

## **TCEQ GENERAL PERMIT NO. TXR050000**

### **EXECUTIVE DIRECTORS RESPONSE TO PUBLIC COMMENT**

The executive director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the multi-sector industrial storm water general permit (MSGP), Texas Pollutant Discharge Elimination System (TPDES) permit number TXR050000 to authorize the discharge of storm water. As required by Texas Water Code (TWC), §26.040(d) and 30 TAC §205.3(c), before a general permit is issued, the executive director must prepare a response to all timely, relevant and material, or significant comments. The response must be made available to the public and filed with the Office of the Chief Clerk at least ten days before the commission considers the approval of the general permit. This response addresses all timely received public comments, whether or not withdrawn. Timely public comments were received from the following entities:

American Foundry Society (AFS), Department of the Army (The Army), Associated General Contractors of Texas (AGC of Texas), CAS Engineering Services, Inc. (CAS Engineering), CMC Recycling, City of Corpus Christi (Corpus Christi), CSA Materials, Inc. (CSA Materials), Dallas/Fort Worth International Airport (DFW), ECS-Texas, LLP (ECS), Fort Worth Aluminum Foundry, Inc. (Fort Worth Aluminum Foundry), Fort Worth Small Business and Local Government Advisory Committee (FWSBLGAC), Harris County, City of Houston (Houston), Golden Triangle Small Business Advisory Committee (Golden Triangle SBAC), Institute of Scrap Recycling Industries, Inc., Gulf Coast Chapter, represented by Vinson & Elkins LLP (ISRI), Lloyd Gosselink Blevins Rochelle & Townsend, P.C. (Lloyd Gosselink), NRG Texas LP (NRG), Safety-Kleen, Steele Environmental Services, LLC (Steele), U.S. Department of Energy, National Nuclear Security Administration, Pantex (Pantex), Port of Houston Authority (PHA), Texas Automotive Recyclers Association (TARA), Texas Cast Metals Association, Inc. (TCMA), Texas Chemical Council (TCC), Texas Industry Project, represented by Vinson & Elkins LLP (TIP), Texas Mining and Reclamation Association (TMRA), Thompson & Knight, LLP (Thompson & Knight), Westward Environmental, and Winstead.

The public comment period ended on May 19, 2006. Late public comments were received by the Office of the Chief Clerk from American Electric Power and the City of Dallas on May 23, 2006 and May 24, 2006, respectively. The public notice for the public meeting specifically stated that comments had to be received by TCEQ's Office of the Chief Clerk by the end of the public meeting on May 19, 2006. Therefore, those public comments were not considered in this response.

### **BACKGROUND**

This general permit amendment and renewal would authorize discharges of storm water associated with industrial activity and certain non-storm water discharges from industrial facilities into surface water in the state. Federal storm water regulations adopted by TCEQ

extend storm water permitting requirements to industrial activities and this general permit will provide a mechanism for industrial facilities to continue to obtain permit coverage.

On September 14, 1998, TCEQ received delegation authority from the United States Environmental Protection Agency (EPA) to administer the National Pollutant Discharge Elimination System (NPDES) program under the TPDES program. As part of that delegation, TCEQ and EPA signed a Memorandum of Agreement (MOA) that authorizes the administration of the NPDES program by TCEQ as it applies to the State of Texas. The original TPDES general permit was issued on August 20, 2001 and expires on August 20, 2006. The amended and renewed general permit will continue to authorize industrial facilities in Texas for five years from the date it is issued.

Under the general permit, industrial facilities will only be authorized to discharge following the development and implementation of a storm water pollution prevention plan (SWP3). 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 storm water discharges. Such measures and practices include: limiting or prohibiting exposure of storm water to materials, wastes, and industrial activities; good housekeeping procedures; maintenance of storm water controls; periodic inspections; and reports to assess compliance with permit requirements and to identify necessary revisions to the SWP3.

The permit is proposed under the statutory authority of: 1) TWC, §26.121, which makes it unlawful to discharge pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission, 2) TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state, and 3) TWC, §26.040, which provides the commission with authority to amend rules to authorize waste discharges by general permit. The federal storm water regulations for discharges from industrial activities are in the federal rules at 40 Code of Federal Regulations (CFR) §122.26, which were adopted by reference as amended by TCEQ at 30 TAC §281.25(a).

Notice of availability and an announcement of the public meeting for this permit were published in *The Dallas Morning News*, *El Paso Times*, *The Monitor* (McAllen), *Amarillo Globe News*, *Houston Chronicle*, and *San Antonio Express News* on April 12, 2006, and in the *Texas Register* on April 14, 2006. A public meeting was held in Austin on May 19, 2006, and the comment period ended at the close of the public meeting.

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

## COMMENTS AND RESPONSES

### General Comments

#### Comment 1:

Harris County, Lloyd Gosselink, TMRA, and Houston request that the title of the MSGP be revised. Harris County requests the title be revised from “General Permit to Discharge Wastes” to “General Permit to Discharge Storm Water Associated with Industrial Activity” so that the name accurately reflects the types of discharges authorized by the permit. Lloyd Gosselink, TMRA, and Houston request that the title be revised to “General Permit to Discharge under the Texas Pollutant Discharge Elimination System,” similar to the title utilized for TPDES municipal separate storm sewer system (MS4) permits.

#### Response 1:

The title of the permit is consistent with individual TPDES permits authorizing the discharge of storm water runoff from industrial activities and was not changed. This is also consistent with the TCEQ’s authority under TWC, §26.027 to issue permits for the discharge of waste or pollutants into or adjacent to water in the state. Storm water runoff associated with industrial activity is considered “other waste” (TWC, §26.001(12)).

#### Comment 2:

Pantex requests clarification on the applicability of the permit to facilities that are not subject to the Clean Water Act (CWA) as some of the requirements are derived from the CWA. Pantex also requests clarification if the stated requirements that are derived from the CWA are applicable to facilities not subject to the CWA.

#### Response 2:

The permit is based on the CWA and requires that facilities who perform regulated industrial activities under the Standard Industrial Code (SIC) codes listed in the permit to obtain coverage under this general permit or an individual permit. Part II.A.4. of the permit specifically states that storm water discharges from military installations and other federal facilities that conduct regulated industrial activities require coverage under this general permit, an individual TPDES storm water permit, or an alternative general permit. Please contact TCEQ’s Water Quality Division Wastewater Permitting Section at (512) 239-4671 if you have any specific questions or concerns about storm water permit coverage for your particular facility.

#### Comment 3:

FWSBLGAC comments that there are areas in Texas that are subject to arid conditions and that the MSGP should include language similar to the TPDES Construction General Permit (TXR150000) for the monitoring requirements in arid regions.

#### Response 3:

TCEQ believes that the current permit language adequately addresses facilities that are located in arid areas. The construction general permit (CGP) does provide specific requirements for construction projects located in arid areas, but these requirements relate only to stabilization

practices and to inspections of controls that are in place during construction. The CGP does not include monitoring requirements for discharges, except for storm water discharges from concrete batch plants. The monitoring requirements in the proposed MSGP are generally required once every quarter, and in some cases once every year, and the TCEQ believes that this monitoring frequency is appropriate for all areas in Texas, provided that a discharge occurs. The proposed language is similar to the existing MSGP, in that it provides a discharger the opportunity to obtain a temporary suspension from monitoring due to adverse weather conditions, which may include extended periods of drought. When a temporary suspension is needed, the discharger must conduct the sampling during the next quarter; and if monitoring during the next quarter is not possible, then the requirement is permanently waived. Similarly, benchmark monitoring may be waived if there is no monitoring conducted due to adverse weather conditions. See Part III.C.5.(a) and Part IV.C.2. of the permit.

Comment 4:

FWSBLGAC requests that the wording of the permit be very clear in regards to compliance, limits, standards, etc. For example, FWSBLGAC states that benchmark values are not limits that will result in a violation for exceedance of that value, and that the goal of the benchmark requirements in Part IV is not clear. In addition, FWSBLGAC comments that the use of words such as “hazardous” and “toxicity” are unnecessary, specifically when used in the title of the form “Hazardous Metals - Inland Waters,” in Part III.D. of the permit. FWSBLGAC requests that words such as “hazardous” and “toxic” be used only when discussing specific regulatory limits, and not when discussing general terms and conditions.

Response 4:

TCEQ attempted in this permit amendment and renewal to specify the differences between analytical sampling that is required based on compliance with numeric effluent limits versus monitoring that is used for other purposes, and believes that the permit is clear in this regard. The reference to hazardous metals in Part III.D. relating to numeric effluent limitations is appropriate because these are effluent limits that are established based on TCEQ rules found in 30 TAC Chapter 319, Subchapter B relating to hazardous metals. This is further clarified in Part IV.B. of the Fact Sheet.

Finally, Part IV.A. of the general permit relating to the use of benchmark data does state that the “permittee must compare the results of analyses to the benchmark values, and must include this comparison in the overall assessment of the SWP3s effectiveness. Analytical results that exceed a benchmark value are not a violation of this permit, as these values are not numeric effluent limitations. Results of analyses are indicators that modifications of the SWP3 may be necessary.”

TCEQ believes that additional language is not necessary. Additionally, in relevant portions of Part V of the general permit related to sector-specific benchmark monitoring, the TCEQ added language to clarify that facilities that were required to conduct benchmark sampling for pollutants also listed in Part III.D., related to hazardous metals, were also subject to the numeric effluent limits in Part III.D.

Comment 5:

FWSBLGAC and PHA support the proposal to remove the requirement for the owner to sign the Notice of Intent (NOI) form since the owner is often an unrelated party, is not involved in the operations of the facility, and may not be able or willing to sign the form.

Response 5:

TCEQ acknowledges the comment and thanks the commentor for their input.

Comment 6:

ECS-Texas comments that the proposed permit does not contain the best management practices (BMP) requirements for facilities subject to the Emergency Planning and Community Right-to-Know Act, §313 (60 FR 50818, September 25, 1995).

Response 6:

The permit includes listing the chemicals that must be reported under Superfund Amendments and Reauthorization Act (SARA) Title 313 in its definition of “significant materials.” Part III.A.4. of the permit requires that regulated dischargers describe “all activities and significant materials that may be potential pollutant sources,” and this requirement should meet the federal regulations. The existing NPDES MSGP (65 FR 64815, October 30, 2000) requires that facilities identify potential pollutant sources where they have reporting requirements under Emergency Planning and Community Right-To-Know Act (EPCRA) §313. For clarification, the following sentence was added to create a new second paragraph of Part III.A.4.(a), related to “Inventory of Exposed Materials”:

For facilities which are subject to reporting requirement under EPCRA Section 313, the SWP3 shall list all potential pollutant sources for which they have reporting requirements under EPCRA Section 313.

Additionally, the definition of “significant materials” was revised as follows to clarify the reference to the EPCRA 313 regulations:

“Significant materials - . . . any chemical the operator is required to report pursuant to Section 313 of the Emergency Planning & Community Right-To-Know Act (EPCRA), also known as Title III of Superfund Amendments and Reauthorization Act (SARA) . . . .”

EPA’s 1995 MSGP (60 FR 51116, 51117, September 29, 1995) did contain specific BMPs for facilities subject to EPCRA §313, but these were removed when EPA issued their 2000 MSGP. The 2000 EPA MSGP only includes specific BMP requirements for facilities located in Region 9, as listed at 13.9.2.5. of the NPDES MSGP. EPA did retain the requirement to specifically list EPCRA §313 pollutants (65 FR 64783, October 30, 2000), and the additional language noted should meet this requirement.

Comment 7:

PHA comments that the permit requires dischargers to send various reports or notices to multiple different addresses and TCEQ offices, rather than just to one compliance address. This is likely

to cause confusion and may result in compliance related notices and information being sent inadvertently to the wrong address. PHA suggests that all permit related correspondence and submittals be sent to one common address, rather than to multiple TCEQ addresses.

Response 7:

The agency is structured so that different areas are responsible for processing permit-related information and different mailing addresses and mail codes are associated with each area. For example, violations that exceed 40% of the numeric effluent limit must be submitted directly to an Enforcement Section of the TCEQ for action, while other violations are submitted either to the Compliance Monitoring Section, or to the Information Resources Section. While no changes are proposed to allow submitting information to only one mail code, the permit was corrected at Part III.E.4.(c)(2) to clarify that violations of effluent limits in Part III.D.1. and 2. of the general permit must be submitted to the Information Resources Division at MC 212. This change is consistent with Part III.D.1.(d) of the general permit. Part III.D.2.(c) was also corrected to reference the effluent limits for coal pile runoff at Part III.D.2. rather than Part III.D.1

Part I. - Definitions

Comment 8:

Harris County and Houston request changing the definition of “best management practices.” Harris County recommends adding the phrase “to surface water in the state” and Houston recommends adding the phrase “to water in the state.” The phrase “water in the state” was deleted from the existing MSGP definition of “best management practices.”

Response 8:

TCEQ declines to make the requested change because the definition of “best management practices” includes the term “discharge,” which is defined in the MSGP as “the addition of any pollutant . . . to surface water in the state . . . .”

