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CALIFORNIA COASTAL COMMISSION

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May 9, 2014

Jared Blumenfeld, Regional Administrator
Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105-3901

Re: **CD-001-13, U.S. Environmental Protection Agency (EPA) Consistency Determination for NPDES General Permit for discharges from oil and gas platforms**

Dear Mr. Blumenfeld:

On June 12, 2013, the Coastal Commission (Commission) concurred with EPA's General Consistency Determination (CD-001-13) for the issuance of a General National Pollutant Discharge Elimination System (NPDES) permit (No. CAG280000) for discharges from offshore oil and gas platforms located in federal Outer Continental Shelf (OCS) waters off Southern California.

Under the federal consistency regulations (15 CFR Part 930), a state can revisit a previously-adopted federal consistency concurrence in the event an activity as previously described has been modified, and/or if circumstances have changed, if a state determines that an activity is no longer being conducted in a manner consistent to the maximum extent practicable with the state's enforceable policies of that state's certified coastal management program.

This "reopener clause" is contained in 15 CFR §930.45 and §930.46, which provide:

> *§930.45 Availability of mediation for previously reviewed activities.*
>
> *(a) Federal and State agencies shall cooperate in their efforts to monitor federally approved activities in order to make certain that such activities continue to be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program.*
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> *(b) The State agency may request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a Federal agency activity, including those activities where the State agency's concurrence was presumed, which was:*
>
> > *(1) Previously determined to be consistent to the maximum extent practicable with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent to the maximum extent practicable with the enforceable policies of the management program; ...*

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists, either party may request the Secretarial mediation or OCRM mediation services provided for in subpart G of this part.

§ 930.46 Supplemental coordination for proposed activities.

(a) For proposed Federal agency activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, Federal agencies shall further coordinate with the State agency and prepare a supplemental consistency determination if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The Federal agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource

(3) Substantial changes were made to the activity during the period of the State agency's initial review and the State agency did not receive notice of the substantial changes during its review period, and these changes are relevant to management program enforceable policies and/or affect coastal uses or resources.

(b) The State agency may notify the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the Federal agency to implement the proposed activity consistent with the enforceable policies of the management program. State agency notification under this paragraph (b) does not remove the requirement under paragraph (a) of this section for Federal agencies to notify State agencies.

Since the Commission's June 2013 concurrence several events have transpired that warrant the revisiting of the Commission's concurrence under the above regulations. The Commission staff subsequently learned that hydraulic fracturing was occurring in State and federal waters. The growing public awareness of offshore fracking has led a number of state and federal agencies (including EPA) to begin to reexamine the adequacy of their regulatory practices. On September 20, 2013, the Governor of California signed legislation (Senate Bill (SB) 4) that expressed "paramount" concerns over the adverse environmental and social effects from hydraulic fracturing and other well stimulation activities, and called for updates to existing regulations, standards and practices, conducting additional studies and monitoring of impacts, and providing for increased public disclosure and transparency of information collected by the regulatory agencies reviewing these

activities. As you aware, EPA itself, in light of these growing concerns expressed both state- and nation-wide, informed the Commission staff in July 2013 that it would be modifying its general NPDES Permit to require inventories of chemicals used in the event discharges from hydraulic fracturing were to be commingled with other NPDES-related discharges. The final EPA General NPDES permit issued in December 2013 included language not contained in EPAs initial consistency determination and requiring such an inventory, as follows:

Chemical Inventory. The Permittee shall maintain an inventory of the quantities and concentrations of the specific chemicals used to formulate well treatment, completion and workover fluids. If there is a discharge of these fluids, the chemical formulation (including the concentrations for each chemical used) and discharge volumes of the fluids shall be submitted with the DMR. For discharges of well treatment, completion and workover fluids, the type of operations that generated the discharge fluids shall also be reported.

While we understand that a requirement for providing a chemical inventory is a necessary step in an effort to understand the effects of these discharges on the marine environment, we do not believe that by itself it is sufficient to protect the marine environment from harm from the chemicals used, and we believe that such an inventory would need to be accompanied by specific discharge limits on certain chemicals and by additional testing and monitoring. Without such additional measures we do not believe that discharges involving hydraulic fracturing and other fluids (as defined in SB 4) could be found consistent with the enforceable marine resources and water quality protection policies of the California Coastal Management Program (CCMP), specifically Sections 30230 and 30231 of the California Coastal Act, which provide:

> *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes. [30230]*
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> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges....[30231]*

Our predominant concerns relate to the potentially toxic chemicals commonly found in hydraulic fracturing fluids and the potential for adverse impacts to aquatic organisms associated with exposure to these chemicals. Although there are not a great deal of data available on the types and concentrations of chemicals used in hydraulic fracturing, there are enough data to raise concerns about the potential effects of hydraulic fracturing fluids. Several oil operators have voluntarily submitted hydraulic fracturing fluid product component information disclosure forms to FracFocus, a national hydraulic fracturing chemical registry. These disclosure forms document the use, in state waters offshore of California, of proppants, gelling agents, buffers, surfactants and biocides, among

other types of compounds, which contain specific chemicals that are known to be toxic. For example, human exposure to phenol formaldehyde polymers, a compound found in fracking fluid, can irritate or damage respiratory organs, skin and eyes, compromise liver and kidney function, damage the nervous system, and result in an increased risk of cancer. Another fracking chemical, Hexamethylenetetramine, is highly flammable, has been shown to cause mutagenic effects and in high enough concentrations, is acutely toxic to fish. Petroleum distillates, also found in some fracking fluid formulations, are considered highly toxic to fish, aquatic crustacean and aquatic plants and have the potential to bioaccumulate, making this chemical especially dangerous in aquatic environments. Unfortunately, the data that are available do not provide enough information to determine whether these chemicals are present in quantities and concentrations that would adversely impact coastal resources. These data are sufficient, however, to question whether allowing hydraulic fracturing to continue without further study into the potential adverse impacts associated with releasing hydraulic fracturing fluids into the marine environment is sufficiently protective of coastal resources.

Finally, we would point that it is currently California policy to prohibit discharges of hydraulic fracturing fluids in State waters, due to the concerns expressed above. In light of these concerns, we are requesting that EPA submit a supplemental consistency determination to the Commission, and/or otherwise modify the General NPDES Permit to include: (1) provisions for Commission review of individual uses of hydraulic fluids authorized under the General NPDES Permit; and (2) additional limits, testing, and monitoring provisions to assure that the maximum concentrations of chemicals used in hydraulic fracturing activities (and other activities defined in SB 4) would avoid adverse marine resource and water quality effects. We would also request that any modified consistency determination and/or NPDES General Permit include greater scrutiny and additional analysis of the feasibility of reinjection.

We appreciate the open dialogue and communication we have had with your staff and urge you to continue to work with us in the spirit of cooperation to improve transparency and scrutiny of these matters which are of significant statewide public concern. If you have questions, please contact me at (415) 904-5205, or Kate Huckelbridge, our staff scientist, at (415) 396-9708.

Sincerely,

Alison Dettmer

ALISON DETTMER
Deputy Director