

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF FINAL NPDES GENERAL PERMIT

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

SUMMARY: EPA Region 6 today issues a final National Pollutant Discharge Elimination System (NPDES) general permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (No. GMG290000). The general permit authorizes discharges from new sources, existing sources, and new dischargers in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435, Subpart A). The reissued permit will become effective October 1, 2007. The existing permit published in the Federal Register, at 69 FR 60150 on October 7, 2004, authorizes discharges from exploration, development, and production facilities located in and discharging to Federal waters of the Gulf of Mexico seaward of the outer boundary of the territorial seas offshore of Louisiana and Texas. Today's action reissues the current permit which will expire on November 7, 2007.

A copy of the Region's responses to comments and the final permit may be obtained from the EPA Region 6 internet site: <http://www.epa.gov/earth1r6/6wq/6wq.htm>

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SUPPLEMENTAL INFORMATION:

Regulated entities. EPA intends to use the reissued permit to regulate oil and gas extraction facilities located in the Outer Continental Shelf of the Western Gulf of Mexico, e.g., offshore oil and gas extraction platforms, but other types of facilities may also be subject to the permit. To determine whether your facility, company, business, organization, etc., may be affected by today's action, you should carefully examine the applicability criteria in Part I, Section A.1 of the draft permit. Questions on the permit's application to specific facilities may also be directed to Ms. Smith at the telephone number or address listed above.

Oil Spill Requirements. Section 311 of the Clean Water Act, (CWA or the Act), prohibits the discharge of oil and hazardous materials in harmful quantities. Discharges that are authorized by NPDES permits are excluded from the provisions of Section 311. However, the permit does not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by Section 311 of the Act.

Endangered Species Act (ESA). As explained at 69 FR 39478 (June 30, 2004), EPA found that reissuance of the General Permit for the Outer Continental Shelf of the Western Gulf of Mexico (OCS general permit) was not likely to adversely affect any listed threatened or endangered species or designated critical habitat. EPA requested written concurrence on that determination from the National Marine Fisheries Service (NMFS). In a letter dated July 12,

2004, NMFS provided such concurrence on the current OCS general permit. NMFS also previously concurred with that determination when the permit was reissued in 1991 and 1998 and when it was modified in 1993 and 2001. When proposing this reissued permit, EPA found that no changes were proposed that would decrease the level of protection the permit affords threatened or endangered species. The main changes included new intake structure requirements and more stringent whole effluent toxicity limits based on sub-lethal effects. Since those changes increase the level of protection, EPA again found that reissuance of the permit was not likely to adversely affect any listed threatened or endangered species or their critical habitat. Concurrence with this determination was requested from NMFS on December 21, 2006. NMFS has not yet concurred in that determination.

To prevent further delay in this permit action, EPA is reissuing the general permit at this time in accordance with Section 7(d) of the Endangered Species Act. To avoid an irreversible or irretrievable commitment of resources, the reissued permit includes a re-opener clause that will enable the Agency to modify the permit should further consultation reveal a need to formulate or implement reasonable and prudent alternative measures.

Ocean Discharge Criteria Evaluation. For discharges into waters of the territorial sea, contiguous zone, or oceans, CWA section 403(c) requires EPA to consider guidelines for determining potential degradation of the marine environment when issuing NPDES permits. These Ocean Discharge Criteria (40 CFR 125, Subpart M) are intended to "prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations,

including a prohibition of discharge, if necessary, to ensure this goal" (45 FR 65942, October 3, 1980). EPA Region 6 has previously determined that discharges in compliance with the OCS general permit will not cause unreasonable degradation of the marine environment. EPA has also recently completed a study of the effects of produced water discharges on hypoxia in the northern Gulf of Mexico and found that these discharges do not have a significant impact. (See Predicted Impacts from Offshore Produced Water Discharges on Hypoxia in the Gulf of Mexico, Limno-Tech, Inc., 2006). Since this reissued permit contains limitations that will protect water quality and in general reduce the discharge of toxic pollutants to the marine environment, the Region finds that discharges authorized by the reissued general permit will not cause unreasonable degradation of the marine environment.

