

- Comprehensive Solid Waste Management Program, Implementation, City of DuPont, Pierce and Thurston Counties, WA, Due: June 12, 1995, Contact: Timothy P. Julius (703) 696-8078.
- EIS No. 950182, Draft EIS, NOAA, FL, Florida Keys National Marine Sanctuary Comprehensive Management Plan, Implementation, Special-Use-Permit, Monroe County, FL, Due: December 31, 1995, Contact: Billy Causey (305) 743-2437.
- EIS No. 950183, Draft EIS, SFW, CA, Multiple Species Conservation Program Planning Area, Issuance of a Permit to Allow Incidental Take of Threatened and Endangered Species, San Diego, County, CA, Due: June 26, 1995, Contact: Laura Hill (503) 231-6241.
- EIS No. 950184, Draft EIS, DOE, Programmatic EIS—Uranium Mill Tailings Remedial Action Ground Water Project, Implementation, Clean up of 24 Mill Sites, Due: June 26, 1995, Contact: Rich Sena (505) 845-6307.
- EIS No. 950185, Draft EIS, DOE, NM, Dual Axis Radiographic Hydrodynamic Test (DARHT) Facility, Construction and Operation, Approval of Operating Permit, Los Alamos National Laboratory (LANL), Los Alamos and Santa Fe Counties, NM, Due: June 26, 1995, Contact: Diane Webb (505) 665-6353.
- EIS No. 950186, Draft EIS, AFS, Gypsy Moth Management in the United States: A Cooperative Approach, Implementation, US, Due: June 26, 1995, Contact: Charles Bare (301) 734-8247.
- EIS No. 950187, Draft EIS, USN, FL, Naval Training Center Orlando Disposal and Reuse, Implementation, Orange County, FL, Due: June 26, 1995, Contact: Ronnie Laftimore (803) 743-0888.
- EIS No. 950188, Draft EIS, USN, CA, San Diego Homeporting Facilities Construction and Operation to Support Berthing One NIMITZ Class Aircraft Carrier, Implementation, San Diego County, CA, Due: June 26, 1995, Contact: Robert Hexton (619) 532-3824.

Amended Notices

- EIS No. 910277, Draft EIS, AFS, OR, White King and Lucky Lass Uranium Mine Cleanup and Rehabilitation, Section 404, NPDES Permit and Special Use Permit, Licenses Approval, Fremont National Forest, Lakeview Ranger District, Lake County, OR, Due: November 07, 1991, Contact: Felix R. Miera Jr. (503) 947-3334.

- Published FR 08-23-91—Officially Canceled by Preparing Agency.
- EIS No. 950040, Draft EIS, AFS, CA, California Spotted Owl Habitat Management Plan, Implementation, Sierra Nevada National Forests, CA, Due: July 10, 1995, Contact: Janice Gauthier (916) 979-2020.
- Published FR: 2-3-95—Review period extended.
- EIS No. 950068, Draft EIS, BLM, CA, NV, Alturas 345 Kilovolt (Kv) Electric Power Transmission Line Project, Construction, Operation and Maintenance, Right-of-Way Grant Approval, Special-Use-Permit and COE Section 404 Permit, Susanville District, Modoc, Lassen and Sierra Counties, CA and Washoe County, NV, Due: June 02, 1995, Contact: Peter Humm (916) 257-0456.
- Published FR 03-10-95—Review period extended.
- EIS No. 950073, Draft EIS, BLM, AZ, Grand Canyon National Park General Management Plan, Implementation, Coconino and Mohave Counties, AZ, Due: May 11, 1995, Contact: Larry L. Norris (303) 969-2267.
- Published FR 03-10-95—Review period extended.
- EIS No. 950106, Draft EIS, NPS, WA, Mountain Goat Management Within Olympic National Park, Implementation, Clallan, Grays Harbor, Jefferson and Mason Counties, WA, Due: July 17, 1995, Contact: Paul Crawford (360) 452-4501.
- Published FR—03-31-95 Review period extended.
- EIS No. 950167, Draft Supplement, DOE, WA, Puget Power Northwest Washington Electric Transmission Project, Updated Information, Construction and Operation, Whatcom and Skagit Counties, WA, Due: June 19, 1995, Contact: Ken Barnhart (503) 230-3667.
- Published FR—05-05-95 Due Date Correction.

Dated: May 9, 1995.

