[FRL-3906-2]

Final NPDES General Permits for the Oil and Gas Extraction Point Source Category, Onshore Subcategory—States of Louisiana (LAG320000), New Mexico (NMG320000), Oklahoma (OKG320000), and Texas (TXG320000)

AGENCY: United States Environmental Protection Agency.

ACTION: Issuance of four final NPDES General Permits.

SUMMARY: Region 6 of the United States Environmental Protection Agency (EPA) today issues final NPDES General Permits for oil and gas facilities in the Onshore Subcategory of the Oil and Gas Extraction Point Source Category in the States of Louisiana, New Mexico, Oklahoma and Texas. These general permits prohibit all discharges of pollutants to waters of the United States from those facilities, consistent with EPA guidelines codified at 40 CFR part 435, subpart C.

DATES: These permits are effective at 12:01 a.m. Eastern Daylight Savings Time, thirty days after the publication of this notice.

ADDRESSES: Notifications required by these permits should be sent to the Director, Water Management Division (6W), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone: (214) 655-7190.

SUPPLEMENTARY INFORMATION: EPA issues these general permits pursuant to its authority under section 402 of the Clean Water Act, 33 U.S.C. 1342. Except as noted herein, these permits apply to all Region 6 facilities in the Onshore Oil and Gas Point Source Extraction Point Source Category (40 CFR part 435, subpart C). They do not apply to facilities (1) in the Coastal Subcategory (40 CFR part 435, subpart D), including facilities which would be classified Onshore but for the decision in *American Petroleum Institute* v. *EPA*, 661 F. 2d 340 (5th Cir. 1981); (2) in the Agricultural and Wildlife Water Use Subcategory (40 CFR part 435 subpart E); (3) in the Stripper Subcategory (40 CFR part 435, subpart F); and (4) for which Conoco Inc submitted timely request for variance on the basis of fundamentally different factors, i.e., two facilities in the Muldoon Field in Fayette County, Texas.

EPA Region 6 proposed to issue these permits at 54 FR 35930 (August 30, 1989) and provided additional notice of that proposal in the Baton Rouge State Times, the Albuquerque Journal, the Daily Oklahoman and the Houston Post on September 16, 1989. The comment period was originally scheduled to end on November 17, 1989, but was extended to January 15, 1990.

As indicated in the Agency's proposal, the "no discharge" effluent limitations of the permits are based on earlier determinations that they are achievable through the "best practicable control technology currently available" (BPT), now codified as the Oil and Gas Point Source Extraction Guidelines at 40 CFR 435. EPA Region 6 has not independently considered "best conventional treatment" (BCT) or "best available treatment" (BAT) technologies for the waste streams regulated by these permits. Inasmuch as consideration of those treatment technology levels could not result in effluent limitations more stringent than the BPT "no discharge" limitations, it is the best professional judgement of EPA Region 6 that the "no discharge" limitations of the permits also constitute BCT and BAT levels of control.

The public comment period on the proposed permits ended on November 17, 1989 and susequently extended to January 15, 1990. EPA Region 6 has considered all comments it received. The United States Fish and Wildlife Service; the State of New Mexico Health and Environment Department; the State of New Mexico Energy, Minerals and Natural Resources Department, Oil Conservation Division; the Railroad Commission of the State of Texas; the Texas Water Commission; the American Petroleum Institute; Mesa Limited Partnership; Conoco, Inc.; Exxon Corporation, U.S.A.; and Phillips Petroleum Company submitted comments on EPA's proposal to issue these permits. EPA Region 6 has considered all comments it received. In some instances, the final permits differ from the proposed permits as a result of comments.

In the following comments summary, EPA has departed from the literal words of the commenters for clarity and to accommodate consolidated response to multiple comments on the same issue.

Response to Public Comments

Comment 1—EPA should clarify whether the location of the well head or discharge location is the controlling factor for determining applicability of the permits, particularly with regard to those facilities whose onshore categorization has been suspended in connection with the remand in *American Petroleum Institute* v. *EPA*, 661 F.2d 340 (5th Cir. 1981). See 47 FR 31554 (July 21, 1982).

Response to Comment 1—Because the "no discharge" effluent limitations of these permits are based on technological capability, not water quality needs, applicability of the permits is controlled by the nature and location of the facility, not location of a discharge. Because remote locations of facility components (e.g., storage tanks, separators, etc.) might otherwise subject some facilities to limitations under more than one subcategory, Region 6 has chosen to "locate" facilities by well head. See also Response to Comments 6 and 7, below. The Texas and Louisiana facilities at issue in *American Petroleum Institute* v. *EPA*, supra, with well heads in the area for which EPA suspended the Onshore Subcategory Guidelines at 47 FR 31554 (July 21, 1982), are not subject to LAG320000 or TXG320000.

Comment 2—In relevant part, 40 CFR 435.41 defines "coastal" as "any body of water landward of the territorial seas as defined in 40 CFR 125.1(gg)," but there is no 40 CFR 125.1(gg). How does EPA define "territorial seas?"

Response to Comment 2—Since promulgating 40 CFR part 435, EPA has revised its NPDES regulations and they no longer define "territorial seas." The former regulatory definition ws a verbatim recitation of CWA section 502(3), which defines the term as "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 sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles." See 38 FR 13528, 13530 (May 22, 1973). EPA continues to rely on that statutory definition.

Comment 3—The permits are silent on whether an onshore operator need take any action to obtain coverage under the proposed permits, e.g., submission of a notice of intent to be covered. Because the permits impose no discharge limits, applying for coverage should be unnecessary.

Response to Comment 3—EPA agrees with this comment. These general permits do not require submission of a notice of intent to be covered.

Comment 4—Do the permits' no discharge requirements apply to discharges to wetlands which are not adjacent to a body of water, i.e., isolated wetlands resulting from poor drainage? Who will determine whether or not a particular well site is a wetland? Facilities on islands should be subject to permits for the Coastal Subcategory.

