

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
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TO: Board of Supervisors

FROM: Valentin Alexeef, Director
Planning and Development

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SUBJECT: NPDES Permit for discharges from Outer Continental Shelf (OCS) Oil Platforms

Recommendation(s):

That the Board of Supervisors: Authorize the Chair to execute the letter included herein as Attachment A commenting on the US Environmental Protection Agency's revised draft General NPDES Permit dated December 10, 2003 to the California Coastal Commission with a copy to the Environmental Protection Agency Region 9.

Alignment with Board Strategic Plan: The recommendation aligns with Goal No. 2. A Safe and Healthy Community in Which to Live, Work, and Visit and Goal 5: A High Quality of Life for All Residents.

Executive Summary and Discussion:

Introduction of Issues:

In the interest of protecting marine water quality, fisheries, and marine life in the coastal waters off of Santa Barbara County, the County has reviewed and commented on platform discharge permits issued by the United States Environmental Protection Agency (USEPA) and the California Regional Water Quality Control Board for many years. The County has participated in the review of these discharge permits to ensure that all impacts from the operation of oil and gas platforms off of Santa Barbara County are mitigated to the maximum extent feasible and are consistent with state standards pursuant to the California Coastal Management Program (CCMP).

A revised General National Pollutant Discharge Elimination System (NPDES) Permit for platform discharges has been submitted to the California Coastal Commission (CCC) for certification as consistent with the CCMP, as required by the Coastal Zone Management Act (CZMA). This revised permit was

resubmitted following the USEPA's failure to issue the NPDES General Permit certified by the CCC in January 2001. The NPDES General Permit certified in January 2001 included a requirement that the platforms meet the stricter of either the California Ocean Plan or federal standards at the edge of the 100 meter mixing zone from the platform. This requirement has been eliminated from the revised permit which is now being considered by the CCC for certification. This Board Letter addresses technical and policy issues resulting from the changes to the General Permit proposed by the USEPA.

The NPDES General Permit:

The oil and gas platforms off of Santa Barbara County's coast discharge a variety of effluents into the ocean. Depending upon the activities of a particular platform, such discharges may include drilling muds used to lubricate drill bits, sediment cuttings, domestic and sanitary wastes, and water (referred to as produced water) that is part of the oil emulsion extracted from a subsea reservoir. Because these effluents contain pollutants and toxins (e.g., oil and grease and heavy metals) that can be harmful to marine water quality and marine life and negatively impact designated beneficial uses (e.g., fishing, marine habitat, water contact, etc.), each of the platforms in federal waters off of Santa Barbara County's coast that discharges into the ocean is required to obtain an NPDES permit from the USEPA.

At this time, the platforms located offshore of Santa Barbara County in the Outer Continental Shelf (OCS) are operating under either a 1983 General Permit (e.g., Arguello Inc.'s Point Arguello platforms¹) issued by the USEPA, or under individual permits (e.g., ExxonMobil's Santa Ynez Unit and Nuevo's Platform Irene). The 1983 General Permit expired in 1984 but has been administratively extended by the USEPA. The individual permits were predominantly issued in 1992 and 1993 and expired in 1997 and 1998. These individual permits have also been administratively extended by the USEPA.

In 2000, the USEPA applied to the CCC for a "consistency certification" for a new General NPDES Permit (to replace the expired 1983 General Permit) certifying that the proposed discharge activities were consistent with the policies of CCMP. The General Permit submitted in 2000 was a product of almost two decades of collaboration between the County, USEPA, CCC, US Mineral Management Service, and other interested groups. In the proceedings before the CCC in January 2001, USEPA agreed to incorporate into the new NPDES General Permit a requirement that produced water discharges comply with either the State water quality standards set forth in the California Ocean Plan or the Federal Clean Water Act (CWA) standards for each constituent, whichever was more protective of applicable beneficial uses. For both sets of standards, compliance is measured at the edge of a 100 meter mixing zone from the discharge point. Based on USEPA's commitment to require meeting the more stringent of the Federal CWA or California Ocean Plan effluent discharge standards, the CCC concurred on the consistency with the CCMP in January 2001. The USEPA never issued the General Permit certified by the CCC.