William D. Dickerson,
Director, NEPA Compliance Division, Office of Federal Activities.

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[FRL-5206-5]

Water Pollution Control; Approval of Application by the State of Florida to Administer the National Pollutant Discharge Elimination System (NPDES) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Approval of application.

SUMMARY: On May, 1, 1995, the Regional Administrator for the Environmental Protection Agency (EPA), Region IV, approved the application by the State of Florida to administer the National Pollutant Discharge Elimination System (NPDES) program for regulating point source discharges of pollutants into surface waters within the State. The State NPDES program, as authorized, is a phased NPDES program encompassing permitting for: (1) domestic discharges; (2) industrial discharges, including those which also have storm water discharges; and (3) the pretreatment program for Publicly Owned Treatment Works. Storm water discharges from municipal separate storm sewer systems (MS4's), individual storm water-only discharges, storm water general permits, and Federal facility discharges are to be phased in by the year 2000. Further, the State of Florida is not being authorized to administer a sewage sludge management program.

EFFECTIVE DATE: May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Dee Stewart, Environmental Engineer, Permits Section, U.S. EPA Region IV, 345 Courtland Street, NE, Atlanta, Georgia, 30365, 404/347-3012, ext. 2928. The administrative record (which comprises approximately 1650 pages) can be obtained from the Florida Department of Environmental Protection (FDEP) office in Tallahassee, Florida or the EPA office in Atlanta, Georgia at a minimal cost per page.

SUPPLEMENTARY INFORMATION: The Governor of Florida requested NPDES program approval on November 21, 1994, by submitting a complete program application. Several modifications were made to the application based on public comments and discussions between the EPA and FDEP, and as allowed by Federal regulations. These modifications include the clarification of Section III.C. and additions of Attachments A, B, and C, to the Memorandum of Agreement (MOA). Attachment A, represents permits under active Federal enforcement at the time of authorization which EPA will complete the enforcement action but FDEP will assume permitting, compliance, and future enforcement authority for. Attachment B represents permits for which an evidentiary hearing has been requested at the time of program authorization and EPA will retain full jurisdiction until the matter is resolved. Attachment C represents certain facilities as agreed upon by FDEP and EPA where EPA will retain full jurisdiction of these NPDES permits following authorization. Section IV.C.1.a of the MOA was changed to

allow for EPA review of all discharges which may affect the waters of another state or Indian Lands. The final changes, including the signing of the MOA by the Regional Administrator for EPA, Region IV and the Secretary for FDEP, were completed on May 1, 1995.

Florida's application was described in the **Federal Register** on January 27, 1995, at 60 FR 5390 and in notices published in: The Orlando Sentinel, Pensacola News-Journal, Tallahassee Democrat, News-Press, The Tampa Tribune, The Palm Beach Post, Key West Citizen, The Florida Times-Union, and The Miami Herald, on that same date. Copies of Florida's application were available for review at the EPA Region IV office and at any FDEP office, copying was also available at a minimal cost per page.

As part of the public comment process, EPA conducted four public hearings on Florida's application. The hearings occurred on March 7, 1995, in Orlando, Florida, and on March 9, 1995, in Tallahassee, Florida, at 10:00 a.m and 7:00 p.m. on each day. EPA accepted written comments from the public until March 13, 1995. All comments or objections presented at the public hearings or received in writing by EPA Region IV by March 13, 1995, were considered by EPA.

Comments were received regarding the following issues: (1) The language in Section IV.E. of the MOA representing endangered species, (2) The language in Section IV.B. of the MOA representing procedures and policies by which draft and proposed permits will be reviewed, (3) Concern regarding Florida's ability to administer the NPDES program, (4) Concern with FDEP and the South Florida Water Management District regarding its water quality obligations as provided in the Federal Everglades Case Settlement, (5) Concern with the Florida Everglades Forever Act, (6) Concern with Florida's implementation and enforcement of its Minimum Water Flows and Level Law, (7) Concern regarding the possible degradation of the Central Everglades following state program approval, (8) Concern that the United States (including the Environmental Protection Agency) owes the Miccosukee Tribe of Indians of Florida a trust responsibility to protect tribal land and resources which might be violated by delegation of the Florida NPDES program, (9) Concern that NPDES authorization should be held in abeyance until existing and future NPDES challenges pertaining to the Everglades Storm Water Treatment Areas are settled, (10) Concern that discharges beyond the territorial seas (Federal waters) will continue to be

permitted by EPA, and (11) Comments regarding overall benefits resulting from authorization. EPA's response to all comments are contained in this notice. The comments and hearing record are contained in the administrative record supporting this notice.

