

TPDES General
Permit
#TXR040000

EL PASO COUNTY Storm Water Management Program



Permit Year
2007- 2012

**EL PASO COUNTY TEXAS POLLUTANT DISCHARGE ELIMINATION
SYSTEM (TPDES) MANAGEMENT PROGRAM**

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SECTION 1 – OVERVIEW

I. 1 – Storm Water Rule Overview

Phase 1 of the U.S. Environmental Protection Agency's (EPA) municipal storm water program started in 1990 under the authority of the Federal Clean Water Act (CWA). Phase 1 relies on National Pollutant Discharge Elimination System (NPDES) permit coverage to address pollutants from storm water runoff and dry weather discharges. Phase 1 permits are required for large and medium municipal separate storm sewer systems (MS4S), serving populations of 100,000 or greater.

The Storm Water Phase 2 Final Rule (promulgated December 8, 1999) was approved by EPA to prevent water resources from pollution by storm water runoff and dry weather discharges into storm drain systems. Local governments are required by Phase 2 regulations to implement programs and practices to control water pollution, to the "maximum extent practicable" (MEP) in urbanized areas of small MS4s (population less than 100,000). Phase 2 requires local governments to obtain a permit those implements six "minimum control measures". The six minimum control measures are: public education, public involvement, illicit discharge elimination, construction sites, post construction pollution, and pollution prevention for municipal operations.

EPA has authorized the Texas Commission on Environmental Quality (TCEQ) to issue and enforce the Texas Pollutant Discharge Elimination System (TPDES) Phase 1 and 2 storm water permits, in lieu of federal NPDES permits. Effective 8/13/2007 TCEQ Commissioners approved the TPDES General Permit to authorize discharge of storm water from regulated Phase 2 MS4s. Before 2/8/2008, permittees must submit applications for coverage to TCEQ. The application must include a Notice of Intent for coverage (NOI) and a Storm Water Management Program (SWMP). The NOI is a document that provides TCEQ with an official notification to seek permit coverage and identifies legally responsible parties for permit enforcement. The SWMP will describe actions that will be implemented by the permittee, to address the required elements of a storm water program. The SWMP describes in detail which Best Management Practices (BMPs) will be implemented to meet permit requirements. The permit term will cover 5 years (8/13/07-8/12/12). The permit will be renewed at 5 year intervals, which will require significant changes to the SWMP for future permit approvals, if necessary.

SECTION II – PERMIT APPLICABILITY AND COVERAGE

II. 1 Urbanized Areas

The TPDES Permit requirements apply only to the portions of unincorporated El Paso County that are identified as urbanized areas. There are approximately 9 non-contiguous urbanized areas in unincorporated El Paso County. These areas are identified based upon data in the 2000 U.S. Census map. The map may be viewed at <http://cfpub1.epa.gov/npdes/stormwater/urbanmapresult.cfm?state=TX> there is an overview map and a detailed map with roads. These maps are linked to the TCEQ storm water permit website.

The El Paso County SWMP addresses permit required BMPs only in the unincorporated urbanized area portions of the county. On a regional basis, television broadcasts or websites associated with the Rio Grand Council of Governments will be utilized for coverage of urbanized areas in the unincorporated areas.

II.2 Regulatory Mechanism Restrictions for Counties

The Texas Constitution and State statutes do not grant Texas counties the ability to create and enforce ordinances, such as home rule cities which are allowed to create ordinances to meet the TPDES permit requirements. To address this restriction, TCEQ rules contain text stating “to the extent allowable under state and local law”. This statement is cited several times in Part III, SWMP development and implementation, of the general permit. El Paso County will address the various elements in the General Permit SWMP requirements to the extent allowable under current state and local law.

SECTION III – STORM WATER MANAGEMENT PLAN (SWMP)

Overview of El Paso County’s SWMP

To the extent allowable under State and local law (see II.2 above), El Paso County’s SWMP was developed and will be implemented according to requirements of Part III of TPDES General Permit TXR040000, for discharges of storm water to surface water in the state. This SWMP was developed to prevent pollution in storm drainage systems to the maximum extent practicable, with control measures being phased in during the 5 year permit term. The SWMP addresses six minimum control measures (MCMs) as required by TCEQ rules. MCMs will be implemented in urbanized areas of unincorporated El Paso County and may be implemented in other unincorporated areas adjacent to urbanized areas of El Paso County if warranted by special conditions. MCMs will be evaluated based upon the accomplishment of activities (BMPs) listed under each MCM. El Paso County storm water staff from the Road and Bridge department will monitor MCM activities.

Legal Authority (Contrast with Cities)

Unlike cities, counties are not authorized by the State Constitution or State Statutes to enact the ordinances and implement all of the regulatory requirements that Phase 2 (small

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MS-4) requires. El Paso County addresses “to the extent allowable under state and local law” in appropriate MCM sections.

Ditch Drainage System

El Paso County’s storm drainage system is mostly comprised of unlined (pervious) above ground ditches. Benefits and challenges associated with this type of system will be addressed in the Section III.5 of this document.

Large Area and Long Distances between Non-Contiguous Urbanized Areas

El Paso County has approximately 9 small non-contiguous Urbanized Areas scattered across El Paso County area. Long travel distances, often exceeding those found in large MS-4 cities will require MS-4 County staff to travel great distance in order to implement daily activities associated with this program. This extra challenge is another element to consider when comparing the SWMPs of El Paso County to cities in this area.

Annexation and De-annexation

El Paso County will be losing land areas when annexation occurs. El Paso County will not be adding new areas of responsibilities and will not have to provide services to the annexed land. El Paso County will only add urbanized areas when population densities increase in existing unincorporated county, as designated by the U.S. Census Bureau on a ten year cycle.

Participants in developing/implementing El Paso County’s SWMP

El Paso County’s SWMP was developed by County staff with storm water experience. Responsibilities for implementation of the SWMP will be handled by the Road & Bridge department.

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Section III.1 – Public Education and Outreach MCM

The public will be informed about water quality issues regarding storm water runoff and illicit discharges by providing informational materials in multiple formats and media. El Paso County and the Rio Grand Council of Governments (RGCOG) and other resources may be used to develop and distribute public education and outreach material. El Paso County will work with RGCOG and other local government agencies to develop suitable community materials for website posting and/or distribution at El Paso County Courthouse, Road & Bridge warehouse and El Paso County web page.

The community to be addressed will consist of residents, public service employees, businesses, commercial/industrial facilities and construction site personnel in unincorporated/urbanized areas of El Paso County. These areas are mostly residential in nature and not intended to attract visitors.

(a)BMP, Measurable Goal and Date – Educational Material and Distribution

El Paso County will distribute storm water related materials at 5 or more County buildings. Examples include such items as information sheets, brochures, bookmarks, etc. These materials may be developed by El Paso County staff, EPA, TCEQ, or any other source. Some of these materials will address illicit discharges, construction, NOI submittals and other information materials required by the permit. Additionally El Paso County may elect to use materials that are intended for TV or radio broadcasts, if such materials are affordable. Also El Paso County may participate in regional storm water education projects to supplement or replace (if the regional activities are more effective or reach a larger audience) this BMP and will report activities in the annual report.

Goal and Date: At least 500 copies will be distributed annually, beginning in Permit Year 1 and continuing through Permit Year 5. TV or radio broadcasts may substitute for 500 hundred copies.

Status: **Not Started**

(b)BMP, Measureable Goal and Date – Cooperative Extension

AgriLIFE EXTENSION Program, and El Paso County, will conduct a variety of environmental educational activities (speeches, TV shows, radio programs and Newspaper stories, training, etc.) in El Paso County. Storm water staff will coordinate with Cooperative Extension staff and, as appropriate, El Paso County Master Gardeners volunteers to report any annual educational activities that are storm water related in El Paso County.

Goal and Date: El Paso County staff will document this information and include it in the annual report, beginning in Permit Year 1 and continuing through Permit Year 5.

Status: **Accomplished & Ongoing**

(c)BMP, Measurable Goal and Date – *El Paso County News*

The Local section in the El Paso Times newspaper (approximately 73,000 daily copies) is published on a daily basis. Annually, storm water staff will prepare two articles for the El Paso Times that targets the TCEQ public education and outreach groups.

Goal and Date: Two annual *El Paso County News* articles will be prepared by county staff on storm water related issues, beginning in Permit Year 1 and continuing through Permit Year 5.

Status: **Not Started**

(d)BMP, Measureable Goal and Date – **RGCOG Participation**

Participate in the RGCOG's Storm Water Education Task Force and the Regional Storm Water Management Coordinating Council, in order to develop storm water educational materials which can be used by MS-4s in the West Texas region. Any materials developed by the Taskforce or Council will be reviewed by El Paso County staff and may be used during appropriate times throughout the permit term.

Goal and Date: Document participation in RGCOG Storm Water groups. Participation will continue throughout the permit term, unless the Task Force and/or Council are dissolved. Records will be maintained beginning in Permit Year 1 and continuing through Permit Year 5.

Status: **Ongoing**

(e)BMP Measureable Goal and Date – **Public Health & Transportation Services**

Websites

Post storm water information on the El Paso County Road & Bridge website: <http://epcounty.com/rb/>. El Paso County Road & Bridge Department will also provide links to the TCEQ, EPA and RGCOG storm water websites.

Goal and Dates: The El Paso County Road & Bridge website will be active and contain storm water information beginning in permit Year 1 and continuing through Permit Year 5. The sites will be reviewed annually to determine if content revisions are needed.

Status: **In Progress**

Section III. 2 – Public Involvement/Participation MCM

El Paso County will rely upon compliance with public notice requirements regarding public meetings at El Paso County Commissioners' Court to receive public input into storm water program development and implementation. Also the Draft SWMP will be posted on the County Website prior to submitting it to TCEQ for TPDES General Storm Water Permit coverage.

(a) BMP, Measureable Goal and Date – **Public Notice for Meeting**

El Paso County Commissioner's Court is subject to state/local public notice requirements, which meet TCEQ minimum requirements for public involvement/participation.

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Goal and Date: Staff will verify that Commissioner’s Court meetings comply with public notice requirements and include that information in the annual reports to TCEQ. Public notice for meetings is already in effect and will continue from Permit Year 1 to Permit Year 5.

Status: **Ongoing**

(b) BMP, Measureable Goal and Date – Post Draft SWMP on Website

After internal review by El Paso County Officials and prior submittal to TCEQ, staff will post the draft SWMP on the County’s website.

Goal and Draft: Staff will post the Draft SWMP on the County Website at least 14 days prior to submitting the TCEQ permit application.

Status: **In Progress** (14 days before submitting to TCEQ)

(c) BMP, Measureable Goal and Date – Public Notice in Newspaper

After reviewing El Paso County’s NOI and SWMP, TCEQ will issue “the executive director’s preliminary determination”. This public notice must be published by El Paso County at least once in the largest circulated newspaper in the county. In addition, this public notice must provide an opportunity for the public to submit comments on the NOI and SWMP and request a public meeting. A public meeting will be held if the TCEQ determines there is sufficient interest.

Goal and Date: Publish TCEQ Executive Director’s Preliminary Determination in the El Paso Times, including information about public comment and public meeting request within 30 days after being notified by the TCEQ Office of Chief Clerk.

Status: **Not Started**

Section III.3 – Illicit Discharge Detection and Elimination MCM

To the extent allowable under State law, El Paso County will develop and implement an illicit discharge program. Illicit dischargers that El Paso County cannot enforce against, after seeking voluntary compliance, will be referred to the TCEQ Region Office in El Paso. Malfunctioning on-site sewage facilities, such as septic systems, are subject to County corrective actions and enforcement, as necessary.

The actual structure of the MS4 system will impact the development of the MCM. El Paso County’s MS-4 is composed mostly of open drainage ditches, which means that illicit connections/discharges to underground systems are not as hidden or difficult to find in open drainage ditch systems that are located in many counties. Also, dry weather flows are not as common in ditch systems since they are not lined in concrete and water is absorbed into the ground, while also being exposed to wind and sunlight. Last, outfalls are not commonly found in a ditch system compared to an underground pipe system which discharges into outfalls.

El Paso County will accept the TCEQ list of allowable non-storm water discharges in the MS-4. These non-storm water sources may be discharged from the MS-4 and are not required to be addressed in the MS-4’s Illicit Discharge and Detection MCM or other

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MCM's. This is provided that they have not been determined by the MS-4 to be substantial sources of pollutants to the MS-4. A list of the allowable discharges is contained in the TCEQ Fact Sheet and Executive Director's Preliminary Decision, TXR040000.

(a) BMP, Measureable Goal and Date – Detection: Monitoring Drainage System

Illicit discharge detection will be accomplished by visually monitoring outfalls or other locations within drainage ditch systems for indicators of illicit discharges or water pollution. When deemed appropriate by staff, chemical testing or toxicity testing (minnow in a bottle) may also be performed to confirm the presence of an illicit discharge.

Goal and Date: At least 20 locations will be visually monitored annually. This activity will begin in Permit Year 2 and will continue through Permit Year 5.

Status: **Not started**

(b) BMP, Measureable Goal and Date – Detection & Correction: Citizen Reports and County Staff Surveillance.

Illicit discharge, complaints from citizens will be investigated by staff. Voluntary compliance will be requested due to the County's limited enforcement powers. TCEQ's Region Field Office will be notified of illicit discharges that do not comply voluntarily.

Goal and Date: Citizen reports and staff discovery of illicit discharges in unincorporated urbanized areas will be investigated within 2 weeks. This activity will begin in Permit Year 2 and continue through Permit Year 5.

Status: **Not Started**

(c) BMP, Measureable Goal and Date – Correction: On-Site Sewage Facilities.

The El Paso County staff will maintain records, for the storm water program of actions taken regarding malfunctioning on-site sewage facilities. El Paso County has contracted with the City of El Paso Health Department to enforce the rules regarding the installation and operation of on-site sewerage facilities.

Goal and Date: Software will be obtained and used to track corrective actions taken regarding on-site sewage facilities beginning in Permit Year 1 and continuing through Permit Year 5.

Status: **In Progress**

(d) BMP, Measureable Goal and Date: - Detection: Storm Drainage Map

El Paso County will prepare a storm sewer map of urbanized areas in unincorporated El Paso County, locating outfalls contained in those areas that discharge directly into waters of the State, using available resources such as EPA Urbanized Area maps, RGCOG developed maps. TCEQ website: www.tceq.state.tx.us/comm_exec/forms_pubs/pubs/gi/gi-316/, 7.5 minute USGS topographic maps, El Paso County's GIS maps, and/or other readily available resources. El Paso County will select the best resource(s) to use in map preparation. The map will also contain street names, outfall locations and other features that will be useful in identifying illicit discharges. At minimum, this map will be updated during permit renewal.

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Goals and Dates:

Phase 1 – Map outfalls in unincorporated urbanized areas of Precinct 1 in Permit Year 2.

Phase 2 – Map outfalls in unincorporated urbanized areas of Precinct 3 in Permit Year 3.

Phase 3 – Map outfalls in unincorporated urbanized areas of Precinct 4 in Permit Year 4.

Status: **Ongoing**

(e) BMP, Measureable Goal and Date - **Detection & Correction: Illegal Dumping**

Team. The El Paso County Sheriff's Department in conjunction with the County Attorney's environmental section will investigate illegal dumping in the county. Storm water staff will coordinate with the Sheriff's Department and the County Attorney's Office to report annual activities (number of illegal dumping cases, cases investigated, violations identified or not, cleanups, enforcement actions, etc) that occurred in the county's storm water drainage right of ways.

Goals and Date: Document activities and include findings in the annual report, beginning in Permit Year 1 and continuing through Permit Year 5.

Status: **In Progress**

(f) BMP, Measureable Goal and Date – **Correction: Household Hazardous Waste**

The El Paso County Road & Bridge Department will continue to partner with the City of El Paso to offer residents of unincorporated El Paso County the opportunity to dispose of household hazardous waste at the City of El Paso Environmental Collection Center. El Paso County will continue to fund the use of this regional facility, as long as it's economically feasible. This is a current program and is planned to continue during the permit term.

Goal and Date: Document yearly participation beginning in Permit Year 1 and continuing through Permit Year 5.

Status: **Accomplished & Ongoing**

(g) BMP, Measureable Goal and Date – **Detection & Correction: El Paso County**

Sheriff's Dept. in conjunction with the County Attorney's Environmental Section will offer residents of unincorporated El Paso County the opportunity to report illegal dumping to the County of El Paso. The El Paso County will follow up on reports derived from these calls.

Goal and Date: Document yearly activities beginning in Permit Year 1 and continuing through Permit Year 5.

Status: **In Progress**

Section III.4 – Construction Site Storm Water Runoff Control MCM

To the extent allowable under State law, the County will develop and implement a modified construction inspection program in the urbanized areas of unincorporated El Paso County. All BMPs listed in this section will apply to all construction activities at sites within the MS4 that are 1 acre or larger, including sites that are part of a larger common plan of development.

The County will participate in this MCM by requiring a Storm Pollution Prevention Plan as part the documents to be reviewed prior to the commencement of construction. The plan should address how facility operators will maintain one hundred percent (100%) of the runoff during and post construction of their project. The County will also provide general information about the TCEQ requirements to construction site operators, conducting voluntary reactive and proactive inspections and maintaining a file of Notice of Intent (NOI) for operators to be covered under the TCEQ General Storm Water Permit for construction sites. This file will be readily accessible to TCEQ staff. Any required enforcement will be conducted by TCEQ.

(a) BMP, Measurable Goal and Date – Water Runoff Control

County engineers will review The Storm Pollution Prevention Plan submitted to make sure that one hundred percent (100%) of the runoff during and post construction has been addressed. If it has not, County Engineers will make recommendations of changes that need to take effect for the approval of The Storm Pollution Prevention Plan to be granted.

Goals and Dates: Review of Storm Pollution Prevention Plans will be done during Permit Year 2 and will continue through permit year 5.

Status: **Not Started**

(b) BMP, Measurable Goal and Date – NOI File

The El Paso County will also set up a file system for NOIs and SNs(Construction Site Notices)that are submitted prior to the commencement of construction MCM activities. The file will consists of two sections, one for urbanized area NOIs/CSNs and the other for non-urbanized area NOIs/CSNs. Urbanized areas will be determined by using the TCEQ website link to EPA that is described in Section II.2, Urbanized Areas. TCEQ will have access to this file system after it has been established to obtain information about construction sites in unincorporated areas in the El Paso County. Also, a public information flyer about the Construction Storm Water TPDES Permit will be developed and distributed to citizens and the construction industry. The flyer will include information about the requirements of the NOI and CSN.

Goals and Dates: Creation and distribution of flyer to inform and encourage compliance of TCEQ requirements will be done during Permit Year 1 and will continue through permit year 5.

