



Domestic Petroleum Council

February 17, 2005

Water Docket
Environmental Protection Agency
Mail Code 4101 T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket ID No. OW-2002-0068

Domestic Petroleum Council comments on *Extension of the National Pollutant Discharge Elimination System (NPDES) Permit Deadline for Storm Water Discharges for Oil and Gas Construction Activity that Disturbs One to Five Acres (70 FR 2832 January 18, 2005)*

The Domestic Petroleum Council (DPC) strongly supports the Environmental Protection Agency (EPA) proposal to extend until June 12, 2006, the requirement to obtain NPDES permit coverage for oil and gas-related construction activity that disturbs one to five acres of land.

The DPC position is based on our agreement with several major justifications put forward by the EPA for proposing the requirement delay, justifications that include additional work by the Agency. That agreement may be summarized as reflecting our strong convictions that:

- The economic and energy supply costs of the Phase II storm water requirement are potentially staggering, and that the EPA is to be commended for proposing to further analyze those costs before requiring permit coverage of small exploration and production sites.
- The EPA is also to be commended for its proposal to complete a legal analysis related to regulation of storm water discharges given the pending lawsuit – the thrust of which the DPC supports although we are not a party – challenging the legality of the permit requirements that would be put in place despite an oil and gas exemption in the governing Clean Water Act.
- We are convinced that the EPA will find by its proposed further evaluation of industry practices in protecting water quality that the benefit of new storm water permit requirements would be minimal.

The members of the DPC are 24 of the largest United States independent natural gas and crude oil exploration and production companies. They are leaders in developing and applying technology necessary to explore for, and produce, natural gas and oil in the US and around the world.

The DPC member companies operate mostly very small single well oil and gas production facilities which typically consist of one or two small storage tanks that fall under the five acre disturbance exclusion on a stand-alone basis (assuming a reasonable interpretation of "common plan"), but are in excess of one acre area.

Modern management, continuous improvement of operating practices and new technology at these and other DPC locations are increasingly recognized as contributing to the compatibility of energy production and environmental protection. As a result, we appreciate the opportunity to comment on the January 18, 2005 EPA proposal cited above that would delay new permit requirements for small exploration and production sites.

More specifically with respect to the potential costs associated with requiring storm water discharge permits for construction at small exploration and production sites, a recent report¹ commissioned by the Department of Energy (DOE) found, using conservative assumptions, that if the small site permit requirements were to be put in place there could be additional costs to the exploration and production sector of between \$7.8-billion and \$66-billion by the year 2025. These increased cost burdens will impact not only the domestic oil and gas industry, but also the American economy, leading to increased dependency on foreign imports. Lost natural gas production could range from 15 trillion cubic feet (Tcf) to 45 Tcf. And consumers could pay as much as \$2.7-billion more for their natural gas over the same time period!

Using a different methodology, an even more recent report² by the Argonne National Lab under contract to the DOE projected even greater natural gas production losses should the Phase II storm water permit requirements go into effect.

By contrast, we have seen no estimate of the benefits of increasing the permit requirement that would be greater than obtainable by practices such as those industry's Reasonable and Prudent Practices for Stabilization (RAPPS) of Oil and Gas Construction Sites guidance document³ which explains and illustrates various practices and control measures to effectively contain erosion and sediment. The RAPPS document ~~that~~ has been made available to the EPA during a previous correspondence.

¹ Advanced Resources International, Inc. 2004. *Estimated Economic Impacts of Proposed Storm Water Discharge Requirements on the Oil and Natural Gas Industry: An analysis by Advanced Resources International, Arlington, VA for the U.S. Department of Energy's Office of Fossil Energy*. December. Available at: http://www.fe.doe.gov/programs/oilgas/publications/storm_water_analysis/Storm_Water_Analysis.html

² Elcock, Deborah. 2004. *Environmental Policy and Regulatory Constraints to Natural Gas Production*. December. Washington, DC: Environmental Assessment Division, Argonne National Laboratory.

³ Available at <http://www.dpcusa.org/enviro/rapps.html>

With respect to the EPA's statement (in the January 18 Notice) that it intends to propose additional rulemaking by September 12, 2005, we request that EPA review and clarify its definition of "common plan" published in the July 1, 2003, Construction General Permit (CGP) and Fact Sheet. For the reasons set out by various industry commentators in January and February 2003 in this docket (OW-2002-0068) and in the CGP and Fact Sheet docket (OW-2002-0055), DPC believes that the current definition of "common plan" is inappropriate for oil and gas projects and is impossible to consistently apply for the purpose of determining if a permit is required at multi-component oil and gas projects.

In supporting the EPA proposal to extend until June 12, 2006 its requirements for storm water permits for construction activity at small exploration and production sites, we believe that the agency's intended work between now and then will lead to the conclusion that there is no solid legal, environmental, energy or other beneficial basis to continue to insist on those requirements.

Thank you for considering our views, and please let the DPC know if we can be of assistance in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Whitsitt", written in a cursive style.

William Whitsitt, Ph.D.
President