

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: February 13, 2013

DATE OF REQUEST: January 25, 2013

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Charlotte Horn, (512) 239-0779

CAPTION: Docket No. 2012-0677-MIS. Consideration of the adoption of the renewal with changes of the Texas Pollutant Discharge Elimination System (TPDES) stormwater construction general permit, TPDES Permit Number TXR150000, authorizing the discharge of stormwater and certain non-stormwater discharges from construction sites state-wide into surface water in the state. Public notice of the proposed draft permit was published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8235). (Hal Bailey, Robert Brush) (Non-Rule Project No. 2012-026-OTH-NR)

L'Oreal Stepney, P.E.

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Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** January 25, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2012-0677-MIS

Subject: Commission Approval for General Permit Action Adoption
General Permit TXR150000, Texas Pollutant Discharge Elimination System
(TPDES) Stormwater Construction General Permit

Non-Rule Project No. 2012-026-OTH-NR

Summary and background

The TPDES Construction General Permit (CGP) TXR150000 is a statewide general permit authorizing the discharge of stormwater from small and large construction activities, construction support activities, and certain allowable non-stormwater discharges. The current permit will expire on March 5, 2013.

Basic requirements

Applicability

- The CGP regulates stormwater runoff from construction activities according to the area of land disturbed.
 - Large construction activities disturb five or more acres, or are part of a larger common plan of development that will disturb five or more acres.
 - Small construction activities disturb at least one but less than five acres, or are part of a larger common plan that will disturb at least one but less than five acres.
- Construction activities that disturb less than one acre, and are not part of a larger common plan of development that would disturb one acre or more, are not required to obtain coverage under this general permit.

Permit Requirements

- Permit requirements include the development and implementation of a stormwater pollution prevention plan (SWP3), periodic inspections of best management practices (BMPs), compliance with applicable water quality standards, benchmark sampling of stormwater runoff from concrete batch plants, and final stabilization of the construction site prior to permit termination.
- A Notice of Intent (NOI) is an application that is required for operators to obtain authorization for discharges from large construction sites. Provisional coverage begins seven days after the completed paper NOI is postmarked for delivery to the TCEQ, or immediately if the completed NOI is submitted electronically using the State of Texas Environmental Electronic Reporting System (STEERS).

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Fees

- The permit fee is proposed to remain the same. The fee is \$325 if a paper NOI is submitted or \$225 if the NOI is submitted electronically. This covers the application fee as well as the prorated water quality annual fee.

Number of current/expected authorizations:

Approximately 18,997 construction operations are currently authorized by this general permit (18,996 NOIs for large activities and 1 Low Rainfall Erosivity Waiver for certain small activities). We typically receive about 1,000 NOIs for new construction activities each month. We anticipate that approximately 60% of NOIs will be submitted through e-Permits.

Proposed changes from current permit:

- *New Federal Effluent Limitation Guidelines (ELGs)*
Added narrative effluent limitations based on the new federal Construction and Development (C&D) ELGs, promulgated December 1, 2009, in 40 Code of Federal Regulations (CFR) §§450.21, 450.23, and 450.24, consisting of a series of BMPs. Operators are required to implement a range of erosion and sediment controls and pollution prevention practices to reduce the amount of sediment and pollutants in stormwater discharges from construction sites.
- *Miscellaneous and Minor Revisions*
Made minor revisions to add definitions and clarify existing permit requirements, provide additional flexibility to permittees, and address comments from stakeholders and the United States Environmental Protection Agency (EPA).

Effect on the:

- *Regulated community:* Operators covered under the current permit will need to reapply and comply with any revised and new requirements. The changes in the permit will require existing operators to revise their SWP3s to address new permit conditions.
- *Public:* The permit is not expected to have a significant effect on the public.
- *Agency Programs:* There will be a significant short-term increase in the number of NOIs filed and processed, and the agency will receive questions from permittees and the public related to the revised and new permit conditions.

Planned stakeholder involvement:

The Water Quality Division identified stakeholders for this general permit and reached out to seek preliminary input. Stakeholders include current permitted operators and other interested parties. An initial e-mail was sent notifying them of the upcoming renewal, stakeholder meeting, and providing an opportunity to send in preliminary suggestions.

- A stakeholder meeting was held at TCEQ on February 21, 2012. Approximately 35 stakeholders attended. Verbal comments were received from several stakeholders at the meeting, and written comments were submitted by e-mail during the two-week comment period following the meeting.
 - Many of the comments dealt with EPA's recently issued CGP (February 16, 2012), and to what degree construction operators covered under the TPDES CGP would be required to comply with the C&D ELGs outlined in 40 CFR Part 450.
- Presentations and panel discussions were conducted at the 2011 and 2012 Water Quality Stormwater Seminars, 2012 TCEQ Environmental Trade Fair, and the 2012 EPA Region 6 Municipal Separate Storm Sewer System (MS4) Operators Conference.

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- Updates on permit renewal were given at five quarterly Water Quality Advisory Workgroup Meetings held between October 2011 and October 2012.
- The draft permit was made available on the TCEQ Web site from late May 2012 through the public comment period.
- A statewide public notice was published in the *Texas Register* and nine state newspapers on October 12, 2012.
- A public meeting was held on November 12, 2012.

EPA Review:

On May 11, 2012, the draft permit was sent to EPA for their review. On August 20, 2012, the TCEQ received an interim objection letter from the EPA. The specific comments included six interim objections, three clarification questions, and five recommendations. None of the conditions in EPA's interim objection letter were considered significant and primarily related to slight discrepancies with consistency between the draft permit language and federal rule citations.

The TCEQ revised the draft permit to address the objections with minor revisions to the permit language and responded to the clarifications and recommendations. The EPA withdrew their interim objection on the draft general permit in a letter dated September 4, 2012. As described further, no significant changes were made to the permit based on the public comments; therefore EPA re-review is not needed.

Public Comment

After the public meeting and 30-day public comment period, TCEQ received comments from 14 entities, including the Associated General Contractors of Texas (AGC), the Army Corps of Engineers, the Texas Association of Builders (TAB), and the Texas Department of Transportation (TXDOT). One entity submitted oral comments at the public meeting, and the remaining comments were submitted in writing or through eComments. TCEQ consolidated those into 69 comments and the proposed executive director's response to comments (RTCs) is attached. None of the comments received resulted in substantive changes. The comments included: editorial suggestions, questions on new and existing permit requirements, and comments to add definitions and clarifying language from EPA's 2012 CGP. Based on some of the comments, minor changes were made to the permit; however, it is not necessary for the proposed permit to be forwarded to the EPA for re-review prior to adoption.

The following are two topics of interest based on the public comments received:

New Federal C&D ELGs

- Comments regarding the C&D narrative ELGs taken from 40 CFR Part 450 (adopted by reference by TCEQ in 30 TAC Chapter §305.541 on November 3, 2010). TAB requested that TCEQ extend the existing CGP, or renew without the ELGs, as EPA is being challenged in court over the new C&D rules. TCEQ is required by rule to include these new requirements in the permit.

Electronic-only submittal of NOIs

- The majority of entities who commented on the possibility of TCEQ requiring the electronic submittal of construction NOIs through ePermits were against the idea. Reasons given included the difficulty for some customers in rural areas to obtain access to a computer, the logistics of coordinating the electronic submittal of NOIs with electronic payment in situations where NOIs must be signed by public officials such as county judges, and concern that the integrity of the electronic NOI may be jeopardized and require duplication of

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efforts, as well as concerns regarding technical challenges that would impede the electronic-only submittal of the NOI. TCEQ responded by stating that permittees would continue to have the option to choose between paper NOI submittal and electronic NOI submittal through ePermits.

Potential controversial concerns and legislative interest:

The primary potential issue of concern for this general permit relates to the upcoming expiration date of March 5, 2013, and approval allowing the permit to be reissued prior to expiration. Failure to re-issue the CGP on or before the expiration date may have a significant impact on new construction activities in Texas. EPA's 2012 CGP established new conditions that went beyond the requirements in the federal rule. Initially stakeholders had questions and concerns related to how Texas' proposed permit would compare to the federal permit once it was made public. After the proposed permit was made available to the public, the stakeholders were no longer concerned. This draft general permit strictly adheres to the construction effluent guidelines (40 CFR Part 450) and does not go beyond the federal rule requirements.

Key dates in the proposed general permit schedule:

- Prepare Response to Comments and revise draft permit - November - December 2012
- EPA re-review (if necessary) - Not needed
- Final executive management briefings - January 2013
- Adoption by the Commission - February 13, 2013

Direction and Guidance:

General Permit Action Project number: 2012-026-OTH-NR

Agency contacts:

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Robert Brush, Staff Attorney, 239-5600
Charlotte Horn, Texas Register Coordinator, 239-0779

Attachments - Agenda Item Request; Proposed general permit and fact sheet; Proposed Executive Director's Response to Comments; Resolution

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**Fact Sheet and Executive Director's Preliminary Decision
Stormwater Discharges from Construction Activities - TXR150000**

For proposed Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR150000 to authorize the discharge of stormwater runoff and certain non-stormwater discharges from construction sites into surface water in the state.

Issuing Office: Texas Commission on Environmental Quality

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Date: December 10, 2012

Permit Action: Reissuance of a General Stormwater Permit for Construction Activities

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Stormwater Discharges from Construction Activities - TXR150000**

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**Fact Sheet and Executive Director's Preliminary Decision
Stormwater Discharges from Construction Activities - TXR150000**

I. Summary

The Texas Commission on Environmental Quality (TCEQ) is proposing a renewal of TPDES Construction General Permit (CGP), Permit No. TXR150000, issued on February 15, 2008 and effective on March 5, 2008, which authorizes discharges from construction sites into surface water in the state. The general permit specifies which construction activities must obtain permit coverage, which are eligible for waivers, and which may be required to obtain individual permit coverage. The general permit specifies that where discharges will reach Waters of the United States, a stormwater pollution prevention plan (SWP3) must be developed and implemented unless certain conditions are met. The general permit provides authorization for discharges from small construction sites, according to federal Phase II stormwater regulations finalized in the *Federal Register* of December 8, 1999.

The principal changes to the existing CGP include:

- A. Revised the section entitled "Impaired Receiving Waters and Total Maximum Daily Load (TMDL) Requirements" to address discharges to impaired water bodies listed in accordance with Section 303(d) of the federal Clean Water Act (CWA). (permit Part II.C.4).
- B. Added effluent limitations guidelines for regulated construction sites based on the federal Effluent Limitation Guidelines (ELGs) at 40 CFR Parts 450.21, 450.23, and 450.24, which consist of a series of Best Management Practices (permit Part III.G).
- C. Clarified that on-site disposal of wash out water from concrete trucks may be authorized under this permit, provided that certain requirements are met and the wastewater is properly contained on site and there is no discharge to surface waters. In the existing permit, this authorization is limited to wash out from concrete trucks associated with off-site concrete production facilities. This change is consistent with the 2012 EPA CGP and provides more flexibility for regulated operators.
- D. Added definitions and provided clarification of permit requirements using language that is consistent with the 2012 EPA CGP.

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 the effective date, following the requirements of 30 TAC § 205.5(a).

III. Permit Applicability and Coverage

- A. This general permit would authorize the discharge of stormwater runoff associated with small and large construction sites to surface water in the state. This general permit would specify which sites may be authorized under this general permit, which are eligible for waivers, and which must be authorized by individual permit.
- B. This general permit would authorize the discharge of stormwater associated with other industrial activities at construction sites as follows: Discharges of stormwater runoff from supporting activities, including concrete batch plants, asphalt batch plants, equipment staging areas, material storage yards, material borrow areas, and excavated material disposal areas that are located at, adjacent to, or in close proximity to the permitted construction site and directly support the construction activity; and do not operate beyond the completion date of the construction activity.

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- C. The general permit would not authorize the discharge of process wastewater. In addition, the general permit would not authorize other non-stormwater discharges, except for the following:
1. 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);
 2. uncontaminated fire hydrant flushings (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life), which include flushings from systems that utilize potable water, surface water, or groundwater that does not contain additional pollutants (uncontaminated fire hydrant flushings do not include systems utilizing reclaimed wastewater as a source water);
 3. water from the routine washing of vehicles, the external portion of buildings or structures, and pavement where detergents and soaps are not used and where spills or leaks of toxic or hazardous materials have not occurred (unless spilled materials have been removed; and if local, state, or federal regulations are applicable, the materials are removed according to those regulations), where pressure washing is not conducted, and where the purpose is to remove mud, dirt, or dust;
 4. water used to control dust;
 5. potable water sources, including waterline flushings (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);
 6. uncontaminated air conditioning condensate;
 7. uncontaminated ground water or spring water, including foundation or footing drains where flows are not contaminated with industrial materials such as solvents; and
 8. lawn watering and similar irrigation drainage.

The purpose of providing this list in the general permit is to clarify that certain non-stormwater discharges that may occur during normal activities at a construction site do not require additional permit coverage. Inclusion of this list in the general permit is not meant to prohibit the above discharges in an activity, such as a non-regulated construction activity, which would otherwise be allowed without a TPDES permit.

- D. The on-site disposal of water resulting from the wash out of concrete trucks may be conducted at regulated construction sites, provided that certain requirements of the general permit are met. Operators may also find recommendations for addressing concrete wash out from the EPA at the following web site:
<http://cfpub.epa.gov/npdes/stormwater/swppp.cfm> This web page also includes general guidance on developing a construction site SWP3.
- E. The following discharges are not eligible for coverage under the proposed general permit, and must be authorized under an individual permit or an alternative general permit, if one is available:
1. Discharges 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;

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2. New sources or new discharges of the constituents of concern to impaired waters, unless otherwise allowable under commission rules, applicable state law, and any total maximum daily load (TMDL) that exists for the applicable receiving water;
 3. Discharges otherwise prohibited under existing state rules.
- F. The following stormwater discharges are not eligible for coverage under the proposed permit and may require individual or alternative general 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.
- G. Construction activities that would disturb less than one acre, including any greater common plan of development for the site, are not required to obtain permit coverage under the general permit nor an individual permit unless required by the executive director.
- H. The following stormwater discharges are not under the authority of the commission, are not eligible for coverage under the general permit, and may require authorization from the EPA under a separate NPDES permit:
1. Stormwater runoff from construction activities occurring on Indian Country lands. (Information on the location and contact information for Indian Country Lands in Texas may be accessed at the following EPA web site: <http://www.epa.gov/region6/6dra/oejta/tribalaffairs/index.html>. Additionally, information on the contact information for federally recognized tribes may be found at: <http://www.indians.org/Resource/FedTribes99/fedtribes99.html>.)
 2. Stormwater runoff from construction activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including transportation of crude oil or natural gas by pipeline.

IV. Permit Conditions

A. Notice of Intent and Site Notice

Primary operators of large construction sites must submit a notice of intent (NOI) that indicates the operator will comply with the conditions of the general permit, including development of an SWP3. An NOI is not required for secondary operators.

All primary and secondary operators must post a site notice in plain view at the construction site entrance prior to the commencement of construction activities and maintain the notice until either final stabilization occurs or control of the site is turned over to a separate operator. A copy of the NOI must also be supplied to the operator of any municipal separate storm sewer system (MS4) to which the operator discharges, so that the MS4 operator can conduct its own inspection and enforcement activities according to its NPDES or TPDES permit or local ordinances.

The general permit includes notification to secondary operators of large construction activities that they are regulated under the general permit and are not required to submit an NOI. This statement is consistent with federal rules at 40 CFR § 122.28(b)(2)(vi) and as adopted by reference in 30 TAC Chapter 281, which states that the director may notify a discharger that it is covered by a general permit, even if the discharger has not submitted an NOI for coverage.

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An NOI is not required for the authorization of certain discharges, as allowed by 40 CFR §122.28(b)(2)(v) and as adopted by reference in 30 TAC Chapter 281, where the executive director determines that an NOI is inappropriate. The proposed general permit incorporates this alternative as an option and automatically authorizes certain small construction activities if specific conditions are met. In making the determination that an NOI is inappropriate for small construction activities, the executive director considered the short-term nature of small construction activities, the number of construction sites that will be authorized, and the administrative burden on both the commission and the regulated community. The executive director also considered the nature and type of proposed discharges authorized under the general permit, the expected potential for toxic and conventional pollutants, and the expected volumes. The requirements and conditions of the general permit are appropriate to control the discharges from small construction sites authorized under the general permit and to protect water quality. The administrative burden on the permittee to submit an NOI and on the commission to respond to the NOI would be excessive and not directly necessary to control these discharges.

Operators of small construction sites are not required to submit an NOI, but must develop an SWP3 (with the exception of those sites described in Part IV.D., below) and post a site notice containing information regarding the operator's authorization under the general permit. Operators of small construction sites may alternatively apply for a waiver from permit requirements if activities are shown to occur in certain regions and during certain seasons where the potential for erosion are below an established threshold or erosivity factor. Operators applying for these waivers are also required to provide a copy of the waiver form to the operator of any MS4 that will receive the discharges from the construction site.

B. Stormwater Pollution Prevention Plan (SWP3)

1. All large construction site activities as well as all small construction site activities not specifically described in Part IV.D. below, with discharges that reach Waters of the United States, must develop an SWP3 according to the provisions of the proposed general permit prior to requesting authorization. Operators must implement that plan prior to commencing construction activities.

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 the Clean Water Act (other than cooling ponds, as defined in 40 CFR §423.11(m), that 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 previously converted cropland.

2. The required contents of the SWP3 are based on federal Phase II rules (December 8, 1999 *Federal Register*) related to stormwater permitting, as well as the current TPDES general permit for large construction sites. The purpose of the SWP3 is to identify and address potential sources of pollution that are reasonably expected to affect the quality of stormwater discharges from the construction site, including off-site material storage areas, overburden and stockpiles of dirt, and borrow areas. Separate SWP3s may be developed for each construction site operator where multiple operators exist. However, the proposed permit would also allow a shared SWP3 to promote a more efficient and coordinated effort between multiple operators at a single site. The SWP3 may provide that one operator is responsible for the preparation of a SWP3 in compliance with the CGP, and another operator is

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responsible for implementation of the SWP3 at the project site. Under this alternative, each individual operator would be required to submit an NOI for coverage, and each would be individually responsible for compliance with the terms of the permit in the areas of the site where the person is the responsible operator.

3. The specific requirements of the SWP3 include the following minimum provisions:
 - a. A detailed project description, including a site map that indicates the site location, the construction site details, and information on receiving waters.
 - b. A description of the structural and the non-structural controls (best management practices, or BMPs) that will be used to minimize pollution in runoff during construction, as well as stabilization practices during and at the completion of the activity.
 - c. Demonstration of compliance with other state and local plans, such as the Edwards Aquifer Protection Program.
 - d. A description of how BMPs will be maintained and how controls may be revised upon a finding that the control measures are either not working properly or adequately.
 - e. A description of how inspections of BMPs will be conducted. Inspections are required at a minimum frequency of at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater during active construction activities. An alternative inspection schedule of once every seven (7) calendar days is also available. If this alternative schedule is developed, then the inspection must occur regardless of whether or not there has been a rainfall event since the previous inspection. Where sites have been temporarily stabilized, inspections must be conducted at least once every month. Special provisions allowing for representative inspections are provided for long, linear projects where access along the site is limited and travel along the site may damage stabilized areas or cause potential for erosion.
 - f. Identification and description of the implementation of appropriate pollution prevention measures for all eligible non-stormwater components of the discharge.

C. Terminating Coverage

The general permit includes information on when and how an operator may terminate coverage under the general permit. Primary operators of large construction sites must submit a notice of termination (NOT) form. Operators of small construction sites and secondary operators of large construction sites must remove the applicable site notice. The specific requirements are included in the general permit.

An operator may terminate coverage when certain conditions are met. In establishing vegetation to achieve final stabilization, an operator is not required to utilize the same vegetation that was previously utilized at the site, provided that the stabilized area contains at least 70% coverage of the original percentage of coverage of land for the disturbed area, and provided that the operator utilizes vegetation appropriate for the area that provides acceptable coverage. The permit also allows construction operators located in arid, semi-arid, or drought-stricken areas the flexibility to implement non-vegetative erosion control measures if vegetative controls are not feasible.

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**D. Alternative Permit Requirements for Small Construction Activities
Occurring During Conditions of Low Potential Erosion**

Stormwater runoff from certain small construction activities may be authorized under the general permit without being required to develop an SWP3 if construction occurs when there is a low potential for erosion. This option is consistent with the existing general permit, and is not available for large construction sites, including smaller construction sites that are part of a larger common development that will disturb five (5) or more acres. This option is available for stormwater discharges, and would not include authorization for non-stormwater discharges that are otherwise required to be permitted. These mechanisms for alternative authorization are included to encourage construction to occur during times when the potential for erosion is limited. The alternative requirements apply to small construction sites where the rainfall erosivity factor, or R-factor, is less than five (5) for the duration of the activity. The R-factor is defined as the total annual erosive potential that is due to climatic effects, and is part of the Revised Universal Soil Loss Equation (RUSLE). An R-factor is calculated based on information available from the U.S. Department of Agriculture (USDA) and EPA. Annual R-factors are provided in the U.S. Department of Agriculture's (USDA) Handbook No. 703. The following authorization options require determination of an R-factor for a portion of the year.

1. **Automatic Authorization Option:** A mechanism for automatic authorization is provided to include a very efficient authorization process for certain activities occurring during periods of low erosion potential. Appendix A of the proposed permit includes a list of time periods within certain counties when the potential for erosion is very low and where small construction activities may be automatically authorized. Not all counties in Texas are included in Appendix A, and those that are included only demonstrate an R-factor less than five (5) for the specific time period(s) shown.

Small site construction activities that commence on or after the start date for one of the listed time periods and conclude by the end date of the same listed time period are not required to submit an NOI nor to develop an SWP3. Instead, the general permit requires the operator of such a site to complete and post a specific site notice for the duration of the activity and to provide a copy of the site notice to the operator of any MS4 that would receive a discharge from the site.

This automatic authorization permit option is based on construction site conditions that might otherwise qualify for a permit waiver using an R-factor calculation. Instead of requiring the construction site operator to calculate the R-factor for every possible discharge, the executive director calculated time periods within the year where the R-factor is known to be less than five (5). An application for a waiver requires the operator to calculate the R-factor, complete a waiver form, and submit the waiver request, which is described in the next section of this fact sheet.

In developing Appendix A, the executive director used the most conservative assumptions for each county in the state. The annual R-factor values included in the USDA handbooks are annual factors, and the lowest annual R-factor in Texas is ten (10), which occurs only in El Paso County. While no county in Texas would automatically qualify for this automatic authorization option for the entire year, R factors for specific time periods within the year can be identified by multiplying the annual R-factor by the percentage of the total annual isoerodent factor that occurs during the period in question. In Texas, there are ten isoerodent zones that cross state lines, and those are listed in the table below. The map of zones is located in Chapter 2 of USDA Handbook 703: "Predicting Soil Erosion by Water,"

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<http://www.epa.gov/npdes/pubs/ruslech2.pdf>, referenced in EPA Fact Sheet 3.1: "Stormwater Phase II Final Rule – Construction Rainfall Erosivity Waiver" (<http://www.epa.gov/npdes/pubs/fact3-1.pdf>), and is included as Appendix B of the permit.

To identify partial year R-factors less than five (5), the executive director first identified the potential start dates and end dates of construction projects, and then added the correlating total percentages for the time period. In the Erosivity Index (EI) Table developed in the USDA Handbook 703, the first period is always listed as zero (0), and with each period, a portion of the annual percentage is added until the final number for the last period equals or approaches 100 for each isoerodent zone. For the purposes of establishing Appendix A, the TCEQ did not add each period so that the values were larger for each time period; but rather included only the portion of the annual percentage that was attributable to the period in question. The end result was that each EI zone resulted in a value near 100 when all of the periods were added. Where the results were less than 100, the TCEQ included the difference for the first period beginning January 1. This resulted in an increase for several of the EI zones in the first period from zero (0), which results in a more conservative calculation.

Each county is located within one or more EI zones and contains within it a range of annual isoerodent values. For the automatic R factor permitting option, the executive director determined isoerodent zones by identifying the highest isoerodent line that crosses through the county and assigning a value of the next highest isoerodent line, since some value greater than the highest line crossing through the county would be present within the county. Generally, the value of the line located outside of and east of the county was assigned as the value for the county, as the isoerodent values generally increase to the east. The EI zones may be found in the EPA Fact Sheet 3.1 (Figure 2) or in USDA Handbook 703 (Figure 2-1), and are also provided in Appendix B of the permit. The Isoerodent Map is provided at Appendix C of the permit, and is also included in the USDA Handbook 703 and referenced in the EPA Fact Sheet

The R factor for each time period was determined by calculating the percentage of the isoerodent value that is necessary to achieve an R factor of less than five (5). For a small construction activity to be authorized under this provision, construction must commence no earlier than the start date for a specific date range and county listed in Appendix A of the general permit, and final stabilization must occur no later than the end date of that same date range. If a construction project begins during one date range and ends past that same date range (even if it is within another date range for the same county), then the resulting R factor will be over 5, and the automatic authorization is not available. If construction activities last longer than expected so that final stabilization will occur outside of an approved date range, then the operator must either apply for and obtain a waiver, if appropriate, obtain authorization under Section II.E.2. of the general permit, related to all other small construction activities, be developing and implementing an SWP3 and posting the required site notice.

Two example calculations are shown below:

Example No. 1: In El Paso County, the highest annual isoerodent value is ten (10), and El Paso County is located in EI Zone No. 92.

In order to determine the portion of the isoerodent value (referred to below as $A_{X@}$) that would result in an R factor less than 5, the executive director divided the

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maximum allowable R-factor, five (5), by the annual isoerodent value. Then the result was multiplied by 100 to correct for percentage.

$$x < (5 / 10) * 100$$

$$x < 50$$

To achieve an R factor less than five (5) in El Paso County, the EI from Zone 92 (see table below) must be less than 50 when subtracting the value for the start date from the value for the end date, for any period of construction. This is possible for several ranges of dates in the county, and those date ranges are listed in Appendix A.

Example No. 2: In Dallas County, the highest annual isoerodent value for the county is 350, and Dallas County is located in zone 97.

$$x < (5 / 350) * 100$$

$$x < 1.43$$

To achieve an R factor less than five (5) in Dallas County, the EI from Zone 97 (see table below) must be less than 1.43 when subtracting the value for the start date from the value for the end date, for any period of construction. There are no ranges of dates in the county that meet these criteria, and therefore construction sites in Dallas County would not qualify for this automatic authorization.

Table of Erosivity Indices (EI) for EI Zones in Texas:

EI #	1/1	1/16	1/31	2/15	3/1	3/16	3/31	4/15	4/30	5/15	5/30	6/14	6/29	7/14	7/29	8/13	8/28	9/12	9/27	10/12	10/27	11/11	11/26	12/11	12/31
89	0	1	1	2	3	4	7	2	8	27	38	48	55	62	69	76	83	90	94	97	98	99	100	100	100
90	0	1	2	3	4	6	8	13	21	29	37	46	54	60	65	69	74	81	87	92	95	97	98	99	100
91	0	0	0	0	1	1	1	2	6	16	29	39	46	53	60	67	74	81	88	95	99	99	100	100	100
92	0	0	0	0	1	1	1	2	6	16	29	39	46	53	60	67	74	81	88	95	99	99	100	100	100
93	0	1	1	2	3	4	6	8	13	25	40	49	56	62	67	72	76	80	85	91	97	98	99	99	100
94	0	1	2	4	6	8	10	15	21	29	38	47	53	57	61	65	70	76	83	88	91	94	96	98	100
95	0	1	3	5	7	9	11	14	18	27	35	41	46	51	57	62	68	73	79	84	89	93	96	98	100
96	0	2	4	6	9	12	17	23	30	37	43	49	54	58	62	66	70	74	78	82	86	90	94	97	100
97	0	1	3	5	7	10	14	20	28	37	48	56	61	64	68	72	77	81	86	89	92	95	98	99	100
106	0	3	6	9	13	17	21	27	33	38	44	49	55	61	67	71	75	78	81	84	86	90	94	97	100

If an operator cannot meet the automatic authorization option, then a waiver calculation may be performed to determine if the site-specific R-factor is less than five (5) for a small construction site. The waiver option is described below.

2. **Waiver Option:** A small construction site operator may calculate a site-specific R-factor and apply to the TCEQ for a permit waiver. The R-factor would be calculated using site-specific location information to determine the specific isoerodent line to be used in the calculation. The operator may utilize the table in the previous section of this fact sheet to calculate the isoerodent values for the specific zone where the site is located. Alternatively, the operator may reference EPA Fact Sheet 3.1 or USDA Handbook 703. The map of Isoerodent lines is also provided as Appendix C of the general permit. An operator can identify the specific isoerodent line that relates to the site’s location, rather than utilizing the most conservative line that was used to develop Appendix A of the general permit.

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This waiver may be an important option for shorter duration projects in counties that are located in high isoerodent areas, and may also be important for longer duration projects located in portions of counties that have a lower isoerodent value than the conservative protocol that was utilized to develop Appendix A of the general permit.

