

INSIGHTS

EPA Approved Texas NPDES Oil and Gas Program Authorization on January 15, 2021

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On January 15, 2021, Region 6 of the U.S. Environmental Protection Agency (“EPA”) approved the State of Texas’ October 12, 2020 submittal to the EPA requesting partial National Pollutant Discharge Elimination System (“NPDES”) program authorization for oil and gas discharges. TCEQ’s authority to implement NPDES permitting, compliance monitoring and enforcement for oil and gas activities applies to discharges into water in the state from facilities on land within the State of Texas and extends three (3) statute miles offshore into the Gulf of Mexico. EPA retains jurisdiction for oil and gas discharges more than 3 statute miles offshore in the Gulf of Mexico. Discharges that are not affected by the transfer of NPDES program authorization are spills or releases of hydrocarbons subject to the Oil Pollution Act and discharges of wastewater to waters on Indian lands. Also, the Railroad Commission of Texas (“RRC”) continues to regulate land application of wastewater from oil and gas activities in Texas.

Important dates and activities related to the program approval process include: (1) November 5, 2020, the Texas Commission on Environmental Quality (“TCEQ”) submitted revised language clarifying how the TCEQ implements a particular enforcement program, (2) November 12, 2020, the EPA sent a letter for completeness to the State, (3) November 27, 2020 EPA published notice in the Federal Register of its receipt of a complete delegation request, (4) January 5, 2021, EPA held a virtual public hearing, and (5) January 11, 2021, the public comment period closed. EPA received a total of eight comments during the virtual public hearing and one hundred fifty-six (156) written comments during the public comment period.

Of the 156 comments EPA noted that approximately 130 were very similar in nature. Many comments requested an extension of the 45-day comment period and expressed concern with the Texas’ request to implement the NPDES oil and gas program in the State. Concerns centered around ties of the TCEQ to the oil and gas industry, lack of current understanding of the composition of produced waters and need for updated effluent limitations guidelines for discharges of oil and gas discharges. The most lengthy comments were filed by the Environmental Defense Fund and a group including the Sierra Club Lone Star Chapter, Environment Texas, Greater Edwards Aquifer alliance, Eco-SCI, Earthworks and Clean Water Action. EPA’s Comments and Responses dated January 15, 2021, lists each comment and EPA’s response.

EPA has made available on its website copies of EPA’s letter to the Governor of the State of Texas approving the program, a copy of the signed Addendum to the Memorandum of Agreement between the Texas Commission on Environmental Quality (“TCEQ”) (“MOA”), EPA’s

Comments and Responses listing each comment received and EPA's response and a pre-publication version of the notice approving the application filed by Texas for program authorization. Links to those documents are below.¹

The MOA describes in detail how permitting, compliance monitoring and enforcement authority will be transferred to the TCEQ. On January 15, 2021, jurisdiction for EPA issued oil and gas permits and primary enforcement authority transferred, with certain limited exceptions, to the TCEQ. The MOA describes that EPA will initially retain jurisdiction for permits for which appeals are pending and for enforcement actions that are currently ongoing. The MOA also describes the actions that are to later trigger transfer to the TCEQ of jurisdiction for retained permits and enforcement authority that is initially retained for individual permits. The MOA also describes the implications for program transfer for pending applications.

The TCEQ and the RRC will be available to assist facilities to identify the most appropriate and efficient time to merge NPDES and RRC permits for the same discharge. Also, the TCEQ already has applications and instructions on its website for use by oil and gas facilities to apply for Texas Pollutant Discharge System ("TPDES") permits for oil and gas discharges to replace applications that were pending at the EPA or for new or reissued permits.

It is important for entities in Texas affected by EPA's approval of NPDES program authorization for oil and gas activities to assess and understand the full impacts of the action for their facilities.

¹ https://www.epa.gov/sites/production/files/2021-01/documents/attachment_d_-_tpdes_moa_addendum_final-signed.pdf

https://www.epa.gov/sites/production/files/2021-01/documents/tx_npdes_oil_gas_authorization_frn_-_10019-98-region_6_prepublication_version_0.pdf

https://www.epa.gov/sites/production/files/2021-01/documents/texas_partial_npdes_oil_and_gas_program_authorization_approval_letter_final.pdf

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