Coastal Zone Management Act. When the previous permit was issued, EPA determined that the activities that were authorized were consistent with the local and state Coastal Zone Management Plans. Those determinations were submitted to the appropriate State agencies for certification. Certification was received from the Coastal Management Division of the Louisiana Department of Natural Resources in a letter dated July 12, 2004 and from the Railroad Commission of Texas by a letter dated August 20, 2004. EPA has again determined that activities proposed to be authorized by this reissued permit are consistent with the local and state Coastal Zone Management Plans. The proposed permit and consistency determination was submitted to the State of Louisiana and the State of Texas for interagency review at the time of public notice. Concurrence was received from the both Louisiana Department of Natural

Resources and Railroad Commission of Texas. Both letters of concurrence were dated February 23, 2007.

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

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

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

Executive Order 12866. Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) EPA must determine whether the regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order.

The Order defines “significant regulatory action” as one that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. EPA has determined that this general permit is not a “significant regulatory action” under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to issuance.

Paperwork Reduction Act. The information collection required by this permit has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., in submission made for the NPDES permit

program and assigned OMB control numbers 2040-0086 (NPDES permit application) and 2040-0004 (discharge monitoring reports).

Since this permit reissuance will not significantly change the reporting and application requirements from those of the previous Western Gulf of Mexico Outer Continental Shelf (OCS) general permit (GMG290000), the paperwork burdens are expected to be nearly identical. When it issued the previous OCS general permit, EPA estimated it would take an affected facility three hours to prepare the request for coverage and 38 hours per year to prepare discharge monitoring reports. It is estimated that the time required to prepare the request for coverage and discharge monitoring reports for the reissued permit will be the same and will not be affected by this action.

However, the alternative to obtaining authorization to discharge under this general permit is to obtain an individual permit. The application and reporting burden of obtaining authorization to discharge under the general permit is expected to be significantly less than that under an individual permit.

Regulatory Flexibility Act. The Regulatory Flexibility Act, 5 U.S.C. 601 et seq, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As indicated below, the permit reissuance proposed today is not a “rule” subject to the Regulatory Flexibility Act. EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Offshore Subcategory guidelines on which many

of the permit's effluent limitations are based. That analysis shows that reissuance of this permit will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act. Section 201 of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. §§ 1501, et seq, generally requires Federal agencies to assess the effects of their “regulatory actions” on State, local, and tribal governments and the private sector. UMRA uses the term “regulatory actions” to refer to regulations. (See, e.g., UMRA section 201, “Each agency shall . . . assess the effects of Federal regulatory actions . . . (other than to the extent that such regulations incorporate requirements specifically set forth in law)” (emphasis added)). UMRA section 102 defines “regulation” by reference to section 658 of Title 2 of the U.S. Code, which in turn defines “regulation” and “rule” by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines “rule” as “any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law. . .”

NPDES general permits are not “rules” under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide “an opportunity for a hearing.” Thus, NPDES general permits are not “rules” for RFA or UMRA purposes.

EPA has determined that the permit reissuance will not contain a Federal requirement that may result in expenditures of \$100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

EPA also believes that the permit will not significantly nor uniquely affect small governments. For UMRA purposes, “small governments” is defined by reference to the definition of “small governmental jurisdiction” under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) “Small governmental jurisdiction” means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

The permit also will not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit. Additionally, EPA does not expect small governments to operate facilities authorized to discharge by this permit.

National Environmental Policy Act. In connection with its oil and gas leasing programs under the Outer Continental Shelf Lands Act, the Minerals Management Service of the Department of Interior (MMS) has prepared and published draft and final environmental impact statements (EIS) on potential impacts of oil and gas operations in the Central and Western Gulf of Mexico for the 2007 - 2012 period. MMS published a Notice of Availability of the Final EIS (FEIS) at 72 Fed. Reg. 18667 (April 13, 2007). EPA was a cooperating agency on MMS’s EIS and now

relies on it in reissuing this permit. This final permit decision is thus also a Record of Decision completing National Environmental Policy Act (NEPA) review on reissuance of the OCS General Permit. It should be noted, however, that EPA's decision to reissue the permit precludes no potential MMS decision on its proposed lease sales.

