

Texas Commission on Environmental Quality Oil and Gas Discharge Delegation Stakeholder Virtual Meeting

December 10, 2020 @ 1:30 p.m.
Via MS Teams Live Event

Meeting Summary

Welcome and Introductions

Commissioner Emily Lindley
L'Oreal Stepney, P.E., DED

Status of the NPDES Application

Commissioner Emily Lindley

- On November 27th the EPA published [notice of a virtual public meeting](#) on TCEQ's application for regulatory authority for oil and gas wastewater discharges. The meeting will be held on January 5, 2021 at 4 p.m. [Pre-Registration](#) for the meeting is required.

Permitting Readiness

David Galindo

- Hydrostatic Test General Permit** - The general permit was approved by EPA and was published for public comment. The general permit was issued in October 2020. The general permit is ready however, we need to wait until we receive regulatory authority approval before we can begin accepting notices of intent to obtain coverage. We are anticipating a seamless transfer for issuing authorizations under the general permit after we receive approval for regulatory authority.
- TXG310000 General Permit** - We are currently working on developing a new general permit (TXG310000) that will replace EPA's general permits for Territorial Seas (TXG260000) and the Coastal Water Offshore (TXG330000). The new TCEQ TXG310000 general permit will combine the two EPA general permits into one. We will work with EPA to obtain approval prior to publishing the general permit for public comment. We anticipate the general permit will be available by the Summer 2021.
- Outer Continental Shelf General Permit** – TCEQ will be working to develop a state only general permit for discharges out past three miles on the outer continental shelf. A state only permit is needed because, TCEQ does not have authority to issue Texas Pollutant Discharge Elimination System (TPDES) permits for discharges out past three miles. While EPA currently has an outer continental shelf general permit, dischargers are currently required to obtain coverage from EPA and obtain an additional state only individual permit from the Texas Railroad Commission. The new TCEQ general permit will help streamline the process to allow an opportunity for dischargers to obtain a state only general permit.
- TPDES Individual Permit Application Forms** – We are currently updating our wastewater discharge application forms for individual permits. Our applications are very similar to the NPDES program application that EPA uses for individual permits. The applications consist of an administrative report and a technical report. We are adding a worksheet specific to oil and gas operations. The application instructions explain the information that is needed. Links to the applications will be available through the stakeholder website.

- **Pre-application meetings** - We encourage pre-application meetings for discharges that will require an individual permit. We can help identify any issues or anything that you may need to address in your application.

Compliance Monitoring Readiness

Melissa Cordell

- Good afternoon, my name is Melissa Cordell and I'm the Assistant Deputy Director for the Enforcement Division in the Office of Compliance and Enforcement.
- For the topic of Compliance Monitoring Readiness, I will talk about a team of dedicated staff within the Enforcement Division. This is our Compliance Monitoring Team, and
- They are actively preparing for these new program requirements and for the permittees that may be new to working with TCEQ in this capacity.
- This team is responsible for
 - helping permittees in accessing the NetDMR database that permittees or their agents will use to submit Discharge Monitoring Reports.
 - These DMRs are periodic reports prepared by permitted facilities that discharge to waters of the state and summarize their wastewater samples and analytical data.
 - It is likely that the first interaction that the permitted facilities will have with the Compliance Monitoring Team is outreach from the Compliance Monitoring Coordinators to get the relevant parties into NetDMR.
 - These coordinators review the self-reported data for compliance with permitted effluent limits. And monitor submissions of the data within reporting deadlines.
- So, what do we do with this information?
- If a Regulated Entity is found to be in violation of their permit (for example the failure to self-report or for exceeding established effluent limits), then
- our staff will take the appropriate level of enforcement action in accordance with the Agency's criteria for referral for formal enforcement to protect human health and the water quality of Texas.
- Possible actions can range from:
 - informal enforcement actions, including verbal notifications via telephone;
 - written notifications via email or Notice of Violation letters, and
 - to formal enforcement actions.
- If the violation meets the Enforcement Initiation Criteria (EIC), then a records review investigation will be conducted and the permittee will be notified through a Notice of Enforcement letter
- In addition to this, the regional offices may conduct record review or onsite investigations, including investigating complaints. and
- the matter will be referred to another area within the Enforcement Division - the Water Section - for assignment and review. Throughout that process an Enforcement Coordinator will be in communication with the Regulated Entity and can help explain what is happening and what is needed.
- Staff are available to answer questions about the Compliance Monitoring Team's interaction with the public and for any questions you may have about regional activities.

