

FACT SHEET FOR THE PROPOSED MODIFICATION OF  
THE NPDES GENERAL PERMIT FOR DISCHARGES  
FROM  
THE OIL AND GAS EXTRACTION POINT SOURCE CATEGORY  
TO  
COASTAL WATERS OF TEXAS AND  
ONSHORE STRIPPER WELL CATEGORY EAST OF THE 98<sup>TH</sup> MERIDIAN  
(TXG330000)

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U.S. Environmental Protection Agency  
Region 6  
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Dallas, TX 75202

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## FACT SHEET

### I. LEGAL BASIS

Section 301(a) of the Clean Water Act (CWA or the Act), 33 USC 1311(a), renders it unlawful to discharge pollutants to waters of the United States in the absence of authorizing permits. CWA section 402, 33 USC 1342, authorizes EPA to issue NPDES permits allowing discharges on condition they will meet certain requirements, including CWA sections 301, 304, 306, 401 and 403. Those statutory provisions require NPDES permits to include effluent limitations for authorized discharges: (1) meet standards reflecting levels of technological capability; (2) comply with EPA-approved state water quality standards; (3) comply with other state requirements adopted under authority retained by states under CWA section 510, 33 USC 1370; and, (4) cause no unreasonable degradation to the territorial seas, waters of the contiguous zone or the oceans.

Regulations promulgated at 40 CFR §122.44 (a) require technology-based effluent limitations to be placed in NPDES permits based on Effluent Limitation Guidelines (ELGs) where applicable, on Best Professional Judgment (BPJ) in the absence of guidelines, or on a combination of the two. ELGs for the Coastal Subcategory of the Oil and Gas Point Source Category (40 CFR 435, Subpart D) specify effluent limitations based on the best conventional pollution control technology (BCT), the best available pollution control technology economically achievable (BAT), and the New Source Performance Standards (NSPS). ELGs have not been developed for the Stripper Subcategory (Subpart F).

### II. Proposed Modifications from the 2012 Permit

Note: Public Notice of the proposed permit modification announcing the availability of the draft permit modification and fact sheet is being published in the Federal Register. The Federal Register Notice will start the public comment period and includes instructions on how to request more information and how to provide comments on the proposed permit modification. In accordance with 40 CFR 122.62, only the modified parts of the permit as described below are open for comment.

#### A. Permit Area/Facility Coverage

This permit modification action proposes to clarify the coverage of discharges from existing stripper wells located east of the 98<sup>th</sup> meridian and, therefore, revise the description of receiving water.

The general permit reissued in 2012 (2012 GP) authorizes discharges of produced water from existing facilities in the Stripper Subcategory located east of the 98<sup>th</sup> meridian whose produced water comes from the Carrizo/Wilcox, Reklaw or Bartosh formations in Texas and whose produced water does not exceed 3000 mg/l total dissolved solids. But, the 2012 GP states "...this permit regulates the discharge of produced water from the Stripper Subcategory wells to

coastal waters of Texas“ in the permit cover page and also states “...this permit authorizes discharges, including produced water, from Stripper Subcategory wells to coastal waters of Texas” in Part I, section A.1. of the permit. Because many stripper wells are located in inland areas of Texas and are far away from coastal areas, the phrase “to coastal waters of Texas” is revised to read as “to waters of Texas.” This change would restore the same area of coverage under the previous 2007 permit.

#### B. Whole Effluent Toxicity (WET) Testing Requirements

The 2012 GP requires operators to conduct an acute WET test once per year for produced water using the marine species, Mysidopsis bahia (Mysid shrimp) and the Menidia beryllina (Inland Silverside minnow) at the 100% of critical dilution. Because many stripper well dischargers are located inland and discharge to inland streams, a WET testing with marine species is not adequate to determine how discharges would impact freshwater aquatic life. Therefore, EPA proposes to add WET testing requirements using freshwater species, Daphnia pulex and Pimephales promelas (Fathead minnow), for produced waters which discharge to inland freshwater receiving waters. To be consistent with the State permit requirements established by the Railroad Commission of Texas, the 48-hour acute test at the 100% of critical dilution is proposed.

#### C. Bacteria Effluent Limitations

The most stringent bacteria criteria (E. coli – 126 cfu or MPN per 100 ml daily average, and 399 cfu or MPN per 100 ml daily maximum) for primary contact are established for discharge to freshwater in the proposed permit modification. EPA decides to take the most conservative approach to control bacteria contributed by discharges of domestic and sanitary wastes so EPA does not need to establish site-specific bacteria effluent limitations. EPA does not expect that many onshore stripper well operators have potential to discharge domestic or sanitary wastes. State bacteria criteria for coastal water are also included for discharges to coastal waters.

