UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

DEC 20 2012

Michelle Jesperson
Federal Programs Manager
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Proposed NPDES General Permit for Offshore Oil and Gas Facilities
Coastal Management Program Consistency Determination

Dear Ms. Jesperson:

By this letter, the U.S. Environmental Protection Agency provides a consistency determination to the California Coastal Commission (CCC) pursuant to section 307(c)(1) of the Coastal Zone Management Act (CZMA), including implementing regulations at 15 CFR 930.31(d) and 930.36. As further described below, the activity for which EPA has prepared the consistency determination consists of the proposal to reissue a general NPDES permit which, when issued, would authorize discharges from existing offshore oil and gas exploration, development and production facilities located in specified Federal waters off Southern California. This EPA general permit is subject to the regulations that implement CZMA section 307(c)(1) regarding Federal agency activities because it does not involve case-by-case or individual issuance of a permit by EPA. EPA released the proposed permit and its fact sheet for public comment on December 19, 2012; these documents are enclosed and also available at: http://www.epa.gov/region09/water/npdes/pubnotices.html. We have also enclosed the *Federal Register* notice of the proposed permit (77 FR 75420, December 20, 2012).

I. The Proposed Activity

The proposed activity is the reissuance of the existing general permit which the CCC previously concurred upon in 2001 (CC-126-00); the existing permit was issued on September 22, 2004 (69 FR 56761) and modified on November 30, 2009 (74 FR 64074). In most respects, the proposed permit is very similar to the existing permit. The major changes from the 2004 permit include the following: 1) reduced geographic area of coverage; 2) revised effluent limits and monitoring requirements for produced water based on an updated reasonable potential analysis; 3) revised whole effluent toxicity (WET) requirements using EPA's 2010 Test for Significant Toxicity; 4) study requirement for cooling water intake structures (CWIS); and 5) new requirement for an on-line oil and grease monitor for produced water. These changes are discussed in more detail below and in the fact sheet accompanying the proposed general permit. As discussed below in section II, we believe they will either maintain or improve the permit's protection of the marine environment and will ensure consistency with the California Coastal Management Program (CMP).

A. Geographic Coverage

The geographic area of coverage of the new permit would be reduced by about 40%, which reflects a reduction in the number of lease blocks considered active by Bureau of Ocean Energy Management (BOEM) in 2012 as compared to 2004. Overall, this should reduce the potential environmental effects of the discharges by limiting the locations in which the proposed discharges may occur.

B. Updated Reasonable Potential Analysis

Using recent monitoring data collected in 2009-2012, Region 9 re-evaluated the reasonable potential of produced water discharges to cause or contribute to exceedances of marine water quality criteria. In 2009, Region 9 modified the general permit to include additional effluent limits and monitoring requirements based on a monitoring study submitted by permittees in 2006 of the reasonable potential of produced water discharges to cause or contribute to exceedances of the more stringent of EPA's marine water quality criteria or the California Ocean Plan.

An important factor in the mathematical procedure for determining reasonable potential (Appendix A of the enclosed fact sheet) is the laboratory detection limit for a particular constituent of concern. Detection limits have generally decreased in recent sampling as compared to the sampling conducted for the 2006 study, and for certain constituents reasonable potential is no longer present. For such cases, effluent limits were removed in the proposed permit; however, annual monitoring requirements were retained to ensure no unreasonable degradation of the marine environment.

C. Whole Effluent Toxicity Requirements

For produced water discharges, the proposed permit also includes new whole effluent toxicity (WET) requirements based on EPA's 2010 manual entitled "National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document," available at: http://cfpub.epa.gov/npdes/wqbasedpermitting/wetdocs.cfm. The new WET manual includes new statistical procedures for analyzing WET data that improve regulatory decision-making regarding the data.

