

**NPDES PERMIT NO. TX0133997**  
**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 15, 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 9, 2013.

**RECEIVING WATER – BASIN**

Trinity River Basin, Neches River Basin

**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 <sub>5</sub>	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
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
GPD	Gallon per day
HT	Hydrostatic Testing
IP	Procedures to Implement the Texas Surface Water Quality Standards
µg/l	Micrograms per liter (one part per billion)
mg/l	Milligrams per liter (one part per million)
MGD	Million gallons per day
MSGP	Multi-Sector General Permit
NPDES	National Pollutant Discharge Elimination System
MQL	Minimum quantification level
O&G	Oil and grease
RRC	Railroad Commission of Texas
RP	Reasonable potential
SIC	Standard industrial classification
s.u.	Standard units (for parameter pH)
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
TDS	Total dissolved solids
TMDL	Total maximum daily load
TOC	Total Organic Carbon
TRC	Total residual chlorine
TSS	Total suspended solids
TSWQS	Texas Surface Water Quality Standards
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 LOCATION and 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	Segment #
001	32° 34' 44.4" N 95° 58' 44.5" W	Van Zandt	2.88	Unnamed Tributary to Caney Creek	0818
002	31° 31' 59.3" N 95° 27' 5.3" W	Houston	2.88	Unnamed Pond	0604
003	31° 31' 0.6" N 95° 26' 28.1" W	Houston	2.88	Grapeland Lake	0604
004	31° 2' 58.9" N 95° 14' 46.3" W	Trinity	2.88	Unnamed Tributary to Caney Creek	0803
005	31° 3' 15.5" N 95° 14' 13.3" W	Trinity	2.88	Unnamed Tributary to Caney Creek	0803
006	30° 34' 36.4" N 94° 57' 59.9" W	Polk/San Jacinto	2.88	Trinity River	0802
007	29° 57' 42.1" N 94° 53' 31.1" W	Liberty	2.88	Dayton Canal	N/A

## IV. 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 unnamed Tributary to Caney Creek, which flows into Cedar Creek, thence to Cedar Creek Reservoir, Segment No. 0818. The designated uses for Segment No. 0818, Cedar Creek Reservoir in Trinity River Basin are primary contact recreation, high aquatic life and public water supply.

Discharges from Outfalls 002 and 003 are to unnamed pond and Grapeland Lake respectively, from which the water flows into San Pedro Creek before discharging into the Neches River below Lake Palestine, Segment 0604. The designated uses for Segment 0604, Neches River

below Lake Palestine in the Neches River Basin are primary contact recreation, high aquatic life and public water supply.

Discharges from Outfalls 004 and 005 are to unnamed tributaries to Caney Creek, thence to Lake Livingston, Segment 0803 in the Trinity River Basin. The designated uses of Lake Livingston, Segment No. 0803 are primary contact recreation, high aquatic life and public water supply.

Discharges from Outfalls 006 are to the Trinity River below Lake Livingston, Segment 0802 in the Trinity River Basin. The designated uses for Segment 0802 are primary contact recreation, high aquatic life and public water supply.

Discharges from Outfall 007 are to Dayton Canal. Email from Mr. Bart Jensen, dated August 12, 2013, clarified that the hydrostatic test water discharges will remain in the canal and will not reach Segment 0902 or 0801B. As a result, no further requirement is required for Outfall 007.

## **V. TENTATIVE DETERMINATION**

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

## **VI. DRAFT PERMIT RATIONALE AND PROPOSED PERMIT CONDITIONS**

### **A. OVERVIEW of TECHNOLOGY-BASED VERSUS WATER QUALITY STANDARDS-BASED EFFLUENT LIMITATIONS AND CONDITION FOR PERMIT ISSUANCE**

Regulations contained in 40 CFR §122.44 NPDES permit limits are developed that meet the more stringent of either technology-based effluent limitation guidelines, numerical and/or narrative water quality standard-based effluent limits, on best professional judgment (BPJ) in the absence of guidelines, and/or requirements pursuant to 40 CFR 122.44(d), whichever are more stringent.

### **B. 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 24, 2013, was received on June 27, 2013.

### **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 ELGs where applicable, on BPJ in the absence of guidelines, or on a combination of the two. In the absence of promulgated guidelines for the discharge, permit conditions may be established using BPJ procedures.

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. 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. Concentration limits will be protective of the stream uses.

#### D. WATER QUALITY BASED LIMITATIONS

##### 1. General Comments

Water quality based requirements are necessary where effluent limits more stringent than technology-based limits are necessary to maintain or achieve federal or state water quality limits. Under Section 301(b)(1)(C) of the CWA, discharges are subject to effluent limitations based on federal or state WQS. Effluent limitations and/or conditions established in the draft permit are in compliance with applicable State WQS and applicable State water quality management plans to assure that surface WQS of the receiving waters are protected and maintained, or attained.