Status: **Not Started**

(c) BMP, Measurable Goal and Date – Public Submittal of Information

The County of El Paso will address public requests of information regarding storm water quality issues associated with construction sites prior to implementing a voluntary construction inspection and enforcement referral program. The County will collect, review and maintain the information. Based on the information collected the County will either do a voluntary construction site visit to observe conditions and resolve issues, do a referral to TCEQ, conduct periodic site surveys or other appropriate response to address the issue

Goal and Dates: Initial response will be set at 2 weeks, excluding any repeated, unsubstantiated reports regarding a specific site. This activity will begin in Permit year 1 and continue through Permit Year 5.

Status: **Not Started**

(d) BMP, Measurable Goal and Date – Site Plan Review

A Storm pollution prevention plan is part of the review requirements during the platting procedures for the County of El Paso. The County of El Paso will address this requirement by providing additional storm water information to developers in the county's preliminary and final plat approval letters. The updated County's Subdivision and Land use regulations document will include current storm water quality information.

Goal and Dates: Letters providing additional storm water information to developers in the county's preliminary and final plat approval letters will be prepared and used during Permit Year 2. The updated County's Subdivision and Land use regulations document including current storm water quality information will be prepared and used (pending Commissioner Court approval) during Permit year 3 through 5.

Status: **Not Started**

(e) BMP, Measurable Goal and Date – Site Inspection and Enforcement

The county will conduct voluntary construction site inspections in unincorporated areas of the County of El Paso. Site operators will be checked for NOI submittal, the presence and adherence of a functional Storm Water Pollution Prevention Plan(SW3P) and general compliance with TCEQ requirements. If there are violations, voluntary compliance will be requested due to the County's limited enforcement powers. If violations have not been corrected after the follow-up inspection, TCEQ will be notified and the County will discontinue its voluntary inspection at that particular site. The County will not perform inspections if entrance to a construction site is denied or the request to review records is denied. TCEQ will be notified of such occurrences immediately.

Goal and Dates: Voluntary construction site inspections will be conducted in Permit Year 3 and continuing through Permit Year 5. The number of inspections will be determined based on construction activity in the County of El Paso.

Status: **Not Started**

(f) BMP, Measurable Goal and Date – ISWM Design Manual for Construction

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The County of El Paso will develop a design manual for construction that will be used to provide guidance to governmental entities, property owners, developers, engineers, and contractors for reducing the impact of storm water runoff from construction activities on downstream natural resources and properties. The manual establishes the framework and provides the tools to effectively plan, install and maintain storm water Best Management Practices (BMPs) for construction site storm water runoff.

Goal and Dates: Completion of the manual will be during Permit year 2. El Paso County will use the manual when conducting voluntary inspections beginning in Permit Year 3 and continuing through Permit Year 5.

Status: **Ongoing**

**Section III.5 – Post Construction Storm Water Management in New Development
And Redevelopment MCM**

The intent of this MCM is to lessen the storm water quality impacts after construction has been completed on new and redeveloped sites (areas of soil disturbance that are 1 acre or larger, including those that are part of a larger common plan of development) and while people occupy and/or use the sites.

To the extent allowable under State law, El Paso County will develop and implement a Post Construction MCM in unincorporated El Paso County, which includes both urbanized and areas adjacent to urbanized areas. Since Texas counties do not have the rule/ordinance making authority that cities have, the County cannot enforce a program to reduce pollutants in post construction storm water runoff at new and redeveloped sites.

The County will participate in this MCM by requiring facility operators to maintain one hundred percent (100%) of the runoff during and post construction of their project. The County will also allow the use of unlined or pervious drainage ditches, instead of impervious concrete gutter and underground storm drain pipe systems, which cities typically require.

Compared to impervious underground storm drain pipe systems, above ground open grassy drainage ditch systems allow more storm water runoff to soak into the ground, which reduces downstream runoff velocities (erosion reduction), provides a means of detaining and treating, to a degree, some pollutants (sediment, nutrients/fertilizers, detergents, etc.) and allows illicit discharges to be easier to observe and locate. Drainage ditch systems are usually less costly to install, which provides an obvious incentive for their continued installation during and beyond this permit period.

The County of El Paso will conduct semi-annual inspections to ensure that there is no water quality impact after construction. El Paso County also maintains drainage ditches and channels that serve County roads and will continue to do so throughout the permit term. Repeated violations and ditch maintenance data will be provided to TCEQ in the annual report.

(a) BMP, Measurable Goal and Date –Runoff Control Program

The County will require facility operators to submit a one hundred percent (100%) runoff control plan that they will adhere to during and post construction of their project.

Goal and Dates: The County of El Paso will conduct semi-annual inspections to ensure that there is no water quality impact after construction. This will start in permit year 2 and will remain in effect during the 5 year permit term.

Status: **Not Started**

(b) BMP, Measurable Goal and Date –Allow Previous Drainage Systems

The county of El Paso will allow developers, home builder and residents in unincorporated areas to use open, unlined storm drainage ditches that are next to streets. This system is cost effective to the construction community and environmentally effective for the County’s storm water permit. Other specific legal agreements with adjacent cities may supersede this policy.

Goal and Dates: The County will also allow open, unlined storm drainage ditches and channels to receive and transport storm water runoff from roads and other impervious surfaces such as roofs, driveways and sidewalks. This is currently in effect and will remain in effect during the 5 year permit term.

Status: **Accomplished & Ongoing**

(c) BMP, Measurable Goal and Date – Tracking Runoff Control and Pervious Drainage Systems

El Paso County will conduct semi-annual inspections and if there are violations, voluntary compliance will be requested due to the County’s limited enforcement powers. If violations have not been corrected after the follow-up inspection, TCEQ will be notified and the County will discontinue its voluntary inspection at that particular site. TCEQ will be notified of such occurrences immediately. The El Paso County Road & Bridge Department crew will also maintain the open, unlined storm drainage ditches beside County roads in unincorporated areas. This process will allow the drainage system to operate properly and produce storm water quality benefits.

Goal and Dates: Voluntary construction site inspections will be conducted in Permit Year and continuing through Permit Year 5. Provide an annual list of the maintained drainage ditches in the annual report, beginning in Permit Year 1 and continuing through Permit Year 5.

Status: **Ongoing**

(d) BMP, Measurable Goal and Date – AgriLIFE EXTENSION Program

El Paso County will support AgriLIFE EXTENSION Program by encouraging new home owners and others in the County to use El Paso County Horticulture and Gardening website link from either the El Paso County’s main website or AgriLIFE EXTENSION Program website: <http://elpasotaex.tamu.edu/hg/> to learn earth kind practices. (Earth Kind practices use research-proven techniques to provide maximum gardening and landscape enjoyment while preserving and protecting our fragile

environment.) This website addresses gardening, water conservation, recycling and other environmental issues to make our community better.

Goal and Dates: Provide support and education on AgriLIFE EXTENSION Program, beginning in Permit Year 1 and continuing through Permit Year 5.

Status: **Ongoing**

Section III.6 – Pollution Prevention/Good Housekeeping for Municipal Operations **MCM**

El Paso County will establish a program to conduct its general operations in a manner that prevents or reduces pollution in storm water runoff to the maximum extent practicable. This MCM requires local government to examine multiple internal operations to see if they can be maintained or modified to prevent or minimize storm water pollution or illicit discharge. As stated by TCEQ, examples of local government operations include, but are not limited to: park and open space maintenance; street, road or highway maintenance; land disturbances; parking lots; vehicle and equipment maintenance and storage yards; waste transfer stations; and salt/sand storage locations.

(a) BMP, Measureable Goal and Date – County Operations Survey

El Paso County will conduct site surveys of County facilities and discuss issues with the County administration, departmental representatives and/or storm water staff. The El Paso County will also identify operation activities that may potentially impact storm water quality or generate illicit discharges by visually monitoring outfalls or other locations within drainage ditch systems for indicators of illicit discharges or water pollution. When deemed appropriate by staff, chemical testing or toxicity testing (minnow in a bottle) may also be performed to confirm the presence of an illicit discharge.

Goal and Date: At least 20 locations will be visually monitored annually. This activity will begin in Permit Year 2 and will continue through Permit Year 5.

The site surveys will begin and be completed in Permit Year 3.

Status: **Not Started**

(b) BMP, Measureable Goal and Date – Detection & correction County Staff Surveillance.

Operation activities that may potentially impact storm water quality or generate illicit discharges will be investigated by staff and voluntary corrective actions will be taken.

Goal and Date: Staff discovery of activities that may potentially impact water quality will be investigated within 2 weeks. Corrective actions will be addressed immediately. This activity will begin in Permit Year 2 and will continue through Permit Year 5.

Status: **Not Started**

(c) BMP, Measureable Goal and Date – Proper Waste Disposal

A report, to become part of the SWMP, will be developed to document the proper disposal of waste generated from County MS-4 related operations or maintenance.

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The report will address dredge spoil, accumulated sediments and floatables (trash and debris in storm drain system).

Goal and Date: The report will be completed during Permit Year 5.

Status: **Not Started**

(d) BMP, Measureable Goal and Date – Employee Training

A training program will be developed for County employees who have the potential to impact storm water quality.

Goal and Date: County employees with the potential to impact storm water will receive pollution prevention training during Permit Year 2. During the remainder of the permit, annual pollution prevention training will be performed for new employees whose operational duties have been identified as having potential to impact storm water quality.

Status: **Not Started**

(e) BMP, Measureable Goal and Date: - SPCC Plans for County Facilities

El Paso County will comply with federal spill prevention control and countermeasures plan regulations, and review spill response procedures to ensure storm water quality protection measures are considered during spill response. The county will evaluate all of our facilities and determine if Spill Prevention Control and Countermeasures Plans (SPCC) are required. We will develop SPCC plans for our facilities. An annual report on the number of facilities with SPCC plans and current status of each SPCC plan will be documented.

Goal and Date: In Year 1 El Paso County will review all county facilities and determine the need for SPCC plans. After Year 1, the County will begin to implement SPCC plans at county facilities that need them. The number of facilities requiring SPCC plans will be divided by four and that number of facilities will be processed each year.

Status: **In Progress**

SECTION IV – RECORDKEEPING and REPORTING

Section IV. A – Recordkeeping

El Paso County will maintain all records, a copy of the TPDES general permit and all data used to complete the application (NOI) for this permit, for a period of at least three years, or for the term of this permit, whichever is longer. A current/updated copy of the SWMP, NOI and a copy of the permit language/requirements will be maintained at both the El Paso County Road & Bridge Department.

El Paso County will make the records, including the NOI and SWMP available to the public, if requested to do so in writing. The SWMP will be available within two working days following the request from the public. Other records will be provided within 10 working days, unless the request required an unusual amount of time or effort to assemble. In which case, Texas law regarding the Public Information Act will be followed. Reasonable charges, in accordance with Texas law, may be levied by the County for researching and preparing any requested material.

Section IV.B.2 – Annual Report

El Paso County will submit a concise report to the Executive Director of TCEQ within 90 days of the end of each permit year. The annual report will address the requirements listed in the TPDES Phase 2 MS-4 general permit rules. The County will also maintain copies of annual reports at the El Paso County Road & Bridge Department.

EL PASO COUNTY TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES) MANAGEMENT PROGRAM
Summary of MCMs, BMPs and Measurable Goals

Minimum Control Measure	Best Management Practices	Measurable Goals
<p>MCM #1, Section III.1: Public Education and Outreach MCM</p>	<p>(a)BMP: Educational Material and Distribution</p> <p>(b)BMP: Cooperative Extension AgriLIFE EXTENSION Program - environmental educational activities</p> <p>(c)BMP: Public Education and Outreach- <i>El Paso Times Newspaper</i></p> <p>(d)BMP: Rio Grande Council of Governments (RGCOG) Participation</p> <p>(e)BMP:Public Health & Transportation Services Websites</p>	<ul style="list-style-type: none"> • Distribute storm water related materials. At least 500 copies will be distributed annually, beginning in Permit Year 1 and continuing through Permit Year 5. • Conduct a variety of environmental educational activities (speeches, TV shows, radio programs and Newspaper stories, training, etc.). This activity will begin in Permit Year 1 and continue through Permit Year 5. • Annually, two storm water articles will be published on the El Paso Times newspaper. This activity will begin in Permit Year 1 and continue through Permit Year 5. • Participate in the RGCOG’s Storm Water Education Task Force and the Regional Storm Water Management Coordinating Council, in order to develop storm water educational materials which can be used by MS-4s in the West Texas region. Records will be maintained beginning in Permit Year 1 and continuing through Permit Year 5. • Design and maintain storm water information website. The El Paso County Road & Bridge

		<p>website will be active and contain storm water information beginning in permit Year 1 and continuing through Permit Year 5.</p>
<p>MCM #2, Section III.2: Public Involvement/Participation MCM</p>	<p>(a)BMP: Public Notice for Meeting</p> <p>(b)BMP: Post Draft SWMP on Website</p> <p>(c)BMP: Public Notice in Newspaper</p>	<ul style="list-style-type: none"> • Staff will verify that Commissioner’s Court meetings comply with public notice requirements and include that information in the annual reports to TCEQ. Public notice for meetings is already in effect and will continue throughout permit year 5. • Staff will post the Draft SWMP on the County Website at least 14 days prior to submitting the TCEQ permit application. • Publish TCEQ Executive Director’s Preliminary Determination in the El Paso Times within 30 days after being notified by the TCEQ Office of Chief Clerk.
<p>MCM #3, Section III.3: Illicit Discharge Detection and Elimination MCM</p>	<p>(a)BMP: Detection: Monitoring Drainage System</p> <p>(b)BMP: Detection & Correction: Citizen Reports and County Staff Surveillance.</p>	<ul style="list-style-type: none"> • Visually monitor outfalls or location discharge within drainage ditch systems for indicators of illicit discharges or water pollution. This activity will begin in Permit Year 2 and will continue through Permit Year 5. • Illicit discharge, complaints from citizens will be investigated by staff. This activity will begin in Permit Year 2 and continue through Permit Year 5.

	<p>(c)BMP: Correction: On-Site Sewage Facilities.</p> <p>(d)BMP: Detection: Storm Drainage Map</p> <p>(e)BMP: Detection & Correction: Illegal Dumping Team.</p> <p>(f)BMP: Correction: Household Hazardous Waste</p> <p>(g)BMP: Detection & Correction: El Paso County Sheriff’s Dept. in conjunction with the County Attorney’s Environmental Section</p>	<ul style="list-style-type: none"> • Software will be obtained and used to track corrective actions taken regarding on-site sewage facilities This activity will begin in Permit Year 1 and continue through Permit Year 5. • El Paso County will prepare a storm sewer map of urbanized areas in unincorporated El Paso County, locating outfalls contained in those areas that discharge directly into waters of the State. This activity will begin in Permit Year 1 and be completed by Permit Year 4. • The El Paso County Sheriff’s Department in conjunction with the County Attorney’s environmental section will investigate illegal dumping in the county; activities will be documented and included in the annual report beginning Permit Year 1 through Permit Year 5. • Will offer residents of unincorporated areas the opportunity to dispose of household hazardous waste. Yearly participation will begin in Permit Year 1 through Permit Year 5. • Will offer residents of unincorporated areas the opportunity to report illegal dumping to the County of El Paso. Yearly participation will begin in Permit Year 1 through Permit
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		Year 5.
<p>MCM #4, Section III.4: Construction Site Storm Water Runoff Control MCM</p>	<p>(a)BMP: NOI File for Construction</p> <p>(b)BMP: Public Submittal of Information educational activities</p> <p>(c)BMP: Site Plan Review</p>	<ul style="list-style-type: none"> • The El Paso County will set up a file system for NOIs and CSNs(Construction Site Notices)that are submitted prior to the commencement of construction MCM activities. This activity will be done during Permit Year 1. • Development and distribution of public information flyer about the Construction Storm Water TPDES Permit. This activity will begin in Permit year 1 and continue through Permit Year 5. • The County of El Paso will address public requests of storm water quality issues associated with construction sites prior to implementing a voluntary construction inspection and enforcement referral program. The County will collect, review and maintain the information. This activity will begin in Permit year 1 and continue through Permit Year 5. • Provide additional storm water information to developers in the county’s preliminary and final plat approval letters. The Letters will be prepared and used during Permit Year 2. • Provide updated County Subdivision and Land use regulations that will include

	<p>(d)BMP: Site Inspection and Enforcement</p> <p>(e)BMP: ISWM Design Manual for Construction</p>	<p>documentation on current storm water quality information during Permit year 3 through 5.</p> <ul style="list-style-type: none"> • Voluntary construction site inspections will be conducted in Permit Year 3 through Permit Year 5. • Create ISWM Design manual that establishes the framework and provides the tools to effectively plan, install and maintain storm water Best Management Practices (BMPs) for construction site storm water runoff. Creation will be during permit year 1 and use of manual will be when conducting inspections during Permit Year 3 through Permit Year 5.
<p>MCM #5, Section III.5: Post Construction Storm Water Management in New Development And Redevelopment MCM</p>	<p>(a)BMP: Allow Previous Drainage Systems</p> <p>(b)BMP: Tracking Additional Pervious Drainage Systems</p>	<ul style="list-style-type: none"> • The County of El Paso will allow open, unlined storm drainage ditches and channels to receive and transport storm water runoff from roads and other impervious surfaces such as roofs, driveways and sidewalks. This is currently in effect and will remain in effect during the 5 year permit term. • El Paso County Road & Bridge Department crew will maintain the open, unlined storm drainage ditches beside County roads in unincorporated areas. An annual list of the maintained ditches will be provided beginning in Permit Year 1 and continuing through Permit Year 5.

	<p>(c)BMP: AgriLIFE EXTENSION Program</p>	<ul style="list-style-type: none"> • Provide support and education on AgriLIFE EXTENSION Program, beginning in Permit Year 1 and continuing through Permit Year 5.
<p>MCM #6, Section III.6: Pollution Prevention/Good Housekeeping for Municipal Operations MCM</p>	<p>(a)BMP: County Operations Survey</p> <p>(b)BMP: Select Good Housekeeping BMPs</p> <p>(c)BMP: Start Good Housekeeping BMPs</p> <p>(d)BMP: Proper Waste Disposal</p>	<ul style="list-style-type: none"> • El Paso County will conduct site surveys of County facilities and discuss issues with the County administration departmental representatives and/or storm water staff. The site surveys will begin and be completed in Permit Year 3. • Consult with County Administration departmental representatives and storm water staff to determine BMPs. El Paso County will address fleet vehicle washing, used oil recycling, trash (floatables) receptacles and other appropriate Good Housekeeping activities. The listing of BMPs will be accomplished in Permit Year 4. • Implement BPMs that don't have significant budget conflicts during Permit Year 5. • A report, to become part of the SWMP, will be developed to document the proper disposal of waste generated from County MS-4 related operations or maintenance. The report will be completed during Permit Year 5.

