

ENVIRONMENTAL PROTECTION AGENCY

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Proposed NPDES General Permit for Discharges from the Oil and Gas Extraction Point Source Category to Coastal Waters in Texas (TXG330000)

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed Issuance of NPDES general permit

SUMMARY: EPA Region 6 today proposes to issue a National Pollutant Discharge Elimination System (NPDES) general permit regulating discharges from oil and gas wells in the Coastal Subcategory in Texas and regulating produced water discharges from wells in the Stripper and Offshore Subcategories which discharge into coastal waters of Texas.

As proposed, the permit prohibits the discharge of drilling fluid, drill cuttings, produced sand and well treatment, completion and workover fluids. Produced water discharges are prohibited, except from wells in the Stripper Subcategory located east of the 98th meridian whose produced water comes from the Carrizo/Wilcox, Reklaw or Bartosh formations in Texas. Discharge of dewatering effluent is proposed to be prohibited, except from reserve pits which have not received drilling fluids and/or drill cuttings since January 15, 1997. The discharge of deck drainage, formation test fluids, sanitary waste, domestic waste and miscellaneous discharges is proposed to be authorized.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-2145. This final permit can also be found on the Internet at <http://www.epa.gov/earth1r6/6wq/6wq.htm>.

SUPPLEMENTARY INFORMATION:

Regulated categories and entities include:

<u>Category</u>	<u>Examples of regulated entities</u>
Industry	Operators of oil and gas wells in the Coastal Subcategory of the Oil and Gas Extraction Point Source Category.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. 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 this permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

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OTHER LEGAL REQUIREMENTS

A. State Certification

Under section 401(a)(1) of the Clean Water Act, EPA may not issue an NPDES permit until the State in which the discharge will occur grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. EPA will seek certification from the Railroad Commission of Texas prior to issuing a final permit.

B. 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. In order to make this determination, EPA prepared an environmental assessment in accordance with 40 CFR 6.604 when the current permit was drafted. Based on that environmental assessment document, EPA determined that there would be no significant impact as the result of issuing that permit. When the current permit was issued, a Statement of Findings documenting the completion of EPA's NEPA review process on this permit action was signed by the Regional Administrator.

Since no new limits or changes in permit coverage are proposed, EPA has determined that reissuance of the permit does not rise to the level of a significant impact to the environment. Thus, EPA is not required to prepare another Environmental Assessment for this action.

C. Endangered Species Act

When EPA issued the previous Permit TXG330000, effective October 21, 1993, covering existing sources, but not New Sources, the United States Fish and Wildlife Service (FWS) concurred with EPA's finding that the permit was unlikely to adversely affect any threatened or endangered species or their critical habitat. When EPA issued Permit TXG290000, effective February 8, 1995, the Service also concurred with EPA's finding that the permit was unlikely to adversely affect any threatened or endangered species or their critical habitat. The Region found that adding New Source coverage to the permit is also unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA received written concurrence from the FWS on May 2, 2001, and from the National Marine Fisheries Service (NMFS) on May 1, 2001, on that determination. Since no significant changes are proposed to the permit, EPA again finds that the reissued permit is unlikely to adversely affect any listed threatened or endangered species or their critical habitat. EPA will obtain concurrence with the determination from NMFS and FWS prior to issuing the final permit.

Draft 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.

Based on the prohibitions and limitations and other requirements contained in this proposed general permit, as well as the Essential Fish Habitat Assessment prepared for this permit reissuance, the Region previously found that issuance of this permit would be unlikely to adversely affect Essential Fish Habitat. EPA received written concurrence from NMFS on that determination. Since there are very few changes proposed to the permit with this reissuance, EPA again finds that its issuance is unlikely to adversely affect Essential Fish Habitat. EPA is seeking concurrence with that decision from NMFS.

E. 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. EPA has concluded, based on the conditions, limitations and prohibitions of this permit that the discharges associated with this permit are consistent with the Texas Coastal Management Program goals and policies. EPA previously received a consistency determination from the Texas Coastal Coordination Council on February 13, 2001 and is seeking another consistency determination prior to issuing the final permit.

