



ENVIRONMENTAL PROTECTION AGENCY

[FRL-9762-3]

Notice of Availability of Proposed National Pollutant Discharge Elimination System (NPDES) General Permit for Offshore Oil and Gas Exploration, Development and Production Operations off Southern California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Proposed NPDES General Permit (Reissuance)

SUMMARY: EPA Region 9 is proposing to reissue its general NPDES permit (permit No. CAG280000) for discharges from offshore oil and gas exploration, development and production facilities located in Federal waters off the coast of Southern California. This permit was issued on September 22, 2004, and modified on November 30, 2009.

This notice announces the availability of the proposed general permit and fact sheet for public comment. For the most part, the proposed permit is very similar to the 2004 permit. The

major changes from the 2004 permit include the following: 1) reduced geographic area of coverage reflecting a reduction in the number of lease blocks considered active by the Bureau of Ocean Energy Management (BOEM); 2) revised effluent limits and monitoring requirements for produced water based on an updated reasonable potential analysis; 3) revised whole effluent toxicity (WET) requirements for produced water; 4) study requirement for cooling water intake structures; and 5) new requirements for an on-line oil and grease monitor for produced water. These changes are discussed in more detail below, and in the fact sheet accompanying the proposed general permit.

DATES: Comments on the proposed permit must be received or postmarked no later than [Insert date 45 days after publication].

ADDRESSES: Public comments on the proposed permit may be submitted by U.S. Mail to: Environmental Protection Agency, Region 9, Attn: Eugene Bromley, NPDES Permits Office (WTR-5), 75 Hawthorne Street, San Francisco, California 94105-3901, or by email to: bromley.eugene@epa.gov.

FOR FURTHER INFORMATION CONTACT: Eugene Bromley, EPA Region 9, NPDES Permits Office (WTR-5), 75 Hawthorne Street, San Francisco, California 94105-3901, or telephone (415) 972-3510. A copy of the proposed permit and fact sheet will be provided upon request and are also available on Region 9's website at:

<http://www.epa.gov/region09/water/npdes/pubnotices.html>. The 2004 general permit and fact sheet are available on Region 9's website at <http://www.epa.gov/region09/water/>.

ADMINISTRATIVE RECORD: The proposed permit and other related documents in the administrative record are on file and may be inspected any time between 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays, at the following address:

U.S. EPA Region 9
NPDES Permits Office (WTR-5)
75 Hawthorne Street
San Francisco, CA 94105-3901.

SUPPLEMENTARY INFORMATION:

A. Summary of Proposed Changes from the 2004 General Permit

1. Facility Coverage. Like the 2004 general permit, the proposed general permit would apply to existing development and production platforms, and new exploratory drilling operations in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category, located in and discharging to specified lease blocks in Federal waters on the Pacific Outer-Continental Shelf (OCS), offshore Southern California.

There are currently 23 production platforms which are authorized to discharge by the 2004 permit, and the proposed permit would continue to authorize discharges from these 23 platforms; discharges from any new platforms would require separate individual permits. The

geographic area of coverage for the proposed permit would be the 49 lease blocks currently considered active by the Bureau of Ocean Energy Management (BOEM) off Southern California; this would be a reduction from the 83 lease blocks considered active in 2004 and included in the 2004 general permit.

2. Updated Reasonable Potential Analysis for Produced Water Discharges. On November 30, 2009 (74 FR 64074) Region 9 modified the 2004 general permit to incorporate additional effluent limits and monitoring requirements based on a study submitted in 2006 by permittees of the reasonable potential of the discharges to cause or contribute to exceedances of marine water quality criteria. For the new proposed permit, Region 9 re-evaluated this matter using monitoring data collected in 2009-2012. The new analysis showed that many of the previous effluent limits in the 2009 modification are no longer needed and would not be included in the 2012 proposed permit. For such constituents, however, Region 9 is proposing an annual monitoring requirement to ensure no unreasonable degradation of the marine environment pursuant to section 403 of the Clean Water Act (CWA).

3. Whole Effluent Toxicity (WET). The 2004 permit required monthly WET testing for produced water discharges (for the first year of the permit) using the red abalone (*Haliotis rufescens*) larval development test, and then annual screening with a plant (giant kelp, *Macrocystis pyrifera*), a vertebrate (topsmelt, *Atherinops affinis*) and an invertebrate (red abalone). In 2010, EPA published a new guidance manual¹ which Region 9 believes improves

¹ U.S. EPA. 2010. National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation

regulatory decision-making with regards to WET test results. For the proposed 2012 general permit, Region 9 is proposing WET effluent limits for certain platforms based on the WET test results collected during the term of the 2004 permit. Region 9 is also proposing continuation of chronic toxicity testing for all platforms to ensure no unreasonable degradation of the marine environment, using the three above species, and the 2010 protocol for analysis of the results.

