

stop, and is close to Ronald Reagan Washington National Airport (DCA).

The National Bed Bug Summit meeting is open to the public and seating is available on a first come basis. Persons interested in attending do not need to register in advance of the meeting and there is no registration fee. Lodging and transportation are not being provided. No RSVP is required. An information package that contains a meeting overview, directions, close-by hotels, transportation options, etc., is available at <http://www.epa.gov/pesticides>.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests, Public health.

Dated: March 30, 2009.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-8785-2]

Notice of Availability of Proposed Modification of 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 Modification.

SUMMARY: EPA Region 9 is proposing certain modifications of 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. The permit, which was issued on September 22, 2004 (69 FR 56761), required a one-year monitoring study for discharges of produced water, cooling water and fire control system test water to evaluate whether these discharges would have reasonable potential to cause or contribute to exceedances of marine water quality criteria. For produced water, the permit required monitoring for 26 pollutants which may be present in the discharges. For cooling water and fire control system test water, monitoring was required for total residual chlorine which may be used for anti-fouling

The monitoring study has now been completed and Region 9 is proposing to modify the permit to include additional effluent limitations and monitoring requirements for those discharges for which the monitoring study showed a reasonable potential to cause or contribute to exceedances of marine water quality criteria.

For produced water discharges, Region 9 is also proposing to modify the water quality criterion for undissociated sulfide in the permit based on the results of a new study submitted by the permittees concerning the toxicity of this material to marine organisms. The proposed effluent limitations for undissociated sulfide in the modified general permit would be based on the modified water quality criterion.

DATES: Comments on the proposed permit modifications must be received or postmarked no later than May 4, 2009.

ADDRESSES: Public comments on the proposed permit modifications may be submitted by U.S. Mail to: Environmental Protection Agency, Region 9, Attn: Lisa Honor, NPDES Permits Office (WTR-5), 75 Hawthorne Street, San Francisco, California 94105-3901, or by e-mail to: honor.lisa@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 modifications and fact sheet will be provided upon request and is also available on Region 9's Web site at <http://www.epa.gov/region09/water/>. Additional information concerning the general permit overall is available in the fact sheet accompanying the final issuance of the general permit on September 22, 2004. The 2004 general permit and fact sheet are available on Region 9's Web site at <http://www.epa.gov/region09/water/>.

Administrative Record: The proposed permit modifications 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, NPDES Permits Office (WTR-5), 75 Hawthorne Street, San Francisco, CA 94105-3901.

SUPPLEMENTARY INFORMATION:

A. Reasonable Potential Monitoring Study. Among other factors, the Ocean Discharge Criteria regulations (40 CFR part 125, subpart M) require a consideration of marine water quality

criteria for discharges to the ocean permitted under the NPDES permit program. In considering these criteria, particularly in determining permit conditions that would be needed to support a determination the resulting discharges will not cause unreasonable degradation of the marine environment, the permit included a study requirement using the statistical procedures EPA uses in determining the need for water quality-based effluent limits for point source discharges to waters of the United States, including the territorial seas. The study, captioned the "reasonable potential monitoring study," was required in order to determine whether the ocean discharges regulated under the permit would cause, or have the reasonable potential to cause, or contribute to non-attainment of marine water quality criteria at the boundary of the mixing zone, which is the location identified in the Ocean Discharge Criteria regulations at 40 CFR 125.123(d)(1).

General permit No. CAG28000 included the study requirement because at the time of the issuance insufficient data were available to evaluate the reasonable potential for discharges of produced water, cooling water and fire control system test water to cause or contribute to exceedances of the marine water quality criteria for pollutants Region 9 had identified as potentially present in the discharges. The permit's study requirements were derived from the statistical procedures explained in EPA's Technical Support Document for Water Quality-Based Toxics Control (TSD) (EPA/505/2-90-001). EPA explained in the permit if a discharge demonstrated the reasonable potential to cause non-attainment of a marine water quality criterion at the boundary of a mixing zone, the permit could be reopened and modified to include additional effluent limitations and monitoring requirements to ensure compliance with the water quality criteria. Today Region 9 is proposing to reopen and modify the general permit to include such additional limitations and requirements, thus enabling its determination the authorized discharges will not cause unreasonable degradation of the marine environment.

For produced water, the permit required monitoring monthly during the first year of the permit for 26 pollutants of concern Region 9 had identified as potentially present in the discharges. For cooling water and fire control system test water, monitoring was also required monthly during the first year for total residual chlorine which is used at some platforms as an anti-fouling agent. Monitoring results were due by

March 1, 2006 and were submitted for all platforms in a timely manner. The permit also required the submittal of an analysis by March 1, 2006, using statistical procedures in the TSD, of the reasonable potential of the discharges to cause or contribute to non-attainment of the previously specified marine water quality criteria. These analyses also were submitted for all platforms in a timely manner.