Response to Comment 4—The onshore subcategory guidelines, to which these permits apply, includes those facilities "engaged in the (*sic*) production, field exploration, drilling, well completion and well treatment in the oil and gas industry which are located landward of the inner boundary of the territorial seas . . . and which are not included within subpart D (Coastal subcategory) * * *." 40 CFR 435.30. Coastal is defined at 40 CFR 435.41(e) as "(1) any body of water located landward of the territorial seas * * * or (2) any wetlands adjacent to such waters." In the preamble to the Federal Register notice promulgating the oil and gas extraction guidelines, EPA stated that the "coastal" definition was intended to encompass "all facilities located over waters landward of the territorial seas, including wetlands adjacent to such waters." (Emphasis added). 44 FR 22071 (April 13, 1979).

The Agency also explained in the same preamble that one basis for the regulatory distinction between coastal wells (which are allowed to discharge wastewater, subject to certain limitations that are set forth at 40 CFR 435.42) and onshore wells (which are subject to zero discharge requirement) was that "space constraints or reinjection difficulties may operate with respect to coastal and offshore platforms," *i.e.*, platforms located over water, but that "no such conditions apply to these wells operating on land." (Emphasis added.) *Id.*[1] The coastal subcategory definition specifically included wetlands adjacent to bodies of water landward of the territorial sea within the coastal category, but does not address facilities located over isolated wetlands. Based on the distinction between facilities on land and those over water that was drawn in the preamble to the guidelines, Region 6 does not consider facilities over water in isolated wetlands onshore facilities.

Regarding discharges to isolated wetlands, the guidelines prohibit the discharge of "waste water pollutants into navigable waters from any source" in the onshore subcategory. (Emphasis added.) 40 CFR 435.32(a). When EPA promulgated 40 CFR part 435, its definition of "navigable waters" (now known as "waters of the United States") encompassed certain waters actually used in interstate commerce and their tributaries. EPA later revised its definition of waters of the United States to specifically include, among other things, wetlands adjacent to waters of the United States and intrastate waters "such as * * * wetlands, the use degradation or destruction of which would affect or could affect interstate or foreign commerce * * *" and "(W)hich are or could be used for industrial purposes by industries in interstate commerce * * *." This definition includes many relatively small isolated wetlands not associated with or "adjacent to" other water bodies supporting interstate commerce. See 44 FR 32854 (June 7, 1979). When it promulgated 40 CFR part 435, EPA clearly intended to prohibit all onshore subcategory discharges to waters within its regulatory jurisdiction. In the preamble to the proposed permits, Region 6 made it clear that the permits were intended to prohibit the discharge of pollutants from onshore facilities to waters of the United States. Accordingly, the final permits prohibit discharges from onshore facilities to isolated wetlands which are waters of the United States.

In part I, section A, the final permits now reference 40 CFR 122.2 as the applicable regulatory definition for "waters of the United States." Likewise, EPA has amended the permits definition of "Coastal" to include all wetlands. As a result of these changes to the proposed permit language, it is now clear that no Onshore Subcategory facility may discharge to isolated wetlands which are waters of the United States and that facilities with wellheads in any waters inland of the territorial seas, including isolated wetlands, will not be subject to these Onshore Category permits, but the Coastal Subcategory permits EPA intends to issue in the future. See, e.g., 55 FR 23348 (June 7, 1990).

In planning their drilling operations, operators should already be considering whether their facilities will be located in wetlands, including isolated wetlands which are waters of the United States, to assure compliance with permitting requirements for the discharge of dredge and fill material under CWA section 404 and the Corps of Engineers' implementing regulations at 33 CFR parts 323 and 328.

Region 6 sees no reason for arbitrarily classifying all facilities on islands "coastal." Some of the islands located south and east of the Chapman Line (as geographically defined at 47 FR 31554) are wetlands, e.g., the coastal wetlands complex in the Mississippi river delta area, and facilities thereon would generally be considered "coastal." Conversely, facilities located on islands consisting of dry emergent lands, e.g.,

[1] On this basis, the guidelines removed 1,700 wells "which operated on land but which discharged into coastal waters" from the coastal subcategory and reclassified them as onshore or stripper, depending upon their rate of production. Id. In response to the Court's decision in *API* v. *EPA*, 661 F.2d 340 (5th Cir. 1981), EPA later suspended the applicability of the onshore guidelines to wells located on land in a clearly delineated geographic area in Texas and Louisiana, and in the Santa Maria Basin of California. See Response to Comment 1. No other wells were affected by this suspension.

barrier islands, would generally be considered "onshore." It should be noted, however, that these and other types of islands may support multiple ecosystems and the nature of the specific area in which the wellhead is located controls the subcategory into which a specific facility falls.

Comment 5—The permits prohibit "seepage" from receiving pits to waters of the United States. It would be very difficult or impossible to have zero seepage over geologic time. EPA should clarify the meaning of the term.

Response to Comment 5—In response to this comment, the Agency has defined "seepage" in the permits as the movement of wastewater through a porous material (e.g., reserve pit dike), in sufficient quantity to produce visible surface flow from the containment area to a water of the United States during the life of the facility.

Comment 6—Please clarify the terms "ultimate disposal" and "direct discharges" as used in connection with the permits. The Texas Railroad Commission has issued State discharge permits to produced water treatment and disposal facilities on the Texas coast. These facilities receive produced waters from others, remove free hydrocarbons and suspended solids, then discharge the treated waters into tidally influenced coastal waters. They generally receive produced water from Coastal Subcategory wells, but could accommodate produced waters from wells in the Onshore Subcategory. Simply stated, would it violate these permits to discharge produced water originating at an Onshore Subcategory facility from one of the permitted produced water treatment facilities?