The operator may calculate a site-specific R-factor using the steps outlined in EPA Fact Sheet 3.1: "Stormwater Phase II Final Rule – Construction Rainfall Erosivity Waiver" (<http://www.epa.gov/npdes/pubs/fact3-1.pdf>), by using the online calculator developed by Texas A&M University: <http://ei.tamu.edu/index.html>, using an alternative mechanism that follows appropriate methodology, or by using the following steps:

- 1) Estimate the construction start date and the construction end date. The construction end date is the date that final stabilization will be achieved.
- 2) Find the EI zone from Appendix B of the general permit.
- 3) Find the EI percentage for the project period by subtracting the EI for the start date of the project from the EI of the end date using the table above. Alternatively, use the table provided in EPA Fact Sheet 2.1 or USDA Handbook 703 in a similar manner, by subtracting the start value from the end value on the table. If the project goes past January 1, add 100 to the end date EI to obtain the appropriate value.
- 4) Refer to the Isoerodent Map (Appendix C of the general permit) and interpolate the annual isoerodent value for the construction site location.
- 5) Multiply the percent value obtained in Step 3 by the annual isoerodent value obtained in Step 4. This is the R factor for the project. If the value is less than 5, then a waiver may be obtained.

Under the waiver option, the operator must submit to the executive director a waiver form approved by the executive director, and must provide a copy of the waiver form to the operator of any MS4 that receives the discharge. The operator is not required to develop an SWP3 nor to post the waiver certification form at the entrance to the small construction site. This waiver does not authorize discharges of non-stormwater that would otherwise be required to be permitted.

E. Qualifying Local Programs

This general permit does not include by reference any qualifying local programs (see federal rules at 40 CFR Section 122.44(s)); however, the permit may be amended in the future to include appropriate programs that are currently being implemented or that will be implemented in the future by regulated municipal separate storm sewer systems (MS4s).

V. Changes from Existing General Permit

- A. Expanded the language in the Impaired Receiving Waters and Total Maximum Daily Load (TMDL) Requirements section. Construction sites discharging to a water quality impaired water body, where the impairment is caused by a pollutant of concern present in stormwater, must be consistent with any condition, goal, or requirement in the TMDL or Implementation Plan (I-Plan). (Part II.C.4 of the general permit).

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- B. Added narrative effluent limitations guidelines for regulated construction sites based on the federal Effluent Limitation Guidelines (ELGs) at 40 CFR Parts 450.21, 450.23, and 450.24, consisting of a series of Best Management Practices (permit Part III.G).
- C. Clarified existing permit requirements using language from EPA's 2012 CGP, as appropriate.
- D. Revised the definition of secondary operator to clarify the conditions under which an individual would be considered a secondary operator.
- E. Revised the permit to allow regulated operators located in drought-stricken areas to reduce the frequency of inspection of sediment and erosion controls to once per month rather than once per two weeks, and kept the requirement to inspect controls within 24 hours of a storm event of 0.5 inches or greater.
- F. Revised the permit to allow construction operators located in arid, semi-arid, or drought-stricken areas the flexibility to implement non-vegetative erosion control measures if vegetative controls are not feasible.
- G. Revised the definition of Final Stabilization to include the requirement for the homebuilder to retain documentation of site stabilization in the SWP3.
- H. Clarified in Parts II.B. and V. that on-site disposal of wash out water from concrete trucks may be authorized under this permit, provided that certain requirements are met and the wastewater is properly contained on site and there is no discharge to surface waters. In the existing permit, this authorization is limited to wash out from concrete trucks associated with off-site concrete production facilities. This change is consistent with the 2012 EPA CGP and provides greater flexibility for regulated operators.
- I. Removed the requirement for the primary operator to post a copy of the signed NOI at the construction site, because the permit already requires that a site notice be posted.
- J. Revised the small construction site waiver effective date so that coverage begins seven (7) days after the date a completed waiver form is postmarked for delivery to TCEQ, or immediately upon receipt of confirmation of approval of an electronic submittal.
- K. Removed the paper copies of the construction site notices from the appendix of the general permit, so that changes to the forms may be made without amending the CGP. Permittees will be able to access these notices from the TCEQ web site.
- L. Removed the requirement for construction operators located in the Edwards Aquifer recharge zone or the Edwards Aquifer contributing zone to submit a copy of the NOI or site notice to the TCEQ regional office.
- M. Updated the data in Appendix D based upon revisions to EPA Fact Sheet 3.1: "Stormwater Phase II Final Rule – Construction Rainfall Erosivity Waiver."
- N. Added the limitation that discharges that would adversely affect a listed endangered or threatened species or its critical habitat are not authorized by the general permit, and site-specific controls may be required to ensure that protection of endangered or threatened species is achieved. This change is consistent with other water quality general permits.
- O. Based on comments from stakeholders, added definitions of Construction Activity, Dewatering, Drought-Stricken Area, Effluent Limitations Guideline, Impaired Water, Minimize, Receiving Water, Steep Slopes, TMDL, Linear Project, and Turbidity.
- P. Minor revisions to the permit were made based on EPA's interim objection letter dated August, 13, 2012. The revisions are outlined in TCEQ's response letter dated August 30, 2012, and included as Attachment A of this fact sheet.

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VI. Addresses

Questions concerning this general permit may be sent to:

TCEQ, Stormwater & Pretreatment Team Leader
Wastewater Permitting Section (MC 148)
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-4671
swgp@tceq.texas.gov

Comments regarding the proposed general permit during the public comment period must be submitted either by mail to the following address, by facsimile (fax) followed by mail, or electronically as described below (please refer to the public notice for official instructions):

By Mail:

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

By Fax: (512) 239-3311*

*Fax must be followed by hard copy in mail to CCO at address above within three days of fax date.

Electronically: www10.tceq.texas.gov/epic/ecmnts/

Questions regarding public comments should be directed to CCO: (512) 239-3300

Supplementary information on this Fact Sheet is organized as follows:

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

VII. Legal Basis

Texas Water Code (TWC) §26.121 makes it unlawful to discharge pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order. 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 (H.B.) 1542 in the 75th Legislature, 1997, and to authorize waste discharges by general permit. On September 14, 1998, the TCEQ received authority from the U.S. Environmental Protection Agency (EPA) to administer the Texas Pollutant Discharge Elimination System (TPDES) program. The commission and the EPA have signed a Memorandum of Agreement (MOA) that authorizes the administration of the TPDES program by the commission as it applies to the State of Texas.

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

VIII. Regulatory Background

In 1990, EPA promulgated rules establishing Phase I of the NPDES stormwater program. Among other discharges, Phase I addresses discharges from large construction activities disturbing five acres or more of land. The Phase I NPDES stormwater rule identifies eleven (11) categories of industrial activity in the definition of Astormwater discharges associated with industrial activity@ that must obtain an NPDES permit. Category (x) of this definition is construction activity, commonly referred to as Alarge@ construction activity. Under category (x), the Phase I rule requires all operators of construction activities disturbing five acres or greater of land to apply for an NPDES stormwater permit before beginning construction. Operators of sites disturbing less than five acres are also required to obtain a permit if their activity is part of a Alarger common plan of development or sale@ with a planned disturbance of five acres or greater. ADisturbance@ refers to exposed soil resulting from activities such as clearing, grading, and excavating. Construction activities can include road building, construction of residential houses, office buildings, industrial sites, or demolition.

In 1992, the US Court of Appeals for the Ninth Circuit remanded portions of the existing Phase I stormwater regulation to the EPA. The remanded portions related to the category (x) of stormwater discharges associated with industrial activity, specifically, discharges from large construction activity (NRDC v. EPA, 966 F.2d at 1292). EPA responded to the Court=s decision by designating stormwater discharges from construction activity disturbing less than five acres as sources that should be regulated to protect water quality. The Phase II Rule designated those sources as Astormwater discharges associated with *small construction* activity,@ rather than as another category under Astormwater associated with *industrial* activity.@ Phase II of the NPDES stormwater program requires authorization for small site construction activities disturbing between one and five acres. Phase II rules were final on December 8, 1999 and required authorizations be issued by March 10, 2003.

The Stormwater Phase II Rule automatically designated, as small construction activity under the NPDES stormwater permitting program, all operators of construction site activities that result in a land disturbance of equal to or greater than one and less than five acres. Site activities disturbing less than one acre are also regulated as small construction activity if they are part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and less than five acres, or if they are designated by the NPDES permitting authority.

On September 14, 1998, the TCEQ received authority to administer the NPDES permit program in Texas (the TPDES program), for those discharges under the regulatory authority of the commission. Under the MOA between the two agencies, EPA agreed to continue to administer the construction stormwater general permit until the July 7, 2003 expiration date. The original TPDES CGP was issued on March 5, 2003 and expired on March 5, 2008. The current CGP was issued on February 15, 2008, effective on March 5, 2008, and will expire on March 5, 2013. This proposed general permit would continue authorization for regulated construction activities in Texas for five years from the effective date of the renewed permit. The commission expects to reissue this general permit prior to the expiration date of the current permit, in which case the renewed permit would supersede and replace the existing permit.

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On December 1, 2009, the EPA published ELGs and new source performance standards (NSPS) in 40 CFR Part 450, to control the discharge of pollutants from construction sites. All construction sites required to obtain permit coverage were required to implement a range of erosion and sediment controls and pollution prevention measures. The ELGs included a numeric effluent limitation for turbidity of 280 nephelometric turbidity units (NTU). Subsequently the EPA withdrew the limit to correct a calculation error that was identified in petitions filed by the Small Business Administration and the National Association of Homebuilders. On January 4, 2011, the EPA stayed indefinitely the turbidity effluent limit of 280 NTU in order to seek additional treatment performance data from construction and development sites before proposing a revised numeric turbidity limit. On February 16, 2012, the EPA issued their 2012 CGP which includes the new Construction and Development ELGs. The EPA CGP does not include the numeric effluent limitation for turbidity.

IX. Permit Coverage

- A. The proposed general permit would apply to discharges of stormwater runoff associated with construction activities, stormwater runoff associated with certain other supporting industrial activities, and certain non-stormwater discharges, into Waters of the United States. The general permit specifies which facilities are eligible for authorization by the general permit, which must be authorized by an alternative individual or general permit, and the specific conditions that must be met in order to be excluded from the requirement to develop an SWP3 and from the requirement to submit a notice of intent. The guidelines for small site construction activities were published in the *Federal Register* on December 8, 1999 (64 FR 68722).

The general permit defines large and small construction activities, and includes requirements for both. The general permit specifies that a smaller project is regulated if it is part of a larger common plan of development or sale that will disturb one or more acres. A common plan of development or sale is defined in the permit as a construction activity that is completed in separate stages, separate phases, or in combination with other construction activities, that is identified by the documentation for the construction project that identifies the scope of the project. A common plan of development does not necessarily include all construction projects within the jurisdiction of a public entity (e.g., a city or university). Construction of roads or buildings in different parts of the jurisdiction would be considered separate "common plans," with only the interconnected parts of a project being considered part of a "common plan" (e.g., a building and its associated parking lot and driveways, airport runway and associated taxiways, a building complex, etc.). Where discrete construction projects occur within a larger common plan of development or sale but are located ¼ mile or more 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 included in the area to be disturbed.

An example of a smaller construction project that is regulated under the general permit would include the building of single houses on lots of a quarter-acre each within a larger residential development of 5 or more acres. Any primary operator constructing single homes within that development would be regulated as an operator of a large construction activity, and required to develop an SWP3 and submit an NOI. If the development was generally completed, then a builder may be able to look at the size of the remaining area to be disturbed in determining the size of the larger common plan of development or sale by answering a two part question. First, was the original plan, including modifications, ever substantially completed with less than one acre of the original "common plan of development or sale" remaining (e.g., <1 acre of the "common plan" was not built out at the time)? If so, then was there a clearly identifiable period of

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time with no on-going construction, including meeting the criteria for final stabilization? If the answer to both of the questions is "yes," then it would be appropriate to consider the new project of less than one acre as a new common plan of development. Another example of a "new" common plan of development or sale would be the addition of a swimming pool, fence, or similar addition to a lot by a homeowner after having purchased the lot. Even if the rest of the homes have not been built, the additional construction by the homeowner would be its own common plan unless it was specifically delineated in the plans for the overall development.

- B. A primary operator seeking authorization to discharge stormwater runoff from a large construction site under this general permit must submit a completed Notice of Intent (NOI) on a form approved by the executive director, and must also complete the required site notice and post the notice at the construction site. The NOI shall include, at a minimum, the legal name and address of the construction site operator, the facility name and address, a specific description of the site location, (including the street address, if applicable, and county), the type of construction occurring, the name of the receiving water, and any other information requested by the executive director. A secondary operator of a large construction site and an operator of a small construction site seeking authorization under this permit must complete the applicable site notice and post the notice at the construction site.

Applicants can locate information regarding the classified segment(s) receiving the discharges from the construction site in the "Atlas of Texas Surface Waters" or the TCEQ's Surface Water Quality Viewer, at the following TCEQ web addresses. These documents include identification numbers, descriptions, and maps:

Atlas of Texas Surface Waters:

<http://www.tceq.texas.gov/publications/gi/gi-316/index.html>

Surface Water Quality Viewer:

<http://www.tceq.texas.gov/waterquality/monitoring/viewer.html>

Applicants 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.texas.gov/waterquality/assessment/305_303.html

- C. Submission of an NOI or signing of the required site notice is an acknowledgment that the conditions of the general permit are applicable to the proposed discharges and that the applicant agrees to comply with the conditions of the general permit. Provisional authorization to discharge under the terms and conditions of the general permit begins seven (7) days after a completed NOI is postmarked for delivery to the TCEQ, or immediately upon receipt of confirmation by TCEQ of an administratively complete NOI submitted electronically, unless otherwise specified in the general permit. If submitting a paper copy of the NOI, the NOI must be mailed to the address indicated on the NOI form. Following review of the NOI, the executive director will either confirm coverage by providing a notification and an authorization number to the applicant or notify the applicant that coverage under this general permit is denied. Operators of existing sites that are required to submit an NOI for coverage must do so within the timeframe specified in the general permit in order to maintain authorization for the construction activity. Small construction sites must post the required site notice as required in the general permit.

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- D. Coverage under the general permit is not transferable. If the primary operator of a large construction activity changes, then the original operator must submit a Notice of Termination (NOT) within 10 days prior to the date that responsibility for operations terminates and the new operator must submit a NOI at least ten (10) days before assuming operational control. A change in operator includes changes to the structure of a company, such as changing from a partnership to a corporation, or changing corporation types that changes the filing (or charter) number with the Texas Secretary of State. Operators of small construction activities and secondary operators of large construction activities must remove the original site notice for the original operator, and the new operator must post the required site notice prior to assuming operational control for the site.
- E. A primary operator of a large construction activity must submit current information to the executive director by submitting a Notice of Change (NOC) not later than 14 days before a change in information previously provided to the executive director in a NOI occurs (examples of changes may include changes to the operator's mailing address, a change to the project name, or an increase in the size of the project). If an NOC form is available, the operator must use the TCEQ-approved form. However, if an NOC form is not available, the operator may submit a letter requesting the change. NOC forms and letters must be signed by a person authorized to sign permit applications. An operator of a small construction activity and a secondary operator of a large construction activity may revise the information in the required site notice.
- F. A primary operator of a large construction activity may terminate coverage under the general permit when all construction activity has ceased 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 immediately following confirmation of receipt of the electronic NOT form by the TCEQ, unless otherwise specified in the general permit. An operator of a small construction activity and a secondary operator of a large construction activity may terminate coverage under the general permit by removing the required site notice after final stabilization has been met.

X. Technology-Based Requirements

- A. Construction and Development Effluent Limitations Guidelines (ELGs), 40 CFR Parts 450.21, 450.23, and 450.24

Technology-based effluent limitations must be included in the proposed general permit. With regard to conventional pollutants, CWA §301 (b)(1)(E) requires effluent limitations based on "best conventional pollution control technology" (BCT). The BCT effluent limitations may never be less stringent than corresponding effluent limitations based on best practicable control technology (BPT), a standard applicable to similar discharges before March 31, 1989 under CWA §301(b)(1)(A).

The general permit includes a requirement for construction operators to comply with the new federal construction and development ELGs outlined in 40 CFR Parts 450.21, 450.23, and 450.24. TCEQ adopted these guidelines by reference in 30 TAC §305.541.

The BPT effluent limitations (40 CFR §450.21) and BCT effluent limitations (40 CFR §450.23) are narrative in nature and are achieved through the implementation of BMPs.

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Except as provided in 40 CFR §§125.30-125.32, any discharge regulated under this general permit, with the exception of sites that obtained waivers based on low rainfall erosivity, must achieve, at a minimum, the following effluent limitations representing the degree of effluent reduction attainable by application of the BPT currently available.

1. *Erosion and sediment controls.* Design, install, and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed, and maintained to:
 - (a) Control stormwater volume and velocity within the site to minimize soil erosion;
 - (b) If any stormwater flow will be channelized at the site, stormwater controls must be designed to control both peak flowrates and total stormwater volume to minimize erosion at outlets and to minimize downstream channel and streambank erosion;
 - (c) Minimize the amount of soil exposed during construction activity;
 - (d) Minimize the disturbance of steep slopes;
 - (e) Minimize sediment discharges from the site. The design, installation, and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
 - (f) If earth disturbance activities are located in close proximity to a surface water, provide and maintain appropriate natural buffers or equivalent sediment controls if feasible and as necessary, around surface waters, depending on site-specific topography, sensitivity, and proximity to water bodies. Direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration. If providing buffers is infeasible, the permittee shall document the reason that natural buffers are not feasible, and shall implement additional erosion and sediment controls to reduce sediment load;
 - (g) Preserve native topsoil at the site, unless infeasible; and
 - (h) Minimize soil compaction in post-construction pervious areas. In areas of the construction site where final vegetative stabilization will occur or where infiltration practices will be installed, either:
 - (1) restrict vehicle and equipment use to avoid soil compaction; or
 - (2) prior to seeding or planting areas of exposed soil that have been compacted, use techniques that condition the soils to support vegetative growth, if necessary and feasible;
 - (i) TCEQ does not consider stormwater control features (e.g., stormwater conveyance channels, storm drain inlets, sediment basins) to constitute "surface waters" for the purposes of triggering the buffer requirement in Part III.G.(f) above.
2. *Soil stabilization.* Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. In the context of this requirement, "immediately" means as soon as practicable, but no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased. Temporary stabilization must be completed no more than 14 calendar days after initiation of soil stabilization measures, and final stabilization must be achieved prior to termination

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of permit coverage. In arid, semi-arid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative non-vegetative stabilization measures must be employed as soon as practicable. Refer to Part III.F.2.(b) of the permit for complete erosion control and stabilization practice requirements.

3. *Dewatering*. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited, unless managed by appropriate controls.
4. *Pollution prevention measures*. Design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
 - (a) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
 - (b) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
 - (c) Minimize the discharge of pollutants from spills and leaks, and implement chemical spill and leak prevention and response procedures.
5. *Prohibited discharges*. The following discharges are prohibited.
 - (a) Wastewater from wash out of concrete trucks, unless managed by an appropriate control (see Part V of the general permit);
 - (b) Wastewater from wash out and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
 - (c) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
 - (d) Soaps or solvents used in vehicle and equipment washing.
6. *Surface Outlets*. When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible.

B. Stormwater Pollution Prevention Plan (SWP3)

The general permit continues the requirement to develop and implement an SWP3 to control discharges of stormwater associated with construction activities, in accordance with the NPDES program. Conditions of the proposed general permit have been developed to comply with the technology-based standards of the Clean Water Act.

The general permit is based on a series of BMPs, in the form of a required SWP3, rather than numeric limitations, to prevent or minimize pollutants in stormwater discharges. BMPs may include erosion controls, sediment controls, stabilization practices, and nonstructural controls. Erosion controls provide the first line of defense in preventing off-site sedimentation and are designed to prevent erosion through protection and preservation of soil. Sediment controls are designed to remove sediment from runoff before the runoff is discharged from the site. Sediment and erosion controls can be further divided into two major classes of controls: stabilization practices and structural practices. Part IV.B. of this fact sheet describes the elements of the required SWP3. The

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SWP3 must comply with the new construction and development effluent guidelines in Part III, Section G of the general permit.

Small construction sites that obtain automatic authorization based on the precalculated R factor, or that receive a waiver from coverage based on a calculated R factor, are not required to prepare an SWP3.

C. Benchmark Monitoring Requirements

The 1998 NPDES Construction General Permit for EPA Region 6 for large construction activities included numeric effluent limitations for stormwater discharges from concrete batch plants in Texas. The original TPDES construction general permit continued these limits and applied them to all regulated construction activities. The TCEQ's original recommendation on the NPDES CGP was based on the requirements for wastewater and contact stormwater found in TCEQ's authorization by rule for concrete production facilities, 30 TAC §321.155. The proposed general permit continues the benchmark sampling requirements, BMPs, and SWP3 requirements for the stormwater-only discharges from concrete batch plants that are found in the 2008 TCEQ CGP. This is consistent with TCEQ's Multi Sector General Permit (MSGP) for discharges of stormwater runoff associated with industrial activity and with TCEQ's Wastewater General Permit for Concrete Production Facilities, TXG110000. The following proposed benchmark monitoring requirements are applicable to all discharges from concrete batch plants, and are not applicable to other discharges described in the general permit:

Benchmark Parameter	Benchmark Value
Oil and Grease	15 mg/L
Total Suspended Solids	100 mg/L
pH	6.0 - 9.0 Standard Units
Total Iron	1.3 mg/L

Sampling for the above parameters is required to be conducted at each outfall that includes stormwater runoff from a concrete batch plant. Sampling is required at each regulated construction site that utilizes a concrete batch plant authorized under this permit. A concrete batch plant may alternatively be authorized under another TPDES individual or applicable general permit.

Sampling is required at a frequency of once per quarter when discharge occurs. Sampling shall be conducted during the following periods: First quarter - January through March; second quarter - April through June; third quarter - July through September; and fourth quarter - October through December. Applicants shall begin sampling in the first full quarter following submission of the NOI. For projects lasting less than one full quarter, a minimum of one sample shall be collected, provided that a discharge occurred at least once following submission of the NOI or automatic authorization.

XI. Water Quality-Based Requirements

The Texas Surface Water Quality Standards (TSWQS) are located at 30 TAC Chapter 307, and state that "surface waters will not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with skin, or to terrestrial or aquatic life."

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The methodology outlined in the *Procedures to Implement the Texas Surface Water Quality Standards*, RG-194 (January 2003) 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 wastewater 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.

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 of the receiving stream, 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 data bases to determine the adequacy of technology-based permit limits and the need for additional water-quality based controls.

TPDES stormwater permits generally do not contain water-quality-based effluent limits (WQBELs). As stated in 30 TAC ' 307.8(e), controls on the quality of permitted stormwater discharges are largely based on implementing BMPs or technology-based limits in combination with instream monitoring to assess standards attainment and to determine whether additional controls on stormwater are needed. Typically, a combination of stabilization practices, structural practices, and non structural BMPs are necessary throughout a construction site to provide adequate water quality protection. It has been preliminarily determined that if permit requirements are properly implemented, no significant degradation is expected and existing uses will be maintained and protected.

XII. Monitoring

No discharge monitoring is proposed for this general permit beyond those described in Part X.B. of this fact sheet, related to benchmark sampling applicable to stormwater runoff associated with concrete batch plants. This approach is continued from the existing general permit.

XIII. Procedures for Final Decision

The memorandum of agreement (MOA) between the EPA and TCEQ provides that EPA has up to 90 days to comment, object, or make recommendations to the general permit before it is published in the Texas Register. 30 TAC Chapter 205 requires that when the general permit is proposed, the executive director must publish notice, in at least one newspaper of statewide or regional circulation. The TCEQ 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
- D. any other person the executive director or chief clerk may elect to include.

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After notice of the initial draft permit (IDP) is published in the Texas Register and the newspaper, the public will have at least 30 days to provide public comment on the IDP. A public meeting will be held at the end of the public comment period. 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 public will be given notice of the date, time, and place of the meeting, as required by commission rules. The executive director will respond to all significant public comments raised during the public comment period and make the response available to the public. The proposed general permit will then be filed with the commission to consider final approval of the permit. The executive director's response to public comment will be made available to the public at least ten days before the commission acts on the proposed general permit.

XIV. 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

40 CFR Parts 122, 124, 450.21, 450.23, and 450.24

Federal Register dated February 29, 2012 (Volume 77, No. 40, Pages 12286-12293), Resissuance of NPDES General Permits for Stormwater Discharges From Construction Activities in Region 6; Notice.

Federal Register dated November 5, 2010 (75 FR 68217)

Federal Register dated March 8, 2010 (75 FR 10439)

Federal Register dated December 1, 2009 (74 FR 63057)

Federal Register dated December 8, 1999 (64 FR 68722)

B. Letters/Memoranda/Records of Communication

Interoffice Memorandum from the TCEQ Water Quality Standards Team.

Public comments received during the initial stakeholder meeting.

Public comments received during the public notice period for the draft permit.

EPA Interim Objection Letter from Hosch (EPA) to Linendoll (TCEQ) dated August 13, 2012.

TCEQ Response Letter from Linendoll (TCEQ) to Hosch (EPA) dated August 30, 2012.

C. Miscellaneous

TPDES Construction General Permit (CGP) TXR150000, issued on February 15, 2008 and effective on March 5, 2008.

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U.S. Environmental Protection Agency's Fact Sheet No. 3.1, *Stormwater Phase II Final Rule - Construction Rainfall Erosivity Waiver*, January 2001 (EPA 833-F-00-014), revised March 2012.

Agriculture Handbook No. 282, *Predicting Rainfall-Erosion Losses from Cropland East of the Rocky Mountains, Guide for Selection of Practices for Soil and Water Conservation*, U.S. Department of Agriculture, Agricultural Research Service, in Cooperation with Purdue Agricultural Experiment Station.

Agriculture Handbook No. 703, *Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE)*, U.S. Department of Agriculture, Agricultural Research Service.

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 §§307.1 - 307.10, effective August 17, 2000.

Procedures to Implement the Texas Surface Water Quality Standards, Texas Commission on Environmental Quality, Publication RG-194, January 2003.

TNRCC Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits, TNRCC Document No. 98-001.000-OWR-WQ, May 1998.

TCEQ Rules, including: 30 TAC Chapters 39, 205, 213, 281, 305, 307, 309, 311, 313, 319, 321, and 331.

TPDES General Permit No. TXR050000, the Multi Sector General Permit (MSGP), issued on July 22, 2011 and effective on August 14, 2011.

TPDES General Permit No. TXG110000, issued on November 4, 2011, and effective on November 7, 2011.

EPA NPDES Construction General Permit (CGP), issued February 16, 2012.

TCEQ Response to EPA Interim Objection Letter

1. Draft Permit Cover Page

EPA Objection:

Cover page language states “Construction sites that discharge stormwater associated with construction activity located in the state of Texas may discharge directly to surface water in the state...” 40 CFR 122.1(b) states that “The NPDES program requires permits for the discharge of ‘pollutants’ from any ‘point source’ into ‘waters of the United States.’” This regulation does not specify direct discharge to waters of the US, therefore the term “direct” shall be removed from the cover page language. For example, a discharge that first enters an unregulated municipal separate storm sewer and is then conveyed to a water of the US could be construed as an indirect discharge, but is still regulated as a discharge of pollutants to a water of the US.

TCEQ Response:

The draft permit was modified as suggested. The term “directly” was removed from the permit cover page.

2. Draft Permit Part I.A.1, (p.5) - Flow Chart and Definitions

EPA Objection:

The flow chart indicates that construction activities less than one acre do not require permit coverage and direct operators to Part I.B, “Definitions,” for an explanation of “larger common plan of development or sale” to determine the size of the construction project. To prevent confusion and ensure compliance with 40 CFR 122.26(b)(15)(i), the flow chart shall be modified to direct operators to obtain permit coverage for small construction activity disturbing less than one acre of land that is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than one acre (or add “unless part of a larger plan of development or sale” to the existing language).

TCEQ Response:

The flow chart was modified as suggested. The statement “Unless Part of a Larger Common Plan of Development or Sale” was added to the flow chart.

3. Draft Permit Part II.C.3, (p.13) - Compliance With Water Quality Standards

EPA Objection:

Language at II.C.3 states that “Discharges to surface water in the state that would cause or contribute to a violation of water quality standards...The executive director may require an application...to authorize discharges to surface waters in the state from any activity that is determined to cause a violation of water quality standards or is found to cause, or contribute to, the loss of a designated use.” To ensure compliance with 40 CFR 122.44(d)(1)(i), language at II.C.3 shall be modified to “Discharges to surface water in the state that would cause, have the reasonable potential to cause, or contribute to a violation of water quality standards... The executive director may require an application...to authorize discharges to surface waters in the state if the executive director determines from that any activity ~~that is determined to will~~ cause, has the reasonable potential to cause, or contribute to, a violation of water quality standards or is found to cause, have the reasonable potential to cause, or contribute to, the ~~loss~~ impairment of a designated use.”

TCEQ Response:

The draft permit was modified as suggested. Language regarding “reasonable potential to cause” was added as stated in 40 CFR §122.44(d)(1)(i).

