

**Storm Water Stakeholder Workgroup Meeting
Phase II MS4 GP No.TXR040000 Renewal
April 27, 2011
Minutes**

Introduction

The Storm Water program area at TCEQ has started the renewal process of the TPDES Phase II MS4 General Permit No. TXR040000, which expires August 13, 2012. As part of the renewal process the TCEQ invited stakeholders to participate in a meeting to get input from the regulated community before drafting the permit. The meeting was held at TCEQ on April 27, 2011.

Participants

The Storm Water program area was represented by Jaya Zyman-Ponebshek, Cindy Hooper, and Hanne Lehman Nielsen. Stakeholders included 34 members from the regulated community and included stakeholders from both governmental and private entities. In addition, there were several stakeholders participating via webcast, with an estimated number of 100-150 viewers.

Stakeholder Discussion

Stakeholders provided first term experiences and questions. A summary of the comments are listed below.

Prior to the meeting, a handout entitled *Preliminary Proposed Changes*, prepared on April 21, 2011, was published on the storm water stakeholder website and was also available on hard copy at the meeting. Comments provided during the discussion were based on this handout as well as on the existing general permit. A summary of the comments are listed below.

First Term Experiences and Questions

1. Responsibilities - Some stakeholders expressed the desire to have one authorization for several MUDs, rather than multiple authorizations. According to the stakeholders, this would avoid confusion regarding each entity's responsibilities. They all submit the same report multiple times.
2. Screening – Stakeholders indicated that the wet weather screening is not as effective as the dry weather screening to evaluate stormwater issues.
3. Inspections – It is the opinion of some stakeholders that the inspection of industrial sites is a duplication of the Multi Sector General Permit TXR050000 (MSGP) program. They also believe that there is redundancy with the Construction General Permit TXR150000 (CGP).
4. Overlaps – Some stakeholders indicated that the MS4 program is difficult to implement when overlaps of small and large MS4s exist within the county.
5. Delegation – Stakeholders indicated that TCEQ should delegate the CGP program to local governments with MS4 permits, rather than implement it at a state level.

6. Challenges – It was the opinion of some stakeholders that integrating the new SWMP into the current municipal operations has been a challenge for them.
7. 7th MCM - Some MS4s have used the 7th MCM and want to keep it in the permit.
8. Fixed versus non-fixed maintenance municipal operations – Urbanized areas stated that they would like TCEQ to distinguish between fixed facilities and non-fixed operations.
9. Fees – Some stakeholders expressed interest in receiving additional guidance regarding fees or fines related to enforcement.
10. Training –According to some MS4s, training is very expensive and they do not have enough resources for implementation. They indicated that they would like TCEQ to consider being able to certify staff without certified trainers.
11. Budget – Some stakeholders expressed interest in receiving more guidance on how much to spend on the implementation of the program.
12. Enforcement – Stakeholders stated that MS4 operators need do more inspections.
13. Coordination between TCEQ and MS4s – Stakeholders indicated that MS4 do not receive many NOIs and that TCEQ staff issues violations to illicit dischargers without informing the MS4s.
14. Enforcement authority – Some MS4s indicated that they do not have the authority to enforce. For example, counties have no authority to pursue illicit dischargers to state waters and TxDOT can't pursue the discharger, if they observe an illicit discharge off the ROWs. TxDOT normally reports the incidents to the city and TCEQ for enforcement.

MCM Specific Comments

Illicit Discharges Detection and Elimination Program

1. Authority – Some MS4s expressed concerns over the lack of authority to issue penalties without going through the district court.
2. Facilitating public reporting – participants requested clarification on what this means.
3. Stakeholders asked whether there would be minimum requirements to trigger facilities for inclusion into this MCM.
4. Stakeholders were wondering why TCEQ needed to add additional requirements from the EPA MS4 Improvement Guide to the new MS4 general permit.
5. Enforcement authority – TxDOT indicated that it does not have authority to go after polluters. TxDOT report to the MS4 when they detect an illicit discharge.
6. Monitoring – Some were wondering if TCEQ is planning to require dry and wet weather monitoring, and if TCEQ would evaluate monitoring data. Commenter were indicating that there are problems with sampling for bacteria since holding time for samples is only six hours.