	<p>(e)BMP: Employee Training</p> <p>(f)BMP: SPCC Plans for County Facilities</p>	<ul style="list-style-type: none">• A training program will be developed for County employees who have the potential to impact storm water quality.• El Paso County will review spill response procedures to ensure storm water quality protection measures are considered during spill response. In Year 1 El Paso County will review all county facilities and determine the need for SPCC plans. After Year 1, the County will begin to implement SPCC plans at county facilities that need them.
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TPDES GENERAL PERMIT
No. TXR040000

This is a new general permit issued pursuant to Section 26.040 of the Texas Water Code and Section 402 of the Clean Water Act.

Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

GENERAL PERMIT TO DISCHARGE UNDER THE
TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM
under provisions of
Section 402 of the Clean Water Act
and Chapter 26 of the Texas Water Code

Small Municipal Separate Storm Sewer Systems

located in the state of Texas

may discharge directly to surface water in the state

only according to monitoring requirements and other conditions set forth in this general permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ or Commission), the laws of the State of Texas, and other orders of the Commission of the TCEQ. The issuance of this general permit does not grant to the permittee the right to use private or public property for conveyance of storm water and certain non-storm water discharges along the discharge route. This includes property belonging to but not limited to any individual, partnership, corporation or other entity. Neither does this general permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This general permit and the authorization contained herein shall expire at midnight five years after the date of issuance.

ISSUED AND EFFECTIVE DATE:

For the Commission

**TCEQ GENERAL PERMIT NUMBER TXR040000
RELATING TO STORM WATER DISCHARGES ASSOCIATED WITH
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS**

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Part I. Definitions and Terminology

A. Definitions

Best Management Practices (BMPs) - Schedules of activities, prohibitions of practices, maintenance procedures, structural controls, local ordinances, and other management practices to prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures, and practices to control runoff, spills or leaks, waste disposal, or drainage from raw material storage areas.

Classified Segment - refers to a water body that is listed and described in Appendix A or Appendix C of the Texas Surface Water Quality Standards, at 30 TAC ' 307.10.

Clean Water Act (CWA) - The Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Pub.L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117, 33 U.S.C. 1251 et.seq.

Common Plan of Development or Sale - A construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. A common plan of development or sale is identified by the documentation for the construction project that identifies the scope of the project, and may include plats, blueprints, marketing plans, contracts, building permits, a public notice or hearing, zoning requests, or other similar documentation and activities.

Construction Site Operator - The person or persons associated with a small or large construction project that meets either of the following two criteria:

- (a) the person or persons that have operational control over construction plans and specifications (including approval of revisions) to the extent necessary to meet the requirements and conditions of this general permit; or
- (b) the person or persons that have day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions (e.g. they are authorized to direct workers at a site to carry out activities required by the Storm Water Pollution Prevention Plan or comply with other permit conditions).

Conveyance - Curbs, gutters, man-made channels and ditches, drains, pipes, and other constructed features designed or used for flood control or to otherwise transport storm water runoff.

Daily Maximum - For the purposes of compliance with the numeric effluent limitations contained in this permit, this is the maximum concentration measured on a single day, by grab sample, within a period of one calendar year.

Discharge - When used without a qualifier, refers to the discharge of storm water runoff or certain non-storm water discharges as allowed under the authorization of this general permit.

Final Stabilization - A construction site where either of the following conditions are met:

- (a) All soil disturbing activities at the site have been completed and a uniform (e.g, evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
- (b) For individual lots in a residential construction site by either:
 - (1) the homebuilder completing final stabilization as specified in condition (a) above; or
 - (2) the homebuilder establishing temporary stabilization for an individual lot prior to the time of transfer of the ownership of the home to the buyer and after informing the homeowner of the need for, and benefits of, final stabilization.
- (c) For construction activities on land used for agricultural purposes (e.g. pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to a surface water and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization conditions of condition (a) above.

Ground Water Infiltration - For the purposes of this permit, groundwater that enters a municipal separate storm sewer system (including sewer service connections and foundation drains) through such means as defective pipes, pipe joints, connections, or manholes.

Illicit Connection - Any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

Illicit Discharge - Any discharge to a municipal separate storm sewer that is not entirely composed of storm water, except discharges pursuant to this general permit or a separate authorization and discharges resulting from emergency fire fighting activities.

Indian Country - Defined in 18 USC Section (') 1151, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition includes all land held in trust for an Indian tribe.

Industrial Activities - manufacturing, processing, material storage, and waste material disposal areas (and similar areas where storm water can contact industrial pollutants related to the industrial activity) at an industrial facility described by the TPDES Multi Sector General Permit, TXR050000, or by another TCEQ or TPDES permit.

Large Construction Activity - Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than five (5) acres of land. Large construction activity also includes the disturbance of less than five (5) acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than five (5) acres of land. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, and original purpose of a ditch, channel, or other similar storm water conveyance. Large construction activity does not include the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities.

Maximum Extent Practicable (MEP) - The technology-based discharge standard for municipal separate storm sewer systems to reduce pollutants in storm water discharges that was established by CWA ' 402(p). A discussion of MEP as it applies to small MS4s is found at 40 CFR ' 122.34.

MS4 Operator – For the purpose of this permit, the public entity, and/ or the entity contracted by the public entity, responsible for management and operation of the small municipal separate storm sewer system that is subject to the terms of this general permit.

Notice of Change (NOC) - Written notification from the permittee to the executive director providing changes to information that was previously provided to the agency in a notice of intent.

Notice of Intent (NOI) - A written submission to the executive director from an applicant requesting coverage under this general permit.

Notice of Termination (NOT) - A written submission to the executive director from a permittee authorized under a general permit requesting termination of coverage under this general permit.

Outfall - For the purpose of this permit, a point source at the point where a municipal separate storm sewer discharges to waters of the United States (U.S.) and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels, or other conveyances that connect segments of the same stream or other waters of the U.S. and are used to convey waters of the U.S.

Permittee - The MS4 operator authorized under this general permit.

Permitting Authority - For the purposes of this general permit, the TCEQ.

Point Source - (from 40 CFR ' 122.22) any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Pollutant(s) of Concern - Include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from an MS4. (Definition from 40 CFR ' 122.32(e)(3)).

Redevelopment - Alterations of a property that changed the footprint of a site or building in such a way that there is a disturbance of equal to or greater than one (1) acre of land. This term does not include such activities as exterior remodeling.

Small Construction Activity - Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one (1) acre and less than five (5) acres of land. Small construction activity also includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one (1) and less than five (5) acres of land. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, and original purpose of a ditch, channel, or other similar storm water conveyance. Small construction activity does not include the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities.

Small Municipal Separate Storm Sewer System (MS4) – refers to a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by the United States, a state, city, town, borough, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under ' 208 of the CWA; (ii) Designed or used for collecting or conveying storm water; (iii) Which is not a combined sewer; (iv) Which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR ' 122.2; and (v) Which was not previously authorized under a NPDES or TPDES individual permit as a medium or large municipal separate storm sewer system, as defined at 40 CFR §§122.26(b)(4) and (b)(7). This term includes systems similar to separate storm sewer systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. This term does not include separate storm sewers in very discrete areas, such as individual buildings. For the purpose of this permit, a very discrete system also includes storm drains associated with certain municipal offices and education facilities serving a nonresidential population, where those storm drains do not function as a system, and where the buildings are not physically interconnected to an MS4 that is also operated by that public entity.

Storm Water and Storm Water Runoff - Rainfall runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Associated with Construction Activity - Storm water runoff from an area where there is either a large construction activity or a small construction activity.

Storm Water Management Program (SWMP) - A comprehensive program to manage the quality of discharges from the municipal separate storm sewer system.

Structural Control (or Practice) - A pollution prevention practice that requires the construction of a device, or the use of a device, to capture or prevent pollution in storm water runoff. Structural controls and practices may include but are not limited to: wet ponds, bioretention, infiltration basins, storm water wetlands, silt fences, earthen dikes, drainage swales, vegetative lined ditches, vegetative filter strips, sediment traps, check dams, subsurface drains, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins.

Surface Water in the State - Lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state (from the mean high water mark (MHW) out 10.36 miles into the Gulf), and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; except that waters in treatment systems which are authorized by state or federal law, regulation, or permit, and which are created for the purpose of waste treatment are not considered to be water in the state.

Total Maximum Daily Load (TMDL) - The total amount of a substance that a water body can assimilate and still meet the Texas Surface Water Quality Standards.

Urbanized Area (UA) - An area of high population density that may include multiple MS4s as defined and used by the U.S. Census Bureau in the 2000 decennial census.

Waters of the United States - (from 40 CFR ' 122.2) Waters of the United States or waters of the U.S. means:

- (a) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (b) all interstate waters, including interstate wetlands;
- (c) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds that the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (1) which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (2) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (3) which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) all impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) the territorial sea; and
- (g) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR ' 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area=s status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

B. Commonly Used Acronyms

BMP	Best Management Practice
CFR	Code of Federal Regulations
CGP	Construction General Permit, TXR150000
CWA	Clean Water Act
DMR	Discharge Monitoring Report
EPA	Environmental Protection Agency
FR	Federal Register
IP	Implementation Procedures
MCM	Minimum Control Measure
MSGP	Multi-Sector General Permit, TXR050000
MS4	Municipal Separate Storm Sewer System
NOC	Notice of Change
NOD	Notice of Deficiency
NOI	Notice of Intent
NOT	Notice of Termination (to terminate coverage under a general permit)
NPDES	National Pollutant Discharge Elimination System
SWMP	Storm Water Management Program

SWP3, SWPPP	Storm Water Pollution Prevention Plan
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
TPDES	Texas Pollutant Discharge Elimination System
TWC	Texas Water Code

Part II. Permit Applicability and Coverage

This general permit provides authorization for storm water and certain non-storm water discharges from small municipal separate storm sewer systems (MS4) to surface water in the state. The general permit contains requirements applicable to all small MS4s that are eligible for coverage under this general permit.

A. Small MS4s Eligible for Authorization by General Permit

1. Small MS4s Located in an Urbanized Area

A small MS4 that is fully or partially located within an urbanized area, as determined by the 2000 Decennial Census by the U.S. Bureau of Census, must obtain authorization for the discharge of storm water runoff and is eligible for coverage under this general permit.

2. Designated Small MS4s

A small MS4 that is outside an urbanized area that is designated by TCEQ based on evaluation criteria as required by 40 CFR ' 122.32(a)(2) or 40 CFR ' 122.26(a)(1)(v) and adopted by reference in Title 30, Texas Administrative Code (TAC), ' 281.25, is eligible for coverage under this general permit. Following designation, operators of small MS4s must obtain authorization under this general permit or apply for coverage under an individual TPDES storm water permit within 180 days of notification of their designation.

The portion of the small MS4 that is required to meet the conditions of this general permit are those portions that are located within the urbanized area, as well as any portion of the small MS4 that is designated.

B. Allowable Non-Storm Water Discharges

The following non-storm water sources may be discharged from the small MS4 and are not required to be addressed in the small MS4's Illicit Discharge and Detection or other minimum control measures, unless they are determined by the permittee or the TCEQ to be significant contributors of pollutants to the small MS4:

TPDES General Permit No. TXR040000

1. water line flushing (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);
2. runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;
3. discharges from potable water sources;
4. diverted stream flows;
5. rising ground waters and springs;
6. uncontaminated ground water infiltration;
7. uncontaminated pumped ground water;
8. foundation and footing drains;
9. air conditioning condensation;
10. water from crawl space pumps;
11. individual residential vehicle washing;
12. flows from wetlands and riparian habitats;
13. dechlorinated swimming pool discharges;
14. street wash water;
15. discharges or flows from fire fighting activities (fire fighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);
16. other allowable non-storm water discharges listed in 40 CFR ' 122.26(d)(2)(iv)(B)(1);
17. non-storm water discharges that are specifically listed in the TPDES Multi Sector General Permit (MSGP) or the TPDES Construction General permit (CGP); and
18. other similar occasional incidental non-storm water discharges, unless the TCEQ develops permits or regulations addressing these discharges.

C. Limitations on Permit Coverage

1. Discharges Authorized by Another TPDES Permit

Discharges authorized by an individual or other general TPDES permit may be authorized under this TPDES general permit only if the following conditions are met:

- (a) the discharges meet the applicability and eligibility requirements for coverage under this general permit;
- (b) a previous application or permit for the discharges has not been denied, terminated, or revoked by the executive director as a result of enforcement or water quality related concerns. The executive director may provide a waiver to this provision based on new circumstances at the regulated small MS4; and
- (c) the executive director has not determined that continued coverage under an individual permit is required based on consideration of an approved total maximum daily loading (TMDL) model and implementation plan, anti-backsliding policy, history of substantive non-compliance or other 30 TAC Chapter 205 considerations and requirements, or other site-specific considerations.

2. Discharges of Storm Water Mixed with Non-Storm Water

Storm water discharges that combine with sources of non-storm water are not eligible for coverage by this general permit, unless either the non-storm water source is described in Part II.B or Part VI.B. of this general permit or the non-storm water source is authorized under a separate TPDES permit.

3. Compliance with Water Quality Standards

Discharges to surface water in the state that would cause or contribute to a violation of water quality standards or that would fail to protect and maintain existing designated uses are not eligible for coverage under this general permit. The executive director may require an application for an individual permit or alternative general permit to authorize discharges to surface water in the state if the executive director determines that an activity will cause a violation of water quality standards or is found to cause or contribute to the impairment of a designated use of surface water in the state. The executive director may also require an application for an individual permit considering factors described in Part II.E.2.

4. Discharges to Water Quality-Impaired Receiving Waters

New sources or new discharges of the constituent(s) of concern to impaired waters are not authorized by this permit unless otherwise allowable under 30 TAC Chapter 305 and applicable state law. Impaired waters are those that do not meet applicable water quality standard(s) and are listed on the Clean Water Act ' 303(d) list. Constituents of concern are those for which the water body is listed as impaired.

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Discharges of the constituent(s) of concern to impaired water bodies for which there is a TMDL implementation plan are not eligible for this general permit unless they are consistent with the approved TMDL and the implementation plan. Permitted MS4 operators must incorporate the limitations, conditions and requirements applicable to their discharges, including monitoring frequency and reporting required by TCEQ rules, into their SWMP in order to be eligible for permit coverage. For discharges not eligible for coverage under this general permit, the discharger must apply for and receive an individual TPDES permit prior to discharging.

5. Discharges to the Edwards Aquifer Recharge Zone

Discharges of storm water from regulated small MS4s, and other non-storm water discharges, can not be authorized by this general permit where those discharges are prohibited by 30 TAC Chapter 213 (relating to Edwards Aquifer). New discharges located within the Edwards Aquifer Recharge Zone, or within that area upstream from the recharge zone and defined as the Contributing Zone, must meet all applicable requirements of, and operate according to, 30 TAC Chapter 213 (Edwards Aquifer Rule) in addition to the provisions and requirements of this general permit.

For existing discharges, the requirements of the agency-approved Water Pollution Abatement Plan under the Edwards Aquifer Rules are in addition to the requirements of this general permit. BMPs and maintenance schedules for structural storm water controls, for example, may be required as a provision of the rule. All applicable requirements of the Edwards Aquifer Rule for reductions of suspended solids in storm water runoff are in addition to the effluent limitation requirements found in Part VI.D. of this general permit. A copy of the agency-approved Water Pollution Abatement Plans that are required by the Edwards Aquifer Rule must either be attached as a part of the SWMP or referenced in the SWMP. For discharges located on or within ten stream miles upstream of the Edwards Aquifer recharge zone, applicants must also submit a copy of the NOI to the appropriate TCEQ regional office.

Counties:

Comal, Bexar, Medina, Uvalde,
and Kinney

Williamson, Travis, and Hays

Contact:

TCEQ
Water Program Manager
San Antonio Regional Office
14250 Judson Road
San Antonio, Texas 78233-4480
(210) 490-3096

TCEQ
Water Program Manager
Austin Regional Office
1921 Cedar Bend Drive, Suite 150
Austin, Texas 78758-5336
(512) 339-2929

6. Discharges to Specific Watersheds and Water Quality Areas

Discharges of storm water from regulated small MS4s and other non-storm water discharges can not be authorized by this general permit where prohibited by 30 TAC Chapter 311 (relating to Watershed Protection) for water quality areas and watersheds.

7. Protection of Streams and Watersheds by Home Rule Municipalities

This general permit does not limit the authority of a home-rule municipality provided by ' 401.002 of the Texas Local Government Code.

8. Indian Country Lands

Storm water runoff from MS4s or construction activities occurring on Indian Country lands are not under the authority of the TCEQ and are not eligible for coverage under this general permit. If discharges of storm water require authorization under federal NPDES regulations, authority for these discharges must be obtained from the U.S. Environmental Protection Agency (EPA).

9. Other

Nothing in Part II of the general permit is intended to negate any person's ability to assert the force majeure (act of God, war, strike, riot, or other catastrophe) defenses found in 30 TAC ' 70.7.

This permit does not transfer liability for the act of discharging without, or in violation of, a NPDES or a TPDES permit from the operator of the discharge to the permittee(s).

D. Obtaining Authorization

1. Application for Coverage

When submitting an NOI and Storm Water Management Program (SWMP) as described in Parts II.D.3., II.D.4, and Part III for coverage under this general permit, the applicant must follow the public notice and availability requirements found in Part II.D.12. of this section.

Applicants seeking authorization to discharge under this general permit must submit a completed NOI, on a form approved by the executive director, and a SWMP as described in Part III. The NOI and SWMP must be submitted to the TCEQ Water Quality Division, at the address specified on the form. Discharge authorization begins when the applicant is notified by TCEQ that the NOI and SWMP have been administratively and technically reviewed and the applicant has followed the public participation provisions in Part II.D.12. Following review of the NOI and SWMP, the executive director may determine that: 1) the submission is complete and confirm coverage by providing a notification and an authorization number, 2) the NOI and/or SWMP are incomplete and deny coverage until a complete NOI and/or SWMP are submitted, 3) approve the NOI and/or SWMP with revisions and provide a written description of the required revisions along with any compliance schedule(s), or 4)

deny coverage and provide a deadline by which the MS4 operator must submit an application for an individual permit. Denial of coverage under this general permit is subject to the requirements of 30 TAC ' 205.4(c). Application deadlines are as follows:

(a) Small MS4s Located in an Urbanized Area

Operators of small MS4s described in Part II.A.1 must submit an NOI and SWMP within 180 days following the effective date of this general permit.

(b) Designated Small MS4s

Operators of small MS4s described in Part II.A.2 must submit an NOI and SWMP within 180 days of being notified in writing by the TCEQ of the need to obtain permit coverage.

2. Late Submission of the NOI and SWMP

An NOI and SWMP are not prohibited from being submitted late or after the deadlines provided. If a late NOI and SWMP is submitted, authorization is only for discharges that occur after permit coverage is obtained. The TCEQ reserves the right to take appropriate enforcement actions for any unpermitted discharges.