The general criteria and numerical criteria which make up the stream standards are provided in the 2000 EPA-approved Texas Water Quality Standards, Texas Administrative Code (TAC), 30 TAC Sections 307.1 - 307.9, effective August 24, 2012.

##### 2. Reasonable Potential- Procedures

EPA develops draft permits to comply with State WQS, and for consistency, attempts to follow the IP where appropriate. However, EPA is bound by the State's WQS, not State guidance, including the IP, 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. Waste load allocations (WLA's) are calculated using estimated effluent dilutions, criteria outlined in the TWQS, and partitioning coefficients for metals (when appropriate and designated in the implementation procedures). The WLA is the end-of-pipe effluent concentrations that can be discharged and still meet instream criteria after mixing with the receiving stream. From the WLA, a long term average (LTA) is calculated, for both chronic and acute toxicity, using a log normal probability distribution, a given coefficient of variation (0.6), and either a 90th or a 99th percentile confidence level. The 90th percentile confidence level is for discharges to rivers, freshwater streams and narrow tidal rivers with upstream flow data, and the 99th percentile confidence level is for the remainder of cases. For facilities that discharge into receiving streams that have human health standards, a separate LTA will be calculated. The implementation procedures for determining the human health LTA use a 99th percentile confidence level, along with a given coefficient of variation (0.6). The lowest of the calculated LTA; acute, chronic and/or human health, is used to calculate the daily average and daily maximum permit limits.

Procedures found in the IP for determining significant potential are to compare the reported analytical data either from the DMR history and/or the application information, against percentages of the calculated daily average water quality-based effluent limitation. If the average of the effluent data equals or exceeds 70% but is less than 85% of the calculated daily average limit, monitoring for the toxic pollutant will usually be included as a condition in the permit. If the average of the effluent data is equal to or greater than 85% of the calculated daily average limit, the permit will generally contain effluent limits for the toxic pollutant. The permit may specify a compliance period to achieve this limit if necessary.

Procedures found in the IP require review of the immediate receiving stream and effected downstream receiving waters. Further, if the discharge reaches a perennial stream or an intermittent stream with perennial pools within three-miles, chronic toxicity criteria apply at that confluence.

For Outfalls 002, 003, and 006, the hydrostatic test water will be drawn and discharged back into the same water body. As a result, intake credits are authorized for Outfalls 002, 003, and 006, to account for in-situ waterbody conditions for only TSS. Outfalls 001, 004, and 005 will be drawn from Pond/Lake/River and be discharged into another waterbody. Intake credits are not allowed for Outfalls 001, 004, and 005. For Outfall 007, hydrostatic test water will be drawn and discharged back into Dayton Canal, which is not a water of the U. S. As a result, no further requirement is required for Outfall 007.

#### 5. Permit-Action - Water Quality-Based Limits

Regulations promulgated at 40 CFR §122.44(d) require limits in addition to, or more stringent than effluent limitation guidelines (technology based). State WQS that are more stringent than effluent limitation guidelines are as follows:

##### 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. TAC 307.10 states, "The pH criteria are listed as minimum and maximum values expressed in standard units at any site within the segment."

Wastewater discharges from the facility will flow into various receiving waterbody within various segment. pH shall be limited to the criteria listed for each Segment. For Outfalls 001 through 003, pH shall be limited to 6.0 to 8.5. For Outfalls 004 through 006, pH shall be limited to 6.5 – 9.

##### c. Narrative Limitations

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.

The following narrative limitations in the proposed permit represent protection of water quality for all Outfalls.

“The effluent shall contain no visible film of oil or globules of grease on the surface or coat the banks or bottoms of the watercourse.”

##### d. Toxics

The CWA 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 criteria, the permit must contain an effluent limit for that pollutant.

The applicant proposes to draw water from various Ponds, Rivers, Lake, and Canal 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.

#### Solids and Foam

The prohibition of the discharge of floating solids or visible foam in other than trace amounts is proposed in the draft permit. In addition, there shall be no discharge of visible films of oil, globules of oil, grease or solids in or on the water, or coatings on stream banks.

#### E. MONITORING FREQUENCY FOR LIMITED PARAMETERS

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 facility.

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

#### 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.

### VII. FACILITY OPERATIONAL PRACTICES

#### A. WASTE WATER POLLUTION PREVENTION REQUIREMENTS

The permittee shall institute programs directed towards pollution prevention. The permittee will institute programs to improve the operating efficiency and extend the useful life of the treatment system.

#### B. OPERATION AND REPORTING

The permittee must submit Discharge Monitoring Report's (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.

