

# Federal Register

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**TUESDAY**  
September 21, 1993

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## **ENVIRONMENTAL FEDERAL REGISTER**

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**Electronic Sub-Set**

**Note: Agencies currently participating in  
this sub-set include: EPA**

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# Rules and Regulations

Federal Register

Vol. 58, No. 181

Tuesday, September 21, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

[FRL-4732-8]

#### Territory of Guam Petition for Exemption From the Diesel Fuel Sulfur Requirement

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of direct final decision.

**SUMMARY:** On May 7, 1993, the Governor of Guam submitted a petition requesting that the U.S. Territory of Guam be considered for an exemption from the sulfur content requirement for motor vehicle diesel fuel, as specified in sections 211 (i) and (g) of the Clean Air Act, as amended (Act). This action is a direct final decision that grants an exemption to Guam from the diesel fuel sulfur content requirement of sections 211 (i) and (g) of the Act. The exemption is based on EPA's finding that it is unreasonable to require persons in Guam to comply with the sulfur content requirement due to Guam's unique geographical, meteorological and economic factors, as well as other significant local factors.

This action is being taken without prior proposal because EPA believes that this final decision is noncontroversial and because the effect of this rulemaking is limited to the Territory of Guam.

**EFFECTIVE DATES:** This action will be effective on November 21, 1993, unless received by October 22, 1993, that someone wishes to submit adverse or critical comments. If notice of intention to submit adverse comments is received, EPA will publish in the **Federal Register** timely notice withdrawing this action and a subsequent notice requesting comment on Guam's petition. Please direct all correspondence to the addresses shown below.

**ADDRESSES:** Comments or notice of intent to submit adverse or critical comments should be submitted (in duplicate if possible) to both dockets with a copy forwarded to Ms. Mary

T. Smith, Director, Field Operations and Support Division (6406J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

Copies of information relevant to this petition are available for inspection in public docket A-93-33 at the Air Docket (LE-131) of the EPA, room M-1500, 401 M Street SW., Washington, DC 20460, (202) 260-7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. Monday through Friday. A duplicate public docket, R9-GU-93-1, has been established at U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-1224, and is available between the hours of 8 a.m. to 12 p.m. and 1 p.m. to 5 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Ms. Whitney Trulove-Cranor, Environmental Protection Specialist, Plans and Program Section, Field Operations and Support Division (6406J), 401 M Street SW., Washington, DC 20460, (202) 233-9036.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

This notice describes EPA's action to approve as a direct final decision Guam's request for exemption from the diesel sulfur content requirement of section 211 of the Act and those related sections of EPA's motor vehicle diesel fuel regulations (40 CFR part 80). The remainder of this notice is divided into eight parts. Section II provides the background for this action. Section III summarizes the contents of the petition by the Governor of Guam. Section IV discusses other relevant issues regarding this decision. Section V presents EPA's proposed final action and underlying rationale. Finally, sections VI through IX address EPA's statutory authority, regulatory designation and economic impacts.

##### II. Background

Section 211(i)(1) of the Act makes it unlawful, effective October 1, 1993, for any person to manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent (by weight), or which fails to meet a cetane index minimum of 40 (or, alternatively, contains no more than 35 percent aromatics). Section 211(g) makes it unlawful, effective October 1, 1993, for any person to introduce or cause or allow the introduction into any motor vehicle of diesel fuel which such person knows or should

know contains a concentration of sulfur in excess of the standard or fails to meet the cetane index minimum. Section 211(i)(3) establishes the sulfur content for fuel used in the certification of heavy-duty diesel vehicles and engines. Section 211(i)(4) requires the Administrator to take final action on any petition filed under section 325,<sup>1</sup> which seeks exemption from the requirements of section 211(i), within 12 months of the date of such petition.

Section 325 of the Act provides that upon application by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator may exempt any person or source in such territory from various requirements of the Act, including sections 211 (i) and (g). Such exemption may be granted if the Administrator finds that compliance with such requirements is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant.

##### III. Petition for Exemption

On May 7, 1993, the Honorable Joseph F. Ada, Governor of the Territory of Guam, submitted a petition to exempt motor vehicle diesel fuel in Guam from the sulfur content requirements of sections 211(i)(1) and 211(g)(2) of the Act, and the EPA regulations promulgated at 40 CFR part 80. The petition is based on geographical, meteorological, air quality, and economic factors unique to Guam.

If granted, the exemption would apply to all persons in Guam subject to the prohibitions of sections 211(i)(1) and 211(g)(2) of the Act and the diesel fuel requirements in 40 CFR part 80. The exemption would apply to all persons who manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel, or who introduce diesel fuel into motor vehicles, in Guam. Guam is not requesting an exemption from the minimum cetane requirement for

<sup>1</sup> Section 211(i)(4) mistakenly refers to exemptions under section 324 of the Act ("Vapor Recovery for Small Business Marketers of Petroleum Products"), while the proper reference is to section 325. Congress clearly intended to refer to section 325, as shown by the language used in section 211(i)(4), and the United States Code citation used in section 806 of the Clean Air Act Amendments of 1990, Public Law No. 101-549. Section 806 of the Amendments, which added paragraph i to section 211 of the Act, used 42 U.S.C. 7625-1 as the United States Code designation for section 324. This is the proper designation for section 325 of the Act. Also see 136 Cong. Rec. S17236 (daily ed. October 26, 1990) (statement of Sen. Murkowski).

motor vehicle diesel fuel as set forth in sections 211(i)(1) and 211(g)(2).

The following discussion summarizes the contents of the petition.

#### A. Geography and Location of Guam

Guam is a U.S. Territory and the southernmost island in the Marianas Archipelago, on the southern extension of the undersea Honshu Ridge. Guam is located roughly 3,700 miles west-southwest of Honolulu and 1,550 miles south of Tokyo. Guam is a small island, measuring approximately 28 miles long and between 4 and 8.5 miles wide, with a total land area of approximately 209 square miles. There are no nearby land masses downwind of Guam within 1000 kilometers (600 miles) that could be affected by emissions from sources on the island.

Guam is composed of two distinct geologic areas of about equal size. The northern region is a high coralline limestone plateau rising up to 850 feet above sea level. The southern region is mountainous, of volcanic origin, with elevations of 700 to 1,300 feet. Separating north from south is a narrow waist which is quite low, being generally less than 200 feet in elevation.

Guam has a population of 133,152. There are approximately 140 miles of primary paved roads and approximately 330 miles of local streets. As of 1991, there were 735 diesel fueled motor vehicles registered in Guam.

#### B. Climate, Meteorology and Air Quality

Guam has a tropical climate and an average annual rainfall of approximately 98 inches. Temperatures range from approximately 60 to 90 degrees Fahrenheit. Consistent trade winds prevail from the northeast and southeast quadrants of the island over 90% of the time. The easterly trade winds are the strongest and most constant throughout the dry season when sustained wind speeds of 15 to 25 mph are very common. This meteorology combined with its geographic location, have a beneficial impact on the island's air quality.

At the present time, Guam is in attainment with all primary national ambient air quality standards (NAAQS), with the exception of sulfur dioxide in two areas. One area is defined by a circle 3.5 kilometers in radius around the Piti Power Plant. The other area is defined by a circle 3.5 kilometers around Tanguisson. Both of these areas are designated nonattainment for sulfur dioxide as a result of monitored and modeled exceedances of the ambient sulfur dioxide standards in the 1970's prior to implementing changes to power generation facilities. The petition claims that Guam's air quality has improved in recent years as the result of elimination of certain power generation facilities and their replacement by newer, cleaner units, as well as the updating of existing large facilities. Guam believes that the area around Piti, in particular, is now in attainment for sulfur dioxide and is in the

process of collecting data for a petition for redesignation. As for the nonattainment area around Tanguisson, there are no plans to petition for redesignation. However, this nonattainment area only includes two small villages and a U.S. Air Force Annex, none of which attract significant vehicle traffic.

Information provided to the Agency subsequent to the petition indicates that on an annual basis, the diesel-fueled vehicles on Guam are estimated to emit less than 0.1% of the maximum potential sulfur dioxide emissions from other sources on Guam, given the current sulfur content of diesel fuel used in motor vehicles.<sup>2</sup> Therefore, Guam's continued use of diesel fuel with a maximum sulfur content of 0.6% by weight is not expected to have any significant impact on the ambient air quality status of Guam, including the status of the two areas designated as nonattainment for sulfur dioxide, because of the minimal contribution by motor vehicles to the sulfur dioxide levels.

#### C. Economic Factors

Guam's remote location and resource-poor economy result in the need to import raw materials and consumer goods, including fuel oil, at unusually high transportation costs. The island has no known oil resources and no operating refinery. Oil companies supplying Guam import diesel from four foreign sources: Singapore, Indonesia, Australia and the Philippines. Essentially all of the island's petroleum products are refined in Singapore. Oil companies in Singapore do not presently refine diesel fuel that meets the 0.05% sulfur requirement and have indicated that Guam's diesel demand is not large enough to justify the multi-million dollar investment that would be necessary to do so. Consequently, low sulfur fuel would have to be imported from the U.S. mainland.

The petition states that it could conceivably cost Guam fuel suppliers between \$14,500,000 and \$22,300,000 annually to comply with the low-sulfur standard. This high cost of compliance is due to several factors: additional transportation costs associated with importing fuel from the mainland; construction of new storage facilities needed to segregate low sulfur and high sulfur fuel, and also to store larger quantities of fuel since shipments would be less frequent and possibly less reliable coming from the mainland;<sup>3</sup> and the higher purchase price of low sulfur fuel. All fuel suppliers state that these costs would be passed on to Guam's diesel fuel consumers, who already pay between \$1.47 to \$1.58 a gallon, one of the highest rates in the U.S.

<sup>2</sup> Memo from Ed Settle, R.W. Beck and Associates, July 1, 1993. This organization does permit applications for major sulfur dioxide sources on Guam and is working on the maintenance plan for the redesignation request of the Cabras-Piti nonattainment area.

<sup>3</sup> Shipping time from the U.S. mainland to Guam is approximately 18 days; 36 days round-trip. Ships from Singapore to Guam only require 8 days.

Yet Guam residents earn incomes well below the national average.<sup>4</sup> Guam estimates that, if it is forced to import low-sulfur diesel fuel from the U.S. mainland, the cost per gallon of diesel fuel would increase by 30-46 cents (compared to the estimated 3 to 5 cents per gallon increase to meet the low-sulfur diesel requirement in the mainland).

#### D. Environmental Factors

The Government of Guam requires operating permits that limit the sulfur content of diesel-fuel for electric generating units to 0.6 percent by weight or less. This obligation limits the importation of No. 2 diesel fuel for all diesel fuel needs to the 0.6 percent or less level. Information derived from proprietary data supplied by the oil companies on Guam shows that No. 2 diesel fuel imports during 1992 had a sulfur content in the range of 0.39 percent to 0.50 percent (by weight) and the cetane index was in the range of 48 to 55. If this exemption is granted, motor vehicles would continue to use diesel fuel with a sulfur content less than 0.6 percent by weight.

As of 1991, there were only 735 diesel-fueled vehicles registered with the Motor Vehicle Division of Guam, representing approximately 1% of the total vehicle population on Guam. The small amount of sulfur dioxide emitted from these vehicles, as noted in section B above, is dispersed by the island's trade winds and presents no health risk nor causes any air quality standard to be exceeded.

#### IV. Other Issues

EPA addressed several other issues in the American Samoa decision<sup>5</sup> and is addressing them here in a manner consistent with its earlier decision.

##### *Issue: Sale of Certified Engines*

EPA believes that the prohibition against the sale of uncertified engines in Guam (as in American Samoa) should continue to apply. Beginning with model year 1994, some heavy-duty diesel engines probably could be equipped with devices which will be adversely impacted by the level of sulfur in diesel fuel allowed by the exemption being granted today, but it is possible that some emissions benefits can still be accrued. If the use of high-sulfur diesel fuel causes vehicles equipped with aftertreatment devices to emit certain pollutants at higher levels than would be emitted from such engines without the aftertreatment devices, the Agency may consider, among other things, allowing the sale of certified engines without the affected devices. As expressed in the American Samoa exemption, the Agency believes such decisions should be made on a case-by-case

<sup>4</sup> In 1988, Guam's per capita income ranked below all fifty states at \$7,174. The national average per capita income for 1988 was \$16,489.

<sup>5</sup> The Agency granted American Samoa's petition for an exemption from the diesel sulfur requirements on July 20, 1992. 57 FR 32010.

basis upon receipt of evidence to support those decisions.

#### *Issue: Exemption From Tampering*

EPA believes that a blanket waiver from the tampering prohibition for model year 1994 and later heavy-duty engines would allow tampering in situations where such tampering may result in an increase in emissions. For example, removal of an emissions related device that is not affected by the high sulfur fuel or is rendered less effective but not inoperative by the high-sulfur fuel would increase emissions over what would have occurred in the absence of tampering.

Nevertheless, some model year 1994 and later heavy-duty engines may be built with after-treatment devices that may be rendered inoperative by the use of diesel fuel with sulfur content exceeding 0.05% (by weight). The exercise of enforcement discretion may be appropriate to allow the removal of such after-treatment devices. However, EPA shall not allow tampering with an emissions control device that has been or is likely to be rendered less effective, but not rendered inoperative, as a result of the use of higher sulfur fuel unless there is evidence that it may actually cause an increase in certain pollutants as discussed above.

#### *Issue: Warranty Exemption*

The Agency acknowledges that vehicles which were certified with low sulfur diesel fuel may be unable to meet federal emissions standards if they are fueled on high sulfur diesel fuel. However, EPA believes an exemption from the general warranty provisions of section 207 is unnecessary to protect manufacturers from unreasonable warranty recoveries by purchasers. The emission defect warranty requirements under section 207(a) of the Act require an engine manufacturer to warrant that the engine shall conform at the time of sale to applicable emission regulations and that the engine is free from defects which cause the engine to fail to conform with applicable regulations for its useful life. In practice, this warranty is applicable to a specific list of emissions and emissions related engine components.

It has been consistent EPA policy that misuse and/or improper maintenance of a vehicle or engine by the purchaser, including misfueling, may create a reasonable basis for denying warranty coverage for the specific emissions and emissions related engine components affected by this misuse. In this case, while use of fuel exempted from the sulfur content limitation cannot be considered "misfueling", it will have the same adverse effect on emissions control components. Thus, EPA believes that where the use of noncomplying diesel fuel will have an adverse impact on the emissions durability of specific engine parts or systems, such as a trap oxidizer or other after-treatment devices, the manufacturer will have a reasonable basis

for denying warranty coverage on that part or other related parts. However, as has consistently been EPA's policy, those components not adversely affected by the misfueling should continue to receive full emissions warranty coverage. In any event, the number of engines likely to be covered in Guam, and the potential for excessive costs or disputes, are extremely small. EPA will expeditiously consider manufacturers' suggestions for remedies to these situations on a case-by-case basis as they occur.

#### *Issue: Recall Liability*

Heavy-duty engine manufacturers are responsible for recalling and repairing engines that do not comply with emission requirements for their useful lives. The EPA tests engine classes to determine whether engines comply with applicable emission standards when properly used and maintained. Under section 207(c), if a substantial number of engines in a specific engine class do not comply when tested, that entire class can be recalled. If a situation arose in which an engine fueled with noncomplying diesel fuel were included in an EPA in-use compliance test program, EPA would determine, on a case-by-case basis, if the noncompliance were the result of the use of noncomplying diesel fuel. If it were determined that the noncomplying diesel fuel was the cause of the engine's failure to meet the applicable emission standards, that fact would be considered before seeking a recall of the class. Given the fact that only high-sulfur diesel fuel (over 0.05% by weight) will be used in vehicles in Guam, just as in American Samoa, the Agency does not intend to use test results (emissions levels) from those vehicles to show noncompliance by those engines for the purpose of recalling an engine class. In cases in which it was determined that the overall class was subject to recall, however, individual engines would not be excluded from repair on the basis of the fuel used. Manufacturers are responsible for repairing any engine in the recalled class regardless of its history of tampering or malmaintenance. The situation that would occur in Guam is no different and thus the manufacturers should remain liable for performing recall repairs on these engines when required.

#### **V. Final Action**

Because of its remote location and lack of internal petroleum supplies and refining capability, Guam must rely on the importation of diesel fuel and other petroleum products for use in motor vehicles and non-road sources. The refineries currently supplying Guam's diesel fuel needs do not have the capability to produce diesel fuel that meets the sulfur requirement of sections 211(i) and (g) of the Act, and have indicated that Guam's diesel demand is not large enough to justify the multi-million dollar investment that would be necessary to produce 0.05% sulfur diesel fuel. Consequently, Guam would

have to import low sulfur fuel from the U.S. mainland.

Guam currently does not obtain any petroleum products from the mainland. The cost of importing low-sulfur diesel fuel from the mainland would add 30–46 cents to the cost per gallon of diesel fuel in Guam. Transportation and fuel costs would rise significantly. In addition, if stationary sources continue to use high-sulfur diesel, importing low-sulfur diesel fuel would require the costly construction of separate storage facilities. Even if Guam were to import low-sulfur diesel fuel for all its diesel fuel needs, new storage facilities would be necessary to store larger quantities of fuel since shipments would be less frequent and possibly less reliable coming from the mainland as explained previously in this document.

By requiring Guam to comply with the sulfur requirement of sections 211(i) and 211(g), a major economic burden would be placed on the persons on Guam with little or no environmental benefit. Although Guam has two areas that are designated nonattainment for sulfur dioxide, various control strategies have been implemented which EPA believes will result in at least one of these areas reaching attainment for ambient sulfur dioxide standards by 1996.<sup>6</sup> Thus, Guam is in the process of preparing a petition for redesignation for this area. Despite the possibility that the use of high-sulfur diesel fuel may cause increased particulate sulfate emissions in diesel vehicles equipped with trap systems or oxidation catalysts, any increase in sulfate particulates emitted by such vehicles would be dispersed by the island's easterly trade winds and would present a minimal threat to public health or the environment. Because of the small number of diesel vehicles on Guam and the current sulfur content restrictions Guam imposes on diesel fuel, granting this exemption would not likely lead to future problems in maintaining compliance with any National Ambient Air Quality Standards, including sulfur dioxide.

The Environmental Protection Agency's final action is to exempt the Territory of Guam from compliance with the sulfur content requirements for diesel fuel under sections 211(i)(1) and (g)(2) of the Act, and EPA's motor vehicle diesel fuel regulations at 40 CFR part 80. This action does not exempt Guam from the minimum cetane index requirement or the alternative aromatic level requirement in these sections of the Act or EPA regulations. The Agency believes that compliance with the sulfur requirement is

<sup>6</sup>On October 19, 1992, Guam submitted a petition to the EPA requesting that proposed electric generating units on Guam be exempted from several nonattainment area requirements applicable to the Cabras-Piti area, which is one of the sulfur dioxide nonattainment areas on Guam. EPA has proposed to grant the exemption (58 FR 13579, March 12, 1993) on the condition that, within three years from the effective date of the waiver, Guam shall submit to the EPA a request for redesignation of this area to attainment for the sulfur dioxide NAAQS.

unreasonable given the substantial increased costs to persons on Guam and the minimal benefits to Guam's air quality. These impacts would be the direct result of geographical, meteorological and economic factors unique to the Territory of Guam.

This action is being taken without prior proposal because EPA believes that the decision to exempt Guam from the diesel fuel sulfur requirements is noncontroversial and anticipates no significant adverse comments on this action.

In a petition involving very similar factors, EPA exempted American Samoa from these same diesel fuel requirements (56 FR 58243, November 18, 1991). Consistent with this decision, the EPA has decided to approve the exemptions requested by Guam as a direct final decision.

The public should be advised that this action will be effective November 22, 1993, unless EPA receives notice by October 21, 1993, that someone wishes to submit adverse or critical comments. If such notice is received, this action will be withdrawn. If it is withdrawn, EPA will publish a notice announcing its withdrawal before the effective date provided in today's notice. A second notice will then request comments on a proposed decision regarding Guam's request.

This procedure allows the opportunity for public comment and opportunity for oral presentation of data as required under section 307(d) of the Act. This procedure also provides an expedited procedure for final action where a decision is not expected to be controversial and no adverse comment is expected. In the event this decision is not finalized by the October 1, 1993 effective date for the low sulfur fuel requirements, EPA will regard Guam as a low priority for enforcement of the diesel sulfur requirement, pending the final decision on Guam's petition.

#### **VI. Statutory Authority**

Authority for the action described in this notice is in section 325(a)(1) (42 U.S.C. 7625-1(a)(1)) of the Clean Air Act, as amended.

#### **VII. Administrative Designation and Regulatory Analysis**

Under Executive Order (E.O.) 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. The decision announced today alleviates any potential adverse economic impacts in Guam and is not a regulation or rule as defined in

E.O. 12291. Therefore, no regulatory impact analysis has been prepared.

#### **VIII. Impact on Small Entities**

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it is required to certify that a regulation will not have a significant adverse economic impact on a substantial number of small business entities. Today's decision is not a rulemaking. Furthermore, the action eases requirements otherwise applicable to affected entities. Thus, it will not result in a significant adverse impact on a substantial number of small business entities.

#### **IX. Paperwork Reduction Act**

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

Dated: September 13, 1993.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 93-23063 Filed 9-20-93; 8:45 am]

**BILLING CODE 6560-50-P**

# Proposed Rules

Federal Register

Vol. 58, No. 181

Tuesday, September 21, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[OH38-1-5783; FRL-4731-5]

#### Approval and Promulgation of a Commitment To Adopt Rules for Reasonably Available Control Technology for Nitrogen Oxides; Ohio

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Proposed rule.

