



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

FACT SHEET

NPDES Permit No.: AKG-31-5000

Date: October 21, 2008

Contact: Hanh Shaw

U.S. EPA, Region 10

(206) 553-0171

shaw.hanh@epa.gov

**The U.S. Environmental Protection Agency (EPA) Plans to
Modify the National Pollutant Discharge Elimination System (NPDES)
General Permit for:**

**Oil and Gas Exploration, Development and Production Facilities
Located in State and Federal Waters
in Cook Inlet, Alaska**

EPA Proposes To Modify NPDES Permit

EPA proposes to modify the NPDES General Permit for Oil and Gas Exploration, Development and Production Facilities in State and Federal Waters in Cook Inlet, AKG-31-5000 (Permit). The proposed Permit modification is in response to a settlement agreement between Union Oil Company of California and XTO Energy, Inc. (Petitioners) and EPA (Ninth Circuit, Case No. 07-72656).

This Fact Sheet includes:

- The tentative determination of EPA to modify the Permit.
- Information on public comment and appeal procedures.
- A description of modified Permit conditions.

Alaska State Certification

The Alaska Department of Environmental Conservation (ADEC) intends to waive the Permit under Section 401 of the Clean Water Act since State water quality standards are not affected by the modification.

Alaska Coastal Management Program (ACMP)

On May 31, 2006, the State of Alaska, Division of Coastal and Ocean Management (DCOM) found the Permit consistent with Alaska's coastal management programs.

EPA Invites Comments on the Draft Permit Modification

EPA will consider all substantive comments before issuing the final modified Permit. Those wishing to comment on the draft modified Permit may do so in writing within 30 days from the date of the Federal Register notice. EPA will only be accepting comments on the proposed modification of the Permit. All comments should include name, address, phone number, a concise statement of basis of comment and relevant facts upon which it is based. All written comments should be addressed to:

Attn: Hanh Shaw
USEPA, Region 10
1200 Sixth Avenue Suite 900, OWW-130
Seattle, WA 98101
Fax: (206) 553-0165
E-mail: shaw.hanh@epa.gov

After the public notice expires and all substantive comments have been considered, EPA Region 10's Director for the Office of Water & Watersheds will make a final decision regarding Permit modification issuance. If no comments requesting a change in the draft Permit are received, the tentative conditions in the draft Permit will become final, and the Permit will become effective 30 days upon issuance, unless it is stayed by the Ninth Circuit Court of Appeals. If substantive comments are received, EPA will address the comments and issue the Permit along with a response to comments. Pursuant to Section 509(b)(1) of CWA, 33 USC 1369(b)(1), any interested persons may appeal the Permit modification in the Ninth Circuit Court of Appeals within 120 days following notice of EPA's final decision.

Documents are available for review

The draft Permit modification and fact sheet can be reviewed at EPA's Regional Office in Seattle between 8:30 a.m. and 4:00 p.m., Monday through Friday. This material is also available for inspection and copying at the following places:

USEPA Alaska Operations Office
Federal Building, Room 537
222 West 7th Avenue
Anchorage, Alaska 99513-7588
Telephone: (800) 781-0983 (in Alaska)

USEPA Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Telephone: (206) 553-0171

The draft modified Permit and fact sheet may also be viewed on the internet at the EPA, Region 10 website at: <http://yosemite.epa.gov/r10/WATER.NSF/NPDES+Permits/DraftPermitsAK>

Description of Permit Modifications

Background

On May 25, 2007, EPA issued the final Permit, with an effective date of July 2, 2007. The Permit included the following provisions, among others:

1. Condition II.A.10: "If any discharges are commingled, the most stringent effluent limitations for each individual discharge shall be applied to the resulting discharge. If the Individual discharge is not authorized, the commingled discharge is not authorized. **Monitoring for compliance with technology based limits, such as the oil and grease concentration of produced water must be accomplished prior to commingling.**"
2. Condition II.C.3: "Commingled Waste Streams. If deck drainage is commingled with produced water, then this discharge shall be considered produced water for monitoring purposes (see Section II.G). **However, samples collected for compliance with the produced water oil and grease limits shall be taken prior to commingling the produced water stream with deck drainage or any other waste stream.** The estimated deck drainage flow rate must be reported in the comment section of the DMR (i.e., discharge monitoring report)."
3. Table 7-A, Footnote 1: "The sample type shall be either grab, or a 24-hour composite which consists of the arithmetic average of the results of 4 grab samples taken over a 24-hour period. If a sample is unavailable to be analyzed and the permittee has explained the reason in the DMR, averaging of the remaining samples is permitted. **Samples shall be collected prior to the addition of any seawater to the produced water waste stream.** See Section II.G.6.b of this Permit."

