

Amendments to the NPDES Regulations for Storm Water Discharges Associated with Oil and Gas Exploration, Production, Processing, or Treatment Operations, or Transmission Facilities

(Final Rule Published June 12, 2006)

Questions and Answers August 2006

GENERAL

- Q1: How does the Energy Policy Act of 2005 amend the Clean Water Act with regard to oil and gas exploration, production, processing and treatment activities?
- A1: The Energy Policy Act amends Section 502 of the Clean Water Act by changing the definition of oil and gas exploration and production to encompass field activities or operations associated with all facets of the industry “...**including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities.**”
- Q2: How does the June 12, 2006 Final Rule affect CWA storm water permit requirements as they pertain to oil and gas field activities and operations?
- A2: Section 402(l)(2) of the CWA exempts entities that carry out certain oil and gas activities from obtaining storm water permits, including site preparation and associated activities (i.e., construction of access roads, drilling sites, waste management pits, pipelines, etc.). This rule exempts the oil and gas industry, including associated construction activities, from Federal NPDES storm water permits, except in very limited instances. Facilities that have a discharge of a reportable quantity release or that contribute pollutants (other than non-contaminated sediment) to a violation of a water quality standard are required to obtain and maintain NPDES permit coverage for storm water for the entire operating life of the facility.
- Q3: How does the Final Rule affect the March 10, 2005 deferral rule that delayed permit coverage for small oil and gas construction activities until June 12, 2006?
- A3: The Final Rule clarifying the changes to the NPDES storm water permitting program as it applies to oil and gas construction activities became effective immediately on June 12, 2006. This rulemaking supersedes and replaces the permit coverage issues addressed in the “deferral rule.”
- Q4: How does this rulemaking affect regulation of sediment runoff from oil and gas construction sites?
- A4: This final rule makes clear, through 40 CFR 122.26(a)(2)(ii), that a water quality standard violation for sediment from construction activities associated with oil and gas field operations alone will not trigger an NPDES permit requirement. EPA notes, however, that sediment may serve as a vehicle for discharges of oil or hazardous substances (e.g.,

heavy metals) or some other pollutant, and if an RQ is exceeded or a water quality standard violated for such other pollutant, the resulting contamination could trigger NPDES permitting requirements for the storm water discharge.

Q5: Can an ongoing, permitted oil and gas construction activity that now qualifies for an exemption from the NPDES storm water permit requirement immediately file a Notice of Termination (NOT)?

A5: It depends. All operators of qualifying construction activities and facilities permitted by EPA should file a NOT to ensure that the existing permit is properly terminated and recorded. Since neither EPA's electronic NOT system nor its paper NOT form list the permit exemption for oil and gas activities, EPA recommends that the permittee print a copy of the NOT form, check off the top box (i.e., Final Stabilization) and handwrite "exempt oil and gas activity" next to the printed statement "(Check only one)." The NOT form should be mailed to the EPA Storm Water Notice Processing Center, Water Permits Division (MC 4203), 1200 Pennsylvania Avenue, NW, Washington, DC 20460 to be properly recorded. Those operators whose construction activities and facilities are permitted under a State-issued permit should contact the appropriate State authority to determine appropriate procedures to terminate NPDES permit coverage.

SCOPE OF REGULATIONS

Q6: How does the Final Rule affect large (greater than 5 acres) oil and gas construction sites that have been required to obtain storm water permits since 1992?

A6: This Final Rule clarifies that the Energy Policy Act does not differentiate between small and large sites, and as such, storm water discharges from all oil and gas construction sites no longer require permit coverage – regardless as to the amount of acreage involved for a particular site or project. Large sites (> 5 acres) are no longer required to obtain an NPDES storm water permit prior to initiating construction activities at the site.

Q7: Will the exemption be applicable to construction activities associated with pipelines, gas processing plants, and transmission facilities (e.g., natural gas compressor and crude oil pumping stations) as well?

A7: The Final Rule does also exempt those types of activities.

Q8: How does the changed language in the CWA affect State authority to require operators to obtain a storm water permit for oil and gas construction activities?

A8: The CWA exemption at 402(l)(2) prohibits states from permitting these activities through a federally approved NPDES program; however, states retain authority pursuant to state law to regulate these activities through a non-NPDES program.