TCEQ Response to EPA Interim Objection Letter

4. Draft Permit Part III.F, (pp. 26-29) – Contents of SWP3

EPA Objection:

Although language at III.F states that “The SWP3 must include...and comply with construction and development effluent limitation guidelines in Part III, Section G of the general permit.”, all requirements of this section are not included in III.F. To ensure compliance with 40 CFR 450, you shall:

- a) modify language at III.F.2(b) to clarify compliance requirements – “The SWP3 must include a description of temporary and permanent erosion control and stabilization practices for the site, compliant with the requirements of Part III.G.1 and G.2 of this general permit...”
- b) modify language at III.F.2(c) to include a requirement to comply with III.G.6.
- c) include a SWP3 requirement to describe pollution prevention procedures that comply with III.G.4.
- d) modify language at III.F.4 to include a requirement that other required controls and BMPs comply with all of the requirements of III.G.

TCEQ Response:

The draft permit was modified as suggested.

5. Draft Permit Part VII, (p.39-40) – Standard Permit Conditions

EPA Objection:

40 CFR 122.41 requires all conditions applicable to NPDES permits be incorporated into permits. The following permit conditions were either not incorporated into the draft permit or shall be modified to be consistent with 40 CFR 122.41:

- a) to comply with 122.41(a)(1), language at VII.1 shall be modified to “Failure to comply with any permit condition...and is grounds for enforcement action, for terminating, revoking, or denying permit coverage under this general permit...”
- b) to comply with 122.41(a)(2), language at VII.5 shall be modified to include knowingly violating section 303 of the Clean Water Act and placing another person in imminent danger of death or serious bodily injury to the penalties that a discharge may be subject to
- c) to comply with 122.41(d), 122.41(e), and 122.41(l), you shall incorporate the duty to mitigate, proper operation and maintenance, and reporting requirements permit conditions.

TCEQ Response:

The draft permit was modified as suggested and the above-referenced permit conditions were incorporated into the draft permit.

ANTIBACKSLIDING CONCERNS

6. Draft Permit Part II.E.8(f), (p.19) – Contents of the NOI

EPA Comment:

Language in the March 5, 2008 permit requiring operators to confirm that a SWP3 had been developed, would be implemented prior to construction, and was compliant with any applicable local sediment and erosion control plans, was removed from the current draft permit. It is not clear how the anti-backsliding regulation at 40 CFR 122.44(l)(1) was satisfied.

TCEQ Response to EPA Interim Objection Letter

TCEQ Response:

The draft permit was modified as suggested. The TCEQ added back “that it will be implemented prior to construction, and that it is compliant with any applicable local sediment and erosion control plans” to the end of Part II.E.8(f). The initial removal of the language in the draft permit was not an attempt by the TCEQ to make the permit less stringent, or to avoid any applicable local sediment and erosion control requirements for permittees; however, TCEQ does not agree with EPA’s position that removal of this provision would constitute backsliding.

CLARIFICATION QUESTIONS

7. Draft Permit Part II.A.2(b), (p.12) – Discharges Eligible for Authorization

EPA Comment:

Language at II.A.2(b) states that “Discharges of stormwater runoff from construction support activities may be authorized under this general permit, provided that... an SWP3 is developed...” Is a separate authorization and/or SWP3 required for a support activity, or will coverage for a support activity be part of the permitted construction activity if the SWP3 includes the support activities?

TCEQ Response:

The draft permit was modified to clarify that construction support activities are authorized under the general permit as part of a permitted construction activity, and do not require a separate authorization and/or an SWP3 of their own.

8. Draft Permit Part II.E.3(e), (p.17) – Authorization for Large Construction Activities

EPA Comment:

Language at III.E.3(e) states “All persons meeting the definition of “secondary operator”... are regulated under this general permit but are not required to submit an NOI, provided that another operator(s) at the site has submitted an NOI, or is required to submit an NOI and the secondary operator has provided notification to the operator(s) of the need to obtain permit coverage. Is this secondary operator required to develop and maintain a SWP3? Is TCEQ suggesting that because secondary operator (SO) #1 has submitted an NOI and SO #2 has informed SO #1 of his need for permit coverage, SO #2 is covered under this general permit? Shouldn’t a secondary operator only be able to obtain coverage without submitting an NOI if an Authorized Primary Operator includes the secondary operator in his SWP3?”

TCEQ Response:

The draft permit was modified from the existing permit to clarify that a secondary operator is not required to submit an NOI, provided that a *primary* operator at the site has submitted an NOI, or is required to submit an NOI, and the secondary operator has provided notification to the operator(s) of the need to obtain coverage (with records of notification available upon request). Secondary operators must either prepare their own SWP3 that covers the areas of the construction site where they have control over the plans and specifications, or they must ensure that the shared SWP3 contains this information. The Secondary Operator Site Notice form includes a certification statement that must be signed to certify that an SWP3 has been developed and will be implemented prior to construction. All permitted operators at a regulated construction site must comply with the requirements in Part III.B of the general permit. Please refer to the definition of Secondary Operator on page 9 of the draft permit for clarification.

TCEQ Response to EPA Interim Objection Letter

9. Draft Permit Part III.B, (pp.24-25) – Responsibilities of Operators

EPA Comment:

Language at II.E.2(a) requires small construction activity operators to develop a SWP3. Additionally, language at II.E.3 does not exclude a large construction activity secondary operator from developing a SWP3. Why aren't all operators, who must develop a SWP3, required to comply with III.B.1 and III.B.2?

TCEQ Response:

See above response to Comment No. 8.

RECOMMENDATIONS

10. Draft Permit Part II.A, (pp.11-12) – Discharges Eligible for Authorization

EPA Comment:

Part II.A.2 does not specify that a support activity is not a commercial operation, nor does a support activity serve multiple unrelated construction projects.

TCEQ Response:

The draft permit was modified to specify that construction support activities authorized under the general permit are not commercial operations, and do not serve multiple unrelated construction projects.

11. Draft Permit Part II.C.4, paragraph 2, (p.13) – Impaired Receiving Waters and Total Maximum Daily Load (TMDL) Requirements

EPA Comment:

For discharges to a surface water that is impaired for (1) sediment or a sediment-related parameter (*e.g., total suspended solids (TSS) or turbidity*) and/or (2) nutrients (*e.g., nitrogen and/or phosphorus*), including impaired waters for which a TMDL has been approved or established for the impairment, EPA strongly recommends you require operators to complete the stabilization activities specified in Part III.F.2(b)(iii) within 7 calendar days after the temporary or permanent cessation of earth-disturbing activities.

TCEQ Response:

The TCEQ declined to make the recommended change. The TCEQ believes that the existing stabilization requirements in Part III.F.2(b)(iii) of the draft permit are sufficiently protective of water quality for construction sites that discharge to sediment-impaired receiving waters, including those for which a TMDL has been approved or established for the impairment. Should the TMDL require such management practices, the permit requires compliance with such requirements.

12. Draft Permit Part II.E.3, (p.17) – Authorization for Large Construction Activities

EPA Comment:

- a) Language at II.E.3(b) states “primary operators must submit an NOI...at least 7 days prior to commencing construction activities, or if using electronic submittal, prior to commencing construction activities. If an additional primary operator is added after the initial NOI is submitted..., or if utilizing electronic NOI submittal, prior to assuming operational control.” To ensure primary and secondary operators do not expect discharge authorization to begin prior to confirmation of coverage through receipt of a

TCEQ Response to EPA Interim Objection Letter

notification and authorization number, it is recommended you add language referencing II.E.5(b) to II.E.3.

TCEQ Response:

The TCEQ declined to make the recommended change. The TCEQ believes that the existing language in the draft permit is appropriate as is. Primary operators who submit their NOIs electronically are authorized immediately upon receipt of the NOI by the TCEQ, unless otherwise notified by the executive director. Primary operators, who submit their NOI by mail, are provisionally authorized seven (7) days from the date the NOI is postmarked. They are not required to wait until they receive an authorization certificate from the TCEQ before they can begin construction.

EPA Comment:

- b) Language at II.E.3(c) no longer requires primary operators to post a copy of the signed NOI at the construction site and maintain the NOI in that location until completion of the construction activity. Site notices often provide the only way for interested parties to determine who is doing the construction and if they are actually permitted. The construction permit enforcement program is particularly reliant on citizen complaints to target limited enforcement resources. It is recommended the site notice posted reference the NOI authorization number. (Same recommendation for Part III.D.2)

TCEQ Response:

TCEQ declined to make the recommended change because both the existing primary and secondary site notices for large construction activities have a section for the operator to write in the site-specific TPDES authorization number.

EPA Comment:

- c) Language at II.E.3(e) does not clearly indicate that large construction activity secondary operators must develop a SWP3. To ensure these operators understand they are required to develop a SWP3, it is recommend you add language to II.E.3(e) clarifying this requirement.

TCEQ Response:

The TCEQ declined to make the recommended change. The TCEQ believes that the existing language in the draft permit is appropriate as is. See response to Comment No. 8.

13. Draft Permit Part III, (p.23) – Stormwater Pollution Prevention Plans (SWP3)

EPA Comment:

The first sentence of this section states “All regulated construction site operators shall prepare a SWP3 to address discharges authorized...” To ensure operators understand that the SWP3 shall be developed prior to submittal of the NOI, it is recommended you modify language to “All regulated construction site operators shall prepare a SWP3, prior to submittal of an NOI, to address discharges authorized...”

TCEQ Response:

The draft permit was modified as suggested.

14. Draft Permit Part III.F, (p.26) – Contents of SWP3

EPA Comment:

- a) It is recommended you add “including estimated start dates and duration of activity” immediately following the language at F.1(c).

TCEQ Response to EPA Interim Objection Letter

TCEQ Response:

The draft permit was modified as suggested.

EPA Comment:

- b) It is recommended you include the site topography as a required detail of the site map at F.1(g).

TCEQ Response:

The TCEQ declined to make the recommended change because Part III.F.1(g)(i) of the draft permit already contains a requirement that the site map must indicate anticipated drainage patterns and slopes, which are essentially equivalent to “topography.”

EPA Comment:

- c) It is recommended you modify the language at F.1(g)(i) to “drainage patterns, ~~and~~ approximate slopes anticipated before and after major grading activities, and authorized non-stormwater flow onto, over and from the site property:”

TCEQ Response:

The draft permit was modified as suggested with the exception of the language referencing the non-stormwater flow. The TCEQ declined to include this language to prevent unnecessary confusion caused by the word “authorized.” If an allowable non-stormwater flow was present at the construction site, it should discharge through one of the permitted outfalls.

EPA Comment:

- d) It is recommended you modify the language at F.1(g)(iii) to “locations of all ~~major erosion and sediment~~ controls and ~~natural~~ buffers, either planned or in place;

TCEQ Response:

The draft permit was modified as suggested.

EPA Comment:

- e) It is recommended you modify the language at F.1(g)(v) to “...including material, waste, borrow, fill, or equipment or chemical storage areas;”

TCEQ Response:

The draft permit was modified as suggested.

EPA Comment:

- f) It is recommended you add “indicating impaired or sensitive waters” immediately following the language at F.1(g)(vi).

TCEQ Response:

The draft permit was modified as suggested; however, the TCEQ declined to add the word “sensitive” to the permit language, as this term is undefined.

EPA Comment:

- g) It is recommended you add “and designated sites where vehicles will exit onto paved roads” immediately following the language at F.1(g)(viii).

TCEQ Response:

The draft permit was modified as suggested.

TCEQ Response to EPA Interim Objection Letter

EPA Comment:

- h) It is recommended you require the following information to be included in the site or project description at F.1:
- i. stormwater and allowable non-stormwater discharge locations, including storm drain inlets on the site and in the immediate vicinity of the site
 - ii. locations of all pollutant-generating activities, such as paving operations; concrete, paint and stucco washout and water disposal; solid waste storage and disposal; and dewatering operations

TCEQ Response:

The draft permit was modified as suggested.

EPA Comment:

- i) It is recommended you modify the language at F.7(a) to include a requirement to record total rainfall measured and the beginning and ending dates of a winter and drought conditions resulting in monthly frequency of inspections.

TCEQ Response:

The draft permit was modified as suggested.

EPA Comment:

- j) It is recommended you modify the language at F.7(d) to "...If existing BMPs are modified or if additional BMPs are necessary, an implementation schedule of the corrective action must be described in the SWP3 and..."

TCEQ Response:

The TCEQ declined to make the change because updating BMPs is not a corrective action. The TCEQ believes that an implementation schedule for the revised BMPs as currently worded is sufficient.

TYPOGRAPHICAL OR GRAMMATICAL COMMENTS

EPA Comment:

Draft Permit Part I.A.1, (p.5) – Flow Chart and Definitions – Footnote (*1) refers readers to Part I.B, "Definitions," for an explanation of "larger common plan of development or sale" rather than to the definition of "Common Plan of Development" provided at I.B.

TCEQ Response:

The draft permit was modified as suggested.

EPA Comment:

Draft Permit Part II.E.2, paragraph 5, (p.16) – Automatic Authorization For All Other Small Construction Activities – reference of Part I should be Part I.B for clarity.

TCEQ Response:

The draft permit was modified as suggested.

EPA Comment:

Draft Permit Part III.F.7(b), paragraph 1, (p.31) – Inspections of Controls – reference Part III.F.8(a) in the first sentence and second to last sentence of the paragraph rather than Part III.F.7(a).

TCEQ Response:

The draft permit was modified as suggested.

Texas Commission on Environmental Quality

P.O. Box 13087, Austin, Texas 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

This permit supersedes and replaces
TPDES General Permit No. TXR150000, issued March 5, 2008

Construction sites that discharge stormwater associated with construction activity
located in the state of Texas
may discharge 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 stormwater and certain non-stormwater 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 from the permit effective date.

EFFECTIVE DATE:

ISSUED DATE:

For the Commission

**TPDES GENERAL PERMIT NUMBER TXR150000 RELATING TO
STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION
ACTIVITIES**

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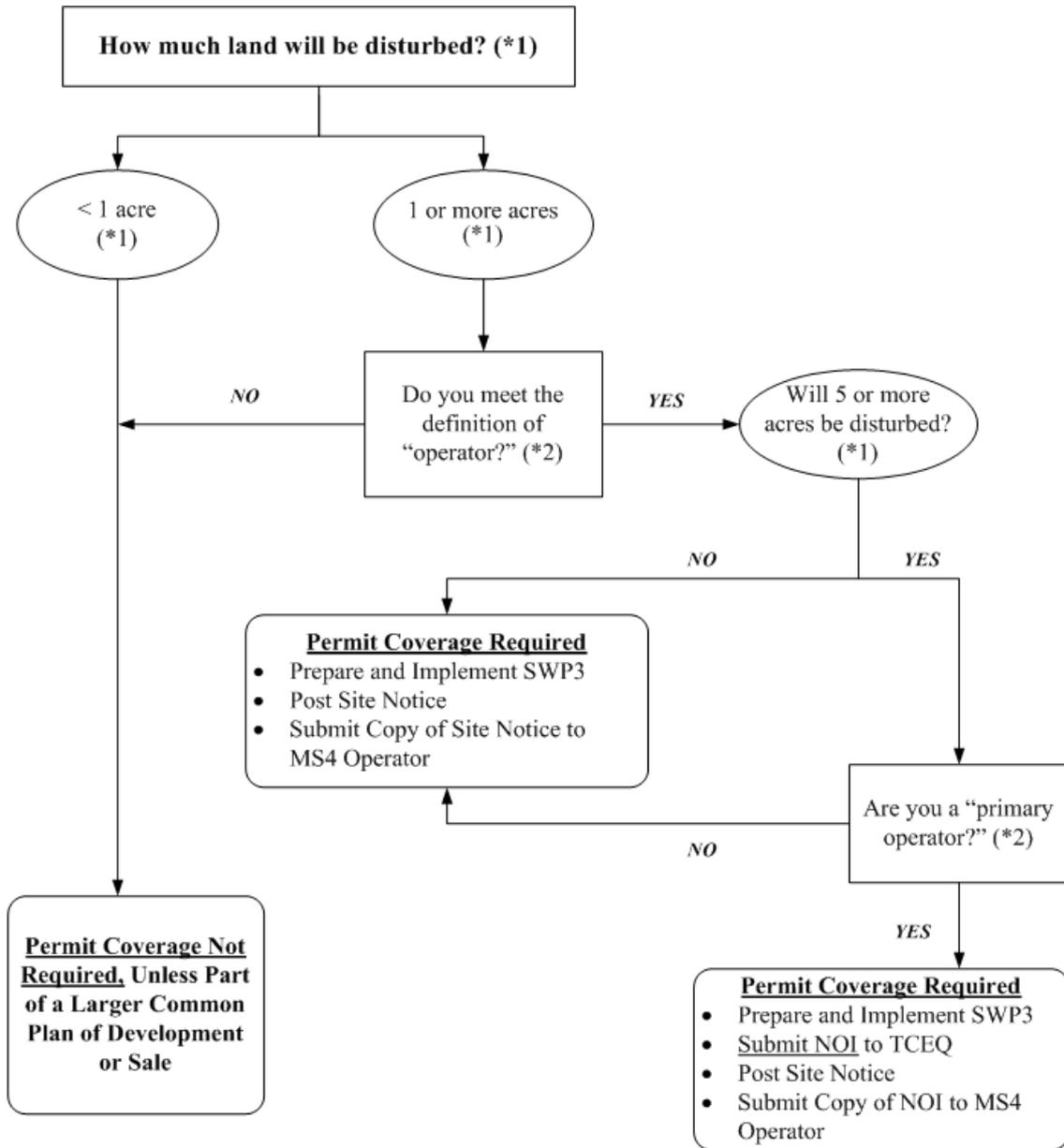
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Part I. Flow Chart and Definitions

Section A. Flow Chart to Determine Whether Coverage is Required



(*1) To determine the size of the construction project, use the size of the entire area to be disturbed, and include the size of the larger common plan of development or sale, if the project is part of a larger project (refer to Part I.B., "Definitions," for an explanation of "common plan of development or sale").

(*2) Refer to the definitions for "operator," "primary operator," and "secondary operator" in Part I., Section B. of this permit.

Section B. Definitions

Arid Areas - Areas with an average annual rainfall of 0 to 10 inches.

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 construction site runoff, spills or leaks, waste disposal, or drainage from raw material storage areas.

Commencement of Construction - The initial disturbance of soils associated with clearing, grading, or excavation activities, as well as other construction-related activities (e.g., stockpiling of fill material, demolition).

Common Plan of Development - A construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. A common plan of development (also known as 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. A common plan of development does not necessarily include all construction projects within the jurisdiction of a public entity (e.g., a city or university). Construction of roads or buildings in different parts of the jurisdiction would be considered separate “common plans,” with only the interconnected parts of a project being considered part of a “common plan” (e.g., a building and its associated parking lot and driveways, airport runway and associated taxiways, a building complex, etc.). Where discrete construction projects occur within a larger common plan of development or sale but are located ¼ mile or more 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 included in the area to be disturbed.

Construction Activity - Includes soil disturbance activities, including clearing, grading, and excavating; and does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (e.g., the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities). Regulated construction activity is defined in terms of small and large construction activity.

Dewatering – The act of draining rainwater or groundwater from building foundations, vaults, and trenches.

Discharge – For the purposes of this permit, the drainage, release, or disposal of pollutants in stormwater and certain non-stormwater from areas where soil disturbing activities (e.g., clearing, grading, excavation, stockpiling of fill material, and demolition), construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck wash out, fueling), or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

Drought-Stricken Area – For the purposes of this permit, an area in which the National Oceanic and Atmospheric Administration’s U.S. Seasonal Drought Outlook indicates for the period during which the construction will occur that any of the following conditions are likely: (1) “Drought to persist or intensify”, (2) “Drought ongoing, some improvement”, (3) “Drought likely to improve, impacts ease”, or (4) “Drought development likely”. See http://www.cpc.ncep.noaa.gov/products/expert_assessment/seasonal_drought.html.

Edwards Aquifer - As defined under Texas Administrative Code (TAC) § 213.3 of this title (relating to the Edwards Aquifer), that portion of an arcuate belt of porous, water-bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties; and composed of the Salmon Peak

Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut Formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

Edwards Aquifer Recharge Zone - Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the offices of the Texas Commission on Environmental Quality (TCEQ) and the appropriate regional office. The Edwards Aquifer Map Viewer, located at http://www.tceq.texas.gov/compliance/field_ops/eapp/mapdisclaimer.html, can be used to determine where the recharge zone is located.

Edwards Aquifer Contributing Zone - The area or watershed where runoff from precipitation flows downgradient to the recharge zone of the Edwards Aquifer. The contributing zone is located upstream (upgradient) and generally north and northwest of the recharge zone for the following counties: all areas within Kinney County, except the area within the watershed draining to Segment No. 2304 of the Rio Grande Basin; all areas within Uvalde, Medina, Bexar, and Comal Counties; all areas within Hays and Travis Counties, except the area within the watersheds draining to the Colorado River above a point 1.3 miles upstream from Tom Miller Dam, Lake Austin at the confluence of Barrow Brook Cove, Segment No. 1403 of the Colorado River Basin; and all areas within Williamson County, except the area within the watersheds draining to the Lampasas River above the dam at Stillhouse Hollow reservoir, Segment No. 1216 of the Brazos River Basin. The contributing zone is illustrated on the Edwards Aquifer map viewer at http://www.tceq.texas.gov/compliance/field_ops/eapp/mapdisclaimer.html.

Effluent Limitations Guideline (ELG) – Defined in 40 Code of Federal Regulations (CFR) § 122.2 as a regulation published by the Administrator under § 304(b) of the Clean Water Act (CWA) to adopt or revise effluent limitations.

Facility or Activity – For the purpose of this permit, a construction site or construction support activity that is regulated under this general permit, including all contiguous land and fixtures (for example, ponds and materials stockpiles), structures, or appurtenances used at a construction site or industrial site described by this general permit.

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

- A. All soil disturbing activities at the site have been completed and a uniform (that is, evenly distributed, without large bare areas) perennial vegetative cover with a density of at least 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. If temporary stabilization is not feasible, then the homebuilder may fulfill this requirement by retaining perimeter controls or BMPs, and informing the homeowner of the need for removal of temporary controls and the establishment of final stabilization.

Fullfillment of this requirement must be documented in the homebuilder's stormwater pollution prevention plan (SWP3).

- C. For construction activities on land used for agricultural purposes (such as 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 surface water and areas that are not being returned to their preconstruction agricultural use must meet the final stabilization conditions of condition (a) above.
- D. In arid, semi-arid, and drought-stricken areas only, all soil disturbing activities at the site have been completed and both of the following criteria have been met:
- (1) Temporary erosion control measures (for example, degradable rolled erosion control product) are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years without active maintenance by the operator, and
 - (2) The temporary erosion control measures are selected, designed, and installed to achieve 70% of the native background vegetative coverage within three years.

Hyperchlorination of Waterlines – Treatment of potable water lines or tanks with chlorine for disinfection purposes, typically following repair or partial replacement of the waterline or tank, and subsequently flushing the contents.

Impaired Water - A surface water body that is identified on the latest approved CWA §303(d) List as not meeting applicable state water quality standards. Impaired waters include waters with approved or established total maximum daily loads (TMDLs), and those where a TMDL has been proposed by TCEQ but has not yet been approved or established.

Indian Country Land – (from 40 CFR §122.2) (1) 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; (2) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian Tribe - (from 40 CFR §122.2) any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian Reservation.

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, or original purpose of the site (for example, the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities.)

Linear Project – Includes the construction of roads, bridges, conduits, substructures, pipelines, sewer lines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities in a long, narrow area.

Minimize - To reduce or eliminate to the extent achievable using stormwater controls that are technologically available and economically practicable and achievable in light of best industry practices.

Municipal Separate Storm Sewer System (MS4) - A separate storm sewer system owned or operated by the United States, a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over the disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, that discharges to surface water in the state.

Notice of Change (NOC) – Written notification to the executive director from a discharger authorized under this permit, providing changes to information that was previously provided to the agency in a notice of intent form.

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 discharger authorized under a general permit requesting termination of coverage.

Operator - The person or persons associated with a large or small construction activity that is either a primary or secondary operator as defined below:

Primary Operator – the person or persons associated with a large or small construction activity that meets either of the following two criteria:

- (a) the person or persons have on-site operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
- (b) the person or persons 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 (SWP3) for the site or other permit conditions (for example, they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions).

Secondary Operator – The person or entity, often the property owner, whose operational control is limited to:

- (a) the employment of other operators, such as a general contractor, to perform or supervise construction activities; or
- (b) the ability to approve or disapprove changes to construction plans and specifications, but who does not have day-to-day on-site operational control over construction activities at the site.

Secondary operators must either prepare their own SWP3 or participate in a shared SWP3 that covers the areas of the construction site where they have control over the plans and specifications.

If there is not a primary operator at the construction site, then the secondary operator is defined as the primary operator and must comply with the requirements for primary operators.

Outfall - For the purpose of this permit, a point source at the point where stormwater runoff associated with construction activity discharges to surface water in the state 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 water of the U.S. and are used to convey waters of the U.S.

Permittee - An operator authorized under this general permit. The authorization may be gained through submission of a notice of intent, by waiver, or by meeting the requirements for automatic coverage to discharge stormwater runoff and certain non-stormwater discharges.

Point Source – (from 40 CFR §122.2) 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 stormwater runoff.

Pollutant - Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any surface water in the state. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland. For the purpose of this permit, the term "pollutant" includes sediment.

Pollution - (from Texas Water Code (TWC) §26.001(14)) The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any surface water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Rainfall Erosivity Factor (R factor) - the total annual erosive potential that is due to climatic effects, and is part of the Revised Universal Soil Loss Equation (RUSLE).

Receiving Water - A "Water of the United States" as defined in 40 CFR §122.2 into which the regulated stormwater discharges.

Semiarid Areas - areas with an average annual rainfall of 10 to 20 inches

Separate Storm Sewer System - A conveyance or system of conveyances (including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains), designed or used for collecting or conveying stormwater; that is not a combined sewer, and that is not part of a publicly owned treatment works (POTW).

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, or original purpose of the site (for example, the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities.)

Steep Slopes – Where a state, Tribe, local government, or industry technical manual (e.g. stormwater BMP manual) has defined what is to be considered a "steep slope", this permit's definition automatically adopts that definition. Where no such definition exists, steep slopes are automatically defined as those that are 15 percent or greater in grade.

Stormwater (or Stormwater Runoff) - Rainfall runoff, snow melt runoff, and surface runoff and drainage.

Stormwater Associated with Construction Activity - Stormwater runoff from a construction activity where soil disturbing activities (including clearing, grading, excavating) result in the disturbance of one (1) or more acres of total land area, or are part of a larger common plan of development or sale that will result in disturbance of one (1) or more acres of total land area.

Structural Control (or Practice) - A pollution prevention practice that requires the construction of a device, or the use of a device, to reduce or prevent pollution in stormwater

runoff. Structural controls and practices may include but are not limited to: silt fences, earthen dikes, drainage swales, 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.

Temporary Stabilization - A condition where exposed soils or disturbed areas are provided a protective cover or other structural control to prevent the migration of pollutants. Temporary stabilization may include temporary seeding, geotextiles, mulches, and other techniques to reduce or eliminate erosion until either permanent stabilization can be achieved or until further construction activities take place.

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

Turbidity – A condition of water quality characterized by the presence of suspended solids and/or organic material.

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 U.S. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the U.S. (such as

disposal area in wetlands) nor resulted from the impoundment of waters of the U.S. Waters of the U.S. 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 CWA, the final authority regarding CWA jurisdiction remains with EPA.

Part II. Permit Applicability and Coverage

Section A. Discharges Eligible for Authorization

1. Stormwater Associated with Construction Activity

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

2. Discharges of Stormwater Associated with Construction Support Activities

Examples of construction support activities include, but are not limited to, concrete batch plants, rock crushers, asphalt batch plants, equipment staging areas, material storage yards, material borrow areas, and excavated material disposal areas.

Construction support activities authorized under this general permit are not commercial operations, and do not serve multiple unrelated construction projects. Discharges of stormwater runoff from construction support activities may be authorized under this general permit, provided that the following conditions are met:

- (a) the activities are located within one (1) mile from the boundary of the permitted construction site and directly support the construction activity;
- (b) an SWP3 is developed for the permitted construction site according to the provisions of this general permit, and includes appropriate controls and measures to reduce erosion and discharge of pollutants in stormwater runoff from the construction support activities; and
- (c) the construction support activities either do not operate beyond the completion date of the construction activity or, at the time that they do, are authorized under separate Texas Pollutant Discharge Elimination System (TPDES) authorization. Separate TPDES authorization may include the TPDES Multi Sector General Permit (MSGP), TXR050000 (related to stormwater discharges associated with industrial activity), separate authorization under this general permit if applicable, coverage under an alternative general permit if available, or authorization under an individual water quality permit.

