

January 8, 2021

Submitted via <http://www.regulations.gov>
Docket No. EPA-R06-OW-2020-0608

Re: Environmental Protection Agency Public Notice of State of Texas' Submittal to EPA of Request for Partial National Pollutant Discharge Elimination System (NPDES) Program Authorization for Oil and Gas Discharges, 85 Fed. Reg. 76,073 (Nov. 27, 2020)
Docket No. EPA- R06-OW-2020-0608

COMMENTS

The Texas Oil and Gas Association (“TXOGA”) and the American Petroleum Institute (“API”) submits these comments on the Environmental Protection Agency (“EPA”) Public Notice of State of Texas' Submittal to EPA of Request for Partial National Pollutant Discharge Elimination System (“NPDES”) Program Authorization for Oil and Gas Discharges, 85 Fed. Reg. 76,073 (Nov. 27, 2020) (“Notice”), in support of the application of the State of Texas for NPDES authority for discharges from produced water, hydrostatic test water and gas plant effluent, hereinafter referred to as oil and gas discharges, within the State of Texas (“State”).

TXOGA is a statewide trade association with approximately 5,000 members representing every facet of the Texas oil and gas industry, including small independents and major producers. Founded in 1919, TXOGA is the oldest and largest group in Texas representing petroleum interests; it continues to serve as the only organization encompassing all industry segments. TXOGA is a non-profit corporation whose members produce more than 90 percent of Texas's crude oil and natural gas; operate nearly 100 percent of the state's refining capacity; and are responsible for most of the state's pipelines. In fiscal year 2019, the oil and gas industry supported more than 428,000 direct jobs; it paid more than \$16 billion in state and local taxes and state royalties—the highest total in Texas history—funding our state's schools, roads, and first responders.

API is a national trade association representing over 600-member companies involved in all aspects of the oil and natural gas industry, including crucial exploration, production, transportation, and ancillary services. API's members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. API and its members are dedicated to meeting environmental requirements while economically developing and supplying energy resources for consumers. API's members have a substantial interest in the scope of asserted federal jurisdiction under the Clean Water Act (“CWA”). As you know, API and its members have been constructive participants in the EPA and the USACE's development of CWA regulations including those related to discharge.

The State's request for NPDES program authorization for oil and gas discharges, if approved, would be administered by the Texas Commission on Environmental Quality ("TCEQ"). The TCEQ currently implements an approved partial NPDES permitting program, the Texas Pollutant Discharge Elimination System ("TPDES") program, for discharges to waters of the State in accordance with Clean Water Act Section 402(n). However, when TCEQ was granted authority by the EPA in 1998 to administer the NPDES program for discharges under its jurisdiction, oil and gas discharges were regulated by the Railroad Commission of Texas ("RRC") and thus were not included as part of the approved TPDES program. As a result, EPA is the NPDES permitting authority for oil and gas discharges in Texas. In 2019, House Bill 2771, 86th Texas Legislature, amended Texas Water Code § 26.131 to transfer jurisdiction of discharges of produced water, hydrostatic test water, and gas plant effluent into water in the state from the RRC to the TCEQ upon NPDES program authorization from the EPA for such discharges.

TXOGA members own various types of facilities in Texas that discharge wastewater to surface waters. Many facilities owned by TXOGA members are defined as oil and gas activities and, as noted above, have historically been within the jurisdiction of the RRC such that discharges of wastewater have been authorized by two permits – a federal NPDES permit issued by EPA and a state permit issued by the RRC. Discharges from other facilities owned by TXOGA members such as refineries are not defined as oil and gas activities and are currently within the jurisdiction of the TCEQ. The TCEQ issues one TPDES permit that provides federal and state authority to discharge. TXOGA members, therefore, have many years of experience with both permitting scenarios and are well positioned to evaluate the benefits of the request filed by the State of Texas.

Based upon the experience of TXOGA members with the two permitting scenarios and TXOGA's review of background information provided by EPA in the Notice, TXOGA members strongly support EPA approval of the State of Texas' request for partial NPDES program authorization for oil and gas discharges. Rather than requiring issuance and monitoring of separate federal and state permits for every discharge, a one permit system is much more efficient in time and resources of the permitting agencies as well as the regulated community. Also, TXOGA submits that the size and experience of the TCEQ Austin headquarters and regional staffs dedicated only to Texas puts the TCEQ in the best position of any agency to monitor and ensure compliance of oil and gas discharges with federal and state permit requirements.

