

## **Frequently Asked Questions & Answers for Phase II (Small) Municipal Separate Storm Sewer Systems (MS4s) General Permit TPDES Permit No. TXR040000**

### **Renewal**

**Question** - Is the MS4 general permit getting renewed in Dec 2013?

- **Answer** - The new Small MS4 General Permit, TPDES Permit No. TRX040000, was adopted by the Commission on December 11, 2013 and will be effective shortly thereafter. Once the Small MS4 General Permit is effective, all regulated entities (new and existing) will have 180 days to apply for coverage under the general permit. Each regulated entity must submit a Notice of Intent (NOI) and a new or revised (for existing regulated entities) Stormwater Management Program (SWMP).

**Question** – Will the MS4s receive a notification letter?

- **Answer** – Notification letters were mailed on Dec. 11, 2013, to new and existing MS4 entities. TCEQ identified many new MS4s through various sources, however; we might not have identified all of them. Please note that, it is still the responsibility of the MS4 to apply even though it might not have received a notification letter.

**Question** – Will the newly regulated MS4s be required to meet the requirements in both the previous permit and the new permit?

- **Answer** – The newly regulated MS4s, based on the 2010 U.S. Census maps, are only required to meet the requirements in the new permit.

### **Urbanized Areas**

**Question** - If a portion of my city is located within a newly designated Urbanized Area (UA), do I have to consider the population of the entire city or just the portion within the UA boundary to determine if I am eligible for a waiver or which level in the permit I would fit in?

- **Answer** – Whether or not an MS4 is regulated under this program is based on whether the MS4 is either partially or totally located within an UA. However, for purposes of determining waiver eligibility or determining permit level the MS4 would only need to consider the population within the UA under its jurisdiction. If a portion of the MS4 is located outside the UA, that portion is not regulated.

**Question** - If I disagree with the UA delineations from the US Census Bureau, is there a contested process to demonstrate I am not located within a UA?

- **Answer** - There is no option to protest the determination of UAs developed by the Census Bureau. The Census Bureau published a notice in the *Federal Register* in August 2011 notifying how urbanized areas would be delineated. The public comment period to provide comments to the

Census Bureau has already expired. If the MS4 finds an error in the UA maps, the MS4 can contact the US Census bureau. Please see the US Census Bureau's website at <http://www.census.gov/>

### **Waiver Options**

**Question** - What is involved in the qualification determination for waivers? Especially for Waiver Option 2, what type of studies or information would the TCEQ be looking for?

- **Answer** – The receiving waters evaluation for Waiver Option 2 is a TMDL-equivalent evaluation that may be performed by the small MS4 using TCEQ protocol with appropriate guidance from the TCEQ. The evaluation would need to include the pollutants of concern, including at a minimum: biochemical oxygen demand (5-day); sediment (or a parameter that addresses sediment such as total suspended solids, turbidity, or siltation); pathogens; oil and grease; and any other pollutant that has been identified as a cause of impairment of any receiving water body. The small MS4 must coordinate with TCEQ Wastewater Permitting staff and Water Quality Assessment staff prior to initiating such a study.

Because of the comprehensive nature of the required receiving water evaluation, and the necessary finding that future discharges from the small MS4 could not potentially exceed water quality standards, Waiver Option No. 2 is difficult to obtain. However, this option is allowed by federal rules and is therefore included in the general permit and made available to certain small MS4s. The small MS4 would need to first coordinate with the TCEQ to determine if a waiver is attainable under this option, and must complete a TCEQ waiver form after completing all of the necessary studies.

### **Non-traditional MS4s**

**Question** - If I am a non-traditional MS4, specifically a transportation authority with jurisdiction exclusively over my right away, and I am discharging into an impaired water body for bacteria, can I safely determine I do not contribute the pollutant of concern (POC) to the impairment?

- **Answer** – A transportation authority would need to determine whether the discharge contains the POC– similar to any other MS4. Runoff from roads has been shown to contain a variety of pollutants such as bacteria, metals, oil and grease, and if the receiving water is impaired for any of those pollutants, the MS4 would need to take that into consideration when developing its SWMP.

**Question** – If I am a non-traditional MS4, how do I determine if I am eligible for a waiver?

- **Answer** – It depends on the non-traditional MS4. Some MS4s, such as Municipal Utility Districts (MUDs) or counties, have residents living in their jurisdictional area. The number of people served by the MS4 and who are located in the AU will determine the eligibility for a waiver. Other non-

traditional MS4s, such a transportation entities or drainage districts would be special cases and dealt with on a case-by-case basis by TCEQ.

