

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-7817-2]

**Final 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), Region 9.**ACTION:** Notice of final permit issuance.

**SUMMARY:** EPA, Region 9 is today issuing a final 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. The general permit establishes effluent limitations, prohibitions, and other conditions for discharges from platforms that engage in such operations within the geographic coverage area of the general permit. The general permit applies to 22 existing development and production platforms as well as to any new exploratory drilling operations located in and discharging to specified lease blocks on the Pacific Outer Continental Shelf offshore Southern California.

EPA is issuing this general permit to replace existing permits for the 22 platforms, some of which have been in place for many years. Today's general permit will achieve significant environmental benefits compared to the existing permits. In particular, the permit incorporates effluent limitation guidelines promulgated by EPA in 1993 for this industry, which have already been implemented for other offshore oil and gas platforms in the United States. In addition, the permit provides for a one-year study which will be used by EPA to determine whether additional limits are necessary in the future to ensure compliance with water quality standards.

**DATES:** The permit is being issued pursuant to 40 CFR 124.15 on September 22, 2004. The effective date of the permit is December 1, 2004, which is the first day of the month that begins at least 45 days after the date of the **Federal Register** notice of final permit issuance.

**ADDRESSES:** The final general 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 p.m., Monday through Friday, excluding legal holidays, at the following address: U.S. EPA, Region 9, CWA Standards and Permits Office

(WTR-5), 75 Hawthorne Street, San Francisco, CA 94105-3901.

**FOR FURTHER INFORMATION CONTACT:**

Eugene Bromley, EPA, Region 9, CWA Standards and Permits Office (WTR-5), 75 Hawthorne Street, San Francisco, California 94105-3901, or telephone (415) 972-3510. Copies of the final general permit, Addendum to Fact Sheet and the Response to Public Comments will be provided upon request and are also available at EPA, Region 9's Web site at <http://www.epa.gov/region09/water/>.

**SUPPLEMENTARY INFORMATION:****A. Proposed General Permit**

On July 20, 2000, EPA proposed to issue a general permit for discharges from oil and gas exploration, development, and production operations in Federal waters offshore of the State of California. The proposed permit contained effluent limitations based on EPA's 1993 effluent limitation guidelines for the offshore subcategory of the oil and gas extraction point source category (40 CFR part 435) as well as other terms and conditions, including a provision that would require permittees to sample produced water discharges for purposes of a future determination whether the discharges had the reasonable potential to cause or contribute to an exceedance of Federal water quality criteria (adopted under Clean Water Act section 304(a)) applied 100 meters from the platform's point of discharge. As required by the Coastal Zone Management Act (CZMA), EPA submitted a certification to the California Coastal Commission (CCC) that the general permit was consistent with the California Coastal Management Plan (CMP) approved by the National Oceanic and Atmospheric Administration (NOAA) in 1978.

After reviewing the proposal and EPA's consistency determination, the CCC requested that, for purposes of analyzing samples of produced water discharges to determine reasonable potential to exceed a water quality standard, dilution be calculated based on Federal water quality criteria and California Ocean Plan (COP) objectives (both applied at the boundary of the 100-meter mixing zone). Additionally, the CCC requested that EPA revise the scope and timing of the study requirements in the permit for alternative disposal for certain discharges and include in the fact sheet a description of a commitment by EPA regarding third party monitoring. On the condition that EPA made these changes in the final general permit and fact

sheet, the CCC concurred that the permit was consistent with the CMP.

On December 10, 2003, EPA submitted a revised proposed general permit to the CCC, along with a certification by EPA that the revised proposed permit was consistent with the CMP. For produced water discharges, EPA proposed a revision to the requirement that each permittee sample produced water discharges for certain, specified constituents in order to determine whether the discharges cause, have the reasonable potential to cause, or contribute to an exceedance above the applicable water quality criteria. For each constituent, EPA proposed that the facility include a determination of the minimum dilution limit required for each discharge location to ensure no reasonable potential to cause or contribute to an exceedance of the Federal water quality criteria at a point 100 meters from the platform's point of discharge or the California Ocean Plan (COP) criteria (adopted by California under Clean Water Act section 303(c)) at the seaward boundary of California's territorial seas. EPA would then review the results of each facility's sampling, evaluate the information for the potential to cause an exceedance of the applicable water quality criteria, and propose any appropriate new limits for the general permit pursuant to the procedures in 40 CFR part 124. On March 17, 2004, the CCC objected to EPA's consistency certification. On April 8, 2004, EPA proposed a revised general permit consistent with the December 10, 2003, certification to the CCC.

