

NPDES PERMIT NO. OK0044857
STATEMENT OF BASIS

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

APPLICANT

Sterling III Pipeline Project
100 West Fifth Street, MD 5-4
Tulsa, OK 74103

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 6, 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 2, 2013.

RECEIVING WATER – BASIN

Various

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

The facility is a new discharger.

II. APPLICANT ACTIVITY

The facility is planning to construct the Sterling III Pipeline Project. This project consists of approximately 550 miles of 16-inch diameter pipeline that will transport natural gas liquids beginning near Medford, Oklahoma and terminating at processing facilities in Mont Belvieu, Texas.

Under the SIC code 4619, the applicant plans to transmit natural gas liquids. The proposed permit is for the hydrostatic testing of a new 16-inch diameter pipeline.

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° 31' 22.6" N 97° 35' 49.7" W	Garfield	2.88	Red Rock Creek	OK621200050010
002	35° 25' 48.4" N 97° 3' 51.0" W	Pottawatomie	2.88	North Canadian River	OK520510000110
003	35° 5' 29.9" N 96° 54' 12.1" W	Pottawatomie	2.88	Salt Creek	OK520800030010
004	34° 43' 32.9" N 96° 44' 5.7" W	Pontotoc	2.88	Unnamed Trib. to Sandy Creek Reservoir Site #2	Unlisted
005	33° 46' 55.4" N 96° 26' 52.3" W	Bryan	2.88	Red River	OK410700000010

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. Therefore, no effluent data are available. However, the proposed discharges from each outfall are described as follows:

Discharges from Outfall 001 are to Red Rock Creek in waterbody identification number OK621200050010. The designated uses for waterbody identification number, OK621200050010 are Warm Water Aquatic Community (WWAC), and Primary Body Contact Recreation (PBCR).

Discharges from Outfall 002 are to North Canadian River in waterbody identification number, OK520510000110. The designated uses for waterbody identification number, OK520510000110 are emergency water supply, Warm Water Aquatic Community (WWAC), and Primary Body Contact Recreation (PBCR).

Discharges from Outfall 003 are to Salt Creek in waterbody identification number, OK520800030010. The designated uses for waterbody identification number, OK520800030010 are Public and Private Water Supply, Warm Water Aquatic community, and primary body contact recreation.

Discharges from Outfall 004 are to Unnamed Tributary to Sandy Creek Reservoir Site #2. Outfall 004 is an unlisted stream segment. According to the OAC 785:45-5-3, beneficial uses of an unlisted stream segment are agriculture, aesthetics, fish & wildlife propagation (warm water aquatic community subcategory), and primary body contact recreation

Discharges from Outfall 005 are to the Red River in waterbody identification number, OK410700000010. The designated uses for waterbody identification number, OK410700000010 are Warm Water Aquatic community, Public and Private Water Supply, and primary body contact recreation.

VI. TENTATIVE DETERMINATION

The EPA has made a tentative determination, after consultation with the ODEQ to issue this permit for 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 application to Discharge (Form 1 & 2D) was received March 27, 2013. Additional permit application information dated June 21, 2013, was received on June 24, 2013.

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 CFR 122.44 (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 30 mg/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 July 1, 2011, 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 draw water from various Creek and Rivers to conduct its hydrostatic testing. 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.

For Outfalls 001 to 003, and 005, the hydrostatic test water is to be discharged back into the same water body from which it was taken. As a result, intake credits are authorized for Outfalls 001 to 003, and 005, to account for in-situ waterbody conditions for only TSS. Water Source for Outfall 004 will be from the Red River and be discharged into unnamed tributary to Sandy Creek Reservoir Site #2. Intake credit is not authorized for Outfall 004.

Although Outfalls 001 to 003 are to be discharged into the same waterbody as the source water, they are listed for: Outfall 001- turbidity, Escherichia coli, Enterococcus; Outfall 002- Enterococcus, Lead, pH, and turbidity; Outfall 003- Enterococcus, TDS, Sedimentation/siltation, Escherichia coli, Chloride, and Fishes Bioassessments in the 2010 303 (d) list of impaired waters. Intake credit is authorized for only Outfall 005 because Red River is not listed in the 2010 303 (d) list of impaired waters.

