

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Natural Resource Conservation Commission (the commission or TNRCC) files this Response to Public Comment (response) on proposed TPDES general permit No. TXR050000. As required by TWC, §26.040(d) and 30 TAC §205.3(c), before a general permit may be issued, the ED prepares a response to all timely, relevant and material, or significant comment. The response shall be made available to the public and filed with 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 This response addresses all timely received public comments, whether or not withdrawn.

The Office of Chief Clerk timely received comment letters from the following persons: American Association of Airport Executives (AAAE); American Electric Power (AEP); American Electronics Association (AEA); Boral Bricks (Boral); City of Austin (Austin); City of Cleburne (Cleburne); City of Dallas (Dallas); City of Garland (Garland); City of Grand Prairie (Grand Prairie); City of Houston (Houston); City of Lubbock (Lubbock); Commercial Metals Company (CMC); Department of the Air Force (DAF); Harris County Public Health & Environmental Services (Harris County); Kohler (Kohler); LG&E Power Inc. (LG&E); Lloyd, Gosselink, Blevins, Rochelle, Baldwin & Townsend, P.C. (LGBRB&T); Louis Bramblett Auto Parts, Inc. (Bramblett); Lower Colorado River Authority (LCRA); National Stormwater Center (NSC); Port of Corpus Christi Authority (PCCA); Port of Houston Authority (PHA); Printing and Imaging Association of Texas/Oklahoma (PIATO); Reliant Energy (Reliant); San Antonio Water System (SAWS); Separation Systems Consultants, Inc. (SSCI); Stormwater Reform Coalition (SRC); TAMKO Roofing Products, Inc. (TAMKO); Temple-Inland Forest Products Corporation (Temple-Inland); Texas Chemical Council (TCC); Texas Instruments (TI); Texas Parks & Wildlife Department (TPWD); TXU (TXU); Vought Aircraft Industries, Inc. (Vought); and WCM Group, Inc. (WCM).

BACKGROUND

TNRCC is proposing to issue a Texas Pollutant Discharge Eliminations System (TPDES) general permit that would authorize discharges of stormwater associated with industrial activity and certain non-stormwater discharges from industrial facilities. This permit is proposed pursuant to TWC, §26.040, General Permits. These discharges are currently authorized under a National Pollutant Discharge Elimination System (NPDES) general permit, issued by the U.S. Environmental Protection Agency (EPA) according to requirements at 40 CFR §122.26, which expired September 29, 2000. On September 27, 2000, TNRCC assumed administrative authority for the permit and proposed to renew the permit through issuance of the proposed draft general permit. These existing authorizations shall remain effective until the date on which the commission takes final action on the proposed general permit. Issuance of the proposed general permit would allow continued coverage for these facilities, and initial coverage for new facilities, under the TPDES permit program. The conditions and requirements of the proposed TPDES general permit are similar to the current NPDES general permit.

As proposed, industrial facilities located in the state of Texas shall only be authorized to discharge stormwater under this general permit following the development and implementation of stormwater pollution prevention plans (SWP3s). Each SWP3 must be developed according to the minimum measures defined in the permit, and must also be tailored to the specific operations and activities conducted at the industrial facility. Applicants must develop SWP3s that establish effective pollution prevention measures and best management practices to reduce pollution in their own stormwater discharges. Such measures and practices include: limiting or prohibiting exposure of stormwater to materials, wastes, and industrial activities; good housekeeping procedures; maintenance of stormwater controls; periodic inspections; and reports to assess compliance with permit requirements and to identify necessary revisions to the SWP3.

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

GENERAL COMMENTS

Comment 1: The AAAE and SRC commented that trade associations can play a valuable role in information dissemination, compliance assistance, and in establishment of minimum environmental standards. AAAE commented that Texas should allow airports to propose and administer a permit compliance initiative modeled after compliance programs in the states of California and Wisconsin. AAAE commented that similar industrial facilities could develop a group-monitoring plan as an alternative permit compliance program. AAAE and SRC proposed that the draft permit be modified to include Sector AE. Similar facilities could develop alternative permit compliance programs, submit the plans to the ED for approval, and be designated as authorized under Sector AE if the plan is determined to be better than the program proposed in the general permit. AAAE commented that this alternative approach would result in increased compliance rates and significant environmental benefit.

Response 1: Although the activities of a group of industries may be similar, facilities located in separate areas of the state would be subject to vastly different topographical and meteorological conditions. This could make the development of a single, acceptable, and effective group storm water pollution prevention plan very difficult even for similar facilities. Additionally, it would be very resource intensive for TNRCC to establish group eligibility criteria, and to review and certify alternative group plans.

Comment 2: WCM commented that the proposed general permit does not include the special SWP3 requirements for facilities subject to EPCRA (Emergency Planning and Community Right-to-Know Act)

§313. WCM asked if this was purposely omitted.

Response 2: The TRNCC did not include the specific provisions of EPCRA, because in 1989 the Texas Toxic Chemical Release Reporting Act, Texas Health and Safety Code (THSC), Chapter 370, was passed. It is a mirror image of the federal act, with a few minor exceptions. The purpose of Toxic Reduction Inventory (TRI) reporting is to inform the public and government officials about routine and accidental releases and disposal of toxic chemicals to the environment and assist in research and development of regulations, guidelines, and standards. The purpose of the proposed general stormwater permit, to regulate storm water discharges, is distinctly different. The proposed general permit would not relieve any industry from complying with the Texas Toxic Chemical Release Reporting Act, THSC, Chapter 370.

Comment 3: PCCA commented that they had previously provided similar comments to the TNRCC regarding the draft permit and "could not find responses to our comments in either a preamble to the proposed permit or in the fact sheet for the proposed permit." PCCA requested that TNRCC address their previous comments.

Response 3: The TNRCC held several stakeholder meetings prior to development of the proposed permit where comments were solicited and discussed. Comments, received prior to the public notice period, were considered and used to develop the conditions of the proposed permit. Because these comments were a part of the stakeholder meeting process, and not submitted as a part of the 30-day public comment period, they are not summarized and responded to in this response to public comments.

Comment 4: PCCA commented, "When compared to the reissued NPDES Multi-Sector General Permit, this permit requires much more of the permit holder in terms of meeting the requirements of the SWP3.

Additionally PCCA commented that many requirements "add much paperwork, cost, and maintenance requirements to the permit holder without additional environmental benefit."

Response 4: The conditions and requirements of the proposed permit are substantially equal to those of the federal NPDES Multi-Sector General Permit (MSGP) that was issued in September 1995. The proposed permit, however, does provide a waiver for hazardous metal monitoring requirements under certain circumstances.

Comment 5: NSC suggested, "all ports with drainage systems be designated as small MS4s." NSC states, "It is more logical for the port owner to limit its liability by regulating tenant discharges into the storm drainage system for which it is ultimately responsible."

Response 5: The ED agrees that ports, which commonly have a separate storm sewer system for multiple users, resemble small municipal separate storm sewer systems in some respects. Portions of these systems may even be determined to be a municipal separate storm sewer system (MS4) with stormwater permit requirements separate from this proposed permit. To clarify, the ED responds that this proposed permit applies to discharges of stormwater associated with industrial activities, and applies to a port when the port is an owner or operator of a facility that causes one of these discharges. The ED recognizes that where multiple industrial facilities are located at a port, or on some other single piece of property, the quality of stormwater discharges from the property may well benefit from a concerted effort of pollution prevention. Industrial facilities may also benefit from a coordinated approach to satisfying permit requirements and conducting pollution prevention efforts. Therefore, the proposed permit is revised to include new Part II.A.3., relating to Co-located Industrial Facilities. Similarly located facilities, or "co-located facilities," shall have the option of participating in a shared SWP3. This approach will benefit permittees by avoiding duplication of efforts in common areas of a property and by

more clearly delineating to permittees and to inspectors the responsibilities of co-located facilities.

Comment 6: SAWS commented that §401.002 of the Texas Local Government Code (Protection of Streams and Watersheds by Home-Rule Municipality) should be added to ensure permittees comply with both state and local regulations.

Response 6: Part II, Section B.10 has been added in response to this comment. It states: "This general permit does not limit the authority of a home-rule municipality provided by § 401.002 of the Texas Local Government Code." The TNRCC has determined that this provision will clarify that home-rule municipalities retain all authority provided by the Local Government Code.

Comment 7: Houston requested clarification on the use of the words "operator," "facility," and "owner" in the draft permit and who is responsible for obtaining permit coverage. Houston suggested adoption of the language from 40 Code of Federal Regulations (CFR) §122.21(b).that provides, "When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit."

Response 7: The proposed TPDES general permit would allow for the discharge of stormwater from industrial facilities. TNRCC rules at 30 TAC §305.43 specify that both the owner and the operator of a facility must apply for a TPDES permit when the operator of the industrial facility is different from the owner of that facility. Since this general permit is a TPDES permit, both the owner and operator must apply.

Comment 8: Houston commented that the term "waste" should not be used when referring to stormwater discharges. Houston stated that the incidental exposure of materials to precipitation resulting in a

discharge of pollutants is entirely different from the discharge of wastes. Additionally Houston commented that the use of the term "waste" has great potential for confusion and possibly for unintended and inappropriate connections with other regulatory programs.

Response 8: The TNRCC disagrees with the comment. The term "waste" does not apply to any specific program, rather it applies to "sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste..." as defined in TWC, §26.001(6).

Part I. - Definitions

Comment 9: Houston and Harris County requested that the terms "New Source" and "New Discharge" be defined. Houston also suggested that TNRCC look to the definitions in 40 CFR §122.2 for guidance. Moreover Houston commented that it is very important to clarify that stormwater discharges from facilities that had previously been operating under the federal permit, or through a federal no exposure certification, do not constitute new sources or new discharges.

Response 9: Generally a facility is a new discharger if it began to discharge after August 13, 1979 and its stormwater discharge was not previously permitted. As stated in the first paragraph in Part I of the proposed permit, this general permit is subject to the definitions of 30 TAC §305.2 that defines a new discharger.

Part II. - Permit Applicability and Coverage

Comment 10: Boral commented that the term "water in the state" should be changed to "water of the state." Boral commented that the definition was broad and requested the change so that the definition would not include waters impounded on private land.

Response 10: TWC, §26.121 prohibits the discharge of industrial and other waste causing pollution of any water in the state. The proposed permit is drafted under the authority of TWC, §26.027 that provides the commission may issue permits for the discharge of waste or pollutants into or adjacent to water in the state. The term "water in the state" is a term of art that has been defined in various statutes over time and which is subject to strict interpretation as a matter of law. The term necessarily includes impounded waters and other waters located on private property.

Part II. Section A.1. - Industrial Activities Covered

Comment 11: Dallas commented that coverage should include facilities described by SIC codes 3281 (Cut Stone and Stone Products) and 5169 (Chemical and Allied Products, Not Elsewhere Classified).

Response 11: The ED agrees, in part, with the comment. Title 40 of the Code of Federal Regulations at §122.26(b)(14)(ii) defines stormwater discharges associated with industrial activity to include stormwater discharges from facilities classified in SIC code group 32 (with the exception of 323), but does not include facilities classified in SIC code 5169. Therefore the draft permit is revised to include facilities described by SIC code 3281, but is not revised to include facilities described by SIC code 5169.

Individual facilities that are not designated as requiring a permit, but which are found to cause environmental harm from the discharge of stormwater runoff, may be required by the ED to obtain an individual TPDES permit, on a case-by-case basis, and will be designated under Miscellaneous Industrial Activities in Sector AD.

Additionally, to correct typographical omissions relating to other SIC codes listed in 40 CFR §122.26(b)(14), the permit is revised to include: SIC codes 2441 - 2449 in Sector A (Timber Products Facilities); SIC codes 3291, 3292, 3295, 3296, and 3299 in Sector E (Glass, Clay, Cement Concrete, and Gypsum Product Manufacturing Facilities); and SIC codes 3812 - 3873 in Sector AC (Electronic,

Electrical, Photographic, And Optical Goods).

Part II.A.2. - Co-located Industrial Activities

Comment 12: PCCA commented that facilities should not be required to meet the sector-specific requirements for co-located activities if those activities directly support the facilities' primary industrial activity.

Response 12: The sector-specific requirements for co-located activities were conditions of the previous federal NPDES MSGP that was issued in September 1995. The continuance of this requirement within the proposed TPDES general permit is in agreement with the general anti-backsliding provisions in the Federal Water Pollution Control Act (Clean Water Act), §402. However, a facility may conduct industrial activities in support of the facilities primary activity that do not qualify as a co-located activity. For example, routine maintenance of vehicles at an industrial facility would not qualify as a Sector P (Motor Freight Transportation Facilities, Passenger Transportation Facilities, Petroleum Bulk Oil Stations and Terminals, Rail Transportation Facilities, and United States Postal Service Transportation Facilities) co-located activity unless the use of those vehicles was described by Sector P.

Part II.A.4. - Non-Stormwater Discharges

Comment 13: Harris County recommended that the permit should be revised to clarify that "contaminated fire fighting water" may not be discharged without prior treatment. TPWD commented that these discharges may result in fish kills and requested that the permit require facilities to monitor these discharges and to report any fish or wildlife kills directly to TPWD.

Response 13: The proposed permit does not require pollution prevention measures to be identified and implemented for fire fighting activities because discharges that result from these actions are unplanned

and occur during emergency situations. Under those circumstances it is necessary to take immediate action to protect the public and to halt an event that could potentially cause greater environmental harm.

Comment 14: ATA recommended that the permit be revised to authorize discharges from all hydrant-flushing activities. Reliant commented that discharges from potable water sources should be allowed if the chlorine concentration does not exceed 4.0 mg/l. Reliant further commented that this recommendation is justified because this is the "permitted upper limits applied to most discharges from sewage treatment plants. TCC commented that the location of many potable water systems make it impracticable to "gather, transport, and treat these waters because of their large volumes and remote locations." TCC also recommended that a "chlorine limit of 4.0 mg/l would provide "adequate water quality protection" for discharges from public water system maintenance activities. TXU commented that the requirements for discharges from potable water sources should be modified to allow the draining of water plants, water storage tanks/towers, and waterline flushings following hyperchlorination if chlorine concentrations do not exceed 2 parts per million.

Response 14: The ED agrees in part with the recommendations, and recognizes that discharges of hyperchlorinated water, typically following the repair of waterlines, may be acutely toxic to fish and other aquatic organisms. The permit is revised to remove the restriction that hydrant flushings discharges must be the result of routine maintenance activities. The permit is also revised to authorize discharges from all potable water sources provided that the conveyances or tanks have either not been hyperchlorinated, or have been dechlorinated prior to discharge and the discharges are not expected to adversely affect aquatic life.

Comment 15: Austin commented that the permit should be revised to require that the routine external washing of buildings would only be allowed "provided there is no excess silt or dirt."

Response 15: The ED agrees in part with the comment. Discharges resulting from routine external washing of buildings must not include amounts of solids that would result in a water quality problem to receiving waters. Part III of the proposed permit requires that facilities develop a stormwater pollution prevention plan (SWP3) that would identify potential pollutants, their sources, and develop pollution prevention measures and controls to limit pollution in authorized discharges. If a facility washes the external surface of buildings and discharges water under the authority of the proposed permit, this activity must be conducted under the requirements of this SWP3, thus preventing the discharge of such solids to water in the state.

Comment 16: Austin commented that the permit should be revised to specifically exclude power washing as this is an activity that is prohibited in the EPA's NPDES MSGP permit.

Response 16: The proposed general permit would authorize the discharges of stormwater associated with industrial activities and a specific list on non-stormwater discharges. The list of non-stormwater discharges does not include those resulting from power washing activities.

Comment 17: TAMKO commented that the permit should be revised to include the discharge of steam line condensate as an authorized non-stormwater discharge.

Response 17: The ED agrees and revises Part II.A.4.(f) to read "air conditioner condensate, compressor condensate, and condensate that externally forms on steam lines."

Comment 18: TCC commented that Part II.A.4.(i) of the proposed permit incorrectly includes a reference to Part IV of the permit. TCC further commented that the language should be revised to reference Part V of the permit.

Response 18: The ED agrees with the comment and corrects the reference in Part II.A.4.(i) from "Part IV" to "Part V."

Part II.B.1. - Suspension or Revocation of Permit Coverage

Comment 19: Houston suggests that the last sentence in the first paragraph should be revised so that the permittee is only required to submit copies of records upon request of the ED.

Response 19: The ED agrees with the suggestion and revises the language to read "Additionally, the permittee shall provide to the ED, upon request, copies of all records that the permittee is required to maintain as a condition of the permit."

Part II.B.3. - Stormwater Discharges from Construction Activity

Comment 20: TCC commented that the permit should be revised to clarify that stormwater discharges from construction activities that disturb less than one acre do not require a permit, and could be mixed with storm water discharges authorized under this proposed permit.

Response 20: The ED disagrees that this proposed revision is necessary. The proposed permit provides that storm water authorized under the proposed permit may only be combined with stormwater runoff from construction activities under two conditions. Stormwater runoff from construction sites must either be permitted under a separate TPDES or NPDES permit, or the runoff must be designated as not requiring permit coverage. Stormwater runoff from small construction activities is addressed in the Phase II NPDES final rules. These rules require authorization for the discharge of stormwater from construction sites that disturb at least one acre, but less than five acres, of land. The rules provide that criteria may be developed to designate discharges of runoff from certain smaller construction activities. TNRCC has not developed TPDES Phase II stormwater permits, and must do so by December 2002.

Therefore the suggested language has not been included. The ED has corrected a typographical omission in this provision by adding the word "permit," after the acronym TPDES, in Part II.B.3.

Part II.B.5. - Discharges of Stormwater Mixed with Non-Stormwater

Comment 21: ATA commented that the distinction between "stormwater" and "non-stormwater" may be confusing. ATA requested that language be added to better define the stormwater in question.

Response 21: The ED agrees that clarification is needed. The provision currently begins "Discharges of stormwater that combine with sources of non-stormwater are not eligible for coverage under this general permit, unless..." The provision is revised to begin "Stormwater discharges associated with industrial activity, that combine with sources of non-stormwater are not eligible for coverage under this general permit, unless..." The revision includes the term, "stormwater associated with industrial activity," which is defined in Part I of the proposed permit. The specific non-stormwater discharges allowed under the proposed general permit are identified in Part II.A.5.

Part II.B.7. - Discharges to Water Quality-Impaired Receiving Waters

Comment 22: PHA commented that total maximum daily loading allocations are currently based on discharges authorized by a TPDES individual permit. The PHA asked, "Is the intent of the TNRCC to issue individual permit for discharges from a facility into a §303(d) waterway?" PHA commented that it "does not believe a stormwater general permit should be affected by a total maximum daily load (TMDL) allocation if the facility is not discharging the constituent being reduced by a TMDL." PHA also commented that TMDLs should allow allocations or consideration for storm water discharges.

TCC commented, "If a new source or discharge does not contribute to the impairment then the discharge should be authorized under this permit even though the water body is listed on an §303(d) list." TCC

requested a revision to clarify that only discharges that contribute to the water body impairment are excluded from coverage under the proposed general permit.

Houston suggested language to revise this section and to clarify that a new source or discharge would not be issued an authorization under the proposed permit if it caused a waterbody to be listed, or contributed the pollutant for which a water body was listed, on the §303(d) list.

Response 22: The ED agrees that revisions are necessary to clarify when discharges to §303(d) listed waterbodies are not eligible for permit coverage. It is not the intent to require individual permits for all discharges of stormwater to any receiving water that is on the §303(d) list. The quality of the discharges authorized under the proposed permit is dependent on effective pollution prevention measures and controls, as opposed to requirements to meet chemical specific numeric effluent limitations. EPA has developed "Interim Permitting Policy for Water Quality-Based Effluent Limitations in Stormwater Permits" (November 26, 1996, Federal Register 43761) that provides that where numeric water quality-based effluent limitations are infeasible, best management practices would serve as the water quality-based limitation. Stormwater discharges that are in compliance with the proposed permit requirements are deemed to be in compliance with water quality standards. However, as a result of TMDLs, additional measures for reductions of pollutants in stormwater discharges may be required. Therefore the proposed permit is revised to clarify that where there is a TMDL implementation plan that addresses the discharges authorized under this proposed permit, a new source or discharge would be eligible for coverage under the proposed permit if the applicable limitations and conditions of the TMDL implementation plan are incorporated into the SWP3. This section of the permit is further revised to cite the Texas Administrative Code in regard to allowable discharges to impaired waters and to clarify that the provisions only apply to those discharges that contain the pollutant(s) for which a waterbody is listed.

