



United States General Accounting Office
Washington, DC 20548

Office of the General Counsel

B-284239

December 20, 1999

The Honorable Robert C. Smith
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Environment and Public Works
United States Senate

The Honorable Bud Shuster
Chairman
The Honorable James Oberstar
Ranking Minority Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: Environmental Protection Agency: National Pollutant Discharge Elimination System--Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges

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 "National Pollutant Discharge Elimination System--Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges" (RIN: 2040-AC82). We received the rule on November 3, 1999. It was published in the Federal Register as a final rule on December 8, 1999. 64 Fed. Reg. 68722.

The final rule expands the existing National Pollutant Discharge Elimination System storm water program to address storm water discharges from small municipal separate storm sewer systems (those serving less than 100,000 persons) and construction sites that disturb one to five acres.

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 indicates that EPA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO

evaluation work relating to the subject matter of the rule is Peter Guerrero, Director, Environmental Protection Issues. Mr. Guerrero can be reached at (202) 512-6111.

Sincerely yours,

Robert P. Murphy
General Counsel

Enclosure

cc: Mr. Thomas E. Kelly
Director, Office of Regulatory
Management and Information
Environmental Protection Agency

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
"NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM--
REGULATIONS FOR REVISION OF THE WATER POLLUTION CONTROL
PROGRAM ADDRESSING STORM WATER DISCHARGES"
(RIN: 2040-AC82)

(i) Cost-benefit analysis

EPA conducted a cost-benefit analysis of the final rule and estimates that costs will range from \$847.6 million to \$981.3 million annually with corresponding estimated monetized benefits from \$671.5 million to \$1.628 billion.

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

The EPA Administrator has certified that the final rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, EPA took steps to attempt to minimize the impact on small entities, including convening a Small Business Advocacy Review Panel. Appendix 5 to the final rule contains a summary of the steps taken by EPA to minimize the impact, such as performance rather than design standards, different compliance dates, and the granting of waivers for small entities.

(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 the expenditure of \$100 million or more in any one year for both state, local, and tribal governments, in the aggregate, and the private sector. Therefore, EPA has prepared the written statement required under section 202.

The statement contains both qualitative and quantitative assessments of the costs of the rule and the benefits of the rule. In the final rule preamble, EPA discusses: (1) the alternatives considered, (2) the fact that it considers the alternative selected to be the most effective, and (3) that the benefits outweigh the costs imposed by the rule.

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

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

The final rule was issued using the notice and comment procedures contained at 5 U.S.C. 553.

On January 9, 1998, EPA published a Notice of Proposed Rulemaking in the Federal Register. 63 Fed. Reg. 1536. In the preamble to the final rule, EPA discusses the comments it received and the actions or modifications to the proposed rule which it made in response. In addition, starting in 1992, EPA gathered information regarding both the Phase I and these Phase II regulations through various outreach meetings and panels.

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

The final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

EPA has submitted the required documentation to OMB regarding the collections and OMB has approved the collections and issued OMB Control No. 2040-0211. The preamble to the final rule contains the information submitted to OMB, including the reasons for the collection and the estimated annual burden hours.

Additional collections will be utilized after the rule has been in effect for 3 years, at which time EPA will obtain approval for those collections along with approval renewal of No. 2040-0211.

Statutory authorization for the rule

The final rule was issued under the authority of the Clean Water Act, 33 U.S.C. 1251 et seq.

Executive Order No. 12866

The final rule was reviewed and approved by the Office of Management and Budget as an “economically significant” regulatory action which complies with the requirements of the Order.

Executive Order No. 13132 (Federalism)

EPA has determined that the final rule may have federalism implications under the Order. It has prepared a federalism summary impact statement that is contained in the preamble to the final rule; the summary describes the extent of EPA’s consultations with state and local governments.