

Final NPDES General Permit for Discharges from New and Existing Sources in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category to the Territorial Seas of Texas (Permit No. TXG260000)

Agency: United States Environmental Protection Agency

Action: Final permit decision and response to comments received on the draft reissued NPDES permit publicly noticed on Federal Register of October 24, 2011.

Date: February 3, 2012

Significant Changes from Proposed Permit.

In response to comments received regarding EPA's solicitation for comments on "no discharge of produced water", EPA determines to continue the authorization of produced water discharges from new wells in this permit term.

State Certifications.

By letter dated January 26, 2012, the Railroad Commission of Texas (RRC) provided certification of the permit under section 401 of the CWA and confirmed consistency with the Texas Coastal Management Program.

Response to Comments.

EPA received comments from BayCorp Holdings, Ltd. (BayCorp), the Texas General Land Office (GLO), and the RRC. A summary of the comments received on the proposed permit and EPA's responses to those comments follows.

Comment 1: BayCorp, GLO, and RRC have concerns about EPA's solicitation of comments on whether or not to prohibit discharges of produced water either from new wells or from all new and existing wells. BayCorp commented that under the proposed "no discharge" requirement, a new well would need to incur significant additional costs to construct a second pipeline to carry produced water to an onshore disposal facility or attempt to contract with and connect to a platform that is able to pipe separated water to an onshore facility. The operator of the new well will then incur additional operating costs for the transportation of the water by the third party. In both of these cases, the operator will also incur operating costs for the disposal of the produced water in an onshore disposal well. The GLO commented that if the EPA institutes this change, it may render many new oil and gas development projects uneconomic due to the substantial increase in production costs associated with transporting and disposing of the produced water. Additionally, if the prohibition is applied to all facilities, it will either cause any affected wells to be shut-in and plugged or shorten the productive life of the wells due to the increased operating costs. The GLO further stated that by simply applying the same produced water toxicity testing requirements and limitations that were contained in the previous permit, the EPA would continue to minimize any potentially adverse impacts while maintaining the economic viability of

operating in the territorial seas of Texas. Additionally, a strict prohibition against on-site discharge would produce little, if any, incremental environmental benefit due to the volume of water produced from most wells combined with the toxicity limitations provided for in the expired permit. A prohibition would merely create a further disincentive to leasing the Permanent School Fund's oil and gas rights and thereby diminish revenues for public education. At this time when the state has limited financial resources, it is particularly critical to avoid unnecessary or overly burdensome new restrictions on a longstanding source of revenue for our schools. The RRC also not support a permit provision to prohibit discharges of produced water from new producing wells in the Texas territorial seas.

Response: EPA, after considerations of environmental benefits, operation and disposal costs, and impact of state revenue, decides not to impose the “no discharge” alternative in this permit renewal. Any discharges would have to comply with all permit limits and conditions. However, if any facility in the Texas Territorial Seas discharges produced water during the term of this permit and the characteristics study of produced water combined with the sedimentation study demonstrate adverse environmental impacts, EPA may reconsider the “no discharge” alternative in the next permit renewal.

Comment 2: The RRC opposes inclusion of the proposed Safety Best Management Practices (BMP) language in this permit. The RRC states that “...EPA has no authority over safety under the Clean Water Act and, historically, the BMPs included in the permit have been under the authority of the states in state waters. The RRC has had such requirements for many years....”

Response: The proposed BMP provision is part of Section B “Proper Operation and Maintenance” and does not, strictly speaking, impose “safety” requirements. If operators follow those procedures and any even more stringent procedures required by the RRC, operators may avoid or significantly reduce spills or unauthorized discharges which may result in degradation of state water quality. The intent of these provisions was to prevent pollution and not strictly for safety concerns. Industry did not raise any concerns on this new BMP requirement. EPA believes such a BMP provision will not cause unreasonable implementation burdens on industry and such a provision can help avoid unauthorized discharges. EPA determines to keep the provision in the final permit, but has changed the sub-title from “Safety Best Management Practices” to “Spill Prevention Best Management Practices” to avoid confusion.

