**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

REPLY TO 6WQ-PP

MEMORANDUM

SUBJECT: Proposed NPDES General Permit for New and Existing Sources and New Dischargers in the Offshore Subcategory of the Oil and Gas Extraction Category for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000)

FROM: William K. Honker, P.E.
Acting Director
Water Quality Management Division (6WQ)

THROUGH: Suzanne Murray
Regional Counsel (6RC)

TO: Diedra Wingate
EPA Liaison for Federal Register (1806A)

The attached notice of the Proposed Reissuance of the NPDES General Permit for Discharges from the Offshore Subcategory of the Oil and Gas Extraction Category to the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000) is submitted for publication in the Federal Register. The completed EPA Form 2340-15 for the Federal Register Typesetting Request and a diskette containing the Federal Register Notice are also attached for submittal to the Federal Register.

Please notify Diane Smith at (214) 665-2145 of the Federal Register publication date.

If you should have any questions or need additional information please contact Isaac Chen by telephone at (214) 665-7364 or by E-mail at chen.isaac@epa.gov.

Attachments

cc: Zobrist (4203M)

6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**NOTICE OF PROPOSED NPDES GENERAL PERMIT**

**Proposed NPDES General Permit for New and Existing Sources and New Dischargers in the Offshore Subcategory of the Oil and Gas Extraction Category for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000)**

**SUMMARY:** The Regional Administrator of Region 6 today proposes to reissue the National Pollutant Discharge Elimination System (NPDES) General Permit No. GMG290000 for existing and new sources and new dischargers in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435, Subpart A), located in and discharging to the Outer Continental Shelf offshore of Louisiana and Texas. The discharge of produced water to that portion of the Outer Continental Shelf from Offshore Subcategory facilities located in the territorial seas of Louisiana and Texas is also authorized by this permit.

This draft permit proposes to retain, with certain modifications, the limitations and conditions of the existing 2007 issued permit (2007 permit). The 2007 permit limitations conform with the Oil and Gas Offshore Subcategory Guidelines and contain additional requirements to assess impacts from the discharge of produced water to the marine environment, as required by section 403(c) of the Clean Water Act.

The following major changes to the 2007 permit are proposed as part of the permit reissuance: (1) define operators for the purpose of this permit, (2) delete New Source Exemption language, (3) add toxicity test requirement for hydrate control fluids, (4) add spill prevention best management practices provision, (5) authorize de minimis discharges caused by subsea safety valve testing, (6) require electronic Notice of Intent (NOI) and discharge monitoring reporting (NetDMR), and (7) establish updated critical dilutions for whole effluent toxicity (WET) limitations for produced water.

**ADDRESS:** Comments should be sent to:

Ms. Diane Smith, Water Quality Protection Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. Comments may be sent electronically to smith.diane@epa.gov.

**DATES:** Comments must be received by [60 days after publication ]. Public meetings and hearings on the proposed permit will be held at the times and places below. The meetings will include a presentation on the proposed permit followed by the opportunity for questions and answers. The public hearings will be held in accordance with the requirements of 40 CFR 124.12. At the public hearing, any person may submit oral or written statements and data concerning the proposed permit. Any person who cannot attend one of the public hearings may still submit written comments, which have the same weight as comments made at the public hearing, through the end of the public comment period.

Date: April 11, 2012
Time: 6:00 pm – 7:30 pm for public meeting and 7:30 pm – 9:00 pm for public hearing
Place: Houston Marriott South Hobby Airport, Galveston Room,
9100 Gulf Freeway, Houston, TX 77017

Date: April 12, 2012
Time: 5:30 pm – 7:00 pm for public meeting and 7:00 pm – 8:30 pm for public hearing
Place: East Bank Regional Library, Jefferson/Napoleon Rooms
4747 W. Napoleon Ave, Metaire, LA 70001

**FOR FURTHER INFORMATION CONTACT:** Ms. Diane Smith, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. Telephone: (214) 655-2145. E-mail address: smith.diane@epa.gov. The complete proposed permit, Fact Sheet and a copy of the Federal Register notice may also be obtained on the Internet at: http://www.epa.gov/region6/water/npdes/genpermit/

**SUPPLEMENTAL INFORMATION:**

Statutory and Regulatory History.

