

NPDES PERMIT NO. TX0134040
STATEMENT OF BASIS

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

APPLICANT:

BridgeTex Pipeline Company, L.P.
Colorado City Terminal
One William Center OTC-8
Tulsa, OK 74172

ISSUING OFFICE:

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

PREPARED BY:

Nichole Young
Life Scientist
NPDES Permits & TMDLs Branch (6WQ-PP)
Water Division
Voice: 214-665-6447
Fax: 214-665-2191
Email: young.nichole@epa.gov

DATE PREPARED:

July 29, 2016

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 July 18, 2016.

RECEIVING WATER – BASIN

Unnamed Ditch to Little Sulphur Creek 1412C (Unclassified) to the Colorado River Below Lake J. B. Thomas in Waterbody Segment Code No. 1412 of the Colorado 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 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
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

Under the SIC code 4612 and 4226, the applicant plans to store crude oil products in bulk. The proposed permit is for the discharge of hydrostatic test water.

As described in the application, the facility is located at 2058 County Road 4156 in Hermleigh, Scurry County, Texas.

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° 31' 46.92" N 100° 50' 52.80" W	Scurry	1.44	Colorado River below Lake J.B. Thomas	1412

IV. DISCHARGE DESCRIPTION

The project application is for the discharge of new and/or existing pipeline and tank hydrostatic test water. This is a new facility and no discharge has occurred. The discharge from the facility will entirely be made up of hydrostatic test water and roof flat water from tanks and pipes storing and transporting crude oil. The need to hydrostatically test the equipment is variable and the discharge will be intermittent. Discharge will be in batches. The flow volume during a discharge will be determined by the volume of the tank or pipe the facility is testing at the time. The facility will obtain its source water from a local municipality. The hydrostatic test water will be discharged into Unnamed Creek to Little Sulphur Creek 1412C (Unclassified) to Little Sulphur Creek Segment Code No. 1412C to the Colorado River Below Lake J. B. Thomas in Waterbody Segment Code No. 1412 of the Colorado River Basin .

It is anticipated that the test water will be able to be discharged with no treatment. If it is determined that contamination is present in the source water, it is proposed that the facility will use carbon filtration to treat wastewater. It is proposed that the facility will also adjust the pH of the effluent, if necessary, with the addition of acid. The treatment will occur after a tank or pipe has been tested. .

Discharges from Outfalls 001 are to unnamed creek to Little Sulphur Creek 1412C to Colorado River Below Lake J. B. Thomas in Segment No. 1412 of the Colorado River Basin. The designated uses for Segment No. 1412, Colorado River Below Lake J. B. Thomas are primary contact recreation and high aquatic life

Below are the facility's discharge characteristics as submitted with the NPDES application.

Table 1: Discharge Characteristics for Outfall 001

The table below shows facility's pollutant concentrations contained in the NPDES application.

Parameter	Max Concentration, mg/L unless noted	Average Concentration, mg/L unless noted
Flow, MGD	1.44	
pH, su	6.0-9.0	
TSS	<100	<30
BOD	<30	
Oil & Grease	<15	<10
Ammonia	<1	

V. 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. 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.

C. 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 2014 EPA-approved Texas Water Quality Standards, Texas Administrative Code (TAC), 30 TAC Sections 307.1 - 307.9, effective March 6, 2014.

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 all Outfalls, the hydrostatic test water will be treated municipal water and be discharged into Colorado River Below Lake J. B. Thomas in Segment No. 1412 of the Colorado River Basin. Intake credits are not allowed for all Outfalls, since the source water will be obtained from treated municipal water supply and be discharged into the Colorado River Below Lake J. B. Thomas. Intake credits are not allowed for all Outfalls, since the source water will be obtained from treated municipal water supply and be discharged into Little Sulphur Creek.

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 waterbody segment 1412. pH shall be limited to the criteria listed for this Segment. For Outfall 001, pH shall be limited to 6.5 – 9.0 s.u..

b. Total Residual Chlorine

TRC shall be limited to 0.011 mg/l in Outfall 001 because the source water is from municipal water supply. 19µg/L is EPA's acute chlorine criteria and 11µg/L is EPA's chronic chlorine criteria. Limits must be protective of WQS per 40 CFR 122.4(d) and 122.44(d). Since the acute conditions do not allow dilution; the limit must be met at end-of-pipe but chronic standards do allow dilution, the permit shall use the most stringent WQS for the permit limit.

Critical dilution is 100%.