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 ALL 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, Red Rock Creek is listed for turbidity, Escherichia coli, Enterococcus; Outfall 002, North Canadian River is listed for Enterococcus, Lead, pH, and turbidity; Outfall 003, Salt Creek is listed for Enterococcus, TDS, Sedimentation/siltation, Escherichia coli, Chloride, and Fishes Bioassessments in the 2010 303 (d) list of impaired waters. Outfall 005, Red River is not listed in the 2010 edition of the 303(d) list of impaired waters. The proposed permit is limited for turbidity end-of-pipe of 50 NTUs for those waterbodies that are listed for turbidity. 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/>, a total of five species are listed as endangered or threatened in Bryan, Garfield, Pontotoc, and Pottawatomie Counties. They are least tern (*Sterna antillarum*), piping plover (*Charadrius melodus*), American burying beetle (*Nicrophorus americanus*), whooping crane (*Grus americana*) and Arkansas River shiner (*Notropis girardi*). Least tern (*Sterna antillarum*) and piping plover (*Charadrius melodus*) are listed in all the Counties. Based on the following discussion, EPA has determined that the issuance of this permit will not affect the listed species and will have no effect on the remaining federally listed threatened or endangered species.

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. Issuance of this permit is found to have no impact on the habitat of this species, in that the discharges will not occur within suitable habitat for the Least Tern

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 non-breeding 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 the permit will have no effect on this species, in that the discharge will not modify sandy shoreline habitat utilized by this species.

AMERICAN BURYING BEETLE (*Nicrophorus americanus*)

American burying beetle 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.

Species –specific surveys were conducted for the American burying beetle in accordance with the USFWS survey protocols in 2012 and 2013. No American burying beetles were documented along the proposed route. According to the USFWS’s guidance for this species, <http://www.fws.gov/southwest/es/oklahoma/Documents/ABB/Step-wise%20guidance%20for%20ABB%202013.PDF>, if surveys indicate that presence of American burying beetles is negative, the project can move forward without additional consideration of American burying beetle. Further, ground disturbance within the range of the American burying beetle has resulted in the area no longer providing potentially suitable habitat for this species. Therefore, issuance of the permit will have no impact on this species, in that the discharges will not occur within potentially suitable habitat for this species.

ARKANSAS RIVER SHINER (*Notropis girardi*)

Arkansas River Shiner is a small, straw-colored with silvery sides. It has scattered brown flecks which occur on its sides behind the head. The Arkansas River Shiner formerly occurred throughout the Arkansas River main stem and in that river’s major right bank tributary basins. The fish is extremely dependent upon flood flows from June through August to successfully spawn. Declining streamflows have now restricted its probable range in Kansas to a few stream

reaches within the Lower Arkansas, Salt Fork Arkansas and Cimarron basins. The fish occurs in the upper reaches of the Cimarron River only during high streamflow events.

Arkansas River Shiner is a producer of semi-buoyant eggs, and may be particularly susceptible to modification of natural flow patterns. The decline of *Notropis girardi* in the upper mainstream Arkansas River could be attributed to anthropogenic reduction of high summer flows apparently needed to stimulate reproduction. Also the species decline could be attributed to reduction of the species' range and numbers due to habitat destruction and modification, channelization, construction of impoundments, stream dewatering, diversion of surface water, groundwater pumping, and water quality degradation. Issuance of the permit will have no impact on this species, in that the discharges will not occur in waterbodies where this species is known to occur.

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. The discharges will not occur within suitable habitat for this species. Based on information available, EPA believes that this permit issuance will have no effect on the Whooping crane or will it adversely modify designated critical habitats.

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 1, was received March 27, 2013. Additional permit application information dated June 21 2013, and received on June 24, 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 July 1, 2011.

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

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

<http://www.kdwp.state.ks.us/news/Other-Services/Threatened-and-Endangered-Species/Threatened-and-Endangered-Species/Species-Information/ARKANSAS-RIVER-SHINER>

<http://www.fws.gov/southwest/es/oklahoma/Documents/ABB/Step-wise%20guidance%20for%20ABB%202013.PDF>

B. 40 CFR CITATIONS

Sections 122, 124, 125, 133, and 136

C. MISCELLANEOUS CORRESPONDENCE

Letter from Dorothy Brown, EPA, to Ms. Loretta Earnest, Manager- Environment, Large Construction Projects, Oneok Sterling III Pipeline, L.L.C., dated July 11, 2013, informing applicant that its NPDES permit application received March 27, 2013, is administratively complete.

Email from Bart Jensen, Natural Resource Group, LLC to Maria Okpala, EPA, dated June 21, 2013 on the facility's SIC Code.

Letter from Loretta Earnest, Manager – Environment, Large Construction Projects, Oneok Sterling III Pipeline, L.L.C., to Maria Okpala, EPA, dated June 21, 2013, receiving additional permit application information.

Email from Robert Kirkland, EPA, to Maria Okpala, EPA, dated July 9, 2013, on critical conditions information.