The general permit authorizes discharges from 22 offshore platforms. However, only 15 of the platforms discharge produced water. Thirteen of the platforms showed reasonable potential to exceed applicable marine water quality criteria for one or more of the 26 pollutants monitored in produced water; the applicable water quality criteria used were the more stringent of CWA section 304(a) criteria or the California Ocean Plan objectives as required by the 2004 final general permit. One of the platforms (Platform Irene) rarely discharges produced water and the operator had not collected the minimum number of samples (which is ten samples) recommended by the TSD to do a reasonable potential analysis. Moreover, the discharges measured for this platform were from small scale pilot tests of potential produced water treatment systems which may not be representative of future discharges resulting from the treatment system ultimately installed. Thus, Region 9 is deferring action on this platform until the general permit is reissued in 2009. Until then, for the majority of the pollutants addressed by the reasonable potential study, Platform Irene would continue to be subject to effluent limits in its previous individual permit, and the platform would continue to conduct monitoring for all 26 of the pollutants as required by Part II.B.1.b.2 of the general permit.

Seven of the 22 platforms use chlorine in cooling water or fire control system test water. Six of the seven platforms showed a reasonable potential to cause non-attainment of the marine water quality criteria for chlorine.

Proposed effluent limitations and monitoring requirements to control the pollutants in the above discharges and ensure compliance with marine water quality criteria are discussed in section C below.

B. Modified Water Quality Criterion for Undissociated Sulfide. The general permit provides a permittee may request a modified criterion for a pollutant of concern in produced water discharges based on additional studies of the toxicity of the pollutant. On April 20, 2006, several permittees operating under the general permit requested a

modification of the criterion in the permit for undissociated sulfide (2 µg/l). The permittees requested a modified criterion of 12 µg/l based on a new study of the toxicity of this material to marine organisms. Region 9 reviewed the new study and believes a revised criterion of 5.79 µg/l is justified by the data (rather than 12 µg/l). Region 9 is proposing to modify the water quality criterion in the permit for undissociated sulfide to 5.79 µg/l. The proposed effluent limitations for undissociated sulfide discussed below are based on the revised criterion of 5.79 µg/l for this material.

C. Proposed Effluent Limitations and Monitoring Requirements. Using the procedures in the TSD, Region 9 calculated effluent limitations for the pollutants in discharges of produced water, cooling water and fire control system test water for which reasonable potential was determined to exist based on the monitoring study. For produced water, these effluent limitations are found in a new Appendix C which is proposed to be added to the general permit. For cooling water and fire control system test water, the effluent limitations are found in a new Appendix D which would be added to the permit.

Monitoring once per quarter would also be required for the pollutants with reasonable potential in each of the discharges. The monitoring results would be reported in the quarterly discharge monitoring reports. For pollutants with no reasonable potential in produced water, monitoring once during the remainder of the permit term would be required as set forth in Part II.B.1.e.3 of the general permit.

D. Requirements Related to the Coastal Zone Management Act. The Coastal Zone Management Act (CZMA) requires Federal activities and projects affecting the coastal zone of a state, including Federally permitted activities, must be consistent with an approved state Coastal Management Plan (CMP) (CZMA Sections 307(c)(1) through (3)). California has a CMP which was approved in 1978; the CZMA authority is the California Coastal Commission (CCC).

In accordance with revised regulations implementing the CZMA (71 FR 788, January 5, 2006), the issuance of a general NPDES permit by EPA is considered a "Federal agency activity" covered by CZMA Section 307(c)(1), and CZMA regulations at 15 CFR Subpart C. The regulations at 15 CFR 930.31(e) further clarify the modification of a general permit which could affect any coastal use or resource is also subject to a consistency review under Subpart C.

Region 9 believes the proposed permit modification could affect coastal uses or resources of the State of California. Region 9 also believes the proposed permit modification would be consistent with the CMP. Region 9 recently submitted a consistency certification to the CCC for the proposed permit modification.

In accordance with 15 CFR 930.31(d), if the CCC concurs with the permit modification, the modification could become effective for all platforms without additional review of individual platforms by the CCC. However, if the CCC objects to the permit modification, the modification would not become effective for a given platform until an individual consistency certification had been submitted by the permittee and concurred upon by the CCC, or the Secretary of Commerce had overridden a CCC objection. The effective date for the proposed permit modification makes allowance for these regulatory requirements.

E. Permit Modification Appeal Procedures. Within 120 days following notice of EPA's final decision for the general permit modification 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 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 as modified on May 15, 2000, 65 FR 30886).

F. Compliance with the Regulatory Flexibility Act for General Permits. 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 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.