Under CWA § 402(b) and 40 CFR part 123, the State must show, among other things, that it has the authority to issue permits that comply with the Act, authority to impose civil and criminal penalties for permit violations, and authority to ensure that the public is given notice and an opportunity for a hearing on each proposed permit. TCEQ is already capable of carrying out the foregoing requirements, and is doing so for every type of wastewater discharge to surface waters, with exception of oil and gas wastewater discharges. The process under which the TCEQ undertakes TPDES permitting, monitoring and enforcement is set out in a detailed Memorandum of Agreement between EPA and a TCEQ predecessor agency first executed in 1998 and updated in 2020 ("MOA"). TPDES permitting, monitoring and enforcement of discharges from oil and gas activities are proposed to be undertaken pursuant to the existing MOA as modified by an Addendum to the MOA ("Addendum"). The Addendum was provided for review as a background document to the Notice. Based upon TXOGA's experience with TPDES permitting under the MOA and its review of the Addendum, TXOGA is confident that the TCEQ is well prepared to

begin permitting, monitoring and enforcing TPDES permits for discharge from oil and gas facilities upon EPA approval of the State's request.

TCEQ has gained a great deal of experience in writing TPDES permits for a wide range of discharge types. TPDES permits include technology-based requirements and any additional water quality-based requirements needed to protect the quality of the receiving waterbody. Technology-based requirements applicable to discharges from oil and gas activities are based upon federal effluent limitations guidelines ("ELGs"). The requirement to incorporate applicable ELGs into each discharge permit will not change with transfer of NPDES permitting from the EPA to TCEQ. Relating to water quality-based requirements, the TCEQ is the agency with the most knowledge of the quality of waters in the State and the requirements needed in permits to protect receiving water quality. Staff within the TCEQ Office of Water undertake regular monitoring and assessment of the waterbodies in the State and water quality planning. They incorporate that data along with other information into the EPA-approved Texas Surface Water Quality Standards ("TSWQS") and into the procedures to implement the TSWQS into discharge permits. Having the TCEQ staff directly responsible for incorporating the TSWQS into TPDES permits will result in more accurate and predictable water quality-based requirements.

The TPDES permitting program administered by the TCEQ includes issuance of individual permits, but the TCEQ has also made extensive efforts to develop general permits, when they are appropriate, that greatly improve timeliness and efficient use of agency resources. For instance, the TCEQ recently amended its general TPDES permit for the discharge of wastewaters used for hydrostatic testing. That permit would be available to authorize discharges of hydrostatic test water from oil and gas activities upon EPA approval of the request for authorization.

TXOGA has observed effective coordination between the TCEQ and EPA in issuing, monitoring and enforcing TPDES permits according to the process set out in the MOA and expects that to occur for TPDES permits for discharges from oil and gas activities. TCEQ has an efficient, EPA-approved electronic monitoring program to measure TPDES permit compliance and long established and well-staffed TCEQ regional offices that serve as a base for inspections of TPDES permittees and for initiation of enforcement consistent with the MOA. TCEQ has the programs and facilities already in place to regulate oil and gas discharges upon EPA approval of the TPDES program.

TXOGA believes that TCEQ issuance of TPDES permits for discharges from oil and gas activities pursuant to the process set out in the MOA as modified by the Addendum will benefit both EPA and the citizens and waters of the State of Texas. A change in primacy for NPDES permitting will increase efficient use of state and federal agency resources. At the same time, TPDES permits will be equally protective of human health and the environment, because they will continue to be based upon the same technology-based requirements and water quality-based standards used by the EPA. TPDES permits will be fully protective of the quality of water in the State for public health and the environment consistent with both Section 402 of the Clean Water Act and Section 26 of the Texas Water Code.

We encourage EPA to review and approve the application as quickly as possible in accordance with substantive and procedural requirements. Thank you for the opportunity to comment on the

Notice in support of partial NPDES program authorization for oil and gas discharges to the State of Texas.

Sincerely,



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