#### D. Permit Clarity

This permit modification proposes to amend the title of the permit to include stripper subcategory, so the Title of the proposed permit modification is read as “Proposed General Permit Modification For Discharges From The Oil And Gas Extraction Point Source To Coastal Waters Of Texas And Onshore Stripper Well Category East Of The 98th Meridian.” For clarification purposes, the proposed permit modification also divides Section B. General Permit Limits, Part I of the current permit into two sections, one for coastal subcategory and another for stripper subcategory.

### III. OTHER REGULATORY REQUIREMENTS

#### A. State Certification

Under section 401(a)(1) of the CWA. EPA may not issue an NPDES permit until the

State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. Section 301(b)(1)(C) of the CWA requires that NPDES permits contain conditions that ensure compliance with applicable state water quality standards or limitations. The permit contains limitations intended to ensure compliance with Texas Water Quality Standards and the corresponding implementation guidance. EPA has contacted the Texas Railroad Commission to obtain the 401 certification.

B. Coastal Zone Management Act

The Coastal Zone Management Act and its implementing regulations (15 CFR 930) require that any Federally licensed or permitted activity affecting the coastal zone of a state with an approved Coastal Zone Management Program be consistent with that Program. This permit modification will unlikely affect coastal zone.

C. Ocean Discharge Criteria

For discharges into waters of the territorial sea, contiguous zone, or oceans, CWA section 403 requires EPA to consider guidelines for determining potential degradation of the marine environment when issuing NPDES permits. The modification of this general permit will not authorize discharges to the territorial sea, contiguous zone or oceans; therefore, no conditions are included in the proposed permit to comply with Ocean Discharge Criteria.

D. National Environmental Policy Act

EPA's regulations at 40 CFR Part 6, Subpart F, which implement the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C., 4331, et seq., provide the procedures for carrying out the NEPA environmental review process for the issuance of new source NPDES permits. The purpose of this review process is to determine if any significant environmental impacts are anticipated by issuance of NPDES permits authorizing discharges from new sources. EPA prepared an environmental assessment (EA) in accordance with 40 CFR 6.604 in 2000, and completed a supplemental information report (SIR) dated May 2012, and determined, based on information available, that there will be no significant impact as the result of reissuing the general permit (TXG330000) in 2012. Because EPA has not developed New Source Performance Standards effluent guidelines limitations for the Stripper Subcategory, NEPA review is not required for this permit modification action.

E. Magnuson-Stevens Fishery Conservation and Management Act

The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act set forth a new mandate to identify and protect important marine and anadromous fisheries habitats. The purpose of addressing habitat in this act is to further the goal of maintaining sustainable fisheries. Guidance and procedures for implementing these amendments are contained in National Marine Fisheries Service regulations (50 CFR 600.805 - 600.930). These regulations specify that any Federal agency that authorizes or proposes to authorize an activity which would adversely affect an Essential Fish Habitat is subject to the consultation provisions

of the Magnuson-Stevens Act. The Texas Coastal Subcategory areas covered by this general permit include Essential Fish Habitat designated under the Magnuson-Stevens Act. But, this permit modification action which clarifies authorization of discharges of produced water from wells located east of the 98<sup>th</sup> meridian is unlikely to affect Texas coastal waters, nor to adversely affect Essential Fish Habitat.

#### F. Historic Preservation Act

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places are not authorized to discharge under this general permit. Texas Historical Commission concurred with EPA's determination on August 5, 2011 for the reissuance of the permit in 2012. This permit modification action does not change the existing condition of prohibition.

#### G. Endangered Species Act (ESA)

When EPA proposed the NPDES general permit for the Coastal Seas of Texas in 2000, EPA determined that authorization of the discharges was not likely to adversely affect listed threatened or endangered species. The U.S. Fish and Wildlife Service (FWS) concurred that the re-issuance of permit No TXG330000 would have no adverse effect on any federally listed threatened or endangered species or designated critical habitat that were under the FWS' jurisdiction. The National Marine Fisheries Service (NMFS) also concurred in a letter dated May 1, 2001, with EPA's determination (Ref: I/SERI2001100372). EPA determined that the renewal of the permit in 2012 would not have adverse effects on the federally listed species. This permit modification action proposes to add WET testing requirements for stripper well discharges so that it provides more protective to freshwater aquatic life. Therefore, the proposed modification action will not change the previous determination of no adverse effect on any federally listed threatened or endangered species or designated critical habitat.

#### H. Paperwork Reduction Act

The information collection required by this permit has been approved by 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). This permit modification action does not add additional burdens to permittees who are seeking the permit coverage.

#### I. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 USC 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. This permit is not a "rule" subject to the Regulatory Flexibility Act. This permit modification will not have a significant impact on a substantial number of small entities.