## **Ordinances**

**Question** - The general permit states that MS4s, within two years of permit issuance, are required to review and revise, if needed, their ordinances to implement and enforce the SWMP. Does this apply to new MS4s? If so, can new MS4s get more time to do develop their ordinances?

- **Answer** - This requirement indeed applies to both existing and newly regulated MS4 entities. Most cities already have some sort of legal mechanism or ordinance to enforce discharges into the storm sewer or other local laws and regulations. TCEQ does not expect that new MS4s will have their fully revised ordinances within two years. The two year deadline is intended for the revision of their existing ordinances to include the overall framework that contains the minimum legal authority for implementation of the SWMP. It is implied that such ordinances will evolve as program implementation continues and deeper understanding of the program is gained. Fully revised ordinances are expected to be in place by the end of the permit term. To assist the new small MS4s, TCEQ will develop a template for a basic ordinance to provide the legal authority to enforce the SWMP and make it available to customers on the TCEQ website.

In addition, the TCEQ strongly encourages new entities to contact other existing MS4 entities to gain knowledge of lessons learned and to obtain a copy of their ordinances to assist with this requirement.

## **SWMPs**

**Question** - If TCEQ takes a year or longer in approving the SWMPs, like it did the first time around, do I wait for approval before implementing my SWMP? If so, how will the compliance timelines be determined?

- **Answer** – Existing MS4s regulated based on the 2000 Census would keep operating under the existing SWMP until their new SWMP has been approved by the TCEQ. However, the MS4 could consider starting implementing additional program elements that are specifically required by the new permit, for example Industrial Stormwater Sources for Level 4 MS4s, before the new SWMP has been approved in order to maximize timelines. However, the MS4 may not eliminate any best management practices (BMPs) and make major changes to the current SWMP, before the new SWMP has been approved and superseded the previous SWMP.

Newly regulated MS4s based on the 2010 Census may not start any new program elements beyond those currently being implemented until their SWMPs have been approved by the TCEQ. When developing the implementation deadlines, the MS4 can adjust for the time it takes TCEQ to review the SWMPs (i.e.) include more deadlines after the first year of the permit term.

## Selecting BMPs

**Question** - Can I eliminate BMPs from my previous SWMP when developing the new one? Do I have to justify all changes and deviations from my previous SWMP? Will TCEQ compare the old and new SWMP before approval?

- **Answer** - When the new permit takes effect, previously permitted MS4s will need to revise their SWMP to meet the requirements in the new permit. Any BMPs that were found not to be effective in the previous permit can be modified or removed from the SWMP; however, changes with justification would need to be briefly documented in the new SWMP. The MS4 will continue to implement BMPs in the existing approved SWMP until the revised SWMP has been approved by the TCEQ.

**Question** - Can I claim credit during the new permit term for new initiatives I undertook during the Year 6 of the general permit?

- **Answer** – All activities implemented by the MS4 during the Year 6 of the previous permit term should be reported in the subsequent annual report. Any new initiatives undertaken could be added to the new SWMP and used to fulfill the new MS4 general permit requirements.

## Discharges to Impaired Water bodies

**Question** - If my MS4 contributes, indirectly to a watershed with an approved Total Maximum Daily Load (TMDL), but not directly into the impaired water body, am I subject to these requirements of the permit?

- **Answer** – Yes, if your MS4 is discharging anywhere in the watershed, with an approved TMDL you are subject to the TMDL requirements.

**Question** - How do I justify that I do not contribute the pollutant of concern (POC) to an impaired water body? What type of information would the TCEQ be requiring to justify this determination?

- **Answer** – To demonstrate the MS4 does not discharge the POC, the MS4 would need to determine, if it has any sources of the POC and include this information in the SWMP. If the POC is bacteria, based on published data, it would be difficult for any MS4 to justify that it does not contribute bacteria into its urban runoff.

**Question** - If I contribute bacteria to an impaired watershed, do I have to identify all my sources or can I just focus on the most significant sources?

- **Answer** – The MS4 needs to identify potential significant sources of bacteria. This evaluation could be done by using available literature data or by referring to the implementation plan (I-Plan). The MS4 should then determine which sources are the most significant and prioritize those sources to maximize improvements in water quality.

**Question** - If I am using a program implementation indicator analysis to determine progress when discharging to an impaired water body with an approved TMDL, do I still have to identify a benchmark?

