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**Friday  
November 16, 1990**

**REGISTRATION**

**STATE**

**Part II**

**Environmental  
Protection Agency**

**40 CFR Parts 122, 123, and 124  
National Pollutant Discharge Elimination  
System Permit Application Regulations  
for Storm Water Discharges; Final Rule**

One commenter took issue with the decision to include drainage ponds, refuse sites, sites for residual treatment, storage, or disposal, as areas associated with industrial activity, because it was the commenter's view that such areas are unconnected with industrial activity. EPA disagrees with this comment. If refuse and other sites are used in conjunction with manufacturing or the by-products of manufacturing they are clearly associated with industrial activity. As noted above, Congress intended to include discharges directly related to manufacturing and processing at industrial plants. EPA is convinced that wastes, refuse, and residuals are the direct result or consequence of manufacturing and processing and, when located or stored at the plant that produces them, are directly related to manufacturing and processing at that plant. Storm water drainage from such areas, especially those areas exposed to the elements (e.g. rainfall) has a high potential for containing pollutants from materials that were used in the manufacturing process at that facility.

One commenter supported the inclusion of these areas since many toxins degrade very slowly and the mere passage of time will not eliminate their effects. EPA agrees and finalizes this part of the definition as proposed. One commenter requested clarification of the term "residual" as used in this context. Residual can generally be defined to include material that is remaining subsequent to completion of an industrial process. One commenter noted that the current owner of a facility may not know what areas or sites at a facility were used in this manner in the past. EPA has clarified the definition of discharge associated with industrial activity to include areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. The Agency believes that the current owner will be in a position to establish these facts.

One commenter suggested including material shipping and receiving areas, waste storage and processing areas, manufacturing buildings, storage areas for raw materials, supplies, intermediates, and finished products, and material handling facilities as additional areas "associated with industrial activity." EPA agrees that this would add clarification to the definition, and has incorporated these areas into the definition at § 122.26(b)(14).

One commenter stated that the language "point source located at an industrial plant" would include outfalls located at the facility that are not owned

or operated by the facility, but which are municipal storm sewers on easements granted to a municipality for the conveyance of storm water. EPA agrees that if the industry does not operate the point source then that facility is not required to obtain a permit for that discharge. A point source is a conveyance that discharges pollutants into the waters of the United States. If a facility does not operate that point source, then it would be the responsibility of the municipality to cover it under a permit issued to them. However, if contaminated storm water associated with industrial activity were introduced into that conveyance by that facility, the facility would be subject to permit application requirements as is all industrial storm water discharged through municipal sewers.

EPA disagrees with several comments that road drainage or railroad drainage within a facility should not be covered by the definition. Access roads and rail lines (even those not used for loading and unloading) are areas that are likely to accumulate extraneous material from raw materials, intermediate products and finished products that are used or transported within, or to and from, the facility. These areas will also be repositories for pollutants such as oil and grease from machinery or vehicles using these areas. As such they are related to the industrial activity at facilities. However, the language describing these areas of industrial activity has been clarified to include those access roads and rail lines that are "used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility." For the same reasons haul roads (roads dedicated to transportation of industrial products at facilities) and similar extensions are required to be addressed in permit applications. Two industries stated that haul roads and similar extensions should be covered by permits by rule. EPA is not considering the use of a permit by rule mechanism under this regulation, however this issue will be addressed in the section 402(p)(5) reports to Congress and in general permits to be proposed and promulgated in the near future. EPA would note however that facilities with similar operations and storm water concerns that desire to limit administrative burdens associated with permit applications and obtaining permits may want to avail themselves of the group application and/or general permits.

In response to comments, EPA would also like to clarify that it intends the language "immediate access roads"

(including haul roads) to refer to roads which are exclusively or primarily dedicated for use by the industrial facility. EPA does not expect facilities to submit permit applications for discharges from public access roads, such as state, county, or federal roads such as highways or BLM roads which happen to be used by the facility. Also, some access roads are used to transport bulk samples of raw materials or products (such as prospecting samples from potential mines) in small-scale prior to industrial production. EPA does not intend to require permit applications for access roads to operations which are not yet industrial activities.

EPA does agree with comments made by several industries that undeveloped areas, or areas that do not encompass those described above, should generally not be addressed in the permit application, or a storm water permit, as long as the storm water discharge from these areas is segregated from the storm water discharge associated with the industrial activity at the facility.

Numerous commenters stated that maintenance facilities, if covered, should not be included in the definition. EPA disagrees with this comment. Maintenance facilities will invariably have points of access and egress, and frequently will have outside areas where parts are stored or disposed of. Such areas are locations where oil, grease, solvents and other materials associated with maintenance activities will accumulate. In response to one commenter, such areas are only regulated in the context of those facilities enumerated in the definition at § 122.26(b)(14), and not similar areas of retail or commercial facilities.

Another commenter requested that "storage areas" be more clearly defined. EPA disagrees that this term needs further clarification in the context of this section of the rule. However, in response to one comment, tank farms at industrial facilities are included. Tank farms are in existence to store products and materials created or used by the facility. Accordingly they are directly related to manufacturing processes.