Comment 9:

Harris County comments that the definition of “discharge” should be specific to storm water discharges related to industrial activities. Harris County states that any reference to “pollutant” is confusing in the context of regulating storm water discharges relating to industrial activity, especially as the term “pollutant” is defined in TWC, §26.001(13). Harris County and Houston comment that the proposed definition also includes the phrase “discharge through pipes, sewers, or other conveyances, leading into a privately owned treatment works (POTWs).” A reference to POTWs is not appropriate for industrial storm water permitting because the MSGP concerns storm water discharges into the surface water in the state, and as such, “leading into a privately-owned treatment works” should be deleted. Harris County suggests the following definition: “Discharge - the discharge of storm water related to industrial activity from a facility into or adjacent to any surface water in the state.” Houston comments that the definition of “discharge” should be revised to clarify that storm water discharges are not automatically considered polluted even when the phrase “storm water” is not included along with the term “discharge.”

Response 9:

In response to the comment, the definition of “discharge” was revised as follows and includes certain components of the definition of “to discharge” from the TWC: “Discharge - for the purpose of this permit, drainage, release or disposal into surface water in the state.”

Comment 10:

Thompson & Knight comments in support of the addition of a definition for “discharge” to the permit and believes that in combination with the deletion of the term “water in the state,” the permit language better clarifies that it only regulates discharges to surface waters and not to groundwater.

Response 10:

As noted, the definition of “discharge” was revised and the intent of the revised definition is to provide adequate clarification that the permit regulates discharges of storm water associated with industrial activity into surface water in the state.

Comment 11:

Harris County and Houston comment that the proposed definition of “discharge” does not account for storm water discharge associated with industrial activity that is flowing off-site as sheet flow and that the proposed MSGP should be revised to clarify that these types of discharges need to be regulated so as not to create an unintentional loophole in the rules requiring permit coverage.

Response 11:

Discharges comprised entirely of sheet flow would not be considered a point source discharge for the purposes of TPDES permitting. Consistent with the NPDES program related to who must obtain a permit, the fact that an industry operates under a regulated SIC code is not the final factor in determining whether the facility has a point source discharge. True sheet flow would actually be considered a non-point source and would not require a permit. However, true sheet flow typically would not occur at a facility since areas such as parking lots, roads, and buildings are added, and sites are graded so as to collect and convey storm water off-site to prevent flooding. This grading would result in diffuse point sources rather than non-point sheet flow. In the preamble to the Phase I storm water regulation (55 FR 47997, November 16, 1990), EPA stated that it “intends to embrace the broadest possible definition of point source consistent with the legislative intent of the CWA and court interpretations to include any identifiable conveyance from which pollutants might enter the waters of the United States.” In most court cases interpreting the term “point source,” the term has been interpreted broadly. For example, the holding in *Sierra Club v. Abston Construction Co, Inc.*, 620 F.2d 41 (5th Cir. 1980) indicates that changing the surface of land or establishing grading patterns on land will result in a point source where the runoff from the site is ultimately discharged to waters of the United States.

Under this approach, point source discharges of storm water result from structures that increase the imperviousness of the ground, which acts to collect runoff, with runoff being conveyed along the resulting drainage or grading patterns. Therefore, in most cases where an industrial activity occurs, true sheet flow would not exist and permitting would be required if the industrial activity

is regulated under the MSGP. In order to obtain a sample from such a discharge, TCEQ recognizes that a facility may need to create a sample point if there is not an obvious outfall. This may include creating a depression or using physical means such as sandbags to direct the storm water so that it can be more easily collected.

Comment 12:

Harris County and Pantex comment that the proposed definition of “facility” is not appropriate since it is limited to those that store, process, or dispose of waste and not all activities requiring authorization under the MSGP are limited to those activities. Houston asks whether TCEQ intends to consider whether storm water discharges authorized under the MSGP are wastes and requests that the definition be revised or removed. Harris County suggests the following definition: “Facility - includes all contiguous land and fixtures, structures, or appurtenances used for industrial activities.”

Response 12:

The definition of “facility” was included to clarify that a facility as it relates to storm water, includes structures, buildings, and fixtures associated with an industrial activity and that the definition does not include land except as it is contiguous to structures, buildings, or areas used for industrial activities. For example, a facility would include a material stockpile, but not the land underneath. If a settling pond was built at the site, then the “facility” would include the pond as well as the land, since the pond would have been built contiguous with the land. This clarification is important when determining the “owner” or “operator” of a facility. In response to the comment, the definition was revised to state: “Facility - for the purpose of this permit, all contiguous land and fixtures (including ponds and lagoons), structures, or appurtenances used at an industrial facility described by one or more of Sectors A through AD of this general permit.”

Comment 13:

Westward Environmental comments that the definition of “industrial solid waste management unit” suggests that retained storm water is an industrial solid waste and that storm water impoundments must be regulated as an industrial solid waste management unit (SWMU). Westward Environmental contends that either storm water regulations or solid waste regulations apply to the water stored in an impoundment, but not both. Westward Environmental states that an impoundment functions to allow sediments to settle out, and as a result, the water discharged would be considered storm water, not a wastewater contaminated with sediments. Unless the impounded storm water is known to have been contaminated with industrial waste, it is not appropriate to regulate it as an industrial waste. Westward Environmental further comments that regulating a storm water impoundment as an industrial SWMU is overly burdensome for permittees and does not provide significant protection beyond the other conditions included in the permit. Westward Environmental also asks for guidance as to whether there will be a requirement by the TCEQ Waste Division to take existing storm water impoundments out of service and install new ones with appropriate liners and monitoring controls to comply with SWMU rules. Westward Environmental also asks whether specific closure and post-closure care guidelines will be established for storm water impoundments. Finally, Westward Environmental believes that water stored in an impoundment should not be considered “industrial waste” within the unit and then be considered “clean” storm water at the outfall.

Response 13:

TCEQ's regulations at 30 TAC §335.1(131) define "Solid waste" as including industrial wastewaters subject to permitting under the TWC, Chapter 26, except at the point where the permitted wastewater is discharged. An exclusion that is applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored, or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment. Regulated storm water that is required to have TPDES permit coverage is considered a waste, regardless of whether it was treated prior to discharge. The only exception is that regulated wastewater, including storm water, is not considered a "solid waste" when it is being discharged through a TPDES permitted outfall.

The requirements in the existing permit and in the renewed permit specify that only storm water detention and retention ponds, used to provide settling of suspended solids, are defined as solid waste management units. Other common storm water structural controls are specifically listed as not being included in this definition. By strictly limiting the definition of a solid waste management unit to those larger dedicated settling ponds, the registration and record-keeping requirements are significantly reduced and clarified. The solid waste requirements in the permit are standard "boiler plate" that are included in TPDES wastewater discharge permits and TCEQ disagrees that the requirements should be deleted from the permit. However, TCEQ recognizes that not all impoundments under this permit hold industrial waste. Therefore, the definition was revised to delete the word "industrial." The new definition was revised as follows and references to "industrial solid waste" Part III.E.5. were revised, as applicable:

Solid waste management unit - for the purposes of this permit, a storm water detention pond, storm water retention pond, or other similar dedicated pond used for removal of suspended solids. Specifically excluded from this definition are other control structures, including berms, grass swales, pipes and ditches or other similar storm water conveyances, and silt fences.

A storm water impoundment at an industrial facility permitted under the MSGP would not require additional authorization to discharge. However, a storm water impoundment that also received other industrial waste, for example, process wastewater, would not be eligible for coverage under the MSGP. For additional information regarding whether a particular retention pond is subject to additional permitting/registration requirements or closure/post closure care under TCEQ rules, please contact the TCEQ's Waste Permitting Division at (512) 239-2334.

Comment 14:

Harris County comments that the definition for "non-structural control" should include the phrase "to surface water in the state" and Houston comments that the definition should include the phrase "to water in the state." The existing MSGP included the phrase "water in the state" in the definition of "non-structural control."

Response 14:

TCEQ declines to make additional changes because the definition of "discharge" clarifies that it relates to surface water in the state.

Comment 15:

NRG requests including definitions for “notice of change” and “no exposure certification” to the permit.

Response 15:

TCEQ agrees with the comment and the following definitions were added to the permit:

No Exposure Certification (NEC) - A written submission to the executive director from an applicant notifying their intent to obtain a conditional exclusion from permit requirements by certifying that there is no exposure of industrial materials or activities to precipitation or runoff.

Notice of Change (NOC) - Written notification from the permittee to the executive director providing changes to information that was previously provided to the agency in a notice of intent or no exposure certification (NEC) form.

Comment 16:

Harris County and Houston comment that the definition of “notice of intent” should not reference “wastes” since the MSGP only applies to storm water discharge associated with industrial activity. Harris County suggests revising the proposed definition to: “notifying their intent to apply for authorization to discharge storm water associated with industrial activity under the provisions of a general permit.” Houston requests revising the definition to: “. . . notifying their intent to apply for authorization to discharge storm water under provisions of . . . .”

Response 16:

In response to the comments, the TCEQ revised the definition as follows, which is consistent with the proposed definition in other general permits for storm water discharges: “Notice of Intent (NOI) - A written submission to the executive director from an applicant requesting coverage under this general permit.”

Comment 17:

Harris County comments that the references to “waste” in the proposed definition of “notice of termination” are not appropriate since the MSGP applies to discharges of storm water associated with industrial activity. Furthermore, Harris County comments that the word “cease” in the definition creates ambiguity and suggests that the definition be revised to: “notifying their intent to terminate the authorization to discharge storm water associated with industrial activity under the provisions of this general permit.” Houston comments that the proposed revision appears to change the meaning of the definition and is confusing. Houston requests that the definition be revised to: “. . . notifying their intent to terminate the authorization to discharge storm water under the provisions of this general permit.”

Response 17:

TCEQ disagrees that the term “waste” is inappropriate when referring to authorization to discharge under this general permit. However, TCEQ does recognize that the definition of

“notice of termination” could be improved and revised the definition in accordance with the comment to:

Notice of Termination - A written submittal to the executive director from a discharger authorized under a general permit requesting termination of coverage.

Comment 18:

Westward Environmental comments that the “operator” should be defined as a regulated entity or company and not as a person. Westward Environmental contends that this change will eliminate the need for a regulated entity to submit a Notice of Change each time the designated operator changes.

Response 18:

TCEQ disagrees that a change is required and points out that TCEQ rules at 30 TAC §3.2(25) (“Definitions”) define a “person” as “an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.”

Comment 19:

PHA comments that it strongly supports the change from the existing MSGP regarding the terms “owner” and “operator.” PHA believes that the existing MSGP inappropriately defined an operator as “the owner or person that is responsible for the management of an industrial facility . . .” Many entities may own facilities or land operated by tenants with direct operational control over pollution control activities and the owner’s off-site administrative activities do not impact storm water quality. PHA further states that the change in the definition more appropriately imposes compliance obligations on the operators instead of owners.

Response 19:

TCEQ acknowledges the comment and thanks the commentor for their input.

Comment 20:

Lloyd Gosselink and TMRA state that the proposed definition of “outfall” may be interpreted to include the point of discharge for any runoff from property owned by the permittee, regardless of whether such runoff comes into contact with a regulated industrial activity. Lloyd Gosselink and TMRA request that TCEQ specify that an outfall is related to the discharge points “designated by the permittee,” through which storm water that comes into contact with a regulated industrial activity will be released into surface water for purposes of the MSGP. Lloyd Gosselink and TMRA state that such a clarification is consistent with the proposed MSGP’s provisions that would require permittees to identify “permitted outfalls” in Part III.A.4.(b) and (c)(2), or outfalls “authorized” by the Proposed MSGP in Part III.A.5.(h) and Part III.A.7.(b)(4).

Response 20:

In response to the comment, the definition of “outfall” was revised to relate specifically to the discharges regulated under this general permit. Since the revised definition references a “point

source,” a new definition for “point source” was added, which is consistent with the federal definition:

**Outfall** - For the purpose of this permit, a point source at the point where storm water runoff associated with industrial activity discharges to surface water in the state and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels, or other conveyances that connect segments of the same stream or other waters of the U.S. and are used to convey waters of the U.S.

**Point Source** - (from 40 CFR §122.22) any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Comment 21:

Harris County and Houston comment that the definition of “outfall” does not account for storm water discharge associated with industrial activity that is flowing off-site as sheet flow and that the proposed MSGP should be revised to clarify that these types of discharges need to be regulated. Houston requests that the last part of the definition be revised to read: “. . . which is discharged from a facility regulated under this general permit into surface water in the state.”

Response 21:

The revised definition should clarify that “outfall” refers to discharges of storm water runoff associated with industrial activity, but TCEQ disagrees that a change is required to address sheet flow. As noted in Response 10, related to the definition of “discharge,” true sheet flow would not be regulated under the TPDES program. However, diffuse point sources would be regulated. Only point source discharges of pollutants are required to obtain permit coverage. However, in most facilities discharging storm water, property has been graded or otherwise constructed in such a way as to direct storm water flow from the property. Therefore, the storm water regulations would apply. For facilities where it is difficult to determine where a discrete conveyance may be sampled, TCEQ recognizes that some facilities may benefit from constructing some type of device to collect storm water so that it can be sampled more readily.