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 permit.

G. Economic Impact (Executive Order 12866)

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is “significant” and therefore subject to OMB review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal

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governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this general permit is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

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).

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. EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Coastal Subcategory guidelines on which many of the permit's effluent limitations are based. That analysis shows that compliance with the permit requirements will not result in a significant impact on dischargers, including small businesses, covered by this permit. EPA Region 6, therefore, concludes that the permit being proposed today will not have a significant impact on a substantial number of small entities.

J. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), P.L. 104-4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, e.g., UMRA section 201, "Each agency shall . . . assess the effects of Federal regulatory actions . . . (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to section 658 of Title 2 of the U.S. Code, which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act (APA), or any other law. . ."

NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the Clean Water Act (CWA). While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a)

Draft requirement to provide an opportunity for a hearing.” Thus, NPDES general permits are not “rules” for RFA or UMRA purposes.

EPA thinks it is unlikely that this permit issuance would contain a Federal requirement that might result in expenditures of \$100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. The Agency also believes that the permit issuance would not significantly nor uniquely affect small governments. For UMRA purposes, “small governments” is defined by reference to the definition of “small governmental jurisdiction” under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) “Small governmental jurisdiction” means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition. The permit issuance also would not uniquely affect small governments because compliance with the permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit.

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq: the "Act"), this permit regulates discharges from existing source and New Source oil and gas wells in the Coastal Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR 435, Subpart D) in Texas. In addition, this permit regulates the discharge of produced water from the Stripper Subcategory wells to coastal waters of Texas and prohibits the discharge of Offshore Subcategory produced water to coastal waters. The discharges are regulated in accordance with effluent limitations and other conditions set forth in Parts I and II of this permit.

In order for discharges to be authorized by this permit, operators of facilities discharging waste waters from oil and gas wells must submit written notification to the Regional Administrator that they intend to be covered (See Part I.A.2). For existing leases, the notification must be submitted no later than 45 days after the effective date of this permit. For leases obtained subsequent to the effective date of this permit, the notification must be submitted at least fourteen days prior to the beginning of the discharge. Unless otherwise notified in writing by the Regional Administrator after submission of the notification, operators requesting coverage are authorized to discharge under this general permit. Operators who fail to notify the Regional Administrator of intent to be covered are not authorized to discharge under this general permit.

Facilities which may adversely affect properties listed or eligible for listing in the National Register of Historic Places are not authorized to discharge under this permit.

This permit shall become effective at midnight, Central Time 30 days after publication of the notice of the final permit in Federal Register.

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This permit and the authorization to discharge shall expire at midnight, Central Time 5 years and 30 days after publication of the notice of the final permit in Federal Register.

Signed this () day of ().

 Miguel I. Flores
 Director
 Water Quality Protection Division
 EPA Region 6

PART I.

SECTION A. PERMIT APPLICABILITY AND COVERAGE CONDITIONS

1. DISCHARGES COVERED

This permit regulates discharges from existing source and New Source oil and gas wells in the Coastal Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR 435, Subpart D) in Texas. In addition, this permit regulates produced water from Stripper Subcategory wells to coastal waters of Texas and prohibits the discharge of Offshore Subcategory produced water to those coastal waters.

2. NOTICE OF INTENT (NOI) TO BE COVERED

Operators of leases (or lease blocks) desiring authorization to discharge under this general NPDES permit must submit a written Notice of Intent (NOI) to be covered. Operators of facilities having only produced water and produced sand, whose discharge is prohibited by this permit, are automatically covered and a written NOI to be covered by this permit is not required of these facilities. The NOI shall include the legal name and address of the operator, the lease (or lease block) number assigned by the Railroad Commission of Texas or, if none, the name commonly assigned to the lease area, and the type of facilities located within the lease (or lease block). For New Source discharges (as defined in 40 CFR 435, Subpart D), the NOI must also identify any facility which is a New Source and state the date on which the facility's protection from more stringent new source performance standards or technology based limitations ends. That date is the earlier of: ten years from the date that construction is completed, ten years from the date the source begins to discharge process or non-construction related waste water, or the end of the period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954.