**SUMMARY:** The USEPA is proposing to approve a revision to the ozone portion of the Ohio State Implementation Plan (SIP) that would satisfy the Clean Air Act (Act) requirements for the adoption of rules for the application of reasonably available control technology (RACT) for major stationary sources of nitrogen oxides (NO<sub>x</sub>) in the Cincinnati-Hamilton interstate moderate ozone nonattainment area (Ohio). The Ohio portion of the interstate area includes the counties of Hamilton, Butler, Warren and Clermont. This revision was submitted by the Ohio Environmental Protection Agency (OEPA) on December 14, 1992. Under the Act, USEPA must approve or disapprove SIPs or portions of SIPs within timeframes specified in the Act; failure to do so would render USEPA in violation of the Act and would delay making approvable SIP rules federally enforceable. In this action, USEPA is proposing action, not on the rules themselves, but on a commitment by the State to submit the NO<sub>x</sub> RACT rules at a later date.

**DATES:** Comments on this proposed revision and on the proposed USEPA approval must be received in writing by October 21, 1993.

**ADDRESSES:** Copies of this SIP revision and USEPA's analysis are available for inspection during normal business hours at the following address: (It is recommended that you contact Richard Schleyer at (312) 353-5089, before visiting the Region 5 Office): Air Enforcement Branch (AE-173), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

#### FOR FURTHER INFORMATION CONTACT:

Richard J. Schleyer, Air Enforcement Branch

(AE-17J), U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604-3590, (312) 353-5089.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The air quality planning requirements for the reduction of NO<sub>x</sub> emissions through the implementation of RACT are set out in Section 182(f) of the Act. Section 182(f) requirements are described by USEPA in a notice, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation if Title I; Proposed Rule," (herein referred to as the NO<sub>x</sub> Supplement) published November 25, 1992 (57 FR 55620). The NO<sub>x</sub> Supplement should be referred to for further information on the NO<sub>x</sub> requirements and is incorporated into this proposal by reference.

Section 182(f) of the Act requires States with areas designated nonattainment of the National Ambient Air Quality Standards (NAAQS) for ozone, and classified as moderate nonattainment and worse (including interstate moderate and ozone transport regions), to apply the same requirements to major stationary sources of NO<sub>x</sub> as are applied to major stationary sources of volatile organic compounds (VOCs).<sup>1</sup> Section 182(b)(2)(C) requires States to submit RACT rules for major stationary sources of VOC emissions which are not covered by a control technologies guidelines (CTG) document by November 15, 1992.<sup>2</sup> USEPA has not issued a CTG document for any NO<sub>x</sub> sources. States, in their RACT rules, are expected to require final installation of the actual NO<sub>x</sub> controls by May 31, 1995, for those sources for which installation by that date is practicable (See 57 FR 55623).

Under Section 110(k)(4), the Administrator may approve a plan revision based on a commitment from the State to adopt specific enforceable measures by a specified date, but not later than one year after the date of USEPA approval of the plan revision that incorporated that commitment.<sup>3</sup>

<sup>1</sup> "Major" as defined in Section 302 and Section 182(c), (d), and (e) of the Clean Air Act Amendments. For more information about what constitutes a major source, refer to Section 2 of the NO<sub>x</sub> Supplement.

<sup>2</sup> The USEPA has defined RACT as being the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762; September 17, 1979).

<sup>3</sup> Refer to the "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990; Implementation of Title I; Proposed Rule," published November 25, 1992 (57 FR

##### II. Committal SIPs

As noted above, Section 110(k)(4) of the Act allows USEPA to accept a commitment from States to adopt portions of SIPs rather than the SIP itself. For example, USEPA may, in certain cases, accept a commitment from States to adopt NO<sub>x</sub> RACT rules rather than the NO<sub>x</sub> RACT rule itself. The NO<sub>x</sub> Supplement and the memoranda of July 22, 1992, and September 16, 1992, from Deputy Assistant Administrator Michael Shapiro concerning the SIP submittals due November 15, 1992, and the memorandum dated February 2, 1993, from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, outline USEPA's criteria for acceptability of committal SIPs for the NO<sub>x</sub> RACT rules. These criteria are:

1. A description of the reason for the committal SIP versus a full SIP submittal.
2. Documentation that credible photochemical grid modeling is not available or did not consider the effects of NO<sub>x</sub> reductions.
3. Identification of resources to complete such modeling.
4. A schedule outlining the milestones that have been and will be achieved toward completion of NO<sub>x</sub> RACT rules. The schedule must include a date for final submittal of rules to USEPA. The date for submitting the final rules to USEPA must be no later than twelve months after USEPA's final approval of the committal SIP.

##### III. State's Committal SIP

On December 14, 1992, USEPA received a revision request (letter dated December 9, 1992) to the ozone portion of Ohio's SIP, submitted by the OEPA. This revision consisted of a commitment for the adoption of rules for the application of RACT for major stationary sources of NO<sub>x</sub> in the Cincinnati-Hamilton interstate moderate ozone nonattainment area by November 15, 1994. The Ohio portion of the interstate area includes the counties of Butler, Warren, Hamilton and Clermont. Sources that emit (or have the potential to emit) 100 tons per year (or more) of NO<sub>x</sub> in these counties will be affected by the NO<sub>x</sub> RACT rules.

The USEPA is proposing to approve this commitment because it meets the

55620) for details of this conditional approval with respect to the NO<sub>x</sub> requirements. Additionally, the memoranda of July 22, 1992, entitled "Guidelines for State Implementation Plans (SIP) Submittals Due November 15, 1992," and a September 16, 1992, entitled "Correction of State Implementation Plan Submittals Table," from Deputy Assistant Administrator Michael Shapiro concerning the SIP submittals due November 15, 1992, also outline the general requirements for conditional approval actions, as well as USEPA's criteria for acceptability of committal SIPs for the NO<sub>x</sub> RACT rules.



requirements of Section 110(k)(4) of the Act and conforms to the policy in the NO<sub>x</sub> Supplement and the memoranda from Deputy Assistant Administrator Michael Shapiro of July 22, 1992, and September 16, 1992, and the February 2, 1993, memorandum from G.T. Helms (cited above), concerning the SIP submittals due November 15, 1992. A detailed analysis of the submittal can be found in a May 25, 1993, Region 5, technical support document.

### 1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to USEPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.<sup>4</sup> Section 110(1) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. The State of Ohio held a public hearing on February 23, 1993, on the commitment to adopt NO<sub>x</sub> RACT rules for the Cincinnati-Hamilton interstate moderate ozone nonattainment area.

### 2. RACT Implementation

States—including those for which USEPA approves a commitment to adopt a NO<sub>x</sub> RACT rule—are expected to require final installation of the actual NO<sub>x</sub> controls by May 31, 1995, for sources for which installation by that date is practicable. The NO<sub>x</sub> Supplement contains a detailed discussion of USEPA's interpretation of the RACT requirement.

### IV. Implications of Today's Action

The USEPA is proposing to approve a commitment by the State of Ohio for the adoption of NO<sub>x</sub> RACT rule(s) as a SIP revision submitted to USEPA for the Cincinnati-Hamilton interstate moderate ozone nonattainment area in Ohio on December 14, 1992. Section 110(k)(4) of the Act provides that where USEPA takes final action to approve a commitment to submit a SIP or portion of a SIP, the State must fulfill that commitment (i.e., submit the required SIP or portion thereof) within one year following USEPA approval. If the State does not fulfill its commitment by submitting the SIP or revision to USEPA within that year, the Act requires that the SIP be disapproved. If USEPA disapproves the SIP for failing to meet the commitment, there are several additional consequences. As provided under Section 179(a) of the Act, if the State of Ohio fails to correct the deficiency[ies] that is[are] the subject of the disapproval within 18 months after a final SIP disapproval, USEPA

is required to impose either the highway funding sanction or the requirement to provide two-to-one new source review offsets. If the State has not corrected its deficiency[ies] within 6 months thereafter, USEPA must impose the second sanction. Any sanction USEPA imposes must remain in place until USEPA determines that the State has come into compliance. If USEPA ultimately disapproves all or part of the SIP submittal for the Cincinnati-Hamilton interstate moderate ozone nonattainment area and the State of Ohio fails to correct the deficiency within 18 months of such disapproval, USEPA anticipates that the first sanction it would impose would be the two-to-one offset requirement. Any final disapproval would also trigger the requirement for USEPA to impose a Federal implementation plan as provided under Section 110(c)(1) of the Act.

### V. Proposed Rule

USEPA is proposing to approve a SIP revision to the ozone portion of the Ohio SIP for a commitment to adopt RACT rules for major stationary sources of NO<sub>x</sub> in the Cincinnati-Hamilton interstate moderate ozone nonattainment area. The Ohio portion of this area includes the counties of Hamilton, Butler, Warren and Clermont.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities; 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and Subchapter I, Part D of the Act do not create any new requirements, but simply approve

requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on affected small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Public comments are solicited on the requested SIP revision and on USEPA's proposal to approve. Public comments received by October 21, 1993, will be considered in the development of USEPA's final rulemaking action.

### List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: September 3, 1993.

**David A. Ullrich,**

*Acting for Regional Administrator.*

[FR Doc. 93–22990 Filed 9–20–93; 8:45 am]

**BILLING CODE 6560–50–M**

### 40 CFR Parts 52 and 81

[CO18–1–5523; FRL–4733–1]

### Clean Air Act Approval and Promulgation of PM–10 Implementation Plan for Colorado; Designation of Areas for Air Quality Planning Purposes

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this action, the EPA proposes full approval of the State implementation plan (SIP) submitted by the State of Colorado for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The SIP was submitted by the State on April 9, 1992 to satisfy certain federal requirements for an approvable nonattainment area PM–10 SIP for Canon City, Colorado.

In addition, EPA is proposing to amend the nonattainment area boundary for the Canon City nonattainment area to include the suburbs of Canon City. The revised boundary is based on information submitted with the SIP which provided a SIP equivalent demonstration showing that the revised boundary more accurately represents the Canon City airshed.

<sup>4</sup>Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

**DATES:** Comments on this proposed action must be received in writing by October 21, 1993.

**ADDRESSES:** Written comments should be addressed to: Vicki Stamper, 8ART-AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222-1530.

**FOR FURTHER INFORMATION CONTACT:**

Vicki Stamper, 8ART-AP, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466, (303) 293-1765.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Canon City, Colorado was designated nonattainment for PM-10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act (Act) upon enactment of the Clean Air Act Amendments of 1990.<sup>1</sup> (See 56 FR 56694, November 6, 1991.) The air quality planning requirements for moderate PM-10 nonattainment areas are set out in subparts 1 and 4 of Title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM-10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on the Colorado moderate PM-10 SIP for the Canon City PM-10 nonattainment area, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, EPA will consider any timely submitted comments before taking final action on today's proposal.

Those states containing initial moderate PM-10 nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM-10 also apply to major stationary sources of PM-10 precursors except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM-10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM-10 by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM-10 NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543-13544.

**II. Today's Action**

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565-13566). In today's action, EPA is proposing to grant approval of the Canon City plan revision which was due to EPA on November 15, 1991 and submitted by the State on April 9, 1992. EPA believes the attainment plan for Canon City meets all of the applicable requirements of the Act.

In addition, EPA is proposing to amend the nonattainment area boundary for the Canon City nonattainment area to include the suburbs of Canon City. The revised boundary is based on information submitted with the SIP which provided a SIP equivalent demonstration showing that the revised boundary more accurately represents the Canon City airshed.

Since the Canon City PM-10 SIP was not submitted by November 15, 1991 as required by section 189(a)(2)(A) of the Act, EPA made a finding pursuant to section 179 of the Act that the State failed to submit the SIP and

notified the Governor in a letter dated December 16, 1991. See 57 FR 19906 (May 8, 1992). After the Canon City PM-10 SIP was submitted on April 9, 1992, EPA found the submittal to be complete pursuant to section 110(k)(1) of the Act and notified the Governor accordingly in a letter dated June 25, 1992. This completeness determination corrected the State's deficiency and, therefore, terminated the 18-month sanctions clock under section 179 of the Act.

*A. Analysis of State Submission*

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.<sup>2</sup> Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA 6 months after receipt of the submission.

The State of Colorado held a public hearing on December 19, 1991 to entertain public comment on the implementation plan for Canon City. The plan for Canon City was subsequently adopted by the State and submitted by the Governor by letter dated April 9, 1992 as a proposed revision to the SIP. EPA received the submittal on April 20, 1992.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. The submittal was found to be complete, and a letter dated June 25, 1992 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. In today's action, EPA proposes to approve the State of Colorado's PM-10 SIP submittal for Canon City and invites public comment on the action.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of

<sup>1</sup> The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et. seq.*

<sup>2</sup> Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because the submission of such inventories is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the submission (see 57 FR 13539).

The State of Colorado submitted a winter season emissions inventory for the base year of 1990. A winter season emissions inventory was calculated because the highest PM-10 concentrations generally occur in the winter season in Canon City. The base year inventory identified area sources as the primary cause of high PM-10 concentrations, which contributed 95% of the total emissions, with re-entrained road dust from paved and unpaved roads contribution 85%, residential wood burning contributing 8%, and tailpipe emissions and coal burning stoves contributing 2%. The remaining 5% of PM-10 emissions was due to minor point sources.

The EPA is proposing to approve the emissions inventory because it generally appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Act.<sup>3</sup> For further details see the Technical Support Document (TSD).

### 3. RACM (Including RACT)

As noted, the initial moderate PM-10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539-13545 and 13560-13561).

The Canon City area was designated nonattainment by operation of law pursuant to section 107(d)(4)(B) of the Act because it was a former PM-10 Group I area of concern. This Group I status was based on the statistical predication of an area's probability of violating the PM-10 NAAQS (Group I areas had the strongest likelihood of violating the PM-10 NAAQS). (See 52 FR 24634, July 1, 1987; 52 FR 29385, August 7, 1987; and 55 FR 45800, October 30, 1990 for further information.) The Canon City area, in fact, has had only one exceedance in 1988 of the 24-hour PM-10 standard, which was associated with high winds and blowing dust. No violations of the PM-10 24-hour standard or the PM-10 annual standard were ever recorded in Canon City. In addition, based on

the 1990 Census results, little to no growth is expected in the Canon City nonattainment area. The Canon City area is already in attainment of the PM-10 NAAQS, and the projected ambient concentrations for the attainment year of 1994 demonstrate that the area will remain in attainment of the PM-10 NAAQS.

RACM (including RACT) does not require the adoption of potentially available control measures where, for example, such measures would not expedite attainment of the PM-10 NAAQS and, therefore, are not "reasonably" available. 57 FR 13543. As indicated, no violations of the PM-10 NAAQS have been monitored in Canon City, and EPA believes that the area is currently in attainment. The adoption and implementation of potentially available control measures would not, in this particular circumstance, expedite attainment. Thus, in this somewhat unique situation where EPA believes the area currently meets the PM-10 NAAQS without the adoption of potentially available control measures, it would be unreasonable to nevertheless require such measures.

Although the State did not adopt control measures for the Canon City nonattainment area, there are several control measures that already apply in the Canon City area. First, Canon City has adopted Resolution No. 9, which is a voluntary street sanding and street sweeping control measure to reduce emissions from re-entrained road dust. Although the State has not adopted these control measures as part of the SIP, the SIP indicates that these control measures have been, and will continue to be, implemented in the Canon City nonattainment area. In addition, Colorado Regulation No. 4, which applies State-wide, requires new wood stoves to meet the emission requirements of EPA's Standards of Performance for New Residential Wood Heaters in 40 CFR 60.532(b). Lastly, Colorado Regulation No. 3, which also applies State-wide, regulates the construction and modification of new stationary sources of PM-10.<sup>4</sup> A more detailed discussion of these measures can be found in the TSD. These measures will help to reduce emissions from new stationary source growth and residential wood combustion, as well as from re-entrained road dust.

EPA has reviewed the State's explanation that the implementation of potentially available control measures are not "reasonably" required for attainment and maintenance of the PM-10 NAAQS in Canon City and, therefore, that RACM (including

RACT) does not require such control measures. EPA believes that the Canon City nonattainment area is currently in attainment of the PM-10 NAAQS without the adoption of potentially available control measures. Accordingly, EPA is proposing to approve the Canon City nonattainment plan as meeting the requirements of RACM (including RACT). However, EPA is not proposing action on the voluntary street sanding and sweeping measure adopted by Canon City because these measures are voluntary and because the State did not include these control requirements in the SIP. In addition, EPA is not proposing action on Regulations No. 3 and 4 because EPA has previously approved these regulations in separate notices (see the TSD for further information).

### 4. Demonstration

As noted, the initial moderate PM-10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). Alternatively, the State must show that attainment by December 31, 1994 is impracticable.

EPA policy specifies that the preferred approach for estimating the air quality impacts of emissions of PM-10 is to use receptor modeling in combination with dispersion modeling. However, on July 5, 1990, EPA issued guidance providing that, in certain situations, it may be more appropriate to rely on a receptor model demonstration alone as the basis for the attainment demonstration (see July 5, 1990 memo to Regional Air Branch Chiefs from Robert D. Bauman, Chief of SO<sub>2</sub>/Particulate Matter Programs Branch and Joseph Tikvart, Chief of Source Receptor Analysis Branch). Canon City met the criteria discussed in the July 5, 1990 memo to justify using receptor modeling alone and had originally planned to use this approach in its attainment demonstration. However, after further review, the State determined that the chemical mass balance (CMB) analysis used in receptor modeling would not be appropriate in Canon City because of the high concentration of geologic material on the PM-10 filters, which is difficult to differentiate from the quartz filters used for PM-10 sampling, and because there were very few high concentration filters to analyze (only two concentrations above 100 micrograms/cubic meter (µg/m<sup>3</sup>) have been measured in Canon City since PM-10 monitoring began in 1987). Thus, the State decided to base its attainment demonstration on simple emissions rollback modeling, which involves using the ratio of the design day ambient concentration of 93 µg/m<sup>3</sup> to the design day emissions and projecting future concentrations. While EPA does not agree with the rationale provided by the State for using emissions rollback modeling, EPA

<sup>3</sup>The EPA issued guidance on PM-10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM-10 SIP Development Guideline. The guidance provided in this document appears to be consistent with the revised Act.

<sup>4</sup>The State is required by the amended Clean Air Act to adopt a revised new source review permit program for the construction and operation of new and modified stationary sources. See section 189(a)(1)(A). This SIP revision, which was submitted by the State on January 15, 1993, was due independent of the November 15, 1991 moderate PM-10 nonattainment area SIP requirements addressed in today's action and will be addressed in a separate notice. See section 189(a)(2)(A) of the Act.

nevertheless does believe that emissions rollback modeling is adequate in this application. Although there is a notable degree of uncertainty in using emissions rollback modeling in a demonstration of attainment, the PM-10 ambient concentrations in Canon City measured during the last three years are so far below the PM-10 NAAQS that an adequate margin of safety is provided. Thus, EPA believes emissions rollback modeling is appropriate in this case.

As noted, EPA believes that the Canon City area is currently in attainment of the PM-10 NAAQS. Further, the attainment demonstration indicates that the NAAQS for PM-10 will be attained in 1994 in the Canon City area and maintained in future years. The 24-hour PM-10 NAAQS is 150  $\mu\text{g}/\text{m}^3$ , and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150  $\mu\text{g}/\text{m}^3$  is equal to or less than one (see 40 CFR 50.6). The annual PM-10 NAAQS is 50  $\mu\text{g}/\text{m}^3$ , and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50  $\mu\text{g}/\text{m}^3$  [id.]. The demonstration predicted that the 24-hour design concentration in the attainment year of 1994 will be 104  $\mu\text{g}/\text{m}^3$ , thus demonstrating attainment of the 24-hour PM-10 NAAQS. The demonstration also showed that the PM-10 NAAQS will be maintained in future years by predicting a 24-hour design concentration in 1997 of 106  $\mu\text{g}/\text{m}^3$ . Since no violations of the annual PM-10 NAAQS have been monitored in the Canon City area and since the attainment demonstration in the Canon City PM-10 SIP clearly shows attainment and maintenance of the 24-hour PM-10 NAAQS, it is reasonable and adequate to assume that protection of the 24-hour standard will be sufficient to protect the annual standard as well. For a more detailed description of the attainment demonstration, see the TSD accompanying this notice.

#### 5. PM-10 Precursors

The control requirements which are applicable to major stationary sources of PM-10 also apply to major stationary sources of PM-10 precursors, unless EPA determines such sources do not contribute significantly to PM-10 levels in excess of the NAAQS in that area (see section 189(e) of the Act).

In Canon City, there has only been one monitored exceedance of the 24-hour PM-10 NAAQS, and the analysis of the air quality and emissions data for the Canon City nonattainment area indicates that the high PM-10 concentrations are generally attributable to particulate matter emissions from area sources, mainly re-entrained road dust and residential wood combustion. In addition, the emissions inventory for this area did not reveal any major stationary sources of PM-10 precursors. Consequently, EPA is proposing to find that major stationary sources of precursors of PM-10 do not

contribute significantly to PM-10 levels in excess of the NAAQS. If finalized, this finding would exclude these major stationary sources from the applicability of PM-10 nonattainment area control requirements. Further discussion of the analyses and supporting rationale for EPA's proposed finding are contained in the TSD accompanying this notice. Note that while EPA is making a general finding for this area, today's finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. The EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

#### 6. Quantitative Milestones and Reasonable Further Progress

The PM-10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). RFP is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

In implementing the quantitative milestone and RFP provisions for this initial moderate area, EPA has reviewed the attainment demonstration for the area to determine the nature of any milestones necessary to ensure timely attainment and whether annual incremental reductions should be required in order to ensure attainment of the PM-10 NAAQS by December 31, 1994 (see section 171(1)). Because the Canon City area is already demonstrating attainment of the PM-10 NAAQS, no further reductions are necessary. Therefore, in this special circumstance, EPA believes the Canon City PM-10 SIP satisfies the quantitative milestone and RFP requirement.