- **Answer** – While everybody has to identify a benchmark, if the MS4’s progress is based on a program implementation indicator analysis, progress can be documented by describing the MS4’s efforts in the individual program elements.

**Question** - Does TCEQ intend to disaggregate the Waste Load Allocations (WLA’s) in future TMDL developments? If not, will TCEQ provide guidance to MS4s on how to disaggregate these WLAs?

- **Answer** – At this time, TCEQ’s TMDL development efforts involve an aggregated approach to WLAs. The main reason the new MS4 general permit did not provide a prescriptive process to disaggregate the WLAs, was to allow MS4s, contributing to an impaired watershed, the flexibility to work collaboratively or independently in disaggregating those loads based on their respective agreed upon contributions. Please note that the individual or cumulative contributions from the MS4s within a watershed may have already been considered as part of the TMDL I-plan or stakeholder process.

**Question** - If an MS4 is contributing to a watershed for which a TMDL has been developed but not approved by EPA, does the MS4 need to include the TMDL section in their SWMP, or wait until the TMDL is approved by EPA?

- **Answer** – MS4s are not required to include any TMDL requirement in the SWMP *until* the TMDL has been approved by EPA. However, since the water body is impaired, the MS4 is required to determine, if it discharges the POC, and if it does, implement BMPs and measurable goals to reduce the POC, in accordance with the permit requirements associated with discharges to impaired water bodies without an approved TMDL. Once the TMDL is approved, the MS4 is required to include the TMDL requirements in their SWMP as soon as possible. If the TMDL is approved in the middle of a permit term, the MS4 is required to submit a NOC to include permit requirements associated with discharges into impaired water bodies with an approved TMDL into their SWMP.

### **Notice of Change (NOC)**

**Question** – What triggers a NOC and when does it need to be submitted?

- **Answer** – An NOCs is required to be submitted to the TCEQ for review and approval if an MS4 wants to make changes to a SWMP that has already been approved by the TCEQ.

An NOC is required and may be implemented within 60 days *unless* denied in writing by TCEQ when:

- replacing an unsuccessful BMP with an alternative BMP, (for example, replacing a structural BMP with a non-structural BMP).

An NOC is not required for the following changes and may be implemented without approval by TCEQ:

- adding BMPs,
- replacing BMPs with an equivalent BMP (a BMP substantially similar in nature to the original BMP),
- Making non-substantive changes, such as minor clarifications to the SWMP such as updating reorganization of a department, minor clarifications to existing BMPs, or correction of typographical errors.
- Adding or subtracting areas such as by annexing or de-annexing land.

An NOC is required and may only be implemented following written approval by TCEQ for all other changes.

The completed and signed NOC should be sent *prior* to implementing the change to the Stormwater and Pretreatment Team, Water Quality Division at TCEQ, P.O. Box 13087, Austin TX 78711.

### **Annual Reports**

**Question** - If I change to a fiscal or calendar year reporting period in the new permit term, how do I report the in-between period? Do I just make my reporting time for the first year shorter or longer to facilitate the switch?

- **Answer** –The permit term is five years long, so at least five annual reports need to be submitted in compliance with the permit. The first reporting year will likely be shorter or longer to adjust to the selected reporting schedule. For instance, existing permitted MS4s who select the fiscal year reporting, need to submit their first annual report at the end of their fiscal year in 2015. New MS4s who select the fiscal year reporting year, will similarly submit their first annual report at the end of their fiscal year in 2015.

The illustration below shows the due dates for annual reports:

<b>Permit Year Option</b>		<b>Fiscal Year (example) Option</b>	
<b>Date</b>	<b>Action</b>	<b>Date</b>	<b>Action</b>
Dec. 2013	Permit effective date	Dec. 2013	Permit effective date
June 2014 (180 days)	NOI + SWMP	June 2014 (180 days)	NOI + SWMP
Dec. 2014	End of permit year	Sep. 2014	Start of MS4 fiscal year
March 2015	Year 1 annual report due (90 days from permit year)	Sep. 2015	End of MS4 fiscal year
		Dec. 2015	Year 1 Annual report due (90 days from fiscal year)

New MS4: The first annual report needs to include all months since the permit effective date.

Existing MS4s: The first annual report needs to include all months since the last reporting period.

**Please note:** The preferred reporting date needs to be included in the SWMP and the NOI, and the reporting date cannot be changed during the permit term.