

NPDES PERMIT NO. OK0044849
STATEMENT OF BASIS

FOR THE DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
(NPDES) PERMIT TO DISCHARGE TO WATERS OF THE UNITED STATES

APPLICANT

Flanagan South Pipeline
4628 Mike Colalillo Drive
Duluth, MN 55807

ISSUING OFFICE

U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

PREPARED BY

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DATE PREPARED

August 20, 2013

PERMIT ACTION

It is proposed that the facility be issued an NPDES permit for a 5-year term in accordance with regulations contained in 40 Code of Federal Regulations (CFR) 122.46(a).

40 CFR CITATIONS: Unless otherwise stated, citations to 40 CFR refer to promulgated regulations listed at Title 40, Code of Federal Regulations, revised as of August 16, 2013.

DOCUMENT ABBREVIATIONS

For brevity, Region 6 used acronyms and abbreviated terminology in this Statement of Basis document whenever possible. The following acronyms were used frequently in this document:

BAT	Best Available Technology Economically Achievable
BOD ₅	Biochemical oxygen demand (five-day unless noted otherwise)
BPJ	Best professional judgment
CFR	Code of Federal Regulations
cfs	Cubic feet per second
COD	Chemical oxygen demand
COE	United States Corp of Engineers
CPP	Continuing Planning Process
CWA	Clean Water Act
DMR	Discharge monitoring report
ELG	Effluent limitation guidelines
EPA	United States Environmental Protection Agency
ESA	Endangered Species Act
F&WS	United States Fish and Wildlife Service
HT	Hydrostatic Testing
IP	Procedures to Implement the Oklahoma Surface Water Quality standards
mg/L	Milligrams per Liter (one part per million)
MGD	Million gallons per and Intrastate Surface Waters
MQL	Minimum quantification level
NPDES	National Pollutant Discharge Elimination System
OAC	Oklahoma Administrative Code
ODEQ	Oklahoma Department of Environmental Quality
O&G	Oil and grease
OWQS	Oklahoma Surface Water Quality Standards
OWRB	Oklahoma Water Resources Board
RP	Reasonable potential
SIC	Standard industrial classification
s.u.	Standard units (for parameter pH)
SWQB	Surface Water Quality Bureau
TMDL	Total maximum daily load
TRC	Total residual chlorine
TSS	Total suspended solids
µg /L	Micrograms per Liter (one part per billion)
WET	Whole effluent toxicity
WQMP	Water Quality Management Plan
WQS	Water Quality Standards

I. PROPOSED CHANGES FROM CURRENT PERMIT

This is a first-time permit issuance

II. APPLICANT ACTIVITY

The proposed permit allows only the hydrostatic test discharge water in four sections; two of those sections will withdraw and discharge from waters within the State of Oklahoma. The other two sections will be tested from the Little Caney River in Southern Kansas. Outfall 001 has been identified for both the withdrawal and discharge of hydrostatic test waters for the two sections.

Under the SIC code 4612, Crude Petroleum Pipelines, the applicant plans to operate a crude oil pipeline. The project consists of approximately 600 mile long, 36 inch diameter pipeline. The pipeline is designed to transport crude oil from Pontiac, Illinois to Cushing, Oklahoma.

III. DISCHARGE LOCATION

The discharge points showing Outfall number, discharge coordinates: latitude and longitude, county, average flow rate in millions gallons per day (MGD), receiving water, and the waterbody identification numbers are shown in the following table:

Outfall Reference Number	Discharge Coordinates Latitude Deg° Min' Sec'' Longitude Deg° Min' Sec''	County	Average Flow MGD	Receiving Water	Waterbody ID #
001	36° 17' 52" N 96° 32' 37" W	Osage/Pawnee	4.32	Arkansas River	OK621200010200_00

IV. STREAM STANDARDS

The general criteria and numerical criteria which make up the stream standards are provided in the Oklahoma Water Quality Standards (Title 785, Chapter 45) promulgated by the Oklahoma Water Resources Board including all amendments which are effective as of July 1, 2011.

