

#### IV. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

#### V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this document in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: July 20, 2000.

**Francis X. Lyons,**

*Regional Administrator, Region V.*

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#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-6843-1]

#### State Program Amendment; Addendum to EPA/LDEQ MOA for Administration of the National Pollutant Discharge Elimination System (NPDES) Program; Louisiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Amendment to the Memorandum of Agreement.

**SUMMARY:** A Court Order dated October 1, 1999, in the case *Sierra Club et al. v. Clifford et al.*, No. 96-0527 (E.D. La.), directs EPA to amend the Memorandum Of Agreement (MOA) for the Louisiana Pollutant Discharge Elimination System (LPDES) Program pursuant to section 402 of the Clean Water Act (CWA). By

letter dated March 30, 2000, the Secretary for the Louisiana Department of Environmental Quality (LDEQ) agreed to amend the MOA to include an addendum addressing the Court's order. EPA is providing notice on the addendum to the LPDES program signed by Secretary Givens on March 31, 2000. Pursuant to the Court orders dated October 1, 1999, and June 21, 2000, EPA was ordered to sign and approve the MOA revisions. Acting EPA Regional Administrator, Sam Coleman, signed the MOA addendum approving the MOA revision on June 28, 2000. The procedures for revising NPDES state programs are set forth in federal regulations found at 40 CFR 123.62. 40 CFR 123.62(b)(4) and Section X of the MOA provide that LPDES program revisions become effective once the EPA Region 6 Administrator approves revisions submitted by the State. Approval of substantial revisions must be noticed in the **Federal Register**. Today, to satisfy its regulatory responsibilities and to allow for public participation, EPA provides notice of a comment period on its approval of such program revisions. Having approved LDEQ's program amendments, EPA now seeks public input on the amendment, and therefore, is providing opportunity for the public to provide comments on this action to determine if further action is appropriate. Upon consideration of information gathered under this comment period EPA may request the Court to allow EPA to make appropriate changes.

**DATES:** EPA Region 6 will accept written comments on the revisions to the MOA through September 7, 2000.

**ADDRESSES:** Written comments must be submitted to: Ms. Evelyn Rosborough; Customer Service Branch; Water Quality Protection Division; EPA Region 6; 1445 Ross Avenue; Dallas, Texas 75202; Mail Stop Code: (6WQ-CA); (214) 665-7515.

**FOR FURTHER INFORMATION CONTACT:** Ms. Evelyn Rosborough, Customer Service Branch; Water Quality Protection Division, EPA Region 6; 1445 Ross Avenue; Dallas, TX 75202; telephone: (214) 665-7515. Copies of the amended MOA submitted to EPA by LDEQ, are available for review at EPA Region 6, Customer Service Branch, Water Quality Protection Division; 1445 Ross Avenue, Dallas, TX 75202, between 8:00 a.m. and 4:30 p.m., Monday through Friday. EPA recommends that you write or call the contact above for an appointment, so the record(s) will be available at your convenience. The MOA signed August 27, 1996, and other pertinent regulations may be viewed at website

<http://yosemite.epa.gov/r6/genper.nsf/pages/npdespn>.

**PUBLIC HEARING PROCEDURES:** EPA's comments and public hearing procedures may be found at 40 CFR 123.62(b)(2). The comment period during which written comments on the amended MOA may be submitted extends for thirty (30) days from the date of this Notice. During the comment period any interested person may request a public hearing by filing a written request which must state the issues to be raised. A public hearing will be held if there is significant public interest based on requests.

**SUPPLEMENTARY INFORMATION:** As a result of litigation in *Sierra Club et al. v. Clifford et al.*, No. 96-0527 (E.D. La.), the Court ordered, among other things, that EPA Region VI amend its MOA with Louisiana. The principal regulations governing the MOA are found in 40 CFR 123.24. These regulations provide that, among other requirements, the MOA shall be submitted to EPA by the state that seeks to administer the NPDES program. The MOA specifies the responsibilities of EPA, and the state and provides structure for the state's program management and EPA's program oversight. The MOA provides that EPA will review certain preliminary draft permits and permit modifications to ensure that permits will comply with federal guidelines and requirements and may review others.