The effluent TRC concentration after allowing for dilution is: $11\mu\text{g/L} \div 1.0 = 11\mu\text{g/L}$. Since this value is less than the 19µg/L end-of-pipe acute standard, the 11µg/L is more stringent and will be more protective. The draft permit shall establish 11 µg/L limit. However TRC is toxic at measurable amounts, so in addition to the 11 µg/L chemical specific limitation, the narrative limit for TRC shall be "No Measurable." Hence, the effluent shall contain NO MEASURABLE TRC at any time. NO MEASURABLE will be defined as no quantifiable level of TRC as determined by any approved method established in 40 CFR 136 that is greater than the established MQL. The effluent limitation for TRC is the instantaneous maximum and cannot be averaged for reporting purposes. TRC shall be measured within fifteen (15) minutes of sampling. In addition, EPA has established a MQL for TRC at 33µg/l. Values less than 33µg/L can be reported as zero

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 Outfall 001.

“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 a municipal water supply, to conduct its hydrostatic testing. Hydrostatic test water will contact both new and existing tanks and pipelines. The facility may use carbon filtration to treat any contaminated wastewater. In addition to carbon filtration, the facility may also treat the waste wastewater with acid to adjust the pH as needed.

Based on the TCEQ’s implementation procedure, Outfall 001 is MENU 7 (Discharge is to an intermittent water body with perennial pools). The Outfall discharges into an unnamed ditch 0.4 miles upstream of Little Sulphur Creek, an intermittent stream. Little Sulphur Creek flows into Deep Creek. Deep Creek is Texas Segment 1412C (Unclassified) and is a tributary of the Colorado River below Lake J.B. Thomas, Texas Segment 1412.

CRITICAL FLOWS:

No stream gage is present on Little Sulphur Creek. Therefore, USGS Gage 08122000 is used as a reference gage. The Harmonic Mean and 7Q2 Low Flow for the gage are as follows:

Harmonic Mean (HM) = 0.03 cubic feet per second (cfs), 7Q2 = 0.0 cfs,
Contributing Area (CA) = 19.4 Square Miles (sq mi)

Outfall 001 has a CA= 20.0 sq mi and critical flows are calculated in the following way:

HARMONIC MEAN = Gage HM * (Outfall CA/Gage Ca) + Permit HM = $0.03 * 20.0 / 19.4$
= 0.03 Cubic Feet per Second

7Q2 = Gage 7Q2 * (Outfall CA/Gage Ca) + Permit 7Q2 = $0.0 * 20.0 / 19.4$
= 0.0 Cubic Feet per Second.

Chronic toxic criteria apply for 100% at the point of discharge. The discharges did not show potential to violate Texas 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.

Turbidity

Waste discharges must not cause substantial and persistent changes from ambient conditions of turbidity or color.

D. 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 outfall 001, monitoring for flow, TSS, Oil & Grease, TRC, and pH shall be daily by grab sample, when discharging.

E. WHOLE EFFLUENT TOXICITY LIMITATIONS

Biomonitoring is the most direct measure of potential toxicity which incorporates both the effects of synergism of effluent components and receiving stream water quality characteristics. The facility indicated that it is planning to treat wastewater with acid to adjust the pH. Therefore, it appears that the discharge will have a potential for toxicity. Biomonitoring of the effluent is, therefore, required as a condition of this permit to assess potential toxicity.

OUTFALL 001

According to TCEQ implementation procedures, permittees that discharge into intermittent streams with perennial pools will conduct chronic testing. In Section V.C.5.d. above; "Toxics", it was stated that the critical dilution, CD, for the facility is 100%. Based on the nature of the discharge; industrial, the estimated average flow; 1.44 MGD, the nature of the receiving water; intermittent freshwater; the 2012 TCEQ IP directs the WET test to be a 7 day chronic test using chronic test species *Ceriodaphnia dubia* and *Pimephales promelas* at a quarterly frequency for the first year of the permit. If all WET tests pass during the first year, the permittee may request a monitoring frequency reduction for the either or both of the test species for the following 2-5 years of the permit. The invertebrate species (*Ceriodaphnia dubia*) may be reduced to twice per year and the vertebrate species (*Pimephales promelas*) may be reduced to once per year. If any tests fail during that time the frequency will revert back to the once per three months frequency for the remainder of the permit term. Both test species shall resume monitoring at a quarterly frequency on the last day of the permit. The proposed permit requires five (5) dilutions in addition to the control (0% effluent) to be used in the toxicity tests based on a 0.75 dilution series. These additional effluent concentrations shall be 32%, 42%, 56%, 75%, and 100%.

EPA concludes based on the nature of the discharge described as hydrostatic test wastewater, this effluent will not cause or contribute to an exceedance of the State water quality standards. Therefore WET limits will not be established in the proposed permit.