For existing leases, the NOI must be submitted within 45 days of the effective date of this permit. For leases obtained subsequent to the effective date of this permit, the NOI must be submitted at least fourteen days prior to the commencement of discharge. If the lease block was

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previously covered by another permit, the operator shall also include the previous permit number in the notification.

For facilities applying for authorization to discharge reserve pit dewatering effluent from drilling fluids and drill cuttings dewatering activities, the NOI must certify that such reserve pit(s) have not received drilling fluids and/or drill cuttings after January 15, 1997.

The definition of New Source is found at 40 CFR 122.2 and the criteria for New Source determination are found at 40 CFR 122.29. Additional definitions pertaining to Coastal Subcategory New Sources are found at 40 CFR 435, Subpart D. According to 435, Subpart D, exploratory facilities are never New Sources, although development and production facilities may be New Sources if they meet the criteria for New Source determination.

All notifications of intent to be covered and any subsequent reports shall be sent to the following address:

Water Enforcement Branch (6EN-WC)
U.S. Environmental Protection Agency
Region 6
P.O. Box 50625
Dallas, TX 75250

Upon receipt of the notification, EPA will notify the facility of its specific facility identification number that must be used on all correspondence with the Agency.

3. TERMINATION OR TRANSFER OF OWNERSHIP OF OPERATIONS

Lease (or lease block) operators shall notify the Regional Administrator within 60 days after the permanent termination of discharges from their facilities. Lease (or lease block) operators shall notify the Regional Administrator within 30 days of any transfer of ownership.

SECTION B. GENERAL PERMIT LIMITS

Permittees shall not discharge nor shall they cause or allow the discharge of pollutants regulated under this permit except in compliance with its limitations and terms. Operators of facilities generating pollutants regulated under this permit shall take reasonable positive steps to assure pollutants are not unlawfully discharged to waters of the United States by third parties and shall maintain documentation of those steps for no less than three years.

Effluent limitations of this permit include:

1. DRILLING FLUID - No discharge.

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2. DRILL CUTTINGS - No Discharge.

3. PRODUCED WATER - No Discharge.

Exception: produced water from facilities in the Stripper Subcategory located east of the 98th 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 shall meet the following limits: 25 mg/l monthly average and 35 mg/l daily maximum for oil and grease. Monitoring for oil and grease shall be performed once per month. Monitoring for total dissolved solids shall be performed once per year. The sample type for both parameters may be either grab, or a 24-hour composite consisting of the arithmetic average of the results of 4 grab samples taken over a 24-hour period. Produced water flow monitoring requirement: once per month, an estimate of the flow in MGD (million gallons per day) must be made and recorded.

4. PRODUCED SAND - No Discharge.

5. DEWATERING EFFLUENT - No Discharge.

Exception: dewatering effluent from reserve pits which have not received drilling fluids and/or drill cuttings since January 15, 1997, shall meet the following limits:

No discharge of free oil as measured by the static sheen test.

Oil and grease - 15 mg/l daily maximum

Total suspended solids (TSS) - 50 mg/l daily maximum

Total dissolved solids (TDS) - 3000 mg/l daily maximum

Exception: Reserve pit discharges to tidally influenced watercourses are not required to meet the total TDS limit if the TDS of the effluent does not exceed the TDS of the receiving water at the point of discharge at the time of discharge.

COD - 200 mg/l daily maximum

pH - 6.0 to 9.0 Standard Units

Chlorides - 500 mg/l daily maximum (discharges to inland areas)
1000 mg/l daily maximum (discharges to tidally influenced watercourses)

Exception: Chloride concentration may exceed 1000 mg/l in tidally

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Hazardous metals - The discharge must not contain concentrations of the substances classified as “hazardous metals” in excess of the levels allowed by Texas Administrative Code (TAC) 319.21.