The MOA provides provisions for modification as well. Section X of the MOA (modification) provides that the MOA shall be reviewed and revised appropriately at least within five years of the effective date. Either EPA or LDEQ may initiate action to modify the MOA at any time. Any substantial changes must be in writing and signed by the LDEQ Secretary and the EPA Regional Administrator. The MOA addendum submitted by the state of Louisiana was signed by the Secretary of LDEQ on March 31, 2000, and by the Acting EPA Regional Administrator on June 28, 2000.

The language at issue in this approved MOA revision is found in paragraphs 6, 7 and 9 of the Court's October 1, 1999, Order, which state the following:

"(6) The defendants [EPA] shall implement the total maximum daily loads in permits by amending the agreement with Louisiana under Section 402 of the Clean Water Act to require that the limits for point sources established in total maximum daily loads be achieved:

(a) By any point source that discharges pursuant to a new permit

issued after the total maximum daily load has been established.

(b) By every point source discharging pursuant to an existing permit within the earlier of six years from the date the total maximum daily load is established or three years following the first expiration of the permit after the total maximum daily load is established.

(7) The defendants [EPA] shall amend the agreement with Louisiana under Section 402 of the Clean Water Act to require the state to provide the EPA with a copy of every permit application (whether for a new permit or renewal of an existing permit) if the application seeks a discharge limit in excess of any limit established in a total maximum daily load.

(9) The defendants [EPA] shall amend the agreement with Louisiana under Section 402 of the Clean Water Act to require the state to provide EPA with a copy of every application for a new permit that proposes to allow the discharge of a pollutant with respect to which a water does not meet water quality standards."

Following several communications between LDEQ and EPA Region 6, LDEQ submitted a signed MOA Addendum on March 31, 2000, that includes language required by paragraphs 6, 7, and 9 of the Court's Order. In addition, LDEQ submitted a cover letter signed March 30, 2000, which addressed requirements for accomplishing an MOA revision under 40 CFR 123.62(b)(1). Pursuant to the Court's order dated June 21, 2000, EPA signed the Addendum on June 28, 2000. Under 40 CFR 123.62(b)(2), "[w]henver EPA determines that the program revision is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days." Because the Court-ordered revisions constitute substantial revisions to the LPDES program, EPA is providing an opportunity for public comment in accordance with the regulations. EPA will consider all comments and determine if further action is appropriate. At that time, EPA may request the Court to allow EPA to make appropriate changes as a result of the information provided under the comment period and hearing process, if held.

EPA notes specifically that neither the EPA regulations, the authorized LPDES program or the August 27, 1996 MOA contain implementation requirements as restrictive as those found in paragraph 6 of the Court's Order.

### 1. The EPA/LDEQ MOA Amendments

The principal regulations governing MOAs are found at 40 CFR 123.24. An MOA is a document signed by each

agency committing them to specific responsibilities. An MOA specifies these responsibilities and provides structure for the State's program management and EPA's program oversight. The MOA Addendum submitted by the State of Louisiana has been signed by the Secretary of the Department of Environmental Quality March 31, 2000, and the Acting Regional Administrator of U.S. EPA Region 6 June 28, 2000. The MOA amendment requested by EPA and submitted by LDEQ includes the following:

#### Addendum

*National Pollutant Discharge Elimination System Memorandum of Agreement Between Louisiana Department of Environmental Quality and the United States Environmental Protection Agency*

Consistent with the October 1, 1999, Court Order in *Sierra Club v. Clifford*, No. 96-0527 (E.D. La.), the Environmental Protection Agency ("EPA"), Region 6 and Louisiana Department of Environmental Quality ("LDEQ") hereby revise the Louisiana Pollutant Discharge Elimination System ("LPDES") program. The revisions add the following Sections and language to the August 27, 1996, Memorandum of Agreement ("MOA") between LDEQ and EPA Region 6:

III.C.2.a LDEQ shall implement the total maximum daily loads in permits to require that the limits for point sources established in total maximum daily loads be achieved:

(i) By any point source that discharges pursuant to a new permit issued after the total maximum daily load has been established.