Part II.B.9. - Discharges to Specific Watersheds and Water Quality Areas

Comment 23: LCRA requested the following sentence be added to protect the Highland Lakes: "In addition to the provisions and requirements of this general permit, new discharges located within the Specific Watersheds and Water Quality areas as defined by Chapter 311 must meet those specific provisions delineated in that Chapter and all applicable requirements of any ordinances, rules and regulations administered by local governments or political subdivisions such as municipalities and river authorities."

Response 23: Part II.B.10 was added in response to this comment. The TNRCC has determined that this revision will clarify that applicants requesting coverage under this general permit must comply with all other local, state, and federal regulations. The specific language is included in Response 6.

Comment 24: WCM requested that the permit include specific information on where the completed notice of intent (NOI), notice of change (NOC), and notice of termination (NOT) forms should be submitted.

Response 24: The ED agrees that this information is necessary but disagrees that it should be included in the proposed permit. This information will be provided either directly on the forms or on the instruction sheets that accompany the forms. Information may be more easily updated if it is not included as a provision of the proposed five-year general permit.

Part II.C.1. - Conditional No Exposure Exclusion from Permit Requirements

Comment 25: Dallas commented that the list of materials that are not required to be isolated from storm-water in order to meet the no exposure exclusion requirements is contrary to the list contained in the

federal NPDES permit. Dallas commented that the intent of the exclusion is to ensure that facilities have "no activities which can potentially impact stormwater and/or stormwater runoff." Dallas commented that they have "seen no quantitative data which establishes that the proposed type of exclusions will not impact the stormwater runoff from the 29 industrial sectors presently permitted under the MSGP." Dallas commented that inclusion of these exclusions "creates disparity within the individual industrial sectors" and "fails to provide uniformity in its application to all the industries within the individual sectors."

Response 25: The ED disagrees with the comment because the no exposure exclusion was expanded in the NPDES rules and regulations from the "light industry" category to all sectors of industrial activity when the final "Phase II" stormwater rules were published in the Federal Register, December 8, 1999. The no exposure exclusion requirements in the proposed permit are based on these final federal rules. The proposed permit extends this provision equitably between all 30 sectors of industrial activities. The final NPDES rules also delineate a list of materials that may be exposed to stormwater and that are not required to be protected by a storm resistant shelter in order that the exclusion requirements are met. The list of materials in the proposed permit is based on these final federal rules and on subsequent guidance documents provided by EPA.

Comment 26: Harris County requested the permit contain a requirement to allow local authorities to conduct inspections. Dallas and Harris County further commented that revisions should be made throughout the permit to require that reports and records be furnished to local authorities as well as to TNRCC.

Response 26: Part II, Section B.10 was added in response to this comment. The TNRCC has determined that this revision will clarify that applicants requesting coverage under this general permit must comply

with all other local, state, and federal regulations. The specific language is included in Response 6 of the ED's Response to Public Comment.

Comment 27: Houston requested clarification on the status of facilities that provide certification for the conditional no exposure exclusion from permitting requirements. Houston commented that this exclusion could be interpreted to mean that these facilities are only excluded from having to comply with the requirements of the permit, but are still included under the coverage of the permit. Houston requested clarification that discharges of stormwater are not discharges of stormwater associated with industrial activities if there is no exposure to industrial materials and activities.

Response 27: The federal regulations, at 40 CFR §122.26, define certain industrial activities as subject to permit requirements for discharges of stormwater runoff. However, facilities may be excluded from application requirements (and requirements to develop a SWP3) if they meet a condition of no exposure of industrial activities to stormwater runoff. Therefore, these facilities are included within the scope of permit applicability, but may come into compliance with the requirements of the Clean Water Act by meeting the no exposure exclusion status.

Comment 28: PIATO commented that empty wooden skids and pallets, that are stored outdoors, should not "trigger permitting" and should not prohibit a facility from applying for the conditional no exposure exclusion. The association commented that if this is decided to constitute exposure of industrial materials to stormwater, "tens of thousands of small business owners in Texas who would otherwise qualify for exclusion would be required to file for stormwater permits."

Response 28: Final products that are intended for outdoor use are not required to be isolated from stormwater and stormwater runoff in order to meet the no exposure exclusion, provided the products would

not be mobilized in stormwater discharges. Skids, pallets, and other similar platforms used for the storage or conveyance of these same final products can also be stored outside provided they are pollutant-free. Skids, pallets, and other similar platforms used for the storage or transport of final products not designed for outdoor use, raw materials, intermediate materials, or waste materials are not considered to be pollutant free and would "trigger permitting" requirements.

Comment 29: Austin commented that facilities that apply for conditional no exposure exclusion from permitting requirements, and that store materials in acceptable containers that are exposed to stormwater, should be required to use pallets or similar storage structures "to prevent the unnecessary deterioration of the structural condition of the containers."

Response 29: The ED agrees that elevating containers would minimize the contact of these containers with stormwater runoff, and that this might minimize the deterioration of certain types of containers. This best management practice is not a requirement of the permit as it may not be feasible for different types of operations or for all types of containers. Facilities that could not utilize this method of storage could construct storm resistant shelters for container storage or apply for general permit coverage. Neither of these options would further reduce pollution in stormwater discharges. Instead, facilities are required to maintain containers in good structural condition, and may incorporate this suggested practice, or alternative practices, to ensure that the conditions for exclusion continue to be met.

Comment 30: SAWS commented that the certification for conditional no exposure exclusion from permitting requirements should be submitted on an annual basis. SAWS and Houston comment that the permit should require the facility to submit a copy of the certification to the municipal separate storm sewer system (MS4) operator and allow the MS4 operator to inspect the facility for verification.

Response 30: The ED agrees in part with the comments. The proposed permit currently requires facilities to provide a copy of no exposure certifications to operators of municipal separate storm sewer systems (MS4) and to allow inspections of the facility by the operators of those systems, if the discharge is to the MS4. The ED disagrees with the comment that certifications should be submitted on an annual basis. The no exposure exclusion is a "conditional" exclusion provided to the person responsible for a point source discharge that meets the conditions of no exposure of industrial materials to stormwater. The certification includes a signed statement that prior to altering conditions at the facility that would result in exposure of industrial materials to stormwater, the person must obtain coverage under the proposed permit. The exclusion is from the permitting requirements of the proposed five-year term general permit. To require certification on an annual basis, when there have not been changes that would disqualify a person from the exclusion, would defeat one intent of the provision, which is to reduce the regulatory burden on the agency and industrial facilities.

Comment 31: Boral commented that if a facility obtains the conditional no exposure exclusion, and subsequently changes operations to a condition of exposure of industrial activities to stormwater, the facility should be granted provisional coverage until an individual permit can be obtained.

Response 31: The ED disagrees with the comment. The draft permit currently requires facilities that propose to make such changes to obtain permit coverage prior to discharging stormwater associated with industrial activities. The ED recognizes the time frame for obtaining an individual permit is lengthier than the time frame for obtaining coverage under the proposed general permit. However, facilities that propose to go from a condition of no exposure to a condition of exposure have several options. They may either obtain coverage under the proposed general permit, or may elect to obtain coverage under an individual permit. If the option of coverage by individual permit is chosen, a facility may elect to isolate industrial materials and activities from stormwater and continue to operate in a condition of no exposure,

or to obtain coverage under the proposed general permit, until the application for the individual permit is submitted and the individual permit is issued.

Comment 32: Houston commented that a facility that submits a certification for conditional no exposure exclusion from permitting requirements, which is subsequently denied this exemption, should be given 15 days to prepare a draft stormwater pollution prevention plan (SWP3) and to submit a notice of intent for permit coverage. Houston commented that the applicant should then be allowed an additional 180 days in order to finalize the SWP3.

Response 32: The conditions that must be met in order to receive the exclusion from permit requirements are clearly delineated in the proposed permit and will be reiterated on the certification form. It is the applicant's responsibility to ensure that these conditions are met prior to submitting the sworn certification to TNRCC. If inspection of the facility reveals that industrial activities or materials are exposed to stormwater, the operator may be issued a notice of violation, or other enforcement action, and given a prescribed period of time to either obtain permit coverage or to meet the conditions of no exposure.

Comment 33: Cleburne requested the opportunity to provide input on what information will be required of individuals that submit a certification for the conditional no exposure exclusion from permit requirements. Specifically, Cleburne requested clarification on who would apply for the exclusion where the facility is owned by one entity, and a separate entity operates the facility and has operational control over the industrial activities of the site.

Response 33: The ED will prepare a certification form that contains, at a minimum, the information required under the final federal rules published in the Federal Register on December 8, 1999. For

industrial facilities that are owned by one person, and under the operational control of a separate person, both the operator and the owner must provide the required certification. This is in accordance with the TNRCC's application requirements at 30 TAC §305.43.

Comment 34: Houston commented that facilities are eligible for conditional no exposure exclusion from permitting requirements if operators certify that all industrial activities and materials are isolated from stormwater and stormwater runoff by storm resistant shelters. Houston requested that the certification requirements be revised to allow operators to certify all industrial activities and materials are isolated from stormwater and stormwater runoff by storm resistant shelters or other means of isolation. Houston gives the example of wastewater treatment plants where uncovered reactors isolate process materials from stormwater.

Response 34: The ED disagrees that the criteria for meeting the no exposure exclusion should be expanded. For the example given, if storm water falls into an uncovered treatment unit and is either retained or discharged through a final outfall authorized under a separate TPDES wastewater discharge permit, the facility may still qualify for a condition of no exposure.

Comment 35: Houston commented that the proposed permit allows for conditional no exposure exclusion from permitting requirements only if the entire facility can meet the conditions. The City of Houston requested clarification for the following situations: only a part of the facility can meet these requirements; only a portion of the co-located activities at a facility can meet the requirements; activities described by the primary SIC code meet the requirements, but other industrial activities or materials are exposed. TCC commented that the conditional no exposure exclusion from permitting requirements should be allowed for specific areas of a facility, and not be limited on a facility-wide basis.

Response 35: The no exposure exclusion from permitting is available only on the condition that applicants can certify that there is no exposure of industrial activities or materials to stormwater and stormwater runoff on a facility-wide basis. For example, exclusion of permit requirements for certain outfalls, or for certain drainage areas within the facility, may be done within the stormwater pollution prevention plan when a facility applies for coverage under the general permit. A condition of the proposed permit is that the permittee identify areas of the facility where stormwater contacts industrial materials and industrial activities. The stormwater pollution prevention plan (SWP3) must then identify best management practices, and other pollution prevention controls, to reduce or eliminate pollution in stormwater runoff from these areas. Areas of the facility where there is no exposure of materials and activities to stormwater may also be identified in the SWP3. There are no further permit requirements for these areas of the facility so long as they are inspected during each annual compliance inspection and no new activities in these areas are identified.

Part II.C.2. - Application for Coverage

Comment 36: Dallas and Houston commented that applicants that propose to discharge to a municipal separate storm sewer system (MS4) should be required to notify the operator of the MS4 system.

Response 36: The ED agrees with the comment. This requirement is in the proposed draft permit at Section C.8., Additional Notification.

Comment 37: WCM commented that the permit should contain application requirements for oil and gas facilities that are not initially required to submit an application for permit coverage, but may be required to submit an application following a reportable quantity release.

Response 37: The proposed general permit does not apply to oil and gas production activities in Texas.

These activities are under the jurisdiction of the Railroad Commission of Texas, a state agency without NPDES permitting authority. Therefore, discharges of stormwater runoff from these activities continue to be authorized under the federal NPDES stormwater permit in Texas.

Comment 38: Houston commented that the opening sentence in Part II.C.2. should reference Part II.C.4. regarding the contents of the notice of intent form.

Response 38: Part II.C.2. states that application must be made on a form that is approved by the ED. Part II.C.4. lists the minimum information that the form must contain. The form will be provided by the ED, and may require information beyond that listed at Part II.C.4. Therefore, the suggested reference is not necessary.

Comment 39: Houston commented that the permit should state that permit coverage will not be provided if the NOI does not contain all of the required information.

Response 39: The ED agrees with the comment and revises the language to include: "Following review of the NOI, the ED may determine the NOI is complete and confirm coverage by providing a notification and an authorization number, determine the NOI is incomplete and deny coverage until a completed NOI is submitted, or deny coverage and require an application for an individual permit be submitted."

Comment 40: PCCA commented that the requirement for currently permitted facilities to submit the notice of intent (NOI) for continued coverage within 90 days following issuance of the proposed permit is severely limiting. PCCA commented that EPA issued notice of the final permit 180 days prior to expiration, and allowed 90 days following issuance for existing facilities to submit an NOI. PCCA suggests that TNRCC allow a similar 270-day period for these facilities to submit an NOI. DAF

commented that the 90-day time frame may be difficult for some military installations "due to the Federal budget cycle." DAF requested that the permit be revised to allow extension of the 90 day deadline to 180 days at the discretion of the ED.

Response 40: Currently permitted facilities were authorized under the federal permit that was issued with a five-year term set to expire on September 30, 1999. These facilities should have been well aware of the need to renew the permit. Currently permitted facilities already have a SWP3 in place. The proposed TPDES permit requirements are very similar to the current NPDES permit. Therefore, most facilities will only need to make minor modifications to the existing SWP3 before completing and submitting the NOI. However, the following provision is added to the proposed permit: "The ED may grant a written request for extension for good cause if such written request is received no later than 15 days before the deadline for filing the NOI."

Comment 41: Houston commented that facilities should be required to submit an NOI at least 48 hours prior to conducting industrial activities, instead of the proposed requirement to submit the NOI at least 48 hours prior to the discharge of stormwater associated with industrial activities.

Response 41: The proposed general permit is to authorize, and to regulate, the discharge of stormwater associated with industrial activities. Authority to regulate these discharges stems from TWC, Chapter 26. TNRCC does not have regulatory authority for the industrial activity itself. However, because storms and resultant discharges are not controllable, TNRCC does recognize that it would be prudent to submit an NOI and obtain authorization as soon as is possible.

Part II.C.3. - Stormwater Pollution Prevention Plan (SWP3)

Comment 42: WCM commented the stormwater pollution prevention plan should be signed according

to the signatory requirements in Part II.C.7. of the proposed permit.

Response 42: Part II.C.3. of the proposed permit, relating to Stormwater Pollution Prevention Plan (SWP3), requires that the SWP3 be signed, and references the signatory requirements in Part III.E.3.(g), relating to Signatory Requirements for Reports and Certifications.

Part II.C.4. - Contents of the Notice of Intent

Comment 43: Houston recommends that the list of minimum information for notice of intent forms should be revised to include the sector(s) of industrial activities for which coverage is sought, and a signature and date according to requirements in Part II , Section C.7. of the proposed permit, relating to Signatory Requirement for NOI, NOT, and NOC Forms.

Response 43: The ED agrees in part with comments and revises the list to include the sector of industrial activities. The signature and date is not included in the list as "minimum information" as the requirement for this information is specified in Part II Section C.7. of the proposed permit, relating to Signatory Requirement for NOI, NOT, and NOC Forms

Comment 44: Houston commented that the notice of intent (NOI) should include additional information to determine if the facility is located in the Edwards Aquifer recharge or contributing zones, and to determine if any listed or endangered species are in the proximity of the proposed discharge.

Response 44: Facilities located within the Edwards Aquifer may not commence the construction of any regulated activity until an Edwards Aquifer protection plan, or modifications to the plan, or an exception has been filed with the appropriate TNRCC regional office, and the application has been reviewed and approved by the ED, according to 30 TAC Chapter 213, relating to Edwards Aquifer. The requirements

of the proposed general permit are in addition to requirements of Chapter 213, and would not differ depending on the location of the facility with respect to the Edwards Aquifer.

The U.S. Fish & Wildlife Service, the federal agency responsible for implementation of the Endangered Species Act, received notice of the proposed general permit. The ED did not receive any comments or recommendations from this agency. The proposed general permit is drafted such that stormwater discharges from facilities that meet the terms and conditions of the permit will not be in violation of the federal Endangered Species Act.

Comment 45: Houston commented that the NOI should require the applicant to list the name of the MS4 operator for any system that the facility is located within, whether or not the proposed discharge would enter the system.

Response 45: The permit requires facilities that contribute stormwater to a MS4 system to notify the operator of that system. Notification to the MS4 operator is important, as the operator of that system is ultimately responsible for the quality of the discharges from the MS4. Facilities that are located within the jurisdictional area of an MS4, but that do not contribute to the MS4, are dischargers directly to water in the state. The operator or the adjacent MS4 does not receive the discharge and is not responsible. The proposed permit contains requirements that will ensure that these direct discharges are protective of water in the state.

Comment 46: Houston commented that the NOI should require applicants to provide a written description of the discharge route from the permitted facility to the nearest major watercourse.

Response 46: The ED disagrees with the comment to require applicants to describe the discharge route.

The proposed general permit contains requirements and conditions that are protective of receiving waters regardless of the discharge route. The requested information would not be required in order to process the application and would not be verified during this process. The NOI will, however, require that the name of the receiving water and the SWP3 will require a site map with the location of each outfall clearly identified.

Part II.C.5. - Notice of Change

Comment 47: PHA requested that the permit be revised so that only the operator of a facility, and not the owner, is required to submit a notice of change. PHA further commented that the owner of the facility may not obtain a copy of the NOI and may not realize that the information submitted by the operator was incorrect.

Response 47: If the operator of a facility is different than the owner, both must complete and sign the NOI and they must both sign and submit the notice of change. Under this scenario, both the owner and operator would be equally responsible for assuring that all information provided is correct.

Comment 48: ATA commented that it is not necessary to require the same level of signatory requirements for a notice of change (NOC) as is required for a notice of intent or notice of termination. ATA commented that a NOC may be for very minor items such as a change in the mailing address. ATA commented that the signature for all submissions, with the exception of NOIs and NOTs, should be delegated to other facility personnel.

Response 48: Part III.E.3.(g) of the proposed permit delineates that signatory requirements for reports and certifications must be according to 30 TAC §305.128 (relating to Signatory Requirements).

According to these rules, the responsibility for signing these reports and certifications may be delegated

to certain other levels of authority.

Comment 49: WCM commented that the federal multi-sector general permit only required industrial facilities that contribute stormwater discharges to a MS4 to provide a copy of the NOI to the operator of that system if the system was for a medium or large city. WCM requested clarification on whether TNRCC proposes that facilities discharging to MS4s provide this notification regardless of the size of the system. ATA commented that the section should be revised to require notification only to medium and large MS4 system operators and that notice should only be required when requested by the operator.

Response 49: The proposed permit requires facilities to notify MS4 operators regardless of the size of the city. The term of the proposed permit will extend past the deadline for development and issuance of Phase II municipal separate storm sewer system stormwater permits. The criteria for determining which of these small MS4s will be required to obtain permit coverage has not been developed. Therefore, the most efficient notification process is to require dischargers to an MS4 to notify the operator of that system regardless of the size of the city.

Comment 50: Harris County commented that the permit should require permittees to provide a copy of NOIs, NOCs, and NOTs to all local authorities.

Response 50: The permit requires that MS4 operators be notified. MS4 operators are responsible for the quality of stormwater discharges from their systems, and necessarily need to know the contributors to these systems. Many other local authorities, such as health districts and law enforcement agencies, may exist that have either no interest or only peripheral interest in these discharges of stormwater. A requirement that all local authorities must be notified would be excessive and potentially confusing.

Comment 51: LGBRB&T commented that the general permit does not indicate the amount of the annual watershed monitoring and assessment fee, and that the amount of the fee should be specifically identified in the general permit. LGBRB&T stated that any annual fee would have negative impacts for many facilities.

Response 51: The proposed general permit does not propose to require watershed monitoring and assessment fees during the five-year term of this proposed permit.

Comment 52: LGBRB&T commented that the commission does not have the statutory authority to require fees in connection with general permits, except waste treatment inspection fees that are authorized by TWC, §26.0291. LGBRB&T further commented §26.040 of the TWC specifically authorizes the Commission to impose "a reasonable and necessary fee" related to waste treatment inspections, and this provision does not authorize any other fee regarding general permits. Furthermore, according to LGBRB&T, TWC, §5.235(a) authorizes the commission to collect fees, but only fees "prescribed by law."