3. Non-Stormwater Discharges

The following non-stormwater discharges from sites authorized under this general permit are also eligible for authorization under this general permit:

- (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, or similar activities);
- (b) uncontaminated fire hydrant flushings (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life), which include flushings from systems that utilize potable water, surface water, or groundwater that does not contain additional pollutants (uncontaminated fire hydrant flushings do not include systems utilizing reclaimed wastewater as a source water);
- (c) water from the routine external washing of vehicles, the external portion of buildings or structures, and pavement, where detergents and soaps are not used, where spills or leaks of toxic or hazardous materials have not occurred (unless spilled materials

have been removed; and if local state, or federal regulations are applicable, the materials are removed according to those regulations), and where the purpose is to remove mud, dirt, or dust;

- (d) uncontaminated water used to control dust;
- (e) potable water sources, including waterline flushings, but excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life;
- (f) uncontaminated air conditioning condensate;
- (g) uncontaminated ground water or spring water, including foundation or footing drains where flows are not contaminated with industrial materials such as solvents; and
- (h) lawn watering and similar irrigation drainage.

4. Other Permitted Discharges

Any discharge authorized under a separate National Pollutant Discharge Elimination System (NPDES), TPDES, or TCEQ permit may be combined with discharges authorized by this general permit, provided those discharges comply with the associated permit.

Section B. Concrete Truck Wash Out

The wash out of concrete trucks at regulated construction sites must be performed in accordance with the requirements of Part V of this general permit.

Section C. Limitations on Permit Coverage

1. Post Construction Discharges

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 this general permit. Discharges originating from the sites are not authorized under this general permit following the submission of the notice of termination (NOT) or removal of the appropriate site notice, as applicable, for the regulated construction activity.

2. Prohibition of Non-Stormwater Discharges

Except as otherwise provided in Part II.A. of this general permit, only discharges that are composed entirely of stormwater associated with construction activity may be authorized under this general permit.

3. Compliance With Water Quality Standards

Discharges to surface water in the state that would cause, have the reasonable potential to 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 (see Parts II.H.2. and 3.) to authorize discharges to surface water in the state if the executive director determines that any activity will cause, has the reasonable potential to cause, or contribute to a violation of water quality standards or is found to cause, has the reasonable potential to cause, or contribute to, the impairment of a designated use. The executive director may also require an application for an individual permit considering factors described in Part II.H.2. of this general permit.

4. Impaired Receiving Waters and Total Maximum Daily Load (TMDL) Requirements

New sources or new discharges of the pollutants 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 standards and are listed on the EPA approved CWA §303(d) List. Pollutants of concern are those for which the water body is listed as impaired.

Discharges of the pollutants of concern to impaired water bodies for which there is a TMDL are not eligible for this general permit unless they are consistent with the approved TMDL. Permittees must incorporate the conditions and requirements applicable to their discharges into their SWP3, in order to be eligible for coverage under this general permit. For consistency with the construction stormwater-related items in an approved TMDL, the SWP3 must be consistent with any applicable condition, goal, or requirement in the TMDL, TMDL Implementation Plan (I-Plan), or as otherwise directed by the executive director.

5. Discharges to the Edwards Aquifer Recharge or Contributing Zone

Discharges cannot be authorized by this general permit where prohibited by 30 TAC Chapter 213 (relating to Edwards Aquifer). In addition, commencement of construction (i.e., the initial disturbance of soils associated with clearing, grading, or excavating activities, as well as other construction-related activities such as stockpiling of fill material and demolition) at a site regulated under 30 TAC Chapter 213, may not begin until the appropriate Edwards Aquifer Protection Plan (EAPP) has been approved by the TCEQ's Edwards Aquifer Protection Program.

- (a) For new discharges located within the Edwards Aquifer Recharge Zone, or within that area upstream from the recharge zone and defined as the Contributing Zone (CZ), operators 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.
- (b) For existing discharges located within the Edwards Aquifer Recharge Zone, the requirements of the agency-approved Water Pollution Abatement Plan (WPAP) under the Edwards Aquifer Rule is in addition to the requirements of this general permit. BMPs and maintenance schedules for structural stormwater 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 stormwater runoff are in addition to the requirements in this general permit for this pollutant.

6. Discharges to Specific Watersheds and Water Quality Areas

Discharges otherwise eligible for coverage cannot 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 Other Governmental Entities

This general permit does not limit the authority or ability of federal, other state, or local governmental entities from placing additional or more stringent requirements on construction activities or discharges from construction activities. For example, this permit does not limit the authority of a home-rule municipality provided by Texas Local Government Code §401.002.

8. Indian Country Lands

Stormwater runoff from 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 stormwater require authorization under federal NPDES

regulations, authority for these discharges must be obtained from the U.S. Environmental Protection Agency (EPA).

9. Oil and Gas Production

Stormwater runoff from construction activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline, are not under the authority of the TCEQ and are not eligible for coverage under this general permit. If discharges of stormwater require authorization under federal NPDES regulations, authority for these discharges must be obtained from the EPA.

10. Stormwater Discharges from Agricultural Activities

Stormwater discharges from agricultural activities that are not point source discharges of stormwater are not subject to TPDES permit requirements. These activities may include clearing and cultivating ground for crops, construction of fences to contain livestock, construction of stock ponds, and other similar agricultural activities. Discharges of stormwater runoff associated with the construction of facilities that are subject to TPDES regulations, such as the construction of concentrated animal feeding operations, would be point sources regulated under this general permit.

11. Endangered Species Act

Discharges that would adversely affect a listed endangered or threatened species or its critical habitat are not authorized by this permit, unless the requirements of the Endangered Species Act are satisfied. Federal requirement related to endangered species apply to all TPDES permitted discharges and site-specific controls may be required to ensure that protection of endangered or threatened species is achieved. If a permittee has concerns over potential impacts to listed species, the permittee may contact TCEQ for additional information.

12. 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.

Section D. Deadlines for Obtaining Authorization to Discharge

1. Large Construction Activities

- (a) New Construction - Discharges from sites where the commencement of construction occurs on or after the effective date of this general permit must be authorized, either under this general permit or a separate TPDES permit, prior to the commencement of those construction activities.
- (b) Ongoing Construction - Operators of large construction activities continuing to operate after the effective date of this permit, and authorized under TPDES general permit TXR150000 (effective on March 5, 2008), must submit an NOI to renew authorization or a NOT to terminate coverage under this general permit within 90 days of the effective date of this general permit. During this interim period, as a requirement of this TPDES permit, the operator must continue to meet the conditions and requirements of the previous TPDES permit.

2. Small Construction Activities

- (a) New Construction - Discharges from sites where the commencement of construction occurs on or after the effective date of this general permit must be authorized, either

under this general permit or a separate TPDES permit, prior to the commencement of those construction activities.

- (b) Ongoing Construction - Discharges from ongoing small construction activities that commenced prior to the effective date of this general permit, and that would not meet the conditions to qualify for termination of this permit as described in Part II.E. of this general permit, must meet the requirements to be authorized, either under this general permit or a separate TPDES permit, within 90 days of the effective date of this general permit. During this interim period, as a requirement of this TPDES permit, the operator must continue to meet the conditions and requirements of the previous TPDES permit.

Section E. Obtaining Authorization to Discharge

1. Automatic Authorization for Small Construction Activities With Low Potential for Erosion:

If all of the following conditions are met, then a small construction activity is determined to occur during periods of low potential for erosion, and a site operator may be automatically authorized under this general permit without being required to develop an SWP3 or submit an NOI:

- (a) the construction activity occurs in a county listed in Appendix A;
- (b) the construction activity is initiated and completed, including either final or temporary stabilization of all disturbed areas, within the time frame identified in Appendix A for the location of the construction site;
- (c) all temporary stabilization is adequately maintained to effectively reduce or prohibit erosion, permanent stabilization activities have been initiated, and a condition of final stabilization is completed no later than 30 days following the end date of the time frame identified in Appendix A for the location of the construction site;
- (d) the permittee signs a completed TCEQ construction site notice, including the certification statement;
- (e) a signed copy of the construction site notice is posted at the construction site in a location where it is readily available for viewing by the general public, local, state, and federal authorities prior to commencing construction activities, and maintained in that location until completion of the construction activity;
- (f) a copy of the signed and certified construction site notice is provided to the operator of any MS4 receiving the discharge at least two days prior to commencement of construction activities;
- (g) any supporting concrete batch plant or asphalt batch plant is separately authorized for discharges of stormwater runoff or other non-stormwater discharges under an individual TPDES permit, another TPDES general permit, or under an individual TCEQ permit where stormwater and non-stormwater is disposed of by evaporation or irrigation (discharges are adjacent to water in the state); and
- (h) any non-stormwater discharges are either authorized under a separate permit or authorization, or are not considered to be a wastewater.

Part II.G. of this general permit describes how an operator may apply for and obtain a waiver from permitting, for certain small construction activities that occur during a period with a low potential for erosion, where automatic authorization under this section is not available.

2. Automatic Authorization For All Other Small Construction Activities:

Operators of small construction activities not described in Part II.E.1. above may be automatically authorized under this general permit, and operators of these sites shall not be required to submit an NOI, provided that they meet all of the following conditions:

- (a) develop a SWP3 according to the provisions of this general permit, that covers either the entire site or all portions of the site for which the applicant is the operator, and implement that plan prior to commencing construction activities;
- (b) sign and certify a completed TCEQ small construction site notice, post the notice at the construction site in a location where it is safely and readily available for viewing by the general public, local, state, and federal authorities, prior to commencing construction, and maintain the notice in that location until completion of the construction activity (for linear construction activities, e.g. pipeline or highway, the site notice must be placed in a publicly accessible location near where construction is actively underway; notice for these linear sites may be relocated, as necessary, along the length of the project, and the notice must be safely and readily available for viewing by the general public; local, state, and federal authorities); and
- (c) provide a copy of the signed and certified construction site notice to the operator of any municipal separate storm sewer system receiving the discharge prior to commencement of construction activities.

Operators of small construction activities as defined in Part I.B of this general permit shall not submit an NOI for coverage unless otherwise required by the executive director.

As described in Part I (Definitions) of this general permit, large construction activities include those that will disturb less than five (5) acres of land, but that are part of a larger common plan of development or sale that will ultimately disturb five (5) or more acres of land, and must meet the requirements of Part II.E.3. below.

3. Authorization for Large Construction Activities:

Operators of large construction activities that qualify for coverage under this general permit must meet all of the following conditions:

- (a) develop a SWP3 according to the provisions of this general permit that covers either the entire site or all portions of the site for which the applicant is the operator, and implement that plan prior to commencing construction activities;
- (b) primary operators must submit an NOI, using a form provided by the executive director, at least seven (7) days prior to commencing construction activities, or if utilizing electronic submittal, prior to commencing construction activities. If an additional primary operator is added after the initial NOI is submitted, the new primary operator must submit an NOI at least seven (7) days before assuming operational control, or if utilizing electronic NOI submittal, prior to assuming operational control. If the primary operator changes after the initial NOI is submitted, the new primary operator must submit a paper NOI or an electronic NOI at least ten (10) days before assuming operational control;
- (c) all operators of large construction activities must post a site notice in accordance with Part III.D.2. of this permit. The site notice must be located where it is safely and readily available for viewing by the general public, local, state, and federal authorities prior to commencing construction, and must be maintained in that location until completion of the construction activity (for linear construction activities, e.g. pipeline or highway, the site notice must be placed in a publicly accessible location near where construction is actively underway; notice for these linear sites may be relocated, as necessary, along the length of the project, and the notice must be safely and readily available for viewing by the general public; local, state, and federal authorities);

- (d) prior to commencing construction activities, all primary operators must (1) provide a copy of the signed NOI to the operator of any MS4 receiving the discharge and to any secondary construction operator, and (2) list in the SWP3 the names and addresses of all MS4 operators receiving a copy;
- (e) all persons meeting the definition of “secondary operator” in Part I of this permit are hereby notified that they are regulated under this general permit, but are not required to submit an NOI, provided that a primary operator at the site has submitted an NOI, or is required to submit an NOI, and the secondary operator has provided notification to the operator(s) of the need to obtain coverage (with records of notification available upon request). Any secondary operator notified under this provision may alternatively submit an NOI under this general permit, may seek coverage under an alternative TPDES individual permit, or may seek coverage under an alternative TPDES general permit if available; and
- (f) all secondary operators must provide a copy of the signed and certified Secondary Operator construction site notice to the operator of any MS4 receiving the discharge prior to commencement of construction activities.

4. Waivers for Small Construction Activities:

Part II.G. describes how operators of certain small construction activities may obtain a waiver from coverage.

5. Effective Date of Coverage

- (a) Operators of small construction activities as described in either Part II.E.1. or II.E.2. above are authorized immediately following compliance with the applicable conditions of Part II.E.1. or II.E.2. Secondary operators of large construction activities as described in Part II.E.3. above are authorized immediately following compliance with the applicable conditions in Part II.E.3. For activities located in areas regulated by 30 TAC Chapter 213, related to the Edwards Aquifer, this authorization to discharge is separate from the requirements of the operator’s responsibilities under that rule. Construction may not commence for sites regulated under 30 TAC Chapter 213 until all applicable requirements of that rule are met.
- (b) Primary operators of large construction activities as described in Part II.E.3. above are provisionally authorized seven (7) days from the date that a completed NOI is postmarked for delivery to the TCEQ, unless otherwise notified by the executive director. If electronic submission of the NOI is provided, and unless otherwise notified by the executive director, primary operators are authorized immediately following confirmation of receipt of the NOI by the TCEQ. Authorization is non-provisional when the executive director finds the NOI is administratively complete and an authorization number is issued for the activity. For activities located in areas regulated by 30 TAC Chapter 213, related to the Edwards Aquifer, this authorization to discharge is separate from the requirements of the operator’s responsibilities under that rule. Construction may not commence for sites regulated under 30 TAC Chapter 213 until all applicable requirements of that rule are met.
- (c) Operators are not prohibited from submitting late NOIs or posting late notices to obtain authorization under this general permit. The TCEQ reserves the right to take appropriate enforcement actions for any unpermitted activities that may have occurred between the time construction commenced and authorization was obtained.

6. Notice of Change (NOC)

If relevant information provided in the NOI changes, an NOC must be submitted at least 14 days before the change occurs, if possible. Where 14-day advance notice is not possible, the operator must submit an NOC within 14 days of discovery of the change. If

the operator becomes aware that it failed to submit any relevant facts or submitted incorrect information in an NOI, the correct information must be provided to the executive director in an NOC within 14 days after discovery. The NOC shall be submitted on a form provided by the executive director, or by letter if an NOC form is not available. A copy of the NOC must also be provided to the operator of any MS4 receiving the discharge, and a list must be included in the SWP3 that includes the names and addresses of all MS4 operators receiving a copy.

Information that may be included on an NOC includes, but is not limited to, the following: the description of the construction project, an increase in the number of acres disturbed (for increases of one or more acres), or the operator name. A transfer of operational control from one operator to another, including a transfer of the ownership of a company, may not be included in an NOC.

A transfer of ownership of a company includes changes to the structure of a company, such as changing from a partnership to a corporation or changing corporation types, so that the filing number (or charter number) that is on record with the Texas Secretary of State must be changed.

An NOC is not required for notifying TCEQ of a decrease in the number of acres disturbed. This information must be included in the SWP3 and retained on site.

7. Signatory Requirement for NOI Forms, Notice of Termination (NOT) Forms, NOC Letters, and Construction Site Notices

NOI forms, NOT forms, NOC letters, and Construction Site Notices that require a signature must be signed according to 30 TAC § 305.44 (relating to Signatories for Applications).

8. Contents of the NOI

The NOI form shall require, at a minimum, the following information:

- (a) the TPDES CGP authorization number for existing authorizations under this general permit, where the operator submits an NOI to renew coverage within 90 days of the effective date of this general permit;
- (b) the name, address, and telephone number of the operator filing the NOI for permit coverage;
- (c) the name (or other identifier), address, county, and latitude/longitude of the construction project or site;
- (d) the number of acres that will be disturbed by the applicant;
- (e) confirmation that the project or site will not be located on Indian Country lands;
- (f) confirmation that a SWP3 has been developed in accordance with this general permit, that it will be implemented prior to construction, and that it is compliant with any applicable local sediment and erosion control plans; for multiple operators who prepare a shared SWP3, the confirmation for an operator may be limited to its obligations under the SWP3 provided all obligations are confirmed by at least one operator;
- (g) name of the receiving water(s);
- (h) the classified segment number for each classified segment that receives discharges from the regulated construction activity (if the discharge is not directly to a classified segment, then the classified segment number of the first classified segment that those discharges reach); and
- (i) the name of all surface waters receiving discharges from the regulated construction activity that are on the latest EPA-approved CWA § 303(d) List of impaired waters.

Section F. Terminating Coverage

1. Notice of Termination (NOT) Required

Each operator that has submitted an NOI for authorization under this general permit must apply to terminate that authorization following the conditions described in this section of the general permit. Authorization must be terminated by submitting an NOT on a form supplied by the executive director. Authorization to discharge under this general permit terminates at midnight on the day the NOT is postmarked for delivery to the TCEQ. If electronic submission of the NOT is provided, authorization to discharge under this permit terminates immediately following confirmation of receipt of the NOT by the TCEQ. Compliance with the conditions and requirements of this permit is required until an NOT is submitted.

The NOT must be submitted to TCEQ, and a copy of the NOT provided to the operator of any MS4 receiving the discharge (with a list in the SWP3 of the names and addresses of all MS4 operators receiving a copy), within 30 days after any of the following conditions are met:

- (a) final stabilization has been achieved on all portions of the site that are the responsibility of the permittee;
- (b) a transfer of operational control has occurred (See Section II.F.4. below); or
- (c) the operator has obtained alternative authorization under an individual TPDES permit or alternative TPDES general permit.

2. Minimum Contents of the NOT

The NOT form shall require, at a minimum, the following information:

- (a) if authorization was granted following submission of an NOI, the permittee's site-specific TPDES authorization number for the construction site;
- (b) an indication of whether the construction activity is completed or if the permittee is simply no longer an operator at the site;
- (c) the name, address, and telephone number of the permittee submitting the NOT;
- (d) the name (or other identifier), address, county, and location (latitude/longitude) of the construction project or site; and
- (e) a signed certification that either all stormwater discharges requiring authorization under this general permit will no longer occur, or that the applicant is no longer the operator of the facility or construction site, and that all temporary structural erosion controls have either been removed, will be removed on a schedule defined in the SWP3, or have been transferred to a new operator if the new operator has applied for permit coverage. Erosion controls that are designed to remain in place for an indefinite period, such as mulches and fiber mats, are not required to be removed or scheduled for removal.

3. Termination of Coverage for Small Construction Sites and for Secondary Operators at Large Construction Sites

Each operator that has obtained automatic authorization and has not been required to submit an NOI must remove the site notice upon meeting any of the conditions listed below, complete the applicable portion of the site notice related to removal of the site notice, and submit a copy of the completed site notice to the operator of any MS4 receiving the discharge (or provide alternative notification as allowed by the MS4 operator, with documentation of such notification included in the SWP3), within 30 days of meeting any of the following conditions:

- (a) final stabilization has been achieved on all portions of the site that are the responsibility of the permittee;
- (b) a transfer of operational control has occurred (See Section II.F.4. below); or
- (c) the operator has obtained alternative authorization under an individual or general TPDES permit.

Authorization to discharge under this general permit terminates immediately upon removal of the applicable site notice. Compliance with the conditions and requirements of this permit is required until the site notice is removed.

4. Transfer of Operational Control

Coverage under this general permit is not transferable. A transfer of operational control includes changes to the structure of a company, such as changing from a partnership to a corporation, or changing to a different corporation type such that a different filing (or charter) number is established with the Texas Secretary of State.

When the primary operator of a large construction activity changes or operational control is transferred, the original operator must submit an NOT within ten (10) days prior to the date that responsibility for operations terminates, and the new operator must submit an NOI at least ten (10) days prior to the transfer of operational control, in accordance with condition (a) or (b) below. A copy of the NOT must be provided to the operator of any MS4 receiving the discharge in accordance with Section II.F.1. above.

Operators of regulated construction activities who are not required to submit an NOI must remove the original site notice, and the new operator must post the required site notice prior to the transfer of operational control, in accordance with condition (a) or (b) below. A copy of the completed site notice must be provided to the operator of any MS4 receiving the discharge, in accordance with Section II.F.3. above.

A transfer of operational control occurs when either of the following criteria is met:

- (a) Another operator has assumed control over all areas of the site that have not been finally stabilized; and all silt fences and other temporary erosion controls have either been removed, scheduled for removal as defined in the SWP3, or transferred to a new operator, provided that the permitted operator has attempted to notify the new operator in writing of the requirement to obtain permit coverage. Record of this notification (or attempt at notification) shall be retained by the operator in accordance with Part VI of this permit. Erosion controls that are designed to remain in place for an indefinite period, such as mulches and fiber mats, are not required to be removed or scheduled for removal.
- (b) A homebuilder has purchased one or more lots from an operator who obtained coverage under this general permit for a common plan of development or sale. The homebuilder is considered a new operator and shall comply with the requirements listed above, including the development of a SWP3 if necessary. Under these circumstances, the homebuilder is only responsible for compliance with the general permit requirements as they apply to lot(s) it has operational control over, and the original operator remains responsible for common controls or discharges, and must amend its SWP3 to remove the lot(s) transferred to the homebuilder.

Section G. Waivers from Coverage

The executive director may waive the otherwise applicable requirements of this general permit for stormwater discharges from small construction activities under the terms and conditions described in this section.

1. Waiver Applicability and Coverage

Operators of small construction activities may apply for and receive a waiver from the requirements to obtain authorization under this general permit, where all of the following conditions are met. This waiver from coverage does not apply to non-stormwater discharges. The operator must insure that any non-stormwater discharges are either authorized under a separate permit or authorization, or are not considered to be a wastewater.

- (a) the calculated rainfall erosivity (R) factor for the entire period of the construction project is less than five (5);
- (b) the operator submits to the TCEQ a signed waiver certification form, supplied by the executive director, certifying that the construction activity will commence and be completed within a period when the value of the calculated R factor is less than five (5); and
- (c) the waiver certification form is postmarked for delivery to the TCEQ at least seven (7) days before construction activity begins or, if electronic filing is available, then any time following the receipt of written confirmation from TCEQ that a complete electronic application was submitted and acknowledged.

2. Steps to Obtaining a Waiver

The construction site operator may calculate the R factor to request a waiver using the following steps:

- (a) Estimate the construction start date and the construction end date. The construction end date is the date that final stabilization will be achieved.
- (b) Find the appropriate Erosivity Index (EI) zone in Appendix B of this permit.
- (c) Find the EI percentage for the project period by adding the results for each period of the project using the table provided in Appendix D of this permit, in EPA Fact Sheet 2.1, or in USDA Handbook 703, by subtracting the start value from the end value to find the percent EI for the site.
- (d) Refer to the Isoerodent Map (Appendix C of this permit) and interpolate the annual isoerodent value for the proposed construction location.
- (e) Multiply the percent value obtained in Step (c) above by the annual isoerodent value obtained in Step (d). This is the R factor for the proposed project. If the value is less than 5, then a waiver may be obtained. If the value is five (5) or more, then a waiver may not be obtained, and the operator must obtain coverage under Part II.E.2. of this permit.

Alternatively, the operator may calculate a site-specific R factor utilizing the following online calculator: <http://ei.tamu.edu/index.html>, or using another available resource.

The waiver certification form is not required to be posted at the small construction site.

3. Effective Date of Waiver

Operators of small construction activities are provisionally waived from the otherwise applicable requirements of this general permit seven (7) days from the date that a completed waiver certification form is postmarked for delivery to TCEQ, or immediately upon receiving confirmation of approval of an electronic submittal, if electronic form submittals are available.

4. Activities Extending Beyond the Waiver Period

If a construction activity extends beyond the approved waiver period due to circumstances beyond the control of the operator, the operator must either:

- (a) recalculate the R factor using the original start date and a new projected ending date, and if the R factor is still under five (5), submit a new waiver certification form at least two (2) days before the end of the original waiver period; or
- (b) obtain authorization under this general permit according to the requirements delineated in either Part II.E.2. or Part II.E.3. before the end of the approved waiver period.

Section H. Alternative TPDES Permit Coverage

1. Individual Permit Alternative

Any discharge eligible for coverage under this general permit may alternatively be authorized under an individual TPDES permit according to 30 TAC §305 (relating to Consolidated Permits). Applications for individual permit coverage should be submitted at least three hundred and thirty (330) days prior to commencement of construction activities to ensure timely authorization.

2. Individual Permit Required

The executive director may suspend an authorization or deny an NOI in accordance with the procedures set forth in 30 TAC §205 (relating to General Permits for Waste Discharges), including the requirement that the executive director provide written notice to the permittee. The executive director may require an operator of a construction site, otherwise eligible for authorization under this general permit, to apply for an individual TPDES permit in the following circumstances:

- (a) the conditions of an approved TMDL or TMDL I-Plan on the receiving water;
- (b) the activity being determined to cause a violation of water quality standards or being found to cause, or contribute to, the loss of a designated use of surface water in the state; and
- (c) any other consideration defined in 30 TAC Chapter 205 (relating to General Permits for Waste Discharges) including 30 TAC Chapter 205.4(c)(3)(D), which allows the commission to deny authorization under the general permit and require an individual permit if a discharger “has been determined by the executive director to have been out of compliance with any rule, order, or permit of the commission, including non-payment of fees assessed by the executive director.”

Additionally, the executive director may cancel, revoke, or suspend authorization to discharge under this general permit based on a finding of historical and significant noncompliance with the provisions of this general permit, relating to 30 TAC §60.3 (Use of Compliance History). Denial of authorization to discharge under this general permit or suspension of a permittee’s authorization under this general permit shall be done according to commission rules in 30 TAC Chapter 205 (relating to General Permits for Waste Discharges).

3. Alternative Discharge Authorization

Any discharge eligible for authorization under this general permit may alternatively be authorized under a separate general permit according to 30 TAC Chapter 205 (relating to General Permits for Waste Discharges), if applicable.

Section I. Permit Expiration

1. This general permit is effective for a term not to exceed five (5) years. All active discharge authorizations expire on the date provided on page one (1) of this permit. Following public notice and comment, as provided by 30 TAC §205.3 (relating to

Public Notice, Public Meetings, and Public Comment), the commission may amend, revoke, cancel, or renew this general permit.

2. If the executive director publishes a notice of the intent to renew or amend this general permit before the expiration date, the permit will remain in effect for existing, authorized discharges until the commission takes final action on the permit. Upon issuance of a renewed or amended permit, permittees may be required to submit an NOI within 90 days following the effective date of the renewed or amended permit, unless that permit provides for an alternative method for obtaining authorization.
3. If the commission does not propose to reissue this general permit within 90 days before the expiration date, permittees shall apply for authorization under an 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. No new NOIs will be accepted nor new authorizations honored under the general permit after the expiration date.

Part III. Stormwater Pollution Prevention Plans (SWP3)

All regulated construction site operators shall prepare an SWP3, prior to submittal of an NOI, to address discharges authorized under Parts II.E.2. and II.E.3. of this general permit that will reach Waters of the U.S., including discharges to MS4s and privately owned separate storm sewer systems that drain to Waters of the U.S., to identify and address potential sources of pollution that are reasonably expected to affect the quality of discharges from the construction site, including off-site material storage areas, overburden and stockpiles of dirt, borrow areas, equipment staging areas, vehicle repair areas, fueling areas, etc., used solely by the permitted project. The SWP3 must describe the implementation of practices that will be used to minimize to the extent practicable the discharge of pollutants in stormwater associated with construction activity and non-stormwater discharges described in Part II.A.3., in compliance with the terms and conditions of this permit.

Individual operators at a site may develop separate SWP3s that cover only their portion of the project, provided reference is made to the other operators at the site. Where there is more than one SWP3 for a site, permittees must coordinate to ensure that BMPs and controls are consistent and do not negate or impair the effectiveness of each other. Regardless of whether a single comprehensive SWP3 is developed or separate SWP3s are developed for each operator, it is the responsibility of each operator to ensure compliance with the terms and conditions of this general permit in the areas of the construction site where that operator has control over construction plans and specifications or day-to-day operations.

Section A. Shared SWP3 Development

For more effective coordination of BMPs and opportunities for cost sharing, a cooperative effort by the different operators at a site is encouraged. Operators must independently obtain authorization, but may work together to prepare and implement a single, comprehensive SWP3 for the entire construction site.

1. The SWP3 must clearly list the name and, for large construction activities, the general permit authorization numbers, for each operator that participates in the shared SWP3. Until the TCEQ responds to receipt of the NOI with a general permit authorization number, the SWP3 must specify the date that the NOI was submitted to TCEQ by each operator. Each operator participating in the shared plan must also sign the SWP3.

2. The SWP3 must clearly indicate which operator is responsible for satisfying each shared requirement of the SWP3. If the responsibility for satisfying a requirement is not described in the plan, then each permittee is entirely responsible for meeting the requirement within the boundaries of the construction site where they perform construction activities. The SWP3 must clearly describe responsibilities for meeting each requirement in shared or common areas.
3. The SWP3 may provide that one operator is responsible for preparation of a SWP3 in compliance with the CGP, and another operator is responsible for implementation of the SWP3 at the project site.