The CCC objected to EPA's proposed revision of the reasonable potential study provision and recommended that, after EPA received and reviewed the results of the study, the permit should be modified to require produced water discharges to comply with either the COP criteria or EPA's CWA section 304(a) criteria, whichever was determined to be more stringent, at a point of compliance located 100 meters from each platform's point of discharge. In today's action, EPA is issuing the general permit with the changes requested by the CCC, for the reasons described in this notice.

**B. Final Permit Provisions**

EPA proposed the general permit on July 20, 2000 (65 FR 45063), and solicited public comment from July 20, 2000, through September 5, 2000. In addition, EPA held a public hearing on the proposed permit on August 23, 2000. On April 8, 2004, EPA proposed certain modifications to the July 2000 proposed permit and sought public

comment on such modifications (69 FR 18570). EPA has included additional relevant documents in the administrative record for this permit, including responses to comments received on the July 20, 2000, proposed permit as well as the revisions proposed in April 2004.

### 1. Reasonable Potential Study/Point of Compliance

EPA is revising the reasonable potential study provisions proposed in April 2004. Specifically, today's permit requires each permittee to sample produced water discharges for certain, specified constituents in order to determine whether the discharges cause, have the reasonable potential to cause, or contribute to an exceedance above the more stringent of the Federal and COP criteria, compared at a point of compliance 100 meters from each facility's point of discharge. For each constituent, the minimum dilution must be calculated for each discharge location to ensure no reasonable potential to cause or contribute to a water quality standard exceedance and submit the results to EPA.

EPA will then review the results of each facility's sampling and evaluate the information, and following such review, EPA intends to propose appropriate modifications to the general permit pursuant to the procedures in 40 CFR part 124 to establish new effluent limitations based on the review of the study results.<sup>1</sup> EPA is including this reasonable potential study point of compliance provision in the general permit as a consequence of the CCC's March 17, 2004, objection to EPA's proposed decision to apply the COP criteria at the seaward boundary of State waters for purposes of the reasonable potential study dilution calculation.

EPA will, at the time of permit modification after completion of the study, consider new information relevant to the provision in the final general permit for produced water discharges which requires that each permittee use a point 100 meters from its platform's point of discharge to determine whether there is reasonable potential to cause or contribute to exceedances of either EPA or COP criteria. The final permit provides that EPA will reopen the permit after completion of the reasonable potential study and will modify the permit to establish permit conditions based on the

outcome of that study. EPA will provide the public with notice and an opportunity to comment on any such modification, as required by 40 CFR 124.5. If, as a result of the study, or for other reasons, there is new information relevant to the new limits proposed at that time, EPA will consider such information and determine whether and how the general permit should be modified.

The CZMA prohibits Federal agencies from granting a license or permit that is subject to the CZMA consistency certification requirement until the State has concurred with the certification. CZMA section 307(c)(3). Even though EPA continues to believe the permit proposed in April 2004 was fully consistent with the enforceable policies of the CMP, as described in our comments on the CCC Staff Report of March 2004, the CCC's objection to EPA's consistency certification effectively prevented EPA from issuing the permit under CZMA section 307(c)(3). Further, for the reasons described below, EPA is concerned that issuing the permit under CZMA section 307(c)(1) with a delayed effective date, as proposed in April 2004, could result in considerable delay in implementing the new permit. Moreover, issuing the permit under CZMA section 307(c)(3) is consistent with EPA's long-standing practice and the NOAA regulations.<sup>2</sup> As described in more detail below, EPA is including the requirement requested by the CCC in order to issue the permit now, make it effective on December 1, 2004, and thus ensure that the environmental benefits of the new permit are achieved as soon as possible.

EPA is including this provision in the permit in order to implement the more stringent permit limits as soon as possible. However, EPA continues to believe that the permit proposed in April 2004 would be consistent with the California CMP. EPA recognizes that the Federal consistency provisions of the CZMA apply to licenses for activities outside State waters, such as those addressed by today's General Permit, if it is reasonably foreseeable that such activities will affect the uses or resources of the State's coastal zone. However, EPA disagrees that the CZMA authorizes California to require that the discharges at issue in this General Permit comply with the COP criteria at

the point of discharge in Federal waters. Moreover, EPA continues to believe that the permit proposed in April 2004 would be fully protective of California's coastal resources. As described in more detail in EPA's December 2003 consistency certification, EPA concluded that the proposed discharges would not cause unreasonable degradation of the marine environment, including its biological resources, or other adverse effects in California's coastal zone. See "Demonstration of Consistency of the Revised Draft General Permit with the California CMP," Enclosure D (enclosure with letter from Alexis Strauss, Water Division Director, EPA Region 9, to Peter Douglas, Executive Director, California Coastal Commission) Dec. 10, 2003.