In August 2003, the County was informed that USEPA's administration was withdrawing its agreement to require that discharges from the platforms adhere to the more stringent of the California Ocean Plan or Clean Water Act standards and that the agency would return to the CCC with a revised General Permit for a new consistency certification. The permit now specifies that the federal water quality standards must be met at the

¹ In July 2003 Arguello Inc. committed to meet all the terms and requirements of the General Permit certified by the CCC in January 2001 with respect to Platforms Hermosa and Hidalgo discharges as a part of its proposal to develop the eastern half of Lease OCS-P 0451.

edge of the 100 meter mixing zone, and the California Ocean Plan standard must be met at the 3 mile boundary between state and federal waters.

In September 2003, the Coastal Commission issued a letter (Attachment B) raising significant technical and policy concerns regarding EPA's failure to issue the previously certified General Permit. The revised General Permit was submitted to the CCC on December 10, 2003, and the CCC is expected to consider the USEPA's revised NPDES General Permit in March 2004. In the meantime, the platforms continue to discharge effluent under the old general and individual NPDES permits that contain outdated water quality standards.

Preserving California's Authority to Manage Its Coastal Resources:

The USEPA's failure to issue the previously certified General Permit and use the more stringent of the California Ocean Plan or federal standards raises a fundamental policy issue. This issue pertains to the standing of coastal states (and coastal counties through state representation) to have a functional role in managing and protecting the quality of their respective coastal resources as was the intent of the U.S. Congress when it passed, and subsequently amended the CZMA.

In 2001, the USEPA agreed with the CCC that pollutant discharges into the oceans offshore California should either meet USEPA standards or California standards, whichever was more protective of water quality and beneficial uses. In so doing, USEPA acknowledged California's role in managing its coastal resources. This role, widely recognized as a cornerstone of the Coastal Zone Management Act, explicitly includes management of adverse affects to those resources – direct or indirect – that may occur from federal or federally approved activities in the Outer Continental Shelf, such as offshore oil and gas development.

A little more than two years later, the USEPA has reversed its position, and now contends that California does not have authority under the CZMA to enforce its clean water standards with regard to ocean discharges. Such reversal follows recent attempts by the U.S. Department of Commerce to revise the regulations that implement the CZMA, particularly the Federal Consistency Review component of those regulations. Last year the Board of Supervisors joined a chorus of affected coastal states and counties in opposing such rulemaking because it weakened the authority and functional ability of coastal states to manage their coastal resources. (Board of Supervisors agenda – 8-19-03.) Both attempts to weaken the authority of coastal states have received substantial support from the petroleum industry.

As discussed below, California Ocean Plan standards are significantly more protective of water quality with respect to cadmium and hexavalent chromium. In addition to this significant difference, the current attempt by USEPA to circumvent state discharge standards represents another ill-advised precedent in curtailing the authorities and abilities of coastal states to manage coastal resources and realize cleaner ocean waters. In particular, Congress envisioned the merit of empowering coastal states to address geographically specific circumstances when developing their respective coastal management programs. USEPA's reversal ignores that intent, and approaches pollutant discharge standards in an oversimplified one-shoe-fits-all-sizes policy that does not work well in case-specific circumstances.

Comparison of the Water Quality Standards:

The County retained Marine Research Specialists (MRS), a consulting firm with marine water quality expertise, to assist in reviewing the differences between the state and federal discharge standards. Because of sampling differences between the state and federal parameters, a direct comparison of the standards could not be readily conducted. MRS used procedures (also used by the CCC) developed by USEPA and the State Water Resources Control Board (SWRCB) to convert the standards into a form that permits a direct comparison. Using the USEPA's procedure, a comparison of the Ocean Plan estimated and USEPA's 4-day average criteria (Attachment C, Table 1) shows that, where the USEPA and Ocean Plan both include water quality standards for a particular constituent, the Ocean Plan criteria are more stringent in all but one case. The difference between the Ocean Plan and the USEPA values are relatively small when compared on an absolute basis with the exception of cadmium and hexavalent chromium. USEPA's criteria do include many constituents that are not included in the Ocean Plan.

Results of the comparison of standards following the procedure recommended by the SWRCB staff for the "main aquatic life protection criteria" of interest are presented in Attachment C, Table 2. Again, the Ocean Plan criteria are more stringent than the USEPA criteria in all but one case. Here again, the differences between the Ocean Plan and the USEPA values are relatively small when compared on an absolute basis with the exception of hexavalent chromium. Regardless of the methodology (USEPA or SWRCB) used to convert USEPA and Ocean Plan water quality criteria to a common statistic, the California Ocean Plan criteria are more stringent and environmental protective in almost all cases. For those cases where the EPA criteria are more stringent, the differences are relatively small, with the criteria being almost identical.