#### 7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The specific control measures contained in the SIP are addressed above under section 3 entitled "RACM (including RACT)." The State has not adopted any additional particulate matter control measures for the Canon City nonattainment area because the area demonstrates attainment and maintenance of the PM-10 NAAQS without the adoption of additional control measures. Thus, it was determined that potentially available control measures were not "reasonably" available and that RACM (including RACT) did not require the adoption of such measures in this case. However, as discussed in section 3 above, there are State-wide regulations that will impact the emissions of PM-10 in the Canon City nonattainment area. These regulations include Colorado Regulation No. 4, which requires all wood stoves sold after July 1, 1991 to meet the emission requirements of EPA's Standards of Performance for New Residential Wood Heaters in 40 CFR 60.532(b), and Colorado Regulation No. 3, which requires construction permits for new or modified stationary sources. EPA has previously reviewed Colorado Regulations No. 3 and 4 at the time these regulations were approved by EPA as part of the SIP, and it was determined that these regulations met the enforceability criteria of the September 23, 1987 Potter Memorandum (see the TSD for information on EPA approvals of these regulations).

The State of Colorado has a program that will ensure that the measures contained in the SIP are adequately enforced. The Colorado Air Pollution Control Division (APCD) has the authority to implement and enforce all emission limitations and control measures adopted by the State, including the requirements of any emission control regulations, the SIP, and any permit. The APCD has the authority to impose civil penalties of up to \$15,000 per day per violation, as well as criminal penalties. Thus, EPA believes the State has adequate enforcement capabilities to ensure compliance with the Canon City PM-10 SIP and the State-wide regulations. The TSD contains further information on the State-wide regulations, enforceability requirements, and a discussion of the personnel and funding intended to support effective implementation of the control measures.

#### 8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. See generally 57 FR 13510-13512 and 13543-13544. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA

that the area has failed to make RFP or attain the PM-10 NAAQS by the applicable statutory deadline. The Canon City SIP did not include any contingency measures. However, as noted, the States are not required to submit the contingency measures required in section 172(c)(9), until November 15, 1993 (see 57 FR 13543 (April 16, 1992)). Consequently, Colorado will have until November 15, 1993 to submit contingency measures for the Canon City nonattainment area.

#### 9. Revisions to the Nonattainment Area Boundary

The Canon City nonattainment area boundary as codified on November 6, 1991 (56 FR 56736) is currently defined as the city limits of Canon City in 40 CFR 81.306. However, on June 20, 1991, the State adopted a more inclusive boundary for the Canon City PM-10 nonattainment area, which included the city limits and the suburbs of Canon City (excluding the nearby towns of Florence and Williamsburg). This revised boundary was submitted with the Canon City PM-10 SIP in April of 1992. The SIP provided a demonstration showing that the revised boundary represented the reasonable Canon City airshed by considering the local topography, meteorology, and land use practices.

The information available at the time that the Canon City PM<sub>10</sub> nonattainment area was promulgated did not indicate that the boundary should include the surrounding suburban areas. However, the subsequent information presented in the SIP persuasively demonstrated that the revised nonattainment area boundary submitted with the SIP more accurately represents the Canon City airshed. (See, e.g., 57 FR 56762, 56763 (November 30, 1992).) Therefore, pursuant to section 110(k)(6) of the Act, EPA is proposing to correct its error by expanding the Canon City PM<sub>10</sub> nonattainment area boundary in 40 CFR 81.306 to include the surrounding suburban area of Canon City (excluding the

cities of Florence and Williamsburg). The proposed legal definition of the revised Canon City nonattainment area is as follows:

*Township 18S—Range 70W*, All of sections 21, 22, 27, 28, 33, and 34; the E1/2, NENW, NESW, SENW, SESW quarters of sections 20, 29, 32; and the W1/2 of sections 23, 26, and 35;

*Township 19S—Range 70W*, All of sections 3, 4, 9, 10; E1/2, NENW, NESW, SENW, SESW quarters of sections 5 and 8; W1/2 of sections 2 and 11.

EPA is proposing to replace the boundary description currently in 40 CFR 81.306 with this revised boundary.

#### III. Implications of Today's Action

The EPA is proposing to approve the plan revision submitted to EPA for the Canon City nonattainment area on April 9, 1992. Among other things, the State of Colorado has adequately demonstrated that the Canon City moderate PM-10 nonattainment area will attain the PM-10 NAAQS by December 31, 1994.

As noted, additional submittals for the initial moderate PM-10 nonattainment areas are due at later dates. The EPA will determine the adequacy of any such submittal as appropriate.

EPA is also proposing to amend the nonattainment area boundary for the Canon City nonattainment area to include the suburbs of Canon City, excluding the nearby towns of Florence and Williamsburg.

#### IV. Request for Public Comments

The EPA is requesting comments on all aspects of today's proposal. As indicated at the outset of this notice, EPA will consider any comments received by October 21, 1993.

#### V. Executive Order (EO) 12291

The OMB has exempted this rule from the requirements of section 3 of EO 12291.

#### VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a

regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

#### List of Subjects

##### 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

##### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: July 26, 1993.

**Robert L. Duprey,**

*Acting Regional Administrator.*

[FR Doc. 93-23065 Filed 9-20-93; 8:45 am]

**BILLING CODE 6560-50-P**

# Notices

Federal Register

Vol. 58, No. 181

Tuesday, September 21, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4732-5]

### Federal Facility Compliance Act; Enforcement Authorities Implementation

**AGENCY:** Environmental Protection Agency.  
**ACTION:** Supplementary information on how EPA will implement its new enforcement authorities granted by the Federal Facility Compliance Act which amended the Resource Conservation and Recovery Act.

The purpose of this information is to notify all Federal agencies of these new procedures and also to notify interested members of the public. The enforcement process is as follows.

On October 6, 1992, the Federal Facility Compliance Act of 1992, Public Law 102-386 (the Act), became law. This Act amends the waiver of sovereign immunity found in the Resource Conservation and Recovery Act (RCRA). The Act's legislative history indicates that its primary purpose is to ensure that Federal facilities are treated the same as private parties with regard to compliance with the requirements of RCRA. For example, the Conference Report states "[w]here EPA uses an administrative complaint pursuant to section 3008(a) to address particular types of violations detected at a private company or municipality the Administrator must use an administrative complaint to address the same types of violations at a federal facility." H.Rep. No. 102-886, 102nd Cong., 2nd Sess., p. 19 (1992). See also H.Rep. No. 102-111, 102nd Cong., 1st Sess., p.2 (1991); S.Rep. No. 102-67, 102nd Cong., 1st Sess. p.1 (1991).

The purpose of this memorandum is to provide guidance on the use of the Agency's authority to issue compliance orders to Federal agencies pursuant RCRA section 3008.<sup>1</sup> It supersedes the Interim Final Guidance, dated April 15, 1993.

<sup>1</sup> This guidance does not cover RCRA section 3008(h) actions against Federal agencies which will continue to be governed by 40 CFR part 24. For cases involving

### Background

Prior to the Act's passage, EPA took RCRA enforcement actions against Federal agencies differently than against private parties. This difference was tied to the language of section 6001 of RCRA, 42 U.S.C. 6961. According to the Department of Justice's 1987 testimony before the House Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, EPA lacked the statutory authority necessary to issue administrative compliance orders pursuant to RCRA section 3008(a). EPA, thus negotiated Federal Facility Compliance Agreements with Federal facilities to bring them into compliance.

Through passage of the 1992 Act, Congress clarified that administrative order authority is available to the Administrator, and this authority has been given directly to the Administrator: "The Administrator shall initiate an administrative enforcement action against such a department \* \* \* in the same manner and under the same circumstances as an action would be initiated against any other person." See section 102(b)(1) of the Act, 42 U.S.C. 6961(b)(2).<sup>2</sup> In addition, under section 103 of the Act, Congress further clarified that federal agencies are persons for purposes of RCRA. EPA now has RCRA administrative compliance order authority against Federal facilities.

### I. Hearing Procedures

As quoted above from the Conference Report "[w]here EPA uses an administrative complaint pursuant to RCRA section 3008(a) to address particular types of violations detected at a private company or municipality the Administrator must use an administrative complaint to address the same types of violations at a federal facility." Upon issuance of a complaint and compliance order, the Regions should also issue a press release.

Since private parties have an opportunity to challenge that complaint using the 40 CFR part 22 procedures, the same opportunity should be available to a Federal agency. While the part 22 procedures are available, the Act also provides the recipient Federal agency with an opportunity to confer with the Administrator before an order becomes final. "No administrative order issued to such a

violations under more than one media, this guidance applies only to the RCRA portion of those violations.

<sup>2</sup> This contrasts with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) which provides response authority and administrative order authority to the President. In order to determine who has been delegated the authority from the President for the particular responsibilities under CERCLA, it is necessary to consult Executive Order 12580.

department, agency, or instrumentality shall become final until such department, agency, or instrumentality has had the opportunity to confer with the Administrator." See section 102(b)(2), 42 U.S.C. 6961(b)(2).<sup>3</sup>

### II. Settlement Negotiations

Settlement is encouraged in the same circumstances as with a private party. See 40 CFR 22.18. The Act also states that any voluntary resolution or settlement of such an action shall be set forth in a consent order. Cases which settle do not require a conference with the Administrator, and in settling a matter, the Respondent waives its opportunity to confer under the new Act on the settled matter. In addition, Federal parties have the same opportunity to confer with EPA as provided under 40 CFR § 22.18. As a result, after EPA issues the complaint, the respondent Federal agency may confer with the complainant under part 22 (EPA employee authorized to issue the complaint) concerning settlement whether or not the respondent requests a hearing. This part 22 opportunity to confer, however, does not affect the thirty-day deadline for filing an answer, just as with a private party under § 22.18(a).

Following the Federal agency's § 22.18 opportunity to confer, if EPA or the Federal agency determine that the case cannot be settled immediately consistent with the provisions and objectives of RCRA, the case will be submitted to the part 22 hearing procedures. Often, however, settlement discussions continue on a parallel track with the hearing procedures. A case against a Federal agency proceeds as would any other compliance hearing matter pursuant to part 22.

### III. Opportunity To Confer Under the New Act

The new Act's "opportunity to confer" requirement would be satisfied by providing an opportunity to confer with a Regional official with properly delegated authority within a reasonable period of time following issuance of the order, but based on input from Regions and as a matter of policy, the Administrator will retain that opportunity to confer personally, as set out below. Federal agencies will have the opportunity to meet with the Administrator only after exhaustion of the part 22 procedures. Placing the conference at the end of the process will enable the Regions to proceed with their

<sup>3</sup> The Administrator's obligation to provide an opportunity confer is tied only to EPA-issued orders. The Administrator will not confer with Federal agencies in receipt of state-issued orders.

enforcement case against the Federal agency in the same manner as they do against private parties.

Conferring with the Administrator before exhaustion of the part 22 procedures would be premature, and EPA policy is that the Administrator will confer with the respondent Federal agency only after exhaustion of the part 22 procedures. Likewise, Regions should not confer with the Federal agency outside of their usual conferring opportunity as found in the part 22 procedures. In other words, each Region should use the same conference and settlement discussion procedures with Federal agencies that it uses with private parties under part 22.

Within ten (10) days of service of a final decision by the Environmental Appeals Board under 40 CFR 22.31, the Federal agency may seek further review by petitioning the Board for reconsideration under § 22.32 if it believes the Board's decision was erroneously decided. Within thirty (30) days of service of the Board's decision if no petition for reconsideration is filed or within thirty (30) days of service of the Board's final decision if a petition for reconsideration is filed, the head of the Federal agency, if it wishes to confer with the Administrator, must file a written request addressed to the Administrator to seek an opportunity to confer with the Administrator. If no written request to confer is filed within these thirty-day periods, the administrative order is final under the terms of section 102(b)(2) of the Act.

In many cases, the conference might be conducted through an exchange of letters. If the conference is handled through letters, the head of the Federal agency should serve his/her letter on the Administrator with a copy to the Director, Office of Federal Facilities Enforcement and all parties/counsel of record. In addition, the letter should specifically identify the issues which the Federal agency proposes that the Administrator consider. The head of the Federal agency should also attach copies of all prior administrative decisions and briefs in the underlying proceedings. Copies of the briefs and underlying decisions should be provided to the Director, Office of Federal Facilities Enforcement.

The head of the Federal agency, however, may prefer to request a direct meeting with the Administrator. The request for a direct conference should be served on the Administrator with a copy to the Director, Office of Federal Facilities Enforcement, and all parties/counsel of record. The request for a direct conference should specifically identify the issues which the Federal agency proposes to discuss with the Administrator, and should specifically identify who will represent the Federal agency. In addition, as part of its request for a direct conference, the head of the Federal agency should attach copies of all prior administrative decisions and briefs in the underlying proceedings. Copies of the briefs and underlying decisions

should also be provided to the Director, Office of Federal Facilities Enforcement.

The parties/counsel of record may request to be present during the direct conference. This request to attend the direct conference, likewise, should be in writing and served on the Director, Office of Federal Facilities Enforcement and the parties/counsel of record. The Administrator or her designee shall notify the head of the Federal agency who requested the direct conference and the parties/counsel of record regarding her plan and arrangements for the direct conference.

Following the conclusion of the direct conference, a person designated by the Administrator will provide a written summary of the issues discussed and addressed. Copies of the written summary shall be provided to the parties/counsel of record. Ordinarily, within thirty (30) days of the conference, or within thirty (30) days following the receipt of the letter from the head of the Federal agency in the event of no direct conference, the Administrator shall issue a written decision with appropriate instruction regarding the finality of the order. This decision shall be filed with the Regional Hearing clerk and made part of the administrative case file.

If the Board referred the matter to the Administrator for decision under § 22.04(a) rather than deciding the matter itself and if the Federal agency wants to request a conference with the Administrator, the Federal agency must do so prior to the Administrator's decision.

To assure that federal agencies are aware of these procedures, Regions should draw responding agencies' attention to part 22 and this and any other relevant Agency guidance.

#### IV. Penalties

In the Federal Facility Compliance Act of 1992, Congress stated that "[t]he Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or imposed for isolated, intermittent, or continuing violations." See section 102(a)(3), 42 U.S.C. 6961(a)(3).

As a matter of policy, EPA will pursue penalties only from the effective date of the Act forward.<sup>4</sup> If violations occurred prior to the effective date and are ongoing, EPA could assess penalties for the violations from October 6, 1992 until correction of the violation.

In summary, the Federal government is liable for RCRA civil and administrative

<sup>4</sup> While states also have the authority to assess penalties against Federal agencies under the Act, states are not necessarily required to use the 1990 RCRA Civil Penalty Policy, but should assess penalties in accordance with state practices. EPA encourages states to use this new authority. As is done in actions against private parties, the Agency can work with those states without administrative penalty authority to assess penalties under the Agency's authority.

penalties just like any other person (with the exception of the effective date of the Act limitation). Since the law and the Congressional intent state that Federal agencies are liable for penalties, EPA will apply its current applicable penalty policy, presently the 1990 RCRA Civil Penalty Policy, against the Federal government for violations of RCRA in the same manner and to the same extent as against any private party.<sup>5</sup> The February 12, 1991 "Policy on the Use of Supplemental Enforcement Projects" also applies in this context. Moreover, for settled cases that require compliance work, stipulated penalties should be included in the Consent Agreement and Consent Order.

#### V. Conclusion

EPA is issuing this final policy to assist the Regions in carrying out their RCRA enforcement program.<sup>6</sup> This guidance supersedes earlier guidance regarding RCRA enforcement at Federal facilities for compliance violations such as that found in the 1988 Federal Facilities Compliance Strategy. It may be necessary in the future to amend part 22 to address the issue of the requirement for the opportunity for a conference before finalizing an Environmental Appeals Board order. Should you have any concerns or questions, please have your staff call Barry Breen or Sally Dalzell at (202) 260-9801.

#### VI. Notice

This guidance and any internal procedures adopted for its implementation are intended solely as guidance for employees of the U.S. Environmental Protection Agency. Such guidance and procedures do not constitute rule making by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this guidance and its internal implementing procedures.

**DATES:** The Guidance was signed July 6, 1993 and was effective immediately.

**FOR FURTHER INFORMATION CONTACT:** Persons needing further information on any

<sup>5</sup> Because the Anti-Deficiency Act, 31 U.S.C. 1341, makes payments by federal agencies subject to the appropriation funds by Congress, there might be unique payment issues that arise with regard to payment of penalties by such agencies. Under the RCRA Civil Penalty policy, the burden regarding ability to pay will reside with the Federal agency, as Respondent. If the Federal agency demonstrates that it cannot pay due to the Anti-Deficiency Act, the Regions should require that the particular Federal agency agree to request additional funds from Congress. In addition, EPA may include an acceleration clause in any payment schedule which is agreed to by the parties.

<sup>6</sup> The Federal Facility Compliance Act addresses more than the waiver of sovereign immunity. For example, RCRA inspections are required at all Federal facilities. EPA issued the March 17, 1993 "FY 1993 Guidance on Implementation of RCRA Inspection Requirements of the Federal Facility Compliance Act" in order to assist the Regions with these new requirements. Guidance should also be forthcoming in the near future to address other appropriate new provisions added by the Act (mixed waste, munitions, and federally-owned treatment works).

aspect of these procedures should contact Sally Dalzell, U.S. Environmental Protection Agency (OE-2261), 401 M Street, SW., Washington, DC 20460, (202) 260-9808.

Dated: September 8, 1993.

**Steven A. Herman,**

*Assistant Administrator, Office of Enforcement.*

[FR Doc. 93-23062 Filed 9-20-93; 8:45 am]

**BILLING CODE 6560-50-P**

[OPPTS-00143; FRL-4646-7]

### Forum on State and Tribal Toxics Action; Coordinating Committee and Projects; Open Meetings

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of open meetings.

**SUMMARY:** The Coordinating Committee and the four Projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold two days of open meetings on the dates, and at the time and place listed below. FOSTTA, a group of state and tribal toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the states/tribes and between the states/tribes and U.S. EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS). FOSTTA currently consists of the Coordinating Committee and four issue-specific Projects. The four Projects are: (1) the Chemical Information Management Project; (2) the State and Tribal Enhancement Project; (3) the Chemical Management Project; and (4) the Lead (Pb) Project.

**DATES:** The meetings are scheduled as follows.

1. The Coordinating Committee and all the Projects will hold meetings on October 18 and 19, 1993.

2. The four Projects will meet on October 18 from 8 a.m. to 5 p.m. and on October 19 from 8 a.m. to noon. On October 18 at 1 p.m. there will be a plenary session with a presentation by the Assistant Administrator-Designate for Prevention, Pesticides and Toxic Substances. The Coordinating Committee will meet on October 19 from noon to 3 p.m.

**ADDRESSES:** The meetings will be held at: The Holiday Inn, 480 King St., Alexandria VA.

**FOR FURTHER INFORMATION CONTACT:** By mail: Shirley Pate, Office of Compliance Monitoring (EN-342), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone (202) 260-8318, or Jim King, Office of Pollution Prevention and Toxics (TS-799), at the same address, telephone (202) 260-6581.

#### List of Subjects

Environmental protection.

Dated: September 15, 1993.

**Michael M. Stahl,**

*Director, Office of Compliance Monitoring.*

[FR Doc. 93-20368 Filed 9-20-93; 8:45 am]

**BILLING CODE 6560-50-F**

[FRL-4731-7]

### Georgia; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final determination of full program adequacy for State of Georgia's application.

**SUMMARY:** Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility.

Georgia applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Georgia's application and proposed a determination that Georgia's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all comments received, EPA is today issuing a final determination that the State's program is adequate.

**EFFECTIVE DATE:** The determination of adequacy for Georgia shall be effective on September 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Patricia S. Zweig, Program Coordinator, Office of Solid Waste, Waste Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

On April 15, 1993, Georgia submitted an application for adequacy determination for their municipal solid waste landfill permit program. On August 5, 1993, EPA published a tentative determination of adequacy for all



portions of Georgia's program. Further background on the tentative determination of adequacy appears at 58 FR 41767, 41768 (August 5, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment.

A public hearing was tentatively scheduled, based on sufficient public interest. As EPA Region IV received no requests for a hearing during the public comment period, the tentatively scheduled hearing has been cancelled.

EPA Region IV received one set of comments during the public comment period on the tentative determination of adequacy for Georgia. The commenter maintained that use of the draft State/Tribal Implementation Rule ("STIR") as guidance is a violation of the Administrative Procedure Act ("APA") requirements that a rule must go through notice and opportunity for comment. EPA does not believe that it is violating any requirements in the APA for notice and comment on a rulemaking. The Agency is not utilizing the draft STIR as a regulation which binds either the Agency or the States. Instead, EPA is using the draft STIR as guidance for evaluating State permit programs and maintains its discretion to approve State programs utilizing the draft STIR and/or other criteria which assures compliance with 40 CFR part 258.

In addition, members of the public have an opportunity to comment on the essential criteria by which EPA assures the adequacy of the State MSWLF permit programs because the Agency discusses the criteria for approval of a State permit program when it publishes each tentative determination notice in the **Federal Register**. The Agency set forth the minimum requirements for an adequate permit program in the tentative determination notice for approval of the State of Georgia's permit program. See 58 FR 41767, 41768 (August 5, 1993).

There are no federally recognized Indian Tribes or lands in the State of Georgia.

## B. Decision

After reviewing the public comments, I conclude that Georgia's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Georgia is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in

compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements with which the regulated community must begin to comply. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

### Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

**Authority:** This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: September 13, 1993.

**Winston A. Smith,**

*Acting Regional Administrator.*

[FR Doc. 93-23061 Filed 9-20-93; 8:45 am]

**BILLING CODE: 6560-50-P**

### [FRL-4731-4]

## Idaho; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final determination of full program adequacy for Idaho's application.

**SUMMARY:** Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has

drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility.