V. DISCHARGE DESCRIPTION

This will be a new facility and no discharge has occurred. However, the proposed discharges from Outfall 001 are described as follows:

Discharges from Outfall 001 are to Arkansas River in waterbody identification number, OK621200010200. The designated uses for waterbody identification number, OK621200010200 are Aesthetic, Agriculture, Public and Private Water Supply (PPWS), Warm Water Aquatic Community (WWAC), Fish Consumption and Primary Body Contact Recreation (PBCR).

The facility included in its application, an estimated daily maximum and average concentrations for certain pollutants. The estimated pollutant concentrations are shown in the Table below:

Parameter	Max Concentration, mg/L unless noted	Average Concentration, mg/L unless noted
Flow, MGD	5.04	4.32
pH, su	8	7
BOD	2	2
COD	15	5
TOC	0.1	0.001
TSS	5	2.5
Ammonia	1	0.2
Temperature	6 °c (Winter); 13 °c (Summer)	5 °c (Winter); 10 °c (Summer)

VI. TENTATIVE DETERMINATION

The EPA has made a tentative determination, after consultation with the ODEQ to issue this permit to the applicant for the activities described.

VII. DRAFT PERMIT RATIONALE

The proposed effluent limitations for those pollutants proposed to be limited are based on regulations promulgated at 40 CFR 122.44. The draft permit limits are based on either technology-based effluent limits pursuant to 40 CFR 122.44(a), on best professional judgment (BPJ) in the absence of guidelines, and/or requirements pursuant to 40 CFR 122.44(d), whichever are more stringent.

A. REASON FOR PERMIT ISSUANCE

An NPDES Application for a Permit to Discharge (Form 1 & 2D) dated January 17, 2013, was received on January 22, 2013, and was deemed administratively complete on February 6, 2012. In a letter dated July 25, 2013, Enbridge resubmitted its permit application because its discharge methodologies have changed since the original submittal on January 17, 2013. The facility made the following changes to the hydrostatic test discharge plan:

1. At the time of the first application submittal, Enbridge planned to both withdraw and discharge hydrostatic testing at the Caney River and Arkansas River. Enbridge no longer plans to conduct hydrostatic testing at the Caney River and is only applying for NPDES discharge permit at the Arkansas River location.
2. The anticipated withdrawal and discharge quantity at the Arkansas River has been changed from 13.98 million gallons to 14.60 million gallons.
3. Enbridge is requesting the flexibility to discharge either directly into the Arkansas River or into a straw bale dewatering structure several hundred feet upslope of the channel bank.

EPA notes that the proposed permit authorizes the hydrostatic test discharges into the Arkansas River only.

B. OPERATION AND REPORTING

The permittee must submit DMR's quarterly, beginning on the effective date of the permit, lasting through the expiration date of the permit or termination of the permit, to report on all limitations and monitoring requirements in the permit.

C. TECHNOLOGY-BASED EFFLUENT LIMITATIONS/CONDITIONS

Regulations promulgated at 40 CFR122.44 (a) require technology-based effluent limitations to be placed in NPDES permits based on ELG's where applicable, on BPJ in the absence of guidelines, or on a combination of the two. There are no published ELG's for this type of activity. Permit limits are proposed based on BPJ. Since hydrostatic test water discharges are batch discharges of short term duration, limits in this Permit will be expressed in terms of daily maximum concentrations rather than in terms of mass limitations, as allowed by 40 CFR 122.45(e) and (f). Limitations for Oil & Grease, TSS, and pH are proposed in the permit. The proposed limitations for TSS are 30mg/l average, 45 mg/l maximum; and Oil & Grease is 15 mg/l maximum. The draft permit will not propose mass limits since the flow is variable and intermittent. Concentration limits will be protective of the stream uses.

D. WATER QUALITY SCREENING

1. General Comments

The Clean Water Act in Section 301 (b) requires that effluent limitations for point sources include any limitations necessary to meet water quality standards. Federal regulations found at 40 CFR 122.44(d) state that if a discharge poses the reasonable potential to cause an in-stream excursion above a water quality criterion, the permit must contain an effluent limit for that pollutant. If the discharge poses the reasonable potential to cause an in-stream violation of narrative standards, the permit must contain prohibitions to protect that standard.