Response to Comment 6—Oil and gas drilling and production wastes are frequently cycled and/or managed through a series of temporary storage units (e.g., reserve pits, separator units, holding tanks). Until activity ceases at the facility, these storage units confine the wastes, preventing their discharge, flow or visible seepage to waters of the United States. In the preamble to the proposed permits EPA used the term "ultimate disposal" in reference to the final disposal of wastes from such units, indicating that such ultimate disposal, unlike "direct discharges", was not subject to these permits, but might be authorized by individual NPDES permits. See 54 FR 35931.

In considering this and several other comments, however, Region 6 reevaluated its position on ultimate disposal. EPA identified a number of "no discharge" technologies which may be used in connection with ultimate disposal of produced water (e.g., land disposal, subsurface reinjection, subsurface disposal to a salt water aquifer, evaporation) at 41 FR 44942 (October 13, 1976). 40 CFR 435.32(a) thus prohibits all discharges of produced water associated with Onshore Subcategory operations. In view of this unequivocal regulatory prohibition, the permits prohibit the discharge of any wastewater emanating from an Onshore Subcategory facility to waters of the United States, regardless of whether those discharges might be classified as "direct discharges" or "ultimate disposal."

The coastal produced water treatment and disposal facilities to which the comment refers discharge to waters of the United States and are therefore not a permissible method of disposal for wastes generated by oil and gas facilities in the Onshore Subcategory. Oil and gas operators discharging Onshore Subcategory waste from remote locations or facilities will be subject to enforcement actions for violations of the permits. The operators of such treatment and disposal facilities may also be liable for such violations.

Comment 7—Most states, including Texas, prohibit the discharge of muds and cuttings, but allow the discharge of water which has come into contact with them from the various working pits. At a typical facility, such water, stormwater and wash water, is channeled to pits to prevent the accidental release of pollutants. At the completion of drilling operations, the water in pits is treated to remove solids and hydrocarbons, then tested to determine whether the composition complies with state water quality criteria. After obtaining a permit or other approval from the responsible state agency, the operator may discharge the remaining water in the pit. Are such discharges subject to the permits?

Response to Comment 7—As required by 40 CFR 435.32(a), the permits prohibit the discharge of waste water that has come into contact with muds or cuttings or other pollutants from any Onshore Subcategory source associated with production, field exploration, drilling, well completion, or well treatment. This prohibition is a technology-based effluent limitation grounded in application of BPT, not water quality. It thus applies whether or not the water is clarified and whether or not its discharge would comply with state water quality standards.

The permits prohibit only discharges to waters of the United States. Wastewater that has come into contact with muds and cuttings may thus be removed from reserve pits and disposed of by any method which does not involve discharge to waters of the United States and which complies with applicable state regulatory requirements. See also Responses to Comments 1 and 6.

Comment 8—In some production operations, fresh water (typically well water) is allowed to cascade over a series of flowlines which contain natural gas, cooling the gas and allowing more efficient removal of entrained water vapor prior to sale. The cooling water never contacts produced fluids and is thus uncontaminated. The only change noticeable in its composition is a slight increase in temperature which quickly dissipates after discharge. This uncontaminated water discharge, as well as the discharge of pipeline test water, should be allowed under the general permits.

Response to comment 8—EPA has historically associated noncontact cooling water and pipeline test water with pipeline operations beyond the ambit of the Oil and Gas Extraction Point Source Category and thus the development document on which the Agency based the part 435 guidelines includes no information on treatment technologies which might be applied to such wastewaters. Certainly, EPA Region 6 did not consider these wastestreams when it proposed these general permits. Accordingly, the discharges are not regulated by these general permits.

Comment 9—How will EPA identify facilities subject to the Agricultural and Wildlife Use Subcategory?

Response to Comment 9—40 CFR 435.50 and 435.51 requires that the Agricultural and Wildlife Use Subcategory facilities be located west of the 98th meridian and the produced waters must actually be used for such purposes during discharge periods.

Comment 10—New technologies, which can economically remove solids from produced water, reportedly can treat waters which are suited for discharge. Are such treatment procedures and subsequent discharges not direct discharges and thus excluded from coverage under the general permits?

Response to Comment 10—As required by 40 CFR 435.32(a), these permit prohibit the discharge of produced water derived from onshore wells whether the water has been treated or not (also see response to Comments 6 and 7).

Comment 11—The proposed permits indicate Onshore Subcategory wells in which production falls below 10 barrels a day after the effective date of the permits will not become stripper wells.

There is no sound legal or policy basis for subjecting such wells to the zero discharge limitations of the Offshore Subcategory permits. Approximately 70% of the wells in Texas currently produce less than ten barrels of oil per day. If these wells are forced to comply with a no discharge limit, many will have to be shut down.

Response to Comment 11—EPA's regulations at 40 CFR 435.60 state that the provisions of the stripper Subcategory "are applicable to those onshore facilities which produce 10 barrels per well per calendar day or less of crude oil and which are operating at the maximum feasible rate of production." "The average production per oil well at a field * * * serves as the basis for categorization" in the Stripper Subcategory. 44 FR 20073 (April 13, 1979). Part 435 does not specifically address the issue of whether facilities or wells producing more than ten barrels a day whose production later falls below that level are to be considered strippers. EPA interprets its guidelines, however, as excluding such facilities from the Stripper Subcategory.

The basis for exempting stripper facilities from the zero discharge requirement of the Onshore Subcategory was the unacceptable economic impact of installing evaluated treatment technologies to marginally profitable wells which could produce no more than ten barrels of oil per day. 41 FR 44942 (October 12, 1976). Limitations for discharges from stripper facilities were thus "reserved pending study of other, less *capital-intensive*, control technologies." (Emphasis added.) Id. Conversely, zero discharge was found attainable by Onshore Subcategory facilities capable of producing more than ten barrels of crude oil per day. Once Onshore operators make the capital investment to meet the zero discharge requirement, no additional capital costs must be incurred to continue meeting that requirement if maximum feasible production falls below 10 barrels a day.