I. Comment Concerning the Language in Section IV.E. of the MOA Representing Endangered Species

Informal consultation was initiated under Section 7 of the Endangered Species Act (ESA) during a meeting scheduled between the National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), FDEP, and EPA on June 16, 1994. This consultation was opened to utilize the expertise of the NMFS and FWS to evaluate EPA's assessment of potential effects on Federally listed species and critical habitat in the State of Florida. Since NMFS was unable to attend, a letter dated June 23, 1994, was sent to the NMFS reaffirming the initiation of informal consultation with NMFS.

A mechanism to address possible adverse impacts to Federally listed species and their habitats associated with state-issued NPDES permits was developed through discussions with FDEP, NMFS, FWS, and EPA. The measures and provision agreed upon are represented in Section IV.E. of the MOA. In letters, both dated December 16, 1994, EPA requested concurrence from NMFS and FWS with EPA's determination that the authorization of the FDEP NPDES permit program is "not likely to adversely affect" listed species or their critical habitat, pursuant to 50 CFR 402.13. FWS concurred with this determination on December 21, 1994, and NMFS concurred with this determination on January 18, 1995.

On December 15, 1994, EPA requested concurrence from the Florida Bureau of Historic Preservation with EPA's determination that NPDES program approval for FDEP will have no effect on the preservation of historic properties within the State of Florida with respect to the National Historic Preservation Act. Florida's Bureau of Historic Preservation concurred with EPA's determination in a letter dated March 3, 1995.

A. Comments

Two organizations provided specific comments suggesting clarification that all ESA issues resulting in an EPA objection be limited to impacts associated to the permitted discharge. Their comments pertained to Section IV.E. of the MOA and the concern that it could provide a framework by which a Section 7 review of a draft permit

being reviewed by EPA would focus upon the permit issuance or other aspects of the permit process that are unrelated to the discharge allowed under the permit.

B. EPA's Response

Section 7 of the ESA requires interagency cooperation between the Services and all Federal agencies. Section 7(a)(1) requires all agencies to review and utilize their programs in furtherance of the purposes of the ESA. Section 7(a)(2) requires each Federal agency, in consultation with and with the assistance of the Services, to insure that any action is not likely to jeopardize an endangered species or adversely affect critical habitat. The Federal action which underwent Section 7(a)(2) consultation with the Services was EPA's approval of Florida's administration of the NPDES program.

Section IV.E. of the MOA was an important factor in developing EPA's approval of the State NPDES program. Because issuance of a state NPDES permit and EPA's review of a proposed state permit does not trigger Section 7 of the ESA, the MOA calls for close coordination between EPA, the State, and the Services to ensure that the state-issued permits are not likely to jeopardize the continued existence of Federally listed species. Since the Services are natural resource agencies with several areas of responsibilities and maintain the right to comment on any issue, as does the public, the MOA should not attempt to limit the scope of the Services' review of a draft state NPDES permit. The authority provided by the CWA, on the other hand, only allows the State and EPA to ensure that the permitted discharge will comply with applicable CWA requirements, including compliance with state water quality standards. EPA is moreover only authorized to object to a state permit that is outside the guidelines and requirements of the CWA (402(d)). EPA's review therefore will focus on impacts on the discharge subject to CWA requirements. EPA believes that the MOA between the State of Florida and EPA adequately and appropriately addresses ESA concerns.

II. The Language in Section IV.B. of the MOA Representing Procedures and Policies by Which Draft and Proposed Permits Will Be Reviewed

A. Comments

One organization provided comments requesting that Section IV.B. of the MOA be changed to require that the basis of EPA's objections be provided to

the permit applicant when EPA makes an objection to a proposed permit, and FDEP denies the permit or issues the permit in accordance with the EPA objections.

B. EPA's Response

EPA does not believe that additional notification in the MOA is necessary. Florida Administrative Code (FAC) Section 620.510(18)(b) (November 29, 1994) requires that if EPA objects in accordance with 40 CFR 123.44 to the issuance of an NPDES permit, FDEP shall address EPA's objections in the issuance or denial of the NPDES permit. In accordance with the FAC, FDEP will advise the applicant of the basis for the EPA objections and EPA believes that additional language for the MOA is not necessary. In addition, EPA is required by 40 CFR 123.44(a)(1) to send a copy of any comment, objection or recommendation on any draft NPDES permit to the permit applicant.