EPA notes that the Agency cannot at this time predict whether any particular permittee's discharges will be found to have reasonable potential to cause or contribute to an exceedance of the applicable water quality criterion, nor can it predict the specific nature of any potential future permit modifications based on the results of the reasonable potential analysis described in today's permit, including whether the COP criteria or the Federal criteria will apply for any particular constituent. EPA will provide public notice of and seek public comment on any proposed permit modification, including permit limitations based on the Federal water quality criteria or COP criteria. 40 CFR 124.5 and 124.6.

### 2. Effective Date

Today's general permit will be effective on December 1, 2004, which is the first day of the month that begins at least 45 days after the date of the **Federal Register** notice of final permit issuance. Because of the significant and important environmental benefits that will be achieved by the general permit, EPA has determined that it is critical to make the permit effective as soon as possible and therefore is not finalizing the delayed effective date proposed on April 8, 2004. Instead, EPA is issuing the permit with an effective date of December 1, 2004.

In April 2004, EPA proposed to treat the permit as a Federal agency activity under CZMA Section 307(c)(1) and to modify the proposed effective date to allow the Agency to issue the permit but delay its effectiveness for a given facility until the facility sought and obtained from the CCC concurrence with the facility's certification that its discharges pursuant to the permit would be consistent with the CMP. As described above, the CCC objected to the permit as

<sup>1</sup> Part I.A.4 of the final permit provides that the permit may be modified at any time if new data would have justified different permit conditions at the time of issuance. Any permit modification would be conducted in accordance with 40 CFR 122.62 and 122.63 and 40 CFR part 124.

<sup>2</sup> The regulations governing Federal consistency review under the CZMA provide that general permit programs proposed by Federal agencies are subject to the regulations governing review of Federal agency activities, unless a Federal agency chooses to subject its general permit program to review under the regulations governing license or permit activities. See 15 CFR 930.31(d).

proposed at that time. Thus, pursuant to regulations implementing the CZMA, the permit would not have become effective for a particular discharger until after a considerable delay. Under the proposed approach, each facility would first prepare an individual certification that its discharges under the general permit would be consistent with the CMP. Each facility would then seek concurrence with its certification from the CCC. The CCC would consider each certification and, under the requirements of the State law governing the CCC's procedures, would hold a public hearing on each certification. See California Public Resources Code sections 30315 and 30320. After considering comments received, the CCC would decide whether to concur with or object to each certification. If the CCC objected to a facility's certification, the facility could appeal the objection to the Secretary of Commerce. See 15 CFR part 930, subpart H. In that event, the Secretary of Commerce would hear and decide the appeal under the procedures described at 15 CFR 930.125–930.130. The entire process described above, including a potential appeal to the Secretary of Commerce, could take as long as two to three years. In the meantime, the terms and conditions of the existing permits would continue in effect and the environmental benefits of the new permit conditions would be further postponed.

After considering the time involved in such a process and the potential delay in implementing the new general permit, EPA concludes that the approach proposed on April 8, 2004, would delay significant environmental benefits that will be achieved by the effluent limitations in today's general permit. In particular, the permit implements technology-based effluent limitations for conventional, non-conventional, and toxic pollutants based on EPA's effluent guidelines promulgated in March 1993, and EPA wants to avoid any further delay in achieving the environmental benefits of these effluent limitations. See 58 FR 12504 (March 4, 1993). Today's general permit offers substantial improvements over the present discharge requirements for the 22 platforms because it incorporates the more stringent 1993 EPA effluent limitations guidelines. For example, the 1993 guidelines reduce allowable discharges of oil and grease in produced water to 42 mg/l (daily maximum) and 29 mg/l (monthly average). In comparison the existing general permit includes a daily maximum limit of 72 mg/l and no monthly average limit.

The CCC has concurred with EPA's determination that today's general permit is consistent with the CMP. The CCC Executive Director confirmed in a letter to EPA dated July 19, 2004, that the January 9, 2001, CCC concurrence is still valid as long as EPA includes in the permit and the addendum to the fact sheet all the changes which EPA agreed to in 2001. Today's permit includes those changes. Therefore, permittees need not seek and obtain the CCC's concurrence with individual consistency certifications under 15 CFR 930.31(d) before applying for coverage under the general permit.

