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United States Government Accountability Office
Washington, DC 20548

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December 16, 2009

The Honorable Barbara Boxer
Chairman
The Honorable James M. Inhofe
Ranking Minority Member
Committee on Environment and Public Works
United States Senate

The Honorable James L. Oberstar
Chairman
The Honorable John L. Mica
Ranking Minority Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Environmental Protection Agency: Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Environmental Protection Agency (EPA), entitled “Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category” (RIN: 2040-AE91). We received the rule on November 23, 2009. It was published in the *Federal Register* as a final rule on December 1, 2009. 74 Fed. Reg. 62,996.

The final rule establishes Clean Water Act technology-based Effluent Limitations Guidelines and New Source Performance Standards for the Construction and Development point source category, which are expected to reduce the amount of sediment and other pollutants discharged from construction and development sites by approximately 4 billion pounds per year. The final rule contains a series of non-numeric effluent limitations, as well as a numeric effluent limitation for the pollutant turbidity. All construction sites will be required to meet the series of non-numeric effluent limitations. Construction sites that disturb 10 or more acres of land at one time will be required to monitor discharges from the site and comply with the numeric effluent limitation. EPA is phasing in the numeric effluent limitation over 4 years to allow permitting authorities adequate time to develop monitoring requirements and to allow the regulated community time to prepare for compliance

with the numeric effluent limitation. Construction sites that disturb 20 or more acres at one time will be required to monitor discharges from the site and comply with the numeric effluent limitation beginning 18 months after the effective date of the final rule, which is February 1, 2010. Construction sites that disturb 10 or more acres at one time will be required to monitor discharges from the site and comply with the numeric effluent limitation beginning February 1, 2014.

Enclosed is our assessment of the EPA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that EPA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Nicole Owens
Director, Regulatory Management Division
Environmental Protection Agency

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
"EFFLUENT LIMITATIONS GUIDELINES AND
STANDARDS FOR THE CONSTRUCTION AND
DEVELOPMENT POINT SOURCE CATEGORY"
(RIN: 2040-AE91)

(i) Cost-benefit analysis

EPA prepared a cost-benefit analysis in conjunction with this final rule. EPA estimates that the final rule, once fully implemented, will result in total pollutant reductions of 4 billion pounds per year. EPA was able to monetize the value of some of the benefits of the rule, which EPA estimates to be approximately \$369 million per year, once fully implemented. EPA could not monetize the value of some benefit categories, such as increases in property values near water bodies, reduced flood damage, and reduced cost of ditch maintenance. For other benefit categories, such as swimming and fishing, EPA was able to partially monetize the benefits. EPA estimates that the annual cost of the rule will be \$810 million when the final rule is fully implemented in 2014.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

EPA certified that the final rule will not have a significant economic impact on a substantial number of small entities. Before making this determination, EPA convened a Small Business Advocacy Review Panel for the rulemaking on September 10, 2008, and EPA held an outreach meeting with Small Entity Representatives on September 17, 2008. EPA determined that approximately 78,000 of the 82,000 in-scope firms, or about 96 percent, are defined as small businesses. Of that 78,000 in-scope small businesses, only 230, or about 0.3 percent, would experience costs exceeding 1 percent of revenue, and none would incur costs exceeding 3 percent of revenue.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

EPA has determined that the final rule contains a federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, EPA has prepared an analysis as required by the Unfunded Mandates Reform Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

EPA published a notice of proposed rulemaking on November 28, 2008. 73 Fed. Reg. 72,562. EPA received numerous comments on the proposed rule, and EPA responded to those comments in the final rule. 74 Fed. Reg. 62,996.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

This final rule contains information collection requirements, and EPA has submitted these requirements to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. The information collection requirements in the final rule are not enforceable until OMB approves them.

EPA estimates a total annual burden of 3,018,750 hours to regulated construction sites larger than 10 acres and regulatory authorities and average annual costs of \$91,978,103. EPA bases this estimate on assumptions that there will be a total of 39,361 projects ongoing at some point in a year, that the average number of monitoring reports submitted per project per year will be 7.07, and that each response will require a burden time of 10.85 hours, 10.3 hours per permittee and 0.55 hours per permitting authority.

In addition, EPA estimates annual capital costs to the industry of \$7,085,890, based on the use of one turbidimeter per active site per year (28,922) and the annual purchase of a turbidimeter calibration kit, for a total annual cost of \$245 per project. EPA estimates that the start-up costs for states will be \$1,564,000, based on an average expected cost of \$31,280 per state (annualized over 10 years, the cost is \$3,667 per state) for equipment purchases and program set-up.

Statutory authorization for the rule

The final rule is authorized by sections 101, 301, 304, 306, 308, 402, 501, and 510 of the Clean Water Act; 33 U.S.C. 1251, 1311, 1314, 1316, 1318, 1341, 1342, 1361, and 1370; and the Pollution Prevention Act of 1990, 42 U.S.C. 13101 et seq.

Executive Order No. 12,866 (Regulatory Planning and Review)

The notice was deemed economically significant under Executive Order No. 12,866 and was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

EPA determined that the final rule has federalism implications under the Executive Order, because it is estimated by EPA to impose substantial direct compliance costs on state and local governments combined. EPA prepared a federalism summary

impact statement as required by the Executive Order. EPA consulted with state and local governments early in the process of developing the proposed action and addresses the concerns it heard in the final rule.