III. Concern Regarding Florida's Ability to Administer the NPDES Program

A. Comments

Three commentators contend that Florida is unqualified to administer the NPDES program for regulating discharges of pollutants into water of the U.S. The commentators stated that FDEP was unable to maintain an unbiased position and an objective appearance while collecting and evaluating information required for an NPDES permit, especially with respect to FDEP's Northeast District Office. One commentator expressed concern that Florida does not utilize a centralized wastewater permitting system and stated that delegation to local government agencies within the state would be in violation of the Clean Water Act (CWA).

B. Response

EPA disagrees. EPA is not in the practice of speculating on future program implementation. EPA reviewed the State program submission and found it complete and sufficient under Federal law. On November 21, 1994, the State of Florida submitted its formal State Program Submission requesting EPA approval for authorization to administer the NPDES program under Sections 402(b) and 304(i) of the CWA. The submittal included a complete program description (including funding, personnel requirements and organization, and enforcement procedures), an Independent Counsel's Statement, copies of applicable State statutes and regulations, and a MOA to be executed by the EPA, Region IV,

Regional Administrator and the FDEP Secretary. On December 28, 1994, EPA informed the State of Florida that EPA had reviewed the submittal and found it "complete" under the requirements of 40 CFR Part 123. Modifications to this package, based on discussions between EPA and FDEP, were submitted to EPA in a letter, with attachments, dated February 2, 1995. EPA reviewed the program submittal and modifications and determined that it meets the requirements of Section 402(b) of the CWA and Federal regulations, which include, among other things, authority to issue permits which comply with the CWA, authority to impose civil and criminal penalties for permit violations, and authority to ensure the public is given notice and opportunity for a hearing on each proposed NPDES permit issuance. Finally, EPA examined all public comments and considered the overall advantages and disadvantages of authorizing NPDES program administration by the State of Florida.

The State program MOA as approved, also provides ample opportunity for continuing Federal oversight of the State program. EPA may review, in accordance with Section IV.C of the MOA, certain draft permits, sufficiency of permit applications, permit revisions, revocations, and reissuances for: (a) Discharges which may affect the waters of another state or Indian Tribe, (b) discharges proposed to be regulated by general permits, (c) discharges from Publicly Owned Treatment Works with a permitted daily average discharge of at least 1.0 million gallons per day, (d) discharges from any major facility or facilities within any of the industrial categories listed in Appendix A to 40 CFR Part 122, (e) discharges from sources other than a. through d. with an average discharge exceeding 0.5 million gallons per day, and (f) discharges from Publicly Owned Treatment Works required to have a pretreatment program. In accordance with the MOA, EPA has the right to request review, at any time, on any other NPDES permit.

The EPA permit review process is outlined in the MOA. On the date the draft permit is sent to the applicant, FDEP will send EPA Region IV one copy of the public notice, draft permit, application, and the fact sheet or statement of basis associated with the draft permit. When applicable, the submittal will be accompanied by a new source/new discharger determination. If the initial permit information supplied by FDEP is inadequate to determine whether the draft permit meets the guidelines and requirements of the CWA, EPA may, in accordance with 40 CFR 123.44(d)(2) request additional

information. If EPA determines the draft permit is insufficient, EPA shall have 90 days from the date the draft permit is sent to EPA to supply specific grounds for objection, and the terms and conditions which should be included in the permit. These written objections must be based upon one or more of the criteria identified in 40 CFR 123.44(c). Following expiration of the period for public comment for the draft permit, FDEP will prepare a proposed permit. If the proposed permit is the same as the draft permit defined in the public notice, EPA has not objected to such draft permit, and valid and significant public comments have not been made, FDEP may assume EPA has waived their review of the proposed permit and issue the permit without further review by EPA. In all other cases, FDEP will send EPA one copy of the proposed permit, recommendations of any other affected State, and copies of written comments and hearing records, including the response to comments prepared under 40 CFR 124.17 to EPA for review. If EPA objects to the proposed permit, in accordance with 40 CFR 123.44, FDEP will deny the proposed permit or will issue a permit in accordance with EPA objections and will mail a copy of the final permit to EPA. This review process will ensure that FDEP is operating an authorized NPDES program in accordance with the requirements of the CWA.