(ii) By every point source discharging pursuant to an existing permit within the earlier of six years from the date the total maximum daily load is established or three years following the first expiration of the permit after the total maximum daily load is established.

III.T. Permit Applications for water quality limited segments and established TMDLs.

III.T.1 LDEQ shall provide EPA with a copy of every permit application (whether for a new permit or renewal of an existing permit) if the application seeks a discharge limit in excess of any limit established in a total maximum daily load.

III.T.2 LDEQ shall provide EPA with a copy of every application for a new permit that proposes to allow the discharge of a pollutant with respect to which a water does not meet water quality standards.

The MOA also states: "Nothing in this MOA Addendum shall be construed to nullify the Modification (Section X) process described in the August 27, 1996, MOA. In addition, this MOA Amendment Addendum shall become effective when approved by both the EPA Regional Administrator pursuant to 40 CFR 123.24(a) and the LDEQ Secretary." The MOA Addendum was signed by Dale Givens, Secretary of the

Environment for Louisiana on March 31, 2000, and by the Acting EPA Regional Administrator on June 28, 2000.

### 2. Total Maximum Daily Loads Process as it Relates to the LPDES Program

The Total Maximum Daily Load (TMDL) process is an important element of the water quality-based approach. It identifies pollutant load allocations necessary to meet water quality standards.

A TMDL must be developed for each waterbody and pollutant combination on a State's CWA Section 303(d) list. The objective of a TMDL is to allocate allowable loads among different pollutant sources so that the appropriate control actions/management measures can be taken and water quality standards will be achieved. A TMDL includes consideration of existing pollutant loads from all sources. The TMDL process distributes portions of the waterbody's assimilative capacity for a pollutant to various pollution sources—including load allocations (LAs) to nonpoint sources and natural background, wasteload allocations (WLAs) to point sources, and a margin of safety to account for any lack of knowledge concerning the relationship between effluent limitations and water quality—so that the waterbody achieves its water quality standards. The TMDL establishes allowable loads and helps provide the basis for establishing or modifying controls or management measures on pollutant sources. Wasteload allocations established in TMDLs provide basis for effluent limitations necessary to protect water quality in the receiving water and ensure attainment of water quality standards.

Once allowable loadings have been developed through WLAs for specific pollutant sources, limits are incorporated into NPDES/LPDES permits. A current version of the Court ordered Section 303(d) list for Louisiana along with EPA established TMDLs in the Mermentau and Vermilion/Teche watersheds may be viewed and downloaded from the Region 6 TMDL website at [www.epa.gov/region6/water/tmdl.htm](http://www.epa.gov/region6/water/tmdl.htm).

### 3. Effects of This Action

The Court Order appears to restrict flexibility provided by federal and state regulations for EPA and Louisiana under the NPDES program which allow construction schedules for existing facilities which may need to install or construct additional treatment to meet effluent limitations. The Court's order, and the Addendum likely will affect some point source dischargers to

Louisiana stream segments for pollutants identified on the State's Section 303(d) list of impaired waters. This action may change the flexibility of the State to provide compliance schedules for dischargers in these cases. Once a TMDL for a particular stream segment is established or approved by EPA, the court-ordered MOA Addendum amendments provides existing dischargers on these segments with as little as 3 to 6 years to achieve the limitations based on the TMDL's wasteload allocations. Federal regulations at 40 CFR 122.47 and corresponding Louisiana regulations provide for compliance schedules of up to 3 years in permits where necessary to comply with more stringent limitations. Due to the five year permit cycle under the CWA, some permits may not come up for renewal until four or five years after a TMDL has been finalized. EPA Region VI believes a significant number of LPDES permits fall within this category. In these specific cases, permit construction/compliance schedule may be further limited by time frames set out in the Court order for achievement of TMDL allocations.

Burdens associated with the shortened time frames may be off-set if dischargers are aware of TMDL allocations for their point source discharges and plan ahead for the additional limitations that will be forthcoming in the next cycle of their LPDES permit. While EPA and the State believe the above described situations can be avoided by dischargers planning ahead, or the State modifying or reopening permits to include new TMDL-based limits, some permits may have to be issued with shortened or no compliance schedules. In such cases, compliance with TMDL based limits could be addressed through a Compliance or Administrative Order.