Response 52: The ED disagrees with the comment that only waste treatment inspection fees may be required for authorizations under a TPDES general permit. Under TWC, §26.0135(h) the commission shall assess watershed monitoring and assessment fees to "users of water and wastewater permit holders in the watershed according to the records of the commission generally in proportion to their right, through permit or contract, to use water from and discharge wastewater to the watershed." Persons authorized to discharge under the proposed general permit are holders of a permit, albeit a general rather than individual permit, that have a right to discharge by virtue of their coverage under a general permit. Therefore, persons discharging under authority of a general permit fall within the scope of TWC, §26.0135. Application fees may also be required for authorization under a TPDES general permit.

TWC, §5.235(b) specifically provides that "Except as otherwise provided by law, the fee for filing an application or petition is \$100 plus the cost of any required notice." Additionally, 30 TAC §3.2(4) defines an application as "A petition or written request to the commission for an order, permit, license, registration, standard exemption, or other approval." Part I of the MSGP defines an NOI as "A written submission to the ED from an applicant requesting coverage under a general permit." Thus, an NOI is an application and as such is subject to the \$100 application fee.

Comment 53: LGBRB&T commented that municipalities that have a population over 10,000 persons may not be charged watershed monitoring and assessment fees. TWC, §26.0135(h) (stating that "no municipality shall be assessed costs" for the water quality management activities of §26.177 -- the water pollution abatement plan requirements).

Response 53: The commenter is correct that §26.0135(h), provides, with respect to watershed monitoring and assessment fees, that no municipality shall be assessed cost for any efforts that duplicate water quality management activities described in TWC, §26.177. However, the ED disagrees that municipalities having a population greater than 10,000 may not be charged watershed monitoring and assessment fees. In order to qualify for the exemption for assessment of costs that duplicate water quality management activities, the municipality must have established and implemented a water pollution control and abatement program under TWC, §26.177(a), that includes, at a minimum, the services and functions described in TWC, §26.177(b)(1) - (6), and the program must have been submitted to and approved by the commission under TWC, §26.177(c).

Comment 54: WCM requested specific information on when the proposed annual fees would be billed so that permittees may budget in advance.

Response 54: The \$100 annual waste treatment inspection fee will be billed in September of each year for every facility that is authorized under the proposed permit on September 1st of that year. The application fee must be submitted with the NOI.

Comment 55: Bramblett requested reconsideration for the amounts of the proposed annual fees.

Bramblett commented that some smaller facilities may have difficulty budgeting the proposed \$100 annual waste treatment inspection fee, an additional watershed assessment fee, and costs associated with monitoring and compliance. CMC commented that a \$100 application fee and a \$100 annual waste treatment inspection fee will be a hardship for smaller businesses and for those with multiple locations. CMC commented that a budget should be developed to justify fees.

Response 55: The ED has considered costs of permit compliance and costs of administrating the permit program in establishing the proposed fees. The application fee is proposed at the minimum amount allowed in 30 TAC §305.503 (relating to Consolidated Permits). Annual waste treatment inspection fees for a permit issued under the authority of TWC, Chapter 26 are described in §305.503 (relating to Consolidated Permits). The minimum waste treatment inspection fee for stormwater permits is set at \$900, and may be adjusted to a maximum annual fee of \$2,070. Title 30 TAC Chapter 205 (relating to General Permits for Waste Discharges) was recently amended to allow that waste treatment fees could either be established according to §305.503 or established in a general permit. The ED, according to Chapter 205, now establishes a \$100 annual fee in the general permit to recover the cost of administering the proposed permit. The ED has noted in the proposed permit that dischargers are subject to an annual watershed assessment fee, but does not propose to assess this fee. Finally, the costs for maintaining authorization under the proposed permit are estimated to be less than the costs for obtaining the alternative individual TPDES permit coverage.

Comment 56: Cleburne commented that the proposed application fee and annual waste treatment inspection fee are reasonable. Cleburne commented that it is concerned that annual watershed assessment fees are increasing and may be an exorbitant cost for a small city to bear. Cleburne stated it would be more appropriate for the state to fund the statewide monitoring of waters in Texas using the budget surplus, rather than requiring municipalities and other entities to come up with the funds through local tax increases.

Response 56: The TNRCC has no control over the state budget or any surplus found therein. The TNRCC is required by the Legislature to support its regulatory activities through the assessment of fees within the guidelines provided by the Texas Legislature. There is no watershed monitoring and assessment fee proposed during the five-year term of the proposed general permit.

Comment 57: PCCA asked if the language in Part II.C.10. of the permit, requiring facilities to apply for an individual permit if the general permit is not renewed, reflects an intent to require all individual permits.

Response 57: The ED does not intend to require all facilities to obtain individual permit coverage. The language in this provision provides guidance to permittees on how to maintain authorization for discharges of stormwater in the event that coverage under the proposed general permit is not available. As stated, coverage may be available through either an individual permit or an alternative general permit.

Comment 58: Boral requested revisions to the language in Part II.C.10. of the permit, requiring facilities to apply for an individual permit if the general permit is not renewed. Boral requested that in the event that the ED decides not to renew the general permit, and issues notice to this fact, currently authorized

facilities may submit an application for an individual permit within 90 days of this notice and the general permit will remain in effect until the individual permit authorization is issued.

Response 58: TPDES permits may be issued for a maximum term of five years. Authorizations under an expiring permit may only be continued beyond the expiration date for those situations where the commission proposes to renew that permit, but has not yet made a final decision on the re-issuance of the permit.

Part II.D.2. - Individual Permit Required

Comment 59: Dallas requested that language be included to define or clarify the terms "substantive non-compliance" and "anti-backsliding policy."

Response 59: The ED disagrees with the comment that the proposed general permit must necessarily include the definition of anti-backsliding. All TPDES discharge permits are subject to this provision. Anti-backsliding is an NPDES requirement that is defined in 40 CFR §122.44(l), as amended and adopted under 30 TAC §305.531(3), relating to Establishing and Calculating Additional Conditions and Limitations for TPDES Permits. This is a general prohibition that limits the renewal, reissuance, or modification of a TPDES permit if it would result in a permit that contained less stringent effluent limitations than those contained in the originally issued permit. Title 30 TAC Chapter 205, relating to General Permits for Waste Discharges, defines the compliance factors that will be considered when determining the eligibility of an applicant for a general permit. All applications for authorization under all TPDES general permits are subject to the provisions of Chapter 205 and therefore Parts II.D.2. and II.B.2.(d) of the proposed permit are revised to include references to Chapter 205.

Comment 60: Dallas commented the draft permit contains many references that require permittees to

maintain certain documents and records and that these be made readily available for review by TNRCC personnel upon request. Dallas requested that the requirements be revised to make these available "for review by an authorized representative of EPA, TNRCC, or an authorized representative of the MS4 municipality."

Response 60: The suggested language is not necessary because Part II.B.10. has been added to clarify that applicants must comply with all other local, state, and federal laws. The specific language is included in Response 6.

Part III.A. - Minimum Storm Water Pollution Prevention Plan (SWP3) Requirements

Comment 61: WCM commented that the permit should require that the SWP3 be kept onsite, and not allow it to be kept offsite but readily available for review.

Response 61: The proposed permit will apply to a wide and varied range of industrial activities. Most facilities will probably find it most efficient and convenient to maintain the SWP3 onsite. Some facilities, however, may not be staffed year-round or may not have offices onsite where the SWP3 can be kept. For example, certain mine sites may only be active on a seasonal basis or operate daily on an "on demand" basis.

Comment 62: WCM commented that the language in Part III.A. that provides how SWP3 requirements may be met by compliance with other, separate regulatory requirements, should be titled "Consistency with Other Plans" and be a numbered item in the permit.

Response 62: The ED agrees with the comment and includes the following language as Part III.A.1. of the permit, and the remainder of Part III.A. is renumbered accordingly. "Consistency With Other Plans

Existing plans and measures that stem from other regulatory requirements, such as Spill Prevention Control Countermeasures (SPCC plans required for certain operations under the federal guidelines of 40 CFR Part 112) may satisfy in whole or in part specific requirements of this general permit. These plans may either be attached as a component of the SWP3, or referenced in the SWP3 and made readily available for review by authorized TNRCC personnel upon request."

Comment 63: Harris County commented that the permit should include a requirement to allow local authorities to review stormwater pollution prevention plans.

Response 63: The ED has determined that the additional language is not necessary, however, Part II.B.10 has been added to clarify that applicants must comply with all other local, state, and federal laws. Additionally, Part II.B.10 states that all aspects of the general permit must be made available to all authorized inspectors. The specific language is included in Response 6.

Comment 64: Vought inquired if the SWP3 included the following certification statement, as was included in the federal NPDES Multi-Sector General Permit: "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 gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Response 64: All signed reports, SWP3s, NOIs, NOTs, and NOCs must contain the following signed certification according to 30 TAC §305.44: "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."

Comment 65: Boral and Cleburne requested deletion of language in Part III.A.(4) that requires the use of references to literature or site-specific information in order to describe the effectiveness of proposed stormwater practices and measures.

Response 65: The ED agrees in part with the comment that references to literature are not always necessary in order to describe and discuss effective pollution prevention controls and measures. The language in the draft permit is revised to indicate that references and site-specific information may be used in these discussions.

Comment 66: TPWD requested that the permit require quarterly visual monitoring requirements to inspect for fish and wildlife kills, and that the permit require notification of the TPWD if wildlife mortalities occur as a result of a spill or leak.

Response 66: Part III.E.4.(b) of the proposed permit, relating to Noncompliance Notification, requires that the permittee notify the TNRCC of any noncompliance which "may endanger human health or safety, or the environment." This is a standard permit requirement that appears in other TNRCC water quality permits. Coordination between TNRCC and TPWD on these matters already exists for wastewater discharges and the ED disagrees that additional procedures are necessary for discharges of

stormwater runoff associated with industrial activities.

Comment 67: SAWS commented that the permit should include the requirement that a copy of the SWP3 be made available to the MS4 operator upon request.

Response 67: The ED agrees with the comment. Part III.A. of the proposed permit is revised to include the following: "Facilities that contribute stormwater discharges to a municipal separate storm sewer system must provide a copy of the SWP3 to the operator of that system upon request."

Comment 68: DAF notes that the permit requires that a SWP3 be developed and implemented prior to submittal of a notice of intent for permit coverage. DAF requested clarification on what constitutes implementation of the SWP3. DAF asked if budgeting and contracting for construction of structural best management practice equals implementation of the SWP3.

Response 68: The ED clarifies that development of a SWP3 means to produce a document that addresses all of the requirements of Part III.A. of the proposed permit, relating to Minimum Storm Water Pollution Prevention Plan (SWP3) Requirements. Implementation of the SWP3 means to set into motion the stormwater pollution prevention measures and best management practices that are described in the facility's SWP3. Some of the measures and practices may be implemented fully and immediately, while others may be commenced subject to a schedule that is identified in the SWP3.

Part III.A.3. - Description of Potential Pollutants and Sources (Renumbered III.A.4.)

Comment 69: PCCA commented that the requirements for describing potential pollutants and sources is subjective and can not be "easily quantified." Houston commented that the opening sentence at this section of the permit requires identification of "significant" materials, while Part III.3.(b), relating to

Narrative Description, requires a description of activities and sources that "may reasonably be expected to add measurable amounts of pollutants to stormwater discharges." Houston commented that the permit should be revised to eliminate this contradiction and require a listing and description of "significant" sources.

Response 69: The ED agrees that the proposed requirement for permittees to "identify and describe all activities and significant materials that may potentially be pollutant sources," in Part III.A.3. of the proposed permit, is subjective. However, a good pollution prevention plan and identification of best management practices both rely on first identifying potential sources of pollutants. The proposed permit will cover a great number of industrial facilities that conduct a wide range of industrial activities. The potential activities and sources of pollution will vary greatly for each different sector of activity, and in many instances from facility to facility. It would not be possible to identify specifically what each of these sources is in the language of the proposed permit. The proposed permit recognizes that the identification of these sources must rely on the site-specific expertise of the facility's stormwater pollution prevention team and provides examples of activities and areas of plant activity that the team must consider. However, Part III.A.3.(a) of the permit is revised to include the following language to clarify what levels of increased exposure or changes in material handling practices would constitute a "significant" change: "A significant change in the types of materials is exposure of a material, not already included in the inventory, that could be transported by precipitation or stormwater runoff and subsequently discharged. A significant change in material management practices is a change that would result in either initial exposure of a material not already listed in the inventory, or increased exposure of a material to the extent that the material could be transported by precipitation or stormwater runoff and subsequently discharged." Part III.A.3.(b) only requires a narrative discussion for those activities and materials on the inventory if they are expected to contribute pollutants to the extent that they are measurable in the discharge. This may, or may not include the entire inventory of exposed materials.

Part III.A.4. - Pollution Prevention Measures and Controls (Renumbered III.A.5.)

Comment 70: PCCA commented that compliance with these requirements will be time consuming and cost prohibitive for most permit holders. PCCA further commented that permittees will simply choose a few general best management practices, rather than establishing many site-specific best management practices, in order to avoid additional required documentation.

Response 70: The ED disagrees that the proposed requirements are excessive. Part III.A.4. requires records of maintenance activities, inspections, spills, discharge quality, employee training activities, employee education activities, SWP3 modifications, and other similar events. These requirements are continued from the federal NPDES permit that was issued by EPA in 1995. These requirements are important tools for establishing the effectiveness of a facility's SWP3.

Part III.A.1. - Pollution Prevention Team (Renumbered III.A.2.)

Comment 71: WCM commented that paragraph (b) states that the team is responsible for assisting the plant manager in implementation, maintenance, and revision of the SWP3. WCM commented that not all companies have a position with the job title of "plant manager," and requested that this term be replaced with "responsible personnel" or "qualified individual" or "designated individual." Houston commented that not all facilities have a plant manager position and requested the provision be revised by striking the reference to the plant manager.

Response 71: The ED agrees with the commenter that the use of the term "plant manager" could be confusing. The ED, however, has opted to change the term to "operator," since this is defined in Part I of the general permit as "{T}he owner or person that is responsible for the management of an industrial facility subject to the provisions of this general permit." Additionally, to ensure that the appropriate individual is involved with development and implementation of the SWP3, the ED has added the phrase

"or the operator's designee" to the section. Thus, the section now reads "{T}he team is responsible for development of the SWP3, and for assisting the operator or the operator's designee in implementation, maintenance, and revision of the SWP3."

Comment 72: Reliant, TXU, and Cleburne commented that the members of the pollution prevention team should not be restricted to facility personnel. Reliant and TXU both commented that it is often appropriate to include facility personnel from various corporate functions as members of the team. Reliant further commented that many facilities are not staffed and may necessarily rely on a team composed entirely of members from outside of the facility. Cleburne commented that many facilities have small staffs and ask if contracted environmental professionals may be designated as members of the team.

Response 72: The ED agrees with the comments and revises the requirement such that the team is not limited to only employees of the permitted facility. Paragraph (a) in Part III.A.1. of the proposed permit, relating to Pollution Prevention Team, is revised to read: "The SWP3 must identify a specific individual, or group of individuals, from within the facility as members of a stormwater pollution prevention team. If the facility is not staffed on a continuous or permanent basis, a company employee, or employees, from outside of the facility may be identified as a part of the team. Additional members of the team may include environmental professionals that are under contract to the permittee. The responsibilities for each member of the team shall be listed and clearly described."

Comment 73: ATA disagrees with the requirement that states "The SWP3 shall be kept readily available to the members of the team, as well as all employees." ATA commented that this could be a significant administrative burden, particularly for facilities with large numbers of non-affected employees. ATA requested the permit be revised to make the SWP3 readily available only to the members of the storm-

water pollution prevention team.

Response 73: Pollution prevention measures may become more effective when employees are aware of the program. The TNRCC, however, does not intend for this requirement to be overly burdensome. The section requires each employee to have easy access to the SWP3; it does not require that each employee be provided a copy of the SWP3.

Part III.A.2. - Non-Stormwater Discharges (Renumbered III.A.3)

Comment 74: PCCA commented that the requirements "seem excessive for stormwater regulations and seem more applicable to MS4 permitting."

Response 74: The proposed requirements duplicate and essentially continue the requirements of the federal NPDES Multi-Sector General Permit that was issued in 1995.

Comment 75: PCCA asked why paragraph (a) requires a description of the discharge points for "eligible non-stormwater discharges." PCCA asked what "what pollution reducing benefits result from listing and describing the non-stormwater discharge locations." PCCA additionally questioned why the permit holder should list and describe best management practices for non-stormwater discharges. PCCA further commented that non-storm water discharges eligible for permit coverage are "incidental when compared to the industrial storm water system." PCCA further commented that these requirements "will be both time consuming and cost prohibitive for most permit holders." PCCA finally suggested that the permit be revised to require permittees only list eligible non-stormwater discharges.

Response 75: Requirements to investigate and then document non-stormwater discharges within the facility's SWP3 are valuable components of an effective pollution prevention plan. For example, during

the investigation of the potential cause for exceedance of a benchmark monitoring value, the pollution prevention team will have the necessary information to readily consider potential non-stormwater sources. Also, if these sources are identified and documented, any new fugitive non-stormwater discharges can be easily recognized. Finally, providing this information will assist TNRCC staff in readily identifying and confirming that non-stormwater discharges are authorized under the permit during compliance inspections of permitted facilities.

Comment 76: PCCA requested clarification on paragraph (b) and asked if the required investigation for non-storm water discharges is for "eligible or non-eligible non-stormwater sources." PCCA further commented that these requirements "will be both time and cost prohibitive for most permit holders."

Response 76: The requirement is to investigate all non-stormwater discharges, whether or not they are eligible for coverage under the proposed permit. The ED disagrees that the requirements are cost prohibitive, as these requirements are identical to the requirements of the federal NPDES Multi-Sector General Permit that was issued in 1995.

Comment 77: SAWS commented that paragraph (d) should be revised to require facilities to notify the operator of the local MS4 if the facility is unable to certify that certain parts of the stormwater system do not contain non-stormwater discharges.

Response 77: Some discharges may be to a permitted MS4 system, and others discharges may be to a non-permitted MS4 system or directly to water in the state. The permit is revised to require that facilities provide this information to the operator of any MS4 system that receives the discharge, upon request of the operator.

Comment 78: Houston recommended that paragraph (d) be revised to require notification of failure to certify certain parts of the stormwater system do not contain non-stormwater discharges within 90 days, rather than the 180-day proposed deadline.

Response 78: The 180-day time frame will allow additional time for a facility to investigate alternatives for meeting the requirements of this provision. Additionally, this is the same time frame that was provided in the federal NPDES Multi-Sector General Permit issued in 1995.

Comment 79: Harris County requested that a time frame be established for when a survey of potential non-stormwater discharges must be completed.

Response 79: Paragraph (c) Part III.A.2. of the proposed permit is revised to clarify that the investigation and certification for non-stormwater discharges must be completed within 90 days of filing the notice of intent for permit coverage.

Comment 80: ATA requested that signatory requirements for SWP3s be changed to allow delegation to the position of station manager with respect to facilities under Part V.S. of the proposed permit, relating to Air Transportation.

Response 80: Part III.E.3.(g) of the permit, relating to Signatory Requirements for Reports and Certifications, delineates that signatory requirements for the SWP3 and other reports must be according to 30 TAC §305.128 (relating to Signatory Requirements). These rules allow that signature requirements for reports may be delegated to certain other levels of authority.

Comment 81: Houston commented that the phrase "prevent or effectively reduce pollution" in Part

III.A.(2) of the proposed permit, relating to Minimum Stormwater Pollution Prevention Plan(SWP3) Requirements, is not consistent with the phrase "effectively prevent or lessen pollution" in Part III.A.3.(3) of the permit.

Response 81: The phrase in Part III.A.(2) is revised for consistency to read "prevent or effectively reduce pollution."

Comment 82: Houston requested that the permit be revised to require permitted facilities to make the SWP3 readily available for review by representatives of local government upon request. Houston references TWC, §26.173 (a). Houston additionally recommends that permitted facilities be encouraged to provide review and copies of the SWP3 to the general public upon written request.