In response to the commentators other concern, as the State Program is approved, there will be no subdelegation of permitting authority outside of the FDEP. Although in 1987, the CWA was amended to allow for NPDES program authorization to more than one state agency, the state program request must demonstrate equivalent scope and stringency to the CWA and the agency(ies) seeking program approval must have statewide jurisdiction over the class or categories of discharges it seeks to regulate. As is provided in the MOA, the FDEP will be the State Agency implementing the NPDES permitting program and EPA concurs with the management of the NPDES program in this manner. The State is not authorized to delegate any authority to any local agency.

IV. Concern with FDEP and the South Florida Water Management District and Its Water Quality Obligations as Provided in the Federal Everglades Case Settlement

Comment

One commentator contended that the Florida Department of Environmental Protection and the South Florida Water

Management District have violated and continue to violate their water quality obligations in the Federal Everglades Case Settlement [*United States of America vs. South Florida Water Management District et al.*, 847 F.Supp. 1567 (S.D. Fla. 1992)]. The commentor asserted that the proposed changes to the settlement attest those violations.

Response

EPA reviewed the program submittal and modifications and determined that it meets the requirements of Section 402(b) of the CWA and Federal regulations. (See response to Comment III, above.) The Federal Everglades Case Settlement is not relevant to EPA's determination.

V. Concern With the Florida Everglades Forever Act

Comment

One commentor contended that Chapter 373.4592 (Supp. 1994), Florida Statutes, also known as the Everglades Forever Act of 1994 (EFA), violates the Federal Everglades Case Settlement and the CWA, and that Florida is failing to enforce water quality standards as a result of the passage of the EFA. The commentor contended that its testimony to the Florida Legislature, a summary authored by the U.S. Department of Interior, and other documented statements, outline the deficiencies of the EFA. The commentor further claimed that the refusal by FDEP to allow the Florida Environmental Regulation Commission (ERC) to consider its petition for a numeric phosphorus standard, and statements by FDEP in appellate court act as admissions of weakening water quality standards and estops the State of Florida from claiming otherwise. In addition, the commentor stated that FDEP did not properly submit the EFA for EPA review, that FDEP has failed to respond to EPA's questions about the law, and that the authorization of the NPDES program should not be decided while litigation against EPA is pending concerning the necessity of EPA approval of the EFA under the CWA.

Response

This issue is not relevant to EPA's determination of completeness or sufficiency of the State NPDES Program submission. EPA has made a determination the Florida's NPDES program submission and modifications meet the requirements of Section 402(b) and 304(i) of the CWA. The passage of the EFA was a State action, and the litigation concerning the necessity of EPA approval of the EFA is not relevant

to EPA's determination concerning NPDES program authorization. It must be noted that the EFA was submitted by the State to EPA on October 1, 1994. Based upon review of the entire statute, EPA does not consider the EFA to be a revision of existing water quality standards, or to change existing designated uses. FDEP and EPA are in agreement that the EFA is not a change to water quality standards but instead provides a compliance schedule for bringing existing sources of pollution into compliance with State water quality standards.

VI. Concern With Florida's Implementation and Enforcement of Its Minimum Water Flows and Level Law

Comment

One commentor asserted that FDEP and the South Florida Water Management District have failed to implement and enforce the State's minimum water flows and levels law for more than two decades and is thus unqualified to administer the NPDES Program.

Response

EPA has made a determination the Florida's NPDES program submission and modifications meet the requirements of Section 402(b) and 304(i) of the CWA. As part of this determination, EPA reviewed FDEP's resources and believes that FDEP has adequate resources to administer the NPDES program. Chapter 373.042, Florida Statutes, Minimum Water Flows and Levels, is a state law which is not relevant to the NPDES regulations in Section 402 of the CWA or EPA's determination because it deals with a quantity and not a water quality issue. In addition, if necessary, EPA retains federal oversight authority, as discussed above.

VII. Concern Regarding Potential Degradation of the Central Everglades Following State Program Approval

Comment

One commentor claimed that the State of Florida has improperly allowed continued degradation and pollution of the central Everglades, which include Water Conservation Area (WCA) 3-A and the lands of Miccosukee Tribe of Indians of Florida. The commentor further asserted that the lack of enforcement on the part of the State has irreparably harmed and degraded the Everglades and allowed phosphorus-laden discharges into the Everglades and other state water bodies in excess of two hundred (200) parts per billion.