Comment 3: The RRC comments that there are several areas in which the proposed general permit could be made less stringent and still not be in violation of state water quality standards or result in an inconsistency with the Texas Coastal Management Program. Three areas are mentioned in the RRC’s comments: 1) the more conservative CORMIX modeling results, 2) the EPA’s solicitation for comments on “no discharge of produced water,” and 3) the produced water characterization study.

Response: EPA notes RRC’s comments and concerns. The final permit allows the discharge of produced water (see response to comment #1). However, EPA declines to make changes to the permit regarding the CORMIX model and produced water characterization study. The more conservative changes resulting from the use of a more current version of the CORMIX model reflect advances in modeling and are expected to more accurately reflect discharge impacts on

the receiving water. Environmental concerns have been raised by citizen groups on the impacts of produced water discharges to the neighboring Louisiana Territorial Seas. The majority of permittees do not currently report discharging of produced water in the Texas Territorial Seas. The discharge characterization study for permittees who choose to discharge produced waters pursuant to this permit is designed to gather the information that would be needed to better evaluate potential impacts on the Texas Territorial Seas in future permitting actions.

Comment 4: The National Marine Fisheries Service (NMFS) concurred with EPA's determination that the proposed permitting action will not adversely affect any ESA-listed species or their critical habitat. In its concurrence letter dated January 3, 2012, NMFS recommends that scientific studies be conducted to investigate the effects of permitted discharges in both coastal and offshore waters. NMFS also recommends that the EPA evaluate the cumulative impacts of permitted discharges in relation to other anthropogenic inputs such as atmospheric deposition, inputs from rivers, and other sources affecting the marine environment. These efforts may lead to a better understanding of the possible impacts of anthropogenic discharges on listed species and the ecosystems upon which they depend.

Response: EPA determines that NMFS's study recommendations are beyond the jurisdiction of this permitting action, which imposes requirements on a permittee and not the EPA or other agencies. Therefore, no change is made for the final permit. Consistent with the "Memorandum of Agreement Between the Environmental Protection Agency, Fish and Wildlife Service, and National Marine Fisheries Service Regarding Enhanced Coordination Under the Clean Water Act and the Endangered Species Act" (66 *FR* 11202, February 22, 2001), the NMFS recommendations will be forwarded to EPA Headquarters for consideration as part of the National Research and Data Gather Plan.

REPLY TO 6WQ-PP

FEB 8 2012

MEMORANDUM

SUBJECT: Final Reissuance of the NPDES General Permit for New and Existing Sources and New Dischargers in the Oil and Gas Extraction Category to Territorial Seas of Texas (TXG260000)

FROM: William K. Honker, P.E.
Acting Director
Water Quality Management Division (6WQ)

THROUGH: Suzanne Murray
Regional Counsel (6RC)

TO: Diedra Wingate
EPA Liaison for Federal Register (3512)

The attached notice of the Final Reissuance of the NPDES General Permit for Discharges from the Oil and Gas Extraction Point Source Category to the Territorial Seas off Texas (TXG260000) is submitted for publication in the Federal Register. The completed EPA Form 2340-15 for the Federal Register Typesetting Request and a diskette containing the Federal Register Notice are also attached for submittal to the Federal Register.

Please notify Diane Smith at (214) 665-2145 of the Federal Register publication date.

If you should have any questions or need additional information please contact Isaac Chen by telephone at (214) 665-7364 or by E-mail at chen.isaac@epa.gov.

Attachments

cc: Zobrist (4203M)

bcc: Reading File (6WQ-P)
Permit File (6WQ-PP)

Chen, C:/.../FR Cover Letter Peer Review

6WQ-PP
Larsen

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6WQ-P
Hosch

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6RC-M
Gillespie

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6RC-D
Harrison

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