Response 82: The ED has determined that the additional language is not necessary, however, Part II.B.10 has been added to clarify that applicants must comply with all other local, state, and federal laws. Additionally, Part II.B.10 states that all aspects of the proposed general permit must be made available to all authorized inspectors. The specific language is included in Response 6 of the ED's Response to Public Comment.

Comment 83: Dallas commented that the words "wherever possible" should be deleted from the proposed permit requirements throughout the permit. Dallas further commented that this revision would remove ambiguity from the requirements.

Response 83: The phrase "wherever possible" is deleted except where it appears in Sector E of the permit, relating to Glass, Clay, Cement Concrete, and Gypsum Product Manufacturing Facilities. The requirement in this sector is to prevent exposure of cement, fly ash, and kiln dust to precipitation and

runoff by storing these materials in enclosed silos, hoppers, buildings or other structures "wherever possible." This requirement has not been revised as it may not be practicable for all facilities to meet this condition in every instance. It is also noted that the current NPDES multi-sector general permit only requires this practice "wherever practicable."

Part III.A.3.(b) - Narrative Description (Renumbered III.A.4.(b))

Comment 84: Grand Prairie, Cleburne, and CMC commented that the requirement for facilities to list the materials exposed to storm water during the three years before an NOI is submitted is an impossible standard. Commenters stated that these records are either typically not available or complete. Boral commented that the list should only include "significant materials" that are exposed to precipitation. Additionally, Boral requested that a 60-day time frame be allowed for updating the list, commencing with the exposure of new materials to precipitation.

Response 84: The requirement to list the materials exposed to stormwater during the three years before submittal of an NOI is deleted from the proposed permit. The ED also agrees that a time frame should be established for updating this list following a change in exposed materials. However, because this list serves as a resource to the facility's storm water pollution prevention team, it must remain relatively current. For example, the team must consider these materials when establishing an effective and comprehensive pollution prevention plan for the facility. A current inventory is also an important tool for the team when researching potential causes for exceedance of a benchmark value, an effluent limitation, or for tracking the source of a condition noted in a visual examination of discharges. The ED disagrees with the comment that a 60-day time frame is necessary, and instead revises the permit to provide a 30-day time frame for updating this inventory.

Comment 85: PHA commented that materials stored in containers should be excluded from the inventory

of exposed materials. PHA further commented that many materials are stored in various containers at the port and that the permittee would not be able to maintain an accurate inventory.

Response 85: Many industrial facilities may store or transport many different materials within containers, and it would not be impossible to list these materials on an inventory of exposed materials. However, the permit is revised to allow an exclusion for listing materials stored in drums, barrels, bins, and other containers that are tightly sealed, waterproof, and in good structural condition.

Comment 86: SRC commented that the proposed permit would not allow a facility to qualify for a condition of no exposure if storage tanks have "operational valves." SRC further commented that all tanks have operational valves and that they are "functionless without them." SRC recommends either eliminating the term "tanks" from the definition of exposure, or to qualify that tanks "with leaking operational valves" do not qualify for the condition of no exposure of industrial activities to stormwater.

Response 86: The ED agrees with the comment. The proposed permit is revised to allow a condition of no exposure for "drums, barrels, and similar containers that are tightly sealed, in good structural condition, without operational valves, and storage tanks in good structural condition without leaking valves;" The ED does not revise the requirement that smaller containers, such as drums and barrels, must not have valves in order to meet this exclusion. When materials are stored outdoors in small containers that have operational valves, it is more likely that workers will access the materials on a regular basis. This condition increases exposure or potential exposure of industrial materials to stormwater and runoff.

Comment 87: Houston and Austin commented that the words "measurable amounts" should be deleted in the permit requirements to provide a narrative description of potential pollutants. Houston commented that the term is subjective and that permittees should narratively describe all activities and potential

sources of pollutants that may be reasonably expected to contribute pollutants to stormwater runoff.

Response 87: The ED agrees in part with the comments. The words "reasonably expected to contribute pollutants" is also subjective. However, the permit is revised to require that the inventory contain a list of all pollutants that may be reasonably expected to contribute pollutants to stormwater runoff. The requirement to revise the list is also amended so that the list must be updated when, in the judgment of the stormwater pollution prevention team, changes have occurred that could reasonably be expected to add pollutants to stormwater runoff. It is a reasonable responsibility for the team, as they are most familiar with the overall industrial activities, stormwater drainage, and SWP3 requirements.

Comment 88: Reliant and TXU commented that it would be more beneficial to identify the location of outfalls and drainage areas where potential sources of pollution occur by referencing the required site map, rather than relying on a narrative description. Both commenters further stated that this revision would eliminate potential for confusion to persons not familiar with the specific facility terminology.

Response 88: Part III.A.3.(b) of the proposed permit is revised to allow for the option of either providing a narrative description or a reference to the site map.

Comment 89: ATA requested that the requirement to narratively describe potential dry weather discharges from the storm sewer system be deleted.

Response 89: No basis is provided for the request to delete this requirement, and therefore no changes to the proposed permit have been made.

Part III.A.3.(c) - Site Map (Renumbered III.A.4.(c))

Comment 90: PCCA commented that the "requirement to develop multiple site maps will be both time consuming and cost prohibitive for most permit holders."

Response 90: Multiple maps are only required in the event that the amount of information on a single map would render it difficult to read and interpret. The amount of information required on the map is necessary to understand the flow of stormwater, location of potential pollutants, location of stormwater controls, and other things necessary to understand and manage a comprehensive SWP3.

Comment 91: TXU commented that the list of items to be included on a facility's site map should be qualified with the phrase "that may reasonably be expected to affect the quality of stormwater discharges from the facility." TXU further commented that "often a majority of buildings, structures, etc. are not within a stormwater drainage area covered by this permit, and are not reasonably expected to affect the quality of stormwater discharges." TXU suggests that items listed in the permit, but that are not within a drainage area to an outfall covered by the permit, could be addressed in the SWP3 and not be included on the site map.

Response 91: The list of items to be included on the site map are activities, structures, and areas that may influence the quality of stormwater runoff. Locating these items on a map will help to provide an overall understanding of the activities and layout of the industrial site.

Comment 92: Cleburne commented that it would be difficult to comply with the requirement to identify the location of all spills that have occurred in the three years prior to submitting the NOI on the site map. Boral requested that the requirement to locate these prior spills on the site map be limited to those spills that occurred at a reportable quantity.

Response 92: A comprehensive list of all spills and leaks may not be available for the three-year period prior to applying for permit coverage. Therefore the requirement to identify previous spills on the facility site map is revised and limited to those that occurred at a reportable quantity. A definition for reportable quantity is also included in Part I of the draft permit.

Part III.A.3.(d) - Spills and Leaks (Renumbered III.A.4.(d))

Comment 93: WCM commented that the required list of reportable spills and leaks of toxic or hazardous pollutants should be updated within 14 days following knowledge of the release, instead of on the proposed quarterly basis. PCCA suggests that the list be updated on an annual basis. ATA requested that the requirement to update the list either be deleted, or that the frequency be set at once per year. ATA further commented that more frequent updates to the list will focus resources on paperwork rather than on stormwater management.

Response 93: Maintaining a current list of spills will assist the facility's stormwater pollution prevention team to identify areas where repeated spills may occur and allow the team to consider additional measures prevent the future occurrence of spills on a more timely basis. The ED responds that the proposed quarterly frequency is not overly burdensome and defines the minimum time frame for updating and maintaining a current list of spills and leaks.

Comment 94: WCM commented that the permit should require a written notification of reportable quantity spills and releases and suggests that the permit contain the mailing address for notification to the TRNCC.

Response 94: The requirements that govern these events are delineated in 30 TAC § 327 (relating to Spill Prevention and Control). The permit makes reference to these requirements, but these activities are

not regulated under the proposed stormwater general permit.

Comment 95: CMC commented that only reportable quantity spills should be listed and included on the quarterly update of the list. CMC further commented that the list should cover a limited time period, such as a list of spills that occurred in the previous five-year period. TXU requested that the requirement to update the list of spills and leaks be revised to clarify that this revision is only required if a spill or leak has occurred.

Response 95: The ED disagrees that only reportable quantity spills and leaks of both hazardous substances and oil should be documented. A spill may not meet this threshold, and may still cause a negative impact on water quality. Recognizing the frequency and location of spills, and having these documented as a part of the facility's SWP3, will assist the stormwater pollution prevention team in assessing potential future spills, and the need for revising existing best management practices. The ED disagrees that it is necessary to revise the proposed permit to define a limited period of time for maintaining the current list of spills and leaks. Updates to the list are limited to the term of the five-year permit plus the preceding three-year period for reportable quantity spills and leaks, and to the five-year permit term for all other spills and leaks. The ED agrees with the comment that this list only requires updating if there has been a spill or leak, but does not agree that revision to the permit language is necessary.

Comment 96: Dallas requested that the following statement be added to this section: "The plan must include a list of any significant spills and leaks of toxic or hazardous pollutants that occurred in the three years prior to the date of the submissions of a Notice of Intent (NOI). Significant spills include, but are not limited to, releases of oil or hazardous substances in excess of quantities that are reportable under CWA, §311 or CERCLA, §102. Significant spills may also include releases of oil or hazardous

substances that are not in excess of reporting requirements and releases of materials that are not classified as oil or hazardous substances. Any spill that has the potential to contribute pollutants to the stormwater must be listed. The list of spills must include a description of the cause of the spill/leak, the actions taken to respond to the release and actions taken to prevent similar spills/leaks in the future."

Response 96: The ED agrees to limit the list of spills that must be developed for the period three years before the NOI is submitted to those that occurred at a reportable quantity. It is probable that many facilities will not have complete or accurate historic records of other spills for this period. Additionally, the following definition is included in Part I of the permit: "Reportable Quantity Spill - a discharge or spill of oil, petroleum product, used oil, hazardous substances, industrial solid waste, or other substances into the environment in a quantity equal to or greater than the reportable quantity listed in 30 TAC §327.4 (relating to Reportable Quantities) in any 24-hour period."

Part III.A.3.(e) - Sampling Data (Renumbered III.A.4.(e))

Comment 97: Houston commented that permit should allow for the summary of sampling data either be an attachment to the SWP3, or referenced in the SWP3.

Response 97: The proposed permit already provides that the summary may either be included as an attachment to the SWP3, or may be referenced in the SWP3, maintained separately, and be readily available for inspection.

Comment 98: PCCA asked if equivalent plans in the proposed permit can substitute for the requirements in Part III.A.4., relating to Pollution Prevention Measures and Controls. PCCA commented that, "Development and implementation of these measures will be time extensive and expensive for facilities that currently have some portions of these measures." PCCA further commented, "The costs and time

requirements will be ridiculous for new facilities never before covered under a stormwater permit."

Reliant Energy commented that facilities should be allowed to reference an Integrated Contingency Plan rather than to provide an inventory of spill cleanup materials and equipment in the SWP3. TXU commented that many of the required spill prevention and response measures that must be included in the SWP3 are already required by other state and federal regulations.

Response 98: The proposed permit, at Part III.A., relating to Minimum Stormwater Pollution Prevention Plan (SWP3) Requirements, contains a provision that any existing plans and measures that stem from other regulatory requirements, may satisfy in whole or in part the specific requirements of the general permit.

Part III.A.4.(a) - Good Housekeeping Measures (Renumbered III.A.5.(a))

Comment 99: AEP commented that requirement for facilities to list housekeeping practices in the SWP3 is overly intrusive, inflexible, and that facilities may be less innovative in developing new measures if the SWP3 must be continually updated. AEP commented that facilities should not receive a notice of violation for not specifically listing the good housekeeping measures in the SWP3.

Response 99: The quality of the discharges authorized under the proposed permit is dependent on effective pollution prevention measures and controls, as opposed to requirements to meet chemical specific numeric effluent limitations. Good housekeeping measures are an effective and important component of a pollution prevention plan. Facilities are encouraged to continually develop, revise, and improve on good housekeeping measures. Facilities are only required to maintain a current description of these practices within the SWP3, and are not required to report changes, or to request for amendments to the SWP3. A current SWP3 is important as this document serves as the basic guideline when the stormwater pollution prevention team conducts required inspections of the facility to evaluate pollution

prevention plan effectiveness. It will also be necessary to have a current SWP3 plan when TNRCC staff inspect a facility to determine compliance with permit requirements.

Part III.A.4. - Pollution Prevention Measures and Controls (Renumbered III.A.5.)

Comment 100: Austin commented that additional language should be included in Part III.A.4.(a) to note that "maintenance activities should not be implemented in a way that would generate wastewater discharges that contain pollutants."

Response 100: The proposed permit would authorize and regulate discharges of stormwater and a limited number of non-storm water discharges. The ED agrees that maintenance activities that are effective, and that either reduce or eliminate the production of a waste, are preferable. The proposed permit encourages the facility's stormwater pollution prevention team to develop best management practices to either eliminate or lessen exposure of precipitation to pollutants. However, in the course of conducting maintenance activities, facilities may generate wastewater as a necessary result and dispose of it in a number of approved manners.

Part III.A.4.(b)(7) - Spill Prevention and Response Measures (Renumbered III.A.5.(b)(7))

Comment 101: ATA commented that Sector S facilities, Vehicle Maintenance Areas, Equipment Cleaning Areas, or Deicing Areas located at Air Transportation Facilities, should not be required to include an inventory of spill cleanup materials and equipment in the SWP3, and should not be required to include this information as a part of the employee training program. ATA commented that these requirements are inappropriate for the airline industry because each "station" may have access to different materials and equipment. ATA commented that, "periodically maintaining such a listing would far outweigh its usefulness." ATA further commented that incorporating "station-specific lists of materials and equipment would hamstring training programs" because training materials would have to

be constantly modified when training was conducted at different locations.

Response 101: Standardized training materials and presentations may be developed to cover general procedures and protocols for spill prevention and cleanup that is appropriate to all employees. If each "station" has specific cleanup materials, equipment, and procedures, it would be very important that the employees in each of those locations be aware of what is available and appropriate for their specific location. Therefore, the maintenance of a current inventory of these materials and equipment within the SWP3 would be especially useful to the stormwater pollution prevention team, and to the employees working in each of these "stations."

Part III.A.4.(c) - Erosion Control Measures (Renumbered III.A.5.(c))

Comment 102: Boral commented that a soil erosion section of the SWP3 should only be required if "applicable to the facility." Cleburne commented that it is the "nature of the site layout" that should determine what erosion control measures should be evaluated.

Response 102: Soil erosion may be a major source of pollution to stormwater runoff. The stormwater pollution prevention team must develop an inventory of potential pollutants and determine if soil erosion constitutes a source. If there is no erosion problem identified by the team, this finding may be documented in this section of the SWP3, and no further action would be required. If the team identifies an erosion problem, erosion prevention measures may be developed based on the site-specific conditions if the site.

Comment 103: Cleburne commented that many times the nature of the site layout can determine what type of erosion control measures can be used. It should not be necessary to evaluate vegetative cover, contouring slopes, paving and structural controls just because they are being required "at a minimum."

Response 103: It may be necessary to evaluate a number of alternative methods for erosion control, based on local topography, meteorological conditions, and other factors. The permit contains only a minimum number of common methods that must be considered; not necessarily utilized to the exclusion of any possible alternatives.

Part III.A.4.(d) - Maintenance Program for Structural Controls (Renumbered III.A.5.(b))

Comment 104: Dallas commented that storm water structural controls are not the only apparatuses that may fail and contribute pollution. Dallas suggested that "many facilities could easily maintain adequate controls over pollutant releases simply monitoring the normal industrial equipment used in their day to day operations," and commented that a requirement for facilities to conduct preventive maintenance on all equipment that could release pollutants would better satisfy the intent of this section of the permit.

Response 104: This specific part of the proposed permit pertains specifically to the maintenance of stormwater structural controls. Potential sources of pollutants, such as industrial equipment, must be identified by the facility's stormwater pollution prevention team according to Part III.A.4. of the permit, relating to Description of Potential Pollutants and Sources. The team should identify industrial equipment that is a potential source in this section of the proposed permit, and then develop measures to prevent spills and leaks according to Part III.A.4.(b), relating to Spill Prevention and Response Measures, and renumbered Part III.A.5.(b).

Comment 105: ATA, Cleburne, and Boral commented that records for estimated volumes of solids removed from catch basins, sediment ponds and other similar structural controls should not be required. ATA commented that estimates would only be educated guesses and therefore not be useful. Cleburne commented that maintaining records of solids "will be labor intensive, may reduce the efficiency of the facility, and increase costs of maintenance."

Response 105: The quality of the discharges authorized under the proposed permit is dependent on effective pollution prevention measures and controls, as opposed to requirements to meet chemical specific numeric effluent limitations. Estimating the volumes of solids removed from structural controls is a performance measure of a facility's pollution prevention plan. These estimates not only assist the stormwater pollution prevention team in measuring structural control performance, but also may indicate effectiveness of other best management practices (such as erosion control practices or material storage pile management) conducted at the facility. Estimations should be simple and not labor intensive. The volumes of solid waste removed from a stormwater detention pond, for example, may be based on the number and size of the dump trucks that were used to transport the materials for disposal.

Comment 106: CMC commented that the requirement that structural controls must be "cleaned and maintained on a regular basis" should be revised to require regular inspection of structural controls. CMC commented that the need for maintenance on these structures depends on the frequency of rainfall. CMC additionally commented that this section of the permit requires equipment must be "inspected and tested to prevent failures" and requested clarification on what equipment this language includes.

Response 106: The permit is revised to require that structural controls be inspected on a regular basis and to include the following statement for clarification: "Mechanical equipment that is part of a structural control, such as a stormwater pump, must also be inspected at intervals described in the SWP3 and maintained at intervals necessary to prevent failures that could result in a discharge of pollutants." The ED agrees that maintenance schedules are dependent on the frequency of rainfall. The maintenance schedules identified in the SWP3 may be an established frequency based on historical experience, or may be a set of criteria that defines when maintenance activities must occur. Part III.A.5.(d) is further revised to clarify that inspection and maintenance schedules for any mechanical equipment related to structural controls must be established in this component of the SWP3.

Part III.A.4.(f) - Employee Training and Employee Education Programs (Renumbered III.A.5.(f))

Comment 107: ATA commented that it would be wasteful and "potentially counter productive" to require training on stormwater pollution prevention to employees that are not directly responsible for implementing the facility's SWP3.

Response 107: The permit does not require an employee training program for all employees. Training on the specific pollution prevention requirements and best management practices is only required for employees who are responsible for implementing or maintaining activities identified in the SWP3.

Comment 108: Houston commented the permit should be revised to require employee training for employees who are responsible for implementing and "maintaining" SWP3 activities, not for employees who are responsible for implementing and "sustaining" these activities. Houston further commented that the description of the employee education program should be revised to clarify that it pertains to those employees, at the permitted facility, who do not participate in the employee training program.

Response 108: The word "maintaining" is substituted for the word "sustaining." The requirements for employee education are also clarified by including the following statement in the proposed permit: "Training must be provided to all employees who are responsible for implementing and maintaining activities identified in the SWP3." Language describing employee education is also revised to clarify that it applies to employees at the permitted facility.

Comment 109: PCCA, Vought, DAF, and ATA commented that the employee education program should be deleted. PCCA asked why employees that are not involved in the industrial activities or stormwater programs must be educated. DAF inquires if all personnel at a military base must be educated, and notes that some bases include family housing.

Response 109: The permit is based on minimizing exposure of pollutants to precipitation and stormwater runoff, rather than relying on engineered treatment technologies. Therefore it is important for all employees to be aware of the basic goals. Employees that are working at the facility but not actively participating in implementation of the SWP3, may be an asset to the facility's pollution prevention efforts, but only if they are aware of the program. Employee education does not require an extensive training program, but should give employees a basic understanding of on-going efforts to prevent pollution. The education program does not apply to the families of service men who simply reside on a base. The language in this section of the permit describing employee education is revised to delete the term "program," to more clearly illustrate the basic information that must be provided, and to define to which the employee education program applies. The following language is included: "Education must be provided to those employees at the facility that are not directly responsible for implementing or maintaining activities identified in the SWP3, and that do not participate in the employee training program. At a minimum, these employees must be informed of the basic goal of the SWP3 and on how to contact the facility's stormwater Pollution Prevention Team regarding stormwater issues."

