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§ 125.132 When must I comply with this subpart?

You must comply with this subpart when an NPDES permit containing requirements consistent with this subpart is issued to you.

§ 125.133 What special definitions apply to this subpart?

In addition to the definitions set forth at 40 CFR 125.83, the following special definitions apply to this subpart:

Cooling water means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in another industrial process either before or after it is used for cooling is considered process water rather than cooling water for the purposes of calculating the percentage of a new offshore oil and gas extraction facility's intake flow that is used for cooling purposes in § 125.131(c).

Fixed facility means a bottom founded offshore oil and gas extraction facility permanently attached to the seabed or subsoil of the outer continental shelf (e.g., platforms, guyed towers, articulated gravity platforms) or a buoyant facility securely and substantially moored so that it cannot be moved without a special effort (e.g., tension leg platforms, permanently moored semi-submersibles) and which is not intended to be moved during the production life of the well. This definition does not include mobile offshore drilling units (MODUs) (e.g., drill ships, temporarily moored semi-submersibles, jack-ups, submersibles, tender-assisted rigs, and drill barges).

Minimum ambient source water surface elevation means the mean low tidal water level for estuaries or oceans. The mean low tidal water level is the average height of the low water over at least 19 years.

New offshore oil and gas extraction facility means any building, structure, facility, or installation that: meets the definition of a "new facility" at 40 CFR

125.83; and is regulated by the Offshore or Coastal Subcategories of the Oil and Gas Extraction Point Source Category Effluent Guidelines in 40 CFR 435.10 or 40 CFR 435.40; but only if it commences construction after July 17, 2006.

Offshore liquefied natural gas (LNG) import terminal means any facility located in waters defined in 40 CFR 435.10 or 40 CFR 435.40 that liquefies, re-gasifies, transfers, or stores liquefied natural gas.

Sea chest means the underwater compartment or cavity within the facility or vessel hull or pontoon through which sea water is drawn in (for cooling and other purposes) or discharged.

Seafood processing vessel means any offshore or nearshore, floating, mobile, facility engaged in the processing of fresh, frozen, canned, smoked, salted or pickled seafood, seafood paste, mince, or meal.

§ 125.134 As an owner or operator of a new offshore oil and gas extraction facility, what must I do to comply with this subpart?

(a)(1) The owner or operator of a new offshore oil and gas extraction facility must comply with:

(i) Track I in paragraph (b) or Track II in paragraph (c) of this section, if it is a fixed facility; or

(ii) Track I in paragraph (b) of this section, if it is *not* a fixed facility.

(2) In addition to meeting the requirements in paragraph (b) or (c) of this section, the owner or operator of a new offshore oil and gas extraction facility may be required to comply with paragraph (d) of this section.

(b) *Track I requirements for new offshore oil and gas extraction facilities.*

(1)(i) New offshore oil and gas extraction facilities that *do not* employ sea chests as cooling water intake structures and are fixed facilities must comply with all of the requirements in paragraphs (b)(2) through (8) of this section.

(ii) New offshore oil and gas extraction facilities that employ sea chests as cooling water intake structures and are fixed facilities must comply with the requirements in paragraphs (b)(2), (3), (4), (6), (7), and (8) of this section.

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(iii) New offshore oil and gas extraction facilities that are *not* fixed facilities must comply with the requirements in paragraphs (b)(2), (4), (6), (7), and (8) of this section.

(2) You must design and construct each cooling water intake structure at your facility to a maximum through-screen design intake velocity of 0.5 ft/s;

(3) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than one (1) percent of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level;

(4) You must select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if the Director determines that:

(i) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(ii) Based on information submitted by any fishery management agency(ies) or other relevant information, there are migratory and/or sport or commercial species of impingement concern to the Director that pass through the hydraulic zone of influence of the cooling water intake structure; or

(iii) Based on information submitted by any fishery management agency(ies) or other relevant information, that the proposed facility, after meeting the technology-based performance requirements in paragraphs (b)(2) and (5) of this section, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(5) You must select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish;

(6) You must submit the applicable application information required in 40 CFR 122.21(r) and §125.136(b). If you are a fixed facility you must submit the information required in 40 CFR

122.21(r)(2) (except (r)(2)(iv)), (3), and (4) and §125.136(b) of this subpart as part of your application. If you are a not a fixed facility, you must only submit the information required in 40 CFR 122.21(r)(2)(iv), (r)(3) (except (r)(3)(ii)) and §125.136(b) as part of your application.