Workshops

Diana Steele

- Overview of Outreach/Assistance in development for stakeholders and the Oil and Gas Industry related to the wastewater permitting delegation.
 - New assistance webpage listing a description of the permits, links to the e-permitting system and online DMR webpage and other relevant resources
 - Online Workshop January 7, 2021
 - How to create a State of Texas Environmental Electronic Reporting System (STEERS) account
 - How to submit a Notice of Intent (NOI) to obtain authorization for a general permit using STEERS
 - How to submit Discharge Monitoring Reports (DMRs)
 - Compliance Alert
 - Email list sign up (texasenvirohelp@tceq.texas.gov or diana.steele@tceq.texas.gov)

Announcements

David Galindo

- Next Meeting: March 18, 2021 @ 1:30 pm
- TCEQ webpage (<https://www.tceq.texas.gov/permitting/wastewater>)

Questions/Answers

David Galindo & Laurie Fleet

Question 1: Has EPA has already approved the TCEQ to have full oversight of issuing permits for oil and gas discharge?

Answer: EPA has not authorized TCEQ to regulate oil and gas discharges yet. They have published notice in the Federal Register and are taking public comments on our application. They are also holding a public meeting on January 5, 2021. Pre-registration is required for the meeting.

Question 2: Can you share the link to the EPA public meeting and public comment page?

Answer: The link to register for the public meeting is at:
<https://www.epa.gov/tx/forms/registration-form-virtual-public-meeting-and-virtual-public-hearing-oil-and-gas-delegation>

Question 3: Questions about Delegation Authority timing. EPA could approve the delegation authority on January 11th even though that is the deadline for comments. That does not allow for any consideration for said comments. When did/does the EPA's 90 day period for making decision begin? Because of deadline issues, is TCEQ working with EPA to extend the statutory review period under 40 CF 123.21?

Answer: We submitted the application to EPA on October 12, 2020. That is the start of EPA's 90 day review period. EPA published notice in the Federal Register on 11/27/20, they are having a public meeting on 01/05/20 at 4:00pm. It's our understanding that you need to pre-register for it. The public comment period is currently scheduled to end 01/11/20. We're aware that the end of comment date is also the end of the 90 day review period. TCEQ does not have any additional information at this time.

Question 4: Why is October 12th the start of the application process when according to the notice there was back and forth with TCEQ that were finally resolved on November 5th?

Answer: That's something for EPA to answer.

Question 5: Will the discharges be allowed into public water sources like streams and rivers? Are produced water permits allowed east of the 98th meridian, and if so what is the permitting process and effluent limitations? Will produced waters be allowed to discharge to waters of the state west of the 98th meridian? If so what is the permitting process and limitations?

Answer: 40 Code of Federal Regulations (CFR) Part 435 allows certain discharges from oil and gas facilities into waters of the U.S. as long as it meets certain criteria, while other types of discharges are prohibited. Technology based limits are identified in 40 CFR Part 435 and must be included in the permit. Additionally, we do a water quality screening for compliance with the water quality standards. This screening may require additional effluent limitations to be included in the permit to protect water quality.

40 CFR Part 435 allows discharges from stripper wells to be discharged east of the 98th meridian. EPA has an existing general permit that includes effluent limits for these discharges. We're in the process of developing a general permit that would replace EPA's general permit for these discharges. The permitting process for general permits requires TCEQ to develop the general permit, obtain EPA approval, publish notice of our intent to issue the general permit and to solicit public comment on the proposed general permit. TCEQ will develop a response to public comments. The proposed general permit is issued by the Commissioners. Once the general permit is issued, applicants can apply for coverage by submitting a notice of intent which is reviewed by TCEQ and then authorization is either issued or denied. General permit authorizations don't have to go through public notice because the general permit went through a public participation process.