Idaho applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Idaho's application and proposed a determination that Idaho's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all comments received, EPA is today issuing a final determination that the State/Tribe's program is adequate.

**EFFECTIVE DATE:** The determination of adequacy for Idaho shall be effective September 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula vanHaagen, M/S HW-107, U.S. EPA, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553-1847.

### SUPPLEMENTARY INFORMATION:

#### A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under Part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several

minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

On April 5, 1993, Idaho submitted an application for adequacy determination for Idaho's municipal solid waste landfill permit program. On May 10, 1993, EPA published a tentative determination of adequacy for all portions of Idaho's program. Further background on the tentative determination of adequacy appears at 58 FR 27568, May 10, 1993.

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA offered to hold a public hearing on June 30, 1993, if a sufficient number of people requested such a hearing. There were no requests for a public hearing, so the hearing was not held.

EPA received three public comments. Two commenters support the tentative determination of adequacy. One commenter raised concerns that Idaho's application and enclosed materials do not provide guidance to permit applicants when a proposed landfill is on or near Indian lands. The commenter requested that EPA encourage Idaho to provide a mechanism that includes Indian Tribes and EPA early in the State's permitting process and to provide guidance and education to permit applicants when Indian lands are involved directly or indirectly.

EPA agrees that timely notification of a Tribe directly or indirectly affected by a proposed landfill is important. EPA also believes that the mechanism for notification of a Tribe can best be established by the Tribe and the state and local agencies involved in permitting decisions potentially affecting the Tribe. As stated in the 1984 Indian Policy, EPA supports early communication and coordination between Tribes and States or local governments. While a special mechanism for notifying Tribes is not a

requirement for approving state permitting programs, Idaho has agreed to pursue coordination mechanisms with Tribes. EPA affirms its full approval of Idaho's permitting program.

As stated in the tentative determination of approval of Idaho's program, the State's program is not enforceable on Indian lands. Idaho has not asserted nor demonstrated jurisdiction within the exterior boundaries of Indian reservations in its application for adequacy determination. Accordingly, this approval does not extend to lands within Indian reservations in Idaho. Until EPA approves a State or Tribal MSWLF permitting program in Idaho for any part of "Indian Country," as defined in 18 U.S.C. 1151, the requirements of 40 CFR part 258 will, after October 9, 1993, automatically apply to that area. Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLFs located in any part of "Indian Country" that is not covered by an approved State or Tribal MSWLF permitting program.

#### B. Decision

After reviewing the public comments, I conclude that Idaho's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Idaho is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

**COMPLIANCE WITH EXECUTIVE ORDER 12291:** The Office of Management and Budget has exempted this notice from the requirements of Section 3 of Executive Order 12291.

**CERTIFICATION UNDER THE REGULATORY FLEXIBILITY ACT:** Pursuant to the provisions

of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

**Authority:** This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: September 13, 1993.

**Gerald A. Emison,**

*Acting Regional Administrator.*

[FR Doc. 93-22992 Filed 9-20-93; 8:45 am]

**BILLING CODE 6560-50-P**

[FRL 4731-3]

### Proposed Settlement Under Section 122(h) of Comprehensive Environmental Response, Compensation and Liability Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed administrative settlement and opportunity for public comment.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (CERCLA), as amended. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve liabilities of three parties for costs incurred by EPA at the Duffield Avenue Trailer Site.

**DATES:** Comments must be provided on or before October 21, 1993.

**ADDRESSES:** Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, room 309, 26 Federal Plaza, New York, New York 10278 and should refer to: In the Matter of: Duffield Avenue Trailer Site, U.S. EPA Index No. II-CERCLA-122-93-0102.

**FOR FURTHER INFORMATION CONTACT:** U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, room 309, 26 Federal Plaza, New York, New York 10278, (212) 264-2858, Attention: Amelia Wagner.

**SUPPLEMENTARY INFORMATION:** In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Duffield Avenue Trailer Site which was located in Jersey City, New Jersey. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle certain claims for costs incurred by the United States.

The following parties are committed to participate in this settlement: North Carolina Department of Agriculture, JPS Converter

and Industrial Corporation, and J.P. Stevens & Co., Inc. These three Settling Parties will pay a total of \$190,000 under this agreement to reimburse EPA for response costs incurred at the Duffield Avenue Trailer Site.

A copy of the proposed administrative settlement agreement, as well as background

information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, New Jersey Superfund Branch, room 309, 26 Federal Plaza, New York, New York 10278.

Dated: September 8, 1993.

**William J. Muszynski,**

*Acting Regional Administrator.*

[FR Doc. 93-22991 Filed 9-20-93; 8:45 am]

**BILLING CODE 6560-50-M**

**Federal Register**

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Tuesday  
September 21, 1993

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**Part III**

**Environmental  
Protection Agency**

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**Final National Pollutant Discharge  
Elimination System General Permits for  
the Coastal Waters of Louisiana; Notice**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4732-4]

### Final NPDES General Permits for the Coastal Waters of Louisiana (LAG330000) and Texas (TXG330000)

**AGENCY:** Environmental Protection Agency.

**ACTION:** Issuance of Final NPDES Permits.

**SUMMARY:** Region 6 of the Environmental Protection Agency (EPA) today issues final NPDES General Permits for oil and gas facilities engaged in field exploration, drilling, well completion and treatment operations and production activities in the Coastal Subcategory of the Oil and Gas Extraction Point Source Category in the States of Louisiana and Texas. Produced water and produced sand discharges are not authorized by these general permits but will be regulated under separate general coastal permits.

These general permits prohibit the discharge of drilling fluids and drill cuttings. The general permits also place limits on oil and grease, total suspended solids, chemical oxygen demand, chlorides, total chromium, zinc, pH and "no free oil" in treated waste water from dewatering activities and prohibit discharge of formation test fluids to rivers, lakes, streams, freshwater wetlands and intermediate wetlands. These permits are consistent with EPA guidelines at 40 CFR part 435, subpart D and water quality-based criteria of the Louisiana Department of Environmental Quality and the Texas Railroad and Water Commissions.

**DATES:** These permits will become effective on October 21, 1993.

**ADDRESSES:** Notifications required by these permits should be sent to the Water Management Division, Enforcement Branch (6W-EA), EPA Region 6, P.O. Box 50625, Dallas, Texas 75202.

#### FOR FURTHER INFORMATION CONTACT:

Copies of the response to comments received on the proposed permits can be obtained from Ms. Ellen Caldwell, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202; telephone: (214) 655-7513.

**SUPPLEMENTARY INFORMATION:** EPA issues these general permits pursuant to its authority under section 402 of the Clean Water Act (CWA), 33 U.S.C. 1342. Except as noted herein, these permits apply to all Region 6 field exploration drilling, well completion, well treatment and production activities, except for the discharge of produced water and produced sand, from facilities in the Coastal Oil and Gas Point Source Extraction Point Source Category (40 CFR part 435, subpart D). The permits also apply to facilities which would be classified Onshore but for the decision in *American Petroleum Institute v. EPA*, 661 F.2d 340 (5th Cir. 1981). The permits do not apply to facilities

in the Offshore Subcategory (40 CFR part 435, subpart A), the Onshore Subcategory (subpart C), the Agricultural and Wildlife Water Use Subcategory (subpart E) or in the Stripper Subcategory (subpart F). These permits do not apply to "new sources" as defined at 40 CFR 122.2, nor to operations which adversely affect properties listed or eligible for listing in the National Register of Historic Places.

EPA Region 6 proposed to issue these permits at 55 FR 23348 (June 7, 1990) and provided additional notice of the proposal in the New Orleans Times and the Houston Post on June 3, 1990. The comment period was originally scheduled to end on July 23, 1990, but was extended to August 13, 1990. The American Petroleum Institute (API); Amoco Corporation; Conoco Inc.; Exxon Company, U.S.A.; Louisiana Department of Environmental Quality; Louisiana Department of Natural Resources; Louisiana Department of Wildlife and Fisheries; Louisiana Mid-Continent Oil and Gas Association (LMOGA); Kerr-McGee Corporation; Mobil Exploration and Producing U.S. Inc.; Natural Resources Defense Council (NRDC); Sierra Club, Delta Chapter; Project Reef Keeper; Shell Offshore Inc.; U.S. Department of the Interior; and private citizens: C. Baek, R. Cook, R. Ernst, J.A. Freeman, M.T. Gordon, J. Hiytzen, E. Johnson, G. Mitchell, J. Morris, P. Oblak, L. Reitman, F.H. Rudenberg, D. Silver, Spackman, D. Swanson, J. Toigo, M. Valrass submitted comments on EPA's proposal to issue this permit. EPA Region 6 has considered all comments received. In some instances, minor wording changes in the final permit may differ from the proposed permit to clarify some points as a result of comments. These final permits contain no substantive changes from the proposed permits.

#### State Certification

In accordance with section 401(a)(1), EPA may not issue a NPDES permit until the State in which the discharge will occur grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. The State of Louisiana, after review of the permit, has certified that the Louisiana permit will comply with applicable State water quality standards or limitations. The State of Texas has waived certification.

#### The Coastal Zone Management Act

In accordance with section 307(c)(3) of the Coastal Zone Management Act, the Louisiana Coastal Zone Management Division of the Louisiana Department of Natural Resources has reviewed NPDES permit LAG330000 and found its issuance consistent with the Louisiana Coastal Resources Program. The State of Texas has no coastal zone management program.

#### The Endangered Species Act

The Endangered Species Act and its implementing regulations (5 CFR 402) require that each Federal shall ensure that any agency action, such as permit issuance, will not jeopardize the continued existence of any endangered species or result in the destruction or adverse modification of their critical habitats. The U.S. Fish and Wildlife Service has concurred with Region 6's earlier finding that the issuance of this permit is "not likely to adversely affect any endangered or threatened species nor adversely affect their critical habitat."

#### The Marine Protection, Research and Sanctuaries Act

The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition, the MPRSA establishes the Marine Sanctuaries Program, implemented by the National Oceanographic and Atmospheric Administration (NOAA), which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values. There are presently no existing marine sanctuaries in coastal waters of Louisiana or Texas.

#### Economic Impact

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order. The economic and inflationary effects of these regulations (40 CFR part 435) on which these permits are based were evaluated in accordance with Executive Orders 11821 and 12044.

#### The Paperwork Reduction Act

The information collection required by these permits have been approved by OMB under provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* in submissions made for the NPDES permit program and assigned OMB control numbers 2040-0088 (NPDES permit application) and 2040-0004 (discharge monitoring reports). All facilities affected by these permits will need to submit a request for coverage under either the Louisiana or Texas Coastal Waters general permits. EPA estimates that it will take an affected facility three hours to prepare a request for coverage. All affected facilities will be required to submit discharge monitoring reports (DMR's). EPA estimates the DMR burden will be 36 hours per facility per year.

#### Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b), EPA region 6 certifies that these general permits will not have a significant impact on a substantial number of small entities. This certification is

based on the fact that the majority of parties regulated by this permit have greater than 500 employees and are not classified as small business under the Small Business Administration regulations established at 49 FR 5024 *et. seq.* (February 9, 1984). These facilities are classified as Major Group 13—Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas. For those operators having fewer than 500 employees this permit will not have significant impact as the effluent limits being imposed in these permits are similar to those being included in state regulations and permits. Moreover, the permits reduce a significant burden of applying for individual permits, on regulated sources.

Dated: September 10, 1993.

**Jack Ferguson,**

*Director, Water Management Division, EPA Region 6.*

**General Permit Authorization To Discharge From the Oil and Gas Extraction Point Source Category to Coastal Waters of Louisiana**

Permit No. LAG330000

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*: the "Act"), the following discharges are authorized from coastal oil and gas facilities (defined in 40 CFR part 435, subpart D) to receiving waters, described below (encompassing the coastal waters of Louisiana) in accordance with effluent limitations, monitoring requirements and other conditions set forth in parts I, II, III, and IV thereof:

Drilling Fluids,  
Drill Cuttings,  
Deck Drainage,  
Sanitary Wastes,  
Domestic Wastes,  
Desalination Unit Discharge,  
Diatomaceous Earth Filter Media,  
Excess Cement Slurry,  
Uncontaminated Ballast/Bilge Water,  
Boiler Blowdown,  
Blowout Preventer Control Fluid,  
Well Treatment Fluids,  
Workover Fluids,  
Completion Fluids,  
Formation Test fluids,  
Treated Wastewater from Dewatered Drilling Fluids/Cuttings,  
Muds, Cuttings, and Cement at the Seafloor,  
Uncontaminated Seawater,  
Uncontaminated Freshwater.

This permit authorizes discharges to waters of the United States from Louisiana Coastal Subcategory oil and gas facilities engaged in field exploration, drilling, well completion, and well treatment operations. Produced water, produced sand and source water and sand discharges are excluded from coverage under this general permit, but will however, be regulated under a separate general coastal permit.

For the purpose of this NPDES general permit, Coastal Subcategory facilities means oil and gas facilities associated with a wellhead located in waters of the United States (including wetlands), as defined at 40 CFR 122.2, landward of the inner boundary of the territorial seas and those wells in the geographic area (land and water areas) suspended from the Onshore Subcategory described in 40 CFR part 435, subpart C. The term wetlands means "those surface areas which are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas". Territorial seas refers to "the belt of the seas measured from the line of ordinary low water along that portion of the coast which is direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles." (See Clean Water Act Section 502).

The coastal permit area as described in the regulations is broad by definition and includes all rivers, streams and lakes, bays, estuaries and wetlands that occur inland of the territorial seas. The coastal subcategory also includes the geographic area along the coast of Texas and Louisiana (Chapman line area) which was originally defined as coastal in EPA's 1976 Interim Final Regulations for the onshore subcategory (See Suspension of Regulations, 47 FR 31554, July 21, 1982). A facility is considered to be covered under the proposed general permit if the location of the wellhead is within the described permit area.

This permit does not authorize discharge from "new sources" as defined in 40 CFR 122.2. This permit also does not authorize discharges from oil and gas extraction operations which adversely affect properties listed or eligible for listing in the National Register of Historic Places.

This permit shall become effective on October 21, 1993.

This permit and the authorization to discharge shall expire at midnight, October 21, 1998.

Signed this September 7, 1993.

Myron O. Knudson, P.E.,

*Director, Water Management Division, EPA Region 6.*

**Part I**

*Section A. General Permit Coverage*

**1. Intent to be Covered**

Written notification of intent to be covered, including the legal name and address of the operator, the lease (or lease block) number assigned by the Louisiana Minerals Board or, if none, the name commonly assigned to the lease area, and the number and type of facilities located within the lease (or lease block) shall be submitted:

(a) By operators in leases (or lease blocks) that are located within the geographic scope of this permit, within 45 days of the effective date of this permit.

**Note:** Operators must request coverage under this general permit or have an effective individual permit.

(b) By operators of leases (or lease blocks) obtained subsequent to the effective date of this permit fourteen days prior to the commencement of discharge.

**2. Termination of Operations**

Lease (or lease block) operators shall notify the Regional Administrator within 60 days after the permanent termination of discharges from their facilities. In addition, lease (or lease block) operators shall notify the Regional Administrator within 30 days of any transfer of ownership.

*Section B. NPDES Individual Versus General Permit Applicability*

**1. The Regional Administrator May Require Application for an Individual NPDES Permit**

The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

(a) The discharge(s) is a significant contributor of pollution;

(b) The discharger is not in compliance with the conditions of this permit;

(c) A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point sources;

(d) Effluent limitation guidelines are promulgated for point sources covered by this permit;

(e) A Water Quality Management Plan containing requirements applicable to such point source is approved;

(f) The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; or

(5) In the opinion of the Regional

Administrator, are more appropriately controlled under an individual permit than under a general permit.

The Regional Administrator may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a permit application is required.

**2. An Individual NPDES Permit May Be Requested**

(a) Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The operator shall submit

an application together with the reasons supporting the request to the Regional Administrator no later than December 20, 1993.

(b) When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of the individual permit.

### 3. General Permit Coverage May Be Requested

A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source after the notification of intent to be covered is filed (see A.1. above).

## Part II

### Section A. Effluent Limitations and Monitoring Requirements

Specific effluent limitations and monitoring requirements are discussed below. They are organized by the type of discharge in the text, and by discharge type, effluent limitation and monitoring requirements in Table 1.

#### 1. Drilling Fluids

(a) *Applicability.* Permit conditions apply to all drilling fluids (muds) that are discharged, including fluids adhering to cuttings.

(b) *Prohibitions.* This permit prohibits the discharge of all drilling fluids.

#### 2. Drill Cuttings

**Special Note:** The permit prohibitions and limitations that apply to drilling fluids also apply to drilling fluids that adhere to drill cuttings. Any permit condition that applies to the drilling fluid system, therefore, also applies to cuttings discharges.

(a) *Prohibitions.* This permit prohibits the discharge of drill cuttings.

#### 3. Treated Waste water From Drilling Fluids/Cuttings, Dewatering Activities and Pit Closure Activities

(a) *Applicability.* Treated waste water from dewatered drill site reserve pits, shale barges, ring levees and inactive/abandoned reserve pits, mud tanks and effluents from solids control systems.

(b) *Limitations. Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Monitoring must be accomplished once per day, when discharging. The number of days a sheen is detected must be recorded.

(Exception) Treated waste water may be discharged at any time if the operator uses the static sheen method for detecting free oil.

*Oil and Grease.* Treated waste water must meet a 15 mg/l daily maximum limitation.

*Total Suspended Solids.* Treated wastewater shall not exceed 50 mg/l daily maximum.

*Chemical Oxygen Demand.* Treated wastewater shall not exceed 125 mg/l daily maximum.

*pH.* Discharges of treated wastewater must meet a pH limitation of not less than 6.0 and not greater than 9.0 at the point of discharge.

*Chlorides.* Treated wastewater shall not exceed a 500 mg/l daily maximum discharge limitation.

*Total Chromium.* Discharges of treated wastewater shall meet a 0.5 mg/l daily maximum limitation.

*Zinc.* Treated wastewater shall not exceed 5.0 mg/l daily maximum for zinc.

*Monitoring.* The monitoring frequency for the above limitations are once per day when discharging. However, if the effluent is batch treated and discharged, the monitoring requirements for all effluent characteristics are once per discharge event by grab sample.

(c) *Other Monitoring Volume.* The volume (bbls) of discharged treated wastewater must be estimated once per day, when discharging. If the effluent is being batch treated and discharged then the estimated volume discharged in barrels must be recorded per discharge event.

#### 4. Deck Drainage

(a) *Limitations—Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Monitoring must be accomplished once per day, when discharging during conditions when an observation of a sheen is possible and when the facility is manned. The number of days a sheen is detected must be recorded.

(b) *Other Monitoring Volume.* Once per month, the total monthly volume (bbl) must be estimated.

#### 5. Formation Test Fluid

(a) *Prohibitions.* There shall be no discharge of formation test fluids to lakes, rivers, streams, freshwater wetlands or intermediate wetlands. In addition, discharges are prohibited to wildlife refuges, game preserves, scenic streams, or other specially protected lakes or waterbodies.

(Note) Freshwater and intermediate wetland areas, wildlife refuges and game preserves can be identified from the 1978 Vegetative Type Map of Louisiana (or any subsequent revisions), published by the Louisiana Department of Wildlife and Fisheries. The listing of scenic streams in Louisiana is found in the Louisiana Department of Wildlife and Fisheries publication "Natural and Scenic Streams System", (1981).

(Exception) Discharge of formation test fluids is allowed to the Mississippi River below Venice, Atchafalaya River below Morgan City, and Wax Lake Outlet. Discharges are also allowed to waterbodies and adjacent wetlands in brackish or saline marsh areas.

(b) *Limitations—Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Monitoring must be accomplished once per discharge. The number of days a sheen is detected must be recorded.

[Exception] Formation test fluids may be discharged at any time if the operator uses the static sheen method for detecting free oil.

*pH.* Discharges of formation test fluid must meet a pH limitation of not less than 6.0 and not greater than 9.0. A grab sample must be taken once per discharge. Any spent acidic test fluids shall be neutralized before discharge such that the pH at the point of discharge meets the limitation.

(c) *Other Monitoring. Volume.* Once per discharge, the total volume reported as number of barrels sent downhole during testing and the number of barrels discharged shall be estimated and reported once per month.

#### 6. Well Treatment Fluids, Completion Fluids, Workover Fluids

(a) *Prohibitions.* There shall be no discharge of well completion, treatment or workover fluids to lakes, rivers, streams, or freshwater wetlands or intermediate wetlands. In addition, discharges are prohibited to wildlife refuges, game preserves, scenic streams, or other specially protected lakes or waterbodies.

**Note:** Freshwater and intermediate wetland areas, wildlife refuges and game preserves can be identified from the 1978 Vegetative Type Map of the Louisiana (or any subsequent revisions), published by the Louisiana Department of Wildlife and Fisheries. The listing of scenic streams in Louisiana is found in the Louisiana Department of Wildlife and Fisheries publication "Natural and Scenic Streams System", (1981).

(Exception) Discharge of well completion, treatment or workover fluids are allowed on the Mississippi River below Venice, Atchafalaya River below Morgan City, and Wax Lake Outlet. Discharges are also allowed to waterbodies and adjacent wetlands in brackish or saline marsh areas.

*Priority (Toxic) Pollutants.* For well treatment fluids, completion fluids, and workover fluids, the discharge of priority pollutants (see Appendix A) is prohibited, except in trace amounts. If well completion, treatment or workover fluids are discharged, the permittee is required to retain records indicating that the discharge did not contain priority pollutants, except in trace amounts.

Certification on DMR's will suffice for priority pollutant limits.

Information on the specific chemical composition of additives used in these fluids, and their concentrations in the fluid, must be recorded if priority pollutants are present, in any amount, in these additives.

(b) *Limitations—Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Monitoring must be accomplished once per day, when discharging. The number of days a sheen is detected must be recorded.