4. Cooling Water Intake Structure Requirements. Section 316(b) of the CWA requires that the location, design, construction and capacity of cooling water intake structures (CWISs) reflect the application of the best technology available to minimize adverse environmental impacts. On June 16, 2006 (71 FR 35006), EPA promulgated final regulations for new offshore oil and gas facilities. Region 9 believes that all facilities potentially covered by the proposed permit (including new exploratory operations) would not be considered “new facilities” as defined in the 2006 regulations and therefore are not categorically subject to the 2006 regulations.

Although the 2006 regulations did not include specific requirements for existing offshore oil and gas facilities, the preamble notes that requirements for existing facilities may be developed on a case-by-case basis using best professional judgment (71 FR 35006). Region 9 is proposing a study requirement (due within one year) for the 2012 general permit which would require the following for all platforms with cooling water discharges: 1) description of current CWIS and existing measures to minimize entrainment/impingement; 2) assessment of the

environmental impacts from entrainment/impingement given current practices; and 3) practicality of additional measures to reduce environmental impacts from entrainment/impingement.

5. On-Line Oil and Grease Monitors. The 2004 general permit required each permittee (jointly or separately) to investigate and submit a report evaluating the availability and practicality of on-line monitoring devices for oil and grease in produced water discharges. The practicality of such devices for produced water was unclear at the time of the 2004 general permit issuance, but it was Region 9's intent to re-evaluate this matter when the permit was reissued. These devices have the potential to provide more timely information concerning upset conditions and potential exceedances of permit limits, and thereby provide improved protection of the marine environment.

The permittees submitted three different reports evaluating this matter, and Region 9 believes they show the technology is now available and practical for use at California offshore platforms. Furthermore, in discussions with operators and as noted in the reports, some platforms have already installed devices of this nature. As such, the proposed 2012 general permit would require within one year of the permit's effective date that operators do either of the following: 1) install on-line monitoring equipment capable of providing the operator with rapid information concerning potential noncompliance with the effluent limits for oil and grease for produced water in the permit, or 2) provide information to Region 9 demonstrating that the operator has already installed monitoring equipment which meets the above objective.

B. Ocean Discharge Criteria. Section 403 of the CWA requires that an NPDES permit for a discharge into marine waters located seaward of the inner boundary of the territorial seas be issued in accordance with guidelines for determining the potential degradation of the marine environment. These guidelines, referred to as the Ocean Discharge Criteria (40 CFR Part 125, Subpart M) and section 403 of the CWA are intended to “prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal” (45 FR 65942, October 3, 1980).

To support the issuance of the 2004 general permit, Region 9 prepared an Ocean Discharge Criteria Evaluation (ODCE)² which evaluated the proposed discharges in relation to the requirements of the Ocean Discharge Criteria regulations. After review of the ODCE, and numerous other studies and data in the administrative record for the 2004 permit, Region 9 concluded that the discharges authorized by the permit would not cause unreasonable degradation of the marine environment. For the proposed 2012 permit reissuance, Region 9 re-evaluated this conclusion through a review of new study results that have become available subsequent to the 2004 permit issuance, such as new reports from the environmental studies program conducted by the Pacific OCS Office of BOEM. After considering such new information, Region 9 again concludes that the proposed discharges from the platforms would not cause unreasonable degradation of the marine environment. As stated above, the proposed permit has water quality and toxicity monitoring to ensure compliance with CWA Section 403.

² Science Applications International Corporation. 2000. Ocean Discharge Criteria Evaluation South and Central

C. Endangered Species Act. The Endangered Species Act (ESA) allocates authority to and administers requirements upon Federal agencies regarding threatened or endangered species of fish, wildlife, or plants and habitat of such species that have been designated as critical. Its implementing regulations (50 CFR Part 402) require EPA to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized, funded or carried out by EPA is not likely to jeopardize the continued existence of any threatened or endangered species or adversely affect its critical habitat (40 CFR 122.49(c)). Implementing regulations for the ESA establish a process by which Federal agencies consult with one another to ensure that the concerns of both the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS)(collectively “Services”) are addressed. EPA prepared separate biological assessments (BAs)^{3,4} to assess the potential impacts of the 2004 permit issuance on listed species under the jurisdiction of the USFWS and NMFS. Both BAs concluded that there would be no effect on listed species. The BAs were provided to the Services for review but no comments were received.

For the 2012 general permit reissuance, Region 9 reconsidered the potential effects of the discharges on listed species and critical habitat. Both NMFS and the USFWS maintain current

California for NPDES Permit No. CAG28000, Submitted to U.S. EPA Region 9, September 29, 2000.

³ Science Applications International Corporation. 2000. Biological Assessment for Endangered Species in Outer Continental Shelf Waters of South and Central California for Consultation with the National Marine Fisheries Service, Submitted to EPA, February 10, 2000.

⁴ Science Applications International Corporation. 2000. Biological Assessment for Endangered Species in Outer Continental Shelf Waters of South and Central California for Consultation with the United States Fish and Wildlife Service, Submitted to EPA, February 10, 2000.

information and lists of threatened and endangered species and critical habitat for these species at: <http://www.nmfs.noaa.gov/pr/species/esa/> and http://ecos.fws.gov/tess_public/. After reconsidering this matter, Region 9 believes the proposed discharges would not affect these species.⁵ However, we will forward the draft permit and fact sheet to the Services to solicit comments on this tentative conclusion.

