

STORMWATER DISCHARGES ISSUE
March 7, 1989

ISSUE

EPA published a proposed rule on December 7, 1988 (53 Federal Register 49416 - 49487) in which the National Pollution Discharge Elimination System (NPDES) permits will be extended to cover stormwater discharges. Six public meetings have been held during the time period of mid-January to early-February, 1989. API formed an Ad Hoc Committee to address the issues of the permit. The committee has met two times - on January 25 and February 21, to formulate written comments for submission by March 7, 1989.

BACKGROUND

The proposed rule requires NPDES permits for all point source discharges into water of the US, which have or may have spills and contamination with oil and grease, or hazardous chemicals as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980. The current proposed rule is an attempt by EPA to codify Section 401 of the Water Quality Act of 1987 (WQA) which amended Section 402 (1) (2) of the Clean Water Act (CWA) to address uncontaminated stormwater discharges from mining and oil and gas operations (40 CFR 122.25 (a) (2)).

The proposed rule identifies a tiered and phased in approach by which all discharges will be permitted by October 1, 1992. The first tier would become all those discharges which contribute to a water quality standard violation or are significant contributors of pollutants to the waters of the United States, and require immediate permitting.

The proposed rule has provisions for sampling, group applications, municipal applications, and construction industry.

IMPACT IN INDUSTRY

EPA in the proposed rule has expanded the definition from "currently contaminated" to historically "ever contaminated" or in the future "may be contaminated" with oil and grease or hazardous materials. This is far outside the intent of Congress which directed EPA to "take into consideration whether these materials are present in such stormwater runoff in excess of reportable quantities under Section 311 of the CWA or Section 102 of the CERCLA.

The EPA in the current proposal is attempting to expand the intent of "associated with industrial activity" to include facilities which were not originally specified by Congress. These include oil and gas exploration,

production, processing or treatment operations, or transmission facilities which discharge stormwater which has come into contact with any overburden, raw material, intermediate products, finished products, byproducts or waste products. The EPA definition includes all land, ponds, roads, maintenance shops and storage areas which are being used or have been used for material handling.

The proposed rule requires a 20 minute "first flush" sample and a sample during the four hours of a representative storm event. API has problems with "representative" definition, and with sampling at unmanned facilities during the first 20 minutes.

The API approves of the concept of group applications but points out to the EPA that the proposed rule requires information nearly resembling a permit application, and contains much unnecessary information, such as inventory of all materials stored outside, drainage maps, and detailed information about each facility.

RECOMMENDATIONS

API Ad Hoc Committee has in the final stages of preparation, a document titled, "Comments of the American Petroleum Institute on The Proposed Rule 'National Pollutant Discharge Elimination System Permit Application Regulations for Stormwater Discharges' 53 Fed. Reg. 49416 (December 7, 1988)." A copy is attached for record.

In the comments, API proposes a triggering event such as a spill in excess of 1000 gallons or two smaller spills creating reportable sheens in a twelve month period, to initiate the need for a permit application. Group applications could be limited to as few as twenty, if certain generic functions and materials can be used. Finally, the API suggests that municipal treatment operations apply for and maintain all permits for the discharge from their facilities. The responsibility for maximum extent practicable (MEP) discharge guidelines would fall to the publicly owned treatment works who would then set guidelines equitably for industry and commercial operations discharging into the system.