(Exception) well treatment fluids, completion fluids, or workover fluids may be discharged at any time if the operator uses the static sheen method for detecting free oil.

*pH.* Well treatment, completion and workover fluids must meet a pH limitation of not less than 6.0 and not greater than 9.0 prior to being discharged. Sampling must be accomplished once per day when discharging.

(c) *Other Monitoring—Volume.* Once per month, the discharge volume (bbls) must be estimated.

#### 7. Sanitary Waste

(a) *Prohibitions—Solids.* No floating solids may be discharged.

(b) *Limitations—Biological Oxygen Demand (BOD5).* Sanitary waste discharges must meet a 45 mg/l daily maximum limitation. A grab sample must be collected and analyzed once per quarter.

*Total Suspended Solids.* Sanitary waste discharges shall meet a 45 mg/l daily maximum limitation. A grab sample shall be collected and analyzed once per quarter.

*Fecal Coliform.* Sanitary waste discharges must meet a daily maximum limitation of 200/100 ml for fecal coliform. A grab sample must be taken and analyzed once per week.

**Note:** In specific water bodies designated by the State for oyster propagation, the mean probable number (MPN) of fecal coliform allowed shall not exceed 14 per 100 ml, and not more than 10% of samples shall exceed an MPN of 43 per 100 ml for a five-tube decimal dilution test in those areas most probably exposed to fecal contamination during the most unfavorable hydrographic and pollution conditions.

(c) *Other Monitoring—Flow.* Once per month, the average flow (million gallons per day; MGD) must be estimated.

#### 8. Domestic Waste

(a) *Prohibitions—Solids.* This permit prohibits the discharge of "garbage" including food wastes (comminuted or not), incineration ash and clinkers. Neither Fish and fish debris from fish cleaning stations nor graywater is considered garbage under this definition.

#### 9. Excess Cement Slurry

(a) *Prohibitions* There shall be no discharge of excess cement slurry to lakes,

streams, or freshwater wetlands or intermediate wetlands. In addition, discharges are prohibited to wildlife refuges, game preserves, scenic streams, or other specially protected lakes or waterbodies.

**Note:** Freshwater and intermediate wetland areas, wildlife refuges and game preserves can be identified from the 1978 Vegetative Type Map of the Louisiana (or any subsequent revisions), published by the Louisiana Department of Wildlife and Fisheries. The listing of scenic streams in Louisiana is found in the Louisiana Department of Wildlife and Fisheries publication "Natural and Scenic Streams System", (1981).

(Exception) Discharge of excess cement slurry is allowed on the Mississippi River below Venice, Atchafalaya River below Morgan City, and Wax Lake Outlet. Discharges are also allowed to waterbodies and adjacent wetlands in brackish or saline marsh areas.

(b) *Limitations—Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Monitoring must be accomplished once per day, when discharging. The number of days a sheen is detected must be recorded.

(Exception) Excess cement slurry may be discharged at any time if the operator uses the static sheen method for detecting free oil.

#### 10. Miscellaneous Discharges

Desalination Unit Discharge, Blowout Preventer Fluid, Uncontaminated Ballast Water, Uncontaminated Bilge Water, Mud, Cuttings, and Cement at the Seafloor, Uncontaminated Seawater, Uncontaminated Freshwater, Boiler Blowdown, Diatomaceous Earth Filter Media, Uncontaminated Freshwater including potable water releases during tank transfer and emptying operations and condensate from air conditioner units.

(a) *Limitations Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Monitoring must be accomplished once per day, when discharging during conditions when an observation of a sheen is possible. Discharge is authorized only at times when visual sheen observation is possible. The number of days a sheen is detected must be recorded.

(Exception) Miscellaneous discharges may occur at any time if the operator uses the static sheen method for detecting free oil.

#### 11. Other Discharge Conditions

(a) *Prohibitions—Halogenated Phenol Compounds.* There shall be no discharge of halogenated phenol compounds.

*Rubbish, Trash, and Other Refuse.* The discharge of any solid material not authorized in the permit (as described above) is prohibited.

(b) *Limitations—Floating Solids or Visible Foam.* There shall be no discharge of floating

solids or visible foam in other than trace amounts.

*Surfactants, Dispersants, and Detergents.* The discharge of surfactants, dispersants, and detergents used to wash working areas shall be minimized except as necessary to comply with applicable State and Federal safety requirements.

#### Section B. Other Conditions

##### 1. Samples of Wastes

If requested, the permittee shall provide EPA with a sample of any waste in a manner specified by the Agency.

### Part III

#### Section A. General Conditions

##### 1. Introduction

In accordance with the provisions of 40 CFR 122.41, *et. seq.*, this permit incorporates by reference all conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, (hereinafter known as the "Act") as well as ALL applicable CFR regulations.

##### 2. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action or for requiring a permittee to apply for and obtain an individual NPDES permit.

##### 3. Toxic Pollutants

Notwithstanding III.A.5 below, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of the Clean Water Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified.

The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

##### 4. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must submit notice of intent to be covered and must apply for a new permit. Continuation of the expiring permit shall be governed by regulations at 40 CFR 122.6 and any subsequent amendments.



## 5. Permit Flexibility

This permit may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following (see 40 CFR 122.62–64):

- (a) Violation of any terms or conditions of this permit;
- (b) Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;
- (c) A change in any condition that requires either a temporary or a permanent reduction or elimination of the authorized discharge; or
- (d) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under sections 301, 304, and 307 of the Clean Water Act, if the effluent standard or limitation so issued or approved:

- (a) Contains different conditions or limitations than any in the permit; or
- (b) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

## 6. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

## 7. Duty to Provide Information

The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional Administrator upon request, copies of records required to be kept by this permit.

## 8. Civil and Criminal Liability

Except as provided in permit conditions on "Bypassing" and "Upsets" (see III.B.4 and III.B.5), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or misleading misrepresentation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable CFR regulations which avoids or effectively defeats the regulatory purpose of the permit may subject the

permittee to criminal enforcement pursuant to 18 U.S.C. Section 1001.

## 9. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act.

## 10. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Clean Water Act.

## 11. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

### *Section B. Operation and Maintenance of Pollution Controls*

#### 1. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

#### 2. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

#### 3. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

#### 4. Bypass of Treatment Facilities

(a) *Definitions.* (1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and

permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) *Bypass not exceeding limitations.*

The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Section B, paragraphs 4.c and 4.d of this section.

(c) *Notice.* (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section D, paragraph 6 (24-hour reporting).

(d) *Prohibition of Bypass.* (1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The permittee submitted notices as required under Section B, paragraph 4.c.

(2) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in Section B, paragraph 4.d.(1).

#### 5. Upset Conditions

(a) *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) *Effect of an Upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Section B, paragraph 5.(c) are met. No determination made during administrative review of claims that

noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(c) *Conditions Necessary for a Demonstration of Upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

- (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (2) The permitted facility was at the time being properly operated;
- (3) The permittee submitted notice of the upset as required in Section D, paragraph 5; and,

(4) The permittee complied with any remedial measures required under section B, paragraph 2.

(d) *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

#### 6. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters. Any substance specifically listed within this permit may be discharged in accordance with specified conditions, terms, or limitations.

#### Section C. Monitoring and Records

##### 1. Inspection and Entry

The permittee shall allow the Regional Administrator or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

- (a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

##### 2. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge.

##### 3. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by this permit, for a period of at least 3 years from the date of the sampling, measurement, or reporting. This period may be extended by request of the Regional Administrator at any time.

The operator shall maintain records at development and production facilities for 3 years, wherever practicable and at a specific shore-based site whenever not practicable. The operator is responsible for maintaining records at exploratory facilities while they are discharging under the operator's control and at a specified shore-based site for the remainder of the 3-year retention period.

##### 4. Record Contents

Records of monitoring information shall include:

- (a) The date, exact place, and time of sampling or measurements,
- (b) The individual(s) who performed the sampling or measurements,
- (c) The date(s) analyses were performed,
- (d) The individual(s) who performed the analyses,
- (e) The analytical techniques or methods used, and
- (f) The results of such analyses.

##### 5. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this permit (see part IV.A., below).

##### 6. Discharge Rate/Flow Measurements

Appropriate flow measurement devices consistent with accepted practices shall be selected, maintained, and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to insure that the accuracy of the measurements are consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than  $\pm 10\%$  from true discharge rates throughout the range of expected discharge volumes.

#### Section D. Reporting Requirements

##### 1. Planned Changes

The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- (a) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source

in 40 CFR 122.29(b) (48 FR 14153, April 1, 1983, as amended at 49 FR 38049, September 26, 1984); or

(b) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR 122.42(a)(1) (48 FR 14153, April 1, 1983, as amended at 49 FR 38049, September 26, 1984).

##### 2. Anticipated Noncompliance

The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

##### 3. Transfers

This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act.

##### 4. Discharge Monitoring Reports

The operator of each lease (or lease block) shall be responsible for submitting monitoring results for all facilities within each lease (or lease block). The monitoring results for the facilities (platform, jack-up, drilling barge, etc.) within the particular lease (or lease block) shall be summarized on the annual Discharge Monitoring Report for that lease (or lease block).

Monitoring results obtained during the previous 12 months shall be summarized and reported on a Discharge Monitoring Report (DMR) Form (EPA No. 3320-1). The highest monthly average for all activity within each lease (or lease block) shall be reported. The highest daily maximum sample taken during the reporting period shall be reported as the daily maximum concentration. (See "Definitions" for more detailed explanations of these terms.)

If any category of waste (discharge) is not applicable for all facilities within the lease (or lease block) due to the type of operation (e.g. drilling, production), "no discharge" must be recorded for those categories on the DMR. If all facilities within a lease block have had no activity during the reporting period, then "no activity" must be written on the DMR. All pages of the DMR must be signed and certified as required by Part III.D.11 of this permit and submitted when due.

The Permittee must complete all empty blanks in the DMR unless there has been absolutely no activity or no discharge within the lease (or lease block) for the entire reporting period. In these cases, EPA Region VI will accept a listing of leases (or lease blocks) with no discharges or no activity, in

lieu of submitting actual DMRs for these leases (or lease blocks). This listing must specify the permittee's NPDES General Permit Number, lease/lease block description, and EPA-assigned outfall number. The listing must also include the certification statement presented in Part III.D.11.d of this permit and an original signature of the designated responsible official.

Upon receipt of a notification of intent to be covered, (Part I.A.) the permittee will be notified of its specific outfall number applicable to that lease block. Furthermore, the Permittee will be informed of the discharge monitoring report due date for that lease block.

All notices and reports required under this permit shall be sent to EPA Region 6 at the following address: Director, Water Management Division, USEPA, Region 6, Enforcement Branch (6W-EA), P.O. Box 50625, Dallas, TX 75270.

#### 5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased monitoring frequency shall also be indicated on the DMR.

#### 6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

#### 7. Twenty-Four Hour Reporting

The permittee shall report any noncompliance which may endanger health or the environment (this includes any spill that requires oral reporting to the state regulatory authority). Information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

The following shall be included as information which must be reported within 24 hours:

(a) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(b) Any upset which exceeds any effluent limitation in the permit.

(c) Violations of a maximum daily discharge limitation or daily minimum toxicity limitation for any of the pollutants listed by the Regional Administrator in Part III of the permit to be reported within 24 hours.

The reports should be made to Region 6 by telephone at (214) 655-6593. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

#### 8. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under part III, section D, paragraphs 4 and 7 at the time monitoring reports are submitted. The reports shall contain the information listed in section D, paragraph 7.

#### 9. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Administrator, it shall promptly submit such facts or information.

#### 10. Changes in Discharges of Toxic Substances

For any toxic pollutant (see Appendix A) that is not limited in this permit, either as an additive itself or as a component in an additive formulation, the permittee shall notify the Regional Administrator as soon as he knows or has reason to believe:

(a) That any activity has occurred or will occur which would result in the discharge of such toxic pollutants, on a routine or frequent basis, if that discharge will exceed the highest of the "notification levels" described at 40 CFR 122.42(a)(1) (i) and (ii);

(b) That any activity has occurred or will occur which would result in any discharge of such toxic pollutants, on a non-routine or infrequent basis, if that discharge will exceed the highest of the "notification levels" described at 40 CFR 122.42 (a)(2) (i) and (ii).

#### 11. Signatory Requirements

All applications, reports, or information submitted to the Regional Administrator shall be signed and certified as required at 40 CFR 122.22.

(a) All permit applications shall be signed as follows:

(1) For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(i) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the corporation, or

(ii) The manager of one or more manufacturing, production, or operating

facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: By a general partner or the proprietor, respectively.

(b) *Authorized Representative.* All reports required by the permit and other information requested by the Regional Administrator shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

(3) The written authorization is submitted to the Regional Administrator.

(c) *Changes to Authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

#### 12. Availability of Reports

Except for data determined to be confidential under 40 CFR part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of the Regional Administrator. As required by the Clean Water Act, the name and address of any permit applicant or

permittee, permit applications, permits, and effluent data shall not be considered confidential.

### 13. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

#### Section E. Penalties for Violations of Permit Conditions

##### 1. Criminal

(a) *Negligent Violations.* The Act provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(b) *Knowing Violations.* The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(c) *Knowing Endangerment.* The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than \$250,000 per day of violation, or by imprisonment for not more than 15 years, or both.

(d) *False Statements.* The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309.c.4 of the Clean Water Act).

##### 2. Civil Penalties

The Clean Water Act at section 309 provides that any person who violates a

permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$25,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both. The maximum penalty may be assessed for each violation occurring on a single day. A single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

##### 3. Administrative Penalties

The Act at Section 309 allows that the Regional Administrator may assess a Class I or Class II civil penalty for violations of sections 301, 302, 306, 307, 308, 318, or 405 of the Act. A Class I penalty may not exceed \$10,000 per violation except that the maximum amount shall not exceed \$25,000. A Class II penalty may not exceed \$10,000 per day for each day during which the violation continues, except that the maximum amount shall not exceed \$125,000. An upset that leads to violations of more than one pollutant parameter will be treated as a single violation.

## Part IV

### Section A. Test Procedures

For test procedures not specified below, the only authorized procedures are those described at 40 CFR part 136.

#### 1. Visual Sheen Test

The visual sheen test is used to detect free oil by observing the surface of the receiving water for the presence of a sheen while discharging. A sheen is defined as a 'silvery' or 'metallic' sheen, gloss, or increased reflectivity; visual color; or iridescence on the water surface. The operator must conduct a visual sheen test only at times when a sheen can be observed. This restriction eliminates observations at night or when atmospheric or surface conditions prohibit the observer from detecting a sheen (e.g. fog (not overcast skies), rough seas, etc.). Certain discharges can only occur if a visual sheen test can be conducted.

The observer must be positioned on the rig or platform, or other vantage point, relative to both the discharge point and current flow at the time of discharge, such that the observer can detect a sheen should it surface down current from the discharge. For discharges that have been occurring for at least 15 minutes previously, observations may be made any time thereafter. For discharges of less than 15 minutes duration, observations must be made during both discharge and at 5 minutes after discharge has ceased.

#### 2. Static Sheen Test

Region 10, Modified Static Sheen Test, "Bucket Test": Combined 50 FR No. 165 August 26, 1985 and USEPA Region 10, Interim Guidance for the Static (Laboratory) Sheen Test, January 10, 1984.

##### 1. Scope and Application

The static sheen test is to be used as a compliance test for all discharges in this permit with the "no free oil discharge" requirement, when it is not possible for the operator to accomplish a visual sheen observation on the surface of the receiving water. This would preclude an operator from attempting a visual sheen observation when atmospheric or surface conditions prohibit the observer from detecting a sheen (e.g., during rough seas, etc.). Free oil refers to any oil contained in a waste stream that when discharged will cause a film or sheen upon or a discoloration of the surface of the receiving water.

##### 2. Summary of Method

15 ml samples of drilling fluids; deck drainage, well treatment, completion and workover fluids, formation test fluids, or treated wastewater from drilling fluid dewatering activities, or 15 gm (wet weight basis) samples of drill cuttings or produced sand are introduced into ambient seawater in a container having an air to liquid interface area of 1000 cm<sup>2</sup> (155.5 in<sup>2</sup>). Samples are dispersed within the container and observations made no more than one hour later to ascertain if these materials cause a sheen, iridescence, gloss, or increased reflectance on the surface of the test seawater. The occurrence of any of these visual observations will constitute a demonstration that the tested material contains "free oil", and therefore, results in a prohibition on its discharge into receiving waters.

##### 3. Interferences

Residual "free oil" adhering to sampling containers, the magnetic stirring bar used to mix drilling Fluids, and the stainless steel spatula used to mix drill cuttings will be the principal sources of contamination problems. These problems should only occur if improperly washed and cleaned equipment are used for the test. The use of disposable equipment minimizes the potential for similar contamination from pipets and the test container.

#### 4. Apparatus, Materials, and Reagents

##### 4.1 Apparatus

4.1.1—Sampling Containers—1 L polyethylene beakers and 1 L glass beakers.

4.1.2—Graduated cylinder—100 ml graduated cylinder required only for operations where predilution of mud discharges is required.

4.1.3 Plastic disposable weighing boats.

4.1.4 Triple-beam scale.

4.1.5 Disposable pipets—25 ml disposable pipets.

4.1.6 Magnetic stirrer and stirring bar.

4.1.7 Stainless steel spatula.

4.1.8 Test container—open plastic container whose internal cross-section parallel to its opening has an area of  $1000 \pm 50 \text{ cm}^2$  ( $155.5 \pm 7.75 \text{ in}^2$ ), and a depth of at least 13 cm (5 inches) and no more than 30 cm (11.8 inches).

#### 4.2 Materials and Reagents

4.2.1 Plastic liners for the test container—Oil free, heavy duty plastic trash can liners that do not inhibit the spreading of an oil film. Liners must be of sufficient size to completely cover the interior surface of the test container. Permittees must determine an appropriate local source of liners that do not inhibit the spreading of 0.05 ml diesel fuel added to the lined test container under the test conditions and protocol described below.

4.2.2 Ambient receiving water.

#### 5. Calibration

None currently specified.

#### 6. Quality Control Procedures

None currently specified.

#### 7. Sample Collection and Handling

7.1 Sampling containers must be thoroughly washed with detergent, rinsed a minimum of three times with fresh water, and allowed to air dry before samples are collected.

7.2 Samples of drilling fluid to be tested shall be taken at the shale shaker after cuttings have been removed. The sample volume should range between 200 ml and 500 ml.

7.3 Samples of drill cuttings will be taken from the shale shaker screens with a clean spatula or similar instrument and placed in a glass beaker. Cuttings samples shall be collected prior to the addition of any washdown water and should range between 200 g and 500 g.

7.4 Samples of produced sand must be obtained from the solids control equipment from which the discharge occurs on any given day and shall be collected prior to the addition of any washdown water; samples should range between 200 g and 500 g.

7.5 Samples of deck drainage, well treatment, completion and workover fluids, formation test fluids and treated wastewater from drilling fluid dewatering activities must be obtained from the holding facility prior to discharge; the sample volume should range between 200 ml and 500 ml.

7.6 Samples must be tested no later than 1 hour after collection.

7.7 Drilling fluid samples must be mixed in their sampling containers for 5 minutes prior to the test using a magnetic bar stirrer. If predilution is imposed as a permit condition, the sample must be mixed at the same ratio with the same prediluting water as

the discharged muds and stirred for 5 minutes.

7.8 Drill cuttings must be stirred and well mixed by hand in their sampling containers prior to testing, using a stainless steel spatula.

#### 8. Procedure

8.1 Ambient receiving water must be used as the "receiving water" in the test. The temperature of the test water shall be as close as practicable to the ambient conditions in the receiving water, not the room temperature of the observation facility. The test container must have an air to liquid interface area of  $1000 \pm 50 \text{ cm}^2$ . The surface of the water should be no more than 1.27 cm ( $\frac{1}{2}$  inch) below the top of the test container.

8.2 Plastic liners shall be used, one per test container, and discarded afterwards. Some liners may inhibit spreading of added oil; operators shall determine an appropriate local source of liners that do not inhibit the spreading of the oil film.

8.3 A 15 ml sample of drilling fluid, deck drainage, well treatment, completion and workover fluids, formation test fluids, or treated wastewater from drilling fluid dewatering activities must be introduced by pipet into the test container 1 cm below the water surface. Pipets must be filled and discharged with test material prior to the transfer of test material and its introduction into test containers. The test water-test material mixture must be stirred using the pipet to distribute the test material homogeneously throughout the test water. The pipet must be used only once for a test and then discarded.

8.4 Drill cuttings or produced sand should be weighed on plastic weighing boats; 15 gram samples must be transferred by scraping test material into the test water with a stainless steel spatula. Drill cuttings shall not be prediluted prior to testing. Also, drilling fluids and cuttings will be tested separately. The weighing boat must be immersed in the test water and scraped with the spatula to transfer any residual material to the test container. The drill cuttings or produced sand must be stirred with the spatula to an even distribution of solids on the bottom of the test container.

8.5 Observations must be made no later than 1 hour after the test material is transferred to the test container. Viewing points above the test container should be made from at least three sides of the test container, at viewing angles of approximately  $60^\circ$  and  $30^\circ$  from the horizontal. Illumination of the test container must be representative of adequate lighting for a working environment to conduct routine laboratory procedures. It is recommended that the water surface of the test container be observed under a fluorescent light source such as a dissecting microscope light. The light source shall be positioned above and directed over the entire surface of the pan.

8.6 Detection of a "silvery" or "metallic" sheen, gloss, or increased reflectivity; visual color; or iridescence; or an oil slick, on the water surface of the test container surface shall constitute a demonstration of "free oil". These visual observations include patches, streaks, or sheets of such altered surface characteristics and shall constitute a demonstration of free oil. If the free oil content of the sample approaches or exceeds 10 percent, the water surface of the test container may lack color, a sheen or iridescence, due to the increased thickness of the film; thus, the observation for an oil slick is required. The surface of the test container shall not be disturbed in any manner that reduces the size of any sheen or slick that may be present.