During the period beginning the effective date of the permit and lasting through the expiration date of the permit, the permittee is authorized to discharge from Outfall 001 - the discharge to Unnamed Ditch to Little Sulphur Creek 1412C (Unclassified) to the Colorado River Below Lake J. B. Thomas in Waterbody Segment Code No. 1412 of the Colorado River Basin. Discharges shall be limited and monitored by the permittee as specified below:

<u>EFFLUENT CHARACTERISTIC</u>	<u>DISCHARGE MONITORING</u>	
	<u>30-DAY AVG MINIMUM</u>	<u>7-DAY MINIMUM</u>
Whole Effluent Toxicity Testing (7 Day Static Renewal) <u>1/</u>		
<i>Ceriodaphnia dubia</i>	REPORT	REPORT
<i>Pimephales promelas</i>	REPORT	REPORT

<u>EFFLUENT CHARACTERISTIC</u>	<u>MONITORING REQUIREMENTS</u>	
	<u>FREQUENCY</u>	<u>TYPE</u>
Whole Effluent Toxicity Testing (7 Day Static Renewal) <u>1/</u>		
<i>Ceriodaphnia dubia</i>	1/Quarter	24-Hr. Composite
<i>Pimephales promelas</i>	1/Quarter	24-Hr. Composite

FOOTNOTES

1/ Monitoring and reporting requirements begin on the effective date of this permit. See Part II, Whole Effluent Toxicity Testing Requirements for additional WET monitoring and reporting conditions.

F. FINAL EFFLUENT LIMITATIONS

See the draft permit for limitations.

VI. 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.

Electronic Reporting Rule

The EPA published the electronic reporting rule in the federal register (80 FR 64063) on October 22, 2015. The rule became effective on December 21, 2015. One year after the effective date of the final rule, NPDES regulated entities that are required to submit DMRs (including majors and non-majors, individually permitted facilities and facilities covered by general permits) must do so electronically. All DMRs shall be electronically reported effective December 21, 2016, per 40 CFR 127.16. If you are submitting on paper before December 21, 2016, you must report on the Discharge Monitoring Report (DMR) Form EPA No. 3320-1 in accordance with the "General Instructions" provided on the form. No additional copies are needed if reporting electronically, however when submitting paper form EPA No. 3320-1, the permittee shall submit the original DMR signed and certified as required by Part III.D.11 and all other reports required by Part III.D. to the EPA and other agencies as required. (See Part III.D.IV of the permit.). To submit electronically, access the NetDMR website at www.epa.gov/netdmr and contact the R6NetDMR@epa.gov in-box for further instructions. PA and authorized NPDES programs will begin electronically receiving these DMRs from all DMR filers and start sharing these data with each other.

Sufficiently Sensitive Analytical Methods (SSM)

The permittee must use sufficiently sensitive EPA-approved analytical methods (SSM) (under 40 CFR part 136 or required under 40 CFR chapter I, subchapters N or O) when quantifying the presence of pollutants in a discharge for analyses of pollutants or pollutant parameters under the permit. In case the approved methods are not sufficiently sensitive to the limits, the most SSM with the lowest method detection limit (MDL) must be used as defined under 40 CFR 122.44(i)(1)(iv)(A). If no analytical laboratory is able to perform a test satisfying the SSM in the region, the most SSM with the lowest MDL must be used after adequate demonstrations by the permittee and EPA approval.

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

According to the 2014 State of Texas 303(d) List for Assessed River/Stream Reaches Requiring Total Maximum Daily Loads (TMDLs), the receiving stream for Outfall 001, Colorado River Below Lake J. B. Thomas, is listed as impaired for bacteria. This impairment is under TCEQ's category 5c, which implies that a TMDL is underway, scheduled, or will be scheduled.

In light of the nature of the facility and its' operations, the discharger is not likely to contribute to bacteria. 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.

VIII. 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.

IX. 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, five species are listed as either endangered or threatened. The Black-capped Vireo (*Vireo atricapilla*), Least Tern (*Sterna antillarum*) and Texas Poppy-mallow (*Callirhoe scabriuscula*) are listed as endangered. The Piping Plover (*Charadrius melodus*) and the Red Knot (*Calidris canutus rufa*) are listed as threatened. The description of the species and its effect is described below.

BLACK-CAPPED VIREO (*Vireo atricapilla*):

Black-Capped Vireos nest in Texas during April through July, and spend the winter on the western coast of Mexico. They build a cup-shaped nest in the fork of a branch 2 to 4 feet above the ground. Nests are usually built in shrubs such as shin oak or sumac. Females lay 3-4 eggs, which hatch in 14-17 days. Both parents incubate the eggs and feed the chicks. Their diet consists of insects. Black-capped vireos have a lifespan of 5-6 years. Black-capped Vireos are endangered because the low growing woody cover they need for nesting has been cleared or overgrazed by livestock and deer. Also, range fires, which used to keep the land open and the shrubs growing low to the ground, are not as frequent today as in the days before people settled Texas. Another problem is that brown-headed cowbirds lay their eggs in vireo nests, causing the vireos to abandon their nest.