Section B. Responsibilities of Operators

1. Secondary Operators and Primary Operators with Control Over Construction Plans and Specifications

All secondary operators and primary operators with control over construction plans and specifications shall:

- (a) ensure the project specifications allow or provide that adequate BMPs are developed to meet the requirements of Part III of this general permit;
- (b) ensure that the SWP3 indicates the areas of the project where they have control over project specifications, including the ability to make modifications in specifications;
- (c) ensure that all other operators affected by modifications in project specifications are notified in a timely manner so that those operators may modify their BMPs as necessary to remain compliant with the conditions of this general permit; and
- (d) ensure that the SWP3 for portions of the project where they are operators indicates the name and site-specific TPDES authorization number(s) for operators with the day-to-day operational control over those activities necessary to ensure compliance with the SWP3 and other permit conditions. If the party with day-to-day operational control has not been authorized or has abandoned the site, the person with control over project specifications is considered to be the responsible party until the authority is transferred to another party and the SWP3 is updated.

2. Primary Operators with Day-to-Day Operational Control

Primary operators with day-to-day operational control of those activities at a project that are necessary to ensure compliance with an SWP3 and other permit conditions must ensure that the SWP3 accomplishes the following requirements:

- (a) meets the requirements of this general permit for those portions of the project where they are operators;
- (b) identifies the parties responsible for implementation of BMPs described in the SWP3;
- (c) indicates areas of the project where they have operational control over day-to-day activities; and
- (d) includes, for areas where they have operational control over day-to-day activities, the name and site-specific TPDES authorization number of the parties with control over project specifications, including the ability to make modifications in specifications.

Section C. Deadlines for SWP3 Preparation, Implementation, and Compliance

The SWP3 must be prepared prior to obtaining authorization under this general permit, and implemented prior to commencing construction activities that result in soil

disturbance. The SWP3 must be prepared so that it provides for compliance with the terms and conditions of this general permit.

Section D. Plan Review and Making Plans Available

1. The SWP3 must be retained on-site at the construction site or, if the site is inactive or does not have an on-site location to store the plan, a notice must be posted describing the location of the SWP3. The SWP3 must be 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 stormwater management plans; local government officials; and the operator of a municipal separate storm sewer receiving discharges from the site. If the SWP3 is retained off-site, then it shall be made available as soon as reasonably possible. In most instances, it is reasonable that the SWP3 shall be made available within 24 hours of the request.
2. A primary operator of a large construction activity must post the TCEQ site notice near the main entrance of the construction site. An operator of a small construction activity seeking authorization under this general permit and a secondary operator of a large construction activity must post the TCEQ site notice required in Part II.E.1., 2., or 3. of this general permit in order to obtain authorization. If the construction project is a linear construction project, such as a pipeline or highway, the notices must be placed in a publicly accessible location near where construction is actively underway. Notices for these linear sites may be relocated, as necessary, along the length of the project. The notices must be readily available for viewing by the general public; local, state, and federal authorities; and contain the following information:
 - (a) the site-specific TPDES authorization number for the project if assigned;
 - (b) the operator name, contact name, and contact phone number;
 - (c) a brief description of the project; and
 - (d) the location of the SWP3.
3. This permit does not provide the general public with any right to trespass on a construction site for any reason, including inspection of a site; nor does this permit require that permittees allow members of the general public access to a construction site.

Section E. Revisions and Updates to SWP3s

The permittee must revise or update the SWP3 whenever the following occurs:

1. 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;
2. changing site conditions based on updated plans and specifications, new operators, new areas of responsibility, and changes in BMPs; or
3. results of inspections or investigations by site operators, operators of a municipal separate storm sewer system receiving the discharge, 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.

Section F. Contents of SWP3

The SWP3 must include, at a minimum, the information described in this section and must comply with the construction and development effluent guidelines in Part III, Section G of the general permit.

1. A site or project description, which includes the following information:
 - (a) a description of the nature of the construction activity;
 - (b) a list of potential pollutants and their sources;
 - (c) a description of the intended schedule or sequence of activities that will disturb soils for major portions of the site, including estimated start dates and duration of activities;
 - (d) the total number of acres of the entire property and the total number of acres where construction activities will occur, including off-site material storage areas, overburden and stockpiles of dirt, and borrow areas that are authorized under the permittee's NOI;
 - (e) data describing the soil or the quality of any discharge from the site;
 - (f) a map showing the general location of the site (e.g. a portion of a city or county map);
 - (g) a detailed site map (or maps) indicating the following:
 - (i) drainage patterns and approximate slopes anticipated after major grading activities;
 - (ii) areas where soil disturbance will occur;
 - (iii) locations of all controls and buffers, either planned or in place;
 - (iv) locations where temporary or permanent stabilization practices are expected to be used;
 - (v) locations of construction support activities, including off-site activities, that are authorized under the permittee's NOI, including material, waste, borrow, fill, or equipment or chemical storage areas;
 - (vi) surface waters (including wetlands) either at, adjacent, or in close proximity to the site, and also indicating those that are impaired waters;
 - (vii) locations where stormwater discharges from the site directly to a surface water body or a municipal separate storm sewer system;
 - (viii) vehicle wash areas; and
 - (ix) designated points on the site where vehicles will exit onto paved roads (for instance, this applies to construction transition from unstable dirt areas to exterior paved roads).

Where the amount of information required to be included on the map would result in a single map being difficult to read and interpret, the operator shall develop a series of maps that collectively include the required information.

- (h) the location and description of support activities authorized under the permittee's NOI, including asphalt plants, concrete plants, and other activities providing support to the construction site that is authorized under this general permit;
- (i) the name of receiving waters at or near the site that may be disturbed or that may receive discharges from disturbed areas of the project;
- (j) a copy of this TPDES general permit;
- (k) the NOI and acknowledgement certificate for primary operators of large construction sites, and the site notice for small construction sites and for secondary operators of large construction sites;
- (l) stormwater and allowable non-stormwater discharge locations, including storm drain inlets on site and in the immediate vicinity of the construction site; and

- (m) locations of all pollutant-generating activities, such as paving operations; concrete, paint and stucco washout and water disposal; solid waste storage and disposal; and dewatering operations.
2. A description of the BMPs that will be used to minimize pollution in runoff.
- The description must identify the general timing or sequence for implementation. At a minimum, the description must include the following components:
- (a) General Requirements
 - (i) Erosion and sediment controls must be designed to retain sediment on-site to the extent practicable with consideration for local topography, soil type, and rainfall.
 - (ii) Control measures must be properly selected, installed, and maintained according to the manufacturer's or designer's specifications.
 - (iii) Controls must be developed to minimize the offsite transport of litter, construction debris, and construction materials.

(b) Erosion Control and Stabilization Practices

The SWP3 must include a description of temporary and permanent erosion control and stabilization practices for the site, compliant with the requirements of Part III.G.1 and G.2 of this general permit, including a schedule of when the practices will be implemented. Site plans should ensure that existing vegetation is preserved where it is possible.

- (i) Erosion control and stabilization practices may include but are not limited to: establishment of temporary or permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of existing trees and vegetation, slope texturing, temporary velocity dissipation devices, flow diversion mechanisms, and other similar measures.
- (ii) The following records must be maintained and either attached to or referenced in the SWP3, and made readily available upon request to the parties listed in Part III.D.1 of this general permit:
 - (A) the dates when major grading activities occur;
 - (B) the dates when construction activities temporarily or permanently cease on a portion of the site; and
 - (C) the dates when stabilization measures are initiated.
- (iii) Erosion control and stabilization measures must be initiated immediately in portions of the site where construction activities have temporarily ceased and will not resume for a period exceeding 14 calendar days. Stabilization measures that provide a protective cover must be initiated immediately in portions of the site where construction activities have permanently ceased. The term "immediately" is used to define the deadline for initiating stabilization measures. In the context of this requirement, "immediately" means as soon as practicable, but no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased. Except as provided in (A) through (D) below, these measures must be completed as soon as practicable, but no more than 14 calendar days after the initiation of soil stabilization measures:
 - (A) Where the immediate initiation of stabilization measures 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.

- (B) In arid areas, semi-arid areas, or drought-stricken areas where the immediate initiation of stabilization measures after construction activity has temporarily or permanently ceased or is precluded by arid conditions, erosion control and stabilization measures must be initiated as soon as practicable. Where vegetative controls are not feasible due to arid conditions, the operator shall immediately install, and within 14 calendar days of a temporary or permanent cessation of work in any portion of the site complete, non-vegetative erosion controls. If non-vegetative controls are not feasible, the operator shall install temporary sediment controls as required in Paragraph (C) below.
 - (C) In areas where temporary stabilization measures are infeasible, the operator may alternatively utilize temporary perimeter controls. The operator must document in the SWP3 the reason why stabilization measures are not feasible, and must demonstrate that the perimeter controls will retain sediment on site to the extent practicable. The operator must continue to inspect the BMPs at the frequency established in Section III.F.7.(a) for unstabilized sites.
 - (D) If the initiation or completion of vegetative stabilization is affected by circumstances beyond the control of the permittee, vegetative stabilization must be initiated or completed as soon as conditions or circumstances allow it on the site. The requirement to initiate stabilization is triggered as soon as it is known with reasonable certainty that work will be stopped for 14 or more additional calendar days.
- (iv) Final stabilization must be achieved prior to termination of permit coverage.
 - (v) TCEQ does not expect that temporary or permanent stabilization measures to be applied to areas that are intended to be left un-vegetated or unstabilized following construction (e.g., dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, or materials).
- (c) Sediment Control Practices

The SWP3 must include a description of any sediment control practices used to remove eroded soils from stormwater runoff, including the general timing or sequence for implementation of controls.

- (i) Sites With Drainage Areas of Ten or More Acres

- (A) Sedimentation Basin(s)

- (1) A sedimentation basin is required, where feasible, for a common drainage location that serves an area with ten (10) or more acres disturbed at one time. A sedimentation basin may be temporary or permanent, and must provide sufficient storage to contain a calculated volume of runoff from a 2-year, 24-hour storm from each disturbed 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 permanent stabilization, if these flows are diverted around both the disturbed areas of the site and the sediment basin. Capacity calculations shall be included in the SWP3.

- (2) Where rainfall data is not available or a calculation cannot be performed, the sedimentation basin must provide at least 3,600 cubic feet of storage per acre drained until final stabilization of the site.
 - (3) If a sedimentation basin is not feasible, then the permittee shall provide equivalent control measures until final stabilization of the site. In determining whether installing a sediment basin is feasible, the permittee may consider factors such as site soils, slope, available area, public safety, precipitation patterns, site geometry, site vegetation, infiltration capacity, geotechnical factors, depth to groundwater, and other similar considerations. The permittee shall document the reason that the sediment basins are not feasible, and shall utilize equivalent control measures, which may include a series of smaller sediment basins.
 - (4) Unless infeasible, when discharging from sedimentation basins and impoundments, the permittee shall utilize outlet structures that withdraw water from the surface.
 - (B) Perimeter Controls: At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries of the construction area, and for those side slope boundaries deemed appropriate as dictated by individual site conditions.
 - (ii) Controls for Sites With Drainage Areas Less than Ten Acres:
 - (A) Sediment traps and sediment basins may be used to control solids in stormwater 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 of the construction area, and for those side slope boundaries deemed appropriate as dictated by individual site conditions.
 - (B) Alternatively, a sediment basin that provides storage for a calculated volume of runoff from a 2-year, 24-hour storm from each disturbed acre drained may be utilized. Where rainfall data is not available or a calculation cannot be performed, a temporary or permanent sediment basin providing 3,600 cubic feet of storage per acre drained may be provided. If a calculation is performed, then the calculation shall be included in the SWP3.
 - (C) If sedimentation basins or impoundments are used, the permittee shall comply with the requirements in Part III.G.6 of this general permit.
3. Description of Permanent Stormwater Controls

A description of any measures that will be installed during the construction process to control pollutants in stormwater discharges that may occur after construction operations have been completed must be included in the SWP3. Permittees are only responsible for the installation and maintenance of stormwater management measures prior to final stabilization of the site or prior to submission of an NOT.
4. Other Required Controls and BMPs
 - (a) Permittees shall minimize, to the extent practicable, the off-site vehicle tracking of sediments and the generation of dust. The SWP3 shall include a description of controls utilized to accomplish this requirement.

- (b) The SWP3 must include a description of construction and waste materials expected to be stored on-site and a description of controls to minimize pollutants from these materials.
 - (c) The SWP3 must include a description of potential pollutant sources from areas other than construction (such as stormwater discharges from dedicated asphalt plants and dedicated concrete batch plants), and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.
 - (d) Permittees shall place velocity dissipation devices at discharge locations and along the length of any outfall channel (i.e., runoff conveyance) to provide a non-erosive flow velocity from the structure to a water course, so that the natural physical and biological characteristics and functions are maintained and protected.
 - (e) Permittees shall design and utilize appropriate controls to minimize the offsite transport of suspended sediments and other pollutants if it is necessary to pump or channel standing water from the site.
 - (f) Permittees shall ensure that all other required controls and BMPs comply with all of the requirements of Part III.G of this general permit.
5. Documentation of Compliance with Approved State and Local Plans
- (a) Permittees must ensure that the SWP3 is consistent with requirements specified in applicable sediment and erosion site plans or site permits, or stormwater 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 stormwater management site plans or site permits approved by state or local official for which the permittee receives written notice.
 - (c) If the permittee is required to prepare a separate management plan, including but not limited to a WPAP or Contributing Zone Plan in accordance with 30 TAC Chapter 213 (related to the Edwards Aquifer), then a copy of that plan must be either included in the SWP3 or made readily available upon request to authorized personnel of the TCEQ. The permittee shall maintain a copy of the approval letter for the plan in its SWP3.
6. Maintenance Requirements
- (a) All protective measures identified in the SWP3 must be maintained in effective operating condition. If, through inspections or other means, the permittee determines that BMPs are not operating effectively, then the permittee shall perform maintenance as necessary to maintain the continued effectiveness of stormwater controls, and prior to the next rain event if feasible. If maintenance prior to the next anticipated storm event is impracticable, the reason shall be documented in the SWP3 and maintenance must be scheduled and accomplished as soon as practicable. Erosion and sediment controls that have been intentionally disabled, run-over, removed, or otherwise rendered ineffective must be replaced or corrected immediately upon discovery.
 - (b) If periodic inspections or other information indicates a control has been used incorrectly, is performing inadequately, or is damaged, then the operator shall replace or modify the control as soon as practicable after making the discovery.
 - (c) Sediment must be removed from sediment traps and sedimentation ponds no later than the time that design capacity has been reduced by 50%. For perimeter

controls such as silt fences, berms, etc., the trapped sediment must be removed before it reaches 50% of the above-ground height.

- (d) If sediment escapes the site, accumulations must be removed at a frequency that minimizes off-site impacts, and prior to the next rain event, if feasible. If the permittee does not own or operate the off-site conveyance, then the permittee shall work with the owner or operator of the property to remove the sediment.

7. Inspections of Controls

- (a) Personnel provided by the permittee 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, discharge locations, and structural controls for evidence of, or the potential for, pollutants entering the drainage system. Personnel conducting these inspections must be knowledgeable of this general permit, familiar with the construction site, and knowledgeable of the SWP3 for the site. Sediment and erosion control measures identified in the SWP3 must be inspected to ensure that they are operating correctly. Locations where vehicles enter or exit the site must be inspected for evidence of off-site sediment tracking. Inspections must be conducted at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

Where sites have been finally or temporarily stabilized or where runoff is unlikely due to winter conditions (e.g. site is covered with snow, ice, or frozen ground exists), inspections must be conducted at least once every month. In arid, semi-arid, or drought-stricken areas, inspections must be conducted at least once every month and within 24 hours after the end of a storm event of 0.5 inches or greater. The SWP3 must also contain a record of the total rainfall measured, as well as the approximate beginning and ending dates of winter or drought conditions resulting in monthly frequency of inspections.

As an alternative to the above-described inspection schedule of once every 14 calendar days and within 24 hours of a storm event of 0.5 inches or greater, the SWP3 may be developed to require that these inspections will occur at least once every seven (7) calendar days. If this alternative schedule is developed, then the inspection must occur regardless of whether or not there has been a rainfall event since the previous inspection.

The inspections may occur on either schedule provided that the SWP3 reflects the current schedule and that any changes to the schedule are conducted in accordance with the following provisions: the schedule may be changed a maximum of one time each month, the schedule change must be implemented at the beginning of a calendar month, and the reason for the schedule change must be documented in the SWP3 (e.g., end of "dry" season and beginning of "wet" season).

- (b) Utility line installation, pipeline construction, and other examples of long, narrow, linear construction activities may provide inspection personnel with limited access to the areas described in Part III.F.7.(a) above. Inspection of these areas could require that vehicles compromise temporarily or even permanently stabilized areas, cause additional disturbance of soils, and increase the potential for erosion. In these circumstances, controls must be inspected at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater, but representative inspections may be performed. For representative inspections, personnel must inspect controls along the construction site for 0.25 mile above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the areas described in Part III.F.7.(a)

above. The conditions of the controls along each inspected 0.25 mile portion may be considered as representative of the condition of controls along that reach extending from the end of the 0.25 mile portion to either the end of the next 0.25 mile inspected portion, or to the end of the project, whichever occurs first.

As an alternative to the above-described inspection schedule of once every 14 calendar days and within 24 hours of a storm event of 0.5 inches or greater, the SWP3 may be developed to require that these inspections will occur at least once every seven (7) calendar days. If this alternative schedule is developed, the inspection must occur regardless of whether or not there has been a rainfall event since the previous inspection. The inspections may occur on either schedule provided that the SWP3 reflects the current schedule and that any changes to the schedule are conducted in accordance with the following provisions: the schedule may be changed a maximum of one time each month, the schedule change must be implemented at the beginning of a calendar month, and the reason for the schedule change must be documented in the SWP3 (e.g., end of "dry" season and beginning of "wet" season).

- (c) In the event of flooding or other uncontrollable situations which prohibit access to the inspection sites, inspections must be conducted as soon as access is practicable.
- (d) 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.
- (e) A report summarizing the scope of the inspection, the date(s) 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.

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. The report must be signed by the person and in the manner required by 30 TAC §305.128 (relating to Signatories to Reports).

The names and qualifications of personnel making the inspections for the permittee may be documented once in the SWP3 rather than being included in each report.

- 8. The SWP3 must identify and ensure the implementation of appropriate pollution prevention measures for all eligible non-stormwater components of the discharge, as listed in Part II.A.3. of this permit.
- 9. The SWP3 must include the information required in Part III.B. of this general permit.
- 10. The SWP3 must include pollution prevention procedures that comply with Part III.G.4 of this general permit.

Section G. Erosion and Sediment Control Requirements Applicable to All Sites

Except as provided in 40 CFR §§125.30-125.32, any discharge regulated under this general permit, with the exception of sites that obtained waivers based on low rainfall erosivity, must achieve, at a minimum, the following effluent limitations representing the degree of effluent reduction attainable by application of the best practicable control technology currently available (BPT).

1. *Erosion and sediment controls.* Design, install, and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed, and maintained to:
 - (a) Control stormwater volume and velocity within the site to minimize soil erosion;
 - (b) If any stormwater flow will be channelized at the site, stormwater controls must be designed to control both peak flowrates and total stormwater volume to minimize erosion at outlets and to minimize downstream channel and streambank erosion;
 - (c) Minimize the amount of soil exposed during construction activity;
 - (d) Minimize the disturbance of steep slopes;
 - (e) Minimize sediment discharges from the site. The design, installation, and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
 - (f) If earth disturbance activities are located in close proximity to a surface water, provide and maintain appropriate natural buffers if feasible and as necessary, around surface waters, depending on site-specific topography, sensitivity, and proximity to water bodies. Direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration. If providing buffers is infeasible, the permittee shall document the reason that natural buffers are not feasible, and shall implement additional erosion and sediment controls to reduce sediment load;
 - (g) Preserve native topsoil at the site, unless infeasible; and
 - (h) Minimize soil compaction in post-construction pervious areas. In areas of the construction site where final vegetative stabilization will occur or where infiltration practices will be installed, either:
 - (1) restrict vehicle and equipment use to avoid soil compaction; or
 - (2) prior to seeding or planting areas of exposed soil that have been compacted, use techniques that condition the soils to support vegetative growth, if necessary and feasible;
 - (i) TCEQ does not consider stormwater control features (e.g., stormwater conveyance channels, storm drain inlets, sediment basins) to constitute “surface waters” for the purposes of triggering the buffer requirement in Part III.G.(f) above.
2. *Soil stabilization.* Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. In the context of this requirement, “immediately” means as soon as practicable, but no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased. Temporary

stabilization must be completed no more than 14 calendar days after initiation of soil stabilization measures, and final stabilization must be achieved prior to termination of permit coverage. In arid, semi-arid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative non-vegetative stabilization measures must be employed as soon as practicable. Refer to Part III.F.2.(b) for complete erosion control and stabilization practice requirements.

3. *Dewatering*. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited, unless managed by appropriate controls.
4. *Pollution prevention measures*. Design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
 - (a) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
 - (b) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
 - (c) Minimize the discharge of pollutants from spills and leaks, and implement chemical spill and leak prevention and response procedures.
5. *Prohibited discharges*. The following discharges are prohibited:
 - (a) Wastewater from wash out of concrete trucks, unless managed by an appropriate control (see Part V of the general permit);
 - (b) Wastewater from wash out and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
 - (c) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
 - (d) Soaps or solvents used in vehicle and equipment washing.
6. *Surface outlets*. When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible.

Part IV. Stormwater Runoff from Concrete Batch Plants

Discharges of stormwater runoff from concrete batch plants at regulated construction sites may be authorized under the provisions of this general permit provided that the following requirements are met for concrete batch plant(s) authorized under this permit. If discharges of stormwater runoff from concrete batch plants are not covered under this general permit, then discharges must be authorized under an alternative general permit or individual permit. This permit does not authorize the discharge or land disposal of any wastewater from concrete batch plants at regulated construction sites. Authorization for these wastes must be obtained under an individual permit or an alternative general permit.

Section A. Benchmark Sampling Requirements

1. Operators of concrete batch plants authorized under this general permit shall sample the stormwater runoff from the concrete batch plants according to the requirements

of this section of this general permit, and must conduct evaluations on the effectiveness of the SWP3 based on the following benchmark monitoring values:

Table 1. Benchmark Parameters

Benchmark Parameter	Benchmark Value	Sampling Frequency	Sample Type
Oil and Grease	15 mg/L	1/quarter (*1) (*2)	Grab (*3)
Total Suspended Solids	100 mg/L	1/quarter (*1) (*2)	Grab (*3)
pH	6.0 – 9.0 Standard Units	1/quarter (*1) (*2)	Grab (*3)
Total Iron	1.3 mg/L	1/quarter (*1) (*2)	Grab (*3)

- (*1) When discharge occurs. Sampling is required within the first 30 minutes of discharge. If it is not practicable to take the sample, or to complete the sampling, within the first 30 minutes, sampling must be completed within the first hour of discharge. If sampling is not completed within the first 30 minutes of discharge, the reason must be documented and attached to all required reports and records of the sampling activity.
- (*2) Sampling must be conducted at least once during each of the following periods. The first sample must be collected during the first full quarter that a stormwater discharge occurs from a concrete batch plant authorized under this general permit.

January through March

April through June

July through September

October through December

For projects lasting less than one full quarter, a minimum of one sample shall be collected, provided that a stormwater discharge occurred at least once following submission of the NOI or following the date that automatic authorization was obtained under Section II.E.2., and prior to terminating coverage.

- (*3) A grab sample shall be collected from the stormwater discharge resulting from a storm event that is at least 0.1 inches of measured precipitation that occurs at least 72 hours from the previously measurable storm event. The sample shall be collected downstream of the concrete batch plant, and where the discharge exits any BMPs utilized to handle the runoff from the batch plant, prior to commingling with any other water authorized under this general permit.
2. The permittee must compare the results of sample analyses to the benchmark values above, and must include this comparison in the overall assessment of the SWP3's effectiveness. Analytical results that exceed a benchmark value are not a violation of this permit, as these values are not numeric effluent limitations. Results of analyses are indicators that modifications of the SWP3 should be assessed and may be necessary to protect water quality. The operator must investigate the cause for each exceedance and must document the results of this investigation in the SWP3 by the end of the quarter following the sampling event.

The operator's investigation must identify the following:

- (a) any additional potential sources of pollution, such as spills that might have occurred,
- (b) necessary revisions to good housekeeping measures that are part of the SWP3,
- (c) additional BMPs, including a schedule to install or implement the BMPs, and
- (d) other parts of the SWP3 that may require revisions in order to meet the goal of the benchmark values.

Background concentrations of specific pollutants may also be considered during the investigation. If the operator is able to relate the cause of the exceedance to background concentrations, then subsequent exceedances of benchmark values for that pollutant may be resolved by referencing earlier findings in the SWP3.

Background concentrations may be identified by laboratory analyses of samples of stormwater runoff to the permitted facility, by laboratory analyses of samples of stormwater run-off from adjacent non-industrial areas, or by identifying the pollutant is a naturally occurring material in soils at the site.

Section B. Best Management Practices (BMPs) and SWP3 Requirements

Minimum SWP3 Requirements – The following are required in addition to other SWP3 requirements listed in this general permit (including, but not limited to Part III.F.7. of this permit):

1. **Description of Potential Pollutant Sources** - The SWP3 must provide a description of potential sources (activities and materials) that may reasonably be expected to affect the quality of stormwater discharges associated with concrete batch plants authorized under this permit. The SWP3 must describe practices that that will be used to reduce the pollutants in these discharges to assure compliance with this general permit, including the protection of water quality, and must ensure the implementation of these practices.

The following must be developed, at a minimum, in support of developing this description:

- (a) **Drainage** – The site map must include the following information:
 - (1) the location of all outfalls for stormwater discharges associated with concrete batch plants that are authorized under this permit;
 - (2) a depiction of the drainage area and the direction of flow to the outfall(s);
 - (3) structural controls used within the drainage area(s);
 - (4) the locations of the following areas associated with concrete batch plants that are exposed to precipitation: vehicle and equipment maintenance activities (including fueling, repair, and storage areas for vehicles and equipment scheduled for maintenance); areas used for the treatment, storage, or disposal of wastes; liquid storage tanks; material processing and storage areas; and loading and unloading areas; and
 - (5) the locations of the following: any bag house or other dust control device(s); recycle/sedimentation pond, clarifier or other device used for the treatment of facility wastewater (including the areas that drain to the treatment device); areas with significant materials; and areas where major spills or leaks have occurred.
- (b) **Inventory of Exposed Materials** – A list of materials handled at the concrete batch plant that may be exposed to stormwater and that have a potential to

affect the quality of stormwater discharges associated with concrete batch plants that are authorized under this general permit.

- (c) **Spills and Leaks** - A list of significant spills and leaks of toxic or hazardous pollutants that occurred in areas exposed to stormwater and that drain to stormwater outfalls associated with concrete batch plants authorized under this general permit must be developed, maintained, and updated as needed.
 - (d) **Sampling Data** - A summary of existing stormwater discharge sampling data must be maintained, if available.
2. **Measures and Controls** - The SWP3 must include a description of management controls to regulate pollutants identified in the SWP3's "Description of Potential Pollutant Sources" from Part IV.B.1.(a) of this permit, and a schedule for implementation of the measures and controls. This must include, at a minimum:
- (a) **Good Housekeeping** - Good housekeeping measures must be developed and implemented in the area(s) associated with concrete batch plants.
 - (1) Operators must prevent or minimize the discharge of spilled cement, aggregate (including sand or gravel), settled dust, or other significant materials from paved portions of the site that are exposed to stormwater. Measures used to minimize the presence of these materials may include regular sweeping or other equivalent practices. These practices must be conducted at a frequency that is determined based on consideration of the amount of industrial activity occurring in the area and frequency of precipitation, and shall occur at least once per week when cement or aggregate is being handled or otherwise processed in the area.
 - (2) Operators must prevent the exposure of fine granular solids, such as cement, to stormwater. Where practicable, these materials must be stored in enclosed silos, hoppers or buildings, in covered areas, or under covering.
 - (b) **Spill Prevention and Response Procedures** - Areas where potential spills that can contribute pollutants to stormwater runoff, and the drainage areas from these locations, must be identified in the SWP3. Where appropriate, the SWP3 must specify material handling procedures, storage requirements, and use of equipment. Procedures for cleaning up spills must be identified in the SWP3 and made available to the appropriate personnel.
 - (c) **Inspections** - Qualified facility personnel (i.e., a person or persons with knowledge of this general permit, the concrete batch plant, and the SWP3 related to the concrete batch plant(s) for the site) must be identified to inspect designated equipment and areas of the facility specified in the SWP3. The inspection frequency must be specified in the SWP3 based upon a consideration of the level of concrete production at the facility, but must be a minimum of once per month while the facility is in operation. The inspection must take place while the facility is in operation and must, at a minimum, include all areas that are exposed to stormwater at the site, including material handling areas, above ground storage tanks, hoppers or silos, dust collection/containment systems, truck wash down and equipment cleaning areas. Follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections must be maintained and be made readily available for inspection upon request.
 - (d) **Employee Training** - An employee training program must be developed to educate personnel responsible for implementing any component of the SWP3, or personnel otherwise responsible for stormwater pollution prevention, with the provisions of the SWP3. The frequency of training must be documented in

the SWP3, and at a minimum, must consist of one training prior to the initiation of operation of the concrete batch plant.