40 CFR Part 435 allows produce water discharges west of the 98 if they are used for agricultural or wildlife purposes so if an applicant proposes to use the water for those two purposes it can be authorized. These discharges will be authorized under an individual permit. For an individual permit, you would submit an application. The process includes two public notices: once after it is administratively complete and then again after the draft permit is developed. The public notice provides an opportunity for the public to comment on those individual permits, request a public meeting, or request a contested case hearing. Renewal applications are not subject to contested case hearing under certain situations. During technical review and development of the individual permit, we determine what type of effluent limitations are necessary to protect water quality based on site-specific information, federal effluent limitation guidelines, and screening against water quality standards.

Question 6: Is a general permit being drafted for produced water? Can you explain again what general permit 31 covers?

Answer: We're developing two separate general permits for produced water. TXG31 is being developed to authorize discharges of produced water from stripper wells, discharges located in the coastal area other than produced water (which is not authorized to be discharged in the coastal areas), and discharges of produced water in the territorial seas.

We are also developing a separate general permit to authorize discharges in the outer continental shelf. This general permit will be a state only permit because EPA doesn't delegate authority out past the territorial seas. For discharges in this area, you will have to obtain an EPA permit and a TCEQ permit.

Question 7: What water quality standards will be applied to these discharges to ensure existing uses are maintained?

Answer: We have current water quality standards in 30 Texas Administrative Code Chapter 307 which will be applied as applicable. For example, numeric total dissolved solids criteria would apply if there are any dissolved solids associated with the discharges. There are also narrative criteria for toxics. We will be screening the discharge for compliance with our current water quality standards. We use the Implementation Procedures to determine whether or not effluent limits are needed in the permit to ensure compliance with the water quality standards.

Question 8: David Galindo mentioned having application forms ready this month but given delegation authority will not happen until 2021 at some point, shouldn't there be public comments on any permit application forms?

Answer: Although the application form will be available, we will not be accepting any applications for oil and gas until we receive delegation. Having the application form available will allow applicants to begin completing the portions of the application that are applicable to their discharge.

We don't solicit public comment on our application forms but when an applicant submits an application to the agency, the public can provide comments on the application that was received by the agency during the public comment period, including comments regarding whether the form was lacking something.

Question 9: If a facility that will be treating produced water is seeking coverage under an individual TPDES permit, will an RRC permit also be required with the individual permit?

Answer: If you're requesting authorization to discharge into water in the state, a Railroad Commission permit will not be required once EPA delegates authority to TCEQ. After delegation, you will only need a permit from TCEQ to discharge into water in the state. However, if you're requesting authorization to discharge adjacent to water in the state (such as for beneficial reuse) that activity will require a permit from the Railroad Commission.

Question 10: Will TCEQ be authorizing facilities regulated under 435 and 437?

Answer: 40 CFR Part 435 is for oil and gas related discharges and Part 437 is for centralized waste treatment facilities. We will be processing application for discharges under 40 CFR part 435 from oil and gas extraction sites once we get delegation authority from EPA. However, we currently have authority to issue permits under 40 CFR Part 437 for non-oil and gas related discharges. After delegation, we would be able to then process applications for discharges from centralized waste treatment systems that collect oil and gas related waste.

Question 11: Does TCEQ use 3rd party testing for your water standards? And if so, what do you use?

Answer: Applicants are required to use a NELAP certified lab to conduct effluent analyses and the lab is required to use certain approved testing methodologies which are identified in 40 CFR part 136.

Question 12: Can we move forward with scheduling pre-application meetings before permitting delegation is received from EPA?

Answer: Yes, we'd be glad to meet with anyone beforehand. You can contact me to schedule a pre-application meeting. Currently we're not doing face-to-face meetings but we can do a virtual meeting.

Question 13: Will TCEQ be doing any chemical/biological monitoring of affected streams to verify effectiveness or modify permitting process and standards as needed?

Answer: TCEQ's Water Quality Planning Division conducts the surface water quality monitoring program. They monitor streams and water bodies across the state. They also evaluate that water quality data to ensure that those water bodies maintain their uses such as drinking water uses and recreation uses.

Question 14: Are there any existing individual permits the TCEQ will be taking on? Or do all individual permits issued under RRC and EPA meeting 40 CFR 435 and 437 need re-approval after TCEQ receives delegation?