The Clean Water Act ("CWA") establishes a comprehensive program "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). The CWA also includes the objective of attaining "water quality which provides for the protection and propagation of fish, shellfish and wildlife and … recreation in and on the water." 33 U.S.C. § 1251(a)(2)). To achieve these goals, the CWA requires EPA to control point source discharges of pollutants to Waters of the United States through the issuance of National Pollutant Discharge Elimination System ("NPDES") permits.

NPDES permits issued for oil and gas exploration, development, and production discharges are required under Section 402(a)(1) of the CWA to include conditions for meeting technology-based effluent limits established under Section 301 and, where applicable, Section 306. Once an effluent limitations guideline or new source performance standard is promulgated in accordance with these sections, NPDES permits issued by the NPDES permitting authorities must incorporate requirements based on such limitations and standards. See 40 CFR 122.44(a)(1). Effluent limitation guidelines for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category are found at 40 CFR 435, Subpart A.

Regulated Entities. EPA intends to use the reissued permit to regulate oil and gas extraction facilities located in the Outer Continental Shelf of the Western Gulf of Mexico, e.g., offshore oil and gas extraction platforms, but other types of facilities may also be subject to the permit. Covered operators would fall primarily under the North American Industrial Classification System (NAICS) 211 and 213 code series (previously the Standard Industrial Classification (SIC) 13 code series). To determine whether your facility, company, business, organization, etc., may be affected by today's action, you should carefully examine the applicability criteria in Part I, Section A.1 of the draft permit. Questions on the permit's application to specific facilities may also be directed to Ms. Smith at the telephone number or address listed above.

**Oil Spill Requirements.** Section 311 of the Clean Water Act, (CWA or the Act), prohibits the discharge of oil and hazardous materials in harmful quantities. Discharges that are authorized by NPDES permits are excluded from the provisions of Section 311. However, the permit does not

preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by Section 311 of the Act.

**Ocean Discharge Criteria Evaluation.** For discharges into waters of the territorial sea, contiguous zone, or oceans, CWA section 403(c) requires EPA to consider guidelines for determining potential degradation of the marine environment when issuing NPDES permits. These Ocean Discharge Criteria (40 CFR 125, Subpart M) are intended to "prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal" (45 FR 65942, October 3, 1980). EPA Region 6 previously determined that discharges in compliance with the OCS general permit would not cause unreasonable degradation of the marine environment. EPA had also completed a study of the effects of produced water discharges on hypoxia in the northern Gulf of Mexico and found that these discharges would not have a significant impact. (See Predicted Impacts from Offshore Produced Water Discharges on Hypoxia in the Gulf of Mexico, Limno-Tech, Inc., 2006). Since this reissued permit contains limitations that will protect water quality and in general reduce the discharge of toxic pollutants to the marine environment, the Region finds that discharges authorized by the reissued general permit will not likely cause unreasonable degradation of the marine environment. EPA is proposing to require an industry-wide produced water and drilling fluid characterization study to obtain more representative data to evaluate impacts to water quality.

**Marine Protection, Research, and Sanctuaries Act.** The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the transportation for dumping of materials into ocean waters and establishes permit programs for ocean dumping. The NPDES permit EPA reissues today does not authorize dumping under MPRSA.

In addition the MPRSA establishes the Marine Sanctuaries Program, implemented by the National Oceanographic and Atmospheric Administration (NOAA), which requires NOAA to designate certain ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values. Pursuant to the Marine Protection and Sanctuaries Act, NOAA has designated the Flower Garden Banks, an area within the coverage of the OCS general permit, a marine sanctuary. The OCS general permit prohibits discharges in areas of biological concern, including marine sanctuaries. The permit authorizes discharges incidental to oil and gas production from a facility which predates designation of the Flower Garden Banks National Marine Sanctuary as a marine sanctuary. EPA has previously worked extensively with NOAA to ensure that authorized discharges are consistent with regulations governing the National Marine Sanctuary.

**National Environmental Policy Act**. In connection with its oil and gas leasing programs under the Outer Continental Shelf Lands Act, the Bureau of Ocean Energy Management of the Department of Interior (BOEM) has prepared and published draft environmental impact statements (EIS) on potential impacts of oil and gas operations in the Central and Western Gulf of Mexico for the 2012 - 2017 period. BOEM published a Notice of Availability of the DRAFT

EIS at 76 Fed. Reg. 39435 (December 30, 2011). EPA is a cooperating agency on BOEM's EIS and intends to use that EIS to fulfill the National Environmental Policy Act obligations for this permit issuance.