If an oil sheen or slick occurs on less than one-half of the surface area after drilling muds or cuttings are introduced to the test container, observations will continue for up to one hour. If the sheen or slick increases in size and covers greater than one-half of the surface area of the test container during the observation period, the discharge of the material shall cease. If the sheen or slick does not increase in size to cover greater than one-half of the test container surface area after one hour of observation, discharge may continue and additional sampling is not required.

If a sheen or slick occurs on greater than one-half of the surface area of the test container after the test material is introduced, discharge of the tested material shall cease. The permittee may retest the material causing the sheen or slick. If subsequent tests do not result in a sheen or slick covering greater than one-half of the surface area of the test container, discharge may continue.

#### Section B. Definitions

*Administrator* means the administrator of EPA Region 6, or an authorized representative.

*Areas of Biological Concern (ABC)* are locations identified by the State of Louisiana as "no activity zones" or areas determined by EPA and the State, collectively, containing significant biological resources or features that require "No Discharge" conditions.

*Average daily discharge limitation* means the highest allowable average of discharges over a 24-hour period, calculated as the sum of all discharges measured divided by the number of discharges measured that day.

*Average monthly discharge limitation* means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of discharges measured that month.

*Batch or bulk discharge* means any discharge of a discrete volume or mass of effluent from a pit, tank or similar container that occurs on a one time or infrequent or irregular basis.

*Batch or bulk treatment* means any treatment of a discrete volume or mass of effluent from a pit, tank, or similar container prior to discharge.

*Blow-out preventer control fluid* is fluid used to actuate the hydraulic equipment on the blow-out preventer.

*BOD5* is five day biochemical oxygen demand.

*Boiler blowdown* is discharge from boilers necessary to minimize solids build-up in the boilers, includes vents from boilers and other heating systems.

*Clinkers* are small lumps of melted plastic.

*Coastal* means all waters of the United States (as defined at 40 CFR 122.2) landward of the territorial seas.

*COD* is chemical oxygen demand.

*Completion fluids* are salt solutions, weighted brines, polymers or various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production. These fluids move into the formation and return to the surface as a slug with the produced water. Drilling muds remaining in the wellbore during logging, casing and cementing operations or during temporary abandonment of the well are not considered completion fluids and are regulated by drilling fluids requirements.

*Daily maximum discharge limitation* means the highest allowable "daily discharge" during the calendar month.

*Deck drainage* is all waste resulting from platform washings, deck washings, spills, rainwater, and runoff from curbs, gutters, and drains, including drip pans and wash areas.

*Desalinization unit discharge* means wastewater associated with the process of creating fresh water from seawater and includes potable water tank waste water discharges and transfers.

*Diatomaceous earth filter media* means filter media used to filter seawater or other authorized completion fluids and subsequently washed from the filter.

*Domestic waste* is discharges from galleys, sinks, showers, safety showers, eye wash stations, hand wash stations and laundries.

*Drill cuttings* are particles generated by drilling into the subsurface geological formations and carried to the surface with the drilling fluid.

*Drilling fluid* is any fluid sent down the hole, including drilling muds and any specialty products, from the time a well is begun until final cessation of drilling in that hole.

*Excess Cement Slurry* is the excess cement including additives and wastes from equipment washdown after a cementing operation.

*Free Oil* is oil that causes a sheen when discharges are released or when a static sheen test is used.

*Formation test fluids* are the discharge that would occur should hydrocarbons be located during exploratory drilling and tested for formation pressure and content.

*Garbage* means all kinds of victual, domestic and operational waste \* \* \* generated during the normal operation of the ship and liable to be disposed of continuously or periodically \* \* \* (See MARPOL 73/78 regulations).

*Grab sample* a single representative effluent sample taken at the recognized discharge point in as short a period of time as feasible.

*Graywater* means drainage from dishwater, shower, laundry, bath, and washbasin drains and does not include drainage from toilets, urinals, hospitals, and drainage from cargo areas. (See MARPOL 73/78 regulations).

*Inverse emulsion drilling fluids* means an oil-based drilling fluid that also contains a large amount of water.

*Maximum hourly rate* means the greatest number of barrels of drilling fluids discharged within one hour, expressed as barrels per hour.

*MGD* refers to units of flow measurement, as million gallons per day.

*MPN* means most probable number.

*Muds, cuttings, and cement at the seafloor* are discharges which occur at the seafloor prior to installation of the marine riser and during marine riser disconnect and well abandonment and plugging operations.

*No Activity Zones* are those areas identified by MMS where no structures, drilling rigs, or pipelines will be allowed. See Areas of Biological Concern.

*No Discharge Areas* are areas specified by EPA where discharge of pollutants may not occur.

*Packer Fluid* means low solids fluids between the packer, production string and well casing. (See workover fluids).

*Priority Pollutants* are those chemicals or elements identified by EPA, pursuant to section 307 of the Clean Water Act, and 40 CFR 401.15. See Appendix A.

*Sanitary waste* means human body waste discharged from toilets and urinals.

*Source water and sand* means water from non-hydrocarbon bearing formations for the purpose of pressure maintenance or secondary recovery, including the entrained solids.

*Static Sheen* is the procedure described in Part IV, Section A.2. of the permit.

*Territorial Seas* is "the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open ocean and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles" (CWA Section 502).

*TDS* means total dissolved solids.

*Toxic Pollutants* (See Priority Pollutants, Appendix A)

*Treated wastewater from dewatered drilling fluids and cuttings* means wastewater from dewatering activities (including but not limited to reserve or other tanks or pits which have been flocculated or otherwise chemically or mechanically treated to meet specific discharge conditions) and any waste commingled with this water.

*TSS* means total suspended solids.

*Untaminated ballast/bilge water* is seawater added or balled to maintain proper draft of a vessel.

*Untaminated Freshwater* means freshwater which is returned to the receiving stream without the addition of any chemicals; included are (1) discharges of excess freshwater that permit the continuous operation of fire control and utility lift pumps, (2) excess freshwater from pressure maintenance and secondary recovery projects, (3) water released during the training and testing of personnel in fire protection, (4) water used to pressure test piping, (5) once through, non-contact cooling water, and (6) potable water released during transfer and tank emptying operations and condensate from air conditioner units.

*Untaminated Seawater* is seawater which is returned to the sea without the addition of chemicals. Included are: (1) Discharges of excess seawater which permit the continuous operation of fire control and utility lift pumps, (2) excess seawater from pressure maintenance and secondary recovery projects, (3) water released during the training and testing of personnel in fire protection, (4) seawater used to pressure test piping, and (5) once through, noncontact cooling water.

*Visual Sheen* means a 'silvery' or 'metallic' sheen, gloss, or increased reflectivity; visual color; or iridescence on the water surface.

*Well treatment (stimulation) fluids* means any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled. These fluids move into the formation and return to the surface as a slug with the produced water. Stimulation fluids include substances such as acids, solvents and propping agents.

*Workover fluids* means salt solutions, weighted brines, polymers or other specialty additives used in a producing well to allow safe repair and maintenance or abandonment procedures. High solids drilling fluids used during workover operations are not considered workover fluids by definition and therefore must meet drilling fluid effluent limitations before discharge may occur. Packer fluids, low solids fluids between the packer, production string and well casing, are considered to be workover fluids and must meet only the effluent requirements imposed on workover fluids.

TABLE 1.—PERMIT CONDITIONS AND DISCHARGE MONITORING FREQUENCY

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Recorded value(s)
(A). Drilling Fluids—no discharge.				
(B). Drill Cuttings—no discharge.				
(C). Treated Wastewater from Drilling Fluids/Cuttings, Dewatering Activities, and Pit Closure Activities.				
Free oil .....	No free oil .....	Once/day <sup>1</sup> .....	Visual sheen on receiving water <sup>2</sup> .	Number of days sheen observed.
Oil and grease .....	15 mg/l .....	Once/day <sup>1</sup> .....	Grab .....	Daily maximum.
TSS .....	50 mg/l .....	Once/day <sup>1</sup> .....	Grab .....	Daily maximum.
COD .....	125 mg/l .....	Once/day <sup>1</sup> .....	Grab .....	Daily maximum.
pH .....	6.0–9.0 <sup>3</sup> .....	Once/day <sup>1</sup> .....	Grab .....	pH value.
Chlorides .....	500 mg/l .....	Once/day <sup>1</sup> .....	Grab .....	Daily maximum.
Total chromium .....	0.5 mg/l .....	Once/day <sup>1</sup> .....	Grab .....	Daily maximum.
Zinc .....	5.0 mg/l .....	Once/day <sup>1</sup> .....	Grab .....	Daily maximum.
Volume .....	Report (bbls) .....	Once/day <sup>1</sup> .....	Estimate .....	Daily total. <sup>4</sup>
(D). Deck Drainage				
Free oil .....	No free oil .....	Once/day <sup>10</sup> .....	Visual sheen on receiving water. <sup>9</sup> .	Number of days sheen observed.
Volume .....	Report (bbls) .....	Once/month .....	Estimate .....	Monthly total. <sup>4</sup>
(E). Formation Test Fluids				
There shall be no discharge of formation test fluids to lakes, rivers, streams, freshwater wetlands or intermediate wetlands. In addition, discharges are prohibited to wildlife refuges, game preserves, scenic streams, or other specially protected lakes or waterbodies.				
(Exception) Discharge of formation test fluids is allowed to the Mississippi River below Venice, Atchafalaya River below Morgan City, Wax Lake Outlet, and to waterbodies and adjacent wetlands in brackish or saline marsh areas. These allowed discharges are subject to the following limitations and monitoring requirements.				
Free oil .....	No free oil .....	Once/discharge .....	Visual sheen on receiving water. <sup>2</sup> .	Number of days sheen observed.
pH .....	6.0–9.0 <sup>3</sup> .....	Once/discharge .....	Grab .....	pH value.
Volume .....	Report (bbls) .....	Once/discharge .....	Estimate .....	Monthly total. <sup>4</sup>
(F). Well Treatment, Completion, and Workover Fluids				
There shall be no discharge of well treatment, completion and workover fluids to lakes, rivers, streams, freshwater wetlands or intermediate wetlands. In addition, discharges are prohibited to wildlife refuges, game preserves, scenic streams, or other specially protected lakes or waterbodies.				
(Exception) Discharge of well treatment, completion and workover fluids is allowed to the Mississippi River below Venice, Atchafalaya River below Morgan City, Wax Lake Outlet, and to waterbodies and adjacent wetlands in brackish or saline marsh areas. These allowed discharges are subject to the following limitations and monitoring requirements.				
Priority Pollutants .....	No discharge .....	.....	Certification <sup>5</sup> .	.....
Free oil .....	No free oil .....	Once/day <sup>1</sup> .....	Visual sheen on receiving water. <sup>2</sup> .	Number of days sheen observed.
pH .....	6.0–9.0 <sup>3</sup> .....	Once/day <sup>1</sup> .....	Grab .....	pH value.
Volume .....	Report (bbls) .....	Once/month <sup>1</sup> .....	Estimate .....	Monthly total.
(G). Sanitary Waste				
Solids .....	No floating solids .....	Once/day .....	Observation <sup>6</sup> .....	Number of days solids observed.
BOD5 .....	45 mg/l .....	Once/quarter .....	Grab .....	Daily maximum.
TSS .....	45 mg/l .....	Once/quarter .....	Grab .....	Daily maximum.
Fecal coliform .....	200/100 ml <sup>7</sup> .....	Once/week .....	Grab .....	Daily maximum.
Flow .....	Report (MGD) .....	Once/month .....	Estimate .....	Monthly avg. <sup>4</sup>
(H). Domestic Waste				
Solids .....	No discharge. <sup>8</sup> .			
(I). Excess Cement Slurry				
Free oil .....	No free oil .....	Once/day <sup>1</sup> .....	Visual sheen on receiving water <sup>2</sup> .	Number of days sheen observed.
LDEQ field wide permits .....	No discharge to lakes, rivers, streams, and freshwater wetlands or intermediate wetlands.			

TABLE 1.—PERMIT CONDITIONS AND DISCHARGE MONITORING FREQUENCY—Continued

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Recorded value(s)
(J). Miscellaneous Discharges: Desalinization Unit Discharge, Blowout Preventer Fluid, Uncontaminated Ballast Water, Uncontaminated Bilge Water, Mud, Cuttings, and Cement at the Seafloor, Uncontaminated Seawater, Uncontaminated Freshwater, Boiler Blowdown, Diatomaceous Earth Filter Media, Uncontaminated Freshwater including potable water releases during tank transfer and emptying operations, and condensate from air conditioner units.				
Free oil .....	No free oil .....	Once/day <sup>1</sup> .....	Visual sheen on receiving water <sup>2</sup> .	Number of days sheen observed.

## Footnotes for Table 1.

<sup>1</sup> When discharging.<sup>2</sup> Discharge is possible during times other than when a visual sheen observation is possible, if the static sheen test method is used.<sup>3</sup> pH at the point of discharge shall not be less than 6.0 or greater than 9.0.<sup>4</sup> Information shall be recorded, but not reported unless specifically requested by EPA.<sup>5</sup> No discharge except in trace amounts. Certification that each discharge does not contain priority pollutants (except in trace amounts) on DMR's is sufficient to meet priority pollutant limits. Information on the specific chemical composition shall be retained by the permittee but not reported unless requested by EPA.<sup>6</sup> Monitoring by visual observation of the surface of the receiving water in the vicinity of outfall(s) shall be done during daylight at the time of maximum estimated discharge.<sup>7</sup> For specific water bodies designated by the state for oyster propagation, Fecal coliform not to exceed 14 most probable number (MPN) fecal coliforms per 100 ml, and not more than 10% of the samples shall exceed an MPN of 43 per 100 ml for a 5 tube decimal dilution test in areas most probably exposed to fecal contamination during most unfavorable hydrographic and pollution conditions.<sup>8</sup> Annex V of MARPOL 73/78 prohibits the discharge of "garbage" including food wastes, incineration ash and clinkers. Graywater, drainage from dishwater, shower, laundry, bath, and washbasins may be discharged.<sup>9</sup> Monitoring of visual sheen to be made at times when visual observations can be made.<sup>10</sup> When discharging and when the facility is manned.**Appendix A. Priority Pollutant List**

Acenaphthene

Acrolein

Acrylonitrile

Benzene

Benzidine

Carbon tetrachloride (tetrachloromethane)

Chlorobenzene

1,2,4-trichlorobenzene

Hexachlorobenzene

1,2-dichloroethane

1,1,1-trichloroethane

Hexachloroethane

1,1-dichloroethane

1,1,2-trichloroethane

1,1,2,2-tetrachloroethane

Chloroethane ether

2-chloroethyl vinyl ether (mixed)

2-chloronaphthalene

2,4,6-trichlorophenol

Parachlorometacresol

Chloroform (trichloromethane)

2-chlorophenol

1,2-dichlorobenzene

1,3-dichlorobenzene

1,4-dichlorobenzene

3,3-dichlorobenzene

1,1-dichloroethylene

2,4-dichlorophenol

1,2-dichloropropane

1,2-dichloropropylene (1,3-dichloropropene)

2,4-dimethylphenol

2,4-dinitrotoluene

2,6-dinitrotoluene

1,2-diphenylhydrazine

Ethylbenzene

Fluoranthene

4-chlorophenyl phenyl ether

4-bromophenyl phenyl ether

Dichlorobromomethane

Chlorodibromomethane

Hexachlorobutadine

Hexachlorocyclopentadine

Isophorone

Naphthalene

Nitrobenzene

2-nitrophenol

4-nitrophenol

2,4-dinitrophenol

4,6-dinitro-o-cresol

4,6-dinitro-o-cresol

N-nitrosodimethylamine

N-nitrosodi-n-propylamine

Pentachlorophenol

Phenol

Bis(2-ethylhexyl) phthalate

Butyl benzyl phthalate

Di-n-butyl phthalate

Di-n-octyl phthalate

Diethyl Phthalate

Dimethyl phthalate 1,2-benzathracene

(benzo(a)anthracene)

Benzo(a)pyrene (3,4-benzopyrene)

3,4-Benzofluoranthene (benzo(b)fluoranthene)

11,12-benzofluoranthene (benzo(b)fluoranthene)

Chrysene

Acenaphthylene

Anthracene

1,12-benzoperylene(benzo(ghi)perylene)

Fluorene

Phenanthrene

1,2,5,6-dibenzanthracene (dibenzo(h)anthracene)

Indeno (1,2,3-cd) pyrene (2,3-o-phenylene) Pyrene

Tetrachloroethylene

Toluene

Endosulphan sulphate

Endrin

Endrin aldehyde

Heptachlor

Heptachlor epoxide (BHC-hexachloro cyclohexane)

Alpha-BHC

Beta-BHC

Gamma-BHC (lindane)

Delta-BHC (PCB-polychlorinated biphenyls)

PCB-1242 (Arochlor 1242)

PCB-1254 (Arochlor 1254)

PCB-1221 (Arochlor 1221)

PCB-1232 (Arochlor 1232)

PCB-1248 (Arochlor 1248)

PCB-1260 (Arochlor 1260)

PCB-1016 (Arochlor 1016)

Toxaphene

Antimony

Arsenic

Asbestos

Beryllium

Cadmium

Chromium

Copper

Cyanide, Total

Lead

Mercury

Nickel

Selenium

N-nitrosodiphenylamine 2,3,4,7,8-

tetrachlorodibenzo-p-dioxin (TCDD)

Silver

Thallium

Bis(2-chloroisopropyl) ether

Bis(2-chloroethoxy) methane

Methylene chloride (dichloromethane)

Methyl chloride (dichloromethane)

Methyl bromide (bromomethane)

Bromoform Tribromoethane

Trichloroethylene

Vinyl chloride (chloroethylene) Aldrin

Dieldrin

Chlordane (techn. mixture and metabolites)

4,4-DDT

4,4-DDE (p,p-DDX)

4,4-DDD (p,p-TDE)

Alpha-endosulfan

Beta-endosulphan

Zinc



**General Permit Authorization to Discharge From the Oil and Gas Point Source Category to Coastal Waters of Texas**

Permit No. TXG330000

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*: the "Act"), the following discharges are authorized from coastal oil and gas facilities (defined in 40 CFR Part 435, Subpart D) to receiving waters, described below (encompassing the coastal waters of Texas) in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts I, II, III, and IV thereof:

Drilling Fluids,  
Drill Cuttings,  
Deck Drainage,  
Sanitary Wastes,  
Domestic Wastes,  
Desalinization Unit Discharge,  
Diatomaceous Earth Filter Media,  
Excess Cement Slurry,  
Uncontaminated Ballast/Bilge Water,  
Boiler Blowdown,  
Blowout Preventer Control Fluid,  
Well Treatment Fluids,  
Workover Fluids,  
Completion Fluids,  
Formation Test Fluids,  
Treated Wastewater from Dewatered Drilling Fluids/Cuttings,  
Muds, Cuttings, and Cement at the Sea floor,  
Uncontaminated Seawater,  
Uncontaminated Freshwater.

This permit authorizes discharges to the coastal waters of Texas from oil and gas facilities engaged in production, field exploration, drilling, well completion, and well treatment operations. Produced water, produced sand and source water and sand discharges are excluded from coverage under this general permit, but will however, be regulated under a separate general coastal permit.

For the purposes of this NPDES general permit, Coastal Subcategory facilities means oil and gas facilities associated with a wellhead located in waters of the United States (including wetlands) as defined at 40 CFR 122.2, landward of the inner boundary of the territorial seas and those wells in the geographic area (land and water areas) suspended from the Onshore Subcategory described at 40 CFR part 435 subpart C. The term wetlands shall mean "those surface areas which are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, swamps, marshes, bogs and similar areas". Territorial seas refers to "the belt of the seas measured from the line of ordinary low water along that portion of the coast which is direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a

distance of three miles." (See Clean Water Act Section 502).

The coastal permit area as described in the regulations is broad by definition and includes all rivers, streams, lakes, bays, estuaries and adjacent wetlands that occur inland of inner boundary of the territorial seas. The coastal subcategory also includes the geographic area along the coast of Texas and Louisiana (Chapman line area) which was originally defined as coastal in EPA's 1976 Interim Final Regulations for the onshore subcategory (See Suspension of Regulations, 47 FR 31554, July 21, 1982). A facility is considered to be covered under the proposed general permit if the location of the wellhead is within the described permit area.

This permit does not authorize discharge from "new sources" as defined in 40 CFR 122.2. This permit also does not authorize discharges from oil and gas extraction operations which adversely affect properties listed or eligible for listing in the National Register of Historic Places.

This permit shall become effective on October 21, 1993.

This permit and the authorization to discharge shall expire at midnight, October 21, 1998.

Signed this September 7th day of 1993.

**Myron O. Knudson, P.E.,**

*Director, Water Management Division EPA Region 6.*

**Part I**

*Section A. General Permit Coverage*

**1. Intent To Be Covered**

Written notification of intent to be covered, including the legal name and address of the operator, the lease (or lease block) number assigned by the Railroad Commission of Texas or, if none, the name commonly assigned to the lease area, and the type of facilities located within the lease (or lease block), shall be submitted.

(a) By operators of leases (or lease blocks) that are located within the geographic scope of this permit, within 45 days of the effective date of this permit.

**Note:** Operators must request coverage under this general permit or have an effective individual permit.

(b) By operators of leases (or lease blocks) obtained subsequent to the effective date of this permit fourteen days prior to the commencement of discharge.

**2. Termination of Operations**

Lease (or lease block) operators shall notify the Regional Administrator within 60 days after the permanent termination of discharges from their facilities. In addition, lease (or lease block) operators shall notify the Regional Administrator within 30 days of any transfer of ownership.