Monitoring: The monitoring frequency for the above dewatering effluent limitations is once per day when discharging using grab samples. However, if the effluent is batch discharged, the monitoring requirements for all effluent limits shall be once per discharge event by grab sample. In addition, the volume (bbls) of discharged treated wastewater must be estimated once per day, when discharging. If the effluent is being batch discharged, the volume discharged must be estimated for the entire discharge event.

6. DECK DRAINAGE - No Discharge of free oil, as determined by the presence of a film or sheen upon or a discoloration of the surface of the receiving water (visual sheen).

Monitoring shall be once per day, when discharging, during conditions when an observation of a sheen is possible and when the facility is manned. The number of days a sheen is detected must be recorded.

7. FORMATION TEST FLUIDS - No Discharge, except to bays and estuaries where no chloride standards have been established.

Where discharges are allowed, the limits are:

Free oil - No Discharge as determined by the static sheen test. Monitoring shall be once per day.

pH - 6.0 to 9.0 Standard Units. A grab sample must be taken once per discharge event.

8. WELL TREATMENT, COMPLETION AND WORKOVER FLUIDS - No Discharge

9. SANITARY WASTE -

No floating solids

BOD5 - 45 mg/l daily maximum. Monitoring shall be once per quarter using grab samples.

TSS - 45 mg/l daily maximum. Monitoring shall be once per quarter using grab

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Fecal coliform - 200/100 ml. Monitoring shall be once per week using grab samples.

10. DOMESTIC WASTE - No discharge of floating solids or garbage or foam.

11. MISCELLANEOUS DISCHARGES -

- Distillation and reverse osmosis brine
- Blowout preventer fluid
- Uncontaminated ballast and bilge water
- Mud, cuttings and cement at the sea floor
- Boiler blowdown
- Excess cement slurry
- Diatomaceous earth filter media
- Uncontaminated water

For miscellaneous discharges, the discharge of free oil is prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Discharge may occur at any time if the operator uses the static sheen method for detecting free oil. Monitoring shall be once per day, when discharging.

12. OTHER DISCHARGE CONDITIONS

a. Prohibitions: Halogenated Phenol Compounds - There shall be no discharge of Halogenated Phenol Compounds.

Rubbish, Trash and Other Refuse - The discharge of any solid material not authorized in the permit (as described above) is prohibited.

b. Limitations: Floating Solids or Visible Foam - There shall be no discharge of floating solids or visible foam in other than trace amounts.

Surfactants, Dispersants and Detergents - The discharge of surfactants, dispersants, and detergents used to wash working areas shall be minimized except as necessary to comply with applicable State and Federal safety requirements.

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PART II
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 regulations.

2. DUTY TO COMPLY

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for terminating coverage under this permit, or for requiring a permittee to apply for and obtain an individual NPDES permit.

3. TOXIC POLLUTANTS

- a. Notwithstanding Part II.A.4, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition.
- b. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

4. PERMIT FLEXIBILITY

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

5. PROPERTY RIGHTS

This permit does not convey any property rights of any sort, or any exclusive privilege.

6. DUTY TO PROVIDE INFORMATION

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The permittee shall furnish to the Director, within a reasonable time, any information which the Director 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 to the Director, upon request, copies of records required to be kept by this permit.

7. 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 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. Section 1001.

8. OIL AND HAZARDOUS SUBSTANCE LIABILITY

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 to which the permittee is or may be subject under Section 311 of the Act.

9. 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 Act.

10. 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. The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators or retention of inadequately

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treated effluent.

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

- a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants and will achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.
- b. The permittee shall provide an adequate operating staff which is duly qualified to carry out operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

4. BYPASS OF TREATMENT FACILITIES

a. BYPASS NOT EXCEEDING LIMITATIONS

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts II.B.4.b. and 4.c.