Because operation and maintenance (O&M) costs were not a basis for exempting stripper facilities from the zero discharge requirements of the guidelines, such costs are not determinative in interpreting stripper exemption. Nevertheless, EPA Region 6 believes O&M costs on installed control systems are minimal. EPA has determined that the average cost (after taxes) of disposing of produced brine in a class II injection well, for instance, is no more than 20 cents a barrel (based on a worst case scenario and generally varying with the distance to the injection well and means of transport thereto) and the O&M costs of some other disposal technologies, e.g., evaporation, may even be lower.

Contrary to the implication of the comment, no well or field which is properly subject to the Stripper Subcategory on the effective date of the permits will be forced to shut down. They will remain subject to the Stripper Subcategory. Likewise, future wells which are never capable of producing more than ten barrels of crude oil will generally be regulated as strippers. The permits only prohibit Onshore Subcategory wells capable of production in excess of ten barrels of crude oil per day from lapsing into the Stripper Subcategory if and when producing capacity declines.

Comment 12—The Agricultural and Wildlife Water Use Subcategory is currently limited to facilities West of the 98th meridian, yet some wells East thereof produce water of sufficient quality to support wildlife and agriculture. EPA should address these "special case" facilities in connection with its issuance of these permits.

Response to Comment 12—EPA Region 6 has not proposed to deviate from the geographical boundaries of the Agricultural and Wildlife Use Subcategory as codified at 40 CFR 435.50 nor will it in responding to public comment on its issuance of these permits. There is nevertheless one "special case" which the Agency will address in separate proceedings. On April 24, 1979, Conoco Inc. applied for "fundamentally different factors" variances to allow discharges of produced water from two facilities a short distance East of the 98th meridian in the Muldon Field in Fayette County, Texas. Although Conoco's variance request met the deadline established in CWA Section 301(n)(2), EPA has not yet acted on it, either individually or in connection with these permits. To process Conoco's pending request, EPA will propose issuance of an individual permit for the discharges at issue, thus ensuring adequate opportunity for public review and comment.

Comment 13—Under the Water Quality Act of 1987, EPA may not require permits for point source discharges of uncontaminated storm water until at least February 4, 1992. Some discharges subject to the proposed general permits could become part of a stormwater discharge, however, and EPA should clarify that stormwater discharges are not regulated by the permits.

Response to Comment 13—As required by 40 CFR 435.32(a), the permits prohibit the discharge of all wastewater pollutants from Onshore Subcategory facilities, including but not limited to drilling fluids, drill cuttings, produced water, produced sand, deck or floor drainage, well treatment fluids, and workover fluids. Discharges regulated under the permits are prohibited, whether or not they are commingled with stormwater and no discharge regulated under these permits is likely to consist of uncontaminated stormwater. Rig and deck drainage, for example, generally contains waste from deck spills of trilling fluids and cuttings, regardless of whether it is generated by storm events or maintenance washdowns.

Comment 14—Oil and gas separation facilities are normally diked as a precautionary measure to prevent accidental release of oil and produced water. These diked areas periodically fill with rainwater which must be removed, typically by discharge to the surrounding environment. These discharges are currently regulated under the Spill Prevention Control and Countermeasure (SPCC) regulations at 40 CFR part 112, which prohibit the discharge of stormwater from diked areas if a sheen is present and require development of specific plans to prevent discharge of pollutants. Such discharges should be excluded from coverage under these general permits.

Response to Comment 14—The discharges to which this comment refers consist of uncontaminated stormwater which EPA may not now regulate. See Response to Comment 13. Accordingly, the permits impose no limits on such discharges unless they are commingled with wastes regulated under this permit.

Comment 15—Blow-out preventer fluid and produced sand should be excluded from coverage by the permits since the former is not used onshore and the latter is not covered by guidelines.

Response to Comment 15—Because it occurs in shallow horizons or in geologic settings where expected down-hole pressures are low, much onshore drilling is accomplished without blow-out preventers. Since these conditions are not applicable to all facilities. The permits accordingly prohibit the discharge of blowout preventer fluids.

Contrary to the allegation of the comment, 40 CFR 435.32(a) expressly prohibits the discharge of produced sand from Onshore Subcategory facilities. It should be noted that the permits' prohibition on discharges of produced sand apply to all facility sources of produced sand, including oil/water separators, production test pits, and temporary storage tanks.

Comment 16—The proposed permits require that operators comply with best management practices (BMP's) codified in state regulations. EPA lacks authority to impose this requirement on the oil and gas industry through the issuance of NPDES permits.

Response to Comment 16—EPA possesses ample authority to impose this BMP requirement in NPDES permits. CWA section 402(a)(2) requires that EPA "prescribe conditions in issuing such permits to assure compliance with "effluent limitations imposed in accordance with CWA § 402(a)(1). See generally, *Montgomery Environmental Coalition* v. *Costle*, 646, F.2d 568 (DC Cir. 1980); *NRDC* v. *U.S.* EPA, 822 F.2d 104 (DC Cir. 1987); 40 CFR 122.44(k). The state requirements at issue are BMP's assuring compliance with the "no discharge" limits of the permits. Because they go beyond the prohibition of discharges, imposing specific implementation requirements, these state BMP requirements are moreover "more stringent limitation(s)
* * * necessary to meet
* * * treatment standards
* * * established pursuant to
* * * State law or regulations. Hence CWA Sections 402(a)(1) and 301(b)(1)(C) also authorize their imposition in NPDES permits.

Comment 17—The proposed permits include effluent limitations, BMP's and reporting requirements which duplicate state regulatory requirements. There is no need for these requirements, but they may subject operators to duplicate enforcement proceedings and liabilities. Enforcement of such measures is best left to the states.