Comment 22:

Harris County and Houston request that definitions of “point source discharge” and “pollutant” be added to the permit as provided in the TWC since the regulated community may not have ready access to all applicable TCEQ rules or the TWC. Harris County and Houston also state that using the definitions from the TWC will be consistent with use of definitions in the permit and would create less ambiguity.

Response 22:

As noted, a definition for “point source” was added to the permit. In addition, and in response to the comment, the following definition of “pollutant,” consistent with the TWC was added to the permit:

*Pollutant - (from Texas Water Code, § 26.001(13)) dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term: (A) includes: (i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone as defined by Section 26.502; or (ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and (B) does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated rangeland, pastureland, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.*

Comment 23:

Harris County and Houston request that the definition of “structural control” retain the following phrase, as included in the existing MSGP: “to surface water in the state.”

Response 23:

TCEQ believes that additional changes are not necessary, because the definition of “discharge” clarifies that it relates to surface water in the state.

Comment 24:

Harris County and Houston request that TCEQ clarify the boundary between surface water in the state and an MS4 as well as the boundary between surface water in the state and waters of the United States. Harris County and Houston also request that technical guidance be provided on these issues.

Response 24:

An MS4 is generally a publicly owned system, designed and used for collecting and conveying storm water, which may include roads with drainage systems, streets, catch basins, curbs, gutters, man-made channels, storm drains, and ditches. Surface water in the state as defined in the permit is generally any of a number of bodies of surface water (with the exception of waste treatment systems), fresh or salt, navigable or non navigable that are wholly or partially inside or bordering the state and subject to the jurisdiction of the State of Texas. There are instances where water may be both surface water in the state and part of an MS4 though it is not possible to articulate all scenarios where it is one, the other, or both. For example, portions of an MS4 system, including ditches, may be surface water in the state. As pointed out by EPA in the preamble to its Phase II storm water permit (64 FR 68722, 68757, December 8, 1999), a ditch may be part of an MS4. However, as with other jurisdictional provisions of the CWA, that determination requires case-specific evaluations of fact. Once a body of water is identified as surface water in the state, it remains surface water in the state downstream from that point.

Surface water in the state includes certain playa lakes and isolated wetlands that may not be waters of the United States. Thus, TCEQ considers playa lakes under its jurisdiction for TPDES purposes. Also, any storm water that infiltrates or is absorbed into soil and does not run off is not considered a discharge to surface water in the state or a discharge to waters of the United States.

Comment 25:

Thompson & Knight comment that it supports deletion of the definition for “water in the state,” and that, combined with the addition of a definition for “discharge,” the change clarifies that the permit only regulates discharges to surface waters.

Response 25:

TCEQ acknowledges the comment and thanks the commentor for their input.

Comment 26:

Harris County and Houston comment that the definition of “waters of the United States” in the permit is different than the definition included in 40 Code of Federal Regulations (CFR) §122.2 because it leaves out the last paragraph. Harris County and Houston request that the following paragraph, which is identical to the last paragraph in the federal definition of “waters of the United States,” be added to the definition in the permit:

*Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR §423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.] Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.*

Response 26:

In response to the comments, the paragraph was added to the definition of “waters of the United States” in the permit.

## Part II. - Permit Applicability and Coverage

Comment 27:

Harris County and Houston request revising the introductory paragraph to Part II. from authorizing discharges to “water in the state” to “surface water in the state.”

Response 27:

In response to the comments, the requested revision was made.

### Part II.A. - Discharges Eligible for Authorization by General Permit

Comment 28:

Thompson & Knight requests that the term “Lime” be added to the Description of Industry Sub-Sector for SIC Codes 3271-3275 in the table on Page 10, and in the tables on Pages 58, 59, and 61. Thompson & Knight requests that the description read, “Concrete, Lime, Gypsum and Plaster Products.”

Response 28:

In response to the comment the requested change was made to the relevant portions of the MSGP and Fact Sheet.

Comment 29:

Harris County and Houston request revising the list of regulated industrial activities to include the following additional activities in Sector AD: Sites processing or manufacturing mulch or compost 5099 and 5261, including additional sites which do not easily fit into the SIC system; metal slitting and shearing; scrap steel cutting; and solvents recovery (7389); pipe storage (5051); industrial container cleaning (7349); and hydroblasting and vacuum truck services for industrial facilities (1799). The commentors indicated that each of the industries mentioned has the potential to contribute to pollutants being discharged in storm water runoff. While the commentors recognized that local authorities may have regulatory mechanisms to control discharges from specific activities, they believed that the TCEQ should consider statewide requirements for the activities mentioned.

Response 29:

TCEQ recognizes additional activities exist that may cause contaminants to be carried in storm water. However, the requested SIC codes are not regulated under the federal definition of “storm water associated with industrial activity,” in 40 CFR §122.26(b)(14) and adopted by reference at 30 TAC §281.25. Where contamination of surface waters occurs based on storm water runoff from a facility that is not regulated under the MSGP, the TCEQ may require that the facility operator obtain an individual TPDES permit, or may direct the facility to apply under Sector AD of the MSGP. TCEQ is currently developing procedures to identify and direct those performing particular activities to apply under Sector AD.

Comment 30:

CSA Materials requests that the last paragraph of Part II.A.1 describing “a facility that does not discharge” should be further defined and explained, similar to the language that is currently in Part III.E. of the Fact Sheet.

Response 30:

In response to the comment, the final paragraph of Part II.A.1., related to situations with no discharge to surface water, was deleted, and the following language was added to create a new Part II.B.11., under “Limitations on Permit Coverage.” Moving this information in this section of the permit is consistent with TCEQ practice for TPDES general permits.

### *11 Facilities with No Discharge to Surface Water in the State*

*A facility that does not discharge storm water to an MS4 nor to surface water in the state may not be required to obtain coverage under this general permit if the operator demonstrates that no discharges have occurred nor will occur in the future. The operator may be required to demonstrate, using engineering calculations or similar methods, that the facility will not discharge storm water associated with industrial activity.*

*Facilities that dispose of storm water by any of the following practices would not be required to obtain coverage under this general permit nor under an individual permit:*

*(a) Recycling of the storm water with no resulting discharge into or adjacent to surface water in the state;*

*(b) Pumping and hauling of the storm water to an authorized disposal facility;*

*(c) Discharge of the storm water to a publicly-owned treatment works (POTW);*

*(d) Underground injection of the storm water in accordance with 30 TAC Chapter 331;*

*(e) Discharge to above ground storage tanks with no resulting discharge into or adjacent to water in the state;*

*(f) Containment of all storm water within property boundaries, with no discharge into surface water in the state, including no discharge during, or as the result of, any storm event.*

*In addition, Part III.E.(6) of the Fact Sheet was revised as follows, for consistency with these changes:*

*(6) Containment of all storm water within property boundaries, with no discharge into surface water in the state, including no discharge during, or as the result of, any storm event.*

Comment 31:

Westward Environmental supports having a waiver available for facilities that do not discharge storm water and requests that Part II.A.1. include additional information regarding: 1) to whom the operator must demonstrate that no discharges have occurred nor will occur in the future, 2) the format of the submission, and 3) the information that must be included.

Response 31:

The general permit will not require that a facility obtain prior approval from TCEQ for demonstrating that there will be no discharge from the site, but a facility operator may contact the TCEQ's Storm Water and Pretreatment Team at (512) 239-4671 to seek assistance on making such a determination. It is possible that a TCEQ site investigator will request information regarding why an NOI was not submitted for a regulated facility; at which time, it will be necessary for the facility operator to demonstrate that adequate calculations were performed to show that the facility will not discharge. It is recommended that the facility

operator have on hand any calculations or other information used to assert a condition of “no discharge.”

Comment 32:

The Army requests clarification on who will be responsible for obtaining permit coverage if both the military installations and their contractors are both considered operators. The Army asks if the contractor operating a covered activity or facility needs to submit their own NOI and prepare an SWP3. If both military and contractor personnel are considered operators, will they both be required to submit NOIs for the same facility and could they co-sign and share an SWP3. Also, the Army asks if there are situations where only the contractor would be required to obtain coverage, excluding the military installation.

Response 32:

It is the duty of the entity who has overall operational responsibility for the regulated industrial activity to apply for permit coverage. If there are multiple regulated industrial activities taking place at a Department of Defense (DOD) facility it will depend on who has operational control of each regulated activity, which could be the contractor or DOD. For example, a DOD facility where the Base Commander has operational control over the entire facility and all activities within, the Base Commander would be the operator for industrial storm water permitting. Where DOD is the owner of land under a long-term lease to a redevelopment authority or commercial business and does not exercise operational control over the entity, then the lessee, rather than DOD would be the operator for permitting purposes.

The DOD facility could also share an SWP3 with one or more contractors with each participant submitting an NOI. The SWP3 would detail each operator’s responsibilities for particular regulated industrial activities taking place at the facility. For specific questions or concerns about storm water permit coverage for a particular facility please contact TCEQ’s Water Quality Division Wastewater Permitting Section at (512) 239-4671.

Comment 33:

Lloyd Gosselink, TMRA, and Thompson & Knight request that the MSGP provide allowable storm water discharges that may include similar occasional incidental non-storm water discharges in Part II.A.5., until the TCEQ develops permits or regulations addressing these discharges.

Response 33:

Similar language was included in permits for MS4s because MS4s are system-wide permits that may include a wide variety of facilities whose discharges enter the MS4. Extending a list of authorized non-storm water discharges in the MSGP could result in a permittee discharging a utility wastewater, process wastewater, or other waste stream in violation of TPDES regulations. The TCEQ believes that any list must be very specific regarding what can be discharged and believes that the list included in this permit is adequate to address most incidental non-storm water discharges that would not otherwise require a TPDES permit. For information on whether a specific waste stream can be discharged without additional permit coverage, an operator may contact the TCEQ’s Water Quality Division Wastewater Permitting Section at (512) 239-4671.

Comment 34:

Lloyd Gosselink, TMRA, and Thompson & Knight request that the phrase “uncontaminated” be deleted from Part II.A.5.(a) or alternatively be defined in detail.

Response 34:

The requested term was retained, because it is possible that fire hydrant systems may utilize certain wastewaters that could contain contaminants prohibiting it from being discharged except during emergency events. In response to the comments, Part III.C.(1) of the Fact Sheet, related to the list of non-storm water discharges, was revised to add clarification regarding what is meant by “uncontaminated fire hydrant flushings”:

discharges from fire fighting activities and uncontaminated fire hydrant flushings (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life; uncontaminated fire hydrant flushings include flushings from systems which utilize potable water, surface water, or groundwater that does not contain additional pollutants; uncontaminated fire hydrant flushings do not include systems utilizing wastewater as source water);

Comment 35:

Lloyd Gosselink, TMRA and Thompson & Knight request that the phrase “water used to control dust” be added to the list of allowable non-storm water discharges.

Response 35:

In response to the comment, the following was added as a new Part II.A.5.(h) of the permit, related to non-storm water discharges (subsequent items were renumbered accordingly): “(h) *uncontaminated water used for dust suppression . . .*”

Comment 36:

Harris County and Houston request that the word “uncontaminated” be added to Part II.A.5.(f) of the permit because adding the word clarifies that the air compressor condensate is free of pollutants. Harris County and Houston also comment that new language in Part II.A.5.(f) states that “air conditioner condensate, compressor condensate, and steam condensate that has not contacted a material, intermediate, or final product associated with industrial activity” is an allowable discharge. The current MSGP states that “condensate that externally forms on a steamline” is an allowable discharge. Thus, condensate that internally forms inside the steamline is not an allowable discharge. Harris County and Houston comment that the terms “material” and “intermediate” are vague and would make these sections very difficult to enforce. As provided in the current MSGP, it is clear that only external steam condensate is allowable and that language needs to remain in the proposed MSGP. Harris County and Houston recommend retaining the language in the current MSGP for this section.

Response 36:

In response to the comment, Part II.A.5.(f) of the general permit was revised as follows to state that only “uncontaminated” steam condensate may be authorized. “Uncontaminated” would refer only to condensates that have not contacted materials or products. There may be some

cases where steam condensate forms within steam lines, but would otherwise not contact a pollutant of concern. Part II.A.5.(f) now reads: “(f) *uncontaminated air conditioner condensate, compressor condensate, and steam condensate; . . .*”

#### Part II.B. - Limitations on Permit Coverage

##### Comment 37:

Lloyd Gosselink and TMRA comment that Part II.B. does not provide any release from liability for spills or events that are beyond the control of a permittee (i.e., spills caused by third parties, spills made so as to prevent the loss of life, personal injury or severe property damage, and any spills attributable to *force majeure*). Lloyd Gosselink and TMRA note that 30 TAC §70.7 provides a *force majeure* defense for an event that would otherwise be a violation of the permit. They request the permit clarify that this defense is available to industrial permittees.