Answer: The draft Memorandum of Agreement between EPA and TCEQ in our application outlines the transfer of permitting authority and compliance monitoring for facilities that are currently authorized under EPA permits. We have a Memorandum of Understanding between the Railroad Commission and TCEQ that outlines the transfer of permitting and compliance monitoring from the Railroad Commission to TCEQ. Essentially if you have an existing permit with either of those other agencies if in effect you will be allowed to continue operating under that existing authorization until the earlier of the expiration date so for example if your EPA permit expires before your Railroad Commission permit expires then you would need to apply for a TCEQ permit prior to the EPA permit expiration date.

The draft Memorandum of Agreement between TCEQ and EPA is part of our application that was submitted to EPA and is currently out for public review and comment. The Memorandum of Understanding between TCEQ and the Railroad Commission is in 30 TAC §7.117.

Question 15: The majority of constituents in produced water don't have Texas water quality standards, so what do you do in terms of permit limits for those?

Answer: In addition to screening for water quality standards, we also have whole effluent toxicity testing which is designed to identify other parameters which we may not have existing criteria for. We update the water quality standards every three years which includes a public participation process. Stakeholders can recommend additional water quality standards or criteria during the triennial revisions. It's important to clarify that EPA and Railroad Commission already apply limitations on where discharges can occur, how that occurs, and effluent guidelines and limitations to include in the permit. Currently if EPA or Railroad Commission issues a permit in Texas, that permit has to comply with our Texas surface water quality standards, so they're already doing the screenings for permit that they're currently issuing. If we get program authorization, we're going to be following basically what EPA and Railroad Commission did and probably some additional things on our part to fit into our existing program.

Question 16: Can you provide info on where to find the list of approved certified water quality testing labs?

Answer: A list of NELAP certified labs is available at:
https://www.tceq.texas.gov/assets/public/compliance/compliance_support/qa/txnelap_lab_list.pdf

Question 17: Will centralized water treatment plants be allowed to discharge to surface waters in all cases? Or will they have to follow the same rules as oil and gas operations, (e.g., surface discharges allowed only for ag or wildlife applications)?

Answer: That's a very good question. Typically, a facility is subject to one effluent limitation guideline, but in this case we're treading some new territory and we want to get this right. We may have to explore that with our Environmental Law Division.

Question 18: If a discharge of hydrostatic test water associated with oil and gas activity is applied to an upland area but portions of the water would flow into a waterbody, would TCEQ GP cover the entire discharge or would a permit from both RRC and TCEQ be required? (i.e. Would an RRC permit be required for the portion of the discharge that was absorbed into the ground or evaporated prior to reaching the waterbody?)

Answer: If you are proposing to discharge hydrostatic test water into a water body, that would be authorized by TCEQ's hydrostatic test general permit upon delegation. If you are using that hydrostatic test water for land application, irrigating crops or landscaping, or strictly for evaporation, that would require a Railroad Commission permit. House Bill 2771 transferred discharges into water in the state to TCEQ but the reuse (such as land application, irrigation, and evaporation) stays with the Railroad Commission. The applicant should determine whether or not their discharge is going to enter water in the state. If so, you need to have a TPDES authorization from TCEQ.

Question 19: Regarding technology limitations – those are somewhat unknown as it relates to certain volatiles. We’re currently working with the New Mexico Produced Water Research Consortium who is working through roughly a 23 month process to confirm the removal of roughly 250-300 constituents of concern. What does that list of constituents look like that TCEQ is referencing against technology limitations and is that list of constituents and technologies available for public view?

Answer: The technology-based limitations were developed by EPA, so EPA would have development documents to lay out how they went about looking at different types of treatment for these industries and determining what's best available treatment and best practical treatment. The EPA development documents for those guidelines would spell out the process and the parameters that EPA evaluated. As for volatiles, we have a list of volatiles that matches the Federal requirements and may even go beyond the federal requirement because we may have some additional ones within our water quality standards. Those are part of the water quality based screening that we mentioned that occurs when an application is submitted to the agency. The Federal regulations should have a list of volatiles, so you could use that to compare to what criteria New Mexico has.

Adjournment

To be added to the HB2771 stakeholder list for future meetings and correspondence, please email your request to HB2771@tceq.texas.gov.

The recording of this meeting will be available on our TCEQ YouTube channel at: <https://www.youtube.com/user/TCEQNews>.