Response to Comment 17—EPA generally lacks authority to exempt point source discharges from the Clean Water Act permitting requirements. *NRDC* v. *Costle* 568 F.2d 1369 (DC Cir. '77). It thus cannot disclaim responsibility for regulating any point source because it is already regulated by states without an approved NPDES program. By incorporating some state requirements by reference in the permits, however, EPA is avoiding inconsistent State and Federal requirements. The comment's observation that operators may be subjected to parallel state and federal enforcement proceedings for violating the same substantive requirement is accurate. Whether such parallel proceedings are appropriate is a decision best made in connection with individual violations.

Comment 18—EPA should resolve issues underlying these permits in the context of rulemaking proceedings, and more specifically, in the pending rulemaking on the effluent guidelines, not in the issuance of these general permits.

Response to Comment 18—The proceedings under which EPA is issuing these general permits are rulemaking. Although the part 435 guidelines on which the effluent limitations of these permits are based are under consideration, Region 6 need not wait until amended guidelines are promulgated to issue these permits.

Comment 19—How will EPA set discharge limitations for toxics indicated in part III.D.4 of the permits? Do discharges of toxic substances not specifically listed in the permits violate the permits?

Response to Comment 19—The reports on potential toxics discharges required by part III.D.4 of the permits are primarily for information purposes. The permits prohibit all discharges regardless of the presence of toxic pollutants. Thus a discharge of effluent containing toxics not specifically listed in the permit would be a violation.

Comment 20—The permits will allow degradaton of the environment to the extent caused by choronic spills, leaks and discharges degrading the environment.

Response to Comment 20—To the full extent it has authority to regulate them under section 402 of the Act, EPA, Region 6 has prohibited spills, leaks and discharges in these permits.

Comment 21—The permits do not adequately address the issue of onsite disposal of potentially toxic waste in upland areas. State limitations on closure of temporary storage pits are inadequate and unacceptable post closure residues of oil and heavy metals have been found to be at unsuitable levels in some environmentally sensitive trust areas managed by the U.S. Fish and Wildlife Service. The Service thus favors individual, not general permits.

Response to Comment 21—EPA's NPDES permitting authority is limited to regulation of discharges to waters of the United States. To the extent that state requirements avoid such discharges, EPA has incorporated them by reference in the permits. The Agency cannot, however, regulate all onsite land disposal practices under the Clean Water Act. Because most states independently regulate facility closure on a case-by-case basis, EPA suggests that the Service may wish to provide similar comments in connection with such state proceedings.

Comment 22—The requirement that permittees report "any noncompliance with these permits, bypass or upset" in part III.D.2 of the permits should only apply to discharges which may endanger health or the environment.

Response to Comment 22—In these "zero discharge" permits, Region 6 has forgone some reporting requirements routinely imposed in other NPDES permits, e.g., submission of quarterly discharge monitoring reports, and the 24 hour reporting requirement is thus of increased significance. Section III.D.2 of each permit requires that all discharges (including discharges which may be subject to the affirmative defenses of bypass and upset under the terms of the permits) be reported within 24 hours, regardless of whether they endanger health or the environment. The qualifying phrase suggested by the comment would allow permittees to unilaterally determine whether they should report their discharges, unacceptably interfering with EPA's ability to enforce the permits. EPA may, of course, consider the effects of a discharge in determining whether to institute enforcement proceedings and the nature of such proceedings.

Comment 23—The proposed permits contain specific typographical and notational errors.

Response to Comment 23—The typographical and notational errors identified by the commentators have been corrected in the final permits.

State Certification: Section 301(b)(1)(C) of the Clean Water Act, 33 U.S.C. 1311(b)(1)(C) requires that NPDES permits include conditions ensuring compliance with State water quality standards. Under section 401(a)(1) of the Act, 33 U.S.C. 1241(a)(1), EPA may not issue a permit until an affected state grants or waives certification of compliance with appropriate requirements of the Act and State law. The States of New Mexico and Oklahoma have certified these permits. The States of Louisiana and Texas have waived their certification rights.

Endangered Species Act: In relevant part, section 7 of the Endangered Species Act (ESA) and its implementing regulations (50 CFR part 402) requires that all federal agencies ensure that their actions, such as permit issuance, do not jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of their critical habitats. In connection with its proposal to issue these general permits, EPA found that issuance of the permits was unlikely to adversely affect any listed species or critical habitat and indicated it would seek concurrence from the U.S. Fish and Wildlife Service in that finding. See 54 FR 35939, 35932 (August 30, 1989). The U.S. Fish and

Wildlife Service has concurred with this finding.

Coastal Zone Management Act

In accordance with section 307(c)(3) of the Coastal Zone Management Act, the Louisiana Coastal Management Division of the State of Louisiana Department of Natural Resources has reviewed NPDES permit LAG320000 and found its issuance consistent with the Louisiana Coastal Resources Program.

Economic Impact (E.O. 12291)

The Office of Management and Budget was 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 the regulations (40 CFR 435) on which these permits are based were evaluated in accordance with Executive Orders 11821 and 12044.

Paper Work Reduction Act

EPA has reviewed the requirements imposed on regulated facilities by these general permits under the Paper Work Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* The information collection requirements of these permits have been approved by the Office of Management and Budget in prior submissions.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b), I certify that these general permits will not have a significant impact on a substantial number of small entities. Final NPDES Permits LAG320000, NMG320000, OKG320000, and TXG320000, printed below, are hereby issued.

Dated: February 11, 1991.

Robert E. Layton Jr., P.E.,

Regional Administrator, EPA, Region 6.

