

10/28/83

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
ENVIRONMENTAL PROTECTION AGENCY
AND THE
DEPARTMENT OF THE INTERIOR
CONCERNING THE COORDINATION OF NPDES PERMIT ISSUANCE
WITH THE OUTER CONTINENTAL SHELF OIL AND GAS LEASE PROGRAM

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to improve cooperation and coordination between the Environmental Protection Agency (EPA) and the Department of the Interior (DOI) in oil and gas lease activities on the Outer Continental Shelf (OCS) to determine the terms and conditions of National Pollutant Discharge Elimination System (NPDES) permits and ensure NPDES permit compliance. This MOU establishes that each Agency will coordinate studies and related regulatory responsibilities and cooperate to ensure that EPA can issue NPDES permits at the time of the Final Notice of Offering by DOI. To the extent possible, this MOU will also combine related National Environmental Policy Act requirements.

II. DEFINITIONS

For the purposes of this MOU the following definitions apply:

Outer Continental Shelf (OCS) All submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act of 1953, 43 U.S.C. 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

OCS Oil and Gas Activity Any offshore activity on the OCS pursuant to a Federal lease or permit resulting in effluent discharges associated with the exploration, development, or production of oil and gas mineral resources.

OCS Facility Any artificial island, installation, or other device permanently or temporarily attached to the seabed or subsoil of the OCS and used for oil and gas activity. This term includes fixed or floating structures and mobile offshore drilling units attached to the seabed, including self-positioning drill ships, but does not include a deep-water port or vessel engaged in transportation.

Individual NPDES Permit Individual NPDES permits regulate the discharge of pollutants from point sources under section 402(a) of the Clean Water Act (CWA). These permits identify a named party through an application requirement.

General NPDES Permit General NPDES permits regulate a category of point sources located within the same geographic area whose discharges warrant similar pollution control measures. General permits do not require applications from named parties.

Area of Biological Concern

For the purpose of issuing NPDES permits, an area of biological concern is a portion of the OCS identified by EPA, in consultation with DOI, as containing potentially productive or unique biological communities or as being potentially sensitive to discharges associated with oil and gas activities.

III. STATUTORY AUTHORITIES

The Outer Continental Shelf Lands Act (OCSLA)

The OCSLA establishes a policy for the management of mineral resources on the OCS and provides for the protection of the human, marine and coastal environments. Under the OCSLA, DOI has authority to conduct OCS lease offerings, including preparation for leasing, and for the regulation and management of post-lease activities on the OCS. Within DOI, the Minerals Management Service (MMS) is responsible for preparing for and conducting OCS lease offerings and for regulating and managing post-lease activities.

The Clean Water Act (CWA)

Under the CWA and its amendments, EPA has authority to issue NPDES permits for the discharge of pollutants from point sources into waters of the United States, including the territorial seas, contiguous zone, and oceans. NPDES permits for OCS oil and gas facilities may contain effluent limitations developed pursuant to a number of sections of the Act including 301, 302, 306, 307, and 403. Section 403 requires that an NPDES permit for a marine discharge be issued in compliance with EPA's guidelines for determining the degradation of marine waters. Final Ocean Discharge Criteria guidelines were promulgated at 45 FR 65942 (October 3, 1980)(40 CFR Part 125).

The National Environmental Policy Act (NEPA)

The NEPA, as amended, establishes a national policy for the protection of the environment. Section 102(2)(c) establishes that all Federal agencies

shall prepare Environmental Impact Statements (EISs) to examine proposed major Federal actions which significantly affect the quality of the human environment. DOI may need to prepare EISs before issuing oil and gas leases. When new source performance standards are promulgated for the offshore subcategory under the CWA, EPA may have NEPA responsibilities for permits issued to new sources (section 306 of the CWA) which overlap with those of DOI.

IV. PROVISIONS FOR COORDINATION OF NPDES PERMIT ISSUANCE WITH OCS LEASE

OFFERINGS

This MOU establishes the following provisions regarding the types and timing of NPDES permit issuance with regard to OCS lease offerings and the necessary development and exchange of information between the two agencies. Both agencies recognize that the types and timing of NPDES permits are dependent upon the development and exchange of information sufficient to address the CWA section 403(c) Ocean Discharge Criteria. Each agency (EPA and MMS) will assume the responsibility for communicating this information to its field offices and for enforcing its provisions to assure that this MOU will be implemented with national consistency.

A. Types of NPDES Permits

1. EPA will, wherever possible, issue general NPDES permits for OCS oil and gas activities. These general NPDES permits may be for entire tracts, groups of tracts, or whole OCS planning areas in OCS lease offerings. A general permit

may contain effluent limitations and operating conditions which vary within the areas covered by the permit. These permits shall be effective for a fixed term not to exceed five (5) years.