##### Response 37:

Whether language regarding *force majeure* is included in this or any TPDES permit, any entity regulated under the TPDES program may assert a *force majeure* defense for violations caused solely by an act of God, war, strike, riot, or other catastrophe as allowed in TCEQ rules at 30 §70.7.

Additionally, TCEQ declines to add language regarding spills by third parties. This statement regarding spills caused by third parties may be appropriate for MS4 permits that require that an MS4 operator regulate activities performed by third parties. However, this statement is not appropriate for individual sites that must meet permit conditions for discharges that will leave their property boundaries.

#### Part II.B.3. - Storm Water Discharges from Construction Activity

##### Comment 38:

CAS Engineering requests that Part II.B.3. of the permit be revised to clarify that construction activities associated with Sector L (Landfills and Land Application Sites) are authorized under this general permit. CAS Engineering requests that a sentence be included in this section that reads, “Construction activities associated with Sector L facilities are excluded from the requirements of Part II.B.3.”

##### Response 38:

In addition to the MSGP, any industrial facility that performs regulated construction activities must meet the requirement of the TPDES CGP. TCEQ considers construction of new cells at a landfill to be routine landfill operations that are covered by the landfill's industrial storm water general permit. For this activity, the SWP3 for the landfill must incorporate BMPs that address sediment and erosion control for new cells. However, where a new landfill is being constructed and one or more acres of land are disturbed, such activity is covered under the CGP until such time that the initial construction is completed and industrial waste is received.

#### Part II.B.4. - Storm Water Discharges from Salt Storage Piles

Comment 39:

Harris County and Houston request that the phrase “to surface water in the state” be added to the first sentence of Part II.B.4. of the permit.

Response 39:

The requested change was made to the general permit. However, note that the revised definition of “discharge” in the permit clarifies that it applies to the release of storm water into surface water in the state.

#### Part II.B.5. - Discharges of Storm Water Mixed with Non-Storm Water

Comment 40:

Lloyd Gosselink and TMRA request that this section reference Part II.A.5 rather than Part II.A.6. of the permit.

Response 40:

The noted correction was made to the permit.

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

Comment 41:

Lloyd Gosselink and TMRA comment that the first paragraph of Part II.B.7. provides that new sources or new discharges of the constituent(s) of concern to impaired waters are not authorized by this permit, unless otherwise allowable under 30 TAC Chapter 305 and applicable state law. The terms “new sources” and “new dischargers” are not defined in the permit and thus, the applicability of this provision is unclear. The term “new source” is defined in 30 TAC §305.2(23), but based on that definition it should not be applicable to storm water discharges. Also, the CWA, §306, which is applicable to such discharges if performance standards have been promulgated. While EPA has issued standards for multiple categories of sources, they have not promulgated standards pursuant to CWA, §306 for storm water discharges. Therefore, Lloyd Gosselink and TMRA request TCEQ clarify the applicability, if any, of Part II.B.7 to storm water discharges and state that storm water discharges should not be considered “new sources” or “new discharges” because storm water from industrial activities may have been discharged long before storm water permitting requirements were in place.

Response 41:

40 CFR §122.4(i) prohibits issuing permit coverage “to a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards.” Previously existing discharges from regulated industrial facilities otherwise eligible for authorization under the conditions of the permit would not constitute a new source or a new discharger to a currently listed water body and therefore are eligible for coverage.

When a Total Maximum Daily Load (TMDL) is developed for a listed receiving water, existing sources may continue with discharge authorizations. New sources may be authorized if the

discharge falls within the provisions of the approved TMDL and TMDL implementation plan for the listed receiving water. If the TMDL or implementation plan contains provisions or conditions specific to discharges otherwise eligible for coverage under the permit, regulated industrial facilities may then either be required to include those provisions or conditions as a part of their SWP3 and remain authorized under this permit or apply for authorization under an individual TPDES permit.

#### Part II.B.10 - Protection of Streams and Watersheds by Home-Rule Municipalities

##### Comment 42:

Corpus Christi requests that TCEQ add a provision to Part II.B. of the permit acknowledging the fact that the MSGP does not limit the authority of an MS4 to require permits for storm water discharges authorized by the MSGP into their storm sewer system.

##### Response 42:

The permit already requires that permittees comply with both state and local regulations. Part II.B.10. of the permit states that the permit does not limit the authority of home-rule municipalities provided by Texas Local Government Code, §401.002.

#### Part II.C. - Obtaining Authorization to Discharge, 1. - Conditional No Exposure Exclusion from Permit Requirements

##### Comment 43:

For consistency with the existing MSGP, Harris County and Houston request that the first sentence in Part II.C.1. of the permit read, “Facilities that qualify for this exclusion and that contribute storm water discharges to a municipal separate storm sewer system (MS4) shall provide copies of the certification to, and shall allow inspection of the facility by, the operator of the MS4.”

##### Response 43:

TCEQ declines to make this change, because the TCEQ cannot require a permittee to allow access to a facility that it would not otherwise have access to according to state law. For example, certain counties or transit authorities do not have the authority to enter private property, even if a discharge from the property enters its MS4. This general permit cannot provide that authorization where it does not already exist. However, this permit does not prohibit local authorities from requiring additional local controls in accordance with their authority. (See Part II.B.10. of the permit, related to Home Rule Municipalities.) Finally, page 1 of the permit states that the permit does not authorize the violation of any local laws or regulations.

##### Comment 44:

Harris County and Houston request that the phrase “produced by the operator” be removed from Part II.C.1.(b) of the permit because it has the unintended consequence of limiting the final products to those produced only by the operator.

Response 44:

This phrase was removed as requested.

Comment 45:

The Army comments that a large facility such as a military installation may have multiple smaller facilities that are required to obtain permit coverage. The Army asks if one or more of these smaller facilities meets the requirements to qualify for an NEC can the larger facility use the exclusion protection for any such smaller facility, while still following the permit requirements at other sites that do not meet the conditions of the NEC.

Response 45:

The NEC exclusion from permitting is available only on the condition that applicants can certify that there is no exposure of industrial activities or materials to storm water and storm water runoff on a facility-wide basis, which in this case would include all regulated activities at the military base. However, exclusion of permit requirements for certain outfalls, or for certain drainage areas within the facility, may be accomplished within a facility operator's SWP3 when a facility applies for coverage under the general permit. A condition of the permit is that the permittee identify areas of the facility where storm water contacts industrial materials and industrial activities and then identify best management practices, and other pollution prevention controls, to reduce or eliminate pollution in storm water runoff from these areas. Areas of the facility where there is no exposure of materials and activities to storm water may also be identified in the SWP3. There would be 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 46:

Harris County and Houston request that all references to "the issuance of this general permit" be changed to "the effective date of this general permit" in Part II.C.2.(a), (b), and (c) of the permit.

Response 46:

TPDES permits, including general permits, are issued and effective on the same date; therefore, it is unnecessary to change the language as requested.

Comment 47:

Lloyd Gosselink and TMRA request that the TCEQ clarify that notification confirming authorization under the MSGP will be sent to the applicant in writing, notification that the NOI is incomplete will be sent to the applicant in writing explaining the NOI's deficiency, and that the denial of authorization under the MSGP will be sent in writing explaining why coverage under an individual permit is necessary.

Response 47:

In response to the comment, Part II.C.2. was revised to clarify that the confirmation of coverage and any denial of authorization will occur in writing, and that denial of authorization will be performed in accordance with 30 TAC §205.4. TCEQ declines to add a phrase stating that a notice of an NOI being incomplete will be sent in writing, because it is possible that some deficient items can be obtained by a phone call to the applicant. If the needed information cannot be obtained verbally, a written request will be sent to the applicant. The following language was added to Part II.C.2.:

*Following review of the NOI, the executive director will: 1) determine that the NOI is complete and confirm coverage by providing a written notification and an authorization number; 2) determine that the NOI is incomplete and request additional information needed to complete the NOI or 3) deny coverage in writing. Denial of coverage will be made in accordance with TCEQ rules related to General Permits for Waste Discharges, 30 TAC § 205.4.*

Comment 48:

Harris County and Houston request that the phrase “or immediately upon becoming aware of the need for a permit” be deleted from Part II.C.2.(a) of the permit because they believe this language is vague and unenforceable.

Response 48:

TCEQ agrees that this language is ambiguous and removed the phrase as requested. In addition, the following sentence was added at the end of the paragraph, to clarify that an operator would not be precluded from submitting an NOI after the permit is issued: “However, this permit does not preclude a facility from submitting an NOI after the permit issuance date.”

Comment 49:

Lloyd Gosselink and TMRA request that Part II.C.2.(a) of the permit be revised to read:

Facilities which are required to obtain coverage under the previous TPDES MSGP (issued August 20, 2001), *but did not obtain such coverage*, are considered to be existing facilities. The deadline for these facilities to submit an NOI is immediately upon permit issuance, or immediately upon becoming aware of the need for a permit.

Response 49:

In response to the comment, the sentence was revised to reference submission of the NEC. However, the change differs from the requested language in order to include those facilities that did apply for coverage under the previous MSGP, as well as those that were regulated, but who did not apply for coverage:

Facilities which were required to obtain permit coverage under the previous TPDES MSGP (issued August 20, 2001) are considered to be existing facilities, regardless of whether an NOI *or NEC* had previously been submitted under that general permit. The deadline for these facilities to submit an NOI is immediately upon permit issuance. However, this permit does not preclude a facility from submitting an NOI or NEC after the permit issuance date.

Comment 50:

PHA supports the incentive provided for dischargers that choose to submit an electronic NOI. Increased use of information technology and digital information should increase efficiency and lead to improved implementation of environmental regulations.

Response 50:

TCEQ acknowledges the comment and thanks the commentor for their input.

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

Comment 51:

Thompson & Knight supports the removal of the facility owner requirement for a facility owner to sign the application for permit coverage. Thompson & Knight think this change will be particularly beneficial to lessee operators.

Response 51:

TCEQ acknowledges the comment and thanks the commentor for their input.

Comment 52:

Harris County requests adding a provision to Part II.C.4. of the permit that requires permittees to list on the NOI the geographic coordinates of all outfalls and sample points (if they differ from the outfalls). Harris County believes the change would benefit inspectors in locating outfalls when trying to collect samples without facility personnel on site and would benefit MS4 operators which map point-source discharges to their MS4.

Response 52:

TCEQ declines to include a requirement to list coordinates for all outfalls. The federal and state storm water regulations do not require this information be included in NOIs. In addition, a facility may change its operations in such a way as to move outfalls, and TCEQ supports these types of changes being done in the SWP3 as opposed to the NOI through a notice of change (NOC).

#### Part II.C.6. - Terminating Coverage

Comment 53:

Houston and Harris County request changing the word “may” to “shall” in the first sentence in Part II.C.6. of the permit. Houston and Harris County also request allowing a facility’s new owner/operator to submit the notice of termination for the previous owner/operator if they did not do so.

Response 53:

The permit was revised to clarify that a notice of termination must be submitted on an approved form and the first sentence of Part II.C.6. was revised to state:

A permittee may terminate coverage under this general permit, or may terminate the conditional no exposure exclusion, by providing a Notice of Termination (NOT) to the TCEQ. The NOT must be submitted on a form approved by the executive director.

However, the permit was not revised to allow a person to terminate coverage for another permittee, because authorization under the general permit belongs to the permittee and there are no provisions in TCEQ rules that allow a third person to cancel another person's permit authorization.

#### Part II.C.7. - Signatory Requirements

Comment 54:

Thompson & Knight note that the acronym "NEC" is used in Part II.C.7. and throughout the permit, but is not defined, though they believe it stands for "no exposure certification."

Response 54:

The acronym NEC does stand for no exposure certification and a definition of NEC was added to Part I of the permit in response to an earlier comment.

#### Part II.C.9. - Fees

Comment 55:

Houston requests that the NEC fee of \$100 be removed from the permit and it remain at no charge as it was in the previous permit.

Response 55:

TCEQ evaluated several fee rate options to assess the need to collect fees for tasks requiring agency resources, consistent with TCEQ rules and the TWC. The changes should provide a fair and equitable fee structure for regulated facilities, while including fees for tasks that require agency resources. An NEC fee of \$100 was decided on because similar resources are needed to process NEC forms as NOIs and \$100 is the amount charged for each NOI. The permit does exempt NECs from paying an annual water quality fee.

Comment 56:

Houston comments that TCEQ is doubling the annual water quality fee required for each facility from \$100 to \$200. Houston notes that Phase I facilities were required to develop industrial programs that include inspection of facilities covered by the MSGP. Houston believes it is appropriate that fees collected by TCEQ from permittees under the MSGP be paid to municipalities conducting the compliance investigations. Houston requests that the TCEQ consider mechanisms to either conduct inspections for TPDES MSGP facilities or provide fees to the municipalities conducting the compliance inspections.