Regarding storage areas, one commenter stated that the regulations should emphasize that only facilities that are not totally enclosed are required to submit permit applications. EPA does not agree with this interpretation since use of the generic term storage area indicates no exceptions for certain physical characteristics. Thus discharges from enclosed storage areas are also covered by today's rule (except as discussed above). EPA also disagrees with one



will not dictate what type of waste is exposed to the elements.

One commenter requested that the definition of industrial wastes be clarified. For the purpose of this rule, industrial waste consists of materials delivered to the landfill for disposal and whose origin is any of the facilities described under § 122.26(b)(14) of this regulation.

(vi) *Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093.* One commenter suggested that the recycling of materials such as paper, glass, plastics, etc., should not be classified as an industrial activity. EPA disagrees that such facilities should be excluded on that basis. These facilities may be considered industrial, as are facilities that manufacture such products absent recycling.

Other facilities exhibit traits that indicate industrial activity. In junkyards, the condition of materials and junked vehicles and the activities occurring on the yard frequently result in significant losses of fluids, which are sources of toxic metals, oil and grease and polychlorinated aromatic hydrocarbons. Weathering of plated and non-plated metal surfaces may result in contributions of toxic metals to storm water. Clearly such facilities cannot be classified as commercial or retail.

One municipality felt that "significant recycling" should be defined or clarified. EPA agrees that the proposed language is ambiguous. It has been clarified to require permit applications from facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093. These SIC codes describe facilities engaged in dismantling, breaking up, sorting, and wholesale distribution of motor vehicles and parts and a variety of other materials. The Agency believes these SIC codes clarify the term significant recycling.

One municipality stated that regulation of these facilities under NPDES would be duplicative if they are publicly owned facilities. One State expressed the view that automobile junkyards, salvage yards could not legitimately be considered industrial activity. As noted above, EPA disagrees with these comments. Facilities that are actively engaged in the storage and recycling of products including metals, oil, rubber, and synthetics are in the

business of storing and recycling materials associated with or once used in industrial activity. These activities are not commercial or retail because they are engaged in the dismantling of motors for distribution in wholesale or retail, and the assembling, breaking up, sorting, and wholesale distribution of scrap and waste materials, which EPA views as industrial activity. Further, being a publicly owned facility does not confer non-industrial status.

(vii) *Steam electric power generating facilities, including coal handling sites, and onsite and offsite ancillary transformer storage areas.* Most of the comments were against requiring permit applications for onsite and offsite ancillary transformer facilities. One commenter stated that these transformers did not leak in storage and if there were leakage problems in handling transformers, such leaks were subject to Federal and State spill clean-up procedures. The same commenter suggested that if EPA required applications from such facilities that it exclude those that have regular inspections, management practices in place, or those that store 50 transformers at any one time.

EPA agrees that such facilities should not be covered by today's rule. As one commenter noted, the Toxic Substances Control Act (TSCA) addresses pollutants associated with transformers that may enter receiving water through storm water discharges. EPA has examined regulations under TSCA and agrees that regulation of storm water discharges from these facilities should be the subject of the studies being performed under section 402(p)(5), rather than regulations established by today's rule. Under TSCA, transformers are required to be stored in a manner that prevents rain water from reaching the stored PCBs or PCB items. 40 CFR 761.65(b)(1)(i). EPA considers transformer storage to be more akin to retail or other light commercial activities, where items are inventoried in buildings for prolonged periods for use or sale at some point in the future, and where there is no ongoing manufacturing or other industrial activity within the structure.

One commenter stated that this category of industries should be loosened so that all steam electric facilities are addressed—oil fired and nuclear. EPA believes that the language as proposed broadly defines the type of industrial activity addressed without specifying each mode of steam electric production. One commenter noted that the EPA has no authority under the CWA (*Train v. CIPR, Inc.*, 426 U.S. 1 (1976)) to regulate the discharge of

source, special nuclear and by-product materials which are regulated under the Atomic Energy Act. EPA agrees permit applications may not address those aspects of such facilities, however the facility in its entirety may not necessarily be exempt. A permit application will be appropriate for discharges from non-exempt categories.

(viii) *Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, material handling facilities, equipment cleaning operations or airport deicing operations.* Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or which are identified in another subcategory of facilities under EPA's definition of storm water discharges associated with industrial activity. One commenter requested clarification of the terms "vehicle maintenance." Vehicle maintenance refers to the rehabilitation, mechanical repairing, painting, fueling, and lubricating of instrumentalities of transportation located at the described facilities. EPA is declining to write this definition into the regulation however since "vehicle maintenance" should not cause confusion as a descriptive term. One commenter wanted railroad tracks where rail cars are set aside for minor repairs excluded from regulation. In response, if the activity involves any of the above activities then a permit application is required. Train yards where repairs are undertaken are associated with industrial activity. Train yards generally have trains which, in and of themselves, can be classified as heavy industrial equipment. Trains, concentrated in train yards, are diesel fueled, lubricated, and repaired in volumes that connote industrial activity, rather than retail or commercial activity.

One commenter argued that if gasoline stations are not considered for permitting, then all transportation facilities should be exempt. EPA disagrees with the thrust of this comment. Transportation facilities such as bus depots, train yards, taxi stations, and airports are generally larger than individual repair shops, and generally engage in heavier more expansive forms of industrial activity. In keeping with Congressional intent to cover all industrial facilities, permit applications from such facilities are appropriate. In contrast, EPA views gas stations as retail commercial facilities not covered