Part III.A.4.(g) - Quarterly Inspections (Renumbered III.A.5.(g))

Comment 110: WCM commented that "Quarterly Inspections" should be renamed "Periodic Inspections." WCM Group, Inc. commented that many sectors are required to conduct these inspections at different frequencies, such as once per month.

Response 110: The proposed permit is revised to refer to these inspections as "periodic inspections."

Comment 111: PCCA commented that facilities should not be required to develop a summary report for quarterly (periodic) inspections, but should instead be allowed to document inspections using a checklist developed by the permittee. Reliant commented that a summary report should only be required if the

inspections identify revisions or additional measures are necessary to increase effectiveness of the SWP3. Cleburne commented that all documentation regarding the effectiveness of the SWP3 that is generated during these periodic inspections should be submitted in an annual report rather than at the conclusion of each inspection.

Response 111: The proposed permit is revised to require a checklist, a summary of any proposed revisions to the SWP3, and any necessary time frames for implementing revisions to the SWP3. The ED disagrees that the summary of proposed SWP3 revisions should be included in an annual report. The purpose of periodic inspections is not only to document that current control measures are effective, but also to improve on current measures during the course of the permit term. A delay of up to nine months could occur if the conclusions of the periodic inspection are not acknowledged until the annual summary report is prepared. Revision of the SWP3 is only required if the results of the inspection indicate the need to revise or add additional controls.

Comment 112: TXU commented that periodic inspections do not have to be conducted by the facility's stormwater pollution prevention team. TXU commented that it is the stormwater pollution prevention team's responsibility to review the results of inspections and determine if revisions or additions to the SWP3 are necessary. TXU requested that the language in the permit be revised to clarify that the summary report includes recommendations for revisions or additions to the facility's SWP3.

Response 112: The language in the proposed permit is revised to require a summary of any "recommended" revisions or additional measures be included with the periodic inspection checklist.

Part III.A.4.(h) - Quarterly Visual Monitoring (Renumbered III.A.5.(h))

Comment 113: WCM commented that the proposed permit should be revised to delete the word

"monitoring" and to refer to these actions as an "examination of stormwater quality." WCM further commented that this revision would alleviate any confusion with the analytical monitoring requirements of the permit.

Response 113: The requirements for quarterly visual monitoring make no reference to laboratory analyses and should not be confused with other requirements of the proposed permit.

Comment 114: Vought commented that the first sentence should be revised for clarity to read, "Stormwater discharges from each outfall authorized by this general permit must be visually examined on a quarterly basis."

Response 114: The suggested revision is included in the proposed permit.

Comment 115: Reliant and TXU commented that requirements for quarterly visual monitoring should be waived for inactive and unstaffed facilities.

Comment 115: Provisions to set aside certain monitoring requirements for inactive industrial facilities were included in Part III.C.5. of the proposed permit, relating to Temporary Suspension and Waivers from Monitoring Requirements.

Comment 116: PCCA commented that the permit should provide a specific time frame for performing visual examinations after obtaining stormwater samples.

Response 116: Part III.A.5.(a) of the proposed permit is revised to include the following clarification:

"Some examinations, such as an examination for odor and foam, may necessarily be conducted

immediately following collection of the sample. All examinations must be performed within a time frame that ensures the sample is representative of the discharge."

Comment 117: ATA commented that the requirement to modify the SWP3 to address the conclusions from quarterly visual examinations of stormwater discharges should be deleted. The ATA commented that sources of stormwater contamination identified during quarterly examinations should be summarized during the SWP3 annual review.

Response 117: Revision of the SWP3 based on visual examinations is not overly burdensome, and is only required if new sources of pollutants, or the need to revise or add additional controls, are identified. A delay of up to nine months could occur if the conclusions of the pollution prevention team's review are not acknowledged until the annual summary is prepared.

Comment 118: Reliant and TXU commented that requirements for quarterly visual monitoring should be revised to allow for representative monitoring and to restrict the requirements to only those outfalls that include drainage from areas where industrial activities occur.

Response 118: Part III.C.2. of the proposed permit, relating to Representative Discharges for Substantially Similar Outfalls, provides that sampling may be conducted at one outfall and the results reported as representative of other outfalls. This language is revised to clarify that both sampling and monitoring activities may qualify for the representative sampling allowance.

Comment 119: Cleburne commented that it is unnecessary for the entire stormwater pollution prevention team to review the results of each of the quarterly visual monitoring samples.

Response 119: Part III.A.1.(a) and (b) of the proposed permit contains the requirements and responsibilities of the pollution prevention team. If the team consists of more than one member, the SWP3 must identify the responsibilities for each team member. One or more members could be identified with the responsibility of reviewing quarterly visual monitoring samples.

Comment 120: WCM commented that the permit should contain a requirement for the length of time quarterly visual monitoring records must be maintained. Vought commented that the draft permit should reference Part III.E.3.(e), relating to Retention of Records.

Response 120: Records retention requirements are already specified in Part III.C.6., relating to Records Retention, and in Part III.E.3.(e), relating to Retention of Records.

Part III.A.4.(i) - Records (Renumbered III.A.5.(i))

Comment 121: WCM commented that the proposed permit should require for records to be maintained onsite, if not attached to the SWP3.

Response 121: Some industrial sites may not have an office or other places for maintaining records onsite. Whether the SWP3 and other records are maintained onsite, or at another location, the most important consideration is that these documents are made readily available to TNRCC personnel and to the facility's stormwater pollution prevention team.

Part III.A.5. - Management of Runoff (Renumbered III.A.6.)

Comment 122: Reliant, TXU, Cleburne, SRC, PCCA, TXU, and LGBRB&T, and ATA commented that the requirements were unclear, subjective, might require costly hydrologic studies, and beyond the capabilities of many applicants. Several commenters stated that the permit appeared to require flow

dissipation devices, and commented that the permit should be revised to clarify that these control strategies are optional.

Response 122: The proposed permit is revised to include the following description of how structural controls may be used: "Physical structures may be used in conjunction with other pollution prevention measures and controls, as necessary, to reduce pollutants in stormwater discharges. Examples of structural controls that may be utilized include vegetated swales, oil/water separators, settling ponds, and other physical structures."

The proposed permit is also revised with the following language to clarify that the control of discharge velocities is only required under certain circumstances: "Discharge velocities must be controlled to the extent necessary to prevent the destruction of the natural physical characteristics of receiving waters by erosion. Velocity dissipation devices may be constructed at discharge points or along channels and other stormwater collection areas that lead to outfalls. Management alternatives to minimize runoff, such as limiting impervious cover, may also be considered."

Comment 123: LGBRB&T commented that requirements to consider the quantity or rate of flow for permitted discharges goes beyond the TNRCC's legal authority pursuant to TWC, Chapter 26.

Response 123: The TWC, §26.040, relating to General Permits, authorizes the commission to issue a general permit to allow the discharge of industrial waste such as stormwater when "the category of discharges covered by the general permit will not include a discharge of pollutants that will cause significant adverse effects to water quality." (See also the definitions of "pollutant," "pollution," and "waste" in TWC, §26.001). One method of assuring that the discharge of stormwater associated with industrial activities will not cause adverse effects to water quality is by managing runoff volume and rate

of flow so that certain qualities of the receiving waters are maintained. Specifically, bank erosion and the destruction of the natural physical characteristics of receiving waters must be avoided and biological habitat must be maintained. In the absence of proof that structural controls are adequate to protect receiving waters, applicants cannot be allowed to discharge stormwater under authority of a general permit. In some instances, applicants will have to install velocity dissipation devices in order to comply with the requirements of the general permit.

Part III.A.6. - Comprehensive Site Compliance Evaluation (Renumbered III.A.7.)

Comment 124: WCM commented that language in part (b) requires that "qualified employees" or "designated representatives" must conduct a comprehensive site compliance evaluation. WCM requested that these references be revised from the plural to the singular form and commented that the permit should allow a single individual to conduct the evaluation.

Response 124: The proposed permit is revised to provide that the evaluation may be conducted by one or more individuals.

Comment 125: TXU and Reliant Energy comment that the permit should be revised to only require inspections of receiving waters downstream of permitted outfalls to those areas that are "reasonably accessible."

Response 125: The ED agrees with the comment and makes the proposed revision.

Part III.A.6.(c) - Site Compliance Evaluation Report (Renumbered III.A.7.(c))

Comment 126: PCCA commented that the proposed permit contains many requirements and further stated that a permittee is not in compliance with the permit if any element of the SWP3 is not in place, or

if any permit condition is not met. PCCA further commented that permittees may not be in compliance with one of the requirements of the SWP3, and yet discharges may meet Texas Surface Water Quality Standards. PCCA asked "What is the benefit of all the requirements of the SWP3 when the permit holder meets water standards without meeting the new SWP3 requirements?"

Response 126: The proposed permit is developed based on an approach of pollution prevention, rather than compliance with numeric water quality-based effluent limitations for specific chemical pollutants. Applicants will develop, implement, and subsequently revise their own SWP3 based on the outline of SWP3 components contained in the proposed permit. When an effective SWP3 is developed, and implemented according to the permit requirements, discharges are expected to be in compliance with water quality standards. If, following a comprehensive site compliance inspection, certain elements of a facility's SWP3 are determined to not be effective, the permittee should consider better implementation of existing measures, revision of the SWP3 to include equal but alternative measures, or application for coverage under an individual TPDES stormwater permit.

Comment 127: ATA commented that it may require several months for an airport to complete a comprehensive site compliance evaluation. ATA asked that the permit be clarified to state that revisions to the SWP3 do not have to occur until after the evaluation is completed. Cleburne, Boral, and PCCA commented that 14 days is not adequate time for the pollution prevention team to meet, discuss the compliance evaluation report, and decide on revisions to the SWP3. Boral and PCCA recommend that the time frame be revised to a 30-day time frame.

Response 127: The ED agrees with the comment that the revisions are not required to be completed until after the comprehensive site compliance evaluation is completed. The ED additionally agrees with the comments to revise the time frame for revisions to the SWP3. The time frame is revised from 14 to 30

days.

Comment 128: Vought commented that the requirement to update the compliance report to contain a certification that the facility is in compliance with the SWP3, should be deleted as it is repetitive.

Response 128: The ED agrees with the comment and deletes the language requiring this certification.

The remaining language, stating that the site compliance evaluation reports may either be included as an attachment to the SWP3 or maintained separately, is retained for clarity.

Part III.A.6.(d) - Revision of the SWP3 (Renumbered III.A.7.(d))

Comment 129: Reliant commented that the permit should be revised to clarify that revisions to the SWP3 are not always required following the annual site compliance evaluation. TXU commented that the second sentence in this section appears to reference site compliance report requirements, rather than requirements for modification of the SWP3.

Response 129: The language is revised to clarify that "Revisions must include all applicable changes that result from the comprehensive site compliance report..." and updates are only required where the findings of the annual site compliance report concludes that modifications are necessary. The language is also revised to clarify that these requirements apply to revisions of the SWP3, rather than to the site compliance report.

Part III.B.(b) - SWP3 Review

Comment 130: WCM commented that the signatory requirements for the SWP3 should be moved to Part II.C.3. of the proposed permit, relating to Signatory Requirements for NOI, NOT, and NOC Forms. ATA commented that the permit should allow the SWP3 to be signed by a delegated person.

Response 130: The requirement that the SWP3 be signed is removed from Part III.B., as suggested by WCM, and included in Part II.C.3. of the permit, relating to SWP3. The signatory requirements for reports, such as the SWP3, must be according to 30 TAC §305.128 (relating to Signatory Requirements). These rules allow that signature requirements for reports may be delegated to certain other levels of authority.

Comment 131: Cleburne commented that language in Part III.B.(b), requiring that the "SWP3 must be modified as often as necessary," is unclear. Cleburne further commented that confusion could exist when many versions of the SWP3 exist and this could be avoided by requiring the SWP3 to be revised on an annual basis. Cleburne commented that prior to the annual revision, notations of changes could be entered directly into the SWP3 so that employees are assured that they are following the most current provisions.

Response 131: The SWP3 must be updated whenever specific measures in the plan are changed or revised. Depending on the sector-specific requirements of the permit, facilities may conduct inspections and evaluations of the facility on a monthly, quarterly, or other regular basis. The findings of these inspections could indicate a change in pollution prevention measures or controls is necessary. Changes must be implemented as soon as possible in order to improve or maintain the quality of permitted discharges. The SWP3 must be revised as soon as possible in order to accurately reflect the pollution prevention measures that are in effect. The ED agrees that revisions may be inserted directly into an existing plan, with a notation for the effective date of the change, at any time during the year. It is not necessary or required that the entire SWP3 be revised and reprinted with each modification. The facility may also decide that a "clean" and revised copy of the SWP3 is desirable on an annual basis, or on some other appropriate schedule, so that the document remains legible and understandable.

Comment 132: Cleburne commented that the proposed permit states the ED may determine the SWP3 is not sufficient, following a site inspection, and may require revisions to correct deficiencies. Cleburne commented that this provision would not allow a method for a facility to negotiate with TNRCC for implementing best management practices that are based on cost effectiveness, performance, and in consideration for manpower constraints.

Response 132: Development of pollution prevention measures and controls must be according to the general requirements of the permit. However, it is the responsibility of the permittee to develop and implement the specific measures. The proposed permit would provide great latitude for consideration and selection of these pollution controls. If inspectors determine that best management practices, or other measures, are insufficient for controlling pollutants, facilities may be given a specific time frame to correct the deficiency, and will be allowed to develop their own specific measures to replace or bolster existing measures.

Part III.C.1. - Representative Storm Events

Comment 133: PCCA commented that discharges may not result from storm events that exceed 0.1 inches of rainfall. PCCA asked how to comply with sampling and monitoring requirements if a storm event meets the minimum criteria for a representative event, but does not result in a discharge.

Response 133: Monitoring and sampling requirements are for discharges of stormwater. If a storm event meets the criteria of a representative storm event, but there is not resultant discharge, there are no sampling and monitoring requirements for that storm event.

Part III.C.2. - Representative Discharges from Substantially Similar Outfalls

Comment 134: PCCA asked if multiple non-storm water discharges, that are eligible for coverage under

the proposed permit, can qualify as substantially similar outfalls.

Response 134: The permit specifically states "Substantially similar outfalls may not be established for non-stormwater discharges."

Part III.C.3. - Representative Discharge Samples

Comment 135: Grand Prairie commented that the requirement to either obtain grab samples of discharges within the first 30 minutes, or within the first 60 minutes of discharge under certain conditions, is impractical. Grand Prairie stated that this requirement is impractical for reasons concerning manpower, transportation, and nighttime rain events.

Response 135: In order that the results of sampling may serve as an on-going assessment of effectiveness of the SWP3 measures, samples must be both representative of the discharge and comparable. The standard of obtaining a grab sample within 30 minutes of discharge was established as a part of the EPA's Baseline General Permit in 1992, was a condition of the EPA Multi-Sector General Permit issued in 1995, and is proposed by EPA for oil and gas producing facilities in Texas in the Multi-Sector General Permit issued in October 2000. Therefore, existing industrial facilities have successfully conducted sampling under the proposed requirements for some period of time. Automatic samplers may be utilized where manpower is not sufficient, for sites where access is limited, and for sampling during times when the facility is not conducting business.

Comment 136: Boral commented that if stormwater runoff associated with industrial activities commingles with a wastewater that is covered under an individual permit, that discharge of stormwater is covered under the individual permit, and sampling of that stormwater should not be required.

Response 136: The sampling requirements described in the proposed general permit only apply to discharges authorized under the proposed permit. If the individual wastewater permit for a facility specifically contains the authorization for a discharge of stormwater runoff associated with industrial activities, the facility would not apply for coverage under this permit, for that discharge of stormwater. It is possible that an industrial facility could have coverage under both the proposed general permit and an individual wastewater discharge permit. In this instance, stormwater authorized under the proposed permit must be sampled prior to combining with the wastewater.

Comment 137: Boral commented that the permit should specify that all stormwater sampling must be conducted at the final outfall. ATA commented that airport drainage systems often combine stormwater and non-stormwater flows prior to discharge, and the requirement to monitor stormwater discharges prior to combining with other flows is frequently impossible. Temple-Inland commented that the permit should clarify if sampling for allowable non-stormwater discharges must be conducted prior to that flow combining with other stormwater or non-stormwater flows.

Response 137: The proposed permit is revised to clarify sampling requirements. The permit is revised to clarify that samples to determine compliance with numeric effluent limitations in Sectors D, E, J, and O must be obtained prior to combining with other flows. These limitations are derived directly from federal categorical guidelines, are technology-based, and must be met prior to dilution with other flows. The permit is revised to clarify that samples to determine compliance with numeric effluent limitations for hazardous metals, in Part III.D. of the proposed permit, must be taken at the final outfall. These limitations are derived directly from Texas Administrative Code § 319 and are applicable to all discharges. The permit is revised to clarify that if stormwater discharges authorized under this general permit combine with either wastewater or other stormwater authorized under a separate permit, sampling must be conducted at a point before the waters combine. This is necessary so that the results of analyses

are not influenced by discharges that are not covered under the proposed permit, and so that results are useful to the facility's pollution prevention team for assessing the SWP3 effectiveness.

Part III.C.5. - Temporary Suspension and Waivers from Monitoring Requirements

Comment 138: Vought requested clarification on requirements to conduct "make-up" sampling when monitoring for one quarter is temporarily suspended.

Response 138: If monitoring is temporarily suspended, and can not be completed in one quarter, it must be scheduled to occur in the following quarter. This make-up monitoring is in addition to any regularly scheduled or required monitoring for the following quarter. If the make-up monitoring can not be completed during the following quarter, as a result of adverse weather or other allowable conditions, these requirements are then permanently waived. This procedure will prevent make-up monitoring requirements from "accumulating" beyond the following quarter. The permit is revised to clarify that the make-up monitoring may be "permanently waived" under this condition.

Comment 139: Houston commented that the spelling of "wavers" should be corrected to "waivers."

Response 139: This typographical error is corrected.

Comment 140: Reliant and TXU commented that waivers from sampling and monitoring requirements should be allowed for inactive and unstaffed facilities. TXU commented that the definition of "inactive status" should be revised to more clearly allow for waivers at inactive and unstaffed facilities.

Response 140: The definition for "inactive status" is deleted, and a definition for "inactive industrial facilities" is substituted. The draft permit is further revised to remove the language regarding visual

monitoring requirements at inactive Sector J facilities from this section of the permit and to include the language in the sector-specific requirements of Part V.J. of the permit.

Part III. Section C.6. - Records Retention

Comment 141: WCM comments that the permit should be revised to require that all monitoring and reporting records, copies of all other records, and the SWP3 be maintained on the site.

Response 141: Some industrial sites, such as mine sites that are not staffed on a regular basis, may not have an office or other building in which to store these documents. It is not necessary that all documents be maintained on the site, but it is necessary that documents be made readily available for inspection upon request.

Comment 142: TCC commented that the permit should state where discharge monitoring reports should be mailed and further requested that TNRCC accept electronic submission of these forms.

Response 142: The permit has been revised to require that discharge monitoring reports either be retained onsite or be made readily available for review by authorized TNRCC personnel upon request. TNRCC is aware of the many advantages of electronic reporting. In anticipation of developing an electronic application system, the permit includes language that provides a more rapid provisional authorization when NOIs are received electronically.

Comment 143: Harris County commented that the permit should be revised to require permittees to make SWP3s available for inspection and review by local authorities.

Response 143: Part II.B.10 has been added to clarify that applicants must comply with all other local,

state, and federal laws. The specific language is included in Response 6 of the ED's Response to Public Comment. If local laws require access by local authorities, SWP3s must be made available for their inspection and review.

Comment 144: Cleburne commented that the requirement to maintain the SWP3 for a minimum of three years from the date of the last modification, and for at least one-year after coverage under the general permit expires or terminates, is unclear. Cleburne questions if the SWP3 must be maintained up to three years after the permit is terminated or expired.

Response 144: The language is revised to clarify that if the permit is terminated, or is allowed to expire and is not renewed, the SWP3 must be made readily available for review for a period of one-year.

During the term of coverage under the permit the current SWP3 must be maintained and be made readily available. During the term of permit coverage every revised copy of the SWP3 for the preceding three-year period must be maintained, or where this is burdensome due to numerous revisions, a simple log or record of changes must be maintained.