Response 56:

TCEQ does not have statutory authority to rebate a portion or all of the annual water quality fee. TWC, §26.040(k) allows TCEQ to impose a reasonable and necessary fee under TWC, §26.0291

on a discharger covered by a general permit. TWC, §26.0291(c) requires that fees collected under this section “shall be deposited to the credit of the water resource management account, an account in the general revenue fund.” These funds are subject to legislative appropriation for use to protect water resources in the state, including assessment of water quality or reasonably related to the activities of any of the persons required to pay the fee. Therefore, the Texas Legislature could provide funds from these fees to municipalities for conducting compliance inspections, but TCEQ on its own accord may not.

### Part III. - Permit Requirements and Conditions Common to all Industrial Activities - Part III.A.1. Implementation of SWP3 and Consistency With Other Plans

#### Comment 57:

Harris County and Houston recommend adding the phrase “and implement” to the first sentence in Part III.A.1.(a) so that it would then say: “An applicant seeking authorization under this general permit must develop and implement a storm water pollution prevention plan (SWP3) before submitting an NOI for coverage under this general permit.”

#### Response 57:

TCEQ agrees that SWP3s must be developed and implemented prior to submitting an NOI to TCEQ. In response to the comment, the first sentence was revised as follows: “An applicant seeking authorization under this general permit must develop and implement a storm water pollution prevention plan (SWP3) before submitting an NOI for coverage under this general permit.”

### Part III.A.3. - Certification

#### Comment 58:

DFW comments that the phrase “does not occur” related to non-storm water discharges is inconsistent with the governing principle behind the storm water program. DFW further comments that 90 days is not a realistic timetable for changes that may include issuing bonds, a bidding process, hiring, and consolidation of capital improvements. DFW suggests that the language of Part III.A.3.(c) be changed as follows:

The SWP3 must include a certification, signed according to Part III.E.3(g) of this general permit, relating to Signatory Requirements, that states that the separate storm sewer system has been evaluated for the presence of non-storm water discharges and that on the date the system was evaluated the discharge of non-permitted, non-storm water was not observed to occur other than as identified by date and for which BMPs are being developed and/or improved. The certification may acknowledge that the potential exists for non-permitted, non-storm water discharges to occur from time to time.

#### Response 58:

The non-permitted discharge of wastewater is not allowed under the MSGP, except for certain allowable non-storm water discharges included in Part II.A.5. of the permit. The intention of the certification requirement is to ensure that unauthorized discharges do not commingle with the

storm water authorized by this permit. However, in response to the comment the deadline for completing the non-storm water certification in Part III.A.3.(c) was changed from 90 to 180 days.

Comment 59:

PHA supports the addition in Part III.A.3.(d) of a mechanism for permit holders to request an extension beyond 180 days to complete investigations required to make the non-storm water discharge certification. However, PHA believes that 15 working days may not provide TCEQ staff adequate time to review the request for an extension. PHA requests that the permit require the extension request to be submitted earlier and indicate the criteria the executive director will use to determine if an extension will be granted. Thompson & Knight support the addition of a provision in Part III.A.3.(d)(2) that allows a permittee to complete a certification that identifies noncompliance issues and the steps being taken to remedy/prevent further noncompliance. Thompson & Knight notes that this provision allows permittees to fulfill their certification obligation while continuing to address any noncompliance issues.

Response 59:

This section was originally drafted to allow an extension for permittees unable to complete the certification for non-storm water discharges. However, in response to the comments, Part III.A.3.(c) was revised to allow 180 days, rather than 90 days to make the required certification. If the certification is not made within 180 days, then a permittee must notify TCEQ's Enforcement Division. Part III.A.3.(d) was also revised to remove the references to requesting an extension because 180 days should be sufficient to make the required certification and resolve any noncompliance issues.

#### Part III.A.4. - Description of Potential Pollutants and Sources

Comment 60:

Harris County and Houston comment that "on-site waste disposal areas" was in the existing MSGP, but was deleted from the listing of potential sources of pollutants in Part III.A.4.(b). Harris County and Houston request retaining "on-site waste disposal areas" in this section because these areas may be sources of pollutants and industrial facilities with on-site waste disposal areas should identify such areas in the SWP3.

Response 60:

On-site waste disposal areas may be sources of pollutants and industrial facilities with on-site waste disposal areas should identify those areas in the SWP3. In response to the comments, the term "onsite waste disposal" was replaced with "on-site waste disposal areas" in Part III.A.4.(b)(5) of the permit.

Comment 61:

Harris County and Houston request that the site map require the location of each sample point if they differ from the outfall locations. They note that some permittees collect samples in a location different from the depicted outfall. Harris County and Houston believe that being able

to see where permittees are taking samples on the site map would assist storm water investigators.

Response 61:

TCEQ agrees that if the location of a sampling point is different from the outfall location, that this should be indicated on the site map. Therefore, Part III.A.4.(c)(1) was revised as follows:

*(1) the location of each outfall covered by the permit, and the location of each sampling point (if different from the outfall location);*

#### Part III.A.5. - Pollution Prevention Measures and Controls

Comment 62:

The Army asks whether a facility that has a Spill Prevention, Control and Countermeasure Plan based on other federal and state regulatory requirements can reference that plan in the SWP3 to meet some or all of the specific requirements in the SWP3.

Response 62:

Part III.A.1.(b) of the permit states that plans and measures that stem from other regulatory requirements may satisfy in whole or in part specific requirements of the general permit to prevent the duplication of efforts by permittees. The permit also states that these plans may either be attached as a component of the SWP3 or referenced in the SWP3. Also, note that they must also be made readily available for review by authorized TCEQ personnel upon request.

Comment 63:

CSA Materials requests changing the word “inventory” to “supply” in Part III.A.5.(b)(7) of the permit.

Response 63:

TCEQ declines to revise the language, but would like to clarify that the term “inventory” refers to a list that must be maintained, rather than a physical supply of materials.

Comment 64:

The Army comments that it would be unreasonable to extend the education requirement in Part III.A.5.(f) to employees who work at an unregulated industrial activity or facility, such as large military installations that happen to contain smaller facilities that do require permit coverage. The Army asks if the education requirement extends to all employees that work at larger facilities such as military installations, or just those who are employed at the specific, smaller facilities that are covered by this permit and the SWP3 developed for those sites.

Response 64:

Many employees may work in areas not subject to storm water permitting requirements. However, the MSGP is developed based on the goal of minimizing the exposure of pollutants to storm water runoff. Therefore, all employees who are working at a facility may be an asset to the facility's pollution prevention efforts, but only if they are aware of the program. Employee

education does not need to be extensive, but should give employees a basic understanding of the facility's ongoing efforts to prevent pollution. All employees must receive some level of education in accordance with this provision. TCEQ recognizes that the level of education provided may vary considerably for large facilities, such as a military base, where many employees may work in areas not directly regulated under the MSGP.

Comment 65:

The Army, Fort Worth Aluminum Foundry, AFS, FWSBLGAC, WEI, PHA, and TCMA comment that it is unreasonable to require sampling when a facility is closed or not staffed. WEI requests revising the language in the permit to reflect these conditions and to include a waiver for visual monitoring when a facility is not in operation. The Army comments that an alternative would be to allow samples to be collected using some kind of automatic sampler and that a permittee can examine any such samples during the next business day. Fort Worth Aluminum Foundry and AFS comment that the changes to the quarterly visual monitoring requirements are unnecessary. PHA recommends that TCEQ provide other inspection options for locations that are not staffed or provide a waiver as EPA did in their 1995 MSGP. Golden Triangle SBAC comments that they do not agree with the proposed changes to the quarterly visual monitoring requirements found in Part III.A.5.(h), and request that the permit continue to require quarterly visual monitoring during normal facility operating hours. Safety-Kleen comments that the weekend requirements be eliminated from the permit requirements because it would be overly burdensome, costly, and would not provide any appreciable environmental benefit.

Response 65:

The existing MSGP did not provide a waiver for quarterly visual monitoring during periods that a facility is not staffed. However, TCEQ agrees that it may be appropriate to provide such a waiver during this permit term for quarterly visual monitoring if a qualifying storm event occurs outside a facility's normal hours of operation. The permit already provides a waiver from sampling for inactive facilities. However, an active facility would still be expected to perform monitoring of a qualifying storm event if it occurs during normal business hours, even if the facility is unmanned. If monitoring is not possible at an active, but unmanned site because of adverse weather conditions, the permittee could obtain a sampling waiver in accordance with Part III.C.5. of the general permit. Part III.C.5.(b) of the permit contains a provision allowing a waiver for any monitoring and inspection requirements, which would include the quarterly visual monitoring at an inactive facility. In response to the comments, the first sentence of Part III.A.5.(h) of the permit was revised to read:

“Storm water discharges from each outfall authorized by this general permit must be visually examined on a quarterly basis. Where practicable, the same individual should carry out the collection and examination of discharges for the entire permit term to ensure consistency. Monitoring must be conducted during daylight hours during the normal hours of operation for the facility . . . .”

Comment 66:

Harris County and Houston comment that Part III. A.5.(i), which states that “records . . . shall . . . be readily available,” conflicts with language in Part III.C.1.(c), which states that “records shall

be retained on-site and available for review.” Harris County and Houston request using the language “readily available” in both sections for consistency. Facilities under the MSGP do not all have on-site structures capable of retaining records or on-site personnel, and the phrase “readily available” would provide the necessary flexibility.

Response 66:

Both Part III.A.5.(i) and Part III.C.1.(c) were revised to state that records shall be “retained on-site or made readily available for review.” For the purposes of this permit, “readily available” generally refers to an operator making the SWP3 available on the same day that a request is made.

#### Part III.A.6. - Management of Runoff with Structural Controls

Comment 67:

Lloyd Gosselink and TMRA comment that the consideration of water quantity or rate of flow issues separately from water quality issues arguably goes beyond TCEQ’s legal authority pursuant to TWC, Chapter 26. Lloyd Gosselink and TMRA also comment that entities seeking coverage under the MSGP may not have the information necessary to make a determination regarding what will harm the natural physical characteristics of receiving waters. Lloyd Gosselink and TMRA request TCEQ remove Part III.A.6.(b) or, in the alternative, clarify what is required by this section.

Response 67:

TWC, §26.040, relating to General Permits, authorizes the commission to issue a general permit to allow the discharge of industrial waste such as storm water 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." One method of assuring that the discharge of storm water 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, operators cannot be allowed to discharge storm water under authority of a general permit. In some instances, operators may have to install velocity dissipation devices in order to comply with the requirements of the general permit. While operators may not have specific data available to predict potential impact to the natural physical characteristics of the receiving water, operators can make a determination regarding what may be required to reduce the velocity of a discharge if erosion is observed. No changes were made in response to the comment.

#### Part III.A.7. - Annual Comprehensive Site Compliance Evaluation

Comment 68:

DFW requests that Part III.A.7.(c)(3) provide further clarification regarding the 12-week deadline for remedying noncompliance. DFW thinks the time frame is for developing a formal plan of action to correct any incidences of noncompliance, not the time frame to completely

correct the noncompliance. DFW notes that the site compliance evaluation may identify incidents of noncompliance that may require infrastructure modifications or upgrades that involve in depth planning, funding, and/or construction activities.

Response 68:

The 12-week period outlined in Part III.A.7.(c)(3) refers to the time period that a formal report must be developed. Part III.A.7.(d) provides an additional 30 days to revise and implement the SWP3. The purpose of this requirement is to identify and remedy noncompliance with the SWP3, TCEQ disagrees that additional time is needed to comply with the existing SWP3. This is also consistent with the EPA's 2000 MSGP related to the Comprehensive Site Compliance Evaluation. In order to better clarify when the SWP3 must be developed and implemented, the first sentence of Part III.A.7.(c) was revised as follows, to clarify that the report is due 30 days following the evaluation:

Within 30 days of performing the annual site compliance evaluation, the permittee must prepare a report which includes a narrative discussion of the permittee's compliance with the current SWP3.

Part III.A.7.(c)(3) was also revised to remove the reference to an extension:

*(3)If an incident or incidents of non-compliance is identified, then the report shall include all necessary actions to remedy the non-compliance and update the SWP3 in accordance with Part III.A.7.(d) of this permit. The identified actions must be completed as soon as practicable, but no later than 12 weeks following the completion of the report.*

Finally, the first sentence of Part III.A.7.(d) was revised as follows, to clarify that the SWP3 must be revised and fully implemented within 12 weeks following the report date:

Within 12 weeks following the completion of the Annual Site Compliance Evaluation Report, the permittee shall revise and implement the SWP3 to include and address the findings of the Site Compliance Evaluation Report.

Part III, Section B. - Inspection of the Storm Water Pollution Prevention Plan (SWP3, or Plan) and Site

Comment 69:

Corpus Christi comments that the MSGP does not contain a provision acknowledging that MS4s, to the extent authorized by the law, may wish to regulate or limit the discharges they receive into their storm sewer system. Corpus Christi requests adding a provision within Part III.B acknowledging that the MSGP does not limit the authority of an MS4 to require permits for storm water discharges authorized by the MSGP in their storm sewer system. Corpus Christi recommends the following provision: "This general permit does not limit any authority of a home-rule municipality to require permits for the discharges authorized hereunder into its municipal separate storm sewer system."