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

According to the 2012 State of Texas 303(d) List for Assessed River/Stream Reaches requiring Total Maximum Daily Loads (TMDLs), the receiving stream for Outfall 001, Cedar Creek Reservoir, Segment No. 0818 is listed for pH. This impairment is under TCEQ's category 5c, which implies that additional data or information will be collected and/or evaluated for one or more parameters before a management strategy is selected.

The receiving stream for Outfall 002 and 003, San Pedro Creek before discharging into the Neches River below Lake Palestine, Segment 0604 is listed for mercury in edible fish tissue, under TCEQ's category 5c.

Outfalls 004 and 005 discharge to an unnamed tributary to Caney Creek which discharges into Lake Livingston, Water Body Segment No 803 is listed for pH under TCEQ's category 5c; and sulfate, under TCEQ's category 5b. Category 5b implies that a review of the standards for one or more parameters will be conducted before a management strategy is selected, including the possible revision to the water quality standards.

Outfall 006 discharges to Trinity River, Water Body Segment No. 0802, which is not listed in 2012 State of Texas 303(d) List for Assessed River/Stream Reaches Requiring Total Maximum Daily Loads (TMDLs).

Outfall 007 discharges to Dayton Canal, does not discharge into Waters of the U.S. based on an email dated August 9, 2013, from the facility representative stating that the Right-of-Way group visited the land owner and confirmed that the discharge will remain in the Canal. As a result, no further requirement is required for this Outfall.

The cumulative listed pollutants in all the segments above are pH, sulfate, and mercury in edible tissue. In light of the nature of the system, the discharger is not likely to contribute to sulfate and mercury in edible tissue. The discharges for Outfalls 001, 004 and 005 shall be limited to the criteria for each segment. The discharge water will not be treated with biocides or other additives. Therefore, no additional requirements beyond the previously described technology-based or water quality-based effluent limitations and monitoring requirements, are established in the proposed permit.

### **IX. ANTIDegradation**

The Texas Commission on Environmental Quality, Texas Surface Water Quality Standards, Antidegradation, Title 30, Part 1, Chapter 307, Rule §307.5 sets forth the requirements to protect designated uses through implementation of the State WQS. 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 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), Southwest Region 2 website, [http://www.fws.gov/southwest/es/ES\\_ListSpecies.cfm](http://www.fws.gov/southwest/es/ES_ListSpecies.cfm), Texas Prairie dawn flower (*Hymenoxys texana*) and Red-Cockaded Woodpecker (*Picoides borealis*) are the only endangered species listed in Harris County; Red-Cockaded Woodpecker (*Picoides borealis*) is the only species listed as threatened or endangered in Liberty, San Jacinto and Houston County; Red-Cockaded Woodpecker (*Picoides borealis*) and Texas Trailing phlox (*Phlox nivalis ssp.texensis*) are the only species listed as endangered in Polk County and no species was found in Van Zandt County.

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

**TEXAS PRAIRIE DAWN FLOWER (*Hymenoxys texana*):**

Texas Prairie Dawn is a delicate annual one to six inches tall flower. Its yellow flower heads, less than 1/2 inch in diameter, stand out brightly in the patches of dull gray barren sand in which the species is normally found.

Texas Prairie Dawn flowers in March - early April; disappear by mid-summer. It is known from about 50 sites, many within Addicks and Barker Reservoirs in western Harris County. However, habitat destruction by urban development continues to threaten this tiny plant. It grows in sparsely vegetated areas ("slick spots") at the base of mima mounds ("pimple mounds") or other nearly barren areas on slightly saline soils in coastal prairie grasslands. This wildflower is found in Fort Bend and Harris counties, southeast Texas. This species occurs within and on the outskirts of Houston.

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.

**RED-COCKADED WOODPECKER (*Picoides Borealis*)**

Red-cockaded woodpecker is about 8.5 inches long, with a wingspan of about 14 inches, and a weight of about 1.5 ounces. Its back is barred with black and white horizontal stripes. The Red-cockaded Woodpecker's most distinguishing feature is a black cap and nape that encircle large white cheek patches. The Red-cockaded Woodpecker feeds primarily on ants, beetles, cockroaches, caterpillars, wood-boring insects, and spiders, and occasionally fruit and berries. Red-cockaded Woodpeckers are a territorial, non-migratory, cooperative breeding species, frequently having the same mate for several years. The nesting season runs from April to June. The Red-cockaded Woodpecker makes its home in mature pine forests.