The narrative and numerical stream standards are provided in OWQS, as amended (OAC 785:45), and implementation criteria contained in OACs 785:46 and 252:690, promulgated by the OWRB, effective as of May 27, 2008, and Department of Environmental Quality (DEQ), respectively. This is to ensure that no point-source will be allowed to discharge any wastewater which: (1) results in instream aquatic toxicity; (2) causes a violation of an applicable narrative or numerical state water quality standard; (3) results in the endangerment of a drinking water supply; or (4) results in aquatic bioaccumulation which threatens human health.

2. Reasonable Potential

EPA develops draft permits to comply with State WQS, and for consistency, attempts to follow OWQS, OWQS implementation criteria in OAC 785:46 and OAC 252:690, and the CPP document where appropriate. However, EPA is bound by the State's WQS, not State guidance, including the OWQS implementation, in determining permit decisions. EPA performs its own technical and legal review for permit issuance, to assure compliance with all applicable State and Federal requirements, including State WQS, and makes its determination based on that review.

In the RP screening process, the 95th percentile effluent concentration, or estimate thereof if the effluent data set is not sufficiently large to determine it directly, is used to compute an instream concentration according to the regulatory mixing zone equations defined in OAC 785:46. The computed instream concentrations are then compared with the applicable criteria to determine whether RP is exhibited. If RP is exhibited, in accordance with 40 CFR 122.44(d)(1)(vi) and OAC 252:690, a wasteload allocation and criterion long term average is computed for each applicable criterion. Water quality-based permit limitations are calculated for each pollutant exhibiting RP for all applicable criteria. The most stringent of the resulting monthly average permit limitations is established in the draft permit for each pollutant requiring such limitations.

The applicant proposes to discharge water from the same location as the source water. Hydrostatic test water will contact only new pipe, and no chemicals will be added. As a result, no contaminants are expected to be present in the hydrostatic test water discharge at amounts that would pose a reasonable potential to exceed State WQS.

Since the hydrostatic test water is to be discharged back into the same water body from which it was taken, intake credits could normally be authorized to account for in-situ waterbody conditions for only TSS. However, TSS intake credit shall not apply to Outfall 001 because the receiving stream for Outfall 001 is impaired for turbidity. TSS is a surrogate for turbidity.

3. Reasonable Potential-Calculations

a. pH

The daily minimum and daily maximum permit limits of 6.0 standard units to 9.0 standard units on hydrostatic test general permits developed by other EPA Regions and States. OAC 785:45-5-12(f)(3) states, "pH values shall be between 6.5 and 9.0 in waters designated for fish and wildlife propagation; unless pH values outside that range are due to natural conditions." The water quality-based daily minimum pH limit of 6.5 is more stringent than the technology-based daily minimum pH limit of 6.0 standard units. As a result, the Oklahoma Water Quality Based limits of 6.5 standard units to 9.0 standard units are established in the proposed permit.

b. Narrative Limitations

1. Aesthetic Standards

According to OWQS, OAC 785:45-5-12(f) (4) which states that narrative protection for aesthetic standards will propose that surface waters shall be maintained so that oil, grease, or related residue will not produce a visible film or globules of grease on the surface or coat the banks or bottoms of the watercourse; or cause toxicity to man, aquatic life, or terrestrial life. A narrative condition prohibiting the discharge of any visible sheen of oil or globules of oil or grease will be included in the proposed permit. In addition, the technology-based limit of 15 mg/l for Oil and Grease should assure that the narrative criterion is maintained.

2. Public and Private Water Supplies (OAC 785:45-5-10)

Test water being discharged from hydrostatic testing should not contain substances listed in Raw Water Numerical Criteria (785:45-5-10(1)) and Water Column Criteria to protect for the consumption of fish, flesh and water (785:45-5-10(6)) at levels which would have reasonable potential to violate numerical criteria.

3. Fish and Wildlife Propagation (OAC 785:45-5-12)

Test water being discharged from hydrostatic testing should not contain substances listed in Toxic Substances (785:45-5-12(f)(6)) and Water Column Criteria to protect for the consumption of fish, flesh and water (785:45-5-10(6)) at levels which would have reasonable potential to violate numerical criteria.

4. Agriculture/Livestock and Irrigation (OAC 785:45-5-13)

The levels of chloride, sulfate and total dissolved solids in the test water should be the same as in the receiving water. Hydrostatic testing should not result in significant increases in levels of chloride, sulfate or total dissolved solids in the test water above levels contained in the fill water.