3. Storm Water Management Program (SWMP)

A SWMP must be developed and submitted with the NOI for eligible discharges that will reach waters of the United States (U.S.), including discharges from the regulated small MS4 to other MS4s or privately-owned separate storm sewer systems that subsequently drain to waters of the U.S. according to the requirements of Part III of this general permit and submitted with the NOI. The SWMP must include a time line that demonstrates a schedule for implementation of the program throughout the permit term. The program must be completely implemented within five years of the issuance date of this general permit, or within five years of being designated for those small MS4s which are designated following permit issuance. Implementation of the SWMP is required immediately following receipt of written authorization from the TCEQ.

Changes may be made to the SWMP during the permit term. Changes that are made to the SWMP before the NOI is approved by the TCEQ must be submitted in a letter providing supplemental information to the NOI. Changes to the SWMP that are made after TCEQ approval of the NOI and SWMP may be made following written approval of the changes from the TCEQ, except that written approval is not required for the following changes:

(a) Adding components, controls, or requirements to the SWMP; or replacing a BMP with an equivalent BMP, may be made by the permittee at any time upon submittal of a notice of change (NOC) form to the address specified on the form to the TCEQ.

(b) Replacing a less effective or infeasible BMP specifically identified in the SWMP with an alternate BMP may be requested at any time. Changes must be submitted on

an NOC form to the address specified on the form. Unless denied in writing by the TCEQ, the change shall be considered approved and may be implemented by the permittee 60 days from submitting the request. Such requests must include the following:

- (1) an explanation of why the BMP was eliminated;
- (2) an explanation of the effectiveness of the replacement BMP; and
- (3) an explanation of why the replacement BMP is expected to achieve the goals of the replaced BMP.

4. Contents of the NOI

The NOI must contain the following minimum information:

- (a) MS4 Operator Information
 - (1) the name, mailing address, telephone number, and fax number of the MS4 operator; and
 - (2) the legal status of the MS4 operator (e.g., federal government, state government, county government, city government, or other government).
- (b) Site Information
 - (1) the name, physical location description, and latitude and longitude of the approximate center of the regulated portion of the small MS4;
 - (2) county or counties where the small MS4 is located;
 - (3) an indication if all or a portion of the small MS4 is located on Indian Country Lands;
 - (4) if the applicant develops a seventh minimum control measure to obtain authorization for construction activities, the boundary within which those activities will occur;
 - (5) the name, mailing address, telephone number, and fax number of the designated person(s) responsible for implementing or coordinating implementation of the SWMP;
 - (6) a certification that a SWMP has been developed according to the provisions of this permit;
 - (7) a statement that the applicant will comply with the Public Participation requirements described in Part II.D.12.;

- (8) the name of each classified segment that receives discharges, directly or indirectly, from the small MS4. If one or more of the discharge(s) is not directly to a classified segment, then the name of the first classified segment that those discharges reach shall be identified;
- (9) the name of any MS4 receiving the discharge prior to discharge into surface water in the state; and
- (10) the name of all surface water(s) receiving discharges from the small MS4 that are on the latest EPA-approved CWA ' 303(d) list of impaired waters.

5. Notice of Change (NOC)

If the MS4 operator becomes aware that it failed to submit any relevant facts, or submitted incorrect information in the NOI, the correct information must be provided to the executive director in a NOC within 30 days after discovery. If any information provided in the NOI changes, an NOC must be submitted within 30 days from the time the permittee becomes aware of the change.

Any revisions that are made to the SWMP must be made in accordance with Part II.D.3. above. Changes that are made to the SWMP following NOI approval must be made using an NOC form, in accordance with Part II.D.3. above.

6. Change in Operational Control of a Small MS4

If the operational control of the regulated small MS4 changes, the present operator must submit a Notice of Termination (NOT) and the new operator must submit a NOI and SWMP. The NOT and NOI must be submitted concurrently no greater than 10 days after the change occurs.

7. Notice of Termination (NOT)

A permittee may terminate coverage under this general permit by providing a Notice of Termination (NOT) on a form approved by the executive director. Authorization to discharge terminates at midnight on the day that an NOT is postmarked for delivery to the TCEQ. If TCEQ provides for electronic submission of NOTs during the term of this permit, authorization to discharge terminates 24 hours following confirmation of receipt of the electronic NOT form by the TCEQ. An NOT must be submitted within 30 days after the MS4 operator obtains coverage under an individual permit.

8. Signatory Requirement for NOI, NOT, NOC, and Waiver Forms

NOI, NOT, NOC, and Waiver forms must be signed and certified consistent with 30 TAC ' 305.44(a) and (b) (relating to Signatories to Applications).

9. Fees

An application fee of \$100 must be submitted with each NOI. A fee is not required for submission of a waiver form, an NOT, or an NOC.

A permittee authorized under this general permit must pay an annual Water Quality fee of \$100 under Texas Water Code, ' 26.0291 and 30 TAC Chapter 205 (relating to General Permits for Waste Discharges).

10. Permit Expiration

- (a) This general permit is effective for five years from the date of issuance. Authorizations for discharge under the provisions of this general permit may continue until the expiration date of the general permit. This general permit may be amended, revoked, or canceled by the commission or renewed by the commission for an additional term or terms not to exceed five years.
- (b) If the Executive Director proposes to reissue this general permit before the expiration date, the general permit shall remain in effect after the expiration date for those existing discharges covered by the general permit in accordance with 30 TAC, Chapter 205. The general permit shall remain in effect for these dischargers until the date on which the commission takes final action on the proposal to reissue this general permit. No new NOIs will be accepted and no new authorizations will be processed under the general permit after the expiration date.
- (c) Upon issuance of a renewed or amended general permit, all permittees, including those covered under the expired general permit, may be required to submit an NOI according to the requirements of the new general permit or to obtain a TPDES individual permit for those discharges.
- (d) If the commission does not propose to reissue this general permit within 90 days before the expiration date, permittees must apply for authorization under a TPDES individual permit or an alternative general permit. If the application for an individual permit is submitted before the expiration date, authorization under this expiring general permit remains in effect until the issuance or denial of an individual permit.

11. Suspension of Permit Coverage

The executive director may suspend an authorization under this general permit for the reasons specified in 30 TAC ' 205.4(d) by providing the discharger with written notice of the decision to suspend that authority, and the written notice will include a brief statement of the basis for the decision. If the decision requires an application for an individual permit or an alternative general permit, the written notice will also include a statement establishing the deadline for submitting an application. The written notice will state that the authorization under this general permit is either suspended on the effective date of the commission's action on the permit application, unless the commission expressly provides otherwise, or immediately, if required by the executive director.

12. Public Participation

An applicant under this general permit must adhere to the following procedures:

- (a) The applicant must submit the NOI and a SWMP to the executive director.
- (b) After the applicant receives written instructions from the TCEQ's Office of Chief Clerk, the applicant must publish notice of the executive director's preliminary determination on the NOI and SWMP.
- (c) The notice must include:
 - (1) the legal name of the MS4 operator;
 - (2) identify whether the NOI is for a new small MS4 or is a renewal of an existing operation;
 - (3) the address of the applicant;
 - (4) a brief summary of the information included in the NOI, such as the general location of the small MS4 and a description of the classified receiving waters that receive the discharges from the small MS4;
 - (5) the location and mailing address where the public may provide comments to the TCEQ;
 - (6) the public location where copies of the NOI and SWMP, as well as the executive director's general permit and fact sheet, may be reviewed; and
 - (7) if required by the executive director, the date, time, and location of the public meeting.
- (d) This notice must be published at least once in the newspaper of largest circulation in the county where the small MS4 is located. If the small MS4 is located in multiple counties, the notice must be published at least once in the newspaper of largest circulation in the county containing the largest resident population. This notice shall provide opportunity for the public to submit comments on the NOI and SWMP. In addition, the notice shall allow the public to request a public meeting. A public meeting will be held if the TCEQ determines that there is significant public interest.
- (e) The public comment period begins on the first date the notice is published and ends 30 days later, unless a public meeting is held. If a public meeting is held, the comment period will end at the closing of the public meeting. The public may submit written comments to the TCEQ Office of Chief Clerk during the comment period detailing how the NOI or SWMP for the small MS4 fails to meet the technical requirements or conditions of this general permit.

- (f) If significant public interest exists, the executive director will direct the applicant to publish a notice of the public meeting and to hold the public meeting. The applicant must publish notice of a public meeting at least 30 days before the meeting and hold the public meeting in a county where the small MS4 is located. TCEQ staff will facilitate the meeting.
- (g) If a public meeting is held, the applicant shall describe the contents of the NOI and SWMP. The applicant shall also provide maps and other data on the small MS4. The applicant shall provide a sign in sheet for attendees to register their names and addresses and furnish the sheet to the executive director. A public meeting held under this general permit is not an evidentiary proceeding.
- (h) The applicant must file with the Chief Clerk a copy and an affidavit of the publication of notice(s) within 60 days of receiving the written instructions from the Office of Chief Clerk.
- (i) The executive director, after considering public comment, shall approve, approve with conditions, or deny the NOI based on whether the NOI and SWMP meet the requirements of this general permit.
- (j) Persons whose names and addresses appear legibly on the sign in sheet from the public meeting and persons who submitted written comments to the TCEQ will be notified by the TCEQ's Office of Chief Clerk of the executive director's decision regarding the authorization.

E. Permitting Options

1. Authorization Under the General Permit

An operator of a small MS4 is required to obtain authorization either under this general permit, or under an individual TPDES permit if it is located in an urbanized area or if it is designated by the TCEQ. Multiple small MS4s with separate operators must individually submit an NOI to obtain coverage under this general permit, regardless of whether the systems are physically interconnected, located in the same urbanized area, or are located in the same watershed. Each regulated small MS4 will be issued a distinct permit number. These MS4 operators may combine or share efforts in meeting any or all of the SWMP requirements stated in Part III of this general permit. MS4 operators that share SWMP development and implementation must meet the following conditions:

(a) Participants

The SWMP must clearly list the name and permit number for each MS4 operator that contributes to development or implementation of the SWMP, and provide confirmation that the contributing MS4 operator has agreed to contribute. If a contributing MS4 has submitted an NOI and SWMP to TCEQ, but has not yet received written notification of approval, along with the accompanying permit

authorization number, a copy of the submitted NOI form must be made readily available or included in the SWMP.

(b) Responsibilities

Each permittee is entirely responsible for meeting SWMP requirements within the boundaries of its MS4. Where a separate MS4 operator is contributing to implementation of the SWMP, the SWMP must clearly define the contribution and clearly identify the contributing MS4 operator.

2. Alternative Coverage under an Individual TPDES Permit

An MS4 operator eligible for coverage under this general permit may alternatively be authorized under an individual TPDES permit according to 30 TAC Chapter 305 (relating to Consolidated Permits). The executive director may require an MS4 operator, authorized by this general permit, to apply for an individual TPDES permit because of: the conditions of an approved TMDL or TMDL implementation plan; a history of substantive non-compliance; or other 30 TAC Chapter 205 considerations and requirements; or other site-specific considerations.

F. Waivers

The TCEQ may waive permitting requirements for small regulated MS4 operators if the criteria are met for Waiver Option 1 or 2. To obtain Waiver Option 1, the MS4 operator must submit the request on a waiver form provided by the executive director. To obtain Waiver Option 2, the MS4 operator must contact the executive director and coordinate the activities required to meet the waiver conditions. A provisional waiver from permitting requirements begins two days after a completed waiver form is postmarked for delivery to the TCEQ. Following review of the waiver form, the executive director may: 1) determine that the waiver form is complete and confirm coverage under the waiver by providing a notification and a waiver number, 2) determine that the waiver form is incomplete and deny the waiver until a completed waiver form is submitted, or 3) deny the waiver and require that permit coverage be obtained.

If the conditions of either waiver are not met by the MS4 operator, then the MS4 operator must submit an application for coverage under this general permit or a separate TPDES permit application.

The TCEQ can, at any time, require a previously waived MS4 operator to comply with this general permit or another TPDES permit if circumstances change so that the conditions of the waiver are no longer met. Changed circumstances can also allow a regulated MS4 operator to request a waiver at any time.

1. Waiver Option 1: The system serves a population of less than 1,000 within an urbanized area and meets the following criteria:
 - (a) the system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES / TPDES storm water program (40 CFR ' 122.32(d)); and

- (b) if the system discharges any pollutant(s) that have been identified as a cause of impairment of any water body to which the small MS4 discharges, storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established "total maximum daily load" (TMDL) that addresses the pollutant(s) of concern.
2. Waiver Option 2: The system serves a population under 10,000 and meets the following criteria:
- (a) the TCEQ has evaluated all waters of the United States, including small streams, tributaries, lakes, and ponds, that receive a discharge from the small MS4;
 - (b) for all such waters, the TCEQ has determined that storm water controls are not needed based on wasteload allocations that are part of an approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern; and
 - (c) the TCEQ has determined that future discharges from the small MS4 do not have the potential to exceed Texas surface water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

Part III. Storm Water Management Program (SWMP)

To the extent allowable under state and local law, a SWMP must be developed and implemented according to the requirements of Part III of this general permit, for storm water discharges that reach waters of the United States, regardless of whether the discharge is conveyed through a separately operated storm sewer. The SWMP must be developed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act and the Texas Water Code. Existing programs or best management practices (BMPs) may be used to fulfill the requirements of this general permit. The MS4 operator must develop the SWMP to include the six minimum control measures described in Part III.A.1. through 6, and the operator may develop and include the optional seventh minimum control measure in Part III.A.7. Small MS4s have five years from the date of issuance of this general permit to fully implement their SWMP. A discharger's compliance with its approved SWMP will be deemed compliance with Part III of this permit.

Where the permittee lacks the authority to develop ordinances or to implement enforcement actions, the permittee shall exert enforcement authority as required by this general permit for its facilities, employees, and contractors. For discharges from third party actions, the permittee shall perform inspections and exert enforcement authority to the MEP.

If the permittee does not have enforcement authority and is unable to meet the goals of this general permit through its own powers, then, unless otherwise stated in this general permit, the permittee shall perform the following action in order to meet the goals of the permit:

- Enter into interlocal agreements with municipalities where the small MS4 is located. These interlocal agreements must state the extent to which the municipality will be responsible for inspections and enforcement authority in order to meet the conditions of this general permit; or,
- if the permittee is unable to enter into inter-local agreements, notify the TCEQ=s Field Operations Division as needed to report discharges or incidents that it can not itself enforce against.

The controls and Best Management Practices (BMPs) included in the SWMP constitute effluent limitations for the purposes of compliance with the requirements of 30 TAC Chapter 319, Subchapter B, related to Hazardous Metals.

A. Minimum Control Measures

1. Public Education and Outreach on Storm Water Impacts

- (a) A public education program must be developed and implemented to distribute educational materials to the community or conduct equivalent outreach activities that will be used to inform the public. The MS4 operator may determine the most appropriate sections of the population at which to direct the program. The MS4 operator must consider the following groups and the SWMP shall provide justification for any listed group that is not included in the program:

- (1) residents;
- (2) visitors;
- (3) public service employees;
- (4) businesses;
- (5) commercial and industrial facilities; and
- (6) construction site personnel.

The outreach must inform the public about the impacts that storm water run-off can have on water quality, hazards associated with illegal discharges and improper disposal of waste, and steps that they can take to reduce pollutants in storm water runoff.

- (b) The MS4 operator must document activities conducted and materials used to fulfill this control measure. Documentation shall be detailed enough to demonstrate the amount of resources used to address each group. This documentation shall be retained in the annual reports required in Part IV.B.2. of this general permit.

2. Public Involvement/Participation

The MS4 operator must, at a minimum, comply with any state and local public notice requirements when implementing a public involvement/participation program. It is recommended that the program include provisions to allow all members of the public within the small MS4 the opportunity to participate in SWMP development and implementation. Correctional facilities will not be required to implement this MCM.

3. Illicit Discharge Detection and Elimination

(a) Illicit Discharges

A section within the SWMP must be developed to establish a program to detect and eliminate illicit discharges to the small MS4. The SWMP must include the manner and process to be used to effectively prohibit illicit discharges. To the extent allowable under state and local law, an ordinance or other regulatory mechanism must be utilized to prohibit and eliminate illicit discharges. Elements must include:

(1) Detection

The SWMP must list the techniques used for detecting illicit discharges; and

(2) Elimination

The SWMP must include appropriate actions and, to the extent allowable under state and local law, establish enforcement procedures for removing the source of an illicit discharge.

(b) Allowable Non-Storm Water Discharges

Non-storm water flows listed in Part II.B and Part VI.B. do not need to be considered by the MS4 operator as an illicit discharge requiring elimination unless the operator of the small MS4 or the executive director identifies the flow as a significant source of pollutants to the small MS4. In lieu of considering non-storm water sources on a case-by-case basis, the MS4 operator may develop a list of common and incidental non-storm water discharges that will not be addressed as illicit discharges requiring elimination. If developed, the listed sources must not be reasonably expected to be significant sources of pollutants either because of the nature of the discharge or the conditions that are established by the MS4 operator prior to accepting the discharge to the small MS4. If this list is developed, then all local controls and conditions established for these listed discharges must be described in the SWMP and any changes to the SWMP must be included in the annual report described in Part IV.B.2. of this general permit, and must meet the requirements of Part II.D.3. of the general permit.

(c) Storm Sewer Map

- (1) A map of the storm sewer system must be developed and must include the following:
 - (i) the location of all outfalls;
 - (ii) the names and locations of all waters of the U.S. that receive discharges from the outfalls; and
 - (iii) any additional information needed by the permittee to implement its SWMP.
- (2) The SWMP must include the source of information used to develop the storm sewer map, including how the outfalls are verified and how the map will be regularly updated.

4. Construction Site Storm Water Runoff Control

The MS4 operator, to the extent allowable under State and local law, must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre or if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more of land. The MS4 operator is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from sites where the construction site operator has obtained a waiver from permit requirements under NPDES or TPDES construction permitting requirements based on a low potential for erosion.

- (a) The program must include the development and implementation of, at a minimum, an ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state and local law.
- (b) Requirements for construction site contractors to, at a minimum:
 - (1) implement appropriate erosion and sediment control BMPs; and
 - (2) control waste such as discarded building materials, concrete truck washout water, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.
- (c) The MS4 operator must develop procedures for:
 - (1) site plan review which incorporate consideration of potential water quality impacts;
 - (2) receipt and consideration of information submitted by the public; and

- (3) site inspection and enforcement of control measures to the extent allowable under state and local law.