Because EPA authority to include mitigation conditions in NPDES permits on the basis of NEPA review is limited by the Clean Water Act, the EIS was primarily useful in consideration of the two types of potential alternatives available to EPA. First, had the EIS revealed unacceptable environmental impacts would occur as a result of oil and gas operations in the western gulf, EPA might have denied the permit, effectively prohibiting future discharges from those operations. Such a permit denial would substantially disrupt continued oil and gas production on the OCS adjacent to the states of Louisiana and Texas. Without authorization to discharge pollutants, some OCS oil and gas operations would cease with corresponding effects on the Nation's oil and gas supply. Some operators, however, might develop means to transport pollutants they currently discharge offshore to onshore disposal facilities. Construction and operation of associated transportation facilities, e.g., new pipelines to deliver produced water to onshore injection wells, would likely adversely affect the environment in coastal Texas and Louisiana. Additional onshore disposal capacity and attendant environmental consequences might also result from such a permit denial. In EPA's view, however, the FEIS reveals no unmitigated environmental impacts that outweigh the benefits of permit reissuance and continued offshore oil and gas production at current or increased levels. EPA has thus chosen to reissue the general

permit with effluent limitations and requirements that minimize water quality related impacts to the marine environment.

Second, had the FEIS revealed unacceptable water quality impacts from offshore oil and gas operation discharges, EPA could have included more stringent effluent limitations in the permit than would otherwise have been necessary for compliance with CWA. The discharges to be regulated under the reissued permit and their effects are described in Section 4.1.1.4 (Operational Wastes Discharged Offshore) of the FEIS. Most water quality impacts from OCS discharges have been thoroughly examined in past NEPA reviews and it is not thus surprising that the latest MMS EIS reveals no clear need for more stringent effluent limitations than the reissued permit imposes. The FEIS does, however, provide new information on one potential water quality impact, i.e., the effect of OCS produced water discharges to the hypoxic zone in the Gulf. An EPA mandated study, summarized in Section 4.1.1.4.2 of the FEIS, indicates that produced water discharges may very slightly contribute to the hypoxia, but that any such contribution is insignificant, particularly in comparison to the volume of nutrients contributed by the Mississippi and Atchafalaya Rivers. EPA thus finds no hypoxia related reason to include nutrient limitations on produced water discharges to the hypoxic zone. Water quality impacts from discharges complying with the reissued permit will be minimal.

One comment on the FEIS was of arguable relevance to EPA's proposed permit limitations. In a letter dated May 14, 2007, the Louisiana Department of Natural Resources (LDNR) suggested the FEIS should have quantified the incremental amount of drilling wastes (i.e., drilling fluids,

drill cuttings, and produced sand) that must be disposed of onshore as a result of proposed MMS leasing actions. According to LDNR, the FEIS' conclusion that existing and proposed landfills provide adequate capacity for disposal of that waste is unsupported and that the FEIS thus fails to "consider the cost of accommodating the waste to coastal communities and the ability of these communities to absorb that cost."

EPA's permit limitations are, of course, a reason there is a need for onshore disposal of some offshore waste streams; the reissued permit and its predecessors have prohibited discharges of produced sand, oil-based drilling fluids, drilling fluids that cannot be discharged consistent with toxicity limitations, and cuttings derived from such drilling fluids. To a large extent, offshore operators have responded to those limitations by developing and using less toxic drilling fluids that may be discharged in compliance with the permits, but there continues to be a need for onshore disposal of drilling and production wastes generated offshore. Those wastes are generally not disposed of in municipal landfills, however, but at commercial facilities specializing in oil and gas waste, the largest of which is operated by U.S. Liquids in Bourg, Louisiana. Disposal capacity at those commercial facilities has historically increased to meet demands created by EPA's OCS permits and the Agency is unaware of any reason such market driven capacity increases would not continue to occur. If, however, sufficient capacity became unavailable, offshore oil and gas operators would presumably respond by foregoing operations requiring onshore disposal.