5. Primary Body Contact Recreation (OAC 785:45-5-16)

Hydrostatic test wastewater should not contain coliform bacteria, Escherichia coli, and Enterococci at significant levels.

E TECHNOLOGY BASED VERSUS WATER QUALITY STANDARDS BASED EFFLUENT LIMITATIONS AND CONDITIONS

Following regulations promulgated at 40 CFR122.44(l)(2)(ii), 122.44(d), and 130.32(b)(6), the draft permit limits are based on either technology-based effluent limits pursuant to 40 CFR122.44(a), on the results of or on State Water Quality Standards and requirements pursuant to 40 CFR122.44(d), or on the results of an established and EPA approved Total Maximum Daily Load (TMDL), whichever are more stringent.

Numerical water quality based limitations have been placed in the permit for pH. Narrative standards for oil, grease, or related residue have been placed in the proposed permit. A technology-based limit of 15 mg/l for Oil and Grease should assure that the narrative criterion is maintained.

F. WHOLE EFFLUENT TOXICITY LIMITATIONS

There are no chemical specific limitations in the draft permit and the applicant has stated that no chemical additives such as corrosion inhibitors are being added to the HT water. There does not appear that the discharge will have a potential for toxicity. The draft permit does not propose any biomonitoring of the HT water.

G. FINAL EFFLUENT LIMITATIONS

See the draft permit for limitations.

H. MONITORING FREQUENCY

Regulations require permits to establish monitoring requirements to yield data representative of the monitored activity 40 CFR 122.48(b) and to assure compliance with permit limitations 40 CFR 122.44(i)(1). The monitoring frequencies are based on BPJ, taking into account the nature of the discharge.

For both outfalls, monitoring for flow, TSS, Oil & Grease, turbidity and pH shall be daily by grab sample, when discharging.

VIII. IMPAIRED WATER - 303(d) LIST AND TMDL

According to the 2010 edition of the 303(d) list of impaired waters, the receiving stream for Outfall 001, Arkansas River (OK621200010200_00) is listed for Enterococcus, lead, thallium, and turbidity. The proposed permit is limited for turbidity end-of-pipe of 50 NTUs for Outfall 001. Therefore no additional requirements beyond the already proposed technology-based and/or water-quality based requirements are established in the proposed permit.

IX. ANTIDegradation

The Oklahoma Water Quality Standards, Antidegradation, OAC 785:45:3-1, sets forth the requirements to protect designated uses through implementation of the State WQS, OAC 785:46, Subchapter 13. There are no antidegradation restrictions listed in Appendix A of the OWQS for all the receiving waters to which the facility proposes to discharge (see Discharge Description in Section IV). As a result, no special requirements beyond Tier 1 protection (maintenance and protection of designated uses, as herein described) are necessary as described in OAC 785:46, Subchapter 13, implementation of the state's antidegradation policy.

The limitations and monitoring requirements set forth in the proposed permit are developed from the State WQS and are protective of those designated uses. Furthermore, the policy sets forth the intent to protect the existing quality of those waters, whose quality exceeds their designated use. The proposed permit requirements are protective of the assimilative capacity of the receiving waters, which is protective of the designated uses of that water.

X. ENDANGERED SPECIES

The effects of EPA's permitting action are considered in the context of the environmental baseline. The environmental baseline is established by the past and present impacts of all Federal, State, or private actions and other human activities in an action area; the anticipated impacts of all proposed Federal projects in an action area that have already undergone formal or early ESA §7 consultation; and the impact of State or private actions that are contemporaneous with the consultation in process (50 CFR §402.02). Hydrostatic test water discharges occur after a pipeline has already been put in place following earth disturbing activities that have had to have received appropriate federal, state, and local authorizations putting the construction of pipeline itself into the environmental baseline. The scope of the evaluation of the effects of the discharge authorized by this permit was therefore limited to the effects related to the authorized discharge.

According to the most recent county listing available at US Fish and Wildlife Service (USFWS), IPAC-Information, Planning, and Conservation System Website <http://ecos.fws.gov/ipac/>, Five endangered or threatened species in Osage and Pawnee Counties may be affected by the project. These species are Least tern (*Sterna antillarum*) and piping plover (*Charadrius melodus*), American burying beetle (*Nicrophorus americanus*), Whooping Crane (*Grus americana*) and Neosho Mucket (*Lampsilis rafinesqueana*).