5. Post-Construction Storm Water Management in New Development and Redevelopment

To the extent allowable under state and local law, the MS4 operator must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre of land, including projects less than one acre that are part of a larger common plan of development or sale that will result in disturbance of one or more acres, that discharge into the small MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts. The permittee shall:

- (a) Develop and implement strategies which include a combination of structural and/or non-structural BMPs appropriate for the community;
- (b) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state and local law; and
- (c) Ensure adequate long-term operation and maintenance of BMPs.

6. Pollution Prevention/Good Housekeeping for Municipal Operations

A section within the SWMP must be developed to establish an operation and maintenance program, including an employee training component, that has the ultimate goal of preventing or reducing pollutant runoff from municipal operations.

- (a) Good Housekeeping and Best Management Practices (BMPs)

Housekeeping measures and BMPs (which may include new or existing structural or non-structural controls) must be identified and either continued or implemented with the goal of preventing or reducing pollutant runoff from municipal operations. Examples of municipal operations and municipally owned areas include, but are not limited to:

- (1) park and open space maintenance;
- (2) street, road, or highway maintenance;
- (3) fleet and building maintenance;
- (4) storm water system maintenance;
- (5) new construction and land disturbances;

- (6) municipal parking lots;
- (7) vehicle and equipment maintenance and storage yards;
- (8) waste transfer stations; and
- (9) salt/sand storage locations.

(b) Training

A training program must be developed for all employees responsible for municipal operations subject to the pollution prevention/good housekeeping program. The training program must include training materials directed at preventing and reducing storm water pollution from municipal operations. Materials may be developed, or obtained from the EPA, states, or other organizations and sources. Examples or descriptions of training materials being used must be included in the SWMP.

(c) Structural Control Maintenance

If BMPs include structural controls, maintenance of the controls must be performed at a frequency determined by the MS4 operator and consistent with maintaining the effectiveness of the BMP. The SWMP must list all of the following:

- (1) maintenance activities;
- (2) maintenance schedules; and
- (3) long-term inspection procedures for controls used to reduce floatables and other pollutants.

(d) Disposal of Waste

Waste removed from the small MS4 and waste that is collected as a result of maintenance of storm water structural controls must be properly disposed. A section within the SWMP must be developed to include procedures for the proper disposal of waste, including:

- (1) dredge spoil;
- (2) accumulated sediments; and
- (3) floatables.

(e) Municipal Operations and Industrial Activities

The SWMP must include a list of all:

- (1) municipal operations that are subject to the operation, maintenance, or training program developed under the conditions of this section; and
- (2) municipally owned or operated industrial activities that are subject to TPDES industrial storm water regulations.

7. Authorization for Municipal Construction Activities

The development of a MCM for municipal construction activities is an optional measure and is an alternative to the MS4 operator seeking coverage under TPDES general permit TXR150000. Additionally, contractors working for the permittee are not required to obtain a separate authorization if they do not meet the definition of a construction site operator, as long as the permittee meets the status of construction site operator. Permittees that choose to develop this measure will be authorized to discharge storm water and certain non-storm water from construction activities where the permittee can meet the definition of a construction site operator in Part I of this general permit. The authorization to discharge under this MCM is limited to the regulated area, such as the portion of the MS4 located within an urbanized area or the area designated by TCEQ as requiring coverage. However, an MS4 operator may also utilize this MCM over additional portions of their MS4 that are also in compliance with all of the MCMs listed in this general permit. This MCM must be developed as a part of the SWMP that is submitted with the NOI for permit coverage. If this MCM is developed after submitting the initial NOI, a NOC must be submitted notifying the executive director of this change, and identifying the geographical area or boundary where the activities will be conducted under the provisions of this general permit. Utilization of this MCM does not preclude a small MS4 from obtaining coverage under the TPDES Construction General Permit, TXR150000, or under an individual TPDES permit.

(a) The MCM must include:

- (1) a description of how construction activities will generally be conducted by the permittee so as to take into consideration local conditions of weather, soils, and other site specific considerations;
- (2) a description of the area that this MCM will address and where the permittee's construction activities are covered (e.g. within the boundary of the urbanized area, the corporate boundary, a special district boundary, an extra territorial jurisdiction, or other similar jurisdictional boundary); and
- (3) either a description of how the permittee will supervise or maintain oversight over contractor activities to ensure that the SWP3 requirements are properly implemented at the construction site; or how the permittee will make certain that contractors have a separate authorization for storm water discharges.
- (4) a general description of how a SWP3 shall be developed, according to Part V.I.E. of this general permit, for each construction site.

B. General Requirements

Permittees must provide documentation of the development, implementation, and evaluation of the SWMP. The documentation must be included in the SWMP and may be required to be submitted in the annual report required in Part IV.B.2. of this general permit. At a minimum, the documentation must include:

1. a list of any public or private entities assisting with the development or implementation of the SWMP;
2. a list of all BMPs and measurable goals for each of the MCMs;
3. a schedule for the implementation of all SWMP requirements;
4. a description of how each measurable goal will be evaluated;
5. a rationale statement that addresses the overall program, including how the BMPs and measurable goals were selected; and
6. if applicable, a list of all MS4 operators contributing to the development and implementation of the SWMP, including a clear description of the contribution.

Part IV. Recordkeeping and Reporting

A. Recordkeeping

1. The permittee must retain all records, a copy of this TPDES general permit, and records of all data used to complete the application (NOI) for this general permit and satisfy the public participation requirements, for a period of at least three years, or for the remainder of the term of this general permit, whichever is longer. This period may be extended by request of the executive director at any time.
2. The permittee must submit the records to the executive director only when specifically asked to do so. The SWMP required by this general permit (including a copy of the general permit) must be retained at a location accessible to the TCEQ.
3. The permittee must make the NOI and the SWMP available to the public if requested to do so in writing. Copies of the SWMP must be made available within 10 working days of receipt of a written request. Other records must be provided in accordance with the Texas Public Information Act. However, all requests for records from federal facilities must be made in accordance with the Freedom of Information Act.
4. The period during which records are required to be kept shall be automatically extended to the date of the final disposition of any administrative or judicial enforcement action that maybe instituted against the permittee.

B. Reporting

1. General Reporting Requirements

(a) Noncompliance Notification

According to 30 TAC ' 305.125(9), any noncompliance which may endanger human health or safety, or the environment, must be reported by the permittee to the TCEQ. Report of such information must be provided orally or by electronic facsimile transmission (FAX) to the TCEQ regional office within 24 hours of becoming aware of the noncompliance. A written report must be provided by the permittee to the TCEQ regional office and to the TCEQ Enforcement Division (MC-224) within five working days of becoming aware of the noncompliance. The written report must contain:

- (1) a description of the noncompliance and its cause;
- (2) the potential danger to human health or safety, or the environment;
- (3) the period of noncompliance, including exact dates and times;
- (4) if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- (5) steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(b) Other Information

When the permittee becomes aware that it either submitted incorrect information or failed to submit complete and accurate information requested in an NOI, NOT, or NOC, or any other report, it must promptly submit the facts or information to the executive director.

2. Annual Report

The MS4 operator must submit a concise annual report to the executive director within 90 days of the end of each permit year. The annual report must address the previous permit year. The first permit year for annual reporting purposes shall begin on the date of permit issuance, and shall last for one year. Subsequent calendar years will begin on the anniversary date of permit issuance and last for one year. The MS4 operator must also make a copy of the annual report readily available for review by TCEQ personnel upon request. The report must include:

- (a) The status of the compliance with permit conditions, an assessment of the appropriateness of the identified BMPs, progress towards achieving the statutory goal of reducing the discharge of pollutants to the MEP, the measurable goals for each of

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the MCMs, and an evaluation of the success of the implementation of the measurable goals;

- (b) Status of any additional control measures implemented by the permittee (if applicable);
- (c) Any MCM activities initiated before permit issuance may be included, under the appropriate headings, as part of the first year=s annual report;
- (d) A summary of the results of information (including monitoring data) collected and analyzed, if any, during the reporting period used to assess the success of the program at reducing the discharge of pollutants to the MEP;
- (e) A summary of the storm water activities the MS4 operator plans to undertake during the next reporting cycle;
- (f) Proposed changes to the SWMP, including changes to any BMPs or any identified measurable goals that apply to the program elements;
- (g) The number of municipal construction activities authorized under this general permit and the total number of acres disturbed;
- (h) The number of non-municipal construction activities that occurred within the jurisdiction of the permittee (as noticed to the permittee by the construction operator); and
- (i) Notice that the MS4 operator is relying on another government entity to satisfy some of its permit obligations (if applicable).

An annual report must be prepared whether or not the NOI and SWMP has been approved by the TCEQ. If the permittee has either not implemented the SWMP or not begun to implement the SWMP because it has not received approval of the NOI and SWMP, then the annual report may include that information.

If permittees share a common SWMP, all permittees must contribute to a system-wide report (if applicable);

Each permittee must sign and certify the annual report in accordance with 30 TAC ' 305.128 (relating to Signatories to Reports); and

The annual report must be submitted to the following address:

Texas Commission on Environmental Quality
Storm Water & Pretreatment Team; MC - 148
P.O. Box 13087
Austin, Texas 78711-3087

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A copy of the annual report must also be submitted to the TCEQ Regional Office that serves the area of the regulated small MS4.

If available, electronic submission of annual reports is encouraged. The Federal Waste Reduction Act and the Government Paperwork Elimination Act encourages governmental agencies to use electronic submission. See the TCEQ website at, www.tceq.state.tx.us for additional information and instructions.

Part V. Standard Permit Conditions

- A. The permittee has a duty to comply with all permit conditions. Failure to comply with any permit condition is a violation of the general permit and statutes under which it was issued, and is grounds for enforcement action, for terminating coverage under this general permit, or for requiring a discharger to apply for and obtain an individual TPDES permit.
- B. Authorization under this general permit may be suspended or revoked for cause. Filing a notice of planned changes or anticipated non-compliance by the permittee does not stay any permit condition. The permittee must furnish to the executive director, upon request and within a reasonable timeframe, any information necessary for the executive director to determine whether cause exists for revoking, suspending, or terminating authorization under this general permit. Additionally, the permittee must provide to the executive director, upon request, copies of all records that the permittee is required to maintain as a condition of this general permit.
- C. It is not a defense for a discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the permit conditions.
- D. Inspection and entry shall be allowed under Texas Water Code Chapters 26-28, Health and Safety Code ' ' 361.032-361.033 and 361.037, and 40 Code of Federal Regulations (CFR) ' 122.41(i). The statement in Texas Water Code ' 26.014 that commission entry of a facility shall occur according to an establishment's rules and regulations concerning safety, internal security, and fire protection is not grounds for denial or restriction of entry to any part of the facility or site, but merely describes the commission's duty to observe appropriate rules and regulations during an inspection.
- E. The discharger is subject to administrative, civil, and criminal penalties, as applicable, under Texas Water Code, Chapters 26, 27, and 28, and the Texas Health and Safety Code, Chapter 361 for violations including but not limited to the following:
 - a. negligently or knowingly violating CWA, ' ' 301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under CWA, ' 402; and
 - b. knowingly making any false statement, representation, or certification in any record or other document submitted or required to be maintained under a permit, including monitoring reports or reports of compliance or noncompliance.
- F. All reports and other information requested by the executive director must be signed by the person and in the manner required by 30 TAC ' 305.128 (relating to Signatories to Reports).

- G. Authorization under this general permit does not convey property or water rights of any sort and does not grant any exclusive privilege.
- H. The permittee shall implement its SWMP on any new areas under its jurisdiction that are located in a UA or that are designated by the TCEQ. Implementation of the SWMP in these areas is required three (3) years from acquiring the new area, or five (5) years from the date of the original SWMP, whichever is later.

Part VI. Authorization for Municipal Construction Activities

The MS4 operator may obtain authorization under TPDES general permit TXR150000 to discharge storm water runoff from each construction activity performed by the MS4 operator that results in a land disturbance of one (1) or more acres of land. Alternatively, the MS4 operator may develop the SWMP to include this optional seventh (7th) storm water MCM if the eligibility requirements in Part VI.A. are met. If an MS4 operator decides to utilize this MCM, then the MS4 operator must include the MCM in its SWMP submitted with the NOI or submit an NOC notifying the executive director of the addition of this MCM to its SWMP. The MS4 operator must identify the geographic area or boundary where the construction activities will be conducted under the provisions of this general permit. If the small MS4 meets the terms and requirements of this general permit, then discharges from these construction activities may be authorized under this general permit as long as they occur within the regulated geographic area of the small MS4. An MS4 operator may utilize this MCM over additional portions of their MS4 if those areas are also in compliance with all MCMs listed in this general permit. Even if an MS4 operator has developed this optional seventh storm water MCM, the MS4 operator may apply under TPDES general permit TXR150000 for authorization for particular municipal construction activities including those activities that occur during periods of low potential for erosion (for which no SWP3 must be developed).

A. Eligible Construction Sites

Discharges from construction activities within the regulated area where the MS4 operator meets the definition of construction site operator are eligible for authorization under this general permit. Discharges from construction activities outside of the regulated area, where the MS4 operator meets the definition of construction site operator, are only eligible for authorization under this general permit in those areas where the MS4 operator meets the requirements of Parts III.A.1. through III.A.6 of this general permit, related to MCMs.

B. Discharges Eligible for Authorization

1. Storm Water Associated with Construction Activity

Discharges of storm water runoff from small and large construction activities may be authorized under this general permit.

2. Discharges of Storm Water Associated with Construction Support Activities

Discharges of storm water runoff from construction support activities, including concrete batch plants, asphalt batch plants, equipment staging areas, material storage yards, material borrow areas, and excavated material disposal areas may be authorized under this general permit provided:

- (a) the activity is located within a 1-mile distance from the boundary of the permitted construction site and directly supports the construction activity;
- (b) a storm water pollution prevention plan is developed according to the provisions of this general permit and includes appropriate controls and measures to reduce erosion and discharge of pollutants in storm water runoff from the supporting industrial activity site; and
- (c) the construction support activity either does not operate beyond the completion date of the construction activity or obtains separate TPDES authorization for discharges as required.

3. Non-storm Water Discharges

The following non-storm water discharges from construction sites authorized under this general permit are also eligible for authorization under this MCM:

- (a) discharges from fire fighting activities (fire fighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);
- (b) fire hydrant flushings;
- (c) vehicle, external building, and pavement wash water where detergents and soaps are not used and where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material is removed)
- (d) water used to control dust;
- (e) potable water sources including waterline flushings;
- (f) air conditioning condensate; and
- (g) uncontaminated ground water or spring water, including foundation or footing drains where flows are not contaminated with industrial materials such as solvents.

4. Other Permitted Discharges

Any discharge authorized under a separate TPDES or TCEQ permit may be combined with discharges from construction sites operated by the small MS4.

C. Limitations on Permit Coverage

Discharges that occur after construction activities have been completed, and after the construction site and any supporting activity site have undergone final stabilization, are not eligible for coverage under Part VI of the general permit.

D. Numeric Effluent Limitations

All discharges of storm water runoff from concrete batch plants must be monitored at the following monitoring frequency and comply with the following numeric effluent limitations:

<u>Parameter</u>	<u>Limitations</u> <u>Daily Maximum</u>	<u>Monitoring</u> <u>Frequency</u>
Total Suspended Solids	65 mg/l	1/Year
Oil and Grease	15 mg/l	1/Year
pH	between 6 and 9 standard units	1/Year

E. Storm Water Pollution Prevention Plan (SWP3)

Operators of municipal construction activities that qualify for coverage under this general permit and that discharge storm water associated with construction activities that reach waters of the U.S. must:

1. develop a SWP3 according to the provisions of this general permit that covers the entire site and begin implementation of that plan prior to commencing construction activities;
2. post a signed copy of the notice contained in Attachment 1 of this general permit in a location at the construction site where it is readily available for viewing prior to commencing construction activities and maintain the notice in that location until completion of the construction activity and final stabilization of the site;
3. ensure the project specifications allow or provide that adequate BMPs may be developed and modified as necessary to meet the requirements of this general permit and the SWP3;
4. ensure all contractors are aware of the SWP3 requirements, are aware that municipal personnel are responsible for the day-to-day operations of the SWP3, and who to contact concerning SWP3 requirements; and
5. ensure that the SWP3 identifies the municipal personnel responsible for implementation of control measures described in the plan.

F. Effective Date of Coverage

Operators of construction activities eligible for coverage under this general permit are authorized to discharge storm water associated with construction activity from a site 48 hours from the time that the signed notice is posted at the site.

G. Deadlines for SWP3 Preparation and Compliance

The SWP3 must:

1. be completed and initially implemented prior to commencing construction activities that result in soil disturbance;
2. be updated as necessary to reflect the changing conditions of new contractors, new areas of responsibility, and changes in best management practices; and
3. provide for compliance with the terms and conditions of this general permit.

H. Plan Review and Making Plans Available

The SWP3 must be retained on-site at the construction site or made readily available at the time of an on-site inspection to: the executive director; a federal, state, or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; and the operator of a municipal separate storm sewer receiving discharges from the site.

I. Keeping Plans Current

The permittee must amend the SWP3 whenever:

1. there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants and that has not been previously addressed in the SWP3; or
2. results of inspections or investigations by site operators, authorized TCEQ personnel, or a federal, state or local agency approving sediment and erosion plans indicate the SWP3 is proving ineffective in eliminating or significantly minimizing pollutants in discharges authorized under this general permit.

J. Contents of SWP3

The SWP3 must include, at a minimum, the information described in this section.

1. A site description, or project description, must be developed to include:
 - (a) a description of the nature of the construction activity, potential pollutants and sources;

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- (b) a description of the intended schedule or sequence of major activities that will disturb soils for major portions of the site;
 - (c) the number of acres of the entire construction site property and the total number of acres of the site where construction activities will occur, including off-site material storage areas, overburden and stockpiles of dirt, and borrow areas;
 - (d) data describing the soil type or the quality of any discharge from the site;
 - (e) a map showing the general location of the site (e.g. a portion of a city or county map);
 - (f) a detailed site map indicating the following:
 - (1) drainage patterns and approximate slopes anticipated after major grading activities;
 - (2) areas where soil disturbance will occur;
 - (3) areas which will not be disturbed;
 - (4) locations of all major structural controls either planned or in place;
 - (5) locations where stabilization practices are expected to be used;
 - (6) locations of off-site material, waste, borrow or equipment storage areas;
 - (7) surface waters (including wetlands) either adjacent or in close proximity; and
 - (8) locations where storm water discharges from the site directly to a surface water body.
 - (g) the location and description of asphalt plants and concrete plants (if any) providing support to the construction site and that are also authorized under this general permit;
 - (h) the name of receiving waters at or near the site that will be disturbed or that will receive discharges from disturbed areas of the project; and
 - (i) a copy of Part VI of this TPDES general permit.
2. The SWP3 must describe the structural and the non-structural controls (best management practices) that will be used to minimize pollution in runoff. The description must identify the general timing or sequence for implementation and the party responsible for implementation. At a minimum, the description must include the following components:

(a) Erosion and Sediment Controls

- (1) Erosion and sediment controls must be designed to retain sediment on-site to the maximum extent practicable with consideration for local topography and rainfall.
- (2) Control measures must be properly selected, installed, and maintained according to the manufacturer=s or designer=s specifications. If periodic inspections or other information indicates a control has been used incorrectly, or that the control is performing inadequately, the operator must replace or modify the control.
- (3) Sediment must be removed from sediment traps and sedimentation ponds no later than the time that design capacity has been reduced by 50%.
- (4) If sediment escapes the site, accumulations must be removed at a frequency to minimize further negative effects and, whenever feasible, prior to the next rain event.
- (5) Controls must be developed to limit offsite transport of litter, construction debris, and construction materials by storm water runoff.

