

ENVIRONMENTAL PROTECTION AGENCY

Final Reissuance of the NPDES General Permit for Facilities related to Oil and Gas Extraction in the Territorial Seas of Texas

AGENCY: Environmental Protection Agency

ACTION: Notice of Final NPDES General Permit.

SUMMARY: The Director of the Water Quality Protection Division, EPA Region 6 today announces issuance of the final National Pollutant Discharge Elimination System (NPDES) general permit for the Territorial Seas of Texas (No. TXG260000) for discharges from existing and new dischargers and New Sources in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category as authorized by section 402 of the Clean Water Act, 33 U.S.C. 1342 (CWA). The permit supersedes the previous general permit (TXG260000) which expired on November 4, 2010. This permit renewal authorizes discharges from exploration, development, and production facilities located in and discharging to the territorial seas off Texas.

EPA proposed the draft permit in the Federal Register on October 24, 2011. EPA Region 6 has considered all comments received and makes one significant change to the proposed permit. A copy of the Region's responses to comments and the final permit may be obtained from the EPA Region 6 internet site: <http://www.epa.gov/region6/water/npdes/genpermit/index.htm>.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733. Telephone: (214) 665-2145.

DATES: This permit was issued and effective on February 8, 2012, and expires February 7, 2017. In accordance with 40 CFR 23, this permit shall be considered issued for the purpose of judicial review on **[INSERT DATE 14 DAYS AFTER FR PUBLICATION DATE]**. Under section 509(b) of the CWA, judicial review of this general permit can be held by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for judicial review. Under section 509(b)(2) of the CWA, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent are provided in Part I.A.2 of the permit.

SUPPLEMENTARY INFORMATION:

EPA intends to use the reissued permit to regulate discharges from oil and gas extraction facilities located in the territorial seas off Texas under the CWA. To obtain discharge authorization, operators of such facilities must submit a new Notice of Intent (NOI). To determine whether your facility, company, business, organization, etc. is regulated by this action, you should carefully examine the applicability criteria in Part I, Section A.1 of the permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section above.

OTHER LEGAL REQUIREMENTS

Oil Spill Requirements. Section 311 of the CWA prohibits the discharge of oil and hazardous materials in harmful quantities. Discharges that are in compliance with NPDES permits under normal operational conditions are excluded from the provisions of section 311. However, the permit does not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by section 311 of the CWA. This general permit does not authorize discharges beyond normal exploration, development, and production of oil and gas extraction activities. For instance, an oil spill caused by explosion, like the Deepwater Horizon event that extended from April 20, 2010 to September 19, 2010, when oil flowed from a well in the outer continental shelf portion of the Gulf of Mexico, or any potential gas spill, is not authorized by this general permit.

Endangered Species Act. EPA evaluated the potential effects of issuance of this permit upon listed threatened or endangered species. Based on that evaluation, EPA has determined that authorization of the discharges is not likely to adversely affect any listed threatened or endangered species. EPA initiated section 7 consultations in accordance with the Endangered Species Act with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), and received the concurrence letter dated July 15, 2011, from FWS (Consultation No. 21410-2004-I-0051), and a letter dated January 3, 2012, from NMFS (Ref. No. I/SER/2011/00705).

National Environmental Policy Act. EPA issued a final Environmental Impact Statement (EIS) which was published in the Federal Register at 69 FR 15829 on March 26, 2004, to evaluate the potential environmental consequences of this Federal general permit action, pursuant to its

responsibilities under the National Environmental Policy Act of 1969 (NEPA). EPA responded to all issues raised on the Final EIS and issued a Record of Decision on January 11, 2005. EPA has prepared a Supplemental Information Report (SIR) dated September 2011 to the 2005 issued final EIS. The SIR is posted on the Internet at:

<http://www.epa.gov/region6/water/npdes/genpermit/index.htm>.

Ocean Discharge Criteria Evaluation. 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 in issuance of NPDES permits. These Ocean Discharge Criteria (40 CFR 125, Subpart M) are intended to "prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal" (45 FR 65942, October 3, 1980). EPA prepared a report on "Ocean Discharge Criteria Evaluation for the NPDES General Permit for the Territorial Seas of the State of Texas" dated October 25, 2002, when EPA proposed the reissuance of the general permit in 2004, and concluded that reissuance of the Oil and Gas General Permit for the Territorial Seas of Texas would not result in unreasonable degradation of the marine environment. EPA has reevaluated the ten (10) criteria in the SIR mentioned above.

Marine Protection, Research, and Sanctuaries Act. The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition the MPRSA establishes the Marine Sanctuaries Program, implemented by the National Oceanographic and Atmospheric Administration (NOAA), which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic

values. Pursuant to the Marine Protection and Sanctuaries Act, NOAA has not designated any marine sanctuaries within the area covered by the permit. The permit also prohibits discharges to marine sanctuary areas.

Magnuson-Stevens Fishery Management and Conservation Act. EPA has determined that reissuance of this general permit is not likely to adversely affect Essential Fish Habitat established under the 1996 amendments to the Magnuson-Stevens Fishery Management and Conservation Act. In a letter dated June 17, 2011, National Marine Fisheries Service (NMFS) concurred with the determination that issuance of the permit has no adverse effect to Essential Fish Habitat.

Coastal Zone Management Act. EPA has determined that the activities which are authorized by this permit are consistent with the local and state Coastal Zone Management Plans. The State of Texas issued a letter of consistency on January 26, 2012. It should be noted that decisions to allow oil and gas exploration and production in the territorial seas are made by the State of Texas and not the EPA.

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. The Texas Railroad Commission issued the 401 certification on January 26, 2012.

Paperwork Reduction Act. The information collection required by this permit has been approved by the Office of Management and Budget (OMB) under the provisions of the

Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and assigned OMB control numbers 2040-0086 (NPDES permit application) and 2040-0004 (discharge monitoring reports).

This reissued permit requires reporting and application requirements for new facilities to comply with cooling water intake structure requirements and therefore it requires more reporting burdens for new facilities from those under the previous general permit. Since this permit is very similar in reporting and application requirements in discharges which are required to be monitored as the Western Gulf of Mexico Outer Continental Shelf (OCS) general permit (GMG290000) which also has cooling water intake structure requirements, the paperwork burdens are expected to be nearly identical. EPA estimated it would take an affected facility three hours to prepare the request for coverage and 3 hours per month to prepare discharge monitoring reports. It is estimated that the time required to prepare the request for coverage and discharge monitoring reports for this permit will be the same. A new facility may need more time to prepare information for cooling water intake structure requirements. This permit requires electronic reporting for discharge monitoring reports, and it will save some reporting time.

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

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

limitations are based. That analysis has shown that issuance of this permit would not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: FEB 8 2012

A handwritten signature in black ink, appearing to read "WK Honker", written over a horizontal line.

William K. Honker, P.E.

Acting Director

Water Quality Protection Division

EPA Region 6

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