**Magnuson-Stevens Fisheries Conservation and Management Act.** The Magnuson-Stevens Fisheries Conservation and Management Act requires that federal agencies proposing to authorize actions that may adversely affect essential fish habitat (EFH) consult with NMFS. The entire Gulf of Mexico has been designated EFH. EPA intends to adopt the EFH analysis BOEM prepared in the above mentioned Draft EIS for lease sales in the Western and Central Planning Areas (WPA and CPA). BOEM concludes in the Draft EIS that "Impacts of routine dredging and discharges are localized in time and space and are regulated by Federal and State agencies through permitting processes; therefore, there would be minimal impact to fish resources and essential fish habitat from these routine activities associated with a WPA or CPA proposed action." BOEM also concludes that "If there is an effect of an oil spill on fish resources in the Gulf of Mexico, it is expected to cause a minimal decrease in standing stocks of any population. This is because most spill events would be localized, therefore affecting a small portion of fish populations." This permit contains limitations conforming to EPA's Oil and Gas extraction, Offshore Subcategory Effluent Limitations Guidelines at 40 CFR Part 435 and additional requirements assuring that regulated discharges will cause no unreasonable degradation of the marine environment, as required by section 403(c) of the Clean Water Act. This permit also does not authorize spills or any uncontrolled discharges.

**Endangered Species Act (ESA).** The National Marine Fisheries Service (NMFS) previously concurred with EPA's determination that reissuance of the General Permit for the Outer Continental Shelf of the Western Gulf of Mexico (OCS general permit) was not likely to adversely affect any listed threatened or endangered species or designated critical habitat when the permit was reissued in 1991 and 1998 and when it was modified in 1993 and 2001. When EPA reissued the OCS general permit in 2004, EPA requested written concurrence on EPA's "may affect but are not likely to adversely affect" determination from NMFS. In a letter dated July 12, 2004, NMFS provided such concurrence on the 2004 issued OCS general permit. When EPA proposed reissuance of the permit in 2006, EPA found that changes would not decrease the level of protection the permit affords threatened or endangered species. The main changes included new intake structure requirements and more stringent whole effluent toxicity limits based on sub-lethal effects. Since those changes would increase the level of protection, EPA determined that reissuance of the permit was not likely to adversely affect any listed threatened or endangered species or their critical habitat.

EPA is evaluating the effects caused by this permit reissuance action upon the 2004 consultation baseline. EPA will meet its responsibility to fulfill the section 7 of the ESA requirements prior to reissuance of this general permit.

**State Water Quality Standards and State Certification.** The permit does not authorize discharges to State waters; therefore, the state water quality certification provisions of CWA section 401 do not apply to this proposed action.

**Coastal Zone Management Act.** EPA determined that activities proposed to be authorized by this reissued permit are consistent with the local and state Coastal Zone Management Plans. The proposed permit and consistency determination was submitted to the State of Louisiana and the State of Texas for interagency review at the time of public notice. Concurrence was received from both Louisiana Department of Natural Resources and Railroad Commission of Texas on the 2007 permit. Both letters of concurrence were dated February 23, 2007. EPA again determines that reissuance of this permit is consistent with the local and state Coastal Zone Management Plans. The proposed permit and consistency determination are submitted to the State of Louisiana and the State of Texas for interagency review at the time of public notice.

**Paperwork Reduction Act.** The information collection required by this permit will reduce paperwork significantly by implementation of electronic reporting requirements. EPA is working on an electronic notice of intent (eNOI) system so applicants will file their NOIs online. EPA estimates that it takes 10 to 15 minutes to fill up all information required by eNOI for each lease block. And it takes much less time to add, delete, or modify eNOI. EPA will also incorporate an electronic discharge monitoring report (NetDMR) requirement in the permit. The time for NetDMR preparation will be much less than that for paper DMR. The electronic filing systems will also significantly reduce the mailing cost.

**Regulatory Flexibility Act.** The Regulatory Flexibility Act, 5 U.S.C. 601 et seq, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a

substantial number of small entities. As indicated below, the permit reissuance proposed today is not a "rule" subject to the Regulatory Flexibility Act. EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Offshore Subcategory guidelines on which many of the permit's effluent limitations are based. That analysis shows that reissuance of this permit will not have a significant impact on a substantial number of small entities.

Dated

William K. Honker, P.E.

Acting Director, Water Quality Protection Division

EPA Region 6