Response 69:

Part II.B.10. of the permit already contains a provision that states that the permit does not limit the authority of a home-rule municipality to protect water quality. If a municipality determines that storm water discharges authorized under this permit are contributing to a decrease in water quality, then the municipality has the authority to enact its own requirements outside the scope of this permit. This could include prohibiting certain storm water discharges into its MS4. Since the permit already includes a provision regarding the authority of municipalities, no additional language was included in this section.

### Part III.C. - General Monitoring and Records Requirements

Comment 70:

Thompson & Knight comment that they support the language in Part III.C.1.(b), which clarifies that a dry weather discharge of storm water from an outfall can be monitored, such as collected storm water from a retention pond.

Response 70:

TCEQ acknowledges the comment and thanks the commentor for their input.

Comment 71:

WEI requests additional clarification in the first sentence of Part III.C.1.(b). WEI requests that the language be revised so that the first sentence reads, "A facility which uses retention ponds as a BMP might not experience a discharge immediately following a representative storm event."

Response 71:

The language in the permit is not meant to disallow the discharge from a retention pond during or immediately following a representative storm event. The current language is adequate to communicate that TCEQ recognizes that a discharge may occur during dry weather, particularly when a pond is utilized for settling. Therefore, no change to this section was made.

Comment 72:

TCC comments that the requirement that rain gauges be installed and monitored in Part III.C.1.(c) throughout the life of the permit is not in line with the reason the rain gauge is needed, which is to identify a representative storm event for sampling. TCC requests that the language be modified so the permittee is required to monitor the rain gauge only until they have identified a representative storm event and have taken required physical or visual samples for the monitoring period. TIP requests that the second sentence of Part III.C.1(c) be revised to read:

The rain gauge shall be monitored a minimum of once per week and once per day during rain events until the permittee has monitored, sampled, examined and inspected a representative storm event for the applicable monitoring period as set out in this permit.

Response 72:

TCEQ agrees that it may be appropriate to discontinue record-keeping for the rain gauge if the required representative sample(s) has/have already been collected for a particular monitoring

period. However, monitoring must continue even if no storm event occurs in order for a regulated facility to verify the reasoning regarding why a required representative sample was not collected for a particular monitoring period. The final sentence of Part III.C.1.(c) was revised and a new sentence was added to address the comment and to clarify the intent of this section:

Records shall be retained on-site or made readily available for review. Rain gauge monitoring and record-keeping may be temporarily suspended during a given monitoring period if a representative storm event has occurred and the required sampling and analyses has been conducted.

Comment 73:

ISRI states that it supports the requirement to maintain a rain gauge, and the related requirement to monitor the gauge, during rainfall events where samples are collected or visual monitoring is conducted. TIP comments that the requirement to monitor rain gauges on a daily or weekly basis between rain events has no regulatory basis nor environmental benefit. CSA Materials comments that the high frequency of monitoring exceeds the spirit of the permit and places undue burden on operators. Safety-Kleen asks that the monitoring frequency be changed to once per week and on weekends only if the facility is staffed during a rain event.

Thompson & Knight comment that the monitoring frequency could be reduced and still satisfy the practical purpose of gauge monitoring by revising the provision as follows:

Permittees must maintain a rain gauge on site in order to determine when a representative storm event occurs. The rain gauge shall be monitored a minimum of once per day during rain events until the requisite sampling for the monitoring period has been performed. Records shall be retained on site and available for review.

Lloyd Gosselink and TMRA request that TCEQ remove the requirement that the rain gauge be monitored once per week because it is unnecessary to monitor when no rainfall occurs and proposes the following language:

Permittees must maintain a rain gauge on site in order to determine when a representative storm event occurs. The rain gauge shall be monitored during rain events. Records shall be retained on site and available for review.

Response 73:

As noted in the previous response, the language in Part III.C.1.(c) was revised to clarify that the rain gauge must be monitored once per week and once per day during storm events, but that monitoring may be temporarily suspended for the duration of a given monitoring period after a representative sample is collected. Monitoring must be conducted during monitoring periods with no storm events for a permittee to demonstrate whether a qualifying storm event occurred. TCEQ agrees that it would be appropriate to discontinue monitoring for a particular monitoring period following a qualifying storm event that was sampled according to the requirements of the permit.

Comment 74:

Harris County, CMC Recycling, ISRI, TIP, Safety-Kleen, and Houston comment that requiring permittees to maintain a rain gauge on-site is unnecessarily burdensome for facilities that are unmanned and where accurate rainfall data is readily available by other means. CSA Materials and Houston comment that the requirement for having a rain gauge should be removed. Harris County and Houston request that the TCEQ consider certain exceptions, and suggest, at a minimum, requiring a rainfall gauge be used that is owned or operated by a local government and records rainfall events on a daily basis within a two-mile radius of the facility. PHA comments that there may be remote rural facilities that should maintain a rain gauge, but that numerous facilities are located in more densely populated areas and should not be required to maintain gauges when precipitation measurements recorded by many publicly maintained gauges are available over the internet.

Response 74:

TCEQ declines to revise the permit, but recognizes that regulated facilities must use a rain gauge that accurately records rainfall at their site. If an entity utilizes a rain gauge located any distance away from the facility, then it is possible that the data will not accurately reflect the rainfall at the actual site. Since the permit requires that representative samples be collected when the rainfall at a site meets the definition of “representative storm event,” TCEQ declines to state that off-site gauges may be used. However, it may be appropriate for some facilities located in very close proximity to a public rain gauge to utilize the data from that gauge. However, the site must retain applicable records to show whether or not a qualifying event occurred at their site. In response to the comments, the following change was made to the first sentence of Part III.C.1.(c):

Permittees must maintain a rain gauge on-site, or utilize a rain gauge located in the immediate vicinity of the site, in order to determine when a representative storm event occurs.

Comment 75:

Thompson & Knight, Lloyd Gosselink, and TMRA request that TCEQ clarify that a recording rain gauge can be utilized to satisfy the monitoring requirements during rain events.

Response 75:

The permit does not prohibit the use of any rain gauge that accurately measures the amount of rainfall at a site, provided that the gauge can show the date(s) of the rainfall event(s).

Comment 76:

FWSBLGAC comments that if the purpose of requiring a rain gauge is to build a database of rainfall events they would recommend augmenting any data provided by permit holders with data from the database that is already maintained by the National Weather Service Cooperative Observer Network.

Response 76:

The purpose of this requirement is for regulated entities to determine whether a representative rainfall event occurred in order to collect the required samples. This requirement is intended to help determine compliance with the permit conditions rather than serve as a data collection tool.

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

Comment 77:

Harris County, Houston, DFW, and NRG request that TCEQ add “benchmark monitoring” to Part III.C.2.(b)(3) to allow the establishment of substantially similar outfalls for the benchmark monitoring requirements, in addition to allowing this option for quarterly visual monitoring and hazardous metals monitoring. DFW comments to also allow this option for numeric effluent monitoring.

Response 77:

TCEQ agrees that discharges from regulated activities subject to benchmark sampling may be substantially similar and it would be appropriate to evaluate the data from those areas together. Allowing consideration of discharges from substantially similar outfalls together based on one sample is also consistent with the draft NPDES MSGP recently published by the EPA. In response to the comments, benchmark monitoring was added as a new item in Part III.C.2.(b)(3) of the general permit and the following sentence was added as the third sentence in Part IV.C.2.:

Substantially similar outfalls may be established for benchmark monitoring, in accordance with Part III.C.2. of the general permit.

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

Comment 78:

Lloyd Gosselink and TMRA comment that when monitoring is temporarily suspended, the requirement that such monitoring be conducted during the “next quarter” does not apply to all types of monitoring, such as benchmark monitoring. Therefore, Lloyd Gosselink and TMRA recommend revising Part III.C.5 to require that when monitoring is temporarily suspended, such monitoring will be conducted during the next required monitoring period.

Response 78:

In response to the comments, references to “quarter” in the second paragraph of this section were changed to “monitoring period.”

Comment 79:

Thompson & Knight note that Part III.C.5.(a) provides for temporary suspension of monitoring when there are adverse weather conditions that are either dangerous to personnel or that prohibit access to a discharge. Thompson & Knight request that “after dark” be added to the parenthetical listing conditions that are dangerous to personnel because that would be consistent with TCEQ’s current policy relieving permittees of any obligation to monitor at night. In addition, Thompson & Knight request that TCEQ add the phrase “when the facility is not

staffed, and when monitoring staff is not present at the facility” to the parenthetical listing conditions that prohibit access to a discharge. This revision would address situations where facilities are closed and when qualified monitoring staff are not working, such as weekends.

Response 79:

The requested language was not added to the permit because the existing language is sufficient to address the situation raised by the commentor. If a facility is unable to sample, inspect, examine, or otherwise monitor storm water discharges due to potential risks to facility personnel or the inability to reach the sampling location, then the facility must document the occurrence and include it in the SWP3.

#### Part III.D. - Numeric Effluent Limitations - Part III.D.1. - Discharges of Storm Water Runoff

Comment 80:

FWSBLGAC comments that the word “hazardous” should not be used in the permit to discuss general terms and situations, but should be used only when specific regulatory limits apply. FWSBLGAC comments that metals are not hazardous until they reach regulated concentrations.

Response 80:

The term “hazardous” is used for the list of metals in Part III.D.1. to be consistent with the TCEQ rule that establishes these effluent limits (30 TAC Chapter 319, Subchapter B, entitled “Hazardous Metals”). The following definition of “hazardous metal” is provided in 30 TAC §319.21: “Hazardous metal - Includes each of the following metals in its elemental state and any of its compounds expressed as that metal: arsenic, barium, cadmium, chromium, copper, lead, manganese, mercury, nickel, selenium, silver, and zinc.” No changes were made to the permit language.

Comment 81:

Lloyd Gosselink and TMRA object to the inclusion of numeric limitations for the 12 hazardous metals covered by 30 TAC Chapter 319 in Part III.D.1(a) and (b). Lloyd Gosselink and TMRA comment that 30 TAC §319.28 provides that “every waste discharge permit which does not currently specify effluent limitations for any of the hazardous metals covered by this subchapter is hereby amended to incorporate the terms of this subchapter.” Lloyd Gosselink and TMRA propose that the following language replace Part III.D.1., related to numeric effluent limitations:

The controls and Best Management Practices included in the Storm Water Pollution Prevention Plan constitute effluent limitation for the purpose of compliance with the requirements of 30 TAC Chapter 319, Subchapter B, related to Hazardous Metals.

Lloyd Gosselink and TMRA also ask that TCEQ clarify in the Fact Sheet that this language represents the establishment of specific effluent limitations for discharges of the hazardous metals included in Chapter 319.

Response 81:

The permit does contain specific effluent limits for the regulated metals. The permit allows a facility to obtain a waiver from testing if it can demonstrate that regulated metals are not present in their storm water discharge. By meeting the conditions of this section, a regulated entity is demonstrating compliance with the effluent limits in the permit, consistent with 30 TAC Chapter 319. No changes were made.

Comment 82:

Harris County, PHA, and Houston request that TCEQ revise the second column heading for Part III.D.1.(a) and (b) from “Daily Average” to “Monthly Average.” Harris County and Houston also request that a similar change be made to the subheading in the third paragraph of Part III.D.1.(c) which reads “Daily Average Effluent Limitation” to “Monthly Average Effluent Limitation.” Harris County and Houston note that “Monthly Average” is the term used in the current MSGP and is appropriate to use because the numeric limitations remain the same and this is a non-substantive change. In the alternative, the commentors request that it is made clear that this change is non-substantive in nature and that a definition be added to specify that daily average is the same as monthly average and means the average of all values collected within a 30-day period.

Response 82:

The permit continues the requirement from the existing permit term for permittees to analyze discharge samples to ensure that they do not exceed the daily maximum numeric effluent limitations included in Parts III.D.1.(a) and (b). If a permittee collects and analyzes more than one discharge sample during a single calendar month, then the permittee is required to meet the daily average numeric effluent limitations provided in the permit. The phrase “Daily Average” is appropriate throughout Part III.D.1. since the daily average is the average of samples taken in one calendar month. While the existing permit references "Monthly Average," it is consistent with TCEQ practice for TPDES permits to establish "daily average" effluent limits. However, in response to the comments, a definition of “daily average concentration” was added to Part I of the permit and this definition is consistent with TPDES individual storm water discharge permits:

Daily average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements. When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.

Comment 83:

Safety-Kleen comments that the discharge monitoring report (DMR) form included on Page 96 of the permit (Hazardous Waste Metals-Inland Waters) has a daily maximum sample requirement concentration for each of the metals/parameters identified on the page. However, Safety-Kleen comments that the maximum sample requirement is different for each of the metals (arsenic, barium, cadmium, chromium, and copper) for the daily maximum identified in Part III.D.1.(a) of the permit and asks for clarification.

Response 83:

The effluent limits listed in Part III.D.1.(a) of the general permit are the correct concentration values. The values on the DMR form were changed to reflect the concentration values listed in Part III.D.1.(a).