3. Stabilization Practices

The SWP3 must include a description of interim and permanent stabilization practices for the site, including a schedule of when the practices will be implemented. Site plans should ensure that existing vegetation is preserved where it is possible.

- (a) Stabilization practices may include but are not limited to: establishment of temporary vegetation, establishment of permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of existing trees and vegetation and other similar measures.
- (b) The following records must be maintained and either attached to or referenced in the SWP3 and made readily available upon request to the parties in Part VI.H. of this general permit:
 - (1) the dates when major grading activities occur;
 - (2) the dates when construction activities temporarily or permanently cease on a portion of the site; and
 - (3) the dates when stabilization measures are initiated.
- (c) Stabilization measures must be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, and except as provided in (1) through (3) below, must be initiated no more than fourteen (14) days

after the construction activity in that portion of the site has temporarily or permanently ceased.

- (1) Where the initiation of stabilization measures by the 14th day after construction activity temporarily or permanently ceased is precluded by snow cover or frozen ground conditions, stabilization measures must be initiated as soon as practicable.
- (2) Where the initiation of stabilization measures by the 14th day after construction activity has temporarily or permanently ceased is precluded by seasonably arid conditions, stabilization measures must be initiated as soon as practicable. These conditions exist in arid areas (areas with an average rainfall of 0 to 10 inches), semiarid areas (areas with an average annual rainfall of 10 to 20 inches), and other areas experiencing droughts.
- (3) Where construction activity on a portion of the site is temporarily ceased and earth disturbing activities will be resumed within twenty-one (21) days, temporary stabilization measures do not have to be initiated on that portion of site.

4. Structural Control Practices

The SWP3 must include a description of any structural control practices used to divert flows away from exposed soils, to limit the contact of runoff with disturbed areas, or to lessen the off-site transport of eroded soils.

- (a) Sediment basins are required, where feasible, for common drainage locations that serve an area with ten (10) or more acres that remain disturbed at any one time. Sediment basins may be either temporary or permanent, but must be designed to store either the calculated volume of runoff from a 2 year, 24 hour storm from acreage drained, or designed to provide 3,600 cubic feet of storage per acre drained. When calculating the volume of runoff from a 2-year, 24-hour storm event, it is not required to include the flows from offsite areas and flow from onsite areas that are either undisturbed or have already undergone final stabilization, if these flows are diverted around both the disturbed areas of the site and the sediment basin. In determining whether installing a sediment basin is feasible, the permittee may consider factors such as site soils, slope, available area on site, public safety, and other similar considerations. Where sediment basins are not feasible, equivalent control measures, which may include a series of smaller sediment basins, must be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction area.
- (b) Sediment traps and sediment basins may be used to control solids in storm water runoff for drainage locations serving less than ten (10) acres. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as

dictated by individual site conditions) of the construction. Alternatively, a sediment basin providing storage for a calculated volume of runoff from these areas for a 2-year, 24-hour storm or 3,600 cubic feet of storage per acre drained may be provided.

5. Permanent Storm Water Controls

A description of any measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed must be included in the SWP3. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site.

6. Other Controls

- (a) Off-site vehicle tracking of sediments and the generation of dust must be minimized.
- (b) The SWP3 must include a description of construction and waste materials expected to be stored on-site and a description of controls to reduce pollutants from these materials.
- (c) The SWP3 must include a description of pollutant sources from areas other than construction (including storm water discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.

7. Approved State and Local Plans

- (a) Permittees must ensure the SWP3 is consistent with requirements specified in applicable sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by federal, state, or local officials.
- (b) SWP3s must be updated as necessary to remain consistent with any changes applicable to protecting surface water resources in sediment erosion site plans or site permits, or storm water management site plans or site permits approved by state or local official for which the permittee receives written notice.

8. Maintenance

All erosion and sediment control measures and other protective measures identified in the SWP3 must be maintained in effective operating condition. If through inspections the permittee determines that BMPs are not operating effectively, maintenance must be performed before the next anticipated storm event or as necessary to maintain the continued effectiveness of storm water controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable.

9. Inspections of Controls

- (a) Personnel provided by the permittee and familiar with the SWP3 must inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, all structural control measures for effectiveness and necessary maintenance, and locations where vehicles enter or exit the site for evidence of off-site tracking. Inspections must occur at least once every fourteen (14) calendar days and within twenty four (24) hours of the end of a storm event of 0.5 inches or greater. As an alternative, the SWP3 may be developed to require that these inspections will occur at least once every seven (7) calendar days; in which case additional inspections are not required following each qualifying storm event. If this alternative schedule is developed, the inspection must occur on a specifically defined day, regardless of whether or not there has been a rainfall event since the previous inspection.

Where sites have been finally or temporarily stabilized, where runoff is unlikely due to winter conditions (e.g. site is covered with snow, ice, or frozen ground exists), or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches), inspections must be conducted at least once every month.

- (b) Personnel provided by the permittee and familiar with the SWP3 must inspect all accessible discharge locations to determine if erosion control measures are effective in preventing visually noticeable changes to receiving waters, including persistent cloudy appearance in water color and noticeable accumulation of sediments.

Where discharge locations are inaccessible, nearby downstream locations must be inspected to the extent that such inspections are practicable. The frequency for these inspections must be established by the permittee in the SWP3 with consideration for local rainfall and soil, but must occur at least once during the construction activity if a discharge occurs.

- (c) The SWP3 must be modified based on the results of inspections, as necessary, to better control pollutants in runoff. Revisions to the SWP3 must be completed within seven (7) calendar days following the inspection. If existing BMPs are modified or if additional BMPs are necessary, an implementation schedule must be described in the SWP3 and wherever possible those changes implemented before the next storm event. If implementation before the next anticipated storm event is impracticable, these changes must be implemented as soon as practicable.

- (d) A report summarizing the scope of the inspection, names and qualifications of personnel making the inspection, the dates of the inspection, and major observations relating to the implementation of the SWP3 must be made and retained as part of the SWP3. Major observations should include: the locations of discharges of sediment or other pollutants from the site; locations of BMPs that need to be maintained; locations of BMPs that failed to operate as designed or proved inadequate for a particular location; and locations where additional BMPs are needed.

- (e) Actions taken as a result of inspections must be described within, and retained as a part of, the SWP3. Reports must identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report must contain a certification that the facility or site is in compliance with the SWP3 and this permit.
10. The SWP3 must identify and ensure the implementation of appropriate pollution prevention measures for all eligible non-storm water components of the discharge.

K. Additional Retention of Records

The permittee must retain the following records for a minimum period of three (3) years from the date that final stabilization has been achieved on all portions of the site. Records include:

- 1. a copy of the SWP3; and
- 2. all reports and actions required by this general permit, including a copy of the site notice.

Attachment 1



CONSTRUCTION SITE NOTICE

FOR THE
Texas Commission on Environmental Quality
Storm Water Program

TPDES GENERAL PERMIT TXR040000

The following information is posted in compliance with Part VI of the Texas Commission on Environmental Quality's (TCEQ) TPDES General Permit Number TXR040000 for discharges of storm water runoff from construction sites that are operated by small municipal separate storm sewer system operators. Additional information regarding the TCEQ storm water permit program may be found on the internet at: www.tceq.state.tx.us

Field Code Changed

Field Code Changed

Permit Number:	TXR04 _____
Contact Name and Phone Number:	
Project Description: (Including estimated start date and either the projected end date, or date that disturbed soils will be finally stabilized)	
Location of Storm Water Pollution Prevention Plan (SWP3):	

I, _____ (Typed or Printed Name Person Completing This Certification) certify under penalty of law that I have read and understand the eligibility requirements for claiming an authorization under Part VI of TPDES General Permit TXR040000. A storm water pollution prevention plan has been developed and implemented according to permit requirements. I am aware there are significant penalties for providing false information or for conducting unauthorized discharges, including the possibility of fine and imprisonment for knowing violations.

Signature

Date

Attachment 2

CONCRETE BATCH FACILITIES

STW/ TXR04 _____ / CO

PERMITTEE NAME/ADDRESS (Include Facility Name/Location if Different)

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

NOTE: Enter your permit number in the underlined space in the upper right hand corner of this page. Example: STW/TXR04 00123/ CO

NAME

DISCHARGE MONITORING REPORT (DMR)

(2-16)

(17-19)

ADDRESS

PERMIT NUMBER

DISCHARGE NUMBER

Mail to: TCEQ (MC 213)
P.O. Box 13087
Austin, TX 78711-3087

FACILITY LOCATION

MONITORING PERIOD					
YEAR	MO	DAY	YEAR	MO	DAY
	01	01		12	31
(20-21)	(22-23)	(24-25)	(26-27)	(28-29)	(30-31)

PARAMETER (32-37)		(3 Card Only) QUANTITY OR LOADING (46-53) (54-61)			(4 Card Only) QUALITY OR CONCENTRATION (38-45) (46-53) (54-61)			NO. EX (62-63)	FREQUENCY OF ANALYSIS (64-68)	SAMPLE TYPE (69-70)		
		AVERAGE	MAXIMUM	UNITS	MINIMUM	AVERAGE	MAXIMUM				UNITS	
Total Suspended Solids	SAMPLE MEASUREMENT	*****	*****	*****	*****	*****						
	SAMPLE REQUIREMENT	*****	*****	*****	*****	*****	65 Daily Max	mg/l	1/Year	Grab		
Oil & Grease	SAMPLE MEASUREMENT	*****	*****	*****	*****	*****						
	SAMPLE REQUIREMENT	*****	*****	*****	*****	*****	15 Daily Max	mg/l	1/Year	Grab		
pH	SAMPLE MEASUREMENT	*****	*****	*****	*****	*****						
	SAMPLE REQUIREMENT	*****	*****	*****	*****	*****	6.0 - 9.0 Range	S.U.	1/Year	Grab		
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	SAMPLE REQUIREMENT											
NAME/TITLE PRINCIPAL EXECUTIVE OFFICER		<small>I CERTIFY UNDER PENALTY OF LAW THAT THIS DOCUMENT AND ALL ATTACHMENTS WERE PREPARED UNDER MY DIRECTION OR SUPERVISION IN ACCORDANCE WITH A SYSTEM DESIGNED TO ASSURE THAT QUALIFIED PERSONNEL PROPERLY GATHER AND EVALUATE THE INFORMATION SUBMITTED. BASED ON MY INQUIRY OF THE PERSON OR PERSONS WHO MANAGE THE SYSTEM, OR THOSE PERSONS DIRECTLY RESPONSIBLE FOR GATHERING THE INFORMATION, THE INFORMATION SUBMITTED IS, TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE, ACCURATE, AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT FOR KNOWING VIOLATIONS.</small>			TELEPHONE			DATE				
TYPED OR PRINTED					SIGNATURE OF PRINCIPAL EXECUTIVE OFFICER OR AUTHORIZED AGENT			AREA CODE	NUMBER	YEAR	MO	DAY

COMMENTS AND EXPLANATION OF ANY VIOLATIONS (Reference all attachments here)

FACT SHEET AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION

For proposed Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR040000 to discharge from small municipal separate storm sewer systems (MS4s) into surface water in the state.

Issuing Office: Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Prepared by: Wastewater Permitting Section
Water Quality Division
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Date: July 10, 2007

Permit Action: New General TPDES Permit

I. Summary

The Texas Commission on Environmental Quality (TCEQ) is proposing to issue a general permit authorizing discharges from small municipal separate storm sewer systems (MS4s) into surface water in the state. The general permit specifies which MS4s must obtain permit coverage, which are eligible for waivers, and which must obtain individual permit coverage. The permit also specifies that where discharges will reach Waters of the United States, a storm water management program must be developed and implemented, and includes the minimum requirements for the program.

II. Executive Director's Recommendation

The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. It is proposed that the permit be issued to expire five years from date of issuance following the requirements of 30 TAC § 205.5(a).

III. Permit Applicability and Coverage

There are two ways in which a small MS4 would be required to obtain permit coverage. First, the federal NPDES Phase II storm water rules require authorization for the discharge of storm water from MS4s located within urbanized areas (UAs) as defined by the U.S. Census Bureau. These MS4s are often referred to as "regulated" MS4s. In addition, TCEQ can also "designate" an MS4 as requiring coverage. There are two groups that fall into this category. First, the rules require that TCEQ develop and apply designation criteria to MS4s located outside of a UA which serve a jurisdiction with 10,000 or more people, and that have an average density of 1,000 or more people/square mile. Secondly, the rules require TCEQ to designate any small MS4 as a regulated MS4 where the MS4 substantially contributes pollutants to a physically interconnected regulated MS4. MS4s meeting either of these criteria would be referred to as "designated" MS4s. The portion of the MS4 required to meet the conditions of the proposed general permit is that portion located within a UA, as well as any portion that is individually designated by the TCEQ. A map detailing UAs located in Texas is available at:

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<http://cfpub.epa.gov/npdes/stormwater/urbanmapresult.cfm?state=TX>

In the preamble to the Phase II rules (See FR 64, No. 235, p. 68749), the EPA discusses instances where a municipal separate storm sewer may not be considered a system. For example, EPA used an example that a storm sewer serving only a single federal building would not be considered a system, such as a post office building or an urban office of the National Park Service. EPA further stated that storm sewers for state or federal facilities consisting of more than one building may be treated as a single building rather than as an MS4, and that the permitting authority in each state must determine whether those complexes should be regulated. The TCEQ agrees that certain complexes may have storm drainage structures that operate independently of each other (such as roof top drains flowing to the city street) rather than as a system. The TCEQ believes that most elementary and secondary schools do not operate a system, and that each school building would normally drain to a city's MS4 rather than to a system of drains operated by a school district. Similarly, a public office building complex may include roof and parking lot drains that flow to another entity's system. Universities, federal facilities, and many other public complexes do have a constructed drainage system, which would be defined as a small MS4, even if the drains eventually reached another MS4. In this general permit, the definition for small MS4 excludes storm drains associated with municipal (publicly owned) office and education complexes, where the complexes serve a nonresidential population, and where the buildings are not part of a larger MS4.

A. Regulated MS4s Subject to Permitting

The proposed general permit would authorize the discharge of storm water runoff and certain non-storm water discharges from the following small MS4s:

1. MS4s located wholly or partially within an urbanized area (UA) as defined by the U.S. Census Bureau in the 1990 or the 2000 census, and
2. MS4s individually designated by the TCEQ as described in Section III.B. below.

B. Designated MS4s Subject to Permitting

Certain MS4s may be designated by the TCEQ as requiring permit coverage based on federal requirements at 40 CFR § 122.32(a)(2). The TCEQ has developed the following criteria, one or more of which may be considered in designating an MS4:

1. Controls for discharges are determined to be necessary for source water protection of public drinking water resources based on the results of source water assessments by the TCEQ.
2. Controls for discharges are necessary to protect sea grass areas of Texas bays as delineated by the Texas Parks & Wildlife Department.
3. Controls for discharges are necessary to protect receiving waters designated as having an exceptional aquatic life use.

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4. Controls are required for pollutants of concern expected to be present in discharges to a receiving water listed on the Clean Water Act Section 303(d) list based on an approved total maximum daily loading plan.
5. Discharges from an adjacent small MS4 are determined by TCEQ to be significantly contributing pollutants to the regulated MS4. The TCEQ would make this determination after receiving a written request by a regulated adjacent MS4 operator.
6. Additional factors relative to the environmental sensitivity of receiving watersheds.

Specific thresholds are not established for each of the designation criteria. Instead, designation must occur following a case-by-case consideration and is based on a finding that controls are necessary to protect water quality. If designated, the MS4 operator will be notified by the Executive Director and allowed to apply for authorization under either the proposed general permit or an individual TPDES storm water permit. The application for either permit must be submitted within 180 days of the notice.

The TCEQ applied these designation criteria to the small MS4s located outside of a UA which serve a jurisdiction with 10,000 or more people, and which have an average density of 1,000 or more people/square mile. At this time, the TCEQ has not designated any MS4 or portion of an MS4 that is not located within an urbanized area (UA). Additional MS4s may be designated in the future, and designated MS4s will be required to submit an NOI and SWMP within 180 days of being notified in writing of that designation.

C. Permit Waivers

Two potential waivers from permitting requirements, as allowed in the federal Phase II rules (40 CFR § 122.32), are included in the proposed permit.

1. Waiver Option No. 1: The MS4 within an urbanized area may qualify for a waiver if it serves a population of less than 1,000, *and*:
 - a. the MS4 is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the TPDES or NPDES storm water program (40 CFR § 122.32(d)) and
 - b. if the MS4 discharges any pollutant(s) identified as a cause of impairment to a receiving water body, and storm water controls are determined as not needed based on wasteload allocations that are part of an EPA approved or established "total maximum daily load" (TMDL) that addresses the pollutant(s) of concern.
 - c. In order to meet this waiver, an MS4 must submit a letter requesting the waiver including the certifying statement that the above-described criteria for Waiver Option No. 1 are met.
2. Waiver Option No. 2: The MS4 within an urbanized area may qualify for a waiver if it

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serves a population of less than 10,000 and the TCEQ has evaluated all Waters of the United States (including small streams, tributaries, lakes, and ponds) that receive a discharge from the MS4; and

- a. for all such waters, the TCEQ has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern; and
- b. the TCEQ has determined that future discharges from the MS4 do not have the potential to exceed water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

The receiving waters' evaluation is a TMDL-equivalent evaluation that may be performed by the MS4 using TCEQ protocol with appropriate guidance from the TCEQ. The evaluation would need to include the pollutants of concern, including at a minimum: biochemical oxygen demand (5-day); sediment (or a parameter that addresses sediment such as total suspended solids, turbidity, or siltation); pathogens; oil and grease; and any other pollutant that has been identified as a cause of impairment of any receiving water body. The MS4 must coordinate with TCEQ Wastewater Permitting staff and Water Quality Assessment staff prior to initiating such a study.

Because of the comprehensive nature of the required receiving water evaluation, and the necessary finding that future discharges from the MS4 could not potentially exceed water quality standards, Waiver Option No. 2 will be difficult to obtain. However, this option is allowed by federal rules and is therefore included in the proposed general permit and made available to certain small MS4s.