7. MS4 map – Some were wondering what the timetable to map all the outfalls for above ground and for underground outfalls would be and asked for more explanation in the permit because underground structures are more costly.
8. Enforcement - Some Stakeholders indicated that some MS4s can only report illicit discharges but cannot enforce against the discharger.

Construction and Post Construction

1. EPA 40 CFR Part 450 requirements – The issue of 20 acres vs. 10 acre sites came up. Entities were wondering if there would be requirements for monitoring turbidity and how would MS4s regulate construction under the new rules.
2. Specific control measures - Most Stakeholders would support that TCEQ not prescribe specific control measures but rather provide flexibility for MS4s to decide. According to them, it is too premature to be too prescriptive, especially when small MS4s are still in the first term. MS4s support the flexibility for choosing BMPs for their local communities.
3. Public involvement – MS4 indicated that it is redundant to have 2 public comment meetings. They would like to see alternate requirements for public involvement related to construction.
4. Public involvement – MS4s were wondering why multiple meetings would be required if there is a preconstruction meeting.
5. Discharges to an impaired water body – Pollution Reduction Plans (PRPs) – MS4s were wondering if MS4s could use information from watershed plans and if TCEQ has a format for these plans.
6. Enforcement - MS4 operators with no enforcement authority would not be able to enforce PRPs.
7. Local permitting jurisdiction – Stakeholders indicated that local SWP3s overlap with TCEQs CGP and want to be able to coordinate with TCEQ and avoid duplication of program. TCEQ and stakeholders discussed the possibility of qualifying local programs for enforcement, though TCEQ would have to develop a process for approving them.
8. Educate construction site operators – Stakeholders were wondering if MS4s could simply check documentation that construction site operators have been trained instead of have to provide the training themselves.
9. Common plan of development or sale – Stakeholders had questions related to how to determine the size of construction sites that are part of a common plan of development or sale. Stakeholders would like some guidance in the permit.
10. Common plan of development – MS4s were wondering how long a common plan of development lasts and had other questions such as how to handle issues associated with different builders, etc.
11. Post Construction – Stakeholders were wondering whether there would be requirements to control the volume of discharge from new development and redevelopment sites.

Industrial Discharges

1. Inventory, inspections, and training – Stakeholder indicated this is too costly for small MS4s and reference the 1990 Report to Congress. Stakeholders stated that this is also a duplicate program and that MS4s would not support the requirement to include an industrial storm water MCM.
2. Combining MCMs – Some stakeholders stated that there may be some impacts on data systems if MCMs are combined into one MCM. However, others support combining MCMs into one MCM. TCEQ suggested that perhaps one option would be to keep them separate and provide an option to combine them.
3. Inspections – Some stakeholders wondered if TCEQ would specify frequency for inspections, because the MS4s would rather have the flexibility to determine that for themselves.
4. MCM applicability – Some stakeholders suggested that the Industrial Storm Water Discharges MCM only should be mandated for larger cities.
5. Industrial site – Some stakeholders indicated that the permit needed to be more specific in defining the term: “*industrial.*”
6. Training of staff – Some stakeholders were wondering if MS4 operators would train MS4 staff or industry staff.
7. TxDOT stated that it is difficult for them to track industries.
8. Costs – Some stakeholders stated that it would be too costly to have to do this MCM, which would include maintain an inventory of industrial sites, perform inspections, and train MS4 staff to perform industrial inspections.
9. MCM applicability – Some stakeholders supported the industrial MCM and believed that it is critical to get this implemented. Currently, they do not have any guidance on how to include industries in their programs.
10. MCM applicability – Some stakeholders felt there was no need to have a separate industrial program because it would be duplicative. They believe that this is already addressed under the IDDE MCM.

Good Housekeeping for Municipal Operations

1. Funding – One MS4 asked if there are any opportunities for funding or grants.
2. Street sweeping – Some asked if TCEQ would better define the scope of this MCM, indicating that in a county there are no curbs and gutters just miles and miles of county roads, so street sweeping is neither applicable nor appropriate.
3. Street sweeping – Some wanted TCEQ to better define the scope. Many MS4s do not have street sweepers. Street sweeping should be an option but not a requirement. If street sweeping is mandated it would be too expensive. There are other effective BMPs that can be used instead.
4. Use of biodegradable materials – Entities stated that this might be a good suggestion but indicated that it should not be a requirement.