Region 9 analyzed the WET data collected during the term of the 2004 permit using the procedures in the 2010 manual. Where reasonable potential to exceed WET water quality criteria was found, the proposed permit includes WET effluent limits. Where reasonable potential was not found, the proposed permit would require continued annual WET monitoring which we believe is appropriate to ensure no unreasonable degradation of the marine environment. In both cases, the proposed permit would also require certain follow-up actions (such as additional WET tests and a toxicity reduction evaluation) depending on the WET test results. We believe the new permit requirements will enhance the protection of the marine environment as compared to the 2004 permit through the use of the new statistical procedures of the 2010 WET manual and by including actual WET effluent limits in the permit (where needed

based on the reasonable potential analysis); the 2004 permit, on the other hand, did not include any such effluent limits.

D. Cooling Water Intake Structures (CWIS) Requirements

The new proposed permit would also require a study of the potential effects of CWIS at the platforms. In 2006 EPA finalized new regulations for CWIS for new offshore oil and gas facilities. (71 FR 35006) Although Region 9's facilities would all be considered existing facilities and not categorically subject to the new regulations, the preamble for the new regulations clarifies that requirements for existing facilities may be developed based on best professional judgment. Id. The preamble also notes the potential for adverse effects from impingement/entrainment of marine organisms at CWIS at offshore platforms (71 FR 35013), but little information is available quantifying the potential effects.

Accordingly, the proposed permit would require that permittees submit an assessment of the potential impacts of CWIS at existing offshore oil platforms; the assessment would be due within one year of the permit effective date. The proposed permit also includes a clause which provides that the permit may be reopened to include additional requirements based on the study results. The potential effects of CWIS at offshore platforms had not been fully appreciated when the existing permit was issued in 2004 (which was prior to the 2006 regulations) and we believe the new permit will improve the protection of the marine environment by addressing this matter now.

E. On-Line Oil and Grease Monitors

Lastly, the new permit includes new requirements related to on-line oil and grease monitors for produced water discharges. In its staff report (CC-126-00) for the existing general permit, the CCC recommended that such requirements be considered and implemented if feasible. The 2004 permit required permittees to submit an evaluation of the practicality of on-line monitors for produced water, which was unclear when the existing permit was issued in 2004. In 2008, the permittees submitted three reports responding to this requirement, and Region 9 believes they show that such monitors are now practical; EPA will provide the studies to the CCC if desired. Some platforms already have equipment of this nature installed. Thus, the proposed permit would require within one year of the permit effective date that each permittee either install such equipment or submit information showing appropriate equipment has been installed already.

II. Federal Consistency Requirements

EPA has determined that issuance of this permit is consistent to the maximum extent practicable with the enforceable policies of the approved California Coastal Management Program for a number of reasons. Specifically, we have considered the proposed permit in relation to the enforceable policies of Articles 1 through 7 of Chapter 3 of the California Coastal Act.

Of these seven Articles of Chapter 3, we believe that Article 4 (Marine Environment) would be the most applicable to the proposed general permit. The other Articles that may be relevant are Article 3 (Recreation) and Article 7 (Industrial Development). Our analysis of the proposed permit's consistency with the policies in these Articles is discussed below.

A. Article 3 Requirements

Article 3 of Chapter 3 includes policies designed to protect recreation within the coastal zone. Most of these policies pertain to protecting and ensuring the availability of coastal lands and facilities for recreation. Section 30220 requires that water-oriented recreational activities be protected. Requirements necessary for water quality protection for all purposes, including recreation, were considered under EPA's Ocean Discharge Criteria Evaluation (ODCE) discussed below under Article 4. We believe the ODCE analysis showed the requirements of the permit will protect water quality for recreation as well as all other purposes and ensure consistency with Article 3.

B. Article 4 Requirements

Article 4, in sections 30230, 30231, and 30234.5, generally requires the protection of marine resources, environmentally sensitive areas and commercial and recreational fishing when NPDES permits are issued. The requirements and objectives of Article 4 are very similar to the ten factors considered under EPA's Ocean Discharge Criteria regulations at 40 CFR Part 125, Subpart M to ensure consistency with section 403 of the Clean Water Act (CWA) which seeks to prevent unreasonable degradation of the marine environment.