*Section B. NPDES Individual Versus General Permit Applicability*

**1. The Regional Administrator May Require Application for an Individual NPDES Permit**

The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

- (a) The discharge(s) is a significant contributor of pollution;
- (b) The discharger is not in compliance with the conditions of this permit;
- (c) A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point sources;
- (d) Effluent limitation guidelines are promulgated for point sources covered by this permit;
- (e) A Water Quality Management Plan containing requirements applicable to such point source is approved;
- (f) The point source(s) covered by this permit no longer:
  - (1) Involve the same or substantially similar types of operations;
  - (2) Discharge the same types of wastes;
  - (3) Require the same effluent limitations or operating conditions;
  - (4) Require the same or similar monitoring; or
  - (5) In the opinion of the Regional Administrator, are more appropriately controlled under an individual permit than under a general permit.

The Regional Administrator may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a permit application is required.

**2. An Individual NPDES Permit May Be Requested**

(a) Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The operator shall submit an application together with the reasons supporting the request to the Regional Administrator no later than December 20, 1993.

(b) When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of the individual permit.

**3. General Permit Coverage May Be Requested**

A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source after the notification of intent to be covered is filed (see A.1. above).

## Part II

### Section A. Effluent Limitations and Monitoring Requirements

Specific effluent limitations and monitoring requirements are discussed below. They are organized by the type of discharge in the text, and by discharge type, effluent limitation and monitoring requirements in Table 1.

#### 1. Drilling Fluids

(a) *Applicability*. Permit conditions apply to all drilling fluids (muds) that are discharged, including fluids adhering to cuttings.

(b) *Prohibitions*. This permit prohibits the discharge of all drilling fluids.

#### 2. Drill Cuttings

**Special Note:** The permit prohibitions and limitations that apply to drilling fluids also apply to drilling fluids that adhere to drill cuttings. Any permit condition that applies to the drilling fluid system, therefore, also applies to cuttings discharges.

(a) *Prohibitions*. This permit prohibits the discharge of drill cuttings.

#### 3. Treated Wastewater from Drilling Fluids/Cuttings, Dewatering Activities and Pit Closure Activities

(a) *Applicability*. Treated waste water from dewatered drill site reserve pits, shale barges, ring levees and inactive/abandoned reserve pits, mud tanks and effluents from solids control systems.

(b) *Limitations—Free Oil*. Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Monitoring must be accomplished once per day, when discharging. The number of days a sheen is detected must be recorded.

[Exception] Treated wastewater may be discharged at any time if the operator uses the static sheen method for detecting free oil.

*Oil and Grease*. Treated Wastewater must meet a 15 mg/l daily maximum limitation.

*Total Suspended Solids*. Treated wastewater shall not exceed 50 mg/l as a daily maximum.

*Total Dissolved Solids*. Treated wastewater shall not exceed 3000 mg/l as a daily maximum.

[Exception] Total dissolved solids (TDS) concentration may exceed 3,000 mg/l in tidally influenced watercourses (downstream of the upper limit of saltwater intrusion) if the TDS concentration of the treated reserve pit effluent does not exceed the TDS concentration of the receiving water at the point of discharge at the time of discharge.

*Chemical Oxygen Demand*. Treated wastewater shall not exceed 200 mg/l as a daily maximum.

*pH*. Discharges of treated wastewater must meet a pH limitation of not less than 6.0 and not greater than 9.0 at the point of discharge.

*Chlorides*. Treated wastewater shall not exceed 500 mg/l in inland areas and shall not exceed 1,000 mg/l in tidally influenced watercourses.

[Exception] Chloride concentration may exceed 1,000 mg/l in tidally influenced watercourses (downstream of the upper limit of saltwater intrusion) if the chloride concentration of the treated reserve pit effluent does not exceed the chloride concentration of the receiving water at the point of discharge at the time of discharge. Inland regions are defined to be those regions where natural drainage is into any watercourse which is not tidally influenced.

*Hazardous Metals*. The discharge must not contain concentrations of the substances classified as "hazardous metals" in excess of the levels allowed by the Texas Water Development Board Rules 156.19.15.001-.009 (currently TAC 319.21).

*Monitoring*. The monitoring frequency for the above limitations are once per day when discharging. However, if the effluent is batch treated and discharged, the monitoring requirements for all effluent characteristics shall be once per discharge event by grab sample.

(c) *Other Monitoring—Volume*. The volume (bbls) of discharged treated wastewater must be estimated once per day, when discharging. If the effluent is being batch treated and discharged then the estimated volume discharged in barrels must be recorded per discharge event.

#### 4. Deck Drainage

(a) *Limitations—Free Oil*. Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Monitoring must be accomplished once per day, when discharging during conditions when an observation of a sheen is possible and when the facility is manned. The number of days a sheen is detected must be recorded.

(b) *Other Monitoring—Volume*. Once per month, the total monthly volume (bbl) must be estimated.

#### 5. Formation Test Fluid

(a) *Prohibitions*. There shall be no discharge of formation test fluids to lakes, rivers, streams, bays and estuaries.

[Exception] Discharges of formation test fluids are allowed to bays and estuaries where no chloride standards have been established by the Texas Water Commission.

(b) *Limitations—Free Oil*. Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Monitoring must be accomplished once per discharge. The

number of days a sheen is detected must be recorded.

[Exception] Formation test fluids may be discharged at any time if the operator uses the static sheen method for detecting free oil.

*pH*. Discharges of formation test fluid must meet a pH limitation of not less than 6.0 and not greater than 9.0. A grab sample must be taken once per discharge. Any spent acidic test fluids shall be neutralized before discharge such that the pH at the point of discharge meets the limitation.

(c) *Other Monitoring—Volume*. Once per discharge, the total volume reported as number of barrels sent downhole during testing and the number of barrels discharged shall be estimated and reported once per month.

#### 6. Well Treatment Fluids, Completion Fluids, Workover Fluids

(a) *Prohibitions*. There shall be no discharge of well completion, treatment or workover fluids to lakes, rivers, streams, bays or estuaries.

[Exception] Discharge of well completion, treatment or workover fluids are allowed to bays and estuaries where no chloride standards have been established by the Texas Water Commission.

*Priority (Toxic) Pollutants*. For well treatment fluids, completion fluids, and workover fluids, the discharge of priority pollutants (see Appendix A) is prohibited, except in trace amounts. If well completion, treatment or workover fluids are discharged, the permittee is required to retain records indicating that the discharge did not contain priority pollutants, except in trace amounts. Certification on DMR's will suffice for priority pollutant limits.

Information on the specific chemical composition of additives used in these fluids, and their concentrations in the fluid, must be recorded if priority pollutants are present, in any amount, in these additives.

(b) *Limitations—Free Oil*. Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Monitoring must be accomplished once per day, when discharging. The number of days a sheen is detected must be recorded.

[Exception] Well treatment fluids, completion fluids, or workover fluids may be discharged at any time if the operator uses the static sheen method for detecting free oil.

*pH*. Well treatment, completion and workover fluids must meet a pH limitation of not less than 6.0 and not greater than 9.0 prior to being discharged. Sampling must be accomplished once per day when discharging.

(c) *Other Monitoring—Volume*. Once per month, the discharge volume (bbls) must be estimated.

## 7. Sanitary Waste

(a) *Prohibitions—Solids.* No floating solids may be discharged.

(b) *Limitations—Biochemical Oxygen Demand (BOD5).* Sanitary waste discharges must meet a 45 mg/l daily maximum limitation. A grab sample must be collected and analyzed once per quarter.

*Total Suspended Solids.* Sanitary waste discharges shall meet a 45 mg/l daily maximum limitation. A grab sample shall be collected and analyzed once per quarter.

*Fecal Coliform.* Sanitary waste discharges must meet a daily maximum limitation of 200/100 ml for fecal coliform. A grab sample must be taken and analyzed once per week.

(c) *Other Monitoring—Flow.* Once per month, the average flow (million gallons per day; MGD) must be estimated.

## 8. Domestic Waste

(a) *Prohibitions—Solids.* This permit prohibits the discharge of "garbage" including food wastes (comminuted or not), incineration ash and clinker. Neither fish and debris from fish cleaning stations nor graywater are not considered garbage under this definition.

## 9. Miscellaneous Discharges

Desalinization Unit Discharge, Blowout Preventer Fluid, Uncontaminated Ballast Water, Uncontaminated Bilge Water, Mud, Cuttings, and Cement at the sea floor, Uncontaminated Seawater, Boiler Blowdown, Excess Cement Slurry, Diatomaceous Earth Filter Media, Uncontaminated Freshwater, including potable water releases during tank transfer and emptying operations, and condensate from air conditioner units.

(a) *Limitations—Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Monitoring must be accomplished once per day, when discharging. The number of days a sheen is detected must be recorded.

[Exception] Miscellaneous discharges may occur at any time if the operator uses the static sheen method for detecting free oil.

## 10. Other Discharge Conditions

(a) *Prohibitions—Halogenated Phenol Compounds.* There shall be no discharge of halogenated phenol compounds.

*Rubbish, Trash, and Other Refuse.* The discharge of any solid material not authorized in the permit (as described above) is prohibited.

(b) *Limitations—Floating Solids or Visible Foam.* There shall be no discharge of floating solids or visible foam in other than trace amounts.

*Surfactants, Dispersants, and Detergents.* The discharge of surfactants, dispersants, and detergents used to wash working areas shall

be minimized except as necessary to comply with applicable State and Federal safety requirements.

### Section B. Other Conditions

#### 1. Samples of Wastes

If requested, the permittee shall provide EPA with a sample of any waste in a manner specified by the Agency.

### Part III

#### Section A. General Conditions

##### 1. Introduction

In accordance with the provisions of 40 CFR 122.41, et. seq., this permit incorporates by reference all conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, (hereinafter known as the "Act") as well as ALL applicable CFR regulations.

##### 2. Duty To Comply

The permittee must comply with all conditions of this permit. Any permit non-compliance constitutes a violation of the Clean Water Act and is grounds for enforcement action or for requiring a permittee to apply for and obtain an individual NPDES permit.

##### 3. Toxic Pollutants

Notwithstanding III.A.5 below, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of the Clean Water Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified.

The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

##### 4. Duty To Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must submit notice of intent to be covered and must apply for a new permit. Continuation of the expiring permit shall be governed by regulations at 40 CFR 122.6 and any subsequent amendments.

##### 5. Permit Flexibility

This permit may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following (see 40 CFR 122.62-64):

(a) Violation of any terms or conditions of this permit;

(b) Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

(c) A change in any condition that requires either a temporary or a permanent reduction or elimination of the authorized discharge; or

(d) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under section 301, 304, and 307 of the Clean Water Act, if the effluent standard or limitation so issued or approved:

(a) Contains different conditions or limitations than any in the permit; or

(b) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

##### 6. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

##### 7. Duty to Provide Information

The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional Administrator upon request, copies of records required to be kept by this permit.

##### 8. Civil and Criminal Liability

Except as provided in permit conditions on "Bypassing" and "Upsets" (see III.B.4 and III.B.5), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or misleading misrepresentation or concealment of information required to be reported by the provisions of the permit, the ACT, or applicable CFR regulations which avoids or effectively defeats the regulatory purpose of the permit may subject the permittee to criminal enforcement pursuant to 18 U.S.C. 1001.

##### 9. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action

or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Clean Water Act.

#### 10. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Clean Water Act.

#### 11. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

#### Section B. Operation and Maintenance of Pollution Controls

##### 1. Need to Halt or Reduce not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

##### 2. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

##### 3. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

##### 4. Bypass of Treatment Facilities

(a) *Definitions.* (1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) *Bypass not exceeding limitations.* The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of section B, paragraphs 4.c and 4.d of this section.

(c) *Notice.* (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in section D, paragraph 6 (24-hour reporting).

(d) *Prohibition of bypass.* (1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The permittee submitted notices as required under section B, paragraph 4.c.

(2) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in section B, paragraph 4.d.(1).

##### 5. Upset Conditions

(a) *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) *Effect of an Upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of section B, paragraph 5.(c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(c) *Conditions Necessary for a Demonstration of Upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in section D, paragraph 5; and,

(4) The permittee complied with any remedial measures required under section B, paragraph 2.

(d) *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

#### 6. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters. Any substance specifically listed within this permit may be discharged in accordance with specified conditions, terms, or limitations.

#### Section C. Monitoring and Records

##### 1. Inspection and Entry

The permittee shall allow the Regional Administrator or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

##### 2. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge.

##### 3. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all

reports required by this permit, for a period of at least 3 years from the date of the sample, measurement, or report. This period may be extended by request of the Regional Administrator at any time.

The operator shall maintain records at development and production facilities for 3 years, wherever practicable and at a specific shore-based site whenever not practicable. The operator is responsible for maintaining records at exploratory facilities while they are discharging under the operator's control and at a specified shore-based site for the remainder of the 3-year retention period.

#### 4. Record Contents

Records of monitoring information shall include:

- (a) The date, exact place, and time of sampling or measurements,
- (b) The individual(s) who performed the sampling or measurements,
- (c) The date(s) analyses were performed,
- (d) The individual(s) who performed the analyses,
- (e) The analytical techniques or methods used, and
- (f) The results of such analyses.

#### 5. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this permit (see part IV.A., below).

#### 6. Discharge Rate/Flow Measurements

Appropriate flow measurement devices consistent with accepted practices shall be selected, maintained, and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to ensure that the accuracy of the measurements are consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than  $\pm 10\%$  from true discharge rates throughout the range of expected discharge volumes.

#### Section D. Reporting Requirements

##### 1. Planned Changes

The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- (a) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b) [48 FR 14153, April 1, 1983, as amended at 49 FR 38049, September 26, 1984]; or
- (b) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are

subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR 122.42(a)(1) [48 FR 14153, April 1, 1983, as amended at 49 FR 38049, September 26, 1984].

##### 2. Anticipated Noncompliance

The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

##### 3. Transfers

This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act.

##### 4. Discharge Monitoring Reports

The operator of each lease (or lease block) shall be responsible for submitting monitoring results for all facilities within each lease (or lease block). The monitoring results for the facilities (platform, jack-up, drilling barge, etc.) within the particular lease (or lease block) shall be summarized on the annual Discharge Monitoring Report for that lease (or lease block).

Monitoring results obtained during the previous 12 months shall be summarized and reported on a Discharge Monitoring Report (DMR) Form (EPA No. 3320-1). The highest monthly average for all activity within each lease (or lease block) shall be reported. The highest daily maximum sample taken during the reporting period shall be reported as the daily maximum concentration. (See "Definitions" for more detailed explanations of these terms).

If any category of waste (discharge) is not applicable for all facilities within the lease (or lease block) due to the type of operation (e.g. drilling, production), "no discharge" must be recorded for those categories on the DMR. If all facilities within a lease block have had no activity during the reporting period, then "no activity" must be written on the DMR. All pages of the DMR must be signed and certified as required by Part III.D.11 of this permit and submitted when due.

The Permittee must complete all empty blanks in the DMR unless there has been absolutely no activity or no discharge within the lease (or lease block) for the entire reporting period. In these cases, EPA Region VI will accept a listing of leases (or lease blocks) with no discharges or no activity, in lieu of submitting actual DMRs for these leases (or lease blocks). This listing must specify the permittee's NPDES General Permit Number, lease/lease block description, and EPA-assigned outfall number. The listing must also include the certification statement presented in Part III.D.11.d of this permit and

an original signature of the designated responsible official.

Upon receipt of a notification of intent to be covered, (part I.A.) the permittee will be notified of its specific outfall number applicable to that lease block. Furthermore, the Permittee will be informed of the discharge monitoring report due date for that lease block.

All notices and reports required under this permit shall be sent to EPA Region 6 at the address below:

Director, Water Management Division,  
USEPA, Region 6, Enforcement Branch  
(6W-EA), P.O. Box 50625, Dallas, TX  
75270.

##### 5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased monitoring frequency shall also be indicated on the DMR.

##### 6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

##### 7. Twenty-Four Hour Reporting

The permittee shall report any noncompliance which may endanger health or the environment (this includes any spill that requires oral reporting to the State Regulatory Authority). Information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

The following shall be included as information which must be reported within 24 hours:

- (a) Any unanticipated bypass which exceeds any effluent limitation in the permit;
- (b) Any upset which exceeds any effluent limitation in the permit.
- (c) Violations of a maximum daily discharge limitation or daily minimum toxicity limitation for any of the pollutants listed by the Regional Administrator in part

III of the permit to be reported within 24 hours.

The reports should be made to Region 6 by telephone at (214) 655-6593. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

#### 8. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under part III, section D, paragraphs 4 and 7 at the time monitoring reports are submitted. The reports shall contain the information listed in section D, paragraph 7.

#### 9. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Administrator, it shall promptly submit such facts or information.

#### 10. Changes in Discharges of Toxic Substances

For any toxic pollutant (see appendix A) that is not limited in this permit, either as an additive itself or as a component in an additive formulation, the permittee shall notify the Regional Administrator as soon as he knows or has reason to believe:

(a) That any activity has occurred or will occur which would result in the discharge of such toxic pollutants, on a routine or frequent basis, if that discharge will exceed the highest of the "notification levels" described at 40 CFR 122.42(a)(1) (i) and (ii);

(b) That any activity has occurred or will occur which would result in any discharge of such toxic pollutants, on a non-routine or infrequent basis, if that discharge will exceed the highest of the "notification levels" described at 40 CFR 122.42(a)(2) (i) and (ii).

#### 11. Signatory Requirements

All applications, reports, or information submitted to the Regional Administrator shall be signed and certified as required at 40 CFR 122.22.

(a) All permit applications shall be signed as follows:

(1) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the corporation, or

(ii) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the

manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

(b) *Authorized Representative.* All reports required by the permit and other information requested by the Regional Administrator shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above.

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and,

(3) The written authorization is submitted to the Regional Administrator.

(c) *Changes to Authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

#### 12. Availability of Reports

Except for data determined to be confidential under 40 CFR part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of the Regional Administrator. As required by the Clean Water Act, the name and address of any permit applicant or permittee, permit applications, permits, and effluent data shall not be considered confidential.

#### 13. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

#### Section E. Penalties for Violations of Permit Conditions

##### 1. Criminal

(a) *Negligent Violations.* The Act provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(b) *Knowing Violations.* The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(c) *Knowing Endangerment.* The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than \$250,000 per day of violation, or by imprisonment for not more than 15 years, or both.

(d) *False Statements.* The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309.c.4 of the Clean Water Act).

##### 2. Civil Penalties

The Clean Water Act at section 309 provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$25,000 per day of such violation.

Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both. The maximum penalty may be assessed for each violation occurring on a single day. A single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

### 3. Administrative Penalties

The Act at section 309 allows that the Regional Administrator may assess a Class I or Class II civil penalty for violations of sections 301, 302, 306, 307, 308, 318, or 405 of the Act. A Class I penalty may not exceed \$10,000 per violation except that the maximum amount shall not exceed \$25,000. A Class II penalty may not exceed \$10,000 per day for each day during which the violation continues, except that the maximum amount shall not exceed \$125,000. An upset that leads to violations of more than one pollutant parameter will be treated as a single violation.

## Part IV.

### Section A. Test Procedures

For test procedures not specified below, the only authorized procedures are those described at 40 CFR part 136.

#### 1. Visual Sheen Test

The visual sheen test is used to detect free oil by observing the surface of the receiving water for the presence of a sheen while discharging. A sheen is defined as a 'silvery' or 'metallic' sheen, gloss, or increased reflectivity; visual color; or iridescence on the water surface. The operator must conduct a visual sheen test only at times when a sheen can be observed. This restriction eliminates observations at night or when atmospheric or surface conditions prohibit the observer from detecting a sheen (e.g. fog (not overcast skies), rough seas, etc.). Certain discharges can only occur if a visual sheen test can be conducted.

The observer must be positioned on the rig or platform, or other vantage point, relative to both the discharge point and current flow at the time of discharge, such that the observer can detect a sheen should it surface down current from the discharge. For discharges that have been occurring for at least 15 minutes previously, observations may be made any time thereafter. For discharges of less than 15 minutes duration, observations must be made during both discharge and at 5 minutes after discharge has ceased.

#### 2. Static Sheen Test

Region 10, Modified Static Sheen Test, "Bucket Test": Combined 50 FR No. 165 August 26, 1985 and USEPA Region 10,

Interim Guidance for the Static (Laboratory) Sheen Test, January 10, 1984

#### 1. Scope and Application

The static sheen test is to be used as a compliance test for all discharges in this permit with the "no free oil discharge" requirement, when it is not possible for the operator to accomplish a visual sheen observation on the surface of the receiving water. This would preclude an operator from attempting a visual sheen observation when atmospheric or surface conditions prohibit the observer from detecting a sheen (e.g., during rough seas, etc.). Free oil refers to any oil contained in a waste stream that when discharged will cause a film or sheen upon or a discoloration of the surface of the receiving water.

#### 2. Summary of Method

15 ml samples of drilling fluids; deck drainage, well treatment, completion and workover fluids, formation test fluids, or treated wastewater from drilling fluid dewatering activities, or 15 gm (wet weight basis) samples of drill cuttings or produced sand are introduced into ambient seawater in a container having an air to liquid interface area of 1000 cm<sup>2</sup> (155.5 in<sup>2</sup>). Samples are dispersed within the container and observations made no more than one hour later to ascertain if these materials cause a sheen, iridescence, gloss, or increased reflectance on the surface of the test seawater. The occurrence of any of these visual observations will constitute a demonstration that the tested material contains "free oil", and therefore, results in a prohibition on its discharge into receiving waters.

#### 3. Interferences

Residual "free oil" adhering to sampling containers, the magnetic stirring bar used to mix drilling fluids, and the stainless steel spatula used to mix drill cuttings will be the principal sources of contamination problems. These problems should only occur if improperly washed and cleaned equipment are used for the test. The use of disposable equipment minimizes the potential for similar contamination from pipets and the test container.