Enbridge, U.S. Army Corps of Engineers (Corps) and the Bureau of Indian Affairs (BIA) have committed to complete numerous conservation measures in the Biological Assessments (BAs). Because these measures will be followed, the Service concurs with the Corps' and/or BIA's determinations that construction, operation, and maintenance of the Flanagan South Pipeline may affect, but not likely to adversely affect the federal listed species in Osage and Pawnee Counties.

The FW&S completed and released a Biological Opinion (BO) of the Flanagan South (FS) Pipeline Project on July 24, 2013. The U.S. Army Corps of Engineers (Corps) and the Bureau of Indian Affairs (BIA) are proposing to issue permits and easements authorizing the construction of the FS Pipeline. The Action Area for this consultation is the entire 593 mile length of the FS Pipeline, including the permanent right-of-way (ROW), extra temporary work spaces, access roads, pipe yards, aboveground facilities, (e.g. mainline valves and pump stations), contractor yards, and a buffer distance of 3,280 feet around all these areas. The agencies collectively evaluated 18 other federally protected species but determined that the construction, operation and maintenance of the FS Pipeline may affect but not likely to adversely affect these 18 species. The FW &S concurred with the agency determinations based on the numerous mandatory conservation measures proposed by Enbridge, the Corps, and the BIA.

Since a BO has already been issued for the construction, operation and maintenance of the FS Pipeline, this puts the construction of pipeline itself into the environmental baseline. Additionally, the scope of the evaluation of the effects of the discharge authorized by this permit was therefore limited to the effects related to the authorized discharge, EPA has determined that this permit issuance will have "no effect" on listed threatened and endangered species nor will adversely modify designated critical habitat.

The description of the species and its effect on the hydrostatic test discharge is described below.

LEAST TERN (*Sterna antillarum*)

The Least tern populations have declined due to habitat destruction by permanent inundation, destruction by reservoir releases, channelization projects, alterations of Natural River or lake dynamics resulting in vegetational succession of potential nesting sites, and recreational use of potential nesting sites. The interior least tern is known to use reaches of the North Canadian River, South Canadian River, and Red River in Oklahoma (USFWS 2011b). The species also occurs along the Red River in Bryan County, Oklahoma and Fannin County, Texas. Hydrostatic test water will not be withdrawn and discharged to the Arkansas River.

Issuance of this permit is found to have no impact on the habitat of this species, since the discharge is not expected to lead to the destruction of habitat.

PIPING PLOVER (*Charadrius melodus*)

A small plover has wings approximately 117 mm; tail 51 mm; weight 46-64 g (average 55 g); length averages about 17-18 cm. Inland birds have more complete breast band than Atlantic coast birds. The nonbreeding plovers lose the dark bands. In Laguna Madre, Texas, non-breeding home ranges were larger in winter than in fall or spring. The breeding season begins when the adults reach the breeding grounds in mid- to late-April or in mid-May in northern parts of the range. The adult males arrive earliest, select beach habitats, and defend

established territories against other males. When adult females arrive at the breeding grounds several weeks later, the males conduct elaborate courtship rituals including aerial displays of circles and figure eights, whistling song, posturing with spread tail and wings, and rapid drumming of feet. The plovers defend territory during breeding season and at some winter sites. Nesting territory may or may not contain the foraging area. Home range during the breeding season generally is confined to the vicinity of the nest. Plovers are usually found in sandy beaches, especially where scattered grass tufts are present, and sparsely vegetated shores and islands of shallow lakes, ponds, rivers, and impoundments.

Food consists of worms, fly larvae, beetles, crustaceans, mollusks, and other invertebrates. The plovers prefer open shoreline areas, and vegetated beaches are avoided. It also eats various small invertebrates. It obtains food from surface of substrate, or occasionally probes into sand or mud.

Destruction of habitat, disturbance and increased predation rates due to elevated predator densities in piping plover habitat are described as the main reasons for this species' endangered status and continue to be the primary threats to its recovery. The remaining populations, whether on the breeding or wintering grounds, mostly inhabit public or undeveloped beaches. These populations are vulnerable to predation and disturbance.