Part III.D. - Numeric Effluent Limitations

Comment 145: LGBRB&T, TXU, Houston, SRC, and ATA commented that monitoring requirements for hazardous metals should be deleted from the permit. LGBRB&T further commented that these limitations were not included in previous federal permits. TXU, Boral, and CMC commented that these limitations should be removed because the state permit should not be more stringent than the federal stormwater permit requirements. LGBRB&T and Houston commented that the limitations are inappropriate for stormwater discharges as they were developed for low-flow receiving water conditions.

Response 145: These effluent limitations were a requirement of the federal NPDES MSGP that was

issued by EPA in September 1995. The proposed permit is, therefore, not more stringent than the federal permit. These effluent limitations are derived from 30 TAC Chapter 319 and are applicable to all discharges, including stormwater, regardless of receiving stream conditions. Finally, these limitations must be continued in the proposed TPDES permit according to the federal anti-backsliding policy.

Comment 146: ATA commented that the permit should be revised to clarify that monitoring for hazardous metals should be conducted at the final discharge point. ATA clarified that monitoring should not be required at every point where stormwater leaves a tenant's facility, such as at an airport where several airlines may operate.

Response 146: All required monitoring must be conducted at the final discharge point from the permitted facility. A tenant at an airport, authorized to discharge stormwater under the proposed permit, must conduct monitoring at the final discharge point from the tenants area of control. This may or may not be the final "discharge point" from the airport property.

Comment 147: SRC commented that the numeric effluent limitations for hazardous metals are contradictory, incompatible with benchmark monitoring values, and cause confusion. ATA commented that the numeric effluent limitations for certain metals should not be included for Sector S facilities if they conduct benchmark monitoring for these same metals. Vought requested clarification if the numeric effluent limitations for hazardous metals were "action" levels, or if an exceedance of these numbers would be a violation of the permit.

Response 147: Benchmark monitoring values and numeric effluent limitations for hazardous metals are included in the proposed permit for separate purposes. Therefore, the value for a specific pollutant is not necessarily the same for each of these requirements. Benchmark values are simple measures of pollution

prevention plan effectiveness. The exceedance of one of these values is not a violation of the permit. Hazardous metals values are numeric effluent limitations. The exceedance of one of these values is a violation of the permit. Therefore, for facilities that must monitor the same pollutant for both purposes, the more important value is the numeric effluent limitation. The number of facilities that experience this situation should be limited. All facilities must monitor for hazardous metals, unless they qualify for a waiver. Not all facilities must conduct benchmark monitoring. Of the facilities that conduct benchmark monitoring, only a subset must monitor for a hazardous metal.

Comment 148: Cleburne commented that monitoring for hazardous metals can be expensive and should not be required of every discharger. Cleburne further commented that the permit should be revised to reduce the monitoring requirements to the first and second periods of the permit term, similar to the benchmark monitoring requirements. Cleburne also requested clarification on waivers for adverse conditions.

Response 148: Not all dischargers must monitor for these hazardous metals. The proposed permit allows that permittees may certify that either these metals are not used as a part of the industrial process, or there is no exposure of these metals to precipitation and runoff. This certification can provide a waiver for a facility from these requirements on a metal-by-metal basis, and also on an outfall-by-outfall basis. This provision will lessen the monitoring costs for facilities that do not potentially contribute these pollutants to stormwater discharges.

Comment 149: Harris County commented that the permit should contain a numeric effluent limitation for total organic carbon. Harris County further commented that this limitation is frequently included in individual TPDES permits for stormwater discharges.

Response 149: Although a numeric effluent limitation for total organic carbon may be a common requirement in individual TPDES permits, these permits are very different from the proposed general TPDES permit. Applications for individual TPDES permits provide a great amount of very site-specific information on industrial activities and proposed discharges. Individual TPDES permits can then be drafted to contain fewer, but more site-specific requirements, including chemical-specific numeric effluent limitations. In contrast, the application for authorization under the proposed general is minimal, and the permit contains many requirements to control pollution through the use of effective pollution prevention measures and controls. The proposed general permit only contains numeric effluent limitations for stormwater where they were either delineated in the CFR or in TAC.

Comment 150: Houston commented that the protocol is unclear for results of analyses that exceed the effluent limitations.

Response 150: Permittees must sample, analyze, and report all results of analyses according to the requirements of the permit. Standard requirements for noncompliance notification are in Part III.E. of the proposed permit, relating to Standard Permit Conditions.

Comment 151: Vought commented that the terms "Monthly Average," "Daily Composite," and "Daily Maximum," that describe numeric limitations for hazardous metals in discharges to inland and tidal waters, should be modified. Boral commented that monthly average and daily composite limitations, and the definitions for these terms, should be deleted from the permit. Boral further commented that because monitoring was only required on an annual basis, these limitations were not applicable.

Response 151: The effluent limitations and accompanying definitions are included in the draft permit as they appear in TAC Chapter 309 and also as they appear in the federal NPDES Multi-Sector General

Permit (MSGP) that was issued by EPA in September 1995. Monthly average and daily composite limitations cannot be deleted from the proposed permit according to federal anti-backsliding provisions at 40 CFR §122.44(1)(2). The ED, however, clarifies that if a facility only monitors for a hazardous metal at a frequency of once per year, the result of analysis would only be compared to the daily maximum limitation. Some facilities may either choose to do additional monitoring for metals, or may be required to monitor according to benchmark monitoring requirements. In this case the results may be compared to the monthly average limitations, the daily composite limitations, or the daily maximum concentrations. The appropriate limitation for comparison would depend on the number of samples taken and the time period of the sampling.

Comment 152: Dallas commented that aluminum and iron should be added to the list of hazardous metals. Dallas further commented that in the stormwater sampling they have conducted, aluminum, iron, and zinc have consistently been present in stormwater runoff.

Response 152: The proposed general permit is based on control of pollution through the use of effective pollution prevention measures and controls, rather than chemical-specific effluent limitations. Numeric effluent limitations have only been included where they were either delineated in the CFR or in TAC. Neither of these regulations contain numeric effluent limitations for aluminum or iron in stormwater discharges.

Comment 153: Boral commented that there should be clarification as to what concentration of a metal constitutes a "hazardous metal." Boral commented that the permit should define a de minimis concentration for these metals.

Response 153: The term "hazardous metal," and the proposed effluent limitations, are taken directly from 30 TAC Chapter 319, relating to Hazardous Metals. The definition identifies the term "hazardous

metal" to include a specific list of metals, and is not dependant upon a de minimis concentration.

Comment 154: Reliant and TXU commented that the criteria for obtaining a waiver from monitoring requirements for hazardous metals should include a better definition of how these metals may be used in the industrial process. Both commented that the language should base monitoring requirements on whether facilities use metals as a raw material, or produce intermediate or final products containing these metals, and whether the metals are exposed to stormwater or runoff.

Response 154: The description for this waiver is revised to read: "Facilities qualify for a waiver from hazardous metal monitoring requirements if they do not use a raw material, produce an intermediate product, or produce a final product that contains one of these hazardous metals. Facilities may qualify for a waiver if the raw material, intermediate product, or final product contains a hazardous metal but it is not exposed to stormwater or runoff. Final products are not considered to expose hazardous metals to stormwater or runoff if the final product is designed for outdoor use, unless it is a product that could be transported by stormwater runoff. The waiver must be obtained by certifying that these conditions exist. This certification must be completed on a form provided by the ED and must be either maintained onsite or made readily available for review by authorized TNRCC personnel upon request."

Comment 155: Cleburne requested clarification on the requirements for waivers from monitoring requirements for hazardous metals and asked if the waiver certification form would be similar to the federal no exposure certification form.

Response 155: The requirements for the waiver from hazardous metal monitoring requirements have been modified for clarity. The permit now explains that the form will be provided by the ED and that it will be maintained by the permittee. The form will be a simple certification. Waivers are provided for

any number of metals that meet the criteria, and for any number of stormwater outfalls draining areas of the facility that qualify for the waiver.

Part III.D.3. - Coal Pile Runoff

Comment 156: WCM commented that the federal MSGP permit required annual monitoring of coal pile runoff, and other discharges with numeric effluent limitations, while the proposed permit required once per month monitoring. TAMKO also commented that monthly monitoring was proposed for Sector D facilities, while the federal permit required annual monitoring for compliance with numeric effluent limitations. WCM requested the rationale for increased monitoring frequency. TAMKO commented that the proposed increase in monitoring frequency is inconsistent with the agency's policy and legislative intent to not impose more stringent requirements than those established in the federal regulations.

Response 156: The monitoring frequency for discharges subject to numeric effluent limitations is revised from once per month to once per year. This frequency is comparable to the federal MSGP that was issued by U.S. EPA in September 1995. Part V.E.4.(a) (relating to Self-Reporting) is also revised to agree with an annual monitoring requirement.

Comment 157: WCM commented that the description of the sample type for monitoring coal pile runoff should be revised to read, "At a minimum one grab sample shall be taken for analysis." WCM further commented that the draft permit did not contain a discussion regarding requirements for discharges of coal pile runoff from retention ponds designed for a 24-hour detention period.

Responses 157: The sampling requirement is revised to read: At a minimum, one grab sample shall be taken, prior to combining with other flows, for analysis. The proposed permit already contains a provision regarding waivers from numeric effluent limitations during overflows of treatment units

designed to ten-year, 24-hour storm event criteria at Part III.D.3.(d), relating to Waiver from Numeric Effluent Limitations and at Part V.O.6., relating to Waivers for Numeric Effluent Limitations.

Part III.E.4. - Reporting Requirements

Comment 158: Vought commented that a reference to 40 CFR Part 136 should be included, and that this would be in agreement with a similar reference in Part III.E.3.(c), relating to Monitoring Procedures.

Response 158: The proposed permit is revised to include the suggested reference in Part III.E.4.(a).

Comment 159: Vought requested that permittees be able to generate a discharge monitoring report form equivalent to the required EPA No. 3320-1 form. Vought commented that if this form could be generated electronically, printed, and then submitted to TNRCC that it would be more efficient for the permittee.

Response 159: Permittees may generate their own forms if they are duplicate to the EPA discharge monitoring form. The following language is included in the draft permit: "The DMR must either be an original EPA No. 3320-1 form, a duplicate of the form, or a self-generated form that is comparable."

Part III.E.4.(b)(2) - Noncompliance Notification

Comment 160: Vought requested clarification on which effluent limitations the 40% noncompliance notification requirements applies. TCC requests clarification if the reporting requirements apply to results of analyses for benchmark monitoring parameters.

Response 160: This requirement is applicable to all numeric effluent limitations contained in the proposed permit. It does not apply to benchmark monitoring parameters, as these are not numeric effluent limitations. In response to these comments, the following sentence is included in Part IV,

relating to Benchmark Monitoring Requirements Common to Many Industrial Activities: "Analytical results that exceed a benchmark value are not a violation of this permit, as these values are not numeric effluent limitations."

Comment 161: Cleburne commented that if a noncompliance occurs that may endanger human health, safety, or the environment, the permit should contain language that requires the permittee to notify the operator of an MS4 if the discharge is to an MS4. Houston commented that MS4 operators should be notified of noncompliance within 24 hours.

Response 161: The proposed noncompliance notification requirements are the same standard requirements contained in the "boiler plate" language for individual TPDES wastewater discharge permits. MS4 operators may require this notification as a condition of accepting permitted discharges to their system. Part II.B.10., relating to Protection of Streams and Watersheds by Home-Rule Municipalities, has been added in response to related comments.

Comment 162: TCC commented that the permit should provide the address, telephone number, and FAX number where noncompliance notifications must be sent.

Response 162: When noncompliance notifications are required, the notification must be made to the TNRCC regional field office in the area that serves the facility. There are 16 regional offices located throughout the state. This information is not included in this five-year term permit as it is subject to change. The address, telephone number, and FAX number may be obtained by contacting the TNRCC directly or by accessing the TNRCC Internet website.

Part III.E.5. - Solid Waste

Comment 163: AEA, Reliant, TXU, Temple-Inland, Houston, ATA, Boral, TAMKO, TI, and Harris County all commented on the proposed requirements for solid waste. Most commented that the proposed requirements were overly burdensome and that it was unclear how these requirements applied to stormwater runoff. Several commented that it was unclear what would constitute a solid waste management unit and that it might be interpreted that these requirements applied to every berm, grass swale, silt fence, or other stormwater structural control. Several commented that these requirements would discourage the use of any structural controls. Temple-Inland commented that the entire industrial facility might be designated as a solid waste management unit since stormwater is conveyed across the site prior to discharge. Additional comments were that a general statement regarding solids should be substituted for the specific requirements.

Response 163: The solid waste requirements in the proposed permit are standard "boiler plate" requirements that are included in TPDES wastewater discharge permits. The ED disagrees that the requirements should be deleted from the proposed permit, but agrees that revisions are necessary in order to clarify how solid waste rules apply to solids generated through the use of stormwater structural controls at regulated industrial facilities. The requirements are revised to define that only stormwater detention and retention ponds, used to provide settling of suspended solids, are defined as industrial solid waste management units. Other common stormwater structural controls are specifically listed as not being included in this definition. By strictly limiting the definition of an industrial solid waste management unit to those larger dedicated settling ponds, the registration and record-keeping requirements are significantly reduced and clarified.

Part IV. - Benchmark Monitoring Requirements Common to Many Industrial Activities

Comment 164: Vought commented that the term "pollutant" in the second sentence of the opening paragraph in Part V should be plural and read "pollutants." Houston and TXU commented that the third

sentence incorrectly refers to Part IV, and should be revised to reference Part V.

Response 164: The proposed permit is revised to include the suggested revisions.

Comment 165: LCRA requested elimination of benchmark monitoring values for those parameters in Sectors C, D, E, and J for which separate numeric effluent limitations are established. LCRA commented that different criteria for the same parameter "would be confusing to a permittee." LCRA gives the example that Sector J has a benchmark value for total suspended solids of 100 parts per million and a numeric effluent limitation for total suspended solids of 45 parts per million as a daily maximum.

Response 165: The ED disagrees with the request to eliminate benchmark monitoring requirements for these sectors. Benchmark values and numeric effluent limitations may differ as these values are included for separate purposes. In the example cited by LCRA, the numeric effluent limitation for TSS of 45 parts per million applies to discharges of accumulated ground water and stormwater discharged from a mine pit during dewatering activities. The benchmark value of 100 parts per million is a measure of stormwater pollution prevention plan effectiveness for other discharges of stormwater associated with industrial activities from these same sites. Although discharges of mine pit water may be compared to the benchmark value, the overriding permit requirement is to comply with the numeric effluent limitation for this specific discharge.

Comment 166: Kohler commented that the permit should include clarification on what the reporting requirements are for benchmark monitoring.

Response 166: The proposed permit is revised to specify that average results of analyses from the First Period must be submitted before March 2004 and average results from the Second Period must be

submitted before March 2005. Additionally, the calendar periods that define the First Period and Second Period of monitoring are revised, based on the projected date of permit issuance, so that these occur during the second and third years of the permit term.

Comment 167: PCCA asked if the pollution prevention team must repeatedly investigate the cause for each exceedance of a benchmark value. TCC commented that the permit should add "naturally occurring materials in soils" to the list of example background sources that are in the permit. AEP commented that the permit should be revised to allow a permittee to conduct additional monitoring if a benchmark value is exceeded, in lieu of an investigation for the cause of the elevated concentration.

Response 167: Benchmark monitoring is an evaluation of SWP3 effectiveness. An exceedance of a benchmark value is a preliminary indication that the SWP3 may not be effective for reducing a specific pollutant in stormwater runoff. Therefore the pollution prevention team must investigate the cause for each exceedance of a benchmark value. The team should review the inventory of exposed materials, the allowable non-stormwater discharges, the narrative description of pollutant sources, the facility site map, reported spills and leaks, and other elements of the SWP3 to determine if there are additional sources that were not considered or additional controls that should be in place. The exceedance of a benchmark value may also be caused from background sources beyond the control of the permittee. The permit is revised to more clearly describe these background sources and to describe how subsequent exceedances of benchmark values from the influence of a background source may be documented without requiring repetitive monitoring or investigation.

Comment 168: ATA commented that the permit should clarify that the exemptions from benchmark monitoring, for airports that use less than 100 tons of urea or less than 100,000 gallons of ethylene glycol per year, apply to the facility as a whole and not to each air carrier serving that airport.

Response 168: The exemption is based on the combined activities at an airport. The following language in the Sector S requirements in Part V of the permit, relating to Specific Requirements for Industrial Activities, has been added: "These volumes of deicing materials refer to the combined activities and usage at the airport as a whole, and not independently to each carrier or operator."

Comment 169: Houston commented that the footnote for Sector S, regarding deicing activities, should be revised as follows to include the underlined words: "Monitoring only required for airports with deicing activities that utilize for deicing more than 100 tons of urea or more than 100,000 gallons of ethylene glycol per year."

Response 169: The footnote for Sector S is revised to read "Monitoring is only required for airports with deicing activities that utilize for deicing more than 100 tons of urea or more than 100,000 gallons of ethylene glycol per year."

Comment 170: LGBRB&T commented that the benchmark monitoring periods should be established for the second and fourth years of the permit term, similar to the federal permit requirements, so that facilities will have time to evaluate the monitoring and revise the SWP3 based on the results.

Response 170: It is the ED's intent to evaluate the effectiveness of benchmark monitoring requirements prior to re-issuance of this permit. If benchmark monitoring is found to be an effective tool, it may be continued when the permit is reissued. If it has not been an effective tool, the requirements may be modified or replaced by a different measure of pollution prevention. If benchmark monitoring is conducted in the second and third years of the permit term, the results of the fourth year monitoring will not be available to the TNRCC for analysis until the renewal process for the expiring permit is nearly completed. Monitoring in concurrent years may also benefit the permittee. It is likely that permittees

may not recognize that monitoring must be initiated following a one-year absence in monitoring activities. Also, if employees are trained to conduct sampling, it is more likely that additional training will be required following a one-year absence of monitoring.

Comment 171: Reliant commented that a waiver should be provided from Second Period benchmark monitoring requirements for facilities that collect less than four samples in the First Period, provided that no sample exceeded the benchmark value. Reliant further commented that the frequency of rainfall in Texas is highly variable and may not provide a sampling opportunity. TXU commented that the proposed waiver would unduly penalize facilities that do not receive adequate rainfall during one or more quarters of the First Period. Both commenters stated that obtaining a sample in the third and fourth quarters of the year could be difficult. TXU commented that facilities should be allowed a waiver for any three consecutive samples that do not exceed the benchmark value, during either the First Period or the Second Period.

Response 171: The ED disagrees with the comment the requirements unduly penalize facilities that cannot obtain samples during third and fourth quarter of the year. A facility in the described situation would only collect a total of four samples in the two years of monitoring. This is equivalent to the number of samples that facilities receiving "adequate rainfall" would collect in order meet the waiver requirements. Also, facilities may collect three samples during the First Period, if adverse weather conditions prohibit collection of a fourth sample. These three samples could qualify the facility for the waiver, depending on the average of the results of analyses.

Comment 172: Cleburne asked about facilities that retained most of their stormwater in a detention basin, and did not discharge during a quarterly monitoring period. Cleburne requested clarification if these facilities should monitor the water contained in the basins.

Response 172: Monitoring and sampling requirements are applicable only to discharges of stormwater.

Comment 173: PCCA commented that the proposed waiver from benchmark monitoring requires that the permittee certify that concentrations of the pollutant will not exceed the benchmark value in future discharges. PCCA stated that this certification was "useless" unless further monitoring is conducted to verify the certification.

Response 173: A conclusion that there will not be a future exceedance of the benchmark value would be based on consideration of the SWP3 requirements, and on a knowledge of current and future industrial activities at the site, not on additional sampling. In response to the comment, however, the certification requirement is removed, and the following language is substituted: "(c) the current and projected potential pollutant sources of the particular benchmark parameter are not expected to significantly increase."

Comment 174: WCM commented that Sections G, H, P, and T of the proposed permit detail descriptions of industrial activities that must be covered under the general permit. SEM commented that detailed descriptions should be provided in all sections of Part V of the permit, relating to Specific Requirements for Industrial Activities.

Response 174: Industrial activities described by these sections of the permit, Sector G, H, P, and T facilities, are either only required to obtain coverage under certain conditions, or are only required to obtain coverage if certain limited activities occur. The remaining sectors of industrial activities must all obtain coverage, unless they qualify for a no exposure exclusion.