Comment 84:

The Army comments that facilities can exempt themselves from hazardous metals not found in storm water runoff (Part III.D.1.(e)), but not the same hazardous metals found in the benchmark sampling. The Army requests that any exemptions from sampling for hazardous metals for a specific sector also be extended to benchmark sampling for the same hazardous metal.

Response 84:

The purpose of benchmark sampling is to determine whether BMPs are effective at reducing pollutants in storm water runoff and the benchmark pollutants were chosen in part by the pollutants required in EPA's original MSGP of 1995. Additional benchmark pollutants that are being added during this permit term were chosen based on the likelihood of the pollutant to be present in a particular industrial sector. TCEQ will use the benchmark sampling data to determine whether future changes to the general permit would be beneficial, such as requiring continued benchmark sampling for certain industrial sectors, revising benchmark levels for certain sectors, adding specific controls such as BMPs to particular industrial sectors, or establishing effluent limits. In order to have data available that accurately shows what pollutants are being discharged from certain industrial sectors, it is important that all facilities monitor for the same pollutants. If a facility were to obtain a waiver for any benchmark pollutants, then the overall data may not accurately reflect the discharge characteristics of a particular industrial sector. Finally, there may be some cases where benchmark samples are not collected at a final outfall, as is required for hazardous metals sampling. In this case, the discharge would be required to obtain a separate sample for the hazardous metals monitoring requirement and only that sample would be required to meet the effluent limits established in the permit. No changes have been made to this section, except to add a new Part III.D.1.(f) as discussed in the Response to Comment 85, related to compliance with numeric effluent limits:

Comment 85:

For clarification, Thompson & Knight suggest the following revision to the language in the last paragraph of Part III.D.1.(e)(iii):

“If a facility is required to sample for any of the above hazardous metals as part of the benchmark requirements in Part V of this permit, then the permittee is subject to the effluent limitation listed in Part III.D.1 of this general permit for only those hazardous metals sampled as part of benchmark monitoring . . . .”

Thompson & Knight also suggest adding the following language to each of the sectors where benchmark values for metals are also listed in Part III.D.1.: “Facilities sampling for the following pollutants as part of benchmark sampling are also subject to the numeric effluent limits and reporting requirements listed in Part III.D.1 of this permit . . . .”

Response 85:

In response to the comment, TCEQ revised the language in the last paragraph in Part III.D.1.(e)(iii) into a new item, Part III.D.1.(f), to clarify that any hazardous metals that must be sampled under benchmark monitoring must also meet the effluent limits in the general permit. The phrase “all pollutants” was replaced with “those hazardous metals.”

In addition, TCEQ recognizes that the sampling location requirements may vary between facilities, such that benchmark samples are collected at “internal” outfalls, prior to storm water discharging off site, while hazardous metals compliance sampling must be conducted at each “final” outfall, prior to discharging off site or to surface water in the state. Accordingly, two new sentences were added at the end of this section so that Part III.D.1.(f) reads, in its entirety:

*(f) Relation to Benchmark Monitoring - If a facility is required to sample for any of the above hazardous metals as part of the benchmark requirements in Part V of this permit, then the permittee is subject to the effluent limitations listed in Part III.D.1. of this general permit for all hazardous metals sampled at a final outfall as part of benchmark monitoring. There are no waivers available for pollutants that are required in Part V of the general permit. If sampling for benchmark metals is not performed at a final outfall, then the above effluent limits may not apply for the benchmark sample if the sample is not representative of the discharge from the site. In this situation, the discharge must also be sampled at each final outfall to comply with the sampling and analyses requirements of this section.*

Finally, TCEQ reviewed each industrial sector in Part V. that is required to sample for hazardous metals, which are also limited in Part III.D.1. of the permit. The following language: “Facilities sampling for the following pollutants as part of benchmark sampling are also subject to the numeric effluent limits and reporting requirements listed in Part III.D.1. of this permit . . .” is already included in all of the industrial sectors where there are benchmark values for applicable metals. Therefore, no further revisions were made.

#### Part III.D.2. - Coal Pile Runoff

Comment 86:

WEI comments that the language in the second paragraph of Part III.D.2.(c) is unclear and requests that TCEQ delete the phrase “in which the violation(s) occurred,” or indicate that only violations need to be reported.

Response 86:

The intention of this section is to require permittees to have the results of monitoring available by March 31st following the monitoring period. As a result, the second paragraph of Part III.D.2.(c) was revised to delete the final phrase regarding violations and now reads:

Monitoring must be conducted prior to December 31st for each annual monitoring period and the results must be reported as required in Part III.E.4(c) of this permit. A copy of the DMR must either be retained at the facility or shall be made readily available for review by authorized TCEQ personnel upon request by March 31st following the annual monitoring period.

Comment 87:

Westward Environmental requests that the word “surface” be added in front of “water of the state,” in two locations of Part III.E.3.(a) of the draft permit, to reflect the changes made in Part I. Definitions.

Response 87:

This revision was made as requested.

#### Part III.E. - Standard Permit Conditions - Part III.E.4. - Reporting Requirements

Comment 88:

Lloyd Gosselink and TMRA comment that it is unclear in Part III.E.4(a) why a permittee would not be able to generate its own DMR report for filing with TCEQ, as long as such report contains all necessary information. Thus, Lloyd Gosselink and TMRA comment that TCEQ should allow a permittee to use and submit a self-generated form that is comparable to the official DMR.

Response 88:

Consistent with TPDES permitting for individual and general permits, the MSGP requires that the DMR either be an original EPA 3320-1 form, a duplicate of the form, or a form otherwise provided by the executive director. TCEQ recently implemented electronic reporting for DMR forms for applicable permits. Additional information on TCEQ’s electronic reporting system can be obtained at <http://www.tceq.state.tx.us/permitting/steers/edmr.html>. In addition, TCEQ attempted to make the DMR form more accessible by including the applicable DMRs as part of the general permit. A hard copy of each form may be copied directly from the permit and electronic versions will be posted on the web after the MSGP is issued.

#### Part III.E.5. - Solid Waste

Comment 89:

TIP and TCC request clarification that the term “industrial solid waste management unit” in Part III.E.5(b) only applies to storm water detention ponds and storm waste retention ponds or other dedicated earthen ponds whose primary purpose is removal of suspended solids. TIP also requests clarification that the exclusion for “other control structures” includes all secondary containment structures constructed for the purpose of compliance with 40 CFR Part 112. FWSBLGAC comments that treating storm water that is collected into a holding pond or otherwise accumulated as an industrial solid waste is not appropriate. FWSBLGAC comments that only the sludge and sediment that is removed and disposed of should have to be treated as controlled industrial solid waste. The storm water itself should not be classified as an industrial solid waste.

Response 89:

As described in the Response to Comment 13, the definition of “Industrial Solid Waste Management Unit” was revised to remove the term “Industrial.” The definition of “Solid Waste Management Unit” does specify that it only applies to ponds used for the removal of suspended solids. Part III.E.5.(b) of the permit refers to the definition of Solid Waste Management Unit;

therefore, the existing definition provides the needed clarification. In general, controls required under 40 CFR Part 112 would be considered “other control structures.” The primary pollutant of concern is oil and grease rather than suspended solids. In addition, the secondary containment structures utilized under 40 CFR Part 112 are not considered retention ponds.

Part IV. - Benchmark Monitoring Requirements Common to Many Industrial Activities - Part IV.A. - Use of Benchmark Data

Comment 90:

Houston, Harris County, and Winstead comment that this section should be revised to clarify that while benchmark values are not numeric effluent limitations, there are conditions where exceeding benchmark values may violate numeric effluent limitations or TCEQ surface water quality rules. Specifically, Houston and Harris County request that the second sentence of Part IV.A. be revised to add the phrase “unless the analytical results also exceed numeric limits listed in Part III.D.1. or violate surface water quality standards.”

Response 90:

Part III.D.1.(e) of the permit states that a permittee is subject to applicable numeric effluent limitations for any hazardous metals that they are required to sample under benchmark monitoring. In addition, the first sentence of Part II.B.6. states that “Discharges that would cause or contribute to a violation of water quality standards, or that would fail to protect and maintain existing designated uses of receiving waters are not eligible for coverage under this general permit.” To provide further clarification regarding effluent limits for hazardous metals, additional language was added to the first paragraph in Part IV.A. as follows:

Analytical results that exceed a benchmark value are not a violation of this permit, as these values are not numeric effluent limitations, however, if a permittee is required to sample for any of the hazardous metals listed in Part III.D.1. of this general permit as part of the benchmark requirements in Part V of this permit, then the permittee is subject to the effluent limitations in Part III.D.1 for those samples which are collected at a final outfall.

In addition, see the Response to Comment 85 where changes were made to the final paragraph of Part III.D.1. to clarify that benchmark sampling is only subject to effluent limits for hazardous metals, if the benchmark samples are collected at a final outfall.

Comment 91:

Thompson & Knight, ISRI, and CMC recommend that Part IV.A.4. be revised to more accurately reflect the fact that benchmark values are not effluent limitations. Thompson & Knight, ISRI, and CMC state that the current provision has been misinterpreted by field inspectors to mean that the benchmark values must ultimately be met. Thompson & Knight, ISRI, and CMC state that this interpretation is not appropriate for the following reasons: 1) the benchmarks are not sector specific and do not account for the level of control achievable for a specific sector/sub-sector implementing reasonable technologies; 2) the benchmarks are generally based on low-flow stream conditions, while storm water discharges often occur during high flow conditions; and 3) the benchmarks do not account for non-soluble metals in suspended

solids that are included in the total metal analytical results but do not affect water quality. Thompson & Knight, ISRI, and CMC suggest that Part IV.A.4. be revised as follows; “4) *other parts of the SWP3 for which revisions are appropriate.*”

Response 91:

Exceeding benchmark values is generally not considered a violation of numeric effluent limitations. However, if a permittee is required as part of its benchmark monitoring to monitor for one or more of the hazardous metals, any sample analyzed that exceeds the numeric effluent limitation for that metal included in Part III.D. would be a violation of a limitation. With the exception of the hazardous metals, TCEQ does not require a permittee to meet specific values associated with benchmark sampling. It does require that the SWP3 be revised to reduce the discharge of that pollutant to the extent possible, with the ultimate goal of achieving benchmark monitoring results below the value included in the permit.

The changes to the benchmark sampling levels are intended to relate to the actual discharge levels of the pollutants during storm events, rather than being established based on water quality criteria more appropriate for low-flow receiving stream conditions. However, levels that are established were determined to meet or exceed the levels required to meet the Texas Surface Water Quality Standards. In response to the comment, the requested revision was made to Part IV.A.(4) of the general permit.

Comment 92:

Lloyd Gosselink and TMRA suggest that if the monitoring frequency in Part IV.C. remains semiannually as opposed to quarterly (as requested in Comment 96), then the requirement included in Part IV.A. for permittees to investigate the cause of a benchmark exceedance and document the results of the investigation by “the end of the quarter following the sampling events” should be revised for consistency with the monitoring period.

Response 92:

The permit will retain the semiannual frequency for benchmark monitoring, but staff agrees that the time period allowed for a permittee to complete its investigation should be clarified. In response to the comment, the second sentence of Part X.C.(1) of the Fact Sheet was revised to read: “The Pollution Prevention Team must investigate the cause for each exceedance and must document the results of this investigation in the SWP3 within 90 days following the sample event.”

#### Part IV.B. - Sectors Subject to Benchmark Monitoring

Comment 93:

Winstead requests more information regarding why pH was added to SIC codes 1411, 1422 - 29, and 1481 in Part IV.B.

Response 93:

pH was added to the listed SIC codes in Sector J because that group of industries includes those that mine limestone and similar rocks. Based on the nature of the material being mined, there is a potential for the discharge to contain elevated pH levels.

Comment 94:

PHA objects to the addition of total suspended solids (TSS) to Part IV.B. since it does not adequately characterize stormwater-borne solids. PHA suggests that the suspended sediment concentration (SSC) via American Society of Testing and Material (ASTM) D3977 is a more appropriate means of characterizing solids in storm water as documented in studies performed by the U.S. Geological Service (USGS) and the U.S. Department of the Interior. PHA believes that continued use of TSS misrepresents the effectiveness of storm water controls that rely on settling, filtering, and surface stabilization techniques based on the USGS findings that use of TSS biases monitoring to the finer fraction of particle sizes and under-reports coarser solids. PHA contends that SSC is a more appropriate parameter and suggests an initial benchmark value of 200 milligrams per liter (mg/L) to reflect the differences in monitoring results between TSS and SSC found in the studies.

Response 94:

TCEQ declines to make the change from monitoring TSS to SSC at this time. TSS is currently the standard parameter utilized to monitor storm water-borne solids. TSS is also the parameter included in the Texas Surface Water Quality Standards at 30 TAC Chapter 307 and in EPA's MSGP. If more information becomes available on SSC, TCEQ may consider this revision in a future permit action.