Research of available material finds that the primary cause for the population decreases leading to threatened or endangered status for these species is destruction of habitat. Issuance of this permit is found to have no impact on the habitat of this species, since the discharge is not expected to lead to the destruction of habitat.

AMERICAN BURYING BEETLE (*Nicrophorus americanus*)

American burying beetle (ABB) is a shiny black with hardened protective covers that meet in a straight line down the back. It has large orange-red marking on the raised portion of the pronotum, a feature shared with no other members of the genus in North America. The American burying beetle also has orange-red frons (a mustache-like feature) and a single orange-red marking on the top of the head (triangular in females and rectangular in males). Antennae are large, with notable orange clubs at the tips.

American burying beetle is nocturnal (active at night), lives for only one year, and typically reproduces only once. During the winter months when temperatures are below 60°F (15°C) American burying beetles bury themselves in the soil. When temperatures are above 60°F (15°C) they emerge from the soil and begin the mating and reproduction process.

The American burying beetle has been found in various types of habitat including oak-pine woodlands, open fields, oak-hickory forest, open grasslands, and edge habitat. Research indicates that American burying beetles are feeding habitat generalists. Data is lacking pertaining to American burying beetle reproductive habitat requirements, but species experts assume that they are more restrictive in selecting their reproductive habitat than feeding habitat.

The cause for the decline of this species could be a result of habitat fragmentation, habitat loss, carcass limitation, pesticides, disease, light pollution, or a combination of these factors. Species experts believe the primary causes of decline are habitat loss and fragmentation. The

construction of the Project may cause the loss and disturbance of habitat used by the American burying beetle.

Based on the BO, the ABB population within the action area is likely to be small and not representative of that which is considered most critical to ABB recovery. Analysis indicates that the proposed project would have a negative effect on the ABB, but it will not appreciably reduce its survival and recovery.

Since a BO has already been issued for the construction, operation and maintenance of the FS Pipeline and the proposed permit is for a hydrostatic test discharge, EPA has determined that the issuance of this permit is found to have no impact on the habitat of this species, since the discharge is not expected to lead to the destruction of habitat.

WHOOING CRANE (*Grus americana*)

The tallest bird in North America, the Whooping Crane breeds in the wetlands of Wood Buffalo National Park in northern Canada and spends the winter on the Texas coast at Arkansas National Wildlife Refuge near Rockport. Cranes live in family groups made up of the parents and 1 or 2 offspring. In the spring, Whooping Cranes perform courtship displays (loud calling, wing flapping, and leaps in the air) as they get ready to migrate to their breeding grounds. Whooping Cranes are endangered because much of their wetland habitat has been drained for farmland and pasture. Whooping Cranes are nearly 5 feet tall. They eat Blue crabs, clams, frogs, minnows, rodents, small birds, and berries. They are found in large wetland areas. Cranes are considered sacred in many parts of the world. In China, they are a symbol of long life.

The overall decline of whooping cranes has been attributed to habitat loss, direct disturbance and hunting by humans, predation, disease, and collisions with manmade features (CWS and USFWS 2005). The main threat to whooping cranes in the wild is the potential of a hurricane or contaminant spill destroying their wintering habitat on the Texas coast. Collisions with power lines and fences are known hazards to wild whooping cranes. The primary threats to captive birds are disease and parasites. Based on information available, EPA believes that this permit issuance will not affect the whooping crane.

NEOSHO MUCKET (*Lampsilis rafinesqueana*)

The Neosho Mucket is a freshwater mussel found in rivers and streams in Arkansas, Kansas, Missouri, and Oklahoma. Neosho Mucket (clam) is kidney-shaped, dark brown in color and approximately four to six inches in length. It feeds by filtering suspended alga and microscopic organisms out of the water.

The Neosho Mucket is found in stable gravel and finer sediment in near-shore and backwater portions of small rivers. Like all freshwater mussels, it is a filter feeder and must have a permanent source of flowing water surrounding it.