#### 4. Apparatus, Materials, and Reagents

- 4.1 Apparatus.
  - 4.1.1 Sampling Containers—1 L polyethylene beakers and 1 L glass beakers.
  - 4.1.2 Graduated cylinder—100 ml graduated cylinder required only for operations where predilution of mud discharges is required.
  - 4.1.3 Plastic disposable weighing boats.
  - 4.1.4 Triple-beam scale.
  - 4.1.5 Disposable pipets—25 ml disposable pipets.
  - 4.1.6 Magnetic stirrer and stirring bar.
  - 4.1.7 Stainless steel spatula.
  - 4.1.8 Test container—open plastic container whose internal cross-section parallel

to its opening has an area of 1000±50 cm<sup>2</sup> (155.5±7.75 in<sup>2</sup>), and a depth of at least 13 cm (5 inches) and no more than 30 cm (11.8 inches).

#### 4.2 Materials and Reagents.

4.2.1 Plastic liners for the test container—Oil free, heavy duty plastic trash can liners that do not inhibit the spreading of an oil film. Liners must be of sufficient size to completely cover the interior surface of the test container. Permittees must determine an appropriate local source of liners that do not inhibit the spreading of 0.05 ml diesel fuel added to the lined test container under the test conditions and protocol described below.

#### 4.2.2 Ambient receiving water.

#### 5. Calibration

None currently specified.

#### 6. Quality Control Procedures

None currently specified.

#### 7. Sample Collection and Handling

7.1 Sampling containers must be thoroughly washed with detergent, rinsed a minimum of three times with fresh water, and allowed to air dry before samples are collected.

7.2 Samples of drilling fluid to be tested shall be taken at the shale shaker after cuttings have been removed. The sample volume should range between 200 ml and 500 ml.

7.3 Samples of drill cuttings will be taken from the shale shaker screens with a clean spatula or similar instrument and placed in a glass beaker. Cuttings samples shall be collected prior to the addition of any washdown water and should range between 200 g and 500 g.

7.4 Samples of produced sand must be obtained from the solids control equipment from which the discharge occurs on any given day and shall be collected prior to the addition of any washdown water; samples should range between 200 g and 500 g.

7.5 Samples of deck drainage, well treatment, completion and workover fluids, formation test fluids and treated wastewater from drilling fluid dewatering activities must be obtained from the holding facility prior to discharge; the sample volume should range between 200 ml and 500 ml.

7.6 Samples must be tested no later than 1 hour after collection.

7.7 Drilling fluid samples must be mixed in their sampling containers for 5 minutes prior to the test using a magnetic bar stirrer. If predilution is imposed as a permit condition, the sample must be mixed at the same ratio with the same prediluting water as the discharged muds and stirred for 5 minutes.

7.8 Drill cuttings must be stirred and well mixed by hand in their sampling containers prior to testing, using a stainless steel spatula.

## 8. Procedure

8.1 Ambient receiving water must be used as the "receiving water" in the test. The temperature of the test water shall be as close as practicable to the ambient conditions in the receiving water, not the room temperature of the observation facility. The test container must have an air to liquid interface area of  $1000 \pm 50$  cm<sup>2</sup>. The surface of the water should be no more than 1.27 cm ( $\frac{1}{2}$  inch) below the top of the test container.

8.2 Plastic liners shall be used, one per test container, and discarded afterwards. Some liners may inhibit spreading of added oil; operators shall determine an appropriate local source of liners that do not inhibit the spreading of the oil film.

8.3 A 15 ml sample of drilling fluid, deck drainage, well treatment, completion and workover fluids, formation test fluids, or treated wastewater from drilling fluid dewatering activities must be introduced by pipet into the test container 1 cm below the water surface. Pipets must be filled and discharged with test material prior to the transfer of test material and its introduction into test containers. The test water-test material mixture must be stirred using the pipet to distribute the test material homogeneously throughout the test water. The pipet must be used only once for a test and then discarded.

8.4 Drill cuttings or produced sand should be weighed on plastic weighing boats; 15 gram samples must be transferred by scraping test material into the test water with a stainless steel spatula. Drill cuttings shall not be prediluted prior to testing. Also, drilling fluids and cuttings will be tested separately. The weighing boat must be immersed in the test water and scraped with the spatula to transfer any residual material to the test container. The drill cuttings or produced sand must be stirred with the spatula to an even distribution of solids on the bottom of the test container.

8.5 Observations must be made no later than 1 hour after the test material is transferred to the test container. Viewing points above the test container should be made from at least three sides of the test container, at viewing angles of approximately 60° and 30° from the horizontal. Illumination of the test container must be representative of adequate lighting for a working environment to conduct routine laboratory procedures. It is recommended that the water surface of the test container be observed under a fluorescent light source such as a dissecting microscope light. The light source shall be positioned above and directed over the entire surface of the pan.

8.6 Detection of a "silvery" or "metallic" sheen, gloss, or increased reflectivity; visual color; or iridescence; or an oil slick, on the water surface of the test container surface shall constitute a demonstration of "free oil". These visual

observations include patches, streaks, or sheets of such altered surface characteristics. shall constitute a demonstration of free oil. If the free oil content of the sample approaches or exceeds 10 percent, the water surface of the test container may lack color, a sheen or iridescence, due to the increased thickness of the film; thus, the observation for an oil slick is required. The surface of the test container shall not be disturbed in any manner that reduces the size of any sheen or slick that may be present.

If an oil sheen or slick occurs on less than one-half of the surface area after drilling muds or cuttings are introduced to the test container, observations will continue for up to one hour. If the sheen or slick increases in size and covers greater than one-half of the surface area of the test container during the observation period, the discharge of the material shall cease. If the sheen or slick does not increase in size to cover greater than one-half of the test container surface area after one hour of observation, discharge may continue and additional sampling is not required.

If a sheen or slick occurs on greater than one-half of the surface area of the test container after the test material is introduced, discharge of the tested material shall cease. The permittee may retest the material causing the sheen or slick. If subsequent tests do not result in a sheen or slick covering greater than one-half of the surface area of the test container, discharge may continue.

### Section B. Definitions

*Administrator* means the administrator of EPA Region 6, or an authorized representative.

*Areas of Biological Concern (ABC)* are locations identified by the State of Texas as "no activity zones" or areas determined by EPA and the State, collectively, containing significant biological resources or features that require a "No Discharge" condition. There are currently no designated areas of biological concern.

*Average daily discharge limitation* means the highest allowable average of discharges over a 24-hour period, calculated as the sum of all discharges measured divided by the number of discharges measured that day.

*Average monthly discharge limitation* means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of discharges measured that month.

*Batch or bulk discharge* means any discharge of a discrete volume or mass of effluent from a pit, tank or similar container that occurs on a one time or infrequent or irregular basis.

*Batch or bulk treatment* means any treatment of a discrete volume or mass of effluent from a pit, tank, or similar container prior to discharge.

*Blow-out preventer control fluid* is fluid used to actuate the hydraulic equipment on the blow-out preventer.

*BOD5* means five day biochemical oxygen demand.

*Boiler blowdown* is discharge from boilers necessary to minimize solids build-up in the boilers, includes vents from boilers and other heating systems.

*Clinkers* are small lumps of melted plastic.

*Coastal* means all waters of the United States (as defined at 40 CFR 122.2) landward of the territorial seas.

*COD* is chemical oxygen demand.

*Completion fluids* are salt solutions, weighted brines, polymers or various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production. These fluids move into the formation and return to the surface as a slug with the produced water. Drilling muds remaining in the wellbore during logging, casing and cementing operations or during temporary abandonment of the well are not considered completion fluids and are regulated by drilling fluids requirements.

*Daily maximum discharge limitation* means the highest allowable "daily discharge" during the calendar month.

*Deck drainage* is all waste resulting from platform washings, deck washings, spills, rainwater, and runoff from curbs, gutters, and drains, including drip pans and wash areas.

*Desalinization unit discharge* means wastewater associated with the process of creating fresh water from seawater.

*Diatomaceous earth filter media* means filter media used to filter seawater or other authorized completion fluids and subsequently washed from the filter.

*Domestic waste* is discharges from galleys, sinks, showers, safety showers, eye wash stations, hand wash stations and laundries.

*Drill cuttings* are particles generated by drilling into the subsurface geological formations and carried to the surface with the drilling fluid.

*Drilling fluid* is any fluid sent down the hole, including drilling muds and any specialty products, from the time a well is begun until final cessation of drilling in that hole.

*Excess Cement Slurry* is the excess cement including additives and wastes from equipment washdown after a cementing operation.

*Free Oil* is oil that causes a sheen when discharges are released or when a static sheen test is used.

*Formation test fluids* are the discharge that would occur should hydrocarbons be located during exploratory drilling and tested for formation pressure and content.

*Garbage* means all kinds of victual, domestic and operational waste . . . generated during the normal operation of the ship and liable to be disposed of continuously or periodically . . . (See MARPOL 73/78 regulations).



*Grab sample* is a single representative effluent sample taken at the recognized discharge point in as short a period of time as feasible.

*Graywater* means drainage from dishwater, shower, laundry, bath, and washbasin drains and does not include drainage from toilets, urinals, hospitals, and drainage from cargo areas. (See MARPOL 73/78 regulations).

*Inverse emulsion drilling fluids* means an oil-based drilling fluid that also contains a large amount of water.

*Maximum hourly rate* means the greatest number of barrels of drilling fluids discharged within one hour, expressed as barrels per hour.

*MGD* refers to units of flow measurement, as million gallons per day.

*MPN* means the most probable number.

*Muds, cuttings, and cement at the seafloor* are discharges which occur at the seafloor prior to installation of the marine riser and during marine riser disconnect and well abandonment and plugging operations.

*No Activity Zones* are those areas identified by MMS where no structures, drilling rigs, or pipelines will be allowed. See Areas of Biological Concern.

*No Discharge Areas* are areas specified by EPA where discharge of pollutants may not occur.

*Packer Fluid* means low solids fluids between the packer, production string and well casing, (See workover fluids).

*Priority Pollutants* are those chemicals or elements identified by EPA, pursuant to section 307 of the Clean Water Act, and 40 CFR 401.15. See Appendix A.

*Sanitary waste* means human body waste discharged from toilets and urinals.

*Source water and sand* means water from non-hydrocarbon bearing formations for the purpose of pressure maintenance or secondary recovery, including the entrained solids.

*Static Sheen* is the procedure described in Part IV, Section A.2. of the permit.

*TDS* means total dissolved solids.

*Territorial Seas* is "the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open ocean and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles" (CWA Section 502).

*Toxic Pollutants* (See Priority Pollutants, Appendix A)

*Treated wastewater from dewatered drilling fluids and cuttings* means wastewater from dewatering activities (including but not limited to reserve pits which have been flocculated or otherwise chemically or mechanically treated to meet specific discharge conditions) and any waste commingled with this water.

*TSS* means total suspended solids.

*Untaminated ballast/bilge water* is seawater added or removed to maintain proper draft of a vessel.

*Untaminated Freshwater* means freshwater which is returned to the receiving stream without the addition of any chemicals; included are (1) Discharges of excess freshwater that permit the continuous operation of fire control and utility lift pumps, (2) excess freshwater from pressure maintenance and secondary recovery projects, (3) water released during the training and testing of personnel in fire protection, (4) water used to pressure test piping, (5) once-through, non-contact cooling water, and (6) potable water released during transfer and

tank emptying operations and condensate from air conditioning units.

*Untaminated Seawater* is seawater which is returned to the sea without the addition of chemicals. Included are: (1) Discharges of excess seawater which permit the continuous operation of fire control and utility lift pumps, (2) excess seawater from pressure maintenance and secondary recovery projects, (3) water released during the training and testing of personnel in fire protection, (4) sea-water used to pressure test piping, and (5) once-through, non-contact cooling water.

*Visual Sheen* means a 'silvery' or 'metallic' sheen, gloss, or increased reflectivity; visual color; or iridescence on the water surface.

*Well Treatment (stimulation) Fluids* means any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled. These fluids move into the formation and return to the surface as a slug with the produced water. Stimulation fluids include substances such as acids, solvents and propping agents.

*Workover Fluids* means salt solutions, weighted brines, polymers or other specialty additives used in a producing well to allow safe repair and maintenance or abandonment procedures. High solids drilling fluids used during workover operations are not considered workover fluids by definition and therefore must meet drilling fluid effluent limitations before discharge may occur. Packer fluids, low solids fluids between the packer, production string and well casing, are considered to be workover fluids and must meet only the effluent requirements imposed on workover fluids.

TABLE 1.—PERMIT CONDITIONS AND DISCHARGE MONITORING FREQUENCY

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Recorded value(s)
(A) Drilling Fluids—no discharge.				
(B) Drill Cuttings—no discharge.				
(C) Treated Wastewater from Drilling Fluids/Cuttings, Dewatering Activities, and Pit Closure Activities.				
Free oil .....	No free oil .....	Once/day <sup>1</sup> .....	Visual sheen on receiving water <sup>2</sup> .	Number of days sheen observed.
Oil and grease .....	15 mg/l .....	Once/day <sup>1</sup> .....	Grab .....	Daily maximum.
TSS .....	50 mg/l .....	Once/day <sup>1</sup> .....	Grab .....	Daily maximum.
TDS .....	3,000 mg/l <sup>3</sup> .....	Once/day <sup>1</sup> .....	Grab .....	Daily maximum.
COD .....	200 mg/l .....	Once/day <sup>1</sup> .....	Grab .....	Daily maximum.
pH .....	6.0–9.0 <sup>4</sup> .....	Once/day <sup>1</sup> .....	Grab .....	pH value.
Chlorides .....	500 mg/l <sup>3</sup> .....	Once/day <sup>1</sup> .....	Grab .....	Daily maximum.
Hazardous Metals .....	1,000 mg/l <sup>3</sup> .....	Once/day <sup>1</sup> .....	Grab .....	Daily maximum.
Volume .....	No discharge <sup>3</sup> .....	Once/day <sup>1</sup> .....	Grab .....	Daily maximum.
	Report (bbls) .....	Once/day <sup>1</sup> .....	Estimate .....	Daily total. <sup>6</sup>
(D) Deck Drainage.				
Free oil .....	No free oil .....	Once/day <sup>5</sup> .....	Visual sheen on receiving water <sup>10</sup> .	Number of days sheen observed.
Volume .....	Report (bbls) .....	Once/month .....	Estimate .....	Monthly total. <sup>6</sup>

TABLE 1.—PERMIT CONDITIONS AND DISCHARGE MONITORING FREQUENCY—Continued

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Recorded value(s)
(E) Formation Test Fluids—No discharge of formation test fluids to lakes, rivers, streams, bays and estuaries. Exception: for bays and estuaries where no chloride standards have been established by the Texas Water Commission, the following discharge limitations and monitoring requirements shall apply:				
Free oil .....	No free oil .....	Once/discharge .....	Visual sheen on receiving water <sup>2</sup> .	Number of days sheen observed.
pH .....	6.0–9.0 <sup>4</sup> .....	Once/discharge .....	Grab .....	pH value.
Volume .....	Report (bbls) .....	Once/discharge .....	Estimate .....	Monthly total. <sup>6</sup>
(F) Well Treatment, Completion, and Workover Fluids—There shall be no discharge of well treatment, completion and workover fluids to lakes, rivers, streams, bays or estuaries. Exception: for bays and estuaries where no chloride standards have been established by the Texas Water Commission, the following limitations and monitoring requirements shall apply:				
Priority Pollutants .....	No discharge .....	.....	Certification <sup>7</sup> .....	Number of days sheen observed. pH value. Monthly total.
Free oil .....	No free oil .....	Once/day <sup>1</sup> .....	Visual sheen on receiving water <sup>2</sup> .	
pH .....	6.0–9.0 <sup>4</sup> .....	Once/day <sup>1</sup> .....	Grab .....	
Volume .....	Report (bbls) .....	Once/month <sup>1</sup> .....	Estimate .....	
(G) Sanitary Waste.				
Solids .....	No floating solids .....	Once/day .....	Observation <sup>8</sup> .....	Number of days solids observed.
BOD5 .....	45 mg/l .....	Once/quarter .....	Grab .....	Daily maximum.
TSS .....	45 mg/l .....	Once/quarter .....	Grab .....	Daily maximum.
Fecal .....	200/100 ml .....	Once/week .....	Grab .....	Daily maximum.
Flow .....	Report (MGD) .....	Once/month .....	Estimate .....	Monthly avg. <sup>6</sup> .
(H) Domestic Waste.				
Solids .....	No discharge <sup>9</sup>			
(I) Miscellaneous Discharges: Desalinization Unit Discharge, Blowout Preventer Fluid, Uncontaminated Ballast Water, Uncontaminated Bilge Water, Mud, Cuttings, and Cement at the Seafloor, Uncontaminated Seawater, Boiler Blowdown, Excess Cement Slurry, Diatomaceous Earth Filter Media, Uncontaminated Freshwater including potable water releases during tank transfer and emptying operations, and condensate from air conditioner units.				
Free oil .....	No free oil .....	Once/day <sup>1</sup> .....	Visual sheen on receiving water <sup>2</sup> .	Number of days sheen observed

1. When discharging.
2. Discharge is possible during times other than when a visual sheen observation is possible, if the static sheen test method is used.
3. See permit; Part II A.3.b.
4. pH at the point of discharge shall not be less than 6.0 or greater than 9.0.
5. When discharging and when the facility is manned.
6. Information shall be recorded, but not reported unless specifically requested by EPA.
7. No discharge except in trace amounts. Certification that each discharge does not contain priority pollutants (except in trace amounts) on DMR's will suffice for reporting priority pollutant limits. Information on the specific chemical composition shall be recorded but not reported unless requested by EPA.
8. Monitoring by visual observation of the surface of the receiving water in the vicinity of outfall(s) shall be done during daylight at the time of maximum estimated discharge.
9. Annex V of MARPOL 73/78 prohibits the discharge of "garbage" including food wastes, incineration ash and clinkers. Graywater, drainage from dishwater, shower, laundry, bath, and washbasins may be discharged.
10. Monitoring of visual sheen to be made at times when visual observations can be made.

**Appendix A—Priority Pollutant List**

Acenaphthene	Bis(2-chloroethoxy) methane	Vinyl chloride (chloroethylene)
Acrolein	Methylene chloride (dichloromethane)	Aldrin
Acrylonitrile	Methyl chloride (dichloromethane)	2,3,7,8-tetrachloro-dibenzo-p-dioxin (TCDD)
Benzene	Methyl bromide (bromomethane)	Dieldrin
Benzidine	N-nitrosodiphenylamine	Chlordane (tech. mixture and metabolites)
Carbon tetrachloride (tetrachloromethane)	Bromoform (tribromomethane)	4,4-DDT
Chlorobenzene	Dichlorobromomethane	4,4-DDE (p,p-DDX)
1,2,4-trichlorobenzene	Chlorodibromomethane	4,4-DDD (p,p-TDE)
Hexachlorobenzene	Hexachlorobutadiene	Alpha-endosulfan
1,2-dichloroethane	Hexachlorocyclopentadiene	Beta-endosulfan
1,1,1-trichloroethane	Isophorone	Endosulfan sulfate
Hexachloroethane	Naphthalene	Endrin
1,1,-dichloroethane	Nitrobenzene	Endrin aldehyde
1,1,2-trichloroethane	2-nitrophenol	Heptachlor
1,1,2,2-tetrachloroethane	4-nitrophenol	Heptachlor epoxide (BHC-hexachloro cyclohexane)
Chloroethane	2,4-dinitrophenol	Alpha-BHC
Bis(2-chloroethyl) ether	4,6-dinitro-o-cresol	Beta-BHC
2-chloroethyl vinyl ether (mixed)	N-nitrosodimethylamine	Gamma-BHC (lindane)
2-chloronaphthalene	N-nitrosodi-n-propylamine	Delta-BHC (PCB-polychlorinated biphenyls)
2,4,6-trichlorophenol	Pentachlorophenol	PCB-1242 (Arochlor 1242)
Parachlorometacresol	Phenol	PCB-1254 (Arochlor 1254)
Chloroform (trichloromethane)	Bis(2-ethylhexyl) phthalate	PCB-1221 (Arochlor 1221)
2-chlorophenol	Butyl benzyl phthalate	PCB-1232 (Arochlor 1232)
1,2-dichlorobenzene	Di-n-butyl phthalate	PCB-1248 (Arochlor 1248)
1,3-dichlorobenzene	Di-n-octyl phthalate	PCB-1260 (Arochlor 1260)
1,4-dichlorobenzene	Diethyl Phthalate	PCB-1016 (Arochlor 1016)
3,3-dichlorobenzene	Dimethyl phthalate 1,2-benzanthracene	Toxaphene
1,1-dichloroethylene	(benzo(a)anthracene)	Antimony
2,4-dichlorophenol	Benzo (a) pyrene (3,4-benzopyrene)	Arsenic
1,2-dichloropropane	3,4-Benzofluoranthene (benzo (b) fluoranthene)	Asbestos
1,2-dichloropropylene (1,3-dichloropropene)	11,12-benzofluoranthene (benzo(b) fluoranthene)	Beryllium
2,4-dimethylphenol	Chrysene	Cadmium
2,4-dinitrotoluene	Acenaphthylene	Chromium
2,6-dinitrotoluene	Anthracene	Copper
1,2-diphenylhydrazine	1,12-benzoperylene (benzo(ghi)perylene)	Cyanide, Total
Ethylbenzene	Fluorene	Lead
Fluoranthene	Phenanthrene	Mercury
4-chlorophenyl phenyl ether	1,2,5,6-dibenzanthracene (dibenzo(h) anthracene)	Nickel
4-bromophenyl phenyl ether	Indeno (1,2,3-cd) pyrene(2, 30-phenylene	Selenium
Bis(2-chloroisopropyl) ether	pyrene) Pyrene Tetrachloroethylene	Silver Thallium Zinc
	Toluene	
	Trichloroethylene	

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