more than 4 years, or by both (See Section 309(c)(4). of the Clean Water Act).

## 2. Civil Penalties

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307 or 308 of the Act is subject to a civil penalty not to exceed \$25,000 per day for each violation.

#### 3. Administrative Penalties

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed \$25,000 per day for each violation.

## a. Class I Penalty

Not to exceed \$10,000 per violation nor shall the maximum amount exceed \$25,000.

#### b. Class II Penalty

Not to exceed \$10,000 per day for each day during which the violations continues nor shall the maximum amount exceed \$125,000.

## Section F. Definitions

All definitions in Section 502 of the Act shall apply to this permit and are incorporated herein by reference. Unless otherwise specified in this permit, additional definitions words or phrases used in this permit are as follows:

1. *Act* means the Clean Water Act (33 U.S.C. 1251 et. seq.) as amended.

- 2. Applicable effluent standards and limitations means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.
- 3. Applicable water quality standards means all water quality standards to which a discharge is subject under the Act and which have been (a) approved or permitted to remain in effect by the Administrator following submission to him/her, pursuant to Section 303(a) of the Act, or (b) promulgated by the Administrator pursuant to Section 303(b) or 303(c) of the Act.
- 4. *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.
- 5. Coastal waters are defined as waters of the United States (as defined at 40 CFR 122.2) located landward of the territorial seas.
- 6. *Daily Discharge* means the discharge of a pollutant measured during a calendar day or any 24-hour

period that reasonably represents the calendar day for purposes of sampling. For pollutants with limits expressed in units of measurement other than mass, the "daily discharge" is calculated as the average measurement of the pollutant over the sampling day. "Daily discharge" determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the "daily discharge" determination of concentration shall be arithmetic average (weighted by flow value) of all samples collected during that sampling day.

7. Daily Maximum discharge limitation means the highest allowable "daily discharge" during the calendar

month.

8. Environmental Protection Agency means the U.S. Environmental

Protection Agency.

- 9. Monthly Average (also known as daily average) discharge limitations means the highest allowable average of "daily discharge(s)" over a calendar month, calculated as the sum of all "daily discharge(s)" measured during a calendar month divided by the number of "daily discharge(s)" during that month. When the permit establishes monthly average concentration effluent limitations or conditions, the monthly average concentration means the arithmetic average (weighted by flow) of all "daily discharge(s)" of concentration determined during the calendar month.
- 10. National Pollutant Discharge Elimination System means the national program for issuing, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 318, 402 and 405 of the Act.
- 11. Produced sand means sand and other particulate matter from the producing formation and production piping (including corrosion products), as well as source sand and hydrofrac sand. Produced sand also includes sludges generated by any chemical polymer used in a produced water treatment system.

12. Produced water means water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added down hole or during the oil/water separation process

13. Regional Administrator means the Administrator of the U.S. Environmental Protection Agency, Region 6.

14. Severe property damage means substantial physical damage to property,

damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of bypass. Severe property damage does not mean economic loss caused by delays in production.

15. Territorial seas refers to "the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles."

16. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

Section C. Monitoring and Records

## United States Environmental Protection Agency, Region 6, In Re: NPDES Permit Nos. LAG290000 and TXG290000, General Administrative Compliance Order

The following Findings are made and Order issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency (EPA) by Section 309(a)(3) of the Clean Water Act (hereinafter "the Act"), 33 U.S.C. 1319(a)(3), and duly delegated to the Regional Administrator, Region 6, and duly redelegated to the undersigned Director, Water Management Division, Region 6. Failure to comply with the interim requirements established in this Order constitutes a violation of this Order and the NPDES permits.

# Findings

Ι

The term "waters of the United States" is defined at 40 C.F.R. 122.2. The term "coastal" is defined in NPDES Permits LAG290000 and TXG290000 and includes facilities which would be considered "Onshore" but for the decision in *API* v. *EPA* 661 F.2 340 (5th Cir. 1981). The term "existing" means spudded prior to the effective date of NPDES Permits LAG290000 and TXG290000.

II

Pursuant to the authority of Section 402(a)(1) of the Act, 33 U.S.C. § 1342,