Response

EPA has made a determination the Florida's NPDES program submission and modifications meet the requirements of Section 402(b) and 304(i) of the CWA. The issue to which the commentor refers is being addressed by the Federal Everglades Case Settlement [*United States of America vs. South Florida Water Management District et al.*, 847 F.Supp. 1567 (S.D. Fla. 1992)]. That case and the issues associated with it are not relevant to EPA's decision on authorization of Florida's application for the NPDES program.

VIII. Comment Stating that the United States (Including the Environmental Protection Agency) Owes the Miccosukee Tribe of Indians of Florida (Miccosukee Tribe) a Trust Responsibility to Protect Tribal Land and Resources Which Might be Violated by Delegation of the Florida NPDES Program

Comment

One commentor contended that the United States (including the EPA) owes the Miccosukee Tribe a trust responsibility to protect tribal land and resources, and that said trust responsibility would be violated by the delegation of the State of Florida's NPDES program.

Response

As a Federal agency, EPA recognizes the Federal trust responsibility to the Miccosukee Tribe and other Indian Tribes. However, EPA believes that the authorization to the State of Florida to administer the NPDES program will not violate that trust responsibility.

EPA must reiterate that, at this time, it retains full jurisdiction to administer the NPDES program on the Miccosukee Tribe's Reservation. Until the Miccosukee Tribe seeks program authorization, all permit application and related issues concerning discharges on the Miccosukee Reservation must be directed to EPA Region IV. Further, as noted above, EPA retains the authority to ensure compliance with water quality standards, including any water quality standard set by and approved by EPA by one Miccosukee Tribe. In addition, the Miccosukee Tribe may petition for water quality standards and Section 401 certification authority or NPDES program authority under Sections 303, 402, 405 and 518 of the CWA.

Finally, as noted in Comment III above, EPA does not "delegate" a state permitting program. Rather, EPA authorizes the state to implement the

permitting program, as provided for under the CWA and 40 C.F.R. Part 123, while retaining program oversight authority for permitting and enforcement activities. Should the State of Florida fail to implement its NPDES program in accordance with the CWA, EPA has the authority to rescind authorization.

IX. Comment that NPDES Authorization Should be Held in Abeyance Until Existing and Future NPDES Challenges Pertaining to the Everglades Storm Water Treatment Areas are Settled

Comment

One commentor asserted that the State of Florida's application for authorization to administer the NPDES program should be denied or held in abeyance until the existing and future NPDES permit challenges pertaining to the Everglades Storm Water Treatment Areas (STAs) are settled.

Response

EPA disagrees. This comment is not relevant to EPA's decision on authorization of Florida's application for the NPDES program. The NPDES permit for the Everglades Nutrient Removal (ENR) Project (NPDES No. FL0043885), referenced in Comment IX above, is one of several permits currently being challenged through the evidentiary hearing process (40 CFR Part 124). Section III.C.3. of the MOA states that, for permits for which an evidentiary hearing has been requested at the time of program authorization, EPA will retain full jurisdiction until resolution of the administrative challenge or expiration of the permit. These permits are listed in Attachment B to the MOA. In addition, in accordance with Section III.C.4. and listed on Attachment C to the MOA, which represents certain facilities as agreed upon by FDEP and EPA where EPA will retain full jurisdiction to issue these NPDES permits following authorization, EPA and FDEP have agreed that EPA will retain full jurisdiction for the ENR Project (NPDES No. FL0043885), until such time that FDEP and the permittee are notified by EPA that full jurisdiction has been transferred to FDEP. FDEP shall retain its rights under Section 401 of the CWA to consider certification to any NPDES

permit issued by EPA. Any NPDES permit issued to any STA must meet state water quality standards and all applicable Federal regulations. Therefore, EPA believes that the argument presented above by the commentor is not relevant to EPA's determination.

X. Concern that Discharges Beyond the Territorial Seas (Federal Waters) Will Continue to be Permitted by EPA

A. Comments

One commentor suggested that EPA specifically state in the MOA that dischargers to waters beyond the territorial seas (Federal waters) will not be included in the State of Florida's NPDES program authorization.

B. Response

EPA, as listed in Attachment C of the MOA (which represents certain facilities as agreed upon by FDEP and EPA where EPA will retain full jurisdiction to issue these NPDES permits following authorization), will contain all facilities which discharge into waters outside the jurisdiction of the State (i.e., beyond the territorial sea (Federal waters)).