The legal question of whether a general permit (including a general permit modification), as opposed to an individual permit qualifies as a "rule" or as an "adjudication" under the Administrative Procedure Act (APA) has been the subject of periodic

litigation. In a recent case, the court held that the CWA Section 404 Nationwide general permit before the court did qualify as a "rule" and therefore that the issuance of the general permit needed to comply with the applicable legal requirements for the issuance of a "rule." *National Ass'n of Home Builders v. US Army Corps of Engineers*, 417 F.3d 1272, 1284–85 (DC Cir.2005) (Army Corps general permits under Section 404 of the Clean Water Act are rules under the APA and the Regulatory Flexibility Act; "Each NWP [nationwide permit] easily fits within the APA's definition of a 'rule.' * * * As such, each NWP constitutes a rule * * *").

As EPA stated in 1998, "the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit." 63 FR 36489, 36497 (July 6, 1998). At that time, EPA "reviewed its previous NPDES general permitting actions and related statements in the **Federal Register** or elsewhere," and stated that "[t]his review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits." *Id.* at 36496. Based on EPA's further legal analysis of the issue, the Agency "concluded, as set forth in the proposal, that NPDES general permits are permits [*i.e.*, adjudications] under the APA and thus not subject to APA rulemaking requirements or the RFA." *Id.* Accordingly, the Agency stated that "the APA's rulemaking requirements are inapplicable to issuance of such permits," and thus "NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law * * * [and] it is not subject to the RFA." *Id.* at 36497.

However, the Agency went on to explain that, even though EPA had concluded that it was not legally required to do so, the Agency would voluntarily perform the RFA's small-entity impact analysis. *Id.* EPA explained the strong public interest in the Agency following the RFA's requirements on a voluntary basis: "[The notice and comment] process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities." *Id.* Accordingly, with respect to the NPDES permit that EPA was addressing in that **Federal Register** notice, EPA stated that

"the Agency has considered and addressed the potential impact of the general permit on small entities in a manner that would meet the requirements of the RFA if it applied." *Id.*

Subsequent to EPA's conclusion in 1998 that general permits are adjudications, rather than rules, as noted above, the DC Circuit recently held that Nationwide general permits under section 404 are "rules" rather than "adjudications." Thus, this legal question remains "a difficult one" (*supra*). However, EPA continues to believe that there is a strong public policy interest in EPA applying the RFA's framework and requirements to the Agency's evaluation and consideration of the nature and extent of any economic impacts that a CWA general permit could have on small entities (*e.g.*, small businesses). In this regard, EPA believes that the Agency's evaluation of the potential economic impact that a general permit would have on small entities, consistent with the RFA framework discussed below, is relevant to, and an essential component of, the Agency's assessment of whether a CWA general permit would place requirements on dischargers that are appropriate and reasonable. Furthermore, EPA believes that the RFA's framework and requirements provide the Agency with the best approach for the Agency's evaluation of the economic impact of general permits on small entities. While using the RFA framework to inform its assessment of whether permit requirements are appropriate and reasonable, EPA will also continue to ensure that all permits satisfy the requirements of the Clean Water Act.

Accordingly, EPA has committed that the Agency will operate in accordance with the RFA's framework and requirements during the Agency's issuance of CWA general permits (in other words, the Agency commits that it will apply the RFA in its issuance of general permits as if those permits do qualify as "rules" that are subject to the RFA). In satisfaction of this commitment, during the course of this general offshore oil and gas exploration, development and production operations permit proceeding, the Agency conducted the analysis and made the appropriate determinations that are called for by the RFA. In addition, and in satisfaction of the Agency's commitment, EPA will apply the RFA's framework and requirements in any future issuance of other NPDES general permits. EPA anticipates that for most general permits the Agency will be able to conclude that there is not a

significant economic impact on a substantial number of small entities. In such cases, the requirements of the RFA framework are fulfilled by including a statement to this effect in the permit fact sheet, along with a statement providing the factual basis for the conclusion. A quantitative analysis of impacts would only be required for permits that may affect a substantial number of small entities, consistent with EPA guidance regarding RFA certification.¹

G. Analysis of Economic Impacts of the General Permit for Offshore Oil and Gas Exploration, Development and Production Operations off Southern California. EPA determined, in consideration of the discussion in Section F above, the issuance of the general permit for offshore oil and gas exploration, development and production operations off Southern California would not have a significant economic impact on a substantial number of small entities. There are only 22 offshore platforms which could be affected by the proposed general permit modification. EPA concludes since this general permit affects less than 100 small entities, EPA believes it does not have a significant economic impact on a substantial number of small entities. Accordingly, EPA concludes a quantitative analysis of impacts is not required for this permit.

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

Dated: March 12, 2009.

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Director, Water Division, Region 9.

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FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 30, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden

¹ EPA's current guidance, entitled Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement and Fairness Act, was issued in November 2006 and is available on EPA's Web site: <http://www.epa.gov/sbrefa/documents/rfafinalguidance06.pdf>. After considering the Guidance and the purpose of CWA general permits, EPA concludes that general permits affecting less than 100 small entities do not have a significant economic impact on a substantial number of small entities.