### 3. Other Issues

The April 8, 2004, proposed permit included a number of other proposed changes from the July 20, 2000, permit. These changes have been retained with no significant changes in the final permit. As proposed on April 8, 2004, today's final permit accelerates the schedule for produced water sampling for determining reasonable potential to exceed applicable water quality criteria. The final permit requires a total of 12 samples taken during the first year of the permit rather than 10 samples taken during the first 2½ years, as was required by the proposed permit of July 20, 2000. The final permit also retains the revised maximum discharge volumes for Platforms Harvest, Hermosa and Hidalgo (based on updated information from the operator) which had been proposed on April 8, 2004. Further, the final permit uses EPA's revised CWA 304(a) water quality criteria found in "National Recommended Water Quality Criteria: 2002 (EPA-822-R-02-047) and 68 FR 75507 (December 31, 2003) for purposes of the reasonable potential study's dilution calculation. The April 8, 2004, proposed permit also included a number of minor editorial changes, clarifications and other revisions based on comments which had been received since the proposal of July 20, 2000. These revisions have been retained in the final permit.

### C. 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 in the federal Court of Appeals in accordance with section 509(b)(1) of the Clean Water Act (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 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).

### D. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has exempted review of NPDES general permits under the terms of Executive Order 12866.

### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Issuance of an NPDES general permit is not subject to rulemaking requirements, under APA section 553 or any other law, and is thus not subject to the RFA requirements. The APA defines two broad, mutually exclusive categories of agency action—"rules" and "orders." Its definition of "rule" encompasses "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency \* \* \*" APA section 551(4). Its definition of "order" is residual: "a final disposition \* \* \* of an agency in a

matter other than rule making but including licensing” APA section 551(6). The APA defines “license” to “include \* \* \* an agency permit \* \* \*” APA section 551(8). The APA thus categorizes a permit as an order, which by the APA’s definition is not a rule. Section 553 of the APA establishes “rule making” requirements. The APA defines “rule making” as “the agency process for formulating, amending, or repealing a rule” APA section 551(5). By its terms, then, section 553 applies only to “rules” and not also to “orders,” which include permits.

#### F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their “regulatory actions” on State, local, and tribal governments and the private sector. UMRA uses the term “regulatory actions” to refer to regulations. (See, e.g., UMRA section 201, “Each agency shall \* \* \* assess the effects of Federal regulatory actions \* \* \* (other than to the extent that such regulations incorporate requirements specifically set forth in law)”). UMRA section 102 defines “regulation” by reference to 2 U.S.C. 658 which in turn defines “regulation” and “rule” by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines “rule” as “any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act (APA)[we only need parentheses around APA], or any other law \* \* \*.”

As discussed in the RFA section of this notice, NPDES general permits are not “rules” under the APA and thus not subject to the APA requirement to publish a notice of proposed rule making. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide “an opportunity for a hearing.” Thus, NPDES general permits are not “rules” for RFA or UMRA purposes.

#### G. Paperwork Reduction Act

The information collection required by this 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: September 15, 2004.

**Alexis Strauss,**

*Director, Water Division, EPA Region 9.*

[FR Doc. 04–21286 Filed 9–21–04; 8:45 am]

**BILLING CODE 6560–50–P**

### FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

#### Notice of Meetings for 2005

**Board Action:** Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April, 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will meet on the following dates in room 7C13 of the U.S. Government Accountability Office (GAO) Building (441 G Street NW) unless otherwise noted:

- Wednesday and Thursday, March 2 and 3, 2005
- Wednesday and Thursday, May 4 and 5, 2005
- Wednesday and Thursday, June 22 and 23, 2005
- Wednesday and Thursday, August 17 and 18, 2005
- Wednesday and Thursday, October 5 and 6, 2005
- Wednesday and Thursday, December 7 and 8, 2005

The purposes of the meetings are to discuss issues related to:

- FASAB’s conceptual framework,
- Stewardship Reporting,
- Social Insurance,
- Natural Resources,
- Inter-entity Costs,
- Fiduciary Activities,
- Technical Agenda, and
- Any other topics as needed.

A more detailed agenda can be obtained from the FASAB Web site (<http://www.fasab.gov>) one week prior to each meeting.

Any interested person may attend the meetings as an observer. Board discussion and reviews are open to the public. GAO Building security requires advance notice of your attendance. Please notify FASAB of your planned attendance by calling 202–512–7350 at least one day prior to the respective meeting.

**FOR FURTHER INFORMATION CONTACT:** Wendy M. Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

**Authority:** Federal Advisory Committee Act, Pub. L. 92–463.

Dated: September 17, 2004.

**Charles Jackson,**

*Federal Register Liaison Officer.*

[FR Doc. 04–21251 Filed 9–21–04; 8:45 am]

**BILLING CODE 1610–01–M**

### FEDERAL COMMUNICATIONS COMMISSION

#### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 14, 2004.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 22, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Les