D. Ineligible Discharges

The following discharges are not eligible for permit coverage under the proposed general permit and must obtain coverage under either an individual or an alternative general TPDES permit:

1. Discharges from medium and large MS4s based on 1990 U.S. Census Bureau data;
2. Discharges from small MS4s that would cause or contribute to a violation of water quality standards or that would fail to protect and maintain existing designated uses of receiving waters;
3. New sources or new discharges of the constituents of concern to impaired waters, unless otherwise allowable under TCEQ rules, applicable state law, and any TMDL and TMDL implementation plan that exists for the applicable receiving water;
4. Storm water discharges that combine with sources of non-storm water, unless the non-

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storm water source is an allowable non-storm water discharge described in the proposed general permit, or the non-storm water source is authorized under a separate TPDES permit; and

5. Discharges otherwise prohibited under existing state rules.

E. Allowable Non-storm Water Discharges

The following non-storm water sources may be discharged from the MS4 and are not required to be addressed in the MS4's Illicit Discharge and Detection measure, or other minimum control measures (MCMs), provided that they have not been determined by the MS4 operator to be substantial sources of pollutants to the MS4:

1. water line flushing (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);
2. runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;
3. discharges from potable water sources;
4. diverted stream flows;
5. rising ground waters and springs;
6. uncontaminated ground water infiltration;
7. uncontaminated pumped ground water;
8. foundation and footing drains;
9. air-conditioning condensation;
10. water from crawl space pumps;
11. individual residential vehicle washing;
12. flows from wetlands and riparian habitats;
13. dechlorinated swimming pool discharges;
14. street wash water;
15. discharges or flows from fire fighting activities (fire fighting activities do not include washing of trucks, runoff water from training activities, test water from fire suppression systems, and similar activities); and

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16. other similar occasional incidental non-storm water discharges, unless the TCEQ develops permits or regulations addressing these discharges.

Discharge of the waters listed above may contain pollutants that would need to be addressed by the MS4. For example, discharges from water line flushing could contain levels of chlorine that could have an impact on aquatic life, in which case the MS4 may need to require that controls be put on the discharge of chlorinated water line flushing.

F. Discharges from MS4 Construction Activities

The proposed general permit provides the MS4 with authorization to discharge of storm water runoff, and certain non-storm water runoff, from construction sites where the MS4 can meet and maintain the status as the operator of the construction activity. In order for the MS4 operator to cover these activities under this general permit, an optional storm water minimum control measure (MCM) must be developed and implemented to address these activities. The MCM must describe the general procedures the MS4 operator will take to develop and implement a storm water pollution prevention plan (SWP3), with consideration for local weather and soil conditions, and the steps to be taken to meet and maintain the status as operator at MS4 construction sites. The permittee must also describe in the MCM the area within which construction related discharges will be authorized under this general permit. The permittee may choose to cover activities exclusively within the urbanized area boundary, within corporate limits or extra territorial jurisdictions (for cities), within special districts (for municipal utility districts and other similar entities), or within other similar jurisdictional boundaries of the permittee. However, discharges from construction activities outside of the regulated area, such as outside of the urbanized area or outside of the area(s) designated by TCEQ, are only eligible for authorization under this general permit for those areas where the MS4 operator meets the requirements of Parts III.A.1. through III.A.6 of the general permit, related to MCMs. The notice of intent (NOI) will require the permittee to provide information or a description on the boundary of coverage.

A separate detailed SWP3 must be developed and implemented for each specific construction site. Contractors at an MS4 construction site are not required to obtain separate authorization for storm water discharges where the MS4 operator can meet and maintain the status of sole operator for the site, where the contractor does not meet the definition of operator for the site, and where the SWP3 is developed to address the activities of the contractor.

40 CFR § 122.28(b)(2)(i), as adopted by reference in Title 30, Texas Administrative Code (TAC) Chapter 205, requires the submittal of an NOI to authorize certain discharges under a general permit. While 40 CFR § 122.28(b)(2)(v) does allow some exceptions to this requirement, it does not exclude the permittee from the requirement to submit an NOI for authorization of discharges of storm water runoff associated with industrial activity. Because federal rules at 40 CFR § 122.26(b)(14)(x) includes large construction sites in its definition of industrial activity, discharges of construction activity of five or more acres (including activities which are part of a larger common plan of development) are required to submit an NOI. Therefore, if an MS4 operator seeks to obtain coverage for these discharges under this proposed general permit, then

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the MS4 operator must include information on the construction activities on its NOI required under this general permit. The applicant must develop site-specific information on how construction activities will be conducted and SWP3s developed to control pollution. This information must be formalized as an MCM and incorporated as a part of the MS4 operator's storm water management program (SWMP).

The SWMP that is submitted with the NOI must include this optional MCM in order for the permittee's construction activities to be eligible for authorization under this general permit. The NOI will include a certification statement that the MS4 can elect to choose, in which the MS4 operator agrees to comply with the conditions and requirements of the general permit. This certification on the NOI will satisfy the previously cited regulatory requirement regarding the NOI. Separate NOIs for each construction activity are not required, provided that the appropriate information is included in the optional control measure. The MS4 operator must subsequently develop a separate SWP3 for each large and small construction activity, and must post a construction site notice that includes a signed certification that a SWP3 was developed and is implemented according to the conditions and requirements of this general permit. The site notice can be signed by a person properly authorized by the MS4 operator under 30 TAC § 305.128, regarding delegation of signatory authority for reports.

If the MS4 operator determines that it does not wish to implement the optional seventh MCM at the time of original application under this general permit, and at a later date does choose to utilize this option, then a notice of change (NOC) will be equivalent to the NOI required under the rules.

If this optional MCM is not developed by the MS4 operator, then discharges of storm water runoff from large and small construction activities must be authorized under a separate TPDES storm water permit. Additionally, if the MS4 operator either cannot or chooses not to meet and maintain the status as the sole operator for any specific construction activity, then authorization under a separate TPDES permit must be obtained for the additional operators, during construction activities at that specific site.

IV. Permit Conditions

A. Notice of Intent

The proposed permit would require MS4s to submit to the TCEQ a notice of intent (NOI) to comply with the conditions of the general permit, and a Storm Water Management Program (SWMP).

B. Public Notice and Public Participation

An applicant under the proposed general permit would be subject to the following procedures:

1. The applicant must submit the NOI and attached SWMP to the executive director.
2. After the applicant receives written instructions from the TCEQ's Office of Chief Clerk, the applicant must publish notice of the executive director's preliminary determination on

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the NOI and SWMP.

3. The notice must include:
 - a. the legal name of the small MS4 operator;
 - b. identify whether the NOI is for a new MS4 or is a renewal of an existing operation;
 - c. the address of the applicant;
 - d. a brief summary of the information included in the NOI, such as the general location of the MS4 and a description of the classified receiving waters that receive the discharges from the MS4;
 - e. the location and mailing address where the public may provide comments to the TCEQ;
 - f. the public location where copies of the NOI and SWMP, as well as the executive director's general permit and fact sheet, may be reviewed; and
 - g. if required by the executive director, the date, time, and location of the public meeting.
4. This notice must be published at least once in the newspaper of largest circulation in the county where the small MS4 is located. If the small MS4 is located in multiple counties, the notice must be published at least once in the newspaper of largest circulation in the county containing the largest resident population. This notice must provide opportunity for the public to submit comments on the NOI and SWMP. In addition, the notice must allow the public to request a public meeting. A public meeting will be held if the TCEQ determines that there is significant public interest.
5. The public comment period begins on the first date the notice is published and ends 30 days later, unless a public meeting is held. If a public meeting is held, the comment period will end at the closing of the public meeting. The public may submit written comments to the TCEQ Office of Chief Clerk during the comment period detailing how the NOI or SWMP for the small MS4 fails to meet the technical requirements or conditions of this general permit.
6. If significant public interest exists, the executive director will direct the applicant to publish a notice of the public meeting and to hold the public meeting. The applicant must publish notice of a public meeting at least 30 days before the meeting and hold the public meeting in a county where the small MS4 is located. TCEQ staff will facilitate the meeting.
7. If a public meeting is held, the applicant must describe the contents of the NOI and SWMP. The applicant must also provide maps and other data on the small MS4. The

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applicant must provide a sign in sheet for attendees to register their names and addresses and furnish the sheet to the executive director. A public meeting held under this general permit is not an evidentiary proceeding.

8. The applicant must file with the Chief Clerk a copy and an affidavit of the publication of notice(s) within 60 days of receiving the written instructions from the Office of Chief Clerk.
9. The executive director, after considering public comment, must approve or deny the NOI based on whether the NOI and SWMP meet the requirements of this general permit.
10. Persons whose names and addresses appear legibly on the sign in sheet from the public meeting and persons who submitted written comments to the TCEQ will be notified by the TCEQ's Office of Chief Clerk of the executive director's decision regarding the authorization.

C. Storm Water Management Program (SWMP)

1. Small MS4s must develop a SWMP, according to the provisions of this general permit, to the extent allowable under state and local law, to address the portions of the MS4 that are either located within the UA or that are designated by the TCEQ, with discharges that reach Waters of the United States. Waters of the United States are defined in the general permit. Waters of the United States do not include waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR § 423.11(m) which also meet the criteria of this definition). This exclusion applies only to manmade bodies of water that neither were originally created in Waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of Waters of the United States. Waters of the United States do not include prior converted cropland.

The SWMP is a comprehensive document that details the steps that the MS4 will take to reduce or eliminate pollutants in storm water discharges to the maximum extent practicable (MEP). To the extent allowable under local law means that MS4s must develop any necessary ordinances, regulations, or other regulatory controls to meet the general permit requirements to the extent that their authority to make such ordinances is not prohibited by state or federal statutes or regulations. Where the permittee lacks the authority to develop ordinances or to implement enforcement actions, the general permit states that the permittee must attempt to enter into inter-local agreements with municipalities in which the MS4 is located. These inter-local agreements must include procedures for enforcement and inspections to the extent necessary to meet the goals of the general permit. Where the permittee is unable to enter into an inter-local agreement, the permittee may report instances of non-compliance or possible illicit discharges to the TCEQ's Field Operations Division for possible follow-up investigations and/or enforcement

The proposed SWMP requirements were developed based on federal Phase II rules (published in the *Federal Register* 12/08/99), a model MS4 permit that was developed by

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the Environmental Protection Agency, as well as comments from a stakeholder workgroup. The proposed general permit would allow MS4s to share resources in meeting the responsibilities of the SWMP with other regulated MS4s that are either physically interconnected or that are located in the same watershed. This allowance will help to foster a more coordinated approach to resolving local water quality issues and to provide a more efficient use of local MS4 resources. MS4s may combine or share efforts necessary to meet the SWMP requirements of the permit, but each MS4 must be separately authorized (individual NOIs are required). Additionally, individual SWMPs must be developed and maintained by each of the MS4s. Each operator is separately responsible for compliance with the conditions of the general permit and the SWMP, even if efforts are combined or shared between the MS4s.

2. The small MS4 must develop a SWMP to include the following six MCMs, which is based on federal rules at 40 CFR § 122.34(b). For each MCM, the small MS4 operator must keep relevant records in the SWMP:

- a. Public Education and Outreach on Storm Water Quality Issues

Federal rules at 40 CFR § 122.34(b)(1) require small MS4 operators to develop a public education program to distribute educational materials to the community or to conduct equivalent outreach activities that will be used to inform the public. The draft general permit allows the MS4 operator to determine the most appropriate sections of the population at which to direct the program; however, they must consider specific groups as listed in the general permit, or must provide justification in the SWMP if a listed group is not included in the program.

The outreach must inform the public about the impacts that pollution in storm water runoff can have on water quality, hazards associated with illegal discharges and improper disposal of waste, and ways they can minimize their impact on storm water quality.

- b. Public Involvement/Participation

The MS4 operator must implement a public involvement/participation program to include opportunities for constituents within the MS4 area to participate in the SWMP development and implementation. This requirement is consistent with 40 CFR § 122.34(b)(2). Correctional facilities will not be required to implement this MCM.

- c. Illicit Discharge Detection and Elimination

- (1) Illicit Discharges: The small MS4 operator must develop a section within the SWMP to establish a program to detect and eliminate illicit discharges to the MS4. To the extent allowable under state and local law, an ordinance or other regulatory mechanism must be utilized to prohibit and eliminate illicit discharges. Program elements must include:

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- (a) Detection: The SWMP must list the techniques used for detecting illicit discharges; and
 - (b) Elimination: The SWMP must include appropriate actions and, to the extent allowable under State and local law, establish enforcement procedures for removing the source of an illicit discharge.
- (2) Allowable Non-Storm Water Discharges: The non-storm water flows listed in the general permit will not need to be considered by the small MS4 operator as an illicit discharge unless the operator of the MS4 identifies the flow as a significant source of pollutants to the MS4. In lieu of considering non-storm water sources on a case-by-case basis, the MS4 operator may develop a list of common and incidental non-storm water discharges that will not be addressed as illicit discharges requiring elimination. If developed, the listed sources must not be reasonably expected to be significant sources of pollutants either because of the nature of the discharge or the conditions that have been established by the MS4 operator prior to accepting the discharge to the MS4. All local controls and conditions established for these discharges must be described in the SWMP and any changes from the initial SWMP must be implemented according to Part II.D.3. of the general permit, and included in the annual report as described in Part IV.B.2. of the permit.
- (3) Storm Sewer Map: The general permit requires that a map of the storm sewer system must be developed and must include the following:
- (a) the location of all outfalls;
 - (b) the names and locations of all waters of the U.S. that receive discharges from the outfalls; and
 - (c) any additional information needed to implement the SWMP.

The above mapping requirements are consistent with the federal Phase 2 rules at 40 CFR § 122.34(b)(3)(ii)(A). In the Phase 2 *Federal Register* (FR) 64 68756 dated December 8, 1999, the EPA describes that a map with the location of all outfalls will help the regulated MS4 to conduct dry weather field screening for non-storm water flows and to respond to illicit discharge reports from the public. EPA recommended that the MS4 operator collect any existing information from public records, and follows up with field surveys to verify locations of outfalls.

The SWMP must include the source of information used to develop the storm sewer map, including how the outfalls were verified and how the map will be regularly updated.

- d. Construction Site Storm Water Runoff Control

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The MS4 operator, to the extent allowable under State and local law, must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the MS4 from construction activities that result in a land disturbance of greater than or equal to one acre or if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more of land. Where discrete construction projects within a larger common plan of development or sale are located greater than or equal to 1/4 mile apart, and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale, provided that any interconnecting road, pipeline or utility project that is part of the same "common plan" is not concurrently being disturbed. For example, if a utility company was constructing new trunk lines off an existing transmission line to serve separate residential subdivisions located more than 1/4 mile apart, the two trunk line projects could be considered to be separate projects. If separate construction projects occur that are part of the same overall project and are less than 1/4 mile apart, then it would be appropriate to consider the combined acreage in determining the larger common plan.

The MS4 operator is not required to develop, implement, nor enforce a program to reduce pollutant discharges from sites where the construction site operator has obtained a waiver from permit requirements under TPDES General Permit TXR150000 based on a low potential for erosion.

- (1) The program must include the development and implementation of, at a minimum, an ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State and local law.
- (2) Requirements for construction site contractors to, at a minimum:
 - (a) implement appropriate erosion and sediment control BMPs; and
 - (b) control waste such as discarded building materials, concrete truck washout water, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.
- (3) The MS4 operator must develop procedures for:
 - (a) site plan review which incorporate consideration of potential water quality impacts;
 - (b) receipt and consideration of information submitted by the public; and
 - (c) site inspection and enforcement of control measures to the extent allowable under State and local law.

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e. Post-Construction Storm Water Management in Areas of New Development and Redevelopment

As required under 40 CFR § 122.34(b)(5), the MS4 operator must develop, implement, and enforce a program (to the extent allowable under State and local law) to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre of land that discharge into the MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts. The MS4 operator is required to:

- (1) Develop and implement strategies which include a combination of structural and/or nonstructural BMPs appropriate for the community;
- (2) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State and local law; and
- (3) Ensure adequate long-term operation and maintenance of BMPs.

f. Pollution Prevention / Good Housekeeping Measures for Municipal Operations

The general permit requires that a section within the SWMP be developed to establish an operation and maintenance program that will help to prevent or reduce pollutant runoff from municipal operations.

- (1) Good Housekeeping and BMPs: The small MS4 operator must identify (and either implement or continue) housekeeping measures and BMPs to prevent or reduce pollutant runoff from municipal operations such as parks and fleet maintenance areas.
- (2) Training: The operator must develop a training program for all employees responsible for the municipal operations which are subject to the pollution prevention/good housekeeping program. This training must include materials directed at preventing and reducing storm water pollution from municipal operations. Materials may be developed, or obtained from other organizations and sources, and examples or descriptions of the materials must be included in the SWMP.
- (3) Structural Control Maintenance: The MS4 operator must maintain any structural controls at a frequency determined by the MS4 operator, consistent with maintaining the effectiveness of the BMP.
- (4) Disposal of Waste: Waste removed from the MS4 and waste that is collected as a result of maintenance of storm water structural controls must be properly disposed. A section within the SWMP must be developed to include procedures for the proper disposal of waste, including dredge spoil,

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accumulated sediments, and floatables.

- (5) **Municipal Operations and Industrial Activities:** The SWMP must include a list of all municipal operations that are subject to the operation, maintenance, or training program developed under the conditions of this section; as well as municipally owned or operated industrial activities that are subject to TPDES storm water regulations.
3. The small MS4 may develop an optional seventh MCM for discharges from construction activities, and may obtain authorization under this general permit for discharges from construction activities where the MS4 is the operator. In order to qualify for this provision, MS4s must maintain control over the plans and specifications of the construction activity, or must maintain the status of the operator with day-to-day operational control over the construction site, to the extent necessary to meet the requirements of the SWP3 for that site. Implementation of this minimum measure allows the MS4 to obtain this necessary authorization under the terms of this five-year term permit and replaces the requirement to seek separate permit coverage for each construction activity that it conducts. Where the MS4 is able to demonstrate itself to be the sole operator for these activities, by meeting both criteria listed in the definition of "construction site operator," contractors would not have to seek separate authorization. This provision is allowed for construction activities located in the regulated area, such as within a UA or within an area designated by TCEQ, MS4s are required to summarize in the annual report pertinent information related to the construction activities performed in the previous year. As discussed above in Section III.E., MS4s electing this provision must notify the TCEQ upon submittal of the NOI form, along with an attached SWMP that includes this measure. Utilization of the optional seventh MCM does not preclude an MS4 from obtaining coverage under the TPDES Construction General Permit, TXR150000, or under an individual TPDES permit.
4. **SWMP Implementation.**

The SWMP may be implemented on a scheduled stepwise basis throughout the term of the general permit. If full development and implementation of the SWMP is not practicable, then the program must be developed with targeted milestones establishing a schedule that represents the "maximum extent practicable." Implementation must be initiated upon receipt of written approval from the TCEQ of the NOI and SWMP. The general permit contains provisions that allow revisions to the SWMP throughout the term of the permit, without immediate notification to the TCEQ, so that SWMPs can be adjusted based on experiences and findings to become more effective and efficient. Schedules for SWMP implementation, the status of the implementation schedules, and modifications to the SWMP must be summarized in the annual report. These permit provisions allow MS4s to develop and implement SWMPs according to available funding, manpower, and ability and allow for revisions where more efficient or effective BMPs are identified. Complete implementation of the SWMP is required within five years from the date of issuance of the general permit.