Q9: If there is contamination of storm water discharges resulting in a reportable quantity release of hazardous substances or oil during the construction of a qualifying, exempt oil and gas facility, what action(s) must the operator take to remain in compliance with the Clean Water Act?

A9: Storm water discharges from oil and gas activities (i.e., exploration, production, processing, or treatment operations, or transmission facilities, including construction) that are contaminated by contact with raw material, intermediate products, finished product, byproduct, or waste products, as indicated by discharges of reportable quantities of hazardous substances or oil, or by violations of water quality standards are subject to NPDES permitting requirements. Note however, that EPA does not consider sediment from construction activities to be the result of such contact and as such, discharges of sediment from construction activities do not trigger the need to obtain permit coverage.

Discharges of storm water resulting in the discharge of a reportable quantity or that contribute to a violation of a water quality standard are two criteria for oil and gas activities that meet EPA's "contaminated by contact" threshold for which NPDES permit coverage is required. Once the facility meets either of these two criteria, the operator must obtain NPDES permit coverage under either an individual permit or an applicable general permit. NPDES permit coverage is required for the lifetime of these facilities.

Q10: Does this regulatory change apply to mining activities?

A10: No. This rulemaking applies only to oil and gas construction activities.

APPLICABILITY TO SPECIALIZED FACILITIES/ACTIVITIES

Q11: Are ethanol plants and specialty refineries, such as those employing Fischer-Tropsch "clean fuel" technologies, eligible for the storm water permit exemption?

A11: No. None of these facilities are related to upstream oil and gas exploration, production, treatment, processing and transmission field activities. All of these facilities involve the physical and/or chemical transformation of raw materials into final manufactured products for sale. Ethanol plants generally use grain and agricultural waste as feedstock – not natural gas or petroleum. The North American Industrial Classification System (NAICS) codes for these facilities fall under the petroleum and coal products manufacturing category (NAICS 324). These facilities are not related to those oil and gas field activities covered under NAICS 211 and pipeline transportation of crude oil and natural gas activities designated under NAICS 4861 and 4862.

Q12: Are liquefied natural gas (LNG) import terminals eligible for the storm water permit exemption?

A12: No. LNG is imported as a commodity from foreign sources. LNG terminals receive imported liquefied natural gas that has been transported via LNG tankers from sources abroad. These terminals convert the liquefied natural gas back to its gaseous state, compress the gas and send it out via intrastate or interstate natural gas transmission pipelines for final distribution to industrial, commercial and residential customers. The LNG regasification process is analogous to a manufacturing process. LNG is not derived from domestic sources of oil and gas and is, therefore, not eligible for the storm water permit exemption authorized under the Clean Water Act for oil and gas exploration, production, processing, or treatment operations or transmission facilities.

- Q13: Are transmission pipelines conveying natural gas liquids (NGL) from a natural gas processing plant to a refinery, petrochemical complex, or storage facility eligible for an exemption from obtaining an NPDES construction storm water permit?
- A13: Yes. The transmission of natural gas liquids (NGL) from a natural gas processing plant, which removes these liquids from the “wet” gas stream, to an end user is an inherent part of “oil and gas field activities or operations.” Therefore, the construction of a NGL pipeline would qualify for a storm water permit exemption under the new storm water discharge regulations.
- Q14: A number of “non-traditional” facilities used by the industry in Alaska are constructed and operated solely to provide the necessary infrastructure and support for long-term oil and gas field operations. These non-traditional facilities include hotels and barracks for housing operations personnel and maintenance and repair yards, as well as airports and landing strips. All of these support facilities are “captive” to oil and gas industry operations, only. Are these facilities entitled to an exemption from NPDES storm water construction permitting requirements?
- A14: No. While appreciating the “linkage” between these activities and facilities to oil and gas exploration and production operations, EPA believes that all activities and facilities that clearly are not common to oil and gas field operations in the lower 48 States should not be regulated differently merely because the facilities belong to companies operating in Alaska. With one exception (a pipeline company excavating gravel for various construction and maintenance activities), there were no other inquiries or submittals as a Response to Comments on the proposed rule from the industry about extending the permit exemption to “other” non-traditional oil and gas field operating activities. Thus, the general silence from the industry leads EPA to believe that this permitting distinction is not a significant impediment to conducting oil and gas exploration and production operations in Alaska. Therefore, these “captive” facilities are not exempt from filing for a storm water construction permit.