- (e) Record Keeping and Internal Reporting Procedures - A description of spills and similar incidents, plus additional information that is obtained regarding the quality and quantity of stormwater discharges, must be included in the SWP3. Inspection and maintenance activities must be documented and records of those inspection and maintenance activities must be incorporated in the SWP3.
 - (f) Management of Runoff - The SWP3 shall contain a narrative consideration for reducing the volume of runoff from concrete batch plants by diverting runoff or otherwise managing runoff, including use of infiltration, detention ponds, retention ponds, or reusing of runoff.
3. Comprehensive Compliance Evaluation – At least once per year, one or more qualified personnel (i.e., a person or persons with knowledge of this general permit, the concrete batch plant, and the SWP3 related to the concrete batch plant(s) for the site) shall conduct a compliance evaluation of the plant. The evaluation must include the following.
- (a) Visual examination of all areas draining stormwater associated with regulated concrete batch plants for evidence of, or the potential for, pollutants entering the drainage system. These include but are not limited to: cleaning areas, material handling areas, above ground storage tanks, hoppers or silos, dust collection/containment systems, and truck wash down and equipment cleaning areas. Measures implemented to reduce pollutants in runoff (including structural controls and implementation of management practices) must be evaluated to determine if they are effective and if they are implemented in accordance with the terms of this permit and with the permittee's SWP3. The operator shall conduct a visual inspection of equipment needed to implement the SWP3, such as spill response equipment.
 - (b) Based on the results of the evaluation, the following must be revised as appropriate within two weeks of the evaluation: the description of potential pollutant sources identified in the SWP3 (as required in Part IV.B.1., "Description of Potential Pollutant Sources"); and pollution prevention measures and controls identified in the SWP3 (as required in Part IV.B.2., "Measures and Controls"). The revisions may include a schedule for implementing the necessary changes.
 - (c) The permittee shall prepare and include in the SWP3 a report summarizing the scope of the evaluation, the personnel making the evaluation, the date(s) of the evaluation, major observations relating to the implementation of the SWP3, and actions taken in response to the findings of the evaluation. The report must identify any incidents of noncompliance. Where the report does not identify incidences of noncompliance, the report must contain a statement that the evaluation did not identify any incidence(s), and the report must be signed according to 30 TAC §305.128, relating to Signatories to Reports.
 - (d) The Comprehensive Compliance Evaluation may substitute for one of the required inspections delineated in Part IV.B.2.(c) of this general permit.

Section C. Prohibition of Wastewater Discharges

Wastewater discharges associated with concrete production including wastewater disposal by land application are not authorized under this general permit. These wastewater discharges must be authorized under an alternative TCEQ water quality permit or otherwise disposed of in an authorized manner. Discharges of concrete truck wash out at construction sites may be authorized if conducted in accordance with the requirements of Part V of this general permit.

Part V. Concrete Truck Wash Out Requirements

This general permit authorizes the wash out of concrete trucks at construction sites regulated under Sections II.E.1., 2., and 3. of this general permit, provided the following requirements are met. Authorization is limited to the land disposal of wash out water from concrete trucks. Any other direct discharge of concrete production waste water must be authorized under a separate TCEQ general permit or individual permit.

1. Direct discharge of concrete truck wash out water to surface water in the state, including discharge to storm sewers, is prohibited by this general permit.
2. Concrete truck wash out water shall be discharged to areas at the construction site where structural controls have been established to prevent direct discharge to surface waters, or to areas that have a minimal slope that allow infiltration and filtering of wash out water to prevent direct discharge to surface waters. Structural controls may consist of temporary berms, temporary shallow pits, temporary storage tanks with slow rate release, or other reasonable measures to prevent runoff from the construction site.
3. Wash out of concrete trucks during rainfall events shall be minimized. The direct discharge of concrete truck wash out water is prohibited at all times, and the operator shall insure that its BMPs are sufficient to prevent the discharge of concrete truck wash out as the result of rainfall or stormwater runoff.
4. The discharge of wash out water must not cause or contribute to groundwater contamination.
5. If a SWP3 is required to be implemented, the SWP3 shall include concrete wash out areas on the associated site map.

Part VI. Retention of Records

The permittee must retain the following records for a minimum period of three (3) years from the date that a NOT is submitted as required by Part II.E.3. For activities in which an NOT is not required, records shall be retained for a minimum period of three (3) years from the date that the operator terminates coverage under Section II.F.3. of this permit. Records include:

1. A copy of the SWP3;
2. All reports and actions required by this permit, including a copy of the construction site notice;
3. All data used to complete the NOI, if an NOI is required for coverage under this general permit; and
4. All records of submittal of forms submitted to the operator of any MS4 receiving the discharge and to the secondary operator of a large construction site, if applicable.

Part VII. Standard Permit Conditions

1. The permittee has a duty to comply with all permit conditions. Failure to comply with any permit condition is a violation of the permit and statutes under which it was issued, and is grounds for enforcement action, for terminating, revoking, or denying coverage under this general permit, or for requiring a discharger to apply for and obtain an individual TPDES permit.
2. 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 time, any information necessary for the executive director to determine whether cause exists for revoking, suspending, or

terminating authorization under this 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.

3. 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.
4. Inspection and entry shall be allowed under TWC Chapters 26-28, Texas Health and Safety Code ' ' 361.032-361.033 and 361.037, and 40 CFR ' 122.41(i). The statement in TWC ' 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.
5. The discharger is subject to administrative, civil, and criminal penalties, as applicable, under TWC Chapter 7 for violations including but not limited to the following:
 - (a) negligently or knowingly violating the federal CWA ' ' 301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under CWA ' 402, or any requirement imposed in a pretreatment program approved under CWA ' ' 402(a)(3) or 402(b)(8);
 - (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; and
 - (c) knowingly violating ' 303 of the federal CWA, and placing another person in imminent danger of death or serious bodily injury.
6. 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).
7. Authorization under this general permit does not convey property or water rights of any sort and does not grant any exclusive privilege.
8. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.
9. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.
10. The permittee shall comply with the reporting requirements in 40 CFR 122.41(l), as applicable.

Part VIII. Fees

1. A fee of must be submitted along with the NOI:
 - (a) \$325 if submitting a paper NOI, or

- (b) \$225 if submitting an NOI electronically.
- 2. Fees are due upon submission of the NOI. An NOI will not be declared administratively complete unless the associated fee has been paid in full.
- 3. No separate annual fees will be assessed for this general permit. The Water Quality Annual Fee has been incorporated into the NOI fees as described above.

Appendix A: Automatic Authorization

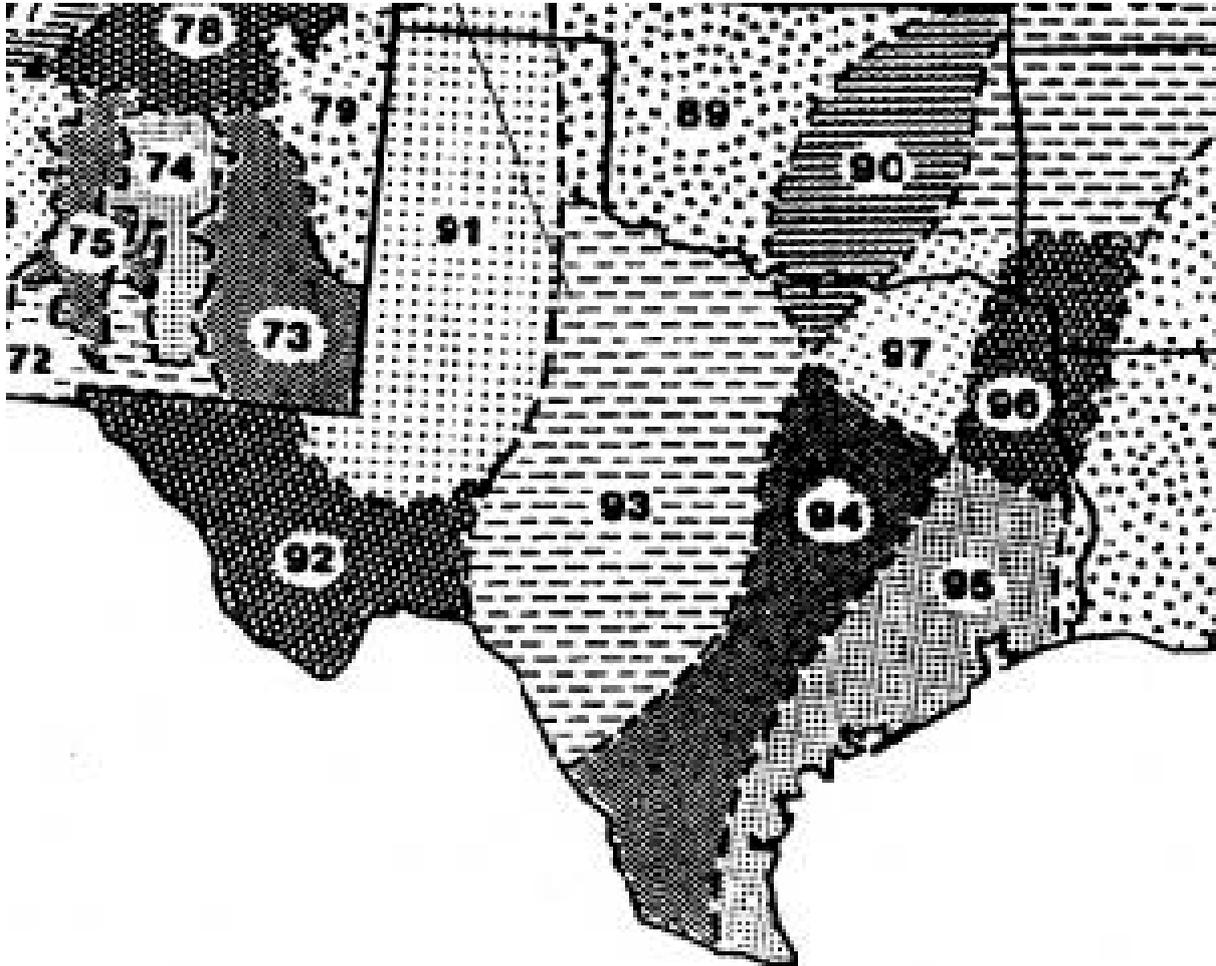
Periods of Low Erosion Potential by County – Eligible Date Ranges

Andrews: Nov. 15 - Apr. 30	Ector: Nov. 15 - Apr. 30
Archer: Dec. 15 - Feb. 14	Edwards: Dec. 15 - Feb. 14
Armstrong: Nov. 15 - Apr. 30	El Paso: Jan. 1 - Jul. 14, or May 15 - Jul. 31, or Jun. 1 - Aug. 14, or Jun. 15 - Sept. 14, or Jul. 1 - Oct. 14, or Jul. 15 - Oct. 31, or Aug. 1 - Apr. 30, or Aug. 15 - May 14, or Sept. 1 - May 30, or Oct. 1 - Jun. 14, or Nov. 1 - Jun. 30, or Nov. 15 - Jul. 14
Bailey: Nov. 1 - Apr. 30, or Nov. 15 - May 14	Fisher: Dec. 15 - Feb. 14
Baylor: Dec. 15 - Feb. 14	Floyd: Nov. 15 - Apr. 30
Borden: Nov. 15 - Apr. 30	Foard: Dec. 15 - Feb. 14
Brewster: Nov. 15 - Apr. 30	Gaines: Nov. 15 - Apr. 30
Briscoe: Nov. 15 - Apr. 30	Garza: Nov. 15 - Apr. 30
Brown: Dec. 15 - Feb. 14	Glasscock: Nov. 15 - Apr. 30
Callahan: Dec. 15 - Feb. 14	Hale: Nov. 15 - Apr. 30
Carson: Nov. 15 - Apr. 30	Hall: Feb. 1 - Mar. 30
Castro: Nov. 15 - Apr. 30	Hansford: Nov. 15 - Apr. 30
Childress: Dec. 15 - Feb. 14	Hardeman: Dec. 15 - Feb. 14
Cochran: Nov. 1 - Apr. 30, or Nov. 15 - May 14	Hartley: Nov. 15 - Apr. 30
Coke: Dec. 15 - Feb. 14	Haskell: Dec. 15 - Feb. 14
Coleman: Dec. 15 - Feb. 14	Hockley: Nov. 1 - Apr. 14, or Nov. 15 - Apr. 30
Collingsworth: Jan. 1 - Mar. 30, or Dec. 1 - Feb. 28	Howard: Nov. 15 - Apr. 30
Concho: Dec. 15 - Feb. 14	Hudspeth: Nov. 1 - May 14
Cottle: Dec. 15 - Feb. 14	Hutchinson: Nov. 15 - Apr. 30
Crane: Nov. 15 - Apr. 30	Irion: Dec. 15 - Feb. 14
Crockett: Nov. 15 - Jan. 14, or Feb. 1 - Mar. 30	Jeff Davis: Nov. 1 - Apr. 30 or Nov. 15 - May 14
Crosby: Nov. 15 - Apr. 30	Jones: Dec. 15 - Feb. 14
Culberson: Nov. 1 - May 14	Kent: Nov. 15 - Jan. 14 or Feb. 1 - Mar. 30
Dallam: Nov. 1 - Apr. 14, or Nov. 15 - Apr. 30	Kerr: Dec. 15 - Feb. 14
Dawson: Nov. 15 - Apr. 30	Kimble: Dec. 15 - Feb. 14
Deaf Smith: Nov. 15 - Apr. 30	King: Dec. 15 - Feb. 14
Dickens: Nov. 15 - Jan. 14, or Feb. 1 - Mar. 30	Kinney: Dec. 15 - Feb. 14
Dimmit: Dec. 15 - Feb. 14	Knox: Dec. 15 - Feb. 14
Donley: Jan. 1 - Mar. 30, or Dec. 1 - Feb. 28	Lamb: Nov. 1 - Apr. 14, or Nov. 15 - Apr. 30
Eastland: Dec. 15 - Feb. 14	

Loving: Nov. 1 - Apr. 30, or Nov. 15 - May 14
Lubbock: Nov. 15 - Apr. 30
Lynn: Nov. 15 - Apr. 30
Martin: Nov. 15 - Apr. 30
Mason: Dec. 15 - Feb. 14
Maverick: Dec. 15 - Feb. 14
McCulloch: Dec. 15 - Feb. 14
Menard: Dec. 15 - Feb. 14
Midland: Nov. 15 - Apr. 30
Mitchell: Nov. 15 - Apr. 30
Moore: Nov. 15 - Apr. 30
Motley: Nov. 15 - Jan. 14, or Feb. 1 - Mar. 30
Nolan: Dec. 15 - Feb. 14
Oldham: Nov. 15 - Apr. 30
Parmer: Nov. 1 - Apr. 14, or Nov. 15 - Apr. 30
Pecos: Nov. 15 - Apr. 30
Potter: Nov. 15 - Apr. 30
Presidio: Nov. 1 - Apr. 30, or Nov. 15 - May 14
Randall: Nov. 15 - Apr. 30
Reagan: Nov. 15 - Apr. 30
Real: Dec. 15 - Feb. 14
Reeves: Nov. 1 - Apr. 30, or Nov. 15 - May 14
Runnels: Dec. 15 - Feb. 14
Schleicher: Dec. 15 - Feb. 14

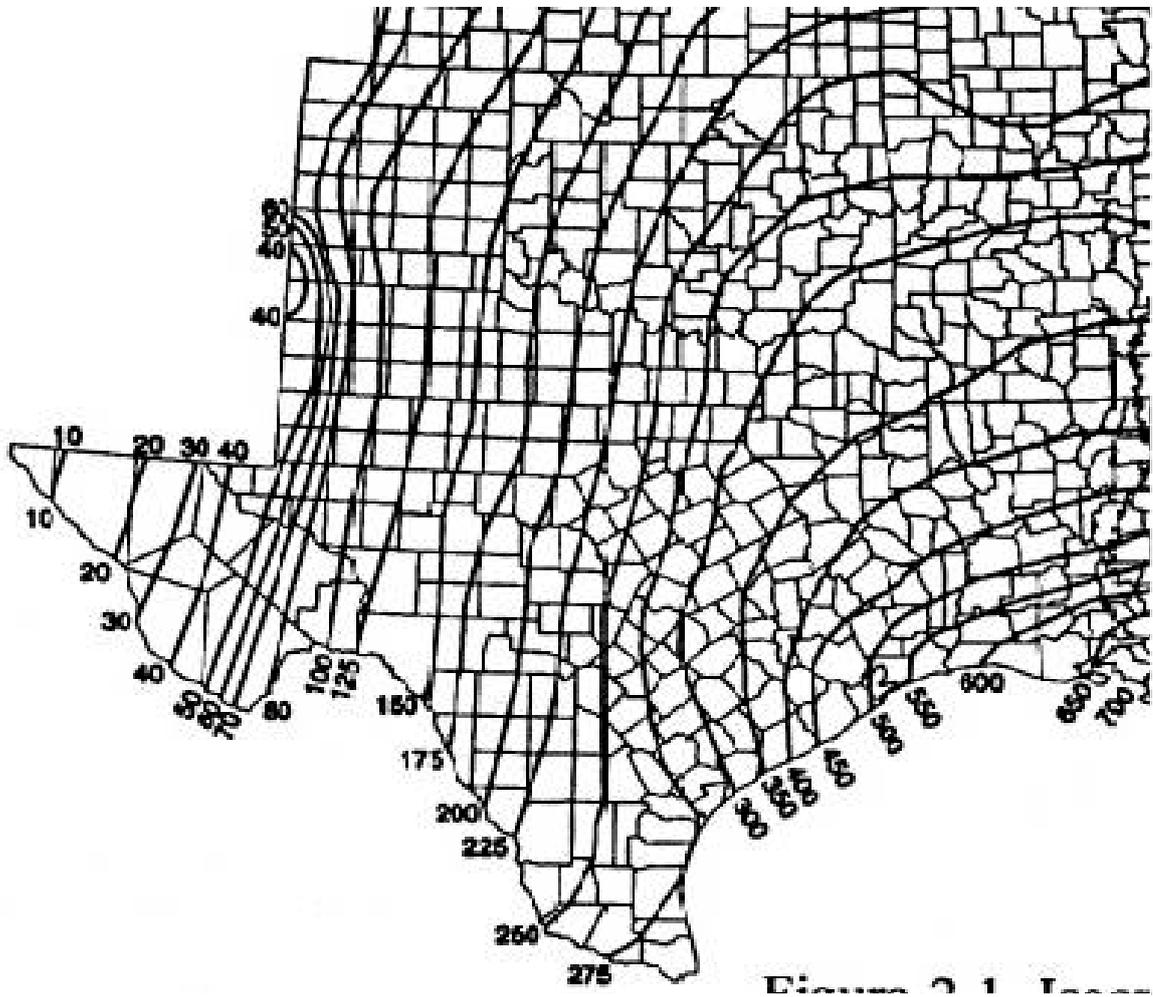
Scurry: Nov. 15 - Apr. 30
Shackelford: Dec. 15 - Feb. 14
Sherman: Nov. 15 - Apr. 30
Stephens: Dec. 15 - Feb. 14
Sterling: Nov. 15 - Apr. 30
Stonewall: Dec. 15 - Feb. 14
Sutton: Dec. 15 - Feb. 14
Swisher: Nov. 15 - Apr. 30
Taylor: Dec. 15 - Feb. 14
Terrell: Nov. 15 - Apr. 30
Terry: Nov. 15 - Apr. 30
Throckmorton: Dec. 15 - Feb. 14
Tom Green: Dec. 15 - Feb. 14
Upton: Nov. 15 - Apr. 30
Uvalde: Dec. 15 - Feb. 14
Val Verde: Nov. 15 - Jan. 14, or Feb. 1 - Mar. 30
Ward: Nov. 1 - Apr. 14, or Nov. 15 - Apr. 30
Wichita: Dec. 15 - Feb. 14
Wilbarger: Dec. 15 - Feb. 14
Winkler: Nov. 1 - Apr. 30, or Nov. 15 - May 14
Yoakum: Nov. 1 - Apr. 30, or Nov. 15 - May 14
Young: Dec. 15 - Feb. 14
Wheeler: Jan. 1 - Mar. 30, or Dec. 1 - Feb. 28
Zavala: Dec. 15 - Feb. 14

Appendix B: Erosivity Index (EI) Zones in Texas



Adapted from Chapter 2 of USDA Agriculture Handbook 703: "Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE)," U.S. Department of Agriculture, Agricultural Research Service

Appendix C: Isoerodent Map



Adapted from Chapter 2 of USDA Agriculture Handbook 703: "Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE)," U.S. Department of Agriculture, Agricultural Research Service

Appendix D: Erosivity Indices for EI Zones in Texas

Periods:

EI #	1/1	1/16	1/31	2/15	3/1	3/16	3/31	4/15	4/30	5/15	5/30	6/14	6/29	7/14	7/29	8/13	8/28	9/12	9/27	10/12	10/27	11/11	11/26	12/11	12/31
89	0	1	1	2	3	4	7	2	8	27	38	48	55	62	69	76	83	90	94	97	98	99	100	100	100
90	0	1	2	3	4	6	8	13	21	29	37	46	54	60	65	69	74	81	87	92	95	97	98	99	100
91	0	0	0	0	1	1	1	2	6	16	29	39	46	53	60	67	74	81	88	95	99	99	100	100	100
92	0	0	0	0	1	1	1	2	6	16	29	39	46	53	60	67	74	81	88	95	99	99	100	100	100
93	0	1	1	2	3	4	6	8	13	25	40	49	56	62	67	72	76	80	85	91	97	98	99	99	100
94	0	1	2	4	6	8	10	15	21	29	38	47	53	57	61	65	70	76	83	88	91	94	96	98	100
95	0	1	3	5	7	9	11	14	18	27	35	41	46	51	57	62	68	73	79	84	89	93	96	98	100
96	0	2	4	6	9	12	17	23	30	37	43	49	54	58	62	66	70	74	78	82	86	90	94	97	100
97	0	1	3	5	7	10	14	20	28	37	48	56	61	64	68	72	77	81	86	89	92	95	98	99	100
106	0	3	6	9	13	17	21	27	33	38	44	49	55	61	67	71	75	78	81	84	86	90	94	97	100

* Each period begins on the date listed in the table above and lasts until the day before the following period. The final period begins on December 11 and ends on December 31.

Table adapted from Chapter 2 of USDA Agriculture Handbook 703: "Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE)," U.S. Department of Agriculture, Agricultural Research Service

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT ON TCEQ GENERAL PERMIT NO. TXR150000

The executive director of the Texas Commission on Environmental Quality (commission or TCEQ) files this Response to Public Comment (Response) on Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR150000, the Construction General Permit for Stormwater Discharges (CGP). As required by Texas Water Code (TWC), §26.040(d) and 30 Texas Administrative Code (30 TAC) Section (§)205.3(e), before a general permit is issued, the executive director must prepare a response to all timely, relevant and material, or significant comments. The response must be made available to the public and filed with the Office of the Chief Clerk at least ten days before the commission considers the approval of the general permit. This response addresses all timely received public comments, whether or not withdrawn. Timely public comments were received from the following entities:

American Electric Power (AEP), City of Amarillo (Amarillo), Associated General Contractors of Texas (AGC), Army Corp of Engineers, Dallas Area Rapid Transit (DART), Harris County, Lower Colorado River Authority (LCRA), Luminant Generation Company LLC (Luminant), Oncor Electric Generation (Oncor), City of Plano (Plano), Project Compliance, LLC, City of Round Rock (Round Rock), Texas Association of Builders (TAB), and the Texas Department of Transportation (TXDOT).

BACKGROUND

The CGP renewal with changes authorizes the discharge of stormwater runoff associated with small and large construction sites and certain non-stormwater discharges into surface water in the state. This general permit identifies the sites that may be authorized under the permit. Additionally, it identifies construction activities that may obtain waivers and that may be eligible for coverage without submitting a notice of intent (NOI). The CGP also identifies under what circumstances a construction activity must obtain individual permit coverage. The CGP also authorizes the discharge of stormwater associated with industrial activities at construction sites that directly support the construction activity and are located at, adjacent to, or in close proximity to the permitted construction site.

On September 14, 1998, TCEQ received delegation authority from the United States Environmental Protection Agency (EPA) to administer the National Pollutant Discharge Elimination System (NPDES) program under the TPDES program. As part of that delegation, TCEQ and EPA signed a Memorandum of Agreement (MOA) that authorizes the administration of the NPDES program by TCEQ as it applies to the State of Texas. The original TPDES CGP was issued on March 5, 2003 and was renewed with changes with an effective date of March 5, 2008. This renewal of the CGP will continue to authorize discharges from regulated construction activities in Texas for five years until March 5, 2018.

The CGP is issued under the statutory authority of the TWC: 1) TWC, §26.121, which 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, 2) TWC, §26.027, which 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, and 3) TWC, §26.040, which provides the commission may authorize waste discharges by general permit.

The federal stormwater regulations for discharges from large construction activities are in the federal rules at 40 Code of Federal Regulations (CFR) §122.26, which were adopted by reference by TCEQ at 30 TAC §281.25(a). The federal Phase II stormwater regulations were published on December 8, 1999 in the *Federal Register*, requiring regulated small construction activities to obtain permit coverage by March 10, 2003. The small construction site regulations are in the federal rules at 40 CFR §122.26(a)(9)(i)(B) and (c), which were adopted by reference by TCEQ at 30 TAC §281.25(a)(4). Federal rules effluent guidelines for construction activities were adopted in 40 CFR Part 450 with an effective date of February 1, 2010 and those rules were adopted by TCEQ by reference in 30 TAC §305.541 on November 3, 2010. However, TCEQ did not adopt the turbidity numeric effluent limitation originally included in the Part 450 rules and EPA is currently seeking to revise those rules. TCEQ will have to conduct additional rulemaking to implement any changes EPA makes to the current stormwater rules.

Notice of availability and an announcement of the public meeting for this permit were published in the *Austin-American Statesman*, *Houston Chronicle*, the *Amarillo Globe-News*, the *Waco Herald Tribune*, the *El Paso Times*, the *San Antonio Express News*, the *Lubbock Avalanche Journal*, *Dallas Morning News*, the *Tyler Morning Telegraph*, and the *Texas Register* on October 12, 2012. A public meeting was held in Austin on November 12, 2012, and the comment period ended at the close of the business the same day.

Comments and responses are organized by section, with general comments first. Some comments have resulted in changes to the permit. Those comments resulting in changes were identified in the respective responses. All other comments resulted in no changes. Due to the number of comments received, some separate comments are combined with other related comments.

General Comments

Comment: The Army Corp of Engineers recommends that TCEQ create two separate construction site notices for small construction activities, one for primary operators and one for secondary operators.

Response: TCEQ considers having separate construction site notices for primary and secondary operators unnecessary and could lead to confusion if there is more than one operator at a construction site. For this reason, TCEQ declines to make the suggested change to the permit.

Comment: The Army Corp of Engineers asks whether TCEQ can provide an example of when a discharge of stormwater will not enter an MS4.

Response: If the stormwater runoff from the construction site discharges directly into a naturally occurring water body, or if the stormwater conveyance is not owned by a public entity, then the discharge is not considered to be into an MS4.

Comment: TAB comments that overall the proposed construction general permit (CGP) is written in simpler language than the current CGP, which will be appreciated by our members in the field.

Response: TCEQ appreciates the comment.

Comment: TAB comments that the proposed CGP implements the construction and development effluent limitation guidelines promulgated by EPA in 2009. TAB comments that following petitions and a lawsuit challenging the new rule EPA is in the process of reconsidering the rule. Given these potential pending changes, TAB respectfully requests that TCEQ extend the existing permit for at least a year, when the final result of the potential changes should be known. Oncor comments that it would be extremely difficult for linear transmission projects to comply with the most current iteration of these new rules. Oncor comments that the rules make no distinction for electric utility transmission line projects and their unique construction parameters and easement rights, despite acknowledging the potential difficulties. Prior to the EPA's implementation of the construction and development rule, Oncor feels a workgroup or discussion forum might be beneficial for electric utilities operating in the state of Texas and TCEQ.

Response: TCEQ adopted the construction and effluent limitation guidelines adopted by EPA in 40 CFR Part 450 in 2011 by reference in 30 TAC §305.541, minus the numeric effluent limitation for turbidity. Any changes to EPA's rules will require additional rulemaking by TCEQ to adopt. However, TCEQ is statutorily prohibited by TWC §26.040(i) to issue a permit for a term more than five years and it contains no provision for an extension of the current CGP as suggested.

If TCEQ was in the process of renewing the CGP and failed to issue the new permit by the current CGP expiration date, the current permit would be administratively continued for existing construction operations with active authorizations until TCEQ acted to issue the new CGP. However, TCEQ would have no general permitting options available for new construction activities that needed to obtain CGP coverage after March 5, 2013, the expiration date of the current CGP. New construction activities could not be retroactively covered under the expired CGP and the only permitting option would be to seek an individual TPDES permit. The process to obtain an individual permit is lengthy (approximately 330 days) and the cost is considerably more than obtaining coverage under the CGP.

Comment: AGC comments that the Texas Department of Transportation (TXDOT) requires an executed "Contractor Certification of Compliance with Stormwater

Requirements" for all projects. AGC comments that the TXDOT certification statement requires the contractor to acknowledge responsibility for a number of requirements relating to the CGP. However, AGC notes that it is TXDOT that prepares and develops the stormwater pollution prevention plan (SWP3) for the majority of TXDOT projects; and maintains operational control at the construction sites. AGC maintains that only TXDOT meets the definition of "operator" for TXDOT contracts.