Currently within Oklahoma, the Neosho Mucket is found in the Illinois River upstream from Tenkiller Reservoir, and also may occur in stable portions of the Illinois River's larger tributaries - the Barren Fork, Caney Creek and Flint Creek. Small populations may occur in the upper reaches of the Verdigris River and the upper reaches of the Neosho River near the Kansas state

line. Populations also occur in a few isolated river systems in southeastern Kansas, southwestern Missouri and northwestern Arkansas. Historically, the Neosho Mucket occurred in the Oklahoma portions of the Verdigris, Caney, Neosho, Spring and Grand Rivers, as well as the lower portion of the Illinois River.

The reasons for its historic decline are unclear but past pesticide and water pollution (before these were regulated) probably played a large role. The Neosho Mucket is still affected by past and potential future reservoir construction. Reservoirs alter the habitat by creating deeper water conditions, changing water flow and allowing sediment to be deposited over gravel beds where the mussels live. Based on information available, EPA believes that this permit issuance will not affect the Neosho Mucket.

The proposed issuance contains controls to limit the quantity of pollutants which are discharged. The discharge water will not be treated with biocides or other additives. The proposed permit has limits for Oil & Grease, Total Suspended Solids, flow, turbidity and pH. The proposed permit is written to include limitations and monitoring requirements on those parameters as conditions in permit.

Operators have an independent ESA obligation to ensure that any of their activities do not result in prohibited “take” of listed species. Section 9 of the ESA prohibits any person from “taking” a listed species, e.g., harassing or harming it, with limited exceptions. See ESA Sec 9; 16 U.S.C. §1538. This prohibition generally applies to “any person,” including private individuals, businesses and government entities. Operators who intend to undertake construction activities in areas that harbor endangered and threatened species may seek protection from potential “take” liability under ESA section 9 either by obtaining an ESA section 10 permit or by requesting coverage under an individual permit and participating in the section 7 consultation process with the appropriate FWS or NMFS office. Operators unsure of what is needed for such liability protection should confer with the appropriate Services.

XI. CERTIFICATION

The permit is in the process of certification by the Oklahoma Department of Environmental quality following regulations promulgated at 40 CFR 124.53. A draft permit and draft public notice will be sent to the District Engineer, Corps of Engineers, to the Regional Director of the U.S. Fish and Wildlife Service and to the National Marine Fisheries Service prior to the publication of that notice.

XII. FINAL DETERMINATION

The public notice describes the procedures for the formulation of final determinations.

XIII. ADMINISTRATIVE RECORD

The following information was used to develop the proposed permit:

A. APPLICATION

NPDES Application for Permit to Discharge, Form 1 & 2D, Permit Application Package, dated January 17, 2013, and received on January 22, 2013.

Resubmission of NPDES Application for Permit to Discharge, Form 1 & 2D, Permit Application Package, dated July 25, 2013, and received on July 26, 2013.

A. REFERENCES

"Implementation of the Oklahoma Water Quality Standards," Oklahoma Water Resources Board, Title 785, Chapter 46, effective as of May 27, 2008

Oklahoma Water Quality Standards, (Title 785, Chapter 45) promulgated by the Oklahoma Water Resources Board including all amendments which are effective as of May 27, 2008.

http://www.deq.state.ok.us/wqdnew/305b_303d/2010/2010%20Oklahoma%20Integrated%20Report_complete.pdf

http://www.deq.state.ok.us/wqdnew/305b_303d/2010/2010%20Appendix%20C%20-%20303d.pdf

http://www.owrb.ok.gov/util/rules/pdf_rul/Chap45.pdf

<http://ecos.fws.gov/ipac/>

<http://www.fws.gov/southwest/es/oklahoma/beetle1.htm>

<http://www.wildlifedepartment.com/wildlifemgmt/endangered/mucket.htm>

Biological Opinion issued by the Fish and Wildlife Service, dated July 24, 2013.

B. 40 CFR CITATIONS

Sections 122, 124, 125, 133, and 136

C. MISCELLANEOUS CORRESPONDENCE

Letter from Dorothy Brown, EPA, to Mr. Adam Vehe, Senior Environmental Analyst, Enbridge Energy Company, dated January 17, 2013, informing applicant that the new NPDES permit received January 22, 2013 is administratively complete.

E-mails from Abby Korte, URS Consultant, to Maria Okpala, EPA, dated 1/17/13, 1/18/13, 1/21/13, 2/5/13, and 7/25/13, receiving additional facility information.