

Update on State of Texas NPDES Application to Issue Federal Discharge Permits for Oil and Gas Facilities

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EPA Review Process

On October 12, 2020, Region 6 of the United States Environmental Protection Agency (“EPA”) received a delegation request from the State of Texas seeking authority to issue federal permits for discharges of produced water, hydrostatic test water and gas plant effluent from certain oil and gas activities into water in the state. The State of Texas (“State”) submitted the delegation request pursuant to the requirements of House Bill 2771, 86th Texas Legislature, 2019. The EPA review of the delegation request will proceed under 40 CFR Part 123. Under Section 123.61(b), within ninety (90) days of receipt of a complete program submission the EPA must approve or disapprove the program based on the requirements of Part 123 and the Clean Water Act and taking into consideration all comments received.

Upon determining that a program submission is complete, the EPA’s next step is to publish notice of the State’s application in the Federal Register and in enough of the largest newspapers in the State to attract statewide attention. The EPA also must mail notice to persons known to be interested in such matters and to all permit holders and applicants within the State. The notice should briefly outline the fundamental aspects of the State’s proposed program, explain how to obtain a copy of the submittal, provide a forty-five (45) day comment period and a public hearing within the State no less than thirty (30) days after the notice is published. The EPA is required to prepare a responsiveness summary that identifies the public participation activities conducted, the matters presented to the public, summarizes the comments received and explains the EPA’s responses to those comments. If the EPA approves the State’s program, it will notify the State, publish notice in the

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Federal Register and suspend issuance of permits by the EPA as of the date of program approval. If the EPA disapproves the State program, the EPA will notify the State of the reasons for disapproval and any required modifications necessary to the program to obtain approval.

TCEQ Amendment of General Permit No. TXG670000

In anticipation of the Texas Commission on Environmental Quality ("TCEQ") receiving approval from the EPA to regulate discharge of hydrostatic test water from oil and gas activities, the TCEQ initiated an amendment (without renewal) of General Permit No. TXG670000 ("General Permit") that currently authorizes discharge of hydrostatic test water from certain facilities already within the jurisdiction of the TCEQ. The amendment would expand applicability to hydrostatic test water from oil and gas activities upon EPA approval of the program submission. Public notice of the amendment to the General Permit was published in the Texas Register on July 3, 2020, and the public comment period ended on August 17, 2020. The amended General Permit is on the TCEQ Commissioner's Agenda for approval on October 21, 2020, as Docket No. 2020-0695-MIS. The TCEQ's intent is for the amended General Permit to be available for use upon EPA approval of the NPDES program submission, which transfers permitting authority for discharges of hydrostatic test water from oil and gas activities from the Railroad Commission of Texas ("RRC") to the TCEQ. Upon an oil and gas facility's receipt of coverage under the amended General Permit for discharges of hydrostatic test water to water in the state, coverage under a RRC discharge permit would no longer be needed.

Individual NPDES Permits for Discharge from Oil and Gas Activities in Texas

The program package submitted by the TCEQ to the EPA includes a proposed memorandum of agreement between the two agencies that will set out specifics of permitting and enforcement responsibilities. Once approved that document will provide definitive information on the process for transfer of individual NPDES permits and the TCEQ's issuance and enforcement of TPDES permits. Currently available information on enforcement is that the TCEQ will begin enforcing the terms of individual NPDES permits transferred to the TCEQ upon their receipt. Currently available information on permitting is that if a discharger has an existing individual NPDES permit issued by EPA Region 6 and a state permit issued by the RRC, both permits will continue in effect until the first of those permits expires. One hundred eighty (180) days prior to the first expiration date, the permittee should file a renewal application with the TCEQ using the TCEQ forms applicable to oil and gas facilities for issuance of a

TPDES permit. Upon issuance of that TPDES permit, the remaining permit will be terminated.

If an entity has an application pending at the EPA for issuance or renewal of a NPDES permit at the time of EPA approval of the request for delegation, available information is that the applicant will be required to prepare an application using TCEQ application forms for oil and gas facilities and substitute it for the application that is pending at EPA that would be withdrawn.

It will be important for entities in Texas affected by the delegation request to track these developments and submit timely comments during the comment period supporting the EPA's approval of the program submittal.