

MEMORANDUM

17 November 2011

TO: Pollution Control Tax Relief Advisory Committee
FROM: Rob Castor, Member Pollution Control Tax Relief Advisory Committee
RE: Concept on Guidance to industry on citation for Best Management Practices related to storm water pollution prevention

Committee Members:

With this memo I hope to provide regulatory justification that BMPs relating to storm water pollution prevention on the Tier I List be granted a positive use determination by the TCEQ; BMPs not on the Tier I list could be granted positive or partial use determinations pending proper justification by the applicant. The intent of this concept is open discussion on BMPs that are required by a regulatory permit only. BMPs that relate to voluntary actions (non permit required) or non-pollution control efforts (safety, OSHA, etc) are not included in this discussion.

Regulatory Justification for BMPs

TCEQ Multi-Sector General Permit TXR050000

The TCEQ MSGP covers a wide variety of industrial activities in the State of Texas. I will use language from this permit as an example. Many facilities in the state may have a specific TPDES permit for storm water discharges that may include various requirements for BMPs. This memo will use specific examples but may be generally applied to other TPDES permits or Source Reduction/Waste Minimization permits.

The MSGP defines a Best Management Practice (BMP) as:

Schedules of activities, prohibitions of practices, maintenance procedures, and other techniques to control, prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spills or leaks, sludge or waste disposal, or drainage from raw material storage areas.

BMPs cover a wide range of activities and controls to prevent storm water pollution. Some BMPs should not be granted a positive use determination given they are not considered property (e.g. procedures, practices, etc). Many BMPs would be considered property and should be granted positive use determinations. Though the MSGP does not dictate specific BMPs, it does require they be in place to reduce the discharge and potential discharge of pollutants in storm water.

Within the MSGP there is a requirement for the facility to develop a Storm Water Pollution Prevention Plan (SWP3). The MSGP dictates many aspects of the SWP3 including development of BMPs. Many examples of BMPs are cited in the MSGP. I have listed here, those that involve property.

1. *Use grading, berming or curbing when possible to prevent runoff of contaminated flows and to divert runoff away from these areas.*
2. *Locate materials, equipment, and activities in such a way that leaks are contained in existing containment and diversion systems.*
3. *Use spill/overflow protection equipment*
4. *Ensure that waste, garbage, and floatable debris are not discharged to receiving waters, by keeping exposed areas free of such materials or by intercepting them before they are discharged*
5. *Divert, infiltrate, reuse, contain, or otherwise reduce storm water runoff, in order to minimize pollutants in discharges.*

It is important to point out that these items listed are among several “suggestions” of what BMPs are included in the MSGP. There are other possible examples of BMPs that should be considered property and therefore eligible for full or partial use determinations.

In addition to BMPs the MSGP requires that the SWP3 include other pollution prevention measures and controls such as erosion and sedimentation controls, and structural controls. These may include:

1. *Physical structures used in conjunction with other pollution prevention measures and controls such as vegetated swales, oil/water separators, settling ponds, catch basins , berms, and other physical structures.*
2. *Velocity dissipation devices used to control discharge velocities to an extent that prevents the destruction of the natural physical characteristics of receiving waters by erosion. These may be constructed at discharge points or along channels and other storm water collection areas that lead to outfalls.*

The MSGP goes on to include some specific requirements relating to BMPs and additional controls for certain industry sectors. I will not go into detail on these, but they should be given the same consideration as the general requirements for all sectors.

Storm Water Pollution Prevention Plans (SWP3)

As discussed above, the MSGP requires that industries it covers to develop and implement a SWP3. Thus, the implementation of the SWP3 is an enforceable standard. The SWP3 must be signed in accordance with 30 TAC 305.128 and 30 TAC 305.44. Here is the certification statement that is required in the plan:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If a facility develops a SWP3 indicating that it will install and operate various property/equipment to reduce pollution of receiving waters of the state (via BMPs and other controls discussed above), and if the plan is certified accordingly it is thereby an enforceable document.

Spill Prevention Control and Countermeasures (SPCC) Plan 40 CFR 112

40 CFR Part 112 relates to facilities that are engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this chapter, into or upon the navigable water of the United States...

Facilities that meet certain thresholds of oil contained or used must develop and implement an SPCC Plan. Within this plan, the facility must:

112.7(c) Provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in Section 112.1(b)...

The SPCC Plan requires similar certification as the SWP3.

Guidance Concept

TCEQ Staff should provide guidance to applicants who are requesting a use determination for equipment or property that is installed in order to meet or exceed requirements in a permit which is being claimed as part of a Best Management Practice. This guidance should direct the applicant to cite the permit or regulation dictating the development of the plan (SPCC, SWP3, etc). In the case where a plan is not required, the applicant should site the permit or regulation dictating the installation of BMPs. If the BMPs are developed as part of a plan that is dictated by a permit or regulations, the applicant should be prepared to provide a copy of the plan to TCEQ upon request. The applicant should be encouraged to provide detail on how the BMP is being used to reduce or control pollution that is specifically required by the permit or regulation.

Example: An applicant is applying for a positive use determination for a storm water pond. The applicant submits a Tier I application. Said applicant operates their facility under the Multi-Sector General Permit TXR0500000, and has developed and implemented a Storm Water Pollution Prevention Plan as part of the requirements in that permit. The applicant should list MSGP TXR0500000 as a regulatory driver (or their specific permit number issued by TCEQ indicating coverage under the MSGP), as well as their specific Storm Water Pollution Prevention Plan. The applicant should provide, as part of the property description, an indication that it was installed as a BMP to control storm water runoff from the site. The applicant should discuss the specific pollution in which the BMP is expected to control or prevent (such as, sediment, velocity dissipation, etc). The applicant should be prepared, if requested by TCEQ, to provide a copy of their Notice of Intent (NOI) to operate under the MSGP issued by TCEQ, the indication or coverage under the general permit issued by TCEQ, as well as a copy of the certified SWP3 used as a driver for the BMP listed on the application.

This example could easily apply to other property or equipment that may be used to control or prevent pollution discussed in the permit or regulation. For equipment or property not specifically listed on the Tier I list, or that has a production benefit, the same guidance for regulatory drivers should apply.