General NPDES Permit for the Oil and Gas Extraction Point Source Category, Onshore Subcategory

Permit No. LAG320000—State of Louisiana

Permit No. NMG320000—State of New Mexico

Permit No. OKG320000—State of Oklahoma

Permit No. TXG320000—State of Texas

This permit, issued under the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq; the "Act"), prohibits the discharge of pollutants from any onshore oil and gas wells and facilities as defined in 40 CFR part 435, subpart C (Onshore Subcategory) and modified at 47 FR, 31554, July 21, 1982. It does not apply to wells or facilities in the Agricultural and Wildlife Use Subcategory (as defined at 40 CFR 435, subpart E). Likewise, it does not apply to existing wells which, at the time of permit issuance, fall within the Stripper Subcategory as defined at 40 CFR 435, subpart F, but onshore wells in which production later falls below 10 barrels per day shall remain subject to this permit. This permit also does not apply to two locations in Conoco's Muldoon Field, Fayette County, Texas nor to those wells or appurtenant facilities whose well heads are located in any water of the United States (as defined at 40 CFR 122.2).

To the extent that applicability of this permit is based on the geographical location of wells or facilities, the location of the wellhead shall be determinative, i.e., pollutant discharges which are prohibited at the location of the well head may not be discharged at other locations.

This permit prohibits the discharge of any pollutant from wells or facilities subject to its terms. Said pollutants include (but are not limited to):

Drilling Fluids
Drill Cuttings
Produced water
Produced sand
Deck and Rig Floor Drainage
Blowout Preventer fluid
Well Treatment Fluids

Further description of said pollutants, as well as monitoring, reporting, and other requirements are set forth in parts I, II, and III of this permit. This permit shall become effective when issued, and expire at midnight on February 25, 1996.

Signed this 11th day of February, 1991.

Myron O. Knudson, P.E.,

Director, Water Management Division, EPA Region 6.

Part I

(Applicable to LAG320000, NMG320000, OKG320000, TXG320000)

Section A. General Permit Coverage

General Permit Limits

(Applicable to LAG320000)

This permit prohibits discharges into waters of the United States as defined at 40 CFR part 122.2. The disposal of waters and waste resulting from oil and gas exploration and producing activities in manners other than by discharges into waters of the United States are limited by the Department of Natural Resources, Office of Conservation of the State of Louisiana according to Amendment to Statewide Order No. 29-B and the water quality standards of the Louisiana Department of Environmental Quality (Louisiana Revised Statute, L.R.S. 30:1091-1096).

(Applicable to NMG320000)

This permit prohibits discharges into waters of the United States as defined at 40 CFR part 122.2. This disposal of waters and waste resulting from oil and gas exploration and producing activities in manners other than by discharges into waters of the United States are otherwise limited by the New Mexico Oil Conservation Division (NMOCD) Rules 01 through 1304 and regulations of the State Oil and Gas Act (sections 70-2-1- through 70-2-38 NMSA, 1978) and as may be amended, and the water quality standards of the New Mexico Water Quality Control Commission, sections 1-100 to 3101 and as explained in Water Quality and Water Pollution Control in New Mexico (1988), and as may be amended.

(Applicable to OKG320000)

This permit prohibits discharges into waters of the United States as defined at 40 CFR part 122.2. The disposal of waters and waste resulting from oil and gas exploration and producing activities in manners other than by discharges into waters of the United States are otherwise limited by the Oklahoma Corporation Commission according to Rules of Practice 1 through 26 (1988) and the water quality standards of the Oklahoma Water Resources Board, Water Quality Division, sections 1 through 8 and as appended (1985) and as may be amended.

(Applicable to TXG320000)

This permit prohibits discharges into waters of the United States as defined at 40 CFR part 122.2. The disposal of waters and waste resulting from oil and gas exploration and producing activities in manners other than by discharges into waters of the United States are otherwise limited by the Railroad Commission of the State of Texas according to Rules for Oil, Gas and Geothermal Operations, 79 through 85 (1937) and the water quality standards of the Texas Water Commission (12 TexReg 3642, 13 TexReg 1776).

Section B. NPDES Individual versus General Permit Applicability

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

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

2. The discharger is not in compliance with the conditions of this permit;

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

4. A Water Management Plan containing requirements applicable to such a point source is approved;

5. The point source(s) covered by this permit no longer

(a) Involves the same or substantially similar types of operations,

(b) Is no longer limited to the same types of wastes,

(c) Requires the same effluent limitations or operating conditions, or

(d) In the opinion of the Regional Administrator, is more appropriately controlled under an individual permit than under a general permit.

Operators required to apply for an individual permit shall be notified in writing by the Regional Administrator.

A permit holder for 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. Upon revocation of the individual permit, this general permit shall apply to the source.

Part II

(Applicable to LAG320000, NMG320000, OKG320000, TXG320000)

Section A. Effluent limitations and Monitoring Requirements, Onshore Subcategory

(Applicable to LAG320000)

The oil and gas exploration and production activities covered by this permit apply to the onshore area of the State of Louisiana as defined in part I.

(Applicable to NMG320000)

The oil and gas exploration and production activities covered by this permit apply to the onshore area of the State of New Mexico as defined in part I.

(Applicable to OKG320000)

The oil and gas exploration and production activities covered by this permit apply to the onshore area of the State of Oklahoma as defined in part I.

(Applicable to TXG320000)

The oil and gas exploration and production activities covered by this permit apply to the onshore area of the State of Texas as defined in part I.

1. Drilling Fluids

(a) Applicability

Permit conditions apply to all drilling fluids (muds), whether oil, mineral oil or water based, and include fluids adhering to drill cuttings, used as the result of activities associated with the exploration and the production of oil and gas.

(b) Prohibitions

The discharge of drilling fluids into waters of the United States is prohibited.

(Applicable to LAG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the State of Louisiana, Department of Natural Resources, Office of Conservation (Statewide Order 29-B) to ensure that receiving pits will not allow discharge or seepage of drilling fluids into waters of the United States.

(Applicable to NMG320000)

Best management practices (BMP) shall be used in accordance with the rules and regulations of the New Mexico Oil Conservation Division (Rules and Regulations) to ensure that receiving pits will not allow discharge or seepage of drilling fluids into waters of the United States.