Part V.A.4.- Non-Stormwater Discharges

Comment 175: Temple-Inland asked if wet decking water is authorized for discharge regardless of whether it is discharged from a storage pond containing stormwater or discharged directly from the wet decking operation. Temple-Inland further requested guidance on where the monitoring point for these discharges would be located, and referenced Part III.C.3. of the permit, relating to Representative Discharge Samples.

Response 175: Discharges of wet decking water are authorized, regardless of whether the discharge is from a wet deck storage pond or if it is a discharge from a "once-through" process. Sampling for discharges from wet deck storage ponds, to determine compliance with the numeric effluent limitations, must be taken at the discharge point from the pond and before to combining with other water.

Compliance sampling for wet decking water from lumber and wood storage yards that is not routed to a storage pond must be taken at any point before it combines with other water. The following language is added to the permit: "Sample Type - Grab samples shall be taken prior to combining with other flows, for analyses."

Part V.A.7. - Numeric Effluent Limitations

Comment 176: WCM suggested that the first sentence should be revised to clarify that the numeric effluent limitations "apply to discharges of water from the storage of unprocessed wood, i.e., the storage of logs or roundwood before or after the removal of bark in self-contained bodies of water (mill ponds or log ponds) or the storage of logs or roundwood on land during which water is sprayed or deposited on the logs (wet decking)."

Response 176: Non-stormwater discharges from Sector A facilities, Timber Products Facilities, are limited to wet decking water. Wet decking water is water sprayed on timber storage piles to deter decay or infestation by insects. Discharges from mill ponds and log ponds are not covered under the proposed

general stormwater permit.

Comment 177: WCM and Harris County commented that a typographical error, "shall not," occurred in the second sentence of the first paragraph, and that adding a space to create two words would correct the error.

Response 177: The typographical error is corrected.

Comment 178: WCM commented that the permit should clarify that benchmark monitoring is not required for discharges of wet decking water.

Response 178: All discharges of stormwater associated with industrial activities from Sector A facilities are subject to benchmark monitoring requirements. Monitoring for compliance with numeric effluent limitations must be conducted prior to commingling with other water or stormwater runoff. Benchmark monitoring should be conducted prior to discharge to water in the state or at a point where stormwater runoff leaves the permitted facility, whichever is first. If wet deck water does not commingle with stormwater prior to leaving the facility, the discharge must necessarily be monitored for compliance with numeric effluent limitations and for comparison to the benchmark concentration. Refer to Response 148, which addresses a similar comparison of benchmark monitoring requirements to numeric effluent limitation monitoring requirements.

Comment 179: WCM commented that several typographical errors occur in the numbering of items in Part V.B. and Part V.C. of the proposed permit. WCM further commented on a typographical error in the first paragraph in Part V.C. of the permit that incorrectly references "Sector A" instead of Sector "C." Finally WCM commented on a typographical error at Part V.C.3. that incorrectly references "Part A.5."

rather than "Part V.A.5."

Response 179: The typographical errors are corrected.

Part V.C.5. - Benchmark Monitoring Requirements

Comment 180: WCM commented that in the third column of the benchmark monitoring table, under the heading "Benchmark Parameter," "Nitrate" should be revised to "Nitrite."

Response 180: "Nitrate + Nitrate" is revised to "Nitrate + Nitrite" where it appears throughout the proposed draft permit.

Part V.D.4. - Numeric Effluent Limitations

Comment 181: Grand Prairie commented that the draft permit should contain specific sampling protocols for portable asphalt plants. Grand Prairie further commented that the results of analyses of discharges from this industrial activity could be influenced by various sampling errors.

Response 181: This specific industrial activity does not require a separate or more specific sampling protocol than the other industrial activities proposed for authorization under the terms of the permit. Part V.D.4. requires that samples of the discharge be obtained before combining with other stormwater runoff. Additionally, Part III.C. relating to General Monitoring and Record Requirements, contains requirements to ensure that samples are representative of the discharge.

Comment 182: WCM commented that the applicability of the proposed numeric effluent limitations be clarified by stating that the limitations applied to discharges from "areas of industrial activities described by SIC codes 2951 and 2952" for stormwater runoff that contacts raw materials, intermediate product,

finished product, by-product, or waste.

Response 182: The ED agrees with the comment and makes the suggested revision.

Comment 183: TAMKO commented that the permit should clarify that the numeric effluent limitations only apply to those facilities using asphalt emulsions.

Response 183: The proposed permit is revised to clarify that the numeric effluent limitations apply to stormwater runoff from asphalt paving and roofing emulsion production areas. For clarification, these numeric limitations apply to runoff from areas of facilities that produce asphalt emulsions, and not to plants that use asphalt emulsions.

Part V.D.5. - Benchmark Monitoring Requirements

Comment 184: WCM commented that the permit should clarify that benchmark monitoring is not required for discharges of stormwater runoff from asphalt paving and roofing emulsion production areas.

Response 184: The ED disagrees with the comment. Please refer to previous Responses 148 and 180 on this subject.

Part V.E.1. - Description of Industrial Activity

Comment 185: Kohler commented that industrial activities described by SIC code 3261 (Vitreous China Plumbing Fixtures, Earthenware Fitting, and Bathroom Accessories) should be included in this section of the permit as a Sector E facility. Kohler further commented that this industry has similar processing steps to most of the facilities included in this sector.

Response 185: The proposed permit is revised to include this industrial activity in Sector E.

Part V.E.5. - Numeric Effluent Limitations

Comment 186: WCM and Boral commented that the applicability of the proposed numeric effluent limitations be clarified by stating that the limitations apply to discharges of stormwater runoff that have come into contact with raw materials, intermediate products, finished products, by-products or waste materials "that are used or derived from the manufacture of cement."

Response 186: The proposed permit is revised to clarify the applicability of the effluent limitations.

Part V.F.4. - Benchmark Monitoring Requirements

Comment 187: WCM commented that the benchmark value of "0.0.636" for SIC codes 3363 - 3369 was a typographical error that should be corrected.

Response 187: The proposed permit is revised to include a value of "0.0636."

Part V.G.6. - Benchmark Monitoring Requirements

Comment 188: WCM commented that the benchmark monitoring requirements for runoff from waste rock and overburden piles from active ore mining or dressing operations should be established on a biennial frequency.

Response 188: Sector G is revised to add clarification for both the specific benchmark monitoring requirements for copper ore mining and the general benchmark monitoring requirements for all Sector G metal mining facilities. For additional clarification, the monitoring requirements specific to waste rock and overburden piles are separated from the benchmark monitoring requirements as Item 7 of Section G.

Monitoring of runoff from waste rock and overburden piles is at a biennial frequency, with no provision for waivers.

Part V.H.6. - Benchmark Monitoring Requirements

Comment 189: TXU commented that the benchmark values for iron and aluminum are lower than the effluent limitations established for these same pollutants in individual TPDES wastewater permits. TXU further stated that best management practices are less capable of reducing pollution than the settling ponds facilities may use to meet the numeric effluent limitations in TPDES wastewater permits.

Response 189: The benchmark value for iron may be similar to effluent limitations established in wastewater permits as the value is based on aquatic life chronic criteria from a publication titled "EPA Recommended Ambient Water Quality Criteria." Similarly, the benchmark value for aluminum was based on aquatic life acute criteria. The specific parameters for monitoring, and the benchmark values were previously determined by EPA and included in the federal MSGP that was issued in September 1995. TNRCC conducted stakeholder meetings during the development of this proposed TPDES permit that included discussions on benchmark monitoring. Discussions centered on whether or not the federal benchmark monitoring requirements provided a useful assessment of SWP3 plans, and also on the appropriateness of the benchmark values. The stakeholder workgroup could not suggest an alternative measure of SWP3 effectiveness. Therefore, the ED proposes to continue benchmark monitoring requirements and to evaluate whether to continue, modify, or replace them based on prior to renewal of this permit.

Part V.I. - Oil and Gas Extraction Facilities

Comment 190: WCM commented that this section of the permit should be revised to include clarification that "contaminated" stormwater means stormwater that has contacted an area where there

has been a reportable quantity release of oil or hazardous substance in stormwater since November 16, 1987. WCM further commented that similar language is included in the EPA stormwater permit for discharges of stormwater associated with industrial activities.

Response 190: The applicability of the proposed TPDES permit for oil and gas extraction facilities is limited. Most of the state regulatory authority for industrial activities described in Sector I of the proposed permit is under the jurisdiction of the Railroad Commission of Texas. The Railroad Commission of Texas does not administer the NPDES program for these activities in Texas. Therefore, EPA Region 6 will issue NPDES storm water permits for most of the industrial facilities described in Sector I of the draft permit. The proposed draft permit would only authorize discharges of stormwater runoff from petroleum refineries that are not subject to federal effluent limitation guidelines at 40 CFR Part 419. "Contaminated runoff" is defined at 40 CFR Part 419 as "runoff which comes into contact with any raw material, intermediate product, finished product, by-product or waste product located on a petroleum refinery property." Contaminated runoff is not eligible for coverage under this proposed permit, and therefore definition is not included in this proposed permit.

Part V.J. - Mineral Mining and Processing Facilities

Comment 191: WCM commented that the permit should include definitions of "active mineral mining facility," "inactive mineral mining facility," and "temporary inactive mineral mining facility" since the site inspection frequency is dependant upon these terms.

Response 191: Definitions for these three terms are not necessary as the permit has been revised to include the following definition of inactive industrial facilities: "A facility where all industrial activities that are described in Part II.A.1. of this permit are suspended, and where an authorization under this general permit is maintained." Also, please refer to Response 141 on this subject.

Part V.J.3. - Numeric Effluent Limitations

Comment 192: WCM commented that the phrase "industrial sand, or crushed stone mining facility (mine dewatering operations)" should be added to the end of the first sentence in the first paragraph of Part V.J.3., relating to Numeric Effluent Limitations.

Response 192: The permit is revised to include: "The following numeric effluent limitations, based on guidelines for mine dewatering from the Processing Point Source Category (40 CFR Part 436), shall apply to mine dewatering operations (discharges from the mine pit of accumulated stormwater and ground water seepage) at construction sand and gravel, industrial sand, or crushed stone mining facilities."

Comment 193: SSCI requested clarification on the requirement that samples must be obtained prior to combining with other stormwater runoff.

Response 193: The numeric effluent limitations apply to discharges of stormwater and ground water that have accumulated within a mine pit. Samples of mine pit water discharges must be taken at a point prior to where the discharge may be influenced by stormwater runoff from a separate area of the mine site. Samples may be taken directly from the pump at the discharge point from the pit, for example, but not from a ditch where other runoff is also conveyed from the site.

Part V.J.4. - Benchmark Monitoring Requirements

Comment 194: WCM commented that the permit should clarify that mine dewatering discharges are not subject to benchmark monitoring.

Response 194: The ED disagrees with the comment. Please refer to previous Responses 148 and 180 on

this subject.

Comment 195: SSCI commented that the permit requirements to sample within the first 30 minutes of discharge may not appropriately address Sector J facilities. SSCI further commented that some facilities may establish BMPs to temporarily capture stormwater and stormwater runoff within the pit. These waters may only leave the site when mine active dewatering occurs.

Response 195: The discharge must be sampled according to the requirements of the proposed permit, and be representative of the quality of the discharge. It would not matter whether discharges were the direct result of a storm event, or as a result of mechanically pumping or otherwise physically controlling the release of water from the pit.

Part V.K. - Hazardous Waste Treatment, Storage, or Disposal Facilities

Comment 196: Vought questioned if there are any sector-specific requirements for industries described in this sector.

Response 196: The permit does include any additional sector-specific requirements for hazardous waste storage facilities.

Comment 197: Houston commented that the title of the section should be revised, as the applicability of the permit requirements is restricted to facilities that store hazardous waste. Houston commented that it is confusing to include hazardous waste treatment and disposal facilities in the title, but then to exclude them from permit coverage.

Response 197: The title of the Section K of the proposed permit is revised to read "Sector K of Industrial

Activity - Hazardous Waste Storage Facilities." Additionally, other similar references, including the reference in the benchmark monitoring table in this section, are modified for clarity.

Part V.K.1. - Description of Industrial Activity

Comment 198: Vought and WCM commented that this section contains a typographical error and that the reference to "Sector I" should be revised to reference "Sector K"

Response 198: The ED agrees with the comments and corrects this error in the draft permit.

Part V.K.2. - Limitations on Permit Coverage

Comment 199: SSCI commented that Sector K should apply to commercial facilities that store, but do not treat or dispose of hazardous waste. SSCI additionally commented that they had contacted EPA Region 6 regarding the federal stormwater permit requirements for these facilities and that EPA indicated that the intent of the federal permit was to include commercial facilities that stored hazardous waste.

Response 199: The permit is revised to contain the following limitation on applicability: "Coverage is limited to those facilities that store hazardous waste. Facilities that treat or dispose of hazardous waste must be authorized under an individual TPDES permit."

Comment 200: Vought commented that this section contain the sentence "This sector does not apply to those facilities that only store wastes on site for less than 90 days without a RCRA permit."

Response 200: The ED disagrees that these facilities be required to obtain individual TPDES permit coverage for stormwater discharges. The conditions of the proposed permit are sufficient for any

facilities where the storage of hazardous waste is the primary activity.

Comment 201: Houston commented that it is not necessary for this sector to cover onsite waste generators because all other sectors covered by the general permit must address hazardous waste handling as part of their SWP3, since hazardous wastes would be included as significant materials.

Response 201: The ED agrees in part with the comment. The requirement to obtain permit coverage for stormwater discharges is based on either the facilities primary SIC code or primary activity code. The generation of on-site hazardous waste would be the result of some other industrial activity, and not the primary activity of a facility. This sector would only apply to a facilities that store, as a commercial service, hazardous waste. Hazardous waste that is generated onsite at a facility covered under a sector other than Sector K, may address the handling of the waste in the SWP3. Finally, facilities may be covered under a separate sector of the permit, but must comply with the requirements of Sector K if hazardous waste storage is a co-located industrial activity, as defined in Part I of the proposed permit.

Part V.K.3. - Benchmark Monitoring

Comment 202: Vought commented that the benchmark monitoring value for magnesium for discharges from Sector K, Hazardous Waste Storage Facilities, may naturally occur in stormwater runoff at concentrations that exceed the proposed benchmark value of 0.0636 mg/l.

Response 202: The pollution prevention team may verify if a result of analysis exceeds the benchmark value due to "background" concentrations during the team's investigation for the cause of the exceedance. This should be documented in the SWP3, and may be referenced as the continuing cause for future events without further investigations, if operations at the facility have not subsequently changed and provided an additional potential source of the pollutant.

Part V.J.3. - Benchmark Monitoring Requirements

Comment 203: WCM and Vought commented that the permit contains a typographical error in the benchmark concentration values, if the values are based on those established by EPA. The first benchmark parameter is incorrectly established as aluminum, and should be revised to be ammonia.

Response 203: Benchmark values in the permit are based on those previously established by EPA and contained in the NPDES general permit for these same discharges. The benchmark monitoring table is revised to show that the benchmark value of 19.0 mg/l is for ammonia.

Part V.L. - Landfills and Land Application Sites

Comment 204: Houston commented that facilities can not qualify for the no exposure exclusion unless the activity is isolated from stormwater and runoff through the use of storm resistant. Houston requested that the permit be revised to allow landfills to meet this exclusion if equipment and materials are not exposed to stormwater and runoff.

Response 204: In order to meet the no exposure exclusion, all industrial activities must be isolated from stormwater and stormwater runoff. Facilities that do not meet this exclusion criteria on a facility-wide basis may, however, exclude certain drainage areas and outfalls from SWP3 requirements if there is no exposure of industrial activities to stormwater in those areas of the facility.

Part V.L.4. - Pollution Prevention Measures and Controls (Renumbered V.L.5.)

Comment 205: Houston commented that it is not clear how including a narrative discussion for the benefit of more frequent inspections in the SWP3 would benefit the quality of the discharge.

Response 205: The proposed inspection frequencies are adequate, and in response to the comment the

requirement for the narrative rationale on inspection frequencies is omitted.

Comment 206: TXU commented that quarterly inspections and erosion control measures should be removed from the requirements for facilities that have been closed under TNRCC solid waste rules and guidance documents. TXU further commented that these requirements already existed.

Boral requested that monthly inspection requirements for finally stabilized landfills be deleted as they are "unnecessary and burdensome." Boral recommended that quarterly inspections are sufficient to assess potential issues at a site that has stabilized cover.

Response 206: The monitoring frequency in the proposed permit for inactive landfills was previously established by EPA and contained in the NPDES general permit for these same discharges and is proposed to be continued in the TPDES general permit. There has been no evidence provided that less frequent monitoring is appropriate for these facilities. Inspections and other activities that are performed to satisfy a separate regulatory requirement may be referenced to satisfy an equivalent requirement of the proposed general permit. In response to the comment, the ED includes the following definition of "inactive landfill" as Part V.L.2. of the permit, and renumbers the remaining provisions of this section accordingly: "Inactive landfill - A facility that no longer receives waste and has completed closure according to all applicable federal, state, and local requirements."

Comment 207: Kohler, Cleburne, and LGBRB&T commented that the requirement for active landfills to inspect on a weekly basis was excessive. Cleburne and LGBRB&T commented that this was a new or increased frequency over previous NPDES permit requirements. Grand Prairie asked, other than the increased industrial activity at an active landfill, what TNRCC considered when deciding that increased inspections would benefit the quality of discharges. Kohler commented that the requirement would be a burden on manpower. Cleburne commented that the requirement would tax their ability to operate the

landfill as the operator would not be available to work the face of the landfill while conducting inspections and recordkeeping.

Response 207: The requirement to conduct inspections of active landfills at a frequency of once per week was previously established by EPA and contained in the NPDES general permit for these same discharges. The frequency in the proposed permit is based on the conditions of the previous federal permit for these same facilities. Manpower constraints from the proposed permit should not exceed those of the previous NPDES permit. The proposed permit does not require specific persons to conduct the inspections, but only that inspections be conducted by "qualified personnel, who are familiar with the industrial activities performed at the facility."

Comment 208: Grand Prairie commented that there is no definition for a stabilized landfill or application site.

Response 208: Part V.L.5.(3) of the proposed permit (renumbered from V.L.4.(3.)) defines alternative inspection requirements for sites where future waste disposal and application will not disturb the soil, and where soils are finally stabilized through revegetation or possibly other means. Part V.L.5(3) is revised to read: " For areas of landfill sites where landfill activities are completed and soils are finally stabilized, and for land application sites where land application has been completed, inspection procedures must be developed according to the standard periodic inspection requirements described in Part III.A.4.(g) of this general permit (Renumbered from III.A.5.(g)), but inspections must be conducted at least once every month."

Part V.L.4.(b) - Erosion Control Measures (Renumbered V.L.5.(b))

Comment 209: LGBRB&T commented that it was unclear why sector-specific erosion control measures

were included in the proposed permit, as municipal solid waste landfill permits include strict stabilization and stormwater requirements. LGBRB&T commented that the requirements are unduly burdensome for facilities as they will have to take multiple actions to satisfy the same purpose.

Response 209: These sector-specific requirements were established by EPA, contained in the NPDES general permit for these same discharges, and are being continued in the proposed general TPDES permit. Part III.A.1. of the proposed permit allows that plans and measures that stem from other regulatory requirements may satisfy in whole or in part specific requirements of the proposed general permit. This will prevent the duplication of efforts by permittees.

Comment 210: Cleburne commented that the "additional requirements" to provide temporary stabilization for stockpiled materials will also require a large effort on the part of the facility. Cleburne commented that the operator must have access to the materials on a daily basis, and to place and remove stabilizing materials on a daily basis would be difficult.

Response 210: These sector-specific requirements are in addition to the general SWP3 requirements, but were established by EPA and previously required in the NPDES general permit for these same discharges. The stormwater pollution prevention team may consider a variety of stabilization measures, in order to find something that is practical for local conditions and activities. Any techniques that prevent or lessen the possibility of erosion and off-site transport of stockpiled materials following precipitation may be appropriate. Stabilization techniques for daily-use materials may necessarily be very different than those stockpiled for intermediate or final cover. It may be appropriate, for example, that stabilization is only provided for daily use materials when rainfall is imminent or during periods when the landfill is closed or unstaffed. Other techniques, including seeding or mulching, may be more appropriate for materials stockpiled and reserved for intermediate or final cover.