From a technical perspective, the County finds itself as a participant in a scientific process that continues to unfold between a federal and state agency. Over time, we have sided with rulemaking that provides more stringent environmental protection. The position expressed in the attached letter continues to follow that approach.

In closing, we request that the Board of Supervisors authorize the chair to execute the attached letter (Attachment A) commenting on the US Environmental Protection Agency's revised draft General NPDES Permit.

Mandates and Service Levels: Consistency review is conducted primarily by the California Coastal Commission; however, Santa Barbara County often participates as an interested party because the Federal government historically has concentrated most of its oil and gas leasing and development offshore California in the Santa Barbara Channel and Santa Maria Basin, offshore Santa Barbara County.

Fiscal and Facilities Impacts: No fiscal or facilities impacts would occur as a result of the recommended action. Expenses incurred in analyzing and preparing comments on the NPDES General Permit are budgeted in Fund 0001, Program 5080, Project PKS2 as shown on page D-298 of the County's FY03-04 budget book under expenditure item *Long Range Planning*.. Revenue to cover these expenditures comes from the U.S. Department of Commerce pursuant to the Coastal Impact Assistance Program of 2001.

In the long term, indirect impacts to the County's coastal resources could result should California and its political subdivisions lose standing in the CZMA consistency review process to minimize the impacts of federal or federally approved activities on the Outer Continental Shelf.

Special Instructions: Clerk of the Board to return the signed letter to Planning and Development for the transmittal to the California Coastal Commission and distribution of copies.

Concurrence: County Counsel

Attachments: A. Draft Letter
B. Coastal Commission Letter dated September 16, 2003
C. Comparison of the Water Quality Standards

March 16, 2004

Mike Reilly, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: General NPDES Permit for Pacific OCS Oil and Gas Operations

Chairman and Honorable Members of the Coastal Commission:

On behalf of the Board of Supervisors of Santa Barbara County, I am submitting the following comments on the US Environmental Protection Agency's (EPA) revised draft General National Pollutant Discharge Elimination System (NPDES) Permit for discharges of pollutants from offshore oil and gas platforms on the Outer Continental Shelf. The County has participated in discussions and review of the General Permit for nearly two decades and was in agreement with the consistency determination made by the Coastal Commission in January 2001 for the proposed General Permit. This consistency determination was based on a commitment from the EPA to use the most stringent water quality standards for produced water discharges, either those standards contained in the Clean Water Act or the California Ocean Plan, whichever are more stringent.

We were disappointed to learn that the EPA did not issue General NPDES permit CAG280000. We expected that the permit would have been issued by EPA immediately following the Coastal Commission consistency certification in January 2001. This permit included significant improvements to the water quality standards contained in the 20-year old General NPDES permit under which 14 platforms (10 off the Santa Barbara coast) continue to discharge into Santa Barbara's coastal waters. The standards of this older General Permit are significantly less protective of ocean water quality than those included in the proposed General Permit. Use of the most protective standards is critical to ensuring the protection of California's coastal waters and marine life.

In permitting oil and gas related development, the County of Santa Barbara has always depended on the commitment of regulatory agencies and industry to implement maximum feasible mitigation. When faced with the impact of offshore oil and gas development on regional air quality, we advocated for and successfully required the extension of State and local air quality standards to platform related emissions. Similarly, we feel it is critical that platform discharges meet the most stringent water quality standards. Further, we fully support the Coastal Commission's position that the Coastal Zone Management Act specifically provides for state

Honorable Members of the Coastal Commission

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standards to be included in the Coastal Management Plan and for those standards to be applied at the site of the federally permitted activity. To do otherwise would significantly and adversely affect the State's and the County's ability to manage and protect its coastal resources.

We urge the Coastal Commission to reject the revised permit as inconsistent with the California Coastal Management Plan. Concurrently, we encourage the EPA to restore its 2001 commitment regarding produced water discharge standards.

Thank you for considering our comments. Please contact Mr. Steve Chase, Deputy Director of the Energy Division or Ms. Alice McCurdy at (805) 568-2040 if you have any questions regarding our comments.

Respectfully submitted,

Joseph Centeno, Chair
Board of Supervisors

Cc: Peter Douglas, Executive Director, California Coastal Commission
Alexis Strauss, Director, Water Division EPA Region 9
Eugene Bromley, EPA Region 9