The factors, at 40 CFR 125.122(a)(1) through (10), that EPA must consider before issuing an NPDES permit are:

- The quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged;
- The potential transport of such pollutants by biological, physical or chemical processes;
- The composition and vulnerability of the biological communities which may be exposed to such pollutants, including the presence of unique species or communities of species, the presence of species identified as endangered or threatened pursuant to the Endangered Species Act, or the presence of those species critical to the structure or function of the ecosystem, such as those important for the food chain;

- The importance of the receiving water area to the surrounding biological community, including the presence of spawning sites, nursery/forage and migratory pathways, or areas necessary for other functions or critical stages in the life cycle of an organism;

- The existence of special aquatic sites including, but not limited to marine sanctuaries and refuges, parks, national and historic monuments, national seashores, wilderness areas and coral reefs;

- The potential impacts on human health through direct and indirect pathways;

- Existing or potential recreational and commercial fishing, including finfishing and shellfishing;

- Any applicable requirements of an approved Coastal Zone Management plan;

- Such other factors relating to the effects of the discharge as may be appropriate

- Marine water quality criteria developed pursuant to Section 304(a)(1).

For the 2004 general permit, EPA prepared an ODCE report (provided previously to the CCC with our certification for the 2004 general permit) that analyzed the effects of the proposed discharges which respect to ten factors listed above. EPA's ODCE concluded that the proposed discharges, as regulated under the general permit, would not cause unreasonable degradation of the marine environment and would be consistent with the Ocean Discharge Criteria regulations and section 403 of the CWA. For the 2004 permit, EPA found that the information and analysis in the ODCE showed that the requirements of the permit would also ensure consistency with the very similar policies and goals set forth in Article 4.

For the 2012 proposed permit, Region 9 reconsidered the potential effects of the discharges and consistency with the Ocean Discharge Criteria regulations by reviewing new studies and information that have become available subsequent to 2004; our review is discussed in detail in the enclosed fact sheet. The environmental effects of the proposed discharges had been studied extensively prior to 2004 and we found no new information suggesting the discharges could cause unreasonable degradation of the marine environment. For the new permit, we again conclude that the proposed discharges would not cause unreasonable degradation, and would be consistent with the Ocean Discharge Criteria regulations as well as the Article 4 policies. As noted above in section I, we are proposing certain changes for the 2012 permit which we believe will either maintain or enhance the protection provided by the permit.

C. Article 7 Requirements

Article 7 includes policies related to industrial development, including section 30262 which applies to oil and gas development within the coastal zone. Most of the policies pertain to matters such as facility siting or oil transport rather than platform discharges. The only section which appears applicable to discharges would be section 30262(a)(6) which requires reinjection of new oilfield brines unless the California Division of Oil and Gas determines there would be

adverse effects from doing so. It must be noted that this section applied to "new facilities" where as the proposed permit, as the previous permit, will cover only existing facilities. Nonetheless, the 2004 general permit required a study of the practicality of discharge alternatives (including an evaluation of reinjection of brines). Two studies were submitted by the permittees in 2006, which were also provided to the CCC in 2009. The studies found that reinjection was already being conducting to the maximum extent feasible at the platforms. The general permit would allow a continuation of existing practices regarding reinjection which in our view is consistent with the study results and also Article 7.

III. Determination and Request for Concurrence

In light of the above, pursuant to section 307(c)(1) of the CZMA, EPA has determined that this proposed permit is consistent to the maximum extent practicable with the enforceable policies of the California CMP. EPA requests your review, and if necessary, conditions based on specific enforceable policies that would permit the CCC to concur with EPA's consistency determination within 60 days of the receipt of this letter.

If you have any questions, please contact Eugene Bromley of my staff, at (415) 972-3510.

Sincerely,

David Smith, Manager
NPDES Permits Office (WTR-5)

Enclosures

cc: Mark Delaplaine, Federal Consistency Manager, California Coastal Commission