Response: TCEQ generally agrees that a contractor who does not develop and implement the SWP3 or have operational control over compliance with the SWP3 does not meet the definition of "operator" under the CGP. However, resolving AGC differences with TXDOT over TXDOT contract language and requirements is beyond the scope of this response. TCEQ recommends that AGC coordinate with TXDOT to resolve differences on the content and language of contracts between AGC members and TXDOT.

To address situations where multiple operators exist at a construction site and share a common SWP3, TCEQ revised Part II.E.8.(f) of the CGP to state that the confirmation for an operator may be limited to its obligations under the SWP3 provided all obligations and requirements are confirmed by at least one operator. The certification requirements in Part E. of the NOI were also revised accordingly. See responses under that Part II.E.8. for revised language.

Comment: Harris County comments that on the TCEQ stormwater construction website there was a notice that TCEQ was considering requiring all NOIs for the CGP to be submitted electronically. Harris County has numerous construction projects that require coverage under the CGP and the logistics of complying with an electronic-only submission would be very burdensome. Pursuant to TCEQ rules, Harris County notes that its NOIs are signed by the County Judge. Generally, Harris County states that their NOI fees are paid for by contractors because they have a credit card, unlike the county. Harris County comments that the logistics of coordinating the electronic submittal of the County Judge's signed paperwork simultaneously with electronic payment is daunting. Accordingly, Harris County requests that a mailing option remain for NOI submissions.

Oncor comments that they prefer to retain the ability to submit a paper copy of the NOI because if NOI submittals become electronic-only, their integrity may be jeopardized and it would require a duplication of effort. Additionally, Oncor comments that there are technical challenges that would impede electronic-only submittal of the NOI and respectfully opposes the CGP requiring all NOIs be submitted electronically.

Response: TCEQ appreciates the comments, and does not plan to require the electronic-only submittal of NOIs during this permit term. Permittees will continue to have the option to submit the NOI electronically (e-NOI) or submit a paper NOI by mail.

Part I.B. – Definitions

Comment: Plano comments that the use of a national drought outlook map in the definition of “drought-stricken area” does not provide adequate geographic or physical references to identify those areas and does not provide regulatory guidance necessary for implementation of drought-stricken area items in the proposed CGP. Plano recommends the use of a map similar to the one found at the following link showing drought boundaries for reference and the drought boundaries being set for a minimum of a one year: http://droughtmonitor.unl.edu/DM_state.htm?TX,S

Response: The definition of “drought-stricken area” and the national drought outlook map it references are the same in the TPDES CGP as it is in the EPA CGP. TCEQ declines to make the change because the map being used is sufficient to provide the references needed to identify drought-stricken areas for the purposes of the permit.

Comment: TXDOT comments that the definition of “final stabilization” requires “70% vegetative coverage within three years” in arid, semi-arid, and drought-stricken areas. TXDOT requests that this provision allow for achievement of “70% of the native background vegetative cover” in order to be consistent with the definition of “final stabilization” under other circumstances.

Response: In response to the comment, the Part D.2. of the definition was revised to read: “The temporary erosion control measures are selected, designed, and installed to achieve 70% of the native background vegetative coverage within three years.”

Comment: TXDOT questions the definition of “impaired water” included in the CGP. TXDOT comments that the first sentence indicates that an impaired water is a water that is on the latest approved CWA §303(d) list, but the second sentence indicates that impaired waters also include those with an approved TMDL. TXDOT’s understanding is that once a TMDL is established for a water body, it is removed from the §303(d) list. Therefore, TXDOT notes that the first sentence of this definition seems to contradict the second. TXDOT asks whether “impaired waters” include both those on the §303(d) list and those with an approved TMDL; or does the term just include those water bodies on the §303(d) list.

Response: As used in the CGP, the definition of “impaired waters” includes water bodies on the Clean Water Act §303(d) list and those water bodies that have an approved TMDL or TMDL Implementation Plan, where the applicable water quality standards have not been successfully achieved. The §303(d) list is comprised of impaired water bodies that do not have an approved TMDL, while the intent of the CGP “impaired water” definition is to address all impaired water bodies, i.e. those that do not meet current water quality standards, with or without a TMDL.

Comment: TAB comments that neither the draft permit or fact sheet includes a definition of the word “minimize,” which is used extensively in Section III.G.1 of the CGP. TAB recommends adding a definition in Part I of the CGP that is consistent with the definition of “minimize” in the federal CGP. The federal definition reads as follows:

"Minimize - to reduce and/or eliminate to the extent achievable using stormwater controls that are technologically available and economically practicable and achievable in light of best industry practices."

Response: In response to the comment, a definition of "minimize" was added to the permit. The definition reads: "To reduce or eliminate to the extent achievable using stormwater controls that are technologically available and economically practicable and achievable in light of best industry practices."

Comment: The Army Corp of Engineers recommends that TCEQ add a definition for "operational control."

Response: TCEQ considers the proposed definition of "primary operator" in the CGP is sufficient to clarify the meaning of operational control. The emphasis in subsection (b) of the "primary operator" portion of the definition is whether the operator has day-to-day control "to ensure compliance with" the SWP3. No changes were made to the permit as a result of this comment.

Comment: Plano comments that the sub-definition of "secondary operator" under the definition of "operator" is still confusing. Plano recommends adding two items to the last paragraph of the definition: 1) Add the following from the current TCEQ Regulatory Guidance Document RG-468, sub-paragraph (b): "Secondary operators cannot initiate changes to the construction plans and specifications." 2) Per the TCEQ response to EPA's Interim Objection Letter, add the following: "Secondary operators must either prepare their own SWP3 or participate in a shared SWP3 that covers the areas of the construction site where they have control over the plans and specifications."

Response: For clarification purposes, TCEQ revised section (b) of the definition of "secondary operator" to include the following language: "Secondary operators must either prepare their own SWP3 or participate in a shared SWP3 that covers the areas of the construction site where they have control over the plans and specifications."

Comment: Plano comments that the term "pollutants of concern" used in Part II.C.4. is not defined in the CGP and requests that a definition be included in the permit.

Response: TCEQ declines to add a definition for "pollutants of concern" to the CGP. Part II.C.4. already states that "pollutants of concern" are the pollutants that have caused a water body to be listed as impaired.

Comment: TAB recommends adding a definition of "receiving water(s)" to the permit. TAB notes that the term is used in several sections of the CGP and is needed to provide clarity for the regulated community regarding the use of this term. TAB recommends adding the following definition of "receiving water" to the CGP: "The first surface water accepting the discharge from the project in cases where the discharge is to surface water; and, in cases where the project discharges into an MS4, as the first surface water accepting the discharge from the MS4."

Response: In response to the comment, TCEQ added the following definition of “receiving water” from EPA’s CGP to the permit: “Receiving Water - A ‘Water of the United States’ as defined in 40 CFR §122.2 into which the regulated stormwater discharges.”

Comment: TAB notes that the term “steep slope” is used in Part III.G.1. of the CGP and that neither the draft permit or the fact sheet include a definition for the term. TAB notes that absent a definition, what is or is not a “steep slope” is arbitrary and subjective. TAB comments that the CGP should include the definition of “steep slope” or offer guidance on how to determine whether a slope is considered steep.

Response: In response to the comment, TCEQ added the following definition of “steep slopes” from EPA’s CGP to the permit: “Steep Slopes – Where a state, Tribe, local government, or industry technical manual (e.g. stormwater BMP manual) has defined what is to be considered a “steep slope,” this permit’s definition automatically adopts that definition. Where no such definition exists, steep slopes are automatically defined as those that are 15 percent or greater in grade.”

Comment: Plano recommends changing the phrase “...capture or prevent pollution...” to “...reduce or prevent pollution...” in the first sentence of the definition of “structural control.” Plano comments that none of the examples given capture all of the pollution from a construction site and notes that even the most efficient structural BMP just reduces the pollution load leaving a site.

Response: TCEQ revised the definition of “structural control” as requested, as this is consistent with the definition of “stormwater control measure” in EPA’s CGP. The first sentence of the definition now reads: “A pollution prevention practice that requires the construction of a device, or the use of a device, to reduce or prevent pollution in stormwater runoff.”

Part II.A.2.

Comment: LCRA comments that the revised CGP in Part II.A.2 states that “discharges of stormwater runoff from construction support activities may be authorized under this general permit provided that the following conditions are met: (a) activities are located within one mile from the boundary of the permitted construction site and directly support the construction activity.” LCRA comments that this paragraph is unclear regarding whether that means that support activities located farther than one mile from permitted construction site cannot be authorized by this permit. For example, if an equipment staging area was set up solely for your permitted construction site, but it is located 1.2 miles from your site, does that mean because it is more than one mile from your site, your only option is to get a separate authorization for it.

LCRA comments that if the answer is “yes,” then if the equipment staging area disturbs less than one acre, their interpretation is that the staging does not require CGP coverage because it does not meet the one acre threshold. Also, LCRA asks that if support activities are located less than one mile from the construction site, does the primary

operator have the option to consider it a separate site. Lastly, LCRA asks that if you have an equipment staging area 0.9 miles from your site, can you elect to not cover it under the main construction site authorization and instead authorize it separately. LCRA presumes that means that if the staging area is less than one acre, then it would not require CGP coverage.

Response: Construction support activities that are located more than one mile from an authorized construction site cannot be covered under the construction site's SWP3 and would require their own coverage under an appropriate individual or general permit based on the activity being conducted. For example, stormwater runoff from a borrow pit may be considered a mining activity and required to be authorized under TXR050000, the multi-sector industrial general permit for stormwater (MSGP). If the construction support activity is located within one mile of the construction site associated with it, it may be authorized separately if the operator chooses to do so.

If the equipment staging area is located more than one mile from the regulated construction activity, but is less than one acre in size, then CGP coverage is not required so long as it is not part of a larger common plan of development. In some cases, multiple related construction activities would not need to be considered as part of a larger common plan of development (see Part II.A.2(c)); while those within 1/4 mile of each other would need to be considered together. This is consistent with guidance provided by EPA and that TCEQ used in evaluating projects for municipalities and similar entities conducting similar land disturbance activities throughout their jurisdiction.

Comment: LCRA respectfully requests that TCEQ take out the one mile reference and instead provide the same requirements as EPA's CGP. The language would read: "Stormwater discharges eligible for authorization under this permit include stormwater from construction support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided: i. The support activity is directly related to the construction site required to have permit coverage for stormwater discharges; ii. The support activity is not a commercial operation, nor does it serve multiple unrelated construction projects; iii. The support activity does not continue to operate beyond the completion of the construction activity at the project it supports; and iv. Stormwater controls are implemented in accordance with Parts F and G, if applicable."

Response: TCEQ declines to make the change, as the current language is consistent with the existing CGP and EPA guidance. See response to the previous comment.

Part II.C.4.

Comment: The Army Corp of Engineers asks that if a classified water body is on the Section 303(d) list, but runoff from the construction activity feeds into an unnamed tributary that is a significant distance upstream, for example 5 miles from the classified water body, does the runoff from the construction activity still need to meet the requirements of the TMDL I-Plan. TAB asks how far downstream the impaired waters

body needs to be in order for it to not impact the permitting process. TAB comments that the permit language should identify the criteria to establish the relative location of the applicable water bodies the permittee must take into consideration when determining permitting and discharge requirements.

Response: For purposes of the CGP, if the construction activity is within the watershed of an impaired water body, the limits apply. However, if a construction activity is not a source for the pollutant of concern(s) causing the impairment then the TMDL requirements in the CGP would not apply.

Comment: TAB comments that this section includes a sentence in the second paragraph reading: "For consistency with an approved TMDL, the SWP3 must be consistent with any condition, goal, or requirement in the applicable TMDL, TMDL Implementation Plan (I-Plan), or as otherwise directed by the executive director." TAB comments that some of its members believe this language is too vague and could lead to inconsistent enforcement. TXDOT recommends deleting the referenced sentence because they are concerned with what appears to be a revised definition of consistency with an approved TMDL and the transformation of a TMDL or TMDL I-Plan goal into a regulatory requirement. At the least, TXDOT requests modification of the sentence so that non-regulatory goals are not misinterpreted as regulatory requirements.

Response: TCEQ recognizes that there are items in a TMDL and TMDL I-Plan that do not apply to stormwater. For clarification purposes, TCEQ revised the last sentence of Part II.C.4 as follows: "For consistency with the construction stormwater-related items in an approved TMDL, the SWP3 must be consistent with any applicable condition, goal, or requirement in the TMDL, TMDL Implementation Plan (I-Plan), or as otherwise directed by the executive director."

Comment: TAB comments that in the second paragraph of the section, the language authorizes a discharge of pollutants of concern to an impaired water body as long as the discharge meets the criteria included in an established TMDL and developed SWP3. However, TAB notes that in the first paragraph that the language does not authorize a discharge of pollutants of concern under the general construction permit from a new source or new discharge if the operator is discharging to an impaired water body that does not have an established TMDL. TAB comments that requiring an individual permit for discharges from new sources and new discharges to impaired water with no established TMDL will significantly impact the cost and scheduling of construction activity with limited environmental benefit. TAB further notes that there are significant costs for a project to remain dormant while seeking individual permit coverage.

TAB suggests that TCEQ consider an alternate method of granting permit coverage in cases where the project discharges to an impaired water body that does not have an established TMDL. For example, the permit could first define the impact zone or distance from the project to the impaired water that will trigger the need for the alternate method of obtaining permit coverage. Next, the operator could develop a SWP3 to include appropriate BMPs to address the potential discharges of pollutants of concern, and then submit the SWP3 to TCEQ for comment and approval. Once

evaluated and approved, TCEQ could allow permit coverage under the CGP rather than requiring the operator to obtain an individual permit.

Response: Part II.C.4 does not prohibit coverage under the CGP for discharge of stormwater associated with construction activities into water bodies that do not have a TMDL. This section only applies to discharges to impaired receiving waters with TMDL and TMDL I-Plan requirements. If the construction site discharges stormwater to a receiving water that does not have an approved TMDL, an individual permit is not required.

Part II.C.11.

Comment: TAB comments that this section added limitations on discharges that would otherwise be covered by the Endangered Species Act (ESA). TAB comments that there is not enough information provided regarding how a permittee will address these requirements. TAB comments that more information is needed on ways to comply with ESA requirements and utilize the proposed CGP. For example, if the ESA requirements are addressed through federal coordination and permitting programs, TAB comments that it is not clear why this section prohibits the use of the CGP. TAB notes that in the EPA CGP, if a permit applicant can demonstrate that they meet certain criteria to address the protection of species that are federally listed as endangered or threatened under the ESA or federally designated critical habitat then they are eligible to use the CGP. Project Compliance LLC asks whether the SWP3s must make any mention of whether or not endangered species are on or around a construction site. TXDOT requests modifying the first sentence to read: "...discharges that would adversely affect a listed endangered or threatened species or its critical habitat are not authorized by this permit, unless the requirements of the Endangered Species Act (ESA) are satisfied." TXDOT comments that it would not make sense to require an individual TPDES permit if an issue is already addressed through the proper regulatory process. Plano comments that the use of the phrase "...Federal requirement related to endangered species..." is very vague and open to interpretation. Plano requests that TCEQ provide clarification for site operators as to what is specifically required in their SWP3 document related to this item, if anything.

Response: The permit was previously submitted to the United States Fish and Wildlife Service (USFWS) for review and evaluation. USFWS did not request any changes to the permit regarding the language on the potential impact on any endangered species. The permit does not specifically include the federally listed species that might be impacted by the permit because the minimum SWP3 permit requirements must be met regardless of whether or not the discharge of stormwater from the site is to receiving waters that serves as habitat for listed species. The permit requires compliance with water quality standards approved by EPA for all areas of the state. These water quality standards are established in accordance with 30 TAC Chapter 307 to protect both aquatic and aquatic dependent species. Water quality standards approved by EPA are reviewed and analyzed by USFWS for consistency with ESA mandates. If there are any ESA requirements that are applicable to the area where the construction activity is occurring, then the SWP3 must specifically address these ESA requirements.

In response to the comments, TCEQ revised the first sentence of Part II.C.11. as follows: “Discharges that would adversely affect a listed endangered or threatened aquatic or aquatic-dependent species or its critical habitat are not authorized by this permit, unless the requirements of the Endangered Species Act are satisfied.”

Part II.D.1.(b)

Comment: TXDOT requests modifying the provision regarding operators of ongoing construction activities such that the applicable section reads: "...an NOT to terminate coverage or an NOI to renew authorization..." is required to be submitted within 90 days so that projects that will reach final stabilization within that time may terminate coverage without first applying for coverage under the new CGP.

Response: TCEQ revised the permit language as requested. Part II.D.1.(b) of the CGP now reads as follows: “Ongoing Construction - Operators of large construction activities continuing to operate after the effective date of this permit, and authorized under TPDES general permit TXR150000 (effective on March 5, 2008), must submit an NOI to renew authorization or a NOT to terminate coverage under this general permit within 90 days of the effective date of this general permit.”

Part II.E.

Comment: The Army Corp of Engineers asks if MS4 notification is required to be sent only to MS4s that are regulated or is notification required to un-regulated MS4s as well. Also, the Army Corp of Engineers asks whether TCEQ has a publicly accessible database so that permittees can confirm what MS4s require notification.

Response: The permit requires each construction operator to notify the operator of any MS4 receiving the stormwater discharge from the construction site, regardless of whether the MS4 is regulated or not. Determining whether an MS4 operator is regulated, authorized under a waiver, or not regulated can be more difficult for the construction site operator than simply providing the required notice if it is discharging into any MS4. The permit requirements ensure that the notices will be made available to any MS4 operator receiving discharges from the construction site. Permittees can search the TCEQ Central Registry to determine if a public entity has a MS4 permit. The Central Registry website can be searched at: <http://www.tceq.texas.gov/>.

Part II.E.2(c)

Comment: LCRA comments that under Part II.E.2(c), the primary operator of a small construction site must provide a copy of the signed and certified construction site notice to the operator of any MS4 receiving the discharge at least two days prior to commencing construction activities. However, LCRA notes that under Part II.E.3(d), the primary operator of a large construction site must provide a copy of the signed Notice of Intent (NOI) to the operator of any MS4 receiving the discharge prior to commencing construction activities. LCRA recommends requiring changing the small

MS4 notification requirement, to reflect the same NOI notification requirements as the large construction sites.

Response: In response to the comment, Part II.E.2(c) was revised to read: "...provide a copy of the signed and certified construction site notice to the operator of any municipal separate storm sewer system (MS4) receiving the discharge prior to commencement of construction activities." The specific two day requirement was removed for consistency.

Part II.E.3.

Comment: Harris County recommends adding back the following language was removed from the language in this section in the previous version of the CGP because removing it adversely impacts the county: "All primary operators must also post a copy of the signed NOI at the construction site in a location where it is readily available for viewing by the general public, local, state and federal authorities prior to commencing construction activities, and must maintain the NOI in that location until completion of the construction activity."

Harris County comments that in fulfilling its requirements under a joint TPDES Phase 1 MS4 permit and as the local authority that inspects and enforces water quality violations, utilizes the information in an NOI to conduct field investigations at construction sites. For instance, if an investigator notes a violation during an investigation, Harris County may use the contact information in the NOI to notify the operator of the violation. Additionally, a posted NOI provides notice that the operator has applied for coverage under the CGP. Such information is especially important when key operator staff is off-site and Harris County investigators need to perform an inspection. Accordingly, by removing the posting requirement, a readily available source of information is lost and Harris County investigators' workload is increased, thus impacting the ability to monitor and compel compliance at these sites.

Response: The removal of the requirement was the suggestion of TCEQ stormwater inspectors. The permit already requires that a site notice be posted and a copy of the NOI must be included as part of the SWP3, which must be retained on-site or be made readily available at the time of an on-site inspection. For this season, TCEQ declines to add the language back to the permit.

Part II.E.3.(d)

Comment: Plano comments that if a secondary operator is required to have an SWP3, then they recommend adding the following to paragraph (d): "Provide a copy of the signed and certified Secondary Operator construction site notice to the operator of any MS4 receiving the discharge at least two days prior to commencement of construction activities."

Response: In response to the comment, TCEQ revised the permit to add a requirement for secondary operators to provide a copy of the signed Secondary Operator site notice to the operator of any MS4 that receives stormwater discharges from the construction

site. This new requirement was added as Part II.E.3.(f), and reads as follows: “all secondary operators must provide a copy of the signed and certified Secondary Operator construction site notice to the operator of any MS4 receiving the discharge prior to commencement of construction activities.”

Part II.E.8.(f)

Comment: TXDOT comments that if multiple operators have agreed on a shared SWP3, an operator who under that SWP3 is not responsible for preparation of the SWP3 in compliance with the CGP, should not be required to certify the plan was developed in accordance with the CGP when a different operator has assumed responsibility to prepare the SWP3 and make the certification. Secondly, TXDOT comments that while the required confirmation only applies to "applicable" local requirements, for TXDOT projects it is especially difficult and confusing for a contractor to confirm the applicable local requirements. With respect to certain TXDOT contracts, it desires to be a primary operator and responsible for the preparation of the SWP3 in compliance with the CGP. TxDOT has no objections to making the required confirmation in the NOI as proposed, but does not believe it is reasonable or necessary to require the same confirmation from an operator who did not develop the plan.

Therefore, TXDOT recommends adding the following phrase at the end of (f): “...for multiple operators who prepare a shared SWP3, the confirmation for an operator may be limited to its obligations under the SWP3 provided all obligations are confirmed by at least one operator.”

Response: TCEQ revised Part II.E.8.(f) of the permit as requested. The requirement now reads as follows: “confirmation that a SWP3 has been developed in accordance with this general permit, that it will be implemented prior to construction, and that it is compliant with any applicable local sediment and erosion control plans; for multiple operators who prepare a shared SWP3, the confirmation for an operator may be limited to its obligations under the SWP3 provided all obligations are confirmed by at least one operator;...”

Part II.E.8.(h)

Comment: TXDOT comments that in some cases (e.g. particularly in west Texas, where few waters have been classified), the first classified segment that is hydrologically connected to a project's discharge location may actually be a hundred or more miles from the project. TXDOT requests modifying this provision to require the segment number if there is a classified segment within a maximum distance downstream (e.g. within one stream mile).

Response: Each receiving stream has its own watershed, and the drainage area of a watershed is not determined by distance. Any pollutant that is discharged into a receiving water that drains into a watershed has the potential to reach any segment of that watershed. Therefore, TCEQ declines to make the requested change.

Part II.H.2.

Comment: TAB recommends changing the term "receiving stream" to "receiving water" in this section for consistency with the term used in other sections of the CGP.

Response: In response to the comment, TCEQ changed the term "receiving stream" to "receiving water" in this section.

Part III

Comment: Project Compliance, LLC comments that throughout the permit the defined term "operator" is used, but in the first sentence of Part III, the permit uses the term "regulated construction site operators." Project Compliance, LLC comments if this phrase has the same meaning as "operator" as used throughout the permit, why not just use the one-word description for consistency.

Response: The intent of Part III is that all operators who are associated with construction projects that are regulated under the CGP must prepare a SWP3. For that reason, the section uses the term "regulated construction site operators." TCEQ declines to make the change, as the term is consistent with the existing CGP and with similar language in EPA's 2012 CGP.

Comment: Plano comments that if a secondary operator is required to have a SWP3, then the text in the first paragraph does not match that requirement and needs to be modified similar to the following: "Secondary operators must either prepare their own SWP3 or participate in a shared SWP3 that covers the areas of the construction site where they have control over the plans and specifications."

Response: The second paragraph of Part III states that individual operators may either prepare separate SWP3s that cover only their portion of the construction project, or they participate in the development of a single comprehensive SWP3. It is the intent of the permit that secondary operators are included under "operator." Therefore, no revisions were made to the permit language in response to the comment.

Part III.A.

Comment: TXDOT requests adding the following sentence as the second sentence of this section: "The SWP3 may provide that one operator is responsible for preparation of an SWP3 in compliance with the CGP and another operator is responsible for implementation of the SWP3 at the project site." TxDOT believes the proposed change is necessary to make the CGP clear that multiple operators responsibilities under a shared SWP3 may be based on a geographic division of a project site or based on a division of roles (i.e. one operator who is responsible for preparing the SWP3 and another operator who is responsible for implementing the SWP3).

Response: In response to the comment, TCEQ added the requested sentence as a new Part III.A.3. The new section now reads as follows: "The SWP3 may provide that one

operator is responsible for preparation of an SWP3 in compliance with the CGP and another operator is responsible for implementation of the SWP3 at the project site.”

Part III.D.1.

Comment: TAB comments that this section states that a copy of the SWP3 must be onsite if there is an onsite office and also states that if there is not an onsite office; one must post the location where the plan can be found. However, TAB notes that the section goes on to state that the plan must be made available for any inspector when he/she arrives to do an inspection. TAB recommends adding the following or something similar for clarity: "If the plan is kept offsite the permittee shall have up to 24 hours to produce said plan to the inspector after proper notification."

Response: In response to the comment, TCEQ added the following two sentences at the end of Part III.D.1.: “If the SWP3 is retained off-site, then it shall be made available as soon as reasonably possible. In most instances, it is reasonable that the SWP3 shall be made available within 24 hours of the request.”

Part III.D.2.

Comment: Harris County comments that the following language was omitted from the draft version of the CGP and requests it be added back to the permit because its absence adversely impacts the county: “In addition to the requirement to post the NOI.” Harris County notes that in the previous version of the CGP this section read: “In addition to the requirement to post the NOI, a primary operator of a large construction activity must post the site notice provided in Attachment 4 of this permit near the main entrance of the construction site.”

Harris County comments that in fulfilling its requirements under a joint TPDES Phase 1 MS4 permit and as the local authority that inspects and enforces water quality violations, utilizes the information in an NOI to conduct field investigations at construction sites. Such information is especially important when key operator staff is off-site and Harris County investigators need to perform an inspection. Accordingly, by removing the posting requirement, a readily available source of information is lost and Harris County investigators’ workload is increased, thus impacting the ability to monitor and compel compliance at these sites.

Response: The removal of the language was the suggestion of TCEQ stormwater inspectors. The permit already requires that a site notice be posted and a copy of the NOI must be included as part of the SWP3, which must be retained on-site or be made readily available at the time on an on-site inspection. For this season, TCEQ declines to add the language back into the permit.

Part III.F.1.(c)

Comment: TAB comments that language was added at the end of this section that may be difficult for home builders to meet. TAB comments that the added language reads

"...including estimated start dates and duration of activities." However, TAB notes that the first part of this section already requires a description of the intended schedule or sequence of activities. TAB comments that due to the fact that the proposed new requirement appears to be a commercial type of scheduling exercise, it is suggested that there should be an exception for residential construction.

Response: TCEQ added the language "including estimated start dates and duration of activity" to the CGP at the request of EPA. The added language is consistent with that in EPA's 2012 CGP. However, please note that these dates are estimates only and may be changed. If changes occur due to unforeseen circumstances or for other reasons, the requirement is not meant to "lock in" the operator to meeting these projections. When departures from initial projections are necessary; this should be documented in the SWP3 itself or in associated records, as appropriate.

Part III.F.1.(g)(i)

Comment: TAB comments that (g)(i) requires a detailed map showing drainage patterns anticipated before grading activities. TAB comments that this requirement showing where the water drains before the start of construction could be problematic because many homebuilders do not get topographic information on each individual lot. TAB notes that those builders can determine how water will drain after grading is completed, but may not have the proper information to determine drainage patterns before the grading activity. TAB comments that to get such information may add another survey and additional costs for building the home. TAB recommends deleting the "before" requirement.

Response: TCEQ agrees that determining drainage patterns before grading activities commence may be difficult for some construction developments. In response to the comment, TCEQ revised Part III.F.1.(g)(i) to remove "before" from the requirement. This change is consistent with the existing CGP, and the section now reads: " (i) drainage patterns and approximate slopes anticipated after major grading activities."

Part III.F.1.(g)(iii)

Comment: TXDOT requests moving this provision from Part III.F.1(g) (contents of the site map) to Part III.F.1 (project description). TXDOT comments that a written description of buffers, in some cases, could more effectively communicate their location (e.g. "A 10-foot vegetated buffer will be maintained along the length of the project"), without cluttering the site map. Also, TXDOT notes that it could be problematic to include off-site buffers (which are allowed by Part III.G.1.(h)) on the project's site map, depending on where they are in relation to the area covered by the site map.

Response: TCEQ declines to make the requested change to Part III.F.1.(g), as the provision is consistent with the existing CGP. The permit does not preclude the operator from providing a narrative description of the structural controls (buffers) in addition to indicating their locations on the site map.

However, in response to this comment and others, TCEQ revised Part III.G.1.(i) of the permit to remove the reference to buffer areas that the permittee does not own or that are otherwise outside their operational control. See Part III.G.1.(h) and (g) of this response for the specific language.