In addition, the MOA modifications may change the permit issuance priority for the State and increase the number and type of draft permits that the State will send to EPA. Prioritizing State permit issuance based on the approval date of a TMDL and requiring the State to submit all draft permits for TMDL segments to EPA has several potential impacts on the regulated community, the State, and EPA. To accommodate the court-ordered changes in the LPDES program, the State may need to defer action on new discharge permits or reissuance of major permits in order to work on minor permits in a TMDL waterbody. New dischargers needing permits or facilities needing permit modification to legally discharge into non-TMDL waterbodies may experience

delays in permitting due to the priority given to TMDL waterbody permits.

EPA and LDEQ want to encourage public participation on this revision of the MOA so that the citizens of Louisiana will understand more fully and be able to comment on their state's program. Therefore, EPA requests that the public review the MOA Addendum and provide any comments they feel are appropriate. EPA and the State want the public to be able to effectively coordinate with LDEQ on LPDES permitting and enforcement actions. EPA will consider all comments on the LPDES program amendments and determine if EPA should request the court to allow EPA and LDEQ to make appropriate changes.

EPA considers a determination to approve or deny a State NPDES program submission an adjudication within the meaning of the Administrative Procedure Act (APA), 5 U.S.C. 551 and 554. An approval of a State NPDES program revision constitutes an order under the APA and is the product of an adjudication. Therefore, this revision of the LPDES program is an adjudication.

EPA is not requesting comment concerning the overall LPDES program, however, EPA is requesting comment on the revisions identified in this public notice (e.g. the MOA Addendum and related documents), and as set forth in the October 1, 1999, Court Order. EPA also requests that the public provide any significant data and information, including economic impacts, concerning this LPDES program revision.

Dated: July 7, 2000.

**Jerry Clifford,**

*Acting Regional Administrator, Region 6.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-6847-1]**

### **Draft Modification of the National Pollutant Discharge Elimination System (NPDES) General Permit for the Eastern Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG280000)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of draft modification of NPDES general permit for the Eastern Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG280000).

**SUMMARY:** The Regional Administrator (RA) of EPA, Region 4 ("Region 4"), is

today proposing to modify, in part, the National Pollutant Discharge Elimination System (NPDES) general permit for the OCS of the Gulf of Mexico (General Permit No. GMG280000) for discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart A) as authorized by section 402 of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. 1342. The existing general permit, issued by Region 4, and published at 63 FR 55718, October 16, 1998, authorizes discharges from exploration, development, and production facilities located in and discharging to all Federal waters of the Eastern Gulf of Mexico seaward of the outer boundary of the territorial seas. Today EPA is proposing to modify the general permit numbering system to make it specific to the Region 4 area of responsibility. Additional modifications are being made to add tables for produced water discharge critical dilution concentrations and for chemically treated seawater used to pressure test piping and pipelines. These modification are being incorporated into part I.B.10 of the permit along with associated effluent limitations and monitoring.

This permit modification is in accordance with a settlement entered into by EPA with various parties which filed a petition for review of the October 16, 1998, general permit in the Fifth Circuit Court of Appeals under the caption *Marathon Oil Company et al. v. Browner, Civ. 99-60090*. After the permit was issued, and aside from other provisions within the permit which specify that any operator authorized by the permit may request to be excluded from coverage and receive an individual permit pursuant to 40 CFR 122.28(a)(4)(iii), EPA determined that the method for calculating effluent limitations and monitoring requirements for produced water discharges that appear as part I.B.3 in the permit are not appropriate for coverage under a general permit in the manner set forth in the October 16, 1998, general permit. The intent of this proposed modification is to establish a table of critical dilution concentrations for use in determining toxicity limitations. Those permittees that have produced water discharges that would fall outside of the proposed table would need to apply for and receive individual NPDES permits.

In brief, EPA today proposes to modify the general permit as follows: changing the general permit numerical designation; requiring permittees to indicate what type of effluents the facility is expected to discharge within