(Applicable to OKG320000)

Best management practices (BMP) shall be used in accordance with the general rules and regulations of the Oklahoma Corporation Commission, Oil and Gas Conservation Division (General Rules and Regulations, 1988) to ensure that receiving pits will not allow discharge or seepage of drilling fluids into waters of the United States.

(Applicable to TXG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Railroad Commission of Texas (Statewide rules for Oil, Gas and Geothermal Operations, RRCT, 1987) to ensure that receiving pits will not allow discharge or seepage of drilling fluids into waters of the United States.

2. Drill Cuttings

Special note: the permit prohibitions and limitations that apply to drilling fluids also apply to cuttings as well as to the fluids that adhere to them. Any permit condition that applies to the drilling fluid system therefore also applies to cuttings.

3. Produced Water

(a) Applicability

This permit applies to all formation waters recovered during activities associated with the exploration and production of oil and gas, including those recovered during production tests.

(b) Prohibitions

The discharge of produced water or produced water associated with oil is prohibited.

(Applicable to LAG320000)

Produced water, whether from well drilling, production or workover operations, as well as waste waters from storage tanks, separators, saltwater or brine pits are prohibited from being discharged into waters of the United States. Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Louisiana Department of Natural Resources, Office of Conservation (Statewide Order 29-B) to ensure that receiving pits will not allow the discharge or seepage of produced water into waters of the United States.

(Applicable to NMG320000)

Produced water, whether from well drilling, production or workover operations, as well as waste waters from storage tanks, separators, saltwater or brine pits are prohibited from being discharged into waters of the United States. Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the New Mexico Oil Conservation Division (Rules and Regulations) to ensure that receiving pits will not allow the discharge or seepage of produced water into waters of the United States.

(Applicable to OKG320000)

Produced water, whether from well drilling, production or workover operations, as well as waste waters from storage tanks, separators, saltwater or brine pits are prohibited from being discharged into waters of the United States. Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Oklahoma Corporation Commission, Oil and Gas Conservation Division (General Rules and Regulations, 1988) to ensure that receiving pits will not allow the discharge or seepage of produced water into waters of the United States.

(Applicable to TXG320000)

Produced water, whether from well drilling, production or workover operations, as well as waste waters from storage tanks, separators, saltwater or brine pits are prohibited from being discharged into waters of the United States. Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Railroad Commission of Texas (Statewide Rules for Oil, Gas and Geothermal Operations, RRCT, 1987) to ensure that receiving pits will not allow the discharge or seepage of produced water into waters of the United States.

4. Produced Sand

Special note: The prohibitions and limitation that apply to drill cuttings, drilling fluids, well completion fluids and fluids that adhere to cuttings also apply to produced sand.

5. Deck or Rig Floor Drainage

(a) Applicability

This permit applies to material or fluid spillage, including drilling muds (oil, mineral oil or water based), wash-down water, grease, waste oil, lubricants, or hydraulic fluids resulting from activities associated with the exploration and production of oil and gas.

(b) Prohibitions

The discharge of rig floor or deck drainage into waters of the United States is prohibited.

(Applicable to LAG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the State of Louisiana, Department of Natural Resources, Office of Conservation (Statewide Order 29–B) to ensure that rig floor or deck drainage will not discharge, seep or otherwise be released into waters of the United States.

(Applicable to NMG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the New Mexico Oil Conservation Division (Rules and Regulations) to ensure that rig floor or deck drainage will not discharge or otherwise be released into waters of the United States.

(Applicable to OKG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Oklahoma Corporation Commission, Oil and Gas Conservation Division (General Rules and Regulations, 1983) to ensure that rig floor or deck drainage will not discharge, seep or otherwise be released into waters of the United States.

(Applicable to TXG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Railroad Commission of Texas (Statewide rules for Oil, Gas and Geothermal Operations, RRCT, 1987) to ensure that rig floor or deck drainage will not discharge, seep or otherwise be released into waters of the United States.

6. Blowout Preventer Fluid

(a) Applicability

This permit applies to all oil or hydraulic fluids used in blowout preventer mechanisms used in activities associated with the exploration and production of oil and gas.

(b) Prohibition

The discharge of blowout preventer fluids are prohibited.

7. Well Treatment Fluids, Completion Fluids, Workover Fluids

(a) Applicability

This permit applies to well treatment fluids, including well completion fluids, workover fluids, well stimulation fluids, or fluids resulting from well tests used in activities related to the exploration and production of oil and gas.

(b) Prohibition

The discharge of well treatment, completion, well testing and workover fluids, as well as discharges from production test, flare, completion or otherwise designated temporary storage pits, into waters of the United States is prohibited.

(Applicable to LAG320000)

Best management practices (BMP) shall be used in the disposal of these wastes in accordance with the treatment and disposal criteria of the State of Louisiana, Department of Natural Resources, Office of Conservation (Statewide Order 29–B) to ensure that there will be no discharges into waters of the United States.

(Applicable to NMG320000)

Best management practices (BMP) shall be used in the disposal of these wastes in accordance with the treatment and disposal criteria of the New Mexico Oil Conservation Division (Rules and Regulations) to ensure that there will be no discharges into waters of the United States.

(Applicable to OKG320000)

Best management practices (BMP) shall be used in the disposal of these wastes in accordance with the treatment and disposal criteria of the Oklahoma Corporation Commission, Oil and Gas Conservation Division (General Rules and Regulations, 1983) to ensure that there will be no discharges into waters of the United States.

(Applicable to TXG320000)

Best management practices (BMP) shall be used in the disposal of these wastes in accordance with the treatment and disposal criteria of the Railroad Commission of Texas (Statewide Rules for Oil, Gas and Geothermal Operations, RRCT, 1987) to ensure that there will be no discharges into waters of the United States.