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 II.D.7.

c. PROHIBITION OF BYPASS

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(1) Bypass is prohibited, and the Director 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 judgment 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 II.B.4.b.
- (2) The Director may allow an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed at Part II.B.4.c(1).

5. UPSET CONDITIONS

a. EFFECT OF AN UPSET

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part II.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.

b. CONDITIONS NECESSARY FOR A DEMONSTRATION OF UPSET

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating 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 II.D.7; and,
- (4) The permittee complied with any remedial measures required by Part II.B.2.

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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

Unless otherwise authorized, solids, sewage sludges, filter backwash, or other pollutants removed in the course of treatment or waste water control shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters, and in accordance with other applicable laws or regulations.

SECTION C. MONITORING AND RECORDS

1. INSPECTION AND ENTRY

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by the law to:

- a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. REPRESENTATIVE SAMPLING

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. RETENTION OF RECORDS

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

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Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) and time(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

5. MONITORING PROCEDURES

- a. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit or approved by the Regional Administrator.
- b. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instruments at intervals frequent enough to insure accuracy of measurements and shall maintain appropriate records of such activities.
- c. An adequate analytical quality control program, including the analyses of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory.

SECTION D. REPORTING REQUIREMENTS

1. PLANNED CHANGES

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR Part 122.29(b); or,
- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements listed at Part II.D.10.a.

2. ANTICIPATED NONCOMPLIANCE

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

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PERMITS

Coverage under these permits is not transferable to any person except after notice to the Director.

4. DISCHARGE MONITORING REPORTS AND OTHER REPORTS

Monitoring results obtained during the previous 12 months for all discharges at a facility shall be summarized and reported to EPA and the appropriate State agency on the 28th day of the month following the end of the twelve month period on Discharge Monitoring Report (DMR) Form EPA No. 3320-1 in accordance with the "General Instructions" provided on the form. The permittee shall submit the original DMR signed and certified as required by Part II.D.11 and all other reports required by Part II.D. to the EPA at the address below.

Compliance Assurance and Enforcement Division
 Water Enforcement Branch (6EN-W)
 U.S. Environmental Protection Agency, Region 6
 P.O. Box 50625
 Dallas, TX 75250

5. ADDITIONAL MONITORING BY THE PERMITTEE

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased monitoring frequency shall also be indicated on the DMR.

6. AVERAGING OF MEASUREMENTS

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

7. TWENTY-FOUR HOUR REPORTING

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally to the EPA Region 6 24-hour voice mail box telephone number 214-665-6593 within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain the following information:

(1) A description of the noncompliance and its cause;

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- (2) 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,
- (3) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.
- b. The following shall be included as information which must be reported within 24 hours:
- (1) Any unanticipated bypass which exceeds any effluent limitation in the permit;
- (2) Any upset which exceeds any effluent limitation in the permit; and,
- (3) Violation of a maximum daily discharge limitation for any pollutants listed by the Director in Part II of the permit to be reported within 24 hours.
- c. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

8. OTHER NONCOMPLIANCE

The permittee shall report all instances of noncompliance not reported under Parts II.D.4 and D.7 and Part I.C at the time monitoring reports are submitted. The reports shall contain the information listed at Part II.D.7.

9. OTHER INFORMATION

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

10. CHANGES IN DISCHARGES OF TOXIC SUBSTANCES

The permittee shall notify the Director 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, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
- (1) One hundred micrograms per liter (100 ug/L);
- (2) Two hundred micrograms per liter (200 ug/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/L) for 2,4-dinitro-phenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;

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- (3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
 - (4) The level established by the Director.
- 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 following "notification levels":
- (1) Five hundred micrograms per liter (500 ug/L);
 - (2) One milligram per liter (1 mg/L) for antimony;
 - (3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
 - (4) The level established by the Director.

11. SIGNATORY REQUIREMENTS

All applications, reports, or information submitted to the Director shall be signed and certified.