Although most direct costs associated with onshore disposal of offshore waste are privately borne (and passed on to consumers), indirect costs and the environmental impacts of the disposal may affect local communities. Such costs and impacts could be more effectively addressed through State regulation and local land use controls than by EPA's permit action. As pointed out above, denial of the permit might in some cases result in greater onshore costs and impacts and amending the draft permit to authorize pollutant discharges prohibited under prior permits and EPA effluent limitation guidelines is not a feasible alternative, given legal constraints imposed by the Clean Water Act.

The reissued permit includes several more stringent limitations than its predecessors. To avoid unreasonable degradation of the marine environment and for consistency with the Region's implementation strategy for whole effluent toxicity, the reissued permit contains more stringent produced water toxicity limitations based on sublethal effects. To ensure compliance with recently adopted technology-based guidelines, it likewise imposes new requirements on new offshore facilities that intake more than 2 million gallons per day of which at least 25% is used for cooling purposes. Information in the FEIS is consistent with imposition of those new requirements and they will reduce potentially adverse impacts to the marine environment.

Magnuson-Stevens Fisheries Conservation and Management Act. The Magnuson-Stevens Fisheries Conservation and Management Act requires that federal agencies proposing to authorize actions that may adversely affect essential fish habitat (EFH) consult with NMFS. The entire Gulf of Mexico has been designated EFH. EPA adopted the 2002 EFH analysis MMS

prepared in connection with 2003 – 2007 Oil and Gas Lease Sales in the Central and Western Planning Areas of the Gulf of Mexico and found that reissuance of the permit would not adversely affect EFH. NMFS concurred with that determination by letter dated January 10, 2007. Subsequent analysis in MMS' 2007 FEIS reconfirms those views, concluding in section 4.2.2.1.11, that “activities such as pipeline trenching and OCS discharge of drilling muds and produced water would cause negligible impacts and would not deleteriously affect fish resources or EFH.”

The permit contains limitations conforming to EPA's Oil and Gas extraction, Offshore Subcategory Effluent Limitations Guidelines at 40 CFR Part 435 and additional requirements assuring that regulated discharges will cause no unreasonable degradation of the marine environment, as required by section 403(c) of the Clean Water Act. Specific information on the derivation of those limitations and conditions is contained in the fact sheet.

Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. section 1342, EPA proposed and solicited comments on NPDES general permit GMG290000 at 71 FR 76667 (December 21, 2006). Notice of the proposed permit modification was also published in the New Orleans Times Picayune and Houston Chronicle on December 22, 2006. The comment period closed on February 20, 2007.

EPA received comments from the Offshore Operators Committee (OOC), Gulf Restoration Network, MacDermid Offshore Solutions, the Department of Energy (DOE), Christy Mile, and Gilbert Cheramie.

EPA Region 6 has considered all comments received. In response to those comments the following changes were included in the final permit. Requirements to comply with new cooling water intake structure regulations were changed to allow expansion of the industry-wide study to include entrainment monitoring. Operators are only required to submit cooling water intake structure design information once per facility. Notification requirements have been added for operators of mobile offshore drilling units required to comply with cooling water intake structure conditions. An end-of-well sample is no longer required for sediment toxicity testing when using non-aqueous based drilling fluids. The toxicity testing frequency for sub-sea fluids has been decreased from once per batch to once per year. Toxicity testing is no longer required for miscellaneous discharges treated using hypochlorite. Minor corrections were made in the produced water whole effluent toxicity testing requirements. Other minor changes in wording were made to clarify EPA's intent regarding the permit's requirements.

Dated: May 31, 2007

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EPA Region 6