LEAST TERN (*Sterna antillarum*):

Least terns are the smallest member of the gull and tern family. They are approximately 9" in length. Unlike gulls, terns will dive into the water for small fish. Least Terns arrive at breeding areas from early April to early June, and spend 3 to 5 months on the breeding grounds. Upon arrival, adult terns usually spend 2 to 3 weeks in noisy courtship. Nesting habitat of the Least Tern includes bare or sparsely vegetated sand, shell, and gravel beaches, sandbars, islands, and salt flats associated with rivers and reservoirs. The birds prefer open habitat, and tend to avoid thick vegetation and narrow beaches. Channelization, irrigation, and the construction of reservoirs and pools have contributed to the elimination of much of the tern's natural nesting habitat in the major river systems.

TEXAS POPPY-MALLOW (*Callirhoe scabriuscula*):

The Texas poppy-mallow has deep red to purple cup-shaped flowers. The leaves have broad, irregularly-shaped lobes. It grows to a height of 2 1/2 feet or taller. The poppy-mallow usually blooms from May to June and grows only in wind-blown, river-deposited deep sands near the upper Colorado River. It is endangered because of habitat loss due to farming, pasture planting, sand mining, and urban development.

PIPING PLOVER (*Charadrius melodus*)

The piping plover is a small shore bird, about 7 1/4 inches long with a 15 inch wingspan. These shorebirds live on sandy beaches and lakeshores. Gulf Coast beaches from Florida to Mexico, and Atlantic coast beaches from Florida to North Carolina provide winter homes for plovers. Habitat alteration and destruction are the primary causes for the decline of the Piping Plover. Loss of sandy beaches and lakeshores due to recreational, residential, and commercial development has reduced available habitat on the Great Lakes, Atlantic Coast, and the Gulf of Mexico. Winter habitats along the Gulf coast are threatened by industrial and urban expansion and maintenance activities for commercial waterways. Pollution from spills of petrochemical products and other hazardous materials is also a concern.

RED KNOT (*Calidris canutus rufa*)

Length is 25-28 cm. Adults in spring are finely mottled with grays, black and light ochre, running into stripes on crown; throat, breast and sides of head cinnamon-brown; dark gray line through eye; abdomen and undertail coverts white; uppertail coverts white, barred with black. Red knots migrate long distances in flocks northward through the contiguous United States mainly April-June, southward July-October. A small plump-bodied, short-necked shorebird that in breeding plumage, typically held from May through August, is a distinctive and unique pottery orange color. The Red Knot prefers the shoreline of coast and bays and also uses mudflats during rare inland encounters.

The Environmental Protection Agency has evaluated the potential effects of issuance of this permit upon listed endangered or threatened species. After review, EPA has determined that this issuance of this permit 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. There is no designated critical habitat in the area of the facility.
3. 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 Scurry County.

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.

X. HISTORICAL and ARCHEOLOGICAL PRESERVATION CONSIDERATIONS

In a letter dated January 4, 2016, the permittee stated that it conducted a probability assessment for prehistoric archeological sites and found that there was a low potential for historic era standing structures or associated intact cultural deposits within the boundaries of the project area. The letter was sent to the Texas Historical Commission. As a result, the issuance of the permit should not have any impact on historical and/or archeological sites.

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 permit:

A. APPLICATION

NPDES Application for Permit to Discharge, Form 1 & 2E, Permit Application received on June 10, 2016.

B. State of Texas References

2014 Texas Integrated Report of Surface Water Quality, Texas Commission on Environmental Quality, November 19, 2015.

"Procedures to Implement the Texas Surface Water Quality Standards via Permitting," Texas Commission on Environmental Quality, June 2010.

2014 Texas Surface Water Quality Standards, 30 TAC Sections 307.1 - 307.9, effective March 6, 2014.

C. Endangered Species References

http://www.fws.gov/southwest/es/ES_ListSpecies.cfm

D. 40 CFR CITATIONS

Sections 122, 124, 125, 133, and 136

E. MISCELLANEOUS CORRESPONDENCE

Letter from Dorothy Brown, EPA, to Mr. Jeff Blackmore, Colorado City Terminal dated June 29, 2016 informing the applicant that its' NPDES application received June 10, 2016, was administratively complete.

Email from Jeff Blackmore, Colorado City Terminal Consultant to Nichole Young, EPA, dated 7/11/16 on additional permit application information.

Email from Robert Kirkland, EPA, to Nichole Young, EPA, dated June 11, 2016, on critical conditions information.