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Federal rules at 40 CFR § 123.35(g) require permitting authorities to issue a menu of BMPs to assist small MS4s in complying with the Phase 2 regulations. The TCEQ has adopted the EPA menu of BMPs by including that menu as a resource to small MS4s through a link on the TCEQ storm water web page at:

<http://cfpub.epa.gov/npdes/stormwater/menuofbmps/menu.cfm>.

D. Reporting Requirements

1. The proposed general permit requires MS4s to provide documentation on the development, implementation, and evaluation of the SWMP. The documentation must be included as a part of the SWMP and may be required to be submitted in the annual report. The preparation and review of the annual report by the MS4 may ensure progressive improvement of storm water controls and reduce pollutants to the maximum extent practicable. At a minimum, the documentation must include:
 - a. a list of any public or private entities assisting with the development or implementation of the SWMP;
 - b. a list of all best management practices (BMPs) and measurable goals for each of the MCMs;
 - c. a description of how each measurable goal will be evaluated;
 - d. a summary that addresses the overall program, including how the BMP's and measurable goals were selected;
 - e. if applicable, a list of all permittees which share responsibilities for implementing an SWMP or portions of an SWMP, and a list of each of their responsibilities for the development and implementation of the SWMP; and
 - f. if applicable, a summary that describes why the permittee chose to share resources to fulfill the SWMP, and how each participant benefit.
2. Additionally, the MS4 must evaluate the following items and must include the information in an annual report:
 - a. program compliance;
 - b. the appropriateness of the chosen BMPs; and
 - c. progress toward achieving identified measurable goals.

V. Addresses

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Questions concerning this proposed draft general permit should be sent to:

Storm Water & Pretreatment Team
Wastewater Permitting Section (MC-148)
Water Quality Division
TCEQ
P.O. Box 13087
Austin, TX 78711-3087
(512) 239-4671

Comments regarding the proposed draft general permit should be sent to:

Chief Clerk's Office (MC-105)
TCEQ
P.O. Box 13087
Austin, TX 78711-3087

Supplementary information on this Fact Sheet is organized as follows:

- VI. Legal Basis
- VII. Regulatory Background
- VIII. Permit Coverage
- IX. Technology-Based Requirements
- X. Water Quality-Based Requirements
- XI. Monitoring
- XII. Procedures for Final Decision
- XIII. Administrative Record

VI. Legal Basis

§ 26.121 of the Texas Water Code (TWC) makes it unlawful to discharge pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission. TWC, § 26.027 authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. TWC, § 26.040 provides the commission with authority to amend rules adopted under TWC § 26.040 prior to amendment of the statute by House Bill (HB) 1542 in 1997, and to authorize waste discharges by general permit. On September 14, 1998, the TCEQ received authority from the United States Environmental Protection Agency (EPA) to administer the Texas Pollutant Discharge Elimination System (TPDES). The TCEQ and the EPA have signed a Memorandum of Agreement (MOA) which authorizes the administration of the National Pollutant Discharge Elimination System (NPDES) program to the TCEQ as it applies to the State of Texas.

CWA, §§ 301, 304, and 401 (33 United States Code (USC), §§ 1331, 1314, and 1341) include provisions which state that NPDES permits must include effluent limitations requiring authorized discharges to: (1) meet standards reflecting levels of technological capability; (2) comply with EPA-approved state water quality standards; and (3) comply with other state requirements adopted under authority retained by states under CWA, § 510, 33 USC, §1370.

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VII. Regulatory Background

The 1972 amendments to the Federal Water Pollution Control Act, later referred to as the Clean Water Act (CWA), prohibit the discharge of any pollutant to navigable waters of the United States from a point source unless the discharge is authorized by an NPDES permit. Efforts to improve water quality under the NPDES program traditionally have focused on reducing pollutants in industrial process wastewater and municipal sewage treatment plant discharges. Over time, it has become evident that more diffuse sources of water pollution, such as storm water runoff from MS4s, are also significant contributors to water quality problems. EPA developed permit requirements for MS4s that are intended to improve water quality by reducing the quantity of pollutants that storm water discharges into storm sewer systems during storm events.

In 1990, EPA promulgated rules establishing Phase I of the NPDES storm water program. Phase I addresses discharges from medium and large MS4s, which are those MS4s serving a population more than 100,000 people, based on the 1990 census. Phase I MS4s were required by the EPA to obtain individual NPDES permits. No additional Phase I MS4s will be created by later census results. The federal Phase II storm water regulations extend permitting requirements to certain "small" MS4s, and require a more general storm water management program than was required for medium and large MS4s. The Phase II regulations were published on December 8, 1999 in the *Federal Register*, requiring affected small MS4s to obtain permit coverage by March 10, 2003. The Phase II regulations are identified in federal rules at 40 CFR §§ 122.30 through 122.37, which were adopted by the TCEQ at 30 TAC § 281.25(b). This proposed TPDES general permit would offer the necessary authorization for these MS4 discharges.

VIII. Permit Coverage

- A. The proposed general permit would apply to discharges of storm water runoff associated with small MS4s. The guidelines for small MS4s were published in the *Federal Register* on December 8, 1999 (64 FR 68722).
- B. Applicants seeking authorization to discharge storm water runoff from small MS4s under the conditions and requirements of the proposed general permit must submit a completed Notice of Intent (NOI) on a form approved by the executive director, as well as a description of the SWMP. The NOI form will include at a minimum, the legal name and address of the owner and operator, the facility name and address, specific description of its location, (including the street address, if applicable, and county), the type of facility and discharge, the name of the receiving water, the boundary of the area where construction activities are covered under the general permit (if the optional MCM is developed), and any other information requested by the TCEQ. The NOI must be signed according to TCEQ rules at 30 TAC § 305.44, which establishes requirements regarding who may sign an application for a permit applicant, and requires that a legal certification be made regarding the permit application. The specific language in this rule can be found at [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.viewtac](http://info.sos.state.tx.us/pls/pub/readtac$ext.viewtac), by searching Title 30, Texas Administrative Code (TAC), Chapter 305, Subchapter C (related to Application for Permit).

MS4 operators can locate information regarding the classified segment(s) receiving the discharges from the MS4 in the "Atlas of Texas Surface Waters" at the following TCEQ web address. This document includes identification numbers, descriptions, and maps:

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http://www.tceq.state.tx.us/comm_exec/forms_pubs/pubs/gi/gi-316/index.html

MS4 operators can find the latest EPA-approved list of impaired water bodies (the Texas 303(d) List) at the following TCEQ web address:

http://www.tceq.state.tx.us/compliance/monitoring/water/quality/data/wqm/305_303.html

- C. Submission of an NOI and SWMP is an acknowledgment by the regulated MS4 that the conditions of this general permit are applicable to the proposed discharges and that the applicant agrees to comply with the conditions of the general permit. Discharge authorization begins when the applicant is notified by TCEQ that the NOI and SWMP have been administratively and technically reviewed, and the applicant has followed the public participation provisions in the general permit. The documents must be submitted by certified mail, return receipt requested, to the address indicated on the NOI form. Following review of the NOI, SWMP, and any public comments received on the application, the Executive Director will determine that: 1) the submission is complete and confirm coverage by providing a notification and an authorization number, 2) the NOI and/or SWMP are incomplete and deny coverage until a complete NOI and/or SWMP are submitted, or 3) approve the NOI and/or SWMP with revisions and provide a written description of the required revisions along with any compliance schedule(s), or 4) deny coverage and provide a deadline by which the MS4 operator must submit an application for an individual permit. Denial of coverage under the general permit is subject to the requirements of 30 TAC § 205.4(c). After receiving written approval from the TCEQ, the applicant must implement the approved SWMP in accordance with the terms and conditions of the general permit.
- D. If the operational control of the MS4 changes, the present operator must submit an NOT and the new operator must submit an NOI and SWMP to obtain authorization under this general permit. The NOT and NOI must be submitted concurrently no greater than 10 days after the change occurs.
- E. A permittee must submit current information to the executive director by submitting a Notice of Change (NOC) not later than 30 days before a change in information previously provided to the executive director within an NOI occurs. An NOC is also required for changes to the SWMP that are made after TCEQ has approved the NOI and SWMP. If changes are proposed before the applicant has received written approval of the NOI and SWMP from the TCEQ, then this information must be submitted in a letter as supplemental application information. An NOC must be signed according to TCEQ rules at 30 TAC § 305.44.
- F. A discharger may terminate coverage under this general permit by providing a Notice of Termination (NOT) on a form approved by the executive director. The NOT must be signed according to TCEQ rules at 30 TAC § 305.44. Authorization to discharge terminates at midnight on the day that an NOT is postmarked for delivery to the TCEQ. If TCEQ provides for electronic submission of NOTs during the term of this permit, authorization to discharge terminates 24 hours following confirmation of receipt of the electronic NOT form by the TCEQ.

IX. Technology-Based Requirements

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The conditions established by this general permit are based on Section 402(p)(3)(B) of the Clean Water Act (CWA) which mandates that a permit for discharges from MS4s must:

- A. effectively prohibit the discharge of non-storm water to the MS4; and
- B. require controls to reduce pollutants in discharges from the MS4 to the maximum extent practicable (MEP) including best management practices (BMPs), control techniques, and system, design and engineering methods, and such other appropriate provisions.

The conditions of the proposed general permit have been developed to comply with the technology-based standards of the Clean Water Act. The draft general permit includes an SWMP requirement that includes MCMs utilizing a series of BMPs, rather than numeric limitations, to address the minimization of pollutants in storm water discharges to Waters of the United States. The Federal Phase II regulations define a small MS4 SWMP as a program comprising of at least six MCMs that collectively are expected to result in significant reductions of pollutants discharged into receiving water bodies. Implementation of the MEP standard will typically require the development and implementation of BMPs and the achievement of measurable goals to satisfy each of the six MCMs. TCEQ believes that the requirements of the general permit, if properly implemented, will meet the MEP standard required in the federal rules at 40 CFR § 122.34.

A statement is included in the general permit which indicates that the BMPs included in the SWMP constitute effluent limitations for the purposes of compliance with 30 TAC Chapter 319, Subchapter B.

The proposed general permit provides for development of an optional 7th MCM that would authorize an MS4 to discharge storm water runoff from construction activities disturbing one or more acres where it is the operator. This provision allows the MS4 the option of separate coverage for these construction activities under TPDES general permit TXR040000 rather than the Construction General Permit, TXR150000. The following proposed limitations and monitoring frequencies are applicable to storm water discharges from concrete batch plants authorized as a support activity at regulated construction sites:

<u>Parameter</u>	<u>Limitations</u> <u>Daily Maximum</u>	<u>Monitoring</u> <u>Frequency</u>
Total Suspended Solids	65 mg/l	1/Year
Oil and Grease	15 mg/l	1/Year
pH	between 6 and 9 standard units	1/Year

X. Water Quality-Based Requirements

The Texas Surface Water Quality Standards (TSWQS) found at 30 TAC Chapter 307 state that “surface waters will not be toxic to man, or to terrestrial or aquatic life.” The methodology outlined in the “Procedures to Implement the Texas Surface Water Quality Standards” is designed to ensure compliance with 30 TAC Chapter 307. Specifically, the methodology is designed to ensure that no source will be allowed to discharge any waste which: (1) results in instream aquatic toxicity; (2) causes a violation of an applicable narrative or numerical state water quality standard; (3) results in the endangerment of a drinking water supply; or (4) results in aquatic bioaccumulation which threatens human health.

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TPDES permits contain technology-based effluent limits reflecting the best controls available. Where these technology-based permit limits do not protect water quality or the designated uses, additional conditions are included in the TPDES permits, which may include discharge limitations. State narrative and numerical water quality standards are used in conjunction with EPA criteria and other toxicity databases to determine the adequacy of technology-based permit limits and the need for additional water-quality-based controls.

TPDES storm water permits do not typically contain water-quality-based effluent limits (WQBELs). As stated in 30 TAC § 307.8(e), controls on the quality of permitted storm water discharges are largely based on implementing BMPs and/or technology-based limits in combination with instream monitoring to assess standards attainment and to determine whether additional controls on storm water are needed. Also, according to EPA rules at 40 CFR § 122.34(a), narrative effluent limitations requiring implementation of BMPs are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality for small MS4s. It has been preliminarily determined that where permit requirements are properly implemented no significant degradation is expected and existing uses will be maintained and protected.

XI. Monitoring

If the MS4 discharges storm water from a construction project authorized under this general permit that includes a supporting concrete batch plant, compliance monitoring is required. Discharges from the batch plant must be sampled at a minimum frequency of once per year (1/year).

The MS4 operator may additionally sample discharges from the MS4 in order to assess the effectiveness of storm water MCMs, measure the effectiveness of BMPs, to detect illicit discharges to the system, or for other similar reasons.

XII. Procedures for Final Decision

The MOA between the EPA and TCEQ provides that EPA has no more than 90 days to comment, object, or make recommendations to the draft general permit before it is proposed for consideration by the Commissioners of the TCEQ. According to 30 TAC Chapter 205, when the initial draft general permit is submitted for public comment prior to being proposed to the Commission of the TCEQ, notice must be published, at a minimum, in at least one newspaper of statewide or regional circulation. The commission may also publish notice in additional newspapers of statewide or regional circulation. Mailed notice must also be provided to the following:

- A. the county judge of the county or counties in which the discharges under the general permit could be located;
- B. if applicable, state and federal agencies for which notice is required in 40 CFR, §124.10(c);
- C. persons on a relevant mailing list kept under 30 TAC § 39.407, relating to Mailing Lists; and

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- D. any other person the executive director or chief clerk may elect to include.

After notice of the initial draft permit is published in the *Texas Register* and the newspaper, the public will have 30 days to provide public comment on the IDP.

Any person, agency, or association may make a request for a public comment meeting on the proposed general permit to the executive director of the TCEQ before the end of the public comment period. A public comment meeting will be granted when the executive director or commission determines, on the basis of requests, that a significant degree of public interest in the draft general permit exists. A public comment hearing is intended for the taking of public comment, and is not a contested case proceeding under the Administrative Procedure Act. The executive director may call and conduct public meetings in response to public comment.

If the executive director calls a public meeting, the commission will give a minimum of 30 days public notice in the *Texas Register* of the date, time, and place of the meeting, as required by commission rules. The public notice for the draft general permit and for the public meeting(s) may be combined. The public comment is automatically extended until the conclusion of all public meetings on the draft general permit. The executive director shall prepare a response to all significant public comments on the draft general permit raised during the public comment period. The proposed general permit will then be filed with the commission to consider final authorization of the permit. The executive director's response to public comment shall be made available to the public and filed with the chief clerk at least ten days before the commission acts on the proposed general permit.

During the initial development of the draft permit, the TCEQ published notice of availability and an announcement of public hearings for this permit in *The Dallas Morning News*, *El Paso Times*, *The Monitor* (McAllen), *Amarillo Globe News*, *Houston Chronicle*, and *San Antonio Express News* on September 27, 2002. Public meetings were held in Arlington on October 28, 2002; Houston on October 29, 2002; and San Antonio on November 4, 2002. The original comment period ended on November 15, 2002. On September 15, 2003, the U.S. 9th Circuit Court of Appeals (Court) issued a revised panel decision, which denied all petitions for rehearing and remanded portions of the rule affecting small MS4s to the EPA. The Court found that portions of the federal regulations were not consistent with the Clean Water Act, because the Phase II rules did not address permitting authority review of notices of intent (NOIs), public participation in the permitting process, and public availability of NOIs. The EPA, by memorandum dated April 16, 2004, provided guidance for permitting authorities to issue general permits consistent with the panel decision. The TCEQ proposes to publish notice of the revised draft permit in accordance with the procedures discussed above.

XIII. Administrative Record

The following section is a list of the fact sheet citations to applicable statutory or regulatory provisions and appropriate supporting references.

A. Code of Federal Regulations (CFR) and Federal Register (FR) Citations

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40 CFR Chapter 122

Federal Register dated February 17, 1998 (Volume 63, No. 31, Pages 7858-2906)

Federal Register dated December 8, 1999 (Volume 64, No. 235, Pages 68722-68851)

B. Letters/Memoranda/Records of Communication

Memorandum from the U.S. EPA (Hanlon) dated April 16, 2004 from, "Implementing the Partial Remand of the Stormwater Phase II Regulations Regarding Notices of Intent & NPDES General Permitting for Phase II MS4s."

Comment letters received during initial public notice period.

Stakeholder comments provided to the TCEQ.

Memo from the Water Quality Standards Team of the Water Quality Assessment Section of the TCEQ.

C. Miscellaneous

U.S. Environmental Protection Agency's Model Permit, "National Pollutant Discharge Elimination System General Permit for Discharges from Large and Small Construction Activities," draft dated September 7, 2001.

U.S. Environmental Protection Agency's Fact Sheet No. 2.0, "Storm Water Phase II Final Rule - Small MS4 Storm Water Program Overview," January 2000 (EPA 833-F-00-002).

U.S. Environmental Protection Agency's Fact Sheet No. 2.1, "Storm Water Phase II Final Rule - Who's Covered? Designation and Waivers of Regulated Small MS4s," January 2000 (EPA 833-F-00-003).

U.S. Environmental Protection Agency's Fact Sheet No. 2.2, "Storm Water Phase II Final Rule - Urbanized Area - Definition and Description," December 1999 (EPA 833-F-00-004).

The Clean Water Act, 33 U.S.C. Chapter 26

Quality Criteria for Water (1986), EPA 440/5-86-001, 5/1/86.

The State of Texas Water Quality Inventory, 13th Edition, Publication No. SFR-50, Texas Natural Resource Conservation Commission, December 1996.

Texas Surface Water Quality Standards, 30 TAC Sections 307.1 - 307.10 (21 TexReg 9765, 4/30/97).

"Procedures to Implement the Texas Surface Water Quality Standards," Texas Commission on

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Environmental Quality, January 2003.

TCEQ Rules.

30 TAC Chapters 39, 205, 213, 281, 311, 305, 307, 309, 319, 321, 331