5. Pesticide, herbicide application – MS4s were wondering if the Pesticide General Permit (GP) would be incorporated into the MS4 GP.
6. Operation and maintenance (O&M) – Since requirements are for fixed facilities, some entities were wondering about O&M MS4 crews that travel to different locations. They suggested that TCEQ consider making a distinction between fixed facilities and crews of O&M operation, outside the fixed facility within the MS4. Prioritize fixed facilities with more requirements.
7. Visual monitoring -There was confusion about visual monitoring. Some wondered how MS4s would effectively evaluate visual monitoring. Since there is guidance in the MSGP, they suggested adding language from the MSGP into the MS4 permit. Some suggested perhaps monitoring for presence or absence of flow and, when there is a discharge, then monitor for color, odor, and oil sheen.

Additional Considerations

Water Quality Impairments

1. Pollutant Reduction Plan (PRP) – Stakeholders asked how the permit would address discharges to impaired water bodies. TCEQ responded the requirements would depend on whether the impaired water had a Total Maximum Daily Load (TMDL).
2. PRP – Stakeholders asked if a PRP was developed, how this would be used related to a TMDL and if a PRP would be required if the receiving water body is not impaired. Stakeholders suggested the SWMP be tailored so it becomes the PRP.
3. Monitoring –Stakeholders commented that if monitoring is required, this would be very expensive.
4. Pollutant of Concern – Stakeholders asked if discharges from MS4s contribute to impairment. They were commenting that controlling bacteria is a challenge. Bacteria are naturally present in the environment, for example in stagnant pools. Some MS4s think this will be difficult to address.
5. Sources of pollutants – Stakeholders said that if the MS4 is not the source of the pollutant of concern, it would be hard to require monitoring of the MS4
6. Nonpoint sources – Some stakeholders asked if the nonpoint sources can be separated from the MS4?
7. Environmental data - TxDOT commented that it has information about bacteria from under bridges with birds that TCEQ can use.
8. Natural background –Stakeholders commented that the MSGP has *natural background* exceptions and suggested something similar be included the phase II MS4 GP permit.
9. Monitoring – The existing phase II MS4 GP permit requires data to be submitted if it is collected. Stakeholders recommended removing the requirement to submit data on all collected samples, because it is a disincentive to collect additional data.

Waivers and Tiered Approach to Permitting

1. Tiered Approach – Stakeholders supported a tiered permitting approach. The second tier could be related to MS4s serving populations from 1,000 to 10,000.
2. Municipal Operations – Stakeholders suggested that additional requirements for municipal operations would be added to the bigger cities only. For example, the industrial MCM, dry weather screening and monitoring should only be required for larger cities.

Miscellaneous Comments

1. MCM 7 Applicability – Some MS4s said they use the 7th MCM and support it, and suggested TCEQ does not remove it.
2. Turbidity – Stakeholders asked what would happen if turbidity limits on discharges from construction sites gets approved during the permit term. TCEQ commented that the permit would not include turbidity limits unless EPA has finalized a limit.
3. List of changes – Some stakeholders suggested that the changes to the general permit will be listed in a separate document.
4. List of BMPs – Some stakeholders thought it would be helpful with a list of BMPs to help MS4s implement the SWMP.
5. Regulated Areas – Stakeholders asked which MS4s would be regulated. MS4s will be regulated based on the 2000 and the 2010 U.S. Census UAs when the urbanized maps will be published.
6. Regulated Areas – Stakeholders discussed if regulated MS4s that now have a population less than 1,000 still would need to be permitted. TCEQ responded that waivers are available if a MS4 serves less than 1,000 people.
7. SWMPs – Stakeholders discussed whether MS4s need to resubmit the entire SWMP and if so, suggested getting staggered deadlines. They suggested one year for submitting the SWMPs and three months for submitting NOIs.
8. Monitoring – Stakeholders wonder if a MS4 will be required to monitor if the flow is to another MS4 before reaching an impaired water. TCEQ answered that they probably would not.
9. Next steps – Stakeholders said they wish to be involved in the renewal process and requested additional meetings.

Next stakeholder meeting will be held before TCEQ sends the draft permit to EPA.