2. EPA will, wherever possible, subject areas of biological concern to general NPDES permits. These general permits may impose different or additional requirements than those imposed in permits for surrounding or adjacent areas.

3. The geographic areas to be covered by NPDES permits shall be identified in reference to OCS Protraction Diagrams and the lease blocks indicated on such diagrams, or in terms of planning areas identified in the 5-Year OCS Oil and Gas Leasing Program approved by the Secretary of the Interior.

4. The Regional Administrator shall issue general permits for discharges from oil and gas facilities within the Region's jurisdiction unless the Regional Administrator determines that the use of a general permit is inappropriate and individual permits are required.

B. Timing of NPDES Permits

1. When an EPA Regional Administrator determines that a general permit is appropriate, he shall issue a project decision schedule which provides for the issuance of a final general permit no later than the Final Notice of Offering for the lease offering as projected by DOI. In cases where petitions for judicial review are filed during the lease sale process potentially affecting permit terms and conditions, the permit process may be stayed and permit terms and conditions reevaluated following final judicial decision.

2. Where there is sufficient information to address the 403(c) Ocean Discharge Criteria, draft general NPDES permits will, except in unusual circumstances which are communicated to EPA Headquarters, be available for public comment at the time of issuance of draft EISs for OCS lease offerings. The timing of public hearings for draft NPDES permits will be coordinated with public hearings for draft EISs.

C. Development and Exchange of Information

To implement the types and timing of NPDES permits described above, and to foster cost effective development of the information needed to determine appropriate permit limitations and conditions, both agencies agree to the following:

1. EPA will participate in the MMS Environmental Studies Program through its representatives on the Regional Technical Working Groups (RTWGs) and through coordination with the MMS Branch of Environmental Studies in Washington, D.C. EPA will participate fully at the regional and national levels to ensure that the information required by EPA is included in the process leading to the planning (annual and five year), selection, and ranking of studies for funding consideration by MMS. MMS will assure that information requirements provided by EPA shall be given thorough consideration by the RTWG's and by the Scientific Committee of the OCS Advisory Board and given timely and thorough consideration in the assessment of national research needs for the final determination of studies funding by MMS. EPA Headquarters shall provide comments on each year's National Study Plan to the Chief, Branch of Environmental Studies, before the final approval of that plan by

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the Associate Director for Offshore Minerals Management. MMS's funding and resource commitments for EPA's information requirements shall be carried out within the MMS established procedures.

2. EPA may identify information requirements for establishing the terms and conditions of NPDES permits throughout the leasing program. In order to be most effective, these information requirements should be identified during the development of the five year leasing schedule but in all cases prior to the issuance of the Call for Information for a particular part of the lease offering. EPA Regional Administrators will provide information requirements to the appropriate MMS Regional Managers through the RTWGs and to the Chief of the Branch of Environmental Studies (MMS) through the Director of the Office of Water Enforcement and Permits (EPA). Information needs requiring long-term and/or generic studies will be presented jointly by MMS and EPA to the Scientific Committee of the OCS Advisory Board. EPA and MMS will, to the extent possible, take advantage of each agency's EIS preparation activities related to OCS information needs. These activities include but are not limited to pre-EIS liaison and scoping at regional and national levels.

3. EPA and DOI will coordinate the identification and results of studies including monitoring programs related to discharges and impacts associated with oil and gas activities to avoid duplication of effort. This coordination will use existing groups and processes to the maximum extent feasible.

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4. EPA, in consultation with MMS, will develop criteria to assess the vulnerability of OCS lease areas to the discharges associated with oil and gas activities. During the development of these criteria, EPA will submit working drafts to MMS and other appropriate agencies for review and comment. These criteria may be used by EPA and MMS through the RIWG Committees and the Scientific Committee of the OCS Advisory Board to suggest appropriate NPDES permit conditions, and to assess information needs and studies related to the determination of appropriate NPDES permit conditions.

V. COORDINATION OF NEPA RESPONSIBILITIES

When new source performance standards are promulgated for the Offshore Subcategory of the Oil and Gas Point Source Category under section 306 of the CWA, EPA may have EIS requirements under NEPA for the issuance of NPDES permits for oil and gas exploration, development, and production activities. It is intended that these NEPA requirements will be coordinated with the existing MMS NEPA process, to the extent such coordination does not jeopardize or delay individual lease offerings or NPDES permits.