D. Coastal Zone Management Act. The Coastal Zone Management Act (CZMA) provides that a Federal license or permit for activities affecting the coastal zone of a state may not be granted until a state with an approved Coastal Management Plan (CMP) concurs that the activities authorized by the permit are consistent with the CMP (CZMA section 307(c)(3)(A)). In California, the CZMA authority is the California Coastal Commission (CCC).

Since Region 9 issued the general permit in 2004, the CZMA regulations specifying Federal agencies' obligations under CZMA sections (c)(1) and (c)(3) have been revised. In accordance with the revised regulations (71 FR 788, January 5, 2006), the issuance of a general NPDES permit by EPA is considered a "Federal agency activity" subject to the consistency determination requirements of CZMA section 307(c)(1). 15 C.F.R. 930.31(d). Region 9 believes the permit would be consistent with the CMP, and will be submitting the required determination to the CCC pursuant to CZMA section 307(c)(1) prior to final permit issuance. If the relevant state agency's conditions are not incorporated into the general permit or the state agency objects to the general permit, then the general permit is not available for use in that state

⁵ In letters dated August 29, 2012, Region 9 also requested species lists from the Services to ensure that appropriate

unless the applicant or person who wants to use the general permit provides the state agency with a consistency determination and the state agency concurs. Essentially, if EPA does not include a state agency's conditions or if the state agency objects, then the applicable CZMA consistency determination requirements shift from those in CZMA section 307(c)(1) into those in CZMA section 307(c)(3).

E. Marine Protection, Research, and Sanctuaries Act. The Channel Islands National Marine Sanctuary was designated in 1980 and encompasses approximately 4,296 km² in the Southern California Bight. Sanctuary regulations (15 CFR Part 922.71) provide a list of activities that are prohibited and thus unlawful for any person to conduct or to cause to be conducted within the Sanctuary. No operations authorized by this proposed permit are within the Sanctuary boundaries.

F. Magnuson-Stevens Fishery Conservation and Management Act. The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act set forth a number of new mandates for NMFS, regional fishery management councils, and Federal agencies to identify and protect important marine and anadromous fish habitat. Regional fishery management councils, with assistance from NMFS, are required to delineate essential fish habitat (EFH).

The Magnuson-Stevens Act requires that Federal agencies consult with NMFS on all actions undertaken by the agency which may adversely affect EFH. In accordance with these

species are considered for reissuance of the final general permit.

requirements, for the 2004 general permit, EPA prepared an assessment⁶ of the effects of the proposed discharges on EFH in the area covered by the permit. The assessment concluded that while there may be effects on EFH from certain discharges near an outfall, these effects should be minor overall. Region 9 also initiated a consultation with NMFS in 2000 which led to a requirement for a 2005 study⁷ to address certain concerns which NMFS raised regarding produced water discharges.

For the 2012 permit reissuance, Region 9 reconsidered the effects of the discharges on EFH. NMFS provides updated information concerning EFH in Southern California ocean waters on its website at http://swr.nmfs.noaa.gov/hcd/HCD_webContent/EFH/index_EFH.htm. After review of the information on the NMFS website, Region 9 believes the previous conclusion is still valid that the discharges would not have a significant adverse effect on EFH. However, Region 9 will forward the draft permit and fact sheet to NMFS for any comments on Region 9's tentative conclusion concerning the potential effects on EFH.

G. Permit Appeal Procedures. Within 120 days following notice of EPA's final decision for the general permit under 40 CFR 124.15, any interested person may appeal the permit decision in the Federal Court of Appeals in accordance with Section 509(b)(1) of the CWA. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or

⁶ Science Applications International Corporation. 2000. Essential Fish Habitat Assessment for NPDES Permit No. CAG280000, Submitted to EPA Region 9. October 2, 2000.

⁷ Western States Petroleum Association. 2005. The Effects of Produced Water Discharges on Federally Managed Fish Species along the California Outer Continental Shelf, Submitted to EPA Region 9, June 2005.

apply for an individual permit as specified at 40 CFR 122.21 (and authorized at 40 CFR 122.28), and then petition the Environmental Appeals Board to review any condition of the individual permit (40 CFR 124.19).

H. Regulatory Flexibility Act. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. The permit renewal proposed today is not a “rule” subject to the Regulatory Flexibility Act. EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Offshore Subcategory guidelines on which many of the permit’s effluent limitations are based. That analysis has shown that issuance of this permit would not have a significant impact on a substantial number of small entities.

I. Paperwork Reduction Act. The information collection required by this proposed permit has been approved by Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*, in submissions made for the NPDES permit program and assigned OMB control numbers 2040-0086 (NPDES permit application) and 2040-0004 (discharge monitoring reports).

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq*.

Dated: December 6, 2012.

John Kemmerer,

Acting Director, Water Division, EPA Region 9.

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