Part III.F.1.(g)(vi)

Comment: TAB comments that language was added requiring a detailed map "indicating impaired waters." TAB comments that there were concerns expressed by their members that this cannot be reasonably determined and that the receiving waters are oftentimes quite distant from the site. Questions included the following: 1) If water runs two or three miles through drainage ditches and finally runs into a creek or river that is "impaired," do home builders have to note that on the site map; and 2) How far away is considered far enough away to not include such on a site map. TAB suggests deleting this new requirement.

Response: The requirement to indicate water bodies that are listed as impaired is consistent with the existing CGP and EPA's 2012 CGP. Each receiving water drains into a particular watershed, and the drainage area of a watershed is not determined by distance. It is possible for any pollutant discharged into the receiving stream to reach any segment of the watershed, so if there is an impaired water body in the discharge route up to the first classified segment, it must be indicated on the site map.

Comment: Plano comments that the additional wording at the end of the item should be corrected to read: "...to the site, and also indicating those that are impaired waters;..." Plano comments that as currently written it appears to only require showing surface waters that are impaired.

Response: TCEQ revised the language as requested. Part III.F.1.(g)(vi) of the permit now reads as follows: " (vi) surface waters (including wetlands) either at, adjacent, or in close proximity to the site, and also indicating those that are impaired waters;"

Part III.F.1.(g)(viii)

Comment: TAB comments that language was added requiring a detailed map showing "designated sites where vehicles will exit onto paved roads." TAB comments that this appears to be applicable to commercial construction activities, not residential construction activities. TAB states that concern arises if applied to home building activities, which are significantly different from commercial building activities. TAB notes that in some cases, site access to a residential site may vary from day-to-day. On a similar note, TAB comments that one of the most misapplied BMP requirements is that each site is to have a crushed stone entryway about 20 feet wide by 50 feet long. Again, TAB comments that this appears to be applicable to commercial construction sites, but impractical for residential construction activities. TAB suggests TCEQ include an exception for residential construction in the CGP in both instances.

TXDOT requests deleting the requirement that the site map show the "designated sites where vehicles will exit onto paved roads: TXDOT comments that on a long, linear project where construction may progress rapidly from one end of the project to the other, vehicle exits can constantly change. Keeping the site map current with vehicle exit locations would be an administrative burden that, since vehicle exits must be inspected on a defined schedule and sediment must be controlled to the extent practicable regardless, would not result in any additional environmental benefit. TXDOT comments that this requirement is more appropriate for a traditional, box-shaped construction project, where the vehicle exits would rarely, if ever, change.

Response: In response to the comments, TCEQ revised Part III.F.1.(g)(ix) as follows: "(ix) designated points on the site where vehicles will exit onto paved roads (for instance, this applies to construction transition from unstable dirt areas to exterior paved roads)." This language is consistent with site map requirements in EPA's 2012 CGP.

Designated construction entry and exit points need to be monitored to prevent off-site tracking of sediment. This requirement is intended to apply to construction from unstable dirt areas to exterior paved roads. Once access roads are paved within a residential development, entry point tracking may no longer be required.

Comment: Plano comments that the additional new language at the end of this sub-paragraph should be separated into a new sub-paragraph as follows: "(viii) vehicle wash areas and (ix) designated sites where vehicles will exit onto paved roads."

Response: In response to the comment, TCEQ separated the former (viii) into sections (viii) and (ix) and revised (ix) as indicated in the previous response.

Part III.F.1.(j)

Comment: Round Rock comments that including a copy of the entire general permit within the SWP3 seems redundant since permittees are certifying that they have met the requirements of the general permit. Round Rock also comments that this requirement also makes it difficult to include the SWP3 in construction plans where it would be most useful to contractors. Therefore, Round Rock recommends removing "(j) A copy of this TPDES general permit;..." from the CGP.

Response: The purpose of the requirement is so that operators will have a copy of the CGP for reference in the event changes occur at the construction site that requires revision of the SWP3. In the event that there are multiple operators at the site, having the CGP as part of the SWP3 helps ensure that each operator understands his or her responsibilities under the permit.

Part III.F.1.(l)

Comment: TAB comments that this subsection regarding "storm drain inlets" could prove difficult to implement if the inlets are not right in front of the lot. TAB comments

that the phrase "in the immediate vicinity" is too vague and could lead to inconsistent enforcement.

Response: The requirement to show storm drain inlets in the immediate vicinity of the site on the site map only applies to those inlets that are easily identifiable from the site or from a publicly accessible area immediately adjacent to the site.

Part III.F.2.(b)

Comment: LCRA comments that often on projects such as transmission line projects, there are areas on the rights of way that are not intended to be stabilized because they will continue to be utilized in their current state, i.e. access roads, staging areas, transmission pole pads. In addition, LCRA notes that some of these areas are also used by landowners, such as access roads or paths. LCRA recommends revising the CGP to include a new paragraph Part III.F.2(b)(v) similar to the note in the EPA's 2012 CGP, Section 2.2, which reads as follows with TCEQ substituted for EPA: "(v) TCEQ does not expect that temporary or permanent stabilization measures to be applied to areas that are intended to be left un-vegetated or un-stabilized following construction (e.g., dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, or materials)."

Response: TCEQ added the requested language to the permit as Part III.F.2(b)(v).

Part III.F.2.(b)(iii)

Comment: TAB comments that the initiation of erosion control and stabilization language was changed from "as soon as practical" in the current CGP to "immediately" in this version of the CGP. TAB comments that this creates significant enforcement issues due to the fact that actions cannot always be done immediately. TAB requests that the language be changed to read "within 48 hours" or a similar time frame. Plano comments that replacing "as soon as practicable" with "immediately" in this paragraph is not necessary. Plano comments that the language in the current CGP is adequate for any jurisdiction that actively enforces the CGP requirements. Luminant comments that this provision, included in the last two versions of the CGP, had a 21-day exception to initiating soil stabilization in the event that construction activities temporarily cease for more than 14 days, but would resume within 21 days. To account for such situations, Luminant requests that the 21-day exception be added back to the CGP. TXDOT comments that it is not always appropriate to immediately initiate site stabilization when construction activities temporarily cease for short periods of time (e.g. when weather temporarily prohibits work). TXDOT requests that that TCEQ not require the initiation of site stabilization if work will resume within 14 calendar days. Also, TXDOT requests, at minimum, that TCEQ not require the completion of stabilization in less time than EPA does (i.e. within 14 days of the initiation of stabilization, rather than within 14 days after the construction activity has ceased).

TXDOT recommends wording (b)(iii) as follows: "Erosion control and stabilization measures must be initiated immediately in portions of the site where construction

activities have temporarily ceased and will not resume for a period exceeding 14 calendar days. Stabilization measures that provide a protective cover must be initiated immediately in portions of the site where construction activities have permanently ceased. Except as provided in (A) through (D) below, temporary stabilization must be completed within 28 calendar days after the initiation of soil stabilization no more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased and final stabilization must be achieved prior to termination of permit coverage:...”

Response: The term “immediately” is used to define the deadline for initiating stabilization measures. In the context of this requirement, “immediately” means as soon as practicable, but no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased. This definition was taken from EPA’s 2012 CGP.

However, in response to the comments from TAB and Plano, TCEQ revised Part III.F.2(b)(iii) so that it reads as follows: “Erosion control and stabilization measures must be initiated immediately in portions of the site where construction activities have temporarily ceased and will not resume for a period exceeding 14 calendar days. Stabilization measures that provide a protective cover must be initiated immediately in portions of the site where construction activities have permanently ceased. The term ‘immediately’ is used to define the deadline for initiating stabilization measures. In the context of this requirement, ‘immediately’ means as soon as practicable, but no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased. Except as provided in (A) through (D) below, these measures must be completed as soon as practicable, but no more than 14 calendar days after the initiation of soil stabilization measures:”

Federal regulations in 40 CFR §450.21 require that soil stabilization measures must be initiated immediately if construction activities have ceased and will not resume for a period exceeding 14 calendar days. This requirement is echoed in the CGP, and is the reason why the 21-day soil stabilization exception in the existing permit was removed. If work on the site will resume within 14 calendar days, site stabilization is not required at that time. TCEQ declines to change the deadline for completing temporary stabilization from 14 to 28 days, as the 14 day deadline is consistent with the requirement in both the existing permit and EPA’s 2012 CGP.

Comment: Plano and Project Compliance LLC request that TCEQ provide a real world definition or some guidance for the determining what is meant by the phrase “temporarily ceased.” Project Compliance LLC comments that construction often temporarily ceases every night, every weekend, and over holidays and without defining “temporarily ceased” it could be argued by some that stabilization measures must be initiated every night, weekend, and holiday.

Response: For the purposes of the CGP, earth-disturbing activities have temporarily ceased when clearing, grading, and excavation within any area of the site that will not include permanent structures will not resume (i.e., the land will be idle) for a period of

14 or more calendar days, but such activities will resume in the future. This interpretation is consistent with the existing TCEQ permit and with EPA's 2012 CGP.

Comment: TXDOT recommends adding a new (b)(iii)(D) that states: "If the initiation and/or completion of vegetative stabilization is affected by circumstances beyond the control of the permittee vegetative stabilization must be initiated and/or completed as soon as conditions or circumstances allow it on the site. The requirement to initiate stabilization is triggered as soon as it is known with reasonable certainty that work will be stopped for 14 or more additional calendar days." TXDOT notes that their suggested language paraphrases the exception included in EPA's 2012 CGP.

Response: In response to TxDOT's comment, TCEQ added a new paragraph (D) to Part III.F.2(b)(iii) of the CGP to address situations where the initiation or completion of stabilization measures cannot be performed due to circumstances beyond the control of the permittee. The new language is consistent with a similar requirement in EPA's CGP and reads as follows: "If the initiation or completion of vegetative stabilization is affected by circumstances beyond the control of the permittee, vegetative stabilization must be initiated or completed as soon as conditions or circumstances allow it on the site. The requirement to initiate stabilization is triggered as soon as it is known with reasonable certainty that work will be stopped for 14 or more additional calendar days."

Part III.F.2.(b)(iii)(a)

Comment: Luminant proposes that language be added to this provision to include other extreme weather conditions; i.e. a series of significant rain events, flooding, etc. TXDOT requests that TCEQ include provisions that allow exceptions to both the initiation and completion of stabilization timeframes in circumstances beyond the permittee's control. TXDOT comments that many factors can influence the timing of stabilization initiation and completion, including weather, season, location of the project, availability of materials, etc. For example, in December and January, the ground may simply be too cold to initiate temporary stabilization. TXDOT also requests an exception to the initiation of temporary stabilization in cases where construction is expected to resume within 14 days, but unexpectedly exceeds that timeframe.

Response: To address situations where the initiation or completion of stabilization measures cannot be performed due to circumstances beyond the control of the permittee (e.g. problems with the supply of seed stock or with the availability of specialized equipment, unsuitability of soil conditions due to excessive precipitation or flooding), TCEQ added TxDOT's suggested language as paragraph (D) to Part III.F.2(b)(iii) of the CGP. This language is consistent with a similar requirement in EPA's 2012 CGP. See the previous response for the specific language.

Comment: Project Compliance, LLC, Plano, and TXDOT comment that there appears to be a conflict between Part III.F.2(b)(iii) and Part III.G.1(h)(2). The former section requires erosion controls and stabilization measures to be completed within 14 days. The latter section requires soil stabilization when earth disturbing activities are not to resume within 14 calendar days and gives 14 days after initiation to complete soil

stabilization measures. LCRA comments there is a big difference between the two. Under the first, you have to complete your temporary stabilization within the 14 days, but under the second as long as stabilization begins within the 14-day period you have an additional 14 days to complete the work. Project Compliance, LLC asks whether these should be the same or if there is some reason they are different. TXDOT questions the practicality of the time limits proposed for "initiation of stabilization" and "completion of stabilization."

Response: In response to the comments, TCEQ revised the last sentence of Part III.F.2(b)(iii) to state that, except for the reasons provided in the CGP, stabilization must be completed as soon as practicable, but no more than 14 calendar days after the initiation of soil stabilization measures. This change makes this section consistent with Part III.G.1(h)(2), which requires that temporary stabilization must be completed within 14 days after initiation of soil stabilization measures. The revised sentence in Part III.F.2(b)(iii) now states: "Except as provided in (A) through (D) below, these measures must be completed as soon as practicable, but no more than 14 calendar days after the initiation of soil stabilization measures:..."

Part III.F.2.(c)(i)(A)(4)

Comment: DART comments that the currently proposed language (also in Part III.G.6) regarding sedimentation basins states that a permittee shall utilize outlet structures that withdraw water from the surface, unless infeasible. DART comments that this language is too confining and doesn't appear to allow for a permittee constructing a basin to function as both a sedimentation basin and a secondary containment structure for petroleum products as part of a Spill Prevention Control and Countermeasures Plan. DART recommends that the permit language be modified to allow for optional basin discharge structures that can be modified depending on the discharge requirements of the situation. For example, a basin would utilize surface withdrawal discharge for sedimentation purposes during precipitation events; no discharge during dry weather for petroleum containment; and bottom (underflow) discharge for petroleum containment during precipitation. DART suggests modifying the language of (A)(4) and Part III.G.6. to replace the phrase "unless infeasible" with the phrase "when possible." Plano comments that the last portion of this sentence is redundant and not necessary. Plano recommends removing the following text "..., as required in Part III.G.6 of this general permit."

Response: It is not the intent of the permit that sedimentation basins at construction sites be used for anything other than stormwater retention. Therefore, TCEQ declines to make the suggested revision. However, in response to Plano's comment, TCEQ removed the phrase "as required in Part III.G.6 of this general permit" from Part III.F.2.(c)(i)(A)(4). That section now reads: "(4) Unless infeasible, when discharging from sedimentation basins and impoundments, the permittee shall utilize outlet structures that withdraw water from the surface."

Comment: TAB comments that language added at the end of the second paragraph of this section would require recording rainfall amounts, as well as beginning and ending

dates for drought conditions, in the SWP3. TAB comments that the requirement for drought conditions is impractical because droughts do not have exact start and end dates, thus making it almost impossible to comply with the new requirements. Also, in regards to recording the rainfall, TAB comments that if you do inspections every 14 days and on rain events it might make sense to record rainfall, but that if you do weekly inspections (and not for rain events), then keeping track of rainfall amounts is unnecessary.

Response: In response to the comment and to clarify the provision, the last sentence of the second paragraph in Part III.F.7.(a) was revised as follows: “The SWP3 must also contain a record of the total rainfall measured, as well as the approximate beginning and ending dates of winter or drought conditions resulting in monthly frequency of inspections.” This requirement is consistent with EPA’s 2012 CGP.

Comment: TAB notes that in the third paragraph, when doing alternative weekly inspections, they are required to occur on a specifically defined day. TAB suggests changing the requirement to “once per week” to give more flexibility rather than having to restrict the inspections to one specific day of the week.

Response: The option to inspect controls once every seven (7) calendar days is consistent with the existing TCEQ permit and EPA’s 2012 CGP. TCEQ declines to change the inspection frequency to once per week. However, in response to the comment, TCEQ revised identical sentences in Part III.F.7.(a) and (b) to remove the requirement that, if the alternative schedule is developed, the inspection must occur on a specifically defined day. The applicable sentence in both sections now reads: “If this alternative schedule is developed, then the inspection must occur regardless of whether or not there has been a rainfall event since the previous inspection.”

Part III.F.7.(a)

Comment: Plano asks that since there is no requirement in the current CGP to measure rainfall, does the new language at the end of this paragraph impose a rainfall monitoring requirement. Plano says if the answer is “yes,” it wants to know whether it only imposed during the winter conditions and in the arid, semi-arid, or drought-stricken areas. Plano comments that the inclusion of the beginning and ending dates in the SWP3 is appropriate, but the imposition of rainfall monitoring is not necessary.

Response: The requirement to measure the rainfall is for periods where there is a reduction in the inspection frequency due to arid, semi-arid, or drought conditions. The operator must measure the rainfall to determine if a storm event of 0.5 inches or greater has occurred at the construction site, and must document the approximate beginning and ending dates of winter or drought conditions resulting in monthly frequency of inspections.

Part III.F.7.(b)

Comment: Plano comments that the third sentence of this paragraph should have the phrase "or greater" inserted after the text ending with "...a storm event of 0.5 inches" to be consistent with the remainder of the CGP, which states "a storm event of 0.5 inches or greater."

Response: In response to the comment, TCEQ revised the language as requested to be consistent with the remainder of the CGP. The third sentence of Part III.F.7.(b) now reads: "In these circumstances, controls must be inspected at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater, but representative inspections may be performed."

Part III.G.

Comment: TAB comments that the entirety of this section appears to be geared toward commercial construction and is impractical for home building. TAB recommends that the entire section exempt residential construction. Specifically, TAB comments that the first paragraph introduces the term "best practicable control technology currently available (BPT)." TAB says this term creates confusion among its members and asks who or what will determine what BPTs are currently available. TAB also notes that subsections 1(a) and (b) reference volume, velocity, and flow rates. TAB states that this appears to be geared toward commercial building and that residential builders generally do not engage in such activity and suggests that residential construction be exempt from these requirements. Additionally, TAB comments that in the last part of subsection 1(e) requiring "soil characteristics, including the range of the soil particle sizes expected to be present at the site" also appears to be geared toward commercial building. TAB comments that home builders generally do not engage in such activity and suggests exempting residential construction from this requirement. Finally, TAB comments that Subsections (2) through (6) appear aimed at commercial construction activities and are impractical for home building. TAB also suggests here that an exception be made for residential construction activities.

Response: The requirements in Part III.G were taken directly from the Construction and Development (C&D) Effluent Guidelines in 40 CFR §450.21 and adopted by reference by TCEQ in 30 TAC §305.541. These requirements are applicable to all construction sites, and there are no exemptions provided in the federal regulations for residential construction activities. However, if a requirement is found to be infeasible, it must be documented in the SWP3.

Part III.G.1.(b)

Comment: LCRA comments that this section states that "... controls must be designed, installed, and maintained to control stormwater discharges, including both peak flow rates and total stormwater volume,... to minimize erosion at outlets..." LCRA understands the need to control stormwater discharges on conventional projects where stormwater is usually channelized; however, transmission line projects do not usually

cause changes to existing topography or change existing stormwater flow patterns. LCRA comments that applying this requirement to a transmission line project when stormwater flow is not channelized would be impracticable. LCRA recommends revising the language for consistency with EPA's 2012 CGP Section 2.1.1.1.a.ii, which reads as follows: "If any stormwater flow will be channelized at the site, stormwater controls must be designed to control both peak flowrates and total stormwater volume to minimize erosion at outlets and to minimize downstream channel and streambank erosion."

Response: In response to the comment, TCEQ revised Part III.G.1.(b) of the permit to include the suggested language from EPA's CGP as follows: " (b) If any stormwater flow will be channelized at the site, stormwater controls must be designed to control both peak flowrates and total stormwater volume to minimize erosion at outlets and to minimize downstream channel and streambank erosion;..."

Part III.G.1.(f)

Comment: LCRA comments that this section contains the following requirement: "Direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration." LCRA states that due to the nature of a transmission line projects, this requirement may not be feasible. LCRA recommends that TCEQ revise the sentence to be similar to the language in section 2.1.1.2(b) of the EPA's 2012 CGP. The revised sentence would read: "Direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration..., unless infeasible."

Response: In response to the comment, TCEQ revised the second sentence of Part III.G.1.(f) to include the suggested language from EPA's CGP. The sentence now reads: "Direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;..."

Part III.G.1.(g)

Comment: Amarillo objects to the requirement described in this section that builders minimize soil compaction and, unless infeasible, preserve topsoil. Amarillo requests deletion of paragraph (g) from the permit, or in the alternative clarify the language to focus upon minimizing soil compaction in post construction pervious areas such that compaction is comparable to what it was before construction, if feasible.

Response: The requirement in Part III.G.1.(g) is taken directly from the Construction and Development Effluent Guidelines in 40 CFR §450.21 and adopted by reference by TCEQ in 30 TAC §305.541. However, TCEQ recognizes that some projects may be designed to be highly impervious after construction with little or no vegetation remaining. In these cases, preserving topsoil at the site would not be feasible. In order to provide clarification, TCEQ revised Part III.G.1. to include the following clarification language from EPA's 2012 CGP in (g) and (h): "(g) Preserve native topsoil at the site, unless infeasible; and (h) Minimize soil compaction in post-construction pervious areas. In areas of the construction site where final vegetative stabilization will occur or where

infiltration practices will be installed, either: (1) restrict vehicle and equipment use to avoid soil compaction; or (2) prior to seeding or planting areas of exposed soil that have been compacted, use techniques that condition the soils to support vegetative growth, if necessary and feasible...;

Part III.G.1.(h)

Comment: Amarillo comments that they agree that vegetative buffer strips are an effective and practical erosion and sediment control. However, Amarillo believes that they should be employed only when practical. Amarillo comments that the last sentence of this section provides questionable authorization that could encourage operators to claim buffer strips that are located on private or public property as BMPs even when they do not own or possess operational control of the claimed buffer strip. Amarillo recommends deleting the last sentence in paragraph (h) or revising the language in the last sentence to protect offsite property owners outside the operational control of the operator.

Response: TCEQ agrees that the sentence in question could be interpreted as a presumption of authorization that may contradict the property rights in the jurisdiction of the building project. Therefore, in response to the comment, TCEQ removed the last sentence in paragraph (h) that read: “Also, areas that the permittee does not own or that are otherwise outside their operational control may be considered areas of undisturbed natural buffer for purposes of compliance with this requirement.”

Part III.G.2.

Comment: AEP comments that this section states that: “Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site.” AEP comments that the term “immediately” is not defined and leaves room for various interpretations. AEP suggests using the term “as soon as practicable” or other language that gives consideration to possible circumstances in the field that might affect the stabilization process (i.e. weather conditions, project size). Luminant comments that this provision no longer identifies legitimate weather-related delays such as flooding, repetitive rainfall events, ice or snow cover, etc. in the requirement to stabilize disturbed areas once activities have permanently ceased or will be temporarily ceased for more than 14 calendar days. To account for such situations, Luminant proposes that the following sentence be added to the end of the paragraph of this requirement: “In the event of extreme weather-related conditions that prohibits soil stabilization of the disturbed area, stabilization will be conducted as soon as practicable.” TXDOT requests that that TCEQ not require the initiation of site stabilization if work will resume within 14 calendar days. TXDOT recommends changing the deadline from 14 to 28 days for completing temporary stabilization after those activities have been initiated.

Response: In response to the comments, TCEQ added a new second sentence to Part III.G.2 to clarify the term “immediately” as it is used to define the deadline for initiating

stabilization measures. The new sentence states: “In the context of this requirement, ‘immediately’ means as soon as practicable, but no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased.”

In response to the other concerns raised by these comments, TCEQ refers the commenters back to Part III.F.2(b)(iii)(A), which contains language to address situations where extreme weather conditions prevent the immediate initiation of stabilization measures. In such cases, the permit requires that operators initiate stabilization as soon as practicable. In response to comments, TCEQ also added a new paragraph (D) to Part III.F.2(b)(iii), which also references situations where the initiation of stabilization measures is affected by circumstances beyond the control of the permittee. See Part III.F.2(b) of this response for additional discussion and changes made in response to public comment.

Part III.G.3.

Comment: AEP comments that this section states that dewatering activities are prohibited, unless managed by appropriate controls. AEP suggests omitting the word “prohibited” and stating that dewatering is allowed only if managed by appropriate controls. Also, AEP comments that the CGP does not define the term “dewatering” and it is unclear if the permit is referring to dewatering of only stormwater, or a combination of stormwater and groundwater. AEP suggests defining what is meant by dewatering as used in this section.

Response: TCEQ thinks that the term “prohibited” best describes the intent of the permit, in that operators may not discharge groundwater or accumulated stormwater removed from excavations, trenches, foundations, vaults, or other similar points of accumulation, unless such waters are first effectively managed by appropriate controls. However, in response to the comment and to help clarify the requirement, a definition of “dewatering” taken from EPA’s 2012 CGP was added to Part I.B. – Definitions. That definition reads as follows: “Dewatering – The act of draining rainwater or groundwater from building foundations, vaults, and trenches.”

Part III.G.4.

Comment: AEP notes that III.G.4. requires the implementation of chemical spill and leak prevention; and response procedures. AEP comments that spill prevention and control countermeasures are regulations not associated with stormwater pollution prevention and should not be required as part of the CGP. AEP suggests re-wording this requirement to state that the permittee is required to comply with all other state and federal regulations.

Response: Consistent with the C&D ELGs in 40 CFR Part 450, the CGP requires operators to design, install, and maintain effective pollution prevention measures in order to prevent the discharge of pollutants from the construction site. The implementation of chemical spill and leak prevention and response procedures is

required under 40 CFR §450.21(d)(2). Therefore, TCEQ declines to make the suggested change.

Part V.5.

Comment: Plano comments in regards to the concrete truck washout requirements, that the phrase "associated map" should be changed to "associated site map" to keep the CGP language consistent for SWP3s.

Response: TCEQ revised the language to state "associated site map" as requested.
Part VII.8.

Comment: Plano comments that the use of the term "sludge use or disposal" in this standard permit condition is not appropriate for the CGP and should be removed.

Response: TCEQ agrees with the comment and revised Part VII.8. of the CGP as follows: "The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment." The revision is consistent with the duty to mitigate requirement in EPA's 2012 CGP.

Part VII.9.

Comment: TAB comments that the second and third sentences in this section add requirements regarding "adequate laboratory controls" and "back-up or auxiliary facilities." TAB comments that these phrases have led to concern and confusion among its members and recommends clarifying these phrases meanings.

Response: The "adequate laboratory controls" requirement is intended to provide minimum standards for analytical testing and reporting of permit limits. The "back-up or auxiliary facilities" requirement is for when back-up power for a treatment unit is needed. The requirements in Part VII.9. were taken directly from 40 CFR §122.41(e), and is also included in the EPA 2012 CGP. These are standard conditions that are required for all NPDES (TPDES in Texas) permits, and are included in the permit based on a request from EPA.

DOCKET NO. 2012-0677-MIS
General Permit No. TXR150000

IN THE MATTER OF AMENDING AND	§	BEFORE THE TEXAS
RENEWING THE TPDES GENERAL PERMIT	§	COMMISSION ON
TO AUTHORIZE DISCHARGES	§	ENVIRONMENTAL
UNDER THE TEXAS POLLUTANT	§	QUALITY
DISCHARGE ELIMINATION SYSTEM FROM	§	
REGULATED CONSTRUCTION ACTIVITIES	§	
WITHIN THE STATE OF TEXAS	§	

COMMISSION RESOLUTION AMENDING AND RENEWING THE GENERAL PERMIT

WHEREAS, under Texas Water Code (TWC), Section (§) 26.121, no person may discharge waste or pollutants into or adjacent to any water in the state except as authorized by a rule, permit, or order issued by the Texas Commission on Environmental Quality (TCEQ or Commission);

WHEREAS, under TWC, § 26.027, the TCEQ has the authority to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state;

WHEREAS, under TWC, § 26.040, the TCEQ has the authority to issue a general permit to authorize the discharge of waste into or adjacent to water in the state;

WHEREAS, renewal of the general permit (TXR150000) with changes that authorizes discharges of stormwater from regulated construction activities in the state of Texas was drafted and proposed by the Executive Director and is attached as Exhibit A;

WHEREAS, the TCEQ received public comment on the general permit;

WHEREAS, the Executive Director made certain changes to the general permit based on comments received;

WHEREAS, the Executive Director prepared, made available to the public, and filed with the Chief Clerk a written Response to Public Comments on the proposed changes to the general permit in accordance with the requirements of 30 Texas Administrative Code (30 TAC) § 205.3(e) and is here attached as Exhibit B;

WHEREAS, the Commission has reviewed in accordance with Texas Natural Resources Code § 33.205 and 30 TAC § 205.5(f) the changes to the general permit for consistency with the Texas Coastal Management Program (CMP) and has found that the general permit is consistent with applicable CMP goals and policies and that the general permit will not adversely affect any applicable coastal natural resource areas as identified in the CMP;

WHEREAS, the Commission has determined in accordance with TWC, §§ 26.040(a)(1)-(4) that the general permit would authorize dischargers who engage in the same or substantially similar types of operations, discharge the same types of waste, are subject to the same requirements regarding effluent limitations or operating conditions, and are subject to the same or similar monitoring requirements;

WHEREAS, the Commission finds in accordance with TWC, § 26.040(a) that a general permit is authorized for the entire state if the dischargers in the category discharge stormwater;

THEREFORE, after consideration of all public comment and the responses to such comment, the Commission, by this resolution, hereby issues the general permit, attached as Exhibit A, as recommended by the Executive Director and as approved by the Commission during its February 13, 2013 public meeting. The Commission, by this resolution, also hereby issues the Executive Director's Response to Comments as approved by the Commission during its February 13, 2013 public meeting as the Commission's Response to Public Comment, attached as Exhibit B.

Furthermore, the Commission directs staff to make any non-substantive changes to the general permit and the Commission's Response to Public Comment to satisfy *Texas Register* format requirements and requests that the general permit and Commission's Response to Public Comment be made available to the public in accordance with the requirements of TWC, § 26.040(d) and 30 TAC § 205.3(e).

It is so **RESOLVED**.

Date of Adoption

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D, Chairman
For the Commission