- a. ALL PERMIT APPLICATIONS shall be signed 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 principal business function, or any other person who performs similar policy or decision making functions for the corporation; or,
 - (b) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - (2) FOR A PARTNERSHIP OR SOLE PROPRIETORSHIP - by a general partner or the proprietor, respectively.
- b. ALL REPORTS required by the permit and other information requested by the Director

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shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (1) The authorization is made in writing by a person described above;
- (2) 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 a well 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 named individual or an individual occupying a named position; and,
- (3) The written authorization is submitted to the Director.

c. **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 gathering 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."

12. **AVAILABILITY OF REPORTS**

Except for applications, effluent data, permits, and other data specified in 40 CFR 122.7, any information submitted pursuant to this permit may be claimed as 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 VIOLATIONS OF PERMIT CONDITIONS

1. **CRIMINAL**

a. **NEGLIGENT VIOLATIONS**

The Act provides that any person who negligently violates permit conditions implementing Section 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine

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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, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 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, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that 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, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such 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, 308, 318, or 405 of the Act is subject to a civil penalty, as specified in 40 CFR 19.4, 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 an administrative penalty, as specified in 40 CFR 19.4, for each violation.

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SECTION 502 DEFINITIONS

All definitions contained 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 of 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. ADMINISTRATOR means the Administrator of the U.S. Environmental Protection Agency.
3. BLOWOUT PREVENTER FLUID is used to actuate the hydraulic equipment on the blowout preventer.
4. BOD5 means five day biochemical oxygen demand.
5. BYPASS means the intentional diversion of waste streams from any portion of a treatment facility.
6. COD means chemical oxygen demand.
7. DAILY MAX discharge limitation means the highest allowable "daily discharge" during the calendar month.
8. DISTILLATION AND REVERSE OSMOSIS BRINE is wastewater associated with the process of creating fresh water from seawater.
9. DIATOMACEOUS EARTH FILTER MEDIA is filter media used to filter seawater or other authorized completion fluids and subsequently washed from the filter.
10. DIRECTOR means the U.S. Environmental Protection Agency Regional Administrator or an authorized representative.
11. DOMESTIC WASTE is materials discharged from sinks, showers, laundries, safety showers, eyewash stations, hand-wash stations, fish cleaning stations, and galleys located within facilities subject to this permit.
12. ENVIRONMENTAL PROTECTION AGENCY means the U.S. Environmental Protection Agency.
13. FACILITY (as defined in 40 CFR 122.2) means any NPDES "point source" or any other facility or activity that is subject to regulation under the NPDES program.
14. FORMATION TEST FLUIDS are the discharge that would occur if hydrocarbons are

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- located during exploratory drilling and tested for formation pressure and content.
15. GRAB SAMPLE means an individual sample collected in less than 15 minutes.
 16. "MGD" means million gallons per day.
 17. "mg/L" means milligrams per liter or parts per million (ppm).
 18. MUDS, CUTTINGS AND CEMENT AT THE SEA FLOOR are discharges which occur at the sea floor prior to installation of the marine riser and during marine riser disconnect and well abandonment and plugging operations.
 19. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 318, 402, and 405 of the Act.
 20. SEVERE PROPERTY DAMAGE means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
 21. STATIC SHEEN is defined in the static sheen test in Appendix 1 to 40 CFR 435, Subpart A.
 22. UNCONTAMINATED WATER is freshwater or seawater which is returned to the receiving water without the addition of any chemicals. Included are (1) discharges of excess water that permit the continuous operation of fire control and utility lift pumps, (2) excess water from pressure maintenance and secondary recovery projects, (3) water released during the training and testing of personnel in fire protection, (4) water used to pressure test piping, (5) once-through, non-contact cooling water, (6) potable water released during transfer and tank emptying operations and (7) condensate from air conditioning units, (8) seawater cooling overboard discharge, (9) chain locker effluent, and (10) firemain system discharge .
 23. 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.
 24. VISUAL SHEEN means a "silvery" or "metallic" sheen, gloss, or increased reflectivity,

Draft optical color iridescence on the water surface.