The major focus of cooperation will be to use, and supplement where possible, information from the MMS environmental studies program so that the maximum number of permit decisions can be made by the time of the Final Notice of Offering. In accordance with CEQ procedures, successful completion of the adoption process of the lease sale EIS will fulfill EPA's NEPA responsibilities related to those permit decisions completed at the time of the lease sale. If there are

significant issues that cannot be resolved prior to issuance of the final statement, both MMS's and EPA's views shall be accurately set forth in the final statement. For those permits issued after the Final Notice of Offering, the associated NEPA requirements will, to the extent possible, be fulfilled through the use of the lease sale EIS with appropriate modifications or supplements.

VI. POST LEASE MONITORING, INSPECTION, AND ENFORCEMENT

Since the MMS has in place effective resources to carry out inspections of OCS facilities, this MOU establishes that:

A. MMS will establish, to the maximum extent possible, requirements for drilling procedures and equipment consistent with EPA's NPDES effluent limitations and permit conditions. EPA will identify such requirements and provide MMS with appropriate recommendations according to an agreed upon schedule.

B. After final procedures for inspections have been developed under the implementation section of this MOU, the Regional Minerals Manager will, upon written request from an EPA Regional Administrator, monitor and inspect OCS facilities for compliance with NPDES permits. Specific agreements between the Regional Minerals Manager and the EPA Regional Administrator implementing inspection provisions under this MOU may be set forth in a Memorandum of Agreement (MOA).

C. Any compliance sampling conducted by MMS will be in accordance with EPA's NPDES Compliance Sampling Inspection Manual. MMS will forward all compliance verifications and samples to EPA for analysis.

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D. EPA retains the right to conduct compliance inspections. When EPA requires transportation to a facility, requests will be made ten (10) days in advance to the MMS so that such transportation can be coordinated with routine MMS inspection schedules. Special or emergency transportation not included in MMS inspection schedules shall be at the discretion of the Regional Minerals Manager.

E. The Regional Memorandum of Agreement will include provisions for EPA reimbursement of MMS for additional costs related to the monitoring and inspection responsibilities which MMS assumes pursuant to this memorandum. These costs will be determined following establishment by MMS and EPA of final procedures for inspections.

F. EPA will be responsible for the enforcement of all NPDES permit conditions.

VII. IMPLEMENTATION

Within two months of the effective date of the MOU, the agencies will develop an implementation plan to carry out the provisions of this MOU. This plan will take into account the following tasks and deadlines.

A. Within 3 months of completion of the implementation plan each agency will review internal procedures and regulations, and will identify whether or not revisions are necessary to accommodate the provisions of the MOU. Actual revisions

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of internal procedures should be completed within 1 year. Changes to regulations shall be processed in accordance with Executive Order 12291.

B. Within four months of completion of the implementation plan each Agency will: 1) develop specific recommendations and guidance to Regional personnel and staff for regulatory, permitting, and leasing activities consistent with the provisions of this MOU; and 2) develop specific recommendations to implement the provisions in Part IV.C. for the development and exchange of information including the timing of information requests and prelease studies, and the effects of long-term studies on the timing of permit issuance.

C. Within six months of completion of the implementation plan each agency will develop specific recommendations to implement the provisions of the Post Lease Monitoring, Inspections, and Enforcement portion (Part VI) of this MOU.

VIII. AGENCY CONTACTS

Inquiries regarding the provisions of this MOU, its implementation, or disagreements over any of its provisions should be directed to:

Minerals Management Service, Department of the Interior

Associate Director for Offshore Minerals Management

Environmental Protection Agency

Director, Office of Federal Activities
(General or Parts IV.C. and V)

Director, Office of Water Enforcement and Permits
(General or Parts IV A. and B. and VI)

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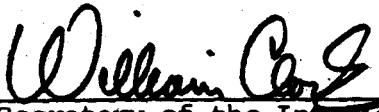
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IX. SAVINGS PROVISIONS

Nothing in this Memorandum shall be deemed to alter, amend, or affect in any way the statutory authorities of the Environmental Protection Agency or the Department of the Interior.

X. EFFECTIVE DATE

Except as provided below, this Memorandum of Understanding is effective upon the signature of the Administrator of the Environmental Protection Agency and the Secretary of the Interior. The provisions of this Memorandum and subsequent implementation documents shall be reevaluated in conjunction with each 5-year OCS oil and gas program. The Memorandum may be amended by written agreement of both agencies, or may be terminated upon 30 days written notice by either Agency. The provisions of Part IV of this MOU relating to general NPDES permits shall be effective with the completion of Part VII Implementation but no earlier than (6 months after signature).


Secretary of the Interior

MAR 19 1984
Date


Administrator, Environmental Protection Agency

MAY 31 1984
Date