The Red-cockaded Woodpecker plays a vital role in the intricate web of life of the southern pine forests. A number of other birds and small mammals use the cavities excavated by Red-cockaded Woodpeckers, such as chickadees, bluebirds, titmice, and several other woodpecker species, including the Downy, Hairy, and Red-bellied Woodpeckers. Larger woodpeckers may take over a Red-cockaded Woodpecker cavity, sometimes enlarging the hole enough to allow Eastern Screech Owls, Wood Ducks, and even Raccoons to move in later. Its preference for longleaf pine and the destruction of that habitat have resulted in the woodpecker becoming an endangered species. The specificity of the bird's breeding habitat makes it extremely vulnerable to habitat loss. Red heart fungus was once common in trees at least 70 years old, but most pines are cut before they reach that age, resulting in a shortage of nesting sites. Fire prevention and suppression policies have also negatively impacted the species, allowing underbrush to clog the open forests it prefers. Consequently, conservation efforts have focused on the installation of artificial cavities for nesting and controlled burns.

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.

### **TEXAS TRAILING PHLOX (*Phlox nivalis ssp.texensis*)**

Texas trailing phlox is an evergreen perennial herb or shrub. Plants often form clumps, but not mats. The stems tend to spread along the ground, with only the upper one to six inches of the stem erect. Leaves are about 5/8 inch long, needle-like, and densely packed on the stem. Young stems produce the flowers, are more or less erect, and have leaves that are longer and lighter-green in color. Older stems have smaller leaves, darker-green in color, and typically lie directly on the surface of the ground. The flowers are pink to magenta in color. Flowers have five petals, each about 3/8 inch in length. Texas trailing phlox grows on sandy soils in fire-maintained open pine woodlands. Texas trailing phlox occurs in fewer than 20 populations in Hardin, Polk, and Tyler counties.

Flowering occurs during March through May. Texas trailing phlox plants are evergreen, growing whenever temperature and moisture conditions are favorable. New growth is most often seen during periods of highest rainfall, in early spring and early fall. Butterflies are the most likely pollinators. Individual plants may produce 3 to 50 or more flowers, depending on the size of the plant. A plant may bloom over a period of one to 5 weeks.

Texas trailing phlox is well-adapted to fire. Although aboveground parts of the plant are destroyed by fire, underground parts are undamaged, and new growth appears within two weeks after a spring burn. If prescribed burning occurs in April, even plants that had flowered before the fire will resprout and flower again in May. Other plant species which grow in association with Texas trailing phlox include longleaf pine, loblolly pine, black hickory, southern red oak, bluejack oak, post oak, flameleaf sumac, yaupon, sassafras, dwarf pawpaw, St. Andrews cross, poison-oak, and American beautyberry.

The main factor in the decline of Texas trailing phlox has been the loss of open, fire-maintained forests, especially longleaf pine. Habitat loss and degradation due to site preparation for pine plantations, land clearing for pasture establishment, exposure to herbicides, and activities associated with development have also contributed to the decline of this species. Recent increases in the number of plants at some study sites indicate that periodic fire is essential to maintain the open pine woodland essential to the survival of this species.

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.

The Environmental Protection Agency has evaluated the potential effects of issuance of this permit modification upon listed endangered or threatened species. After review, EPA has determined that this permit issuance will have “*no effect*” on listed threatened and endangered species nor will adversely modify designated critical habitat. EPA makes this determination based on the following:

1. No pollutants are identified by the permittee-submitted application at levels which might affect species habitat or prey species. Issuance of this permit is found to have no impact on the habitats of these species.
2. Based on information described above, EPA Region 6 has determined that discharges proposed to be authorized by the proposed permit will have no effect on the listed species in the listed Counties.

The standard reopener clause in the permit will allow EPA to reopen the permit and impose additional limitations if it is determined that changes in species or knowledge of the discharge would require different permit conditions.

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**

This permit is in the process of certification by the State agency 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 modified permit:

### **A. APPLICATION**

NPDES Application for Permit to Discharge, Form 1 & 2D, Permit Application received on March 27, 2013. Additional Permit application information received June 27, 2013.

#### B. State of Texas References

The State of Texas Water Quality Inventory, 13th Edition, Publication No. SFR-50, Texas Commission on Environmental Quality, December 1996.

"Procedures to Implement the Texas Surface Water Quality Standards via Permitting," Texas Commission on Environmental Quality, January 2003.

Texas Surface Water Quality Standards, 30 TAC Sections 307.1 - 307.9, August 24, 2012.

#### C. Endangered Species References

<http://www.nature.org/animals/birds/animals/redcockaded.html>

<http://www.nature.org/animals/birds/animals/redcockaded.html>

[http://www.fws.gov/southwest/es/ES\\_ListSpecies.cfm](http://www.fws.gov/southwest/es/ES_ListSpecies.cfm)

<http://www.tpwd.state.tx.us/huntwild/wild/species/trlphlox/>

#### D. 40 CFR CITATIONS

Sections 122, 124, 125, 133, and 136

#### E. MISCELLANEOUS CORRESPONDENCE

Email from Bart Jensen, Natural Resource Group, LLC to Maria Okpala, EPA, dated August 12, 2013, on additional permit application information.

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 24, 2013, receiving additional permit application information.

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