(7) You must implement the monitoring requirements specified in §125.137; and

(8) You must implement the record-keeping requirements specified in §125.138.

(c) *Track II requirements for new offshore oil and gas extraction facilities.* The owner or operator of a new offshore oil and gas extraction facility that is a fixed facility and chooses to comply under Track II must comply with the following requirements:

(1) You must demonstrate to the Director that the technologies employed will reduce the level of adverse environmental impact from your cooling water intake structures to a comparable level to that which you would achieve were you to implement the applicable requirements of paragraph (b)(2) and, if your facility is a fixed facility without a sea chest, also paragraph (b)(5) of this section. This demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species, will be comparable to those which would result if you were to implement the requirements of paragraph (b)(2) and, if your facility is a fixed facility without a sea chest, also paragraph (b)(5) of this section. In identifying such species, the Director may consider information provided by any fishery management agency(ies) along with data and information from other sources;

(2) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than one (1) percent of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level;

(3) You must submit the applicable information required in 40 CFR

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122.21(r)(2) (except (r)(2)(iv)), (3) and (4) and §125.136(c);

(4) You must implement the monitoring requirements specified in §125.137;

(5) You must implement the record-keeping requirements specified in §125.138.

(d) You must comply with any more stringent requirements relating to the location, design, construction, and capacity of a cooling water intake structure or monitoring requirements at a new offshore oil and gas extraction facility that the Director deems are reasonably necessary to comply with any provision of federal or state law, including compliance with applicable state water quality standards (including designated uses, criteria, and antidegradation requirements).

§ 125.135 May alternative requirements be authorized?

(a) Any interested person may request that alternative requirements less stringent than those specified in §125.134(a) through (d) be imposed in the permit. The Director may establish alternative requirements less stringent than the requirements of §125.134(a) through (d) only if:

(1) There is an applicable requirement under §125.134(a) through (d);

(2) The Director determines that data specific to the facility indicate that compliance with the requirement at issue would result in compliance costs wholly out of proportion to the costs EPA considered in establishing the requirement at issue or would result in significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on energy markets;

(3) The alternative requirement requested is no less stringent than justified by the wholly out of proportion cost or the significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on energy markets; and

(4) The alternative requirement will ensure compliance with other applicable provisions of the Clean Water Act and any applicable requirement of federal or state law.

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(b) The burden is on the person requesting the alternative requirement to demonstrate that alternative requirements should be authorized.

§ 125.136 As an owner or operator of a new offshore oil and gas extraction facility, what must I collect and submit when I apply for my new or reissued NPDES permit?

(a)(1) As an owner or operator of a new offshore oil and gas extraction facility, you must submit to the Director a statement that you intend to comply with either:

(i) The Track I requirements for new offshore oil and gas extraction facilities in §125.134(b); or

(ii) If you are a fixed facility, you may choose to comply with the Track II requirements in §125.134(c).

(2) You must also submit the application information required by 40 CFR 122.21(r) and the information required in either paragraph (b) of this section for Track I or, if you are a fixed facility that chooses to comply under Track II, paragraph (c) of this section when you apply for a new or reissued NPDES permit in accordance with 40 CFR 122.21.

(b) *Track I application requirements.* To demonstrate compliance with Track I requirements in §125.134(b), you must collect and submit to the Director the information in paragraphs (b)(1) through (3) of this section.

(1) *Velocity information.* You must submit the following information to the Director to demonstrate that you are complying with the requirement to meet a maximum through-screen design intake velocity of no more than 0.5 ft/s at each cooling water intake structure as required in §125.134(b)(2):

(i) A narrative description of the design, structure, equipment, and operation used to meet the velocity requirement; and

(ii) Design calculations showing that the velocity requirement will be met at minimum ambient source water surface elevations (based on best professional judgment using available hydrological data) and maximum head loss across the screens or other device.

(2) *Source waterbody flow information.* If you are a fixed facility and your