Part III

(Applicable to LAG320000, NMG320000, OKG320000, TXG320000)

Section A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR part 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 and/or for requiring a permittee to apply for and obtain an individual NPDES permit.

3. Permit Flexibility

This permit may be modified, revoked and reissued, or terminated for cause, in accordance with 40 CFR 122.62–64. The filing for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

4. Property Rights

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.

5. 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 the Regional Administrator, upon request, copies of records required to be kept by this permit.

6. Criminal and Civil Liability

Except as provided in permit conditions on "Bypassing" and "Upsets", nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation 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.

7. Oil and Hazardous Substance Liability

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

8. 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.

9. 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. Proper Operation and Maintenance

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) which are installed and used by the permittee to achieve compliance with the conditions of this permit. This provision requires the operation of backup or auxiliary facilities of similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

4. Bypass of Facilities

(a) Definitions

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

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

(b) 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, within 24 hours, submit notice of an unanticipated bypass as required in part III.D.2.

(c) 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 judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The permittee submitted notices as required by part III.B.4.(b).

(2) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet three conditions listed at part III.B.4.(c)(1).

5. Upset Conditions

(a) Definition

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based 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 facilities, inadequate facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effects of an Upset. An upset constitutes an affirmative defense of an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of part III.B.5.b. 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. The permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous 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 by part III.D.2; and

(4) The permittee complied with part III.B.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 pollution from such materials from entering waters of the United States.

Section C. Monitoring and Records

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:

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

2. Have access to and copy, at reasonable times, those records that are kept to assure compliance with the permit (i.e., zero discharge). These records shall be kept for a period of at least three years.

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

4. Sample or monitor at reasonable times, for the purposes of assuring

permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

Section D. Reporting Requirements

1. 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.

2. Twenty-Four Hour Reporting

The permittee shall report any noncompliance with this permit, bypass or upset. Any 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 plans to reduce, eliminate, and prevent reoccurrence of the noncompliance.

3. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in any report to the Regional Adminstrator, it shall promptly submit such facts or information.

4. Changes in Discharges of Toxic Substances

The permittee shall notify the Regional Administrator as soon as it knows or has reason to believe:

(a) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, or any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 CFR 122.42(a)(1).

(b) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 CFR 122.42(a)(2).

5. Signatory Requirements

All reports, or information submitted to the Regional Administrator shall be signed and certified as follows:

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

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principle business function, or decision making functions for the corporation, or

(b) 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.

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

(d) For a municipality, State, Federal or other public agency. Either a principle executive office or ranking elected official. For purposes of this section, a principle executive officer of a Federal agency includes:

(2) The chief executive officer of the agency, or

(3) A senior executive officer having responsibility for the overall operations of a principle geographic unit of the agency.

(4) Alternatively, all reports required by the permit and other information requested by the Regional Administrator may be signed by a person described above or by a duly authorized representative only if:

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

(b) 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 oil 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 individual or an individual occupying a named position; and

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

(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 the gathering of 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."

6. Availability of Reports

Except for applications, effluent data, other data specified in 40 CFR 122.7, any information submitted pursuant to this permit may be claimed confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

Section E. Penalties for Villations 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 or 308 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, or 308 of the Act is subject to a fine of not less than $5,000 per day of violation 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 or 308 of the Act and who knows at the 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, 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 per day, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such a 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 Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307 or 308 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

3. Administrative Penalties

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

(a) Class I Penalty

Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

(b) Class II Penalty

Not to exceed $10,000 per day for each day during which the violations continues nor shall the maximum amount exceed $125,000.

Section F. Definitions

All definitions in section 502 of the Act shall apply to this permit and are incorporated herein by reference. Unless otherwise specified in this permit, additional definitions words or phrases used in this permit are as follows:

1. *Act* means the Clean Water Act (33 U.S.C. 1251 et. seq.) as amended.

2. *Applicable effluent standards and limitations* means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

3. *Applicable water quality standards* means all water quality standards to which a discharge is subject under the Act and which have been (a) approved or permitted to remain in effect by the Administrator following submission to him/her, pursuant to section 303(a) of the Act, or (b) promulgated by the Administrator pursuant to section 303(b) or 303(c) of the Act.

4. *Blowout preventer fluid* means a fluid used to actuate the hydraulic blow out preventer at the well site.

5. *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.

6. *Coastal* means any water, including any wetland, landward of the inner boundry of the territorial seas.

7. *Deck drainage* means all waste resulting from platform washings, deck washings, runoff from curbs, gutters, and drains including spillage of drilling muds, waste from drip pans and rig floor wash down and fluids derived from wash areas.

8. *Drill cuttings* means particles generated by drilling into subsurface geologic formations and which are carried to the surface with the drilling fluids.

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

10. *Environmental Protection Agency* means the U.S. Environmental Protection Agency.

11. *Formation test fluids* means fluids brought up from wells as the result of testing the productivity of potentially economic oil or gas from geologic formations encountered during drilling.

12. *National Pollutant Discharge Elimination* means the national program for issuing, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 318, 402 and 405 of the Act.

13. *Produced sand* means particulate matter, sands, produced along with oil, gas and water during the production of oil and gas.

14. *Regional Administrator* means the Administrator of the U.S. Environmental Protection Agency, Region 6.

15. *Seepage* as used in the permits means the physical, slow movement of wastewater through a porous material in sufficient quantity to produce visible unbroken surface flow from a seepage area to waters of the United States.

16. *Severe property damage* means substantial physical damage to property, damage to treatment facilities which cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of bypass. Severe property damage does not mean economic loss caused by delays in production.

17. *Territorial Seas* means the seas falling seaward of a 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 the inland waters, extending seaward a distance of 3 miles (CWA section 502).

18. *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.

19. *Wetlands* means those areas which are inundated or saturated by surface or ground water at a frequency 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, fens, bogs and similar areas as indicated at 40 CFR 435.41(f).

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