Part V.L.4.(c) - Records (Renumbered V.L.5.(c))

Comment 211: Cleburne and LGBRB&T commented that it would be difficult for landfill operators to maintain a tracking system that listed the specific types of waste, volumes of waste, and that defined the cells where each waste was disposed. Both commented that facilities typically only recorded general information based on trip tickets, and might track the origin of waste and annual tonnage disposed of in the landfill. Grand Prairie commented that there would be great disparity between the records kept at different facilities. LGBRB&T commented that these record requirements should not be required for landfill and land application sites.

Response 211: The proposed permit is revised to remove the sector-specific record keeping requirements for landfills, but requirements to maintain record keeping for land application sites is maintained. The proposed permit would not authorize the discharge of leachate, drained free liquids, contaminated stormwater, and other wastewaters for which the character and quality might largely depend on the nature of the waste. Record keeping requirements are retained for land application sites.

Part V.L.5. - Benchmark Monitoring Requirements (Renumbered V.L.6.)

Comment 212: Boral commented that monitoring for iron should be deleted or justified, as it is not a predominant pollution issue at most landfills.

Response 212: This benchmark parameter is proposed to be continued in the TPDES permit from a condition of the previous NPDES permit for discharges from these same facilities. Refer to the response to comment number 188.

Part V.M. - Automobile Salvage Yards

Comment 213: Cleburne commented that it expected the permit would contain requirements to monitor

for petroleum hydrocarbons in stormwater runoff. Cleburne further commented that the permit should require more frequent inspections of storage and disassembly areas.

Response 213: The proposed permit is based on pollution prevention, as opposed to numeric effluent limitations for parameters such as total petroleum hydrocarbons. Rather than relying on numeric effluent limitations or monitoring requirements, the proposed permit contains requirements specific to auto salvage yards to ensure that sources of oil and other motor vehicle-related fluids are identified and measures are taken to ensure that there is no contamination of stormwater and runoff.

Part V.N. - Scrap and Waste Recycling Facilities

Comment 214: Houston requested clarification on permit requirements for one-day household hazardous waste collection activities. Houston further commented that some of the requirements in Sector N of the proposed permit seemed inappropriate for these activities.

Response 214: Temporary household hazardous waste collection sites and activities, are not typically a commercial activity with a primary SIC code 5015. These collection activities are more usually conducted by municipalities, and may even be related to the municipality's stormwater management plan if it has a stormwater permit for the municipal separate storm sewer system.

Comment 215: DAF inquired if Sector N requirements applied to an industrial facility that collects self-generated waste materials, such as aluminum cans and cardboard, that are then sold off-site as scrap.

Response 215: Sector N applies to facilities that receive scrap materials from other sources. No changes to the proposed draft permit are made.

Part V.N.2. - Limitations on Permit Coverage

Comment 216: SRC commented that the proposed permit requires structural controls in areas of the facility where metal turnings that were previously exposed to cutting oils are stored and handled. SRC requested that the permit be revised to require these controls only in areas where these materials are stockpiled.

Response 216: The proposed permit is revised to clarify that structural controls are only required where these materials are "stored and stockpiled" in areas where there is exposure to stormwater.

Part V.N.4. - Pollution Prevention Measures and Controls

Comment 217: SRC and CMC commented that this section inaccurately refers to recyclable materials as "waste." Both commenters stated that this distinction is included in the THSC.

Response 217: The proposed permit is revised to replace the references to "waste materials" in this section with references to "scrap materials."

Part V.O.3. - Pollution Prevention Measures and Controls

Comment 218: TXU and Reliant commented that a requirement in the Best Management Practices section to cover all residue hauling vehicles should be revised to allow for some flexibility. Reliant further commented a BMP of wetting the surface of a load is a very effective BMP for eliminating dust when the material is hauled for a short distance.

Response 218: The ED agrees with the comments. The requirement is revised to allow for the suggested best management practice as an option. It will remain the responsibility of the pollution prevention team to identify and implement the most appropriate BMP.

Comment 219: LG&E and WCM commented that a requirement in the Periodic Inspections section to conduct inspections of above-ground tanks, pipelines, pumps, and related equipment should be revised to require these inspections on a monthly frequency. LG&E commented that the requirement to conduct inspections once every seven days was much too onerous and labor intensive.

Response 219: The required inspections are proposed at the same frequency that was established in the previous federal NPDES permit for these facilities. There is no evidence that facilities were not able to conduct these weekly inspections during the term of the previous permit, or that less frequent inspections would ensure an equivalent pollution prevention measure.

Comment 220: TXU and Reliant commented that the inspection frequency of "once every seven days" should be changed to "once per week." Both commented that this change would allow some flexibility with employee work schedules during holidays and vacation periods. Both commented that the inspection requirement should be revised to clarify that these are "visual inspections."

Response 220: The proposed permit is revised to define the monitoring frequency as "once per week," rather than "once every seven days." This revision is additionally made in Sector L of the proposed permit for consistency. The ED additionally agrees to clarify that in addition to the periodic inspections required from Part III.A.4.(g) of this permit (Renumbered III.A.5.(g)), Sector O facilities must conduct visual examinations of certain equipment and structures at the once per week frequency.

Part V.O.4. - Comprehensive Site Compliance Evaluation

Comment 221: WCM commented that the sector-specific additional requirements for the Comprehensive Site Compliance Evaluation should be deleted because Sector O facilities must already conduct the more

frequent once per seven-day inspections to comply with Part V.O.3. requirements.

Response 221: The weekly visual inspection required in Part V.O.3. of the proposed permit, relating to Periodic Inspections, is a different inspection than the Comprehensive Site Compliance Evaluation. Periodic Inspection requirements are described in Part III.A.4.(g) of the proposed permit, and Comprehensive Site Compliance Evaluation requirements are described in Part III.A.6. of the proposed permit. Although these requirements are for different purposes, facilities may be able to use the findings of one evaluation or inspection to satisfy portions of the requirements for the other evaluation or inspection.

Comment 222: LG&E commented that the frequency for the Comprehensive Site Compliance Evaluation in coal handling and certain other areas of Sector O facilities should be revised from the proposed frequency of once per month to a semi-annual frequency. LG&E commented that the requirement to conduct inspections on a more frequent basis was much too onerous and labor intensive.

Response 222: The required inspections are proposed at the same frequency that was established in the previous federal NPDES permit for these facilities. There is no evidence that facilities were not able to conduct these inspections during the term of the previous permit, or that less frequent inspections would ensure an equivalent pollution prevention measure.

Part V.O.7. - Benchmark Monitoring Requirements

Comment 223: LG&E commented that the benchmark monitoring requirements for total iron should be revised to a frequency of once per year, in agreement with the monitoring frequency for measuring compliance with the numeric effluent limitations for hazardous metals in Part III.D. of the permit. LG&E further commented that a "no pollution certification" monitoring waiver be provided for this benchmark

monitoring requirement, similar to that provided for the numeric effluent limitations for hazardous metals in Part III.D. of the permit.

Response 223: Benchmark monitoring requirements and numeric effluent limitations for hazardous metals are included in the proposed permit for separate purposes. The hazardous metals values are numeric effluent limitations, and results of analyses for these metals are compared to the numeric limitations to determine either compliance with, or violation of, the terms of the permit. All facilities must monitor for these hazardous metals, unless they can qualify for a waiver by certifying that there is no exposure of these metals to stormwater. There are no waivers from benchmark monitoring requirements based on the finding that there is no exposure of these pollutants. EPA previously determined, during development of the federal stormwater program, that the sector-specific benchmark monitoring parameters were pollutants commonly associated with each of these sectors of industrial activities. The results of analyses for benchmark monitoring parameters are compared to the benchmark values to evaluate the effectiveness of the SWP3, not to determine compliance with the terms of the permit. Benchmark monitoring is included as a condition of the permit in order that the effectiveness of the SWP3 may continue be evaluated following revisions that are made to the SWP3.

Part V.P. - Motor Freight Transportation Facilities, Passenger Transportation Facilities, Petroleum Bulk Oil Stations and Terminals, Rail Transportation Facilities, and United States Postal Service Transportation Facilities

Comment 224: LGBRB&T suggested the permit should be revised to clarify that vehicle and equipment maintenance facilities owned by municipalities are not required to obtain permit coverage unless they are a co-located activity at a site that must otherwise obtain permit coverage. LGBRB&T further commented that the EPA's general permit for discharges of stormwater associated with industrial activities did not require these municipally owned facilities to obtain permit coverage under the federal rules.

Response 224: Municipally owned facilities are not exempt from the description of Sector P facilities. Sector P, in the EPA and in the proposed TPDES permits, applies to facilities that haul substantial amounts of freight, materials, or passengers and applies to those areas of the facility where vehicle and equipment maintenance activities take place. If a city-owned bus line conducts vehicle and equipment maintenance activities, Sector P would describe this municipally owned industrial site, and the facility would require permit coverage for discharges of stormwater. However, the performance of simple vehicle and equipment maintenance by a municipality is not described as a Sector P activity. If vehicle equipment maintenance is conducted at a municipally owned site that is not described by Sector P, or another sector of the proposed permit, this activity does not trigger the requirement for permit coverage.

Part V.Q. - Water Transportation

Comment 225: WCM commented that the requirements for the site map should be revised to read: "The site map shall clearly show the locations of the following activities where such activities are exposed to precipitation: fueling; engine maintenance and repair; vessel maintenance and repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading and unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron)."

Response 225: The proposed permit is revised to include the suggested language with minor revision: "The site map shall clearly show the locations of the following activities if the activities are exposed to precipitation or runoff: fueling; engine maintenance and repair; vessel maintenance and repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading and unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron)."

Comment 226: PHA commented that the activities conducted by Sector Q (Water Transportation) and Sector R (Ship and Boat Building or Repair Yards) facilities are very different. PHA further commented that the proposed permit contained requirements related to pressure washing vessel hulls and drydock activities for both sectors of industrial activity. PHA commented that these activities are only associated with Sector R facilities and the requirements should be deleted from Sector Q of the permit.

Response 226: The requirements in Sector Q of the draft permit only apply to areas of water transportation facilities where these maintenance activities take place. While these activities may more commonly occur at facilities described by Sector R, they may also be performed at water transportation facilities as a matter of maintenance.

Part V.Q.4. - Pollution Prevention Measures and Controls

Comment 227: PHA commented that a requirement to conduct monthly periodic inspections, and to document the inspections, will be both time and cost prohibitive for most permit holders.

Response 227: The required inspections are proposed at the same frequency that was established in the previous federal NPDES permit for these facilities. There is no evidence that facilities were not able to conduct these inspections during the term of the previous permit, or that less frequent inspections would ensure an equivalent pollution prevention measure.

Part V.R. - Ship and Boat Building or Repair Yards

Comment 228: WCM commented that the requirements for the site map should be revised to read: "The site map shall clearly show the locations of the following activities where such activities are exposed to precipitation: fueling; engine maintenance and repair; vessel maintenance and repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading and unloading areas; locations used for

the treatment, storage or disposal of wastes; liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron)."

Response 228: Part V.R.2. of the proposed permit is revised to include the suggested language with minor revision: "The site map shall clearly show the locations of the following activities where such activities are exposed to precipitation or runoff: fueling; engine maintenance and repair; vessel maintenance and repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading and unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron)."

Part V.S. - Vehicle Maintenance Areas, Equipment Cleaning Areas, or Deicing Areas located at Air Transportation Facilities

Comment 229: Houston commented that the description of Sector S facilities is too broad and that the applicability of the permit requirements should be narrowed to match the federal permit language and state: "Only those portions of the facility or establishment that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations, or deicing operations are addressed under this section."

Response 229: Part V.S.1. of the proposed permit is revised to include the suggested language with minor revision: "The requirements of Section S apply to stormwater discharges from those portions of facilities described by SIC codes 4512 - 4581 that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations, or deicing operations."

Comment 230: Houston commented that the permit should be revised to clarify that the threshold for benchmark monitoring is based on the use of more than 100 tons of urea, or 100,000 gallons of ethylene glycol (chemical, not mixture) for deicing or anti-icing activities based on the average yearly usage for the three years prior to submittal of the NOI. Houston commented that deicing chemical usage is highly dependent on weather conditions in a given year. Houston further commented that it is possible that a facility might only reach this threshold during the latter part of its permit term, and it is currently unclear how the permit obligations would be met when this occurred.

Response 230: The ED agrees in part with the comments and clarifies the benchmark monitoring requirements with the following language: "Benchmark monitoring is only required for airports with deicing activities that have used more than 100 tons of urea, or more than 100,000 gallons of ethylene glycol, in any calendar year in the three years prior to submittal of an NOI for coverage under this permit."

Part V.S.2. - Description of Potential Pollutants and Sources (Renumbered V.S.3.)

Comment 231: WCM commented that the language for sector-specific site map requirements references the general site map requirements in Part III.A.3.(c) of the permit (Renumbered III.A.4.(c)), and that further clarification is needed. WCM commented that the language should be amended as follows: "The site map shall clearly show the location of each tenant at the site that conducts industrial activity subject to coverage under this section of this general permit."

Response 231: The ED agrees with the comment and makes the suggested revision.

Part V.S.3. - Pollution Prevention Measures and Controls (Renumbered V.S.4.)

Comment 232: WCM and Cleburne commented that deicing activities should be added to the list of

industrial activities for which best management practices should be developed.

Response 232: The proposed permit already includes requirements to develop best management practices for deicing activities. The permit is revised in response to the comment, however, to include this activity in the list of activities that must be addressed through good housekeeping: "This section of the SWP3 must describe specific measures to prevent or minimize contamination of stormwater from areas used for the maintenance or cleaning of equipment, aircraft, and other vehicles, and for areas where aircraft deicing and anti-icing activities occur."

Comment 233: NSC commented that requirements related to deicing activities should be removed from the permit because the discharge of these materials is a process wastewater rather than a stormwater discharge. NSC further commented that discharges of deicing materials may occur during dry weather, and are controlled by airport tenants.

Response 233: The ED disagrees with the comment to delete all requirements related to deicing activities. Requirements to develop best management plans for these activities, to reduce or eliminate contact of these materials with stormwater runoff, will result in improved quality of stormwater discharges. The ED, in response to the comment on dry-weather discharges, revises the permit to include Part V.S.2, relating to Limitations on Permit Coverage, to clearly state that dry-weather discharges containing deicing chemicals are not authorized under this general permit. The following language is included: "This general permit does not authorize dry weather discharges of deicing chemicals. If these discharges occur, they must be covered by a separate TPDES permit."

Comment 234: ATA commented that it supported including an evaluation of existing pollution prevention measures in the SWP3 and further commented that the safety of aircraft operations can never be compromised.

Response 234: The permit does not need to be revised, as the stormwater pollution prevention team should always consider existing pollution controls and activities, as well as safety issues, during development of SWP3 requirements.

Comment 235: ATA commented that the permit requires weekly inspections during periods of deicing operations, and that these periods of time may be difficult to define. ATA further commented that inspections would likely take considerable time allocation of highly qualified personnel, and may not be readily scheduled. ATA requested that the draft permit be revised to require monthly inspections during the deicing season (October to April of each year). ATA indicated that the requested change would allow for more efficient scheduling, which would also help to minimize additional congestion in busy ramp areas.

Response 235: Revising the monitoring frequency from once per week to once per month will not assist facilities in identifying periods of deicing. Deicing periods must be identified by the permittee in the SWP3 and may be based on historic records. The definition of these periods may be modified, as necessary, throughout the term of the permit. The required inspections are proposed at the same frequency that was established in the previous federal NPDES permit for these facilities. There is no evidence that facilities were not able to conduct these inspections during the term of the previous permit, or that less frequent inspections would ensure an equivalent pollution prevention measure.

Comment 236: ATA commented that air carriers do not typically develop monthly figures on deicing fluid use because many of the deicing vehicles cannot incorporate meters capable of recording the amount of fluid applied. ATA requested that the permit be revised to require records be maintained of an estimate of the annual deicing chemical usage based on inventory data. ATA further commented that airlines have had a difficult time estimating the monthly usage in the past. ATA indicated that the

requirement to provide the annual estimate, as well as identifying the dates that deicing events occurred, would be useful for airport SWP3s.

Response 236: Monthly records on the amount of deicing chemicals may be based on inventory records, application rates, or other methods.

Part V.S.4. - Management of Runoff

Comment 237: ATA commented Part V.S.3., relating to Pollution Prevention Measures and Controls, and Part V.S.4. should be combined and expanded to ensure that the full range of alternative pollution measures is considered at each airport, and that the SWP3 for each facility contains those measures most effective and appropriate at each site. ATA noted that the EPA recognized that there are many BMPs and controls that could be effective for use at a particular airport, and that airports should be allowed to select and implement those measures found to be appropriate to the site to control stormwater runoff from deicing and anti-icing operations.

Response 237: The proposed permit is revised to combine Parts V.S.3 and V.S.4 to be consistent with how these additional sector-specific requirements are structured in other sections of the permit. The ED agrees with the comment that there are many BMPs and controls that could be effective for use at a particular airport, and that airports should be allowed to select and implement those measures found to be appropriate to the site to control stormwater runoff from deicing and anti-icing operations. The draft permit contains the minimum requirements for the different sections of a SWP3. It is the responsibility of the permittee to identify and select controls that are the most effective, and to identify and select appropriate measures for that particular facility. Part III.A.(4) of the permit, relating to Minimum Stormwater Pollution Prevention Plan (SWP3) Requirements, already requires that the SWP3 be developed to include a consideration of how controls and practices relate to each other such that together they

comprise an integrated, facility-wide approach for pollution prevention in stormwater discharges.

Part V.U. - Food and Kindred Products Facilities

Comment 238: Harris County commented that the draft permit should either include facilities described by SIC codes 2033 - 2038 or an explanation of why they are not included for coverage under the proposed permit.

Response 238: The proposed permit is revised to include SIC codes 2032 - 2038.

Part V.V. - Textile Mills, Apparel, and other Fabric Product Manufacturing Facilities

Comment 239: WCM commented that the draft permit should include monthly periodic inspections, as was required in the federal NPDES permit for discharges of stormwater associated with industrial activities from Sector V facilities.

Response 239: Part V.V.3. of the proposed permit is revised to include monthly inspection requirements for material storage, material transfer areas, and for transmission areas. This inspection frequency was established in the previous federal NPDES permit for these facilities and is continued in the proposed permit.

Part V. AA. - Fabricated Metal Products Facilities

Comment 240: WCM commented that the table of benchmark monitoring requirements in Part V.AA.3. of the proposed permit should be revised to clarify that facilities described by SIC code 3479 are not required to monitor for those parameters in the first row of the table. WCM further commented that the benchmark value in the first row of the benchmark monitoring table should be corrected from the value of 0.068 mg/l to 0.68 mg/l. WCM further commented that this was a typographical error in the NPDES

stormwater permit issued by EPA in 1995,

Response 240: The ED agrees with the comments and revises the first row of the benchmark monitoring table to include "(except 3479)." Facilities described by SIC code 3479 must conduct benchmark monitoring defined in row two of the table. The ED additionally corrects the benchmark value for Nitrate + Nitrite N from 0.069 mg/l to 0.68 mg/l.

Part V.AC. - Electronic and Electrical Equipment/Components, and Photographic/Optical Goods Manufacturing Facilities

Comment 241: Houston commented that SIC codes 3821 - 3872 were not included, and requested that they either be included or an explanation provided.

Response 241: The proposed permit only included SIC code 3812 from the SIC group 38 industries. The ED corrects an omission by revising Sector AC to include SIC codes 3812 - 3873.

Comment 242: Cleburne commented that discharges of stormwater from Sector AC industries have a potential to contain metals, and that this should be addressed with additional requirements.

Response 242: The ED disagrees that additional sector-specific requirements are necessary for Sector AC facilities. Metals were not previously identified in the federal regulations as a pollutant of concern during development of NPDES permit requirements, therefore the proposed permit does not include a benchmark monitoring requirement for Sector AC. The proposed permit does, however, contain effluent limitations for hazardous metals that apply to any facility that is unable to certify that they meet certain waiver criteria.