XI. Comments Regarding Overall Benefits Resulting from Authorization

A. Comments

EPA received comments from three organizations supporting the delegation of NPDES authority to Florida. These comments clearly indicated support for delegation because:

1. It would result in the consolidation of wastewater permitting into one permitting agency,
2. Provide cost benefits to those who pay to have facilities permitted,
3. As well as, reduce the confusion of separate permitting and enforcement.

These comments stated the opinion that State and Federal governments, the public, and the environment will benefit from delegation of NPDES authority to Florida.

B. Response

Comment noted and supported by EPA's response to comment number III. above.

Conclusion

EPA is announcing today the approval of the State of Florida NPDES permitting

program on May 1, 1995. The State of Florida has demonstrated that it adequately meets the requirements for program authorization as defined in Sections 402 and 304(i) of the CWA and at 40 CFR Parts 123 and 403. The State program will implement state law in lieu of the Federally administered program. The U.S. Fish and Wildlife Service concurred with the EPA "not likely to adversely affect" determination. This authorization also represents a phased NPDES program authorization encompassing permitting for: (1) Domestic discharges; (2) Industrial discharges, including those which also have storm water discharges; and (3) pretreatment. Storm water discharges from municipal separate storm sewer systems (MS4's), individual storm water-only discharges, storm water general permits, and Federal facility discharges are to be phased in by the year 2000 for administration by the State. The State is required to submit a program modification for authorization of jurisdiction of these types of NPDES permits to EPA for approval in accordance with the schedule set forth in the MOA. This authorization does not include the sludge management program.

At this time, EPA has full jurisdiction of NPDES program authority for Indian Lands. All permit applications and related issues concerning discharges on Federal Indian Reservations or Indian Tribal Lands will be directed to EPA Region IV.

Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA must provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. Today's **Federal Register** notice is to announce the approval of Florida's authority to administer the phased NPDES permit program.

Review Under Regulatory Flexibility Act and Executive Order 12866

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of entities.

State NPDES Program Status

State	Approved State NPDES permit program	Approved to regulate federal facilities	Approved State pretreatment program	Approved general permits program
Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89

State	Approved State NPDES permit program	Approved to regulate federal facilities	Approved State pretreatment program	Approved general permits program
Colorado	03/27/75	.....	.....	03/04/83
Connecticut	09/26/73	01/09/89	06/03/81	03/10/92
Delaware	04/01/74	.....	.....	10/23/92
Georgia	06/28/74	12/08/80	03/12/81	01/28/91
Hawaii	11/28/74	06/01/79	08/12/83	09/30/91
Illinois	10/23/77	09/20/79	.....	01/04/84
Indiana	01/01/75	12/09/78	.....	04/02/91
Iowa	08/10/78	08/10/78	06/03/81	08/12/92
Kansas	06/28/74	08/28/85	.....	11/24/93
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85	09/30/91
Michigan	10/17/73	12/09/78	04/16/85	11/29/93
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	09/27/91
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81	.....	04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78	.....	07/27/92
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	.....	10/15/92
North Carolina	10/19/75	09/28/84	06/14/82	09/06/91
North Dakota	06/13/75	01/22/90	.....	01/22/90
Ohio	03/11/74	01/28/83	07/27/83	08/17/92
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78	.....	08/02/91
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	09/03/92
South Dakota	12/30/93	12/30/93	12/30/93	*12/30/93
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74	.....	03/16/82	08/26/93
Virgin Islands	06/30/76	.....	.....	.....
Virginia	03/31/75	02/09/82	04/14/89	05/20/91
Washington	11/14/73	.....	09/30/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81	.....	09/24/91
Totals	40	35	28	39

Number of Fully Authorized Programs (Federal Facilities, Pretreatment, General Permits) = 25.

Review Under Regulatory Flexibility Act and Executive Order 12866

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of entities. The proposed approval of the Florida NPDES program does not alter the regulatory control over any industrial category. No new substantive requirements are established by this action. Therefore, because this notice does not have a significant impact on a substantial number of small entities, a Regulatory Flexibility Analysis is not needed.

On October 12, 1993, the Office of Management and Budget exempted this Agency action from the requirements of Executive Order 12866.

John H. Hankinson, Jr.,
Regional Administrator.

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FEDERAL RESERVE SYSTEM

Farmers & Merchants Bank Employee Stock Ownership Plan; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.