On July 3, 2007, Petitioners filed the Petition for Review, challenging the three provisions of the Permit set forth above. On the same date, Petitioners filed an Emergency Motion for Stay Under Circuit Rule 27-3, requesting the Court stay the three highlighted sentences above (the "contested terms"). EPA did not oppose the Emergency Stay and on July 5, 2007, the Court issued an order granting Petitioners' Emergency Motion for Stay of the contested Permit provisions.

On August 21, 2008, after EPA reviewed the basis for the contested terms, EPA and Petitioners reached a settlement agreement. Under this agreement, EPA agreed to propose and publish in the Federal Register, pursuant to 40 CFR 122.62, a modification of the Permit that would remove the third sentence of Condition II.A.10, the second sentence of Condition II.C.3, and the fourth sentence of Footnote 1 to Table 7-A, from the Permit. Intervenor Cook Inlet Keeper did not object to the settlement agreement.

Modified Permit Provisions

Below are the provisions EPA proposes to remove from the Permit (hereafter referred to as “commingling provisions”):

1. Condition II.A.10, third sentence: "Monitoring for compliance with technology based limits, such as the oil and grease concentration of produced water, must be accomplished prior to commingling."
2. Condition II.C.3, second sentence: "However, samples collected for compliance with the produced water oil and grease limits shall be taken prior to commingling the produced water stream with deck drainage or any other waste stream."
3. Footnote 1, Table 7-A, fourth sentence: "Samples shall be collected prior to the addition of any seawater to the produced water waste stream."

The replacement pages with the above provisions removed are contained in the Permit modification.

EPA's Rationale for the Permit Modifications

The commingling provisions, above, required Petitioners to ensure that the produced water waste stream meets technology-based effluent limits, such as those for oil and grease, prior to commingling with other waste streams. However, Petitioners' platforms are configured such that produced water is immediately commingled with other waste streams and the combined waste streams are piped to onshore facilities for treatment. At the onshore facilities, any oil product in the waste stream is separated from the commingled waste stream. The remaining waste stream is treated and then discharged. The effluent that is discharged from the onshore facility is required to meet the most stringent effluent limits that apply to any individual waste stream in the commingled waste stream. In general, this means that the facility is required to meet the produced water effluent limits in the Permit. In order to comply with the commingling provisions in the Permit, Petitioners might have to re-pipe their oil platforms or add additional treatment on the platform and install new sampling points in order to comply with the final permit.

During the public comment period, Petitioners submitted comments on the contested terms stating that, among other things, the contested terms were contrary to the Coastal Effluent Limitation Guidelines for Oil and Gas Extraction Facilities (ELGs). In reviewing the response to comments document for the final permit, EPA has found that it did not fully respond to this comment in the Response to Comments document because EPA did not address the issue of whether the permit conditions were consistent with the ELGs.

During settlement discussions on the Petitioner's Petition for Review, EPA researched the basis for imposing the commingling provisions in the Permit. EPA found that although the ELGs for the Coastal Subcategory (40 CFR Part 435, Subpart D) impose different effluent limits for individual waste streams such as produced water and deck drainage, there is nothing in the ELG to indicate that the waste streams cannot be commingled prior to treatment. In fact, when EPA developed the ELGs for the Coastal Subcategory for Cook Inlet, EPA identified that many Cook Inlet platforms commingled their waste streams and piped the commingled waste stream to an

onshore facility for treatment. *See* Development Document for Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category (Development Document) at p. IX-22 to IX-23. One of the treatment options that were examined during the development of the ELGs was a requirement that coastal facilities implement best management practices (BMPs) for the deck drainage waste stream. *See* Development Document at p. XIV-23 to XIV-24. In rejecting this option, EPA stated that “current industry practices, in conjunction with the requirements included in the ... general permit for storm water, are sufficient to minimize the introduction of contaminants from this waste stream to the extent possible.” *Id.* at p. XIV-24. At the time the ELGs were implemented, the current industry practice in Cook Inlet was to commingle the waste streams and pipe the waste streams to the onshore facility for treatment. Additionally, EPA made clear in the Coastal ELGs comment response document that it accounted for the practice of other Cook Inlet operators commingling other wastewaters with produced water in promulgating the final effluent guidelines; “EPA disagrees that certain well treatment, workover, and completion (TWC) fluids can not be commingled with produced water because they would cause upset of the treatment system and result in exceedance of discharge limitations.” Coastal ELGs Comment Response Document, Topic Code: E-007(a). Therefore, after further review of the ELGs, EPA believes it mistakenly interpreted that each ELG would apply prior to commingling and treatment at an onshore facility. As a result, EPA erred in imposing these ELGs for treated waste streams to untreated waste streams prior to discharge. Therefore, EPA is modifying the permit to remove the contested terms pursuant to 40 CFR 122.62(a)(15).