Comment 95:

Houston comments that the determination for benchmark monitoring is based on use in any calendar year for the three years prior to submitting an NOI. Houston notes that this appears to conflict with the table in Part IV.B. of the permit that is based on annual usage. Houston recommends revising the footnote to the table to reflect the specific use requirements stated in Sector S.

Response 95:

TCEQ agrees that the table included in Part IV.B. should be clarified to indicate that for Sector S, the determination for benchmark monitoring is based on use of deicing chemicals for the three years prior to submitting an NOI. As a result, the footnote in Part IV.B. was revised as follows:

Monitoring is only required for airports with deicing activities that utilized for deicing more than 100 tons of urea or more than 100,000 gallons of ethylene glycol in any calendar year for the three years prior to submittal of an NOI for coverage under this permit.

Part IV.C. - Benchmark Monitoring Requirements

Comment 96:

Harris County and TCMA comment that revising the monitoring period to twice per year for the entire permit term will be unduly burdensome and will not contribute to water quality. Houston suggests that the monitoring period should remain once per quarter for the first full monitoring period. TCMA believes that annual benchmark monitoring, in combination with quarterly visual inspections and the annual compliance evaluation included in the permit, will be sufficient to evaluate the effectiveness of the SWP3. ISRI and Winstead support the proposed change to require benchmark monitoring for the full permit term. ISRI believes that monitoring twice per year provides facilities with greater flexibility to identify the storm events to be monitored. Thompson & Knight support the revision to semiannual monitoring, contending that this should increase the likelihood that trained personnel will be present to collect a sample during a representative storm event during work hours. ISRI suggests that this may also reflect areas in Texas where the prevailing weather conditions may be difficult to identify an appropriate storm event in each quarter. Winstead recommends that the frequency of monitoring be quarterly instead of semiannually, regardless of whether the results are below the values. Winstead contends that semiannual monitoring provides the permittee with considerable latitude in choosing when to monitor. Instead, Winstead states that since the visual monitoring requirement is quarterly, benchmark monitoring can be performed at that time with minimal additional effort.

Lloyd Gosselink and TMRA request that the frequency of benchmark monitoring be revised to a quarterly basis for two years since monitoring throughout the permit term does not provide the permittees the opportunity to evaluate the data and fully implement improvements to the BMPs in response to the results of monitoring. Lloyd Gosselink and TMRA state that the quarterly monitoring in the current permit provided permittees the opportunity to collect eight samples in a relatively short amount of time, which allowed permittees to better evaluate whether a sample result was an error or an actual violation of a benchmark value. Lloyd Gosselink and TMRA suggest that TCEQ consider requiring benchmark monitoring during years 1 and 3, or 2 and 4 of the permit term. Lloyd Gosselink and TMRA contend that these frequencies would allow the permittees to respond to the first set of monitoring results and would allow the second set of results to serve as a measure of whether the improvements addressed any elevated levels obtained previously.

Response 96:

TCEQ recognizes that the revisions to monitoring frequency will result in samples being collected for more qualifying storm events (ten), as compared to a maximum of eight required in the existing MSGP, but believes that this will not be unduly burdensome. In addition, TCEQ believes that over the duration of the permit term, data obtained semiannually for each year from each regulated facility will provide a more accurate characterization of the discharge from different industrial sectors. Based on this data, TCEQ may consider including requirements for BMPs in future permit terms in order to address potential sources of pollutants in an effort to protect water quality. Additional changes that could be considered include sector-specific benchmark levels, removal of benchmark sampling, or adding effluent limits.

TCEQ also notes that in the Response to Comment 77, Parts III.C.2.(b) and Part IV.C.2. were changed to allow permittees to establish substantially similar outfalls for benchmark monitoring,

which should decrease the burden on facilities with multiple outfalls discharging from areas that have discharges that are similar in character and quality. Therefore, no changes were made to the semiannual monitoring frequency for the permit term.

Comment 97:

The Army, Houston, Harris County, Lloyd Gosselink, Thompson & Knight, and TMRA request that the permit include a waiver in Part IV.B. for those facilities with benchmark monitoring results below the benchmark monitoring values, similar to what was allowed in the first permit term. The Army states that in the first permit term, the monitoring waiver from the second year of testing provided permittees a reward for not discharging pollutants, or for reducing their discharge of pollutants. Houston suggests that this waiver be available for permittees that remain within the benchmark values for the first two years of benchmark monitoring. Lloyd Gosselink, Thompson & Knight, and TMRA request that if the benchmark monitoring frequency remains semiannual that a waiver be included based on the results of the first two years of the permit term (four samples). Lloyd Gosselink, Thompson & Knight, and TMRA further comment that regardless of the frequency of benchmark monitoring, a waiver should be included in the permit.

Response 97:

The intention of the benchmark monitoring requirement is to provide TCEQ with an accurate representation of the levels of pollutants in each type of industrial discharge as well as to help regulated facilities determine whether BMPs are functioning to reduce the discharge of pollutants. TCEQ will utilize collected data to determine if any BMPs or numeric effluent limitations are necessary to protect water quality. If facilities that consistently achieve benchmark monitoring results below the values included in the permit are given a waiver from future benchmark monitoring, then an analysis of the results submitted will only include those results above the benchmark value. This data may be difficult to evaluate in determining whether additional requirements are necessary for a particular sector.

TCEQ believes that the existing requirements will provide the appropriate information to evaluate BMPs and to characterize discharges, which will benefit the permittees as well as the TCEQ. Additionally, if a facility consistently discharges at levels below the benchmark levels, then the facility will not be required to investigate the cause of any exceedance, nor revise the SWP3. On the other hand, if a permittee continues to sample for benchmark parameters, then it is possible that levels could change over time, such as during periods where BMPs or business practices are changing. This data would then help the permittee to determine whether the SWP3 was continuing to be effective or whether updates may be required.

#### Part IV.C.2. - Reporting Requirements

Comment 98:

DFW and Safety-Kleen comment that Part IV.C.2. of the permit requires that the analysis results of sampling must be submitted to the TCEQ before March 31st of each year, but Part X.C.(1) of the Fact Sheet and Executive Director's Preliminary Decision states that results are required to

be reported during the third year of the permit term. DFW and Safety-Kleen request that the correct reporting frequency be clarified.

Response 98:

In response to the comment, Part X.C.(1) of the Fact Sheet and Executive Director's Preliminary Decision was revised to state: "The proposed TPDES general permit requires this monitoring to be conducted twice per year throughout the permit term, and reported by March 31st of each year."

Comment 99:

Houston and Harris County comment that the proposed reporting values for the benchmark monitoring are yearly average results for each pollutant and are not on an outfall-by-outfall basis. Houston and Harris County comment that sites with more than one outfall may discharge to different receiving streams and as a result, averaged results can lead to undetected, elevated levels of pollutants discharged to a particular receiving stream. Houston and Harris County recommend changing the reporting requirement to include each pollutant on an outfall-by-outfall basis. Houston and Harris County state that this will allow TCEQ to extract information on pollutant loading to stream segments from the results. Houston and Harris County also comment that the reporting requirement need not be changed if the goal of TCEQ is to obtain statewide averages for each parameter.

Response 99:

TCEQ declines to make this change since the data obtained from the benchmark monitoring requirement will be utilized to assess the pollutant loading by specific industries, rather than pollutant loading to a particular receiving stream. There may also be circumstances where benchmark sampling is performed on an "internal" outfall in order to properly characterize the discharge from a particular industrial sector, but where the benchmark sample does not accurately reflect the character of the discharge from a final outfall. This may be due to runoff from several areas of the facility (both regulated and non-regulated areas) commingling prior to discharge into or adjacent to surface water in the state. In addition, Parts III.C.2.(b) and IV.C.2. of the permit allow a permittee the ability to establish substantially similar outfalls for benchmark monitoring, potentially allowing some facilities to lessen their existing sampling requirements. If an approved TMDL implementation plan includes requirements to assess or address a specific pollutant being discharged into an impaired water body, TCEQ will consider changes at that time to address the requirements of the implementation plan.

Comment 100:

TCMA believes that the annual reporting requirement for submission of DMRs should only be required for those facilities that have an average annual result above the benchmark value for each pollutant. TCMA contends that since the benchmark values are not enforceable limits, then reporting requirements should not be more stringent than those for hazardous metals with enforceable limits. TCMA also comments that TCEQ has not made available the number of facilities complying with the reporting requirement of the benchmark values and that a reporting requirement should not be included in the permit because it will likely result in more instances of noncompliance.

Response 100:

TCEQ agrees that the results of benchmark sampling are not enforceable limitations, except that a permittee may have to comply with effluent limits for hazardous metals listed in Part III.D.1. of the permit for those metals that are also sampled as part of the benchmark monitoring requirements. The reporting requirements for effluent limits are established in accordance with federal rules. The reporting requirements for benchmark sampling are established so that TCEQ can evaluate the data for future changes to the MSGP, such as adding sector-specific BMPs, numeric effluent limitations, or removing benchmark parameters. While it could be considered noncompliance if permittees do not submit the benchmark values as required by the permit, this requirement is not unduly burdensome. Therefore, no changes were made to this section.

Comment 101:

PHA objects to TCEQ's method for revising the benchmark values for aluminum, iron, lead, and zinc and states that the Fact Sheet does not adequately explain why the median results were chosen for the proposed values. PHA believes that the 2003 values should reflect storm water runoff from sites with mature SWP3s, and as a result, the 90% values would be more appropriate. PHA further comments that it is inappropriate to suggest that facilities that have been implementing an SWP3 for several years must aggressively enhance existing controls beyond those currently in place. PHA is concerned that a facility could be in compliance with numerical limitations, but exceed the benchmark value, potentially inferring that the SWP3 is ineffective.

Response 101:

For several pollutants, TCEQ chose to revise the existing benchmark levels based on the median result and in some cases used the maximum result reported. For the pollutants mentioned by the commentor, the level was lowered for total lead and was raised for the other pollutants. The median level was used because it is appropriate for a sample result that is above the level that half of all dischargers in Texas have reported would warrant further evaluation. It is also recognized that some facilities that have developed and implemented very effective SWP3s may still discharge at levels above the benchmark value, simply based on the nature of the pollutants at the facility. While many facilities have been operating under an MSGP since 1995, there are likely a number of these facilities that are just now obtaining coverage, including new facilities. TCEQ elected to continue with the proposed levels, with the exception of ammonia-nitrogen, which is being revised to the maximum reported level of 8.11 mg/l. This is appropriate based on the small number of samples that were submitted.

Comment 102:

Thompson & Knight agree with TCEQ's general approach in adopting technology-based benchmark values. However, Thompson & Knight recommend that TCEQ either retain the existing water quality-based benchmark values, or develop specific technology-based values based on sectors or sub-sectors in lieu of permit-wide values based on the average or median of all results reported in order to more accurately establish new benchmark values. For example, Thompson & Knight state that the total iron concentration in discharges from landfills and steel foundries should be different due to the nature of the processes and the technologies available to each industry and that due to these differences, different technology-based values should be

assigned. Thompson & Knight further comment that the number of reporting facilities in each sector may also affect the accuracy of the permit-wide benchmark values. For example, there are many more landfills and concrete products facilities than iron and steel foundries and the value based on the median of the results will be skewed towards the value achievable by the more abundant facilities. Finally, Thompson & Knight state that if TCEQ does not have the data necessary to establish technology-based sector-specific benchmark values, then the current water quality-based values are more appropriate if they are higher than the median or average of the 2003 results.

Response 102:

The specific parameters where levels were lowered to the median level include chemical oxygen demand (COD), total copper, and total lead. Other benchmark levels that were lowered were set at the maximum level that was reported by any facility. Therefore, these levels should not impact a particular sector (these include ammonia-nitrogen, total mercury, and total selenium). TCEQ recognizes the benefit of sector-specific benchmark levels, but did not have enough appropriate data collected during the evaluation period to establish different levels for each industrial sector. TCEQ recognizes that with the changes to COD, total copper, and total lead, certain sectors may be faced with a somewhat more difficult process to address sample results above the new benchmark levels. For those sectors that discharge at levels consistently above the proposed benchmark levels, it will be necessary for the permittee to update the SWP3 to include a statement assessing whether or not the results are achievable when appropriate BMPs are utilized. Where possible, the permittee should revise the SWP3 and its BMPs to attempt to lower the level of pollutants being discharged, with a goal of discharging below the benchmark levels.

The revised benchmark monitoring frequency of two samples per year during the entire permit term, without the opportunity for sampling waivers in subsequent years, will result in the collection of more data within each sector and this information may help TCEQ set benchmark values or other requirements that replace benchmark values on a sector-by-sector basis in future MSGPs. While benchmark levels may be consistently higher for certain industries based in part on the reasons described by the commentor, the permit does specify that the benchmark levels are target levels that are not enforceable, except to trigger a requirement to evaluate the SWP3. No changes are proposed in response to the comment, but Part X.C.(2) of the Fact Sheet was corrected to clarify that the level for COD was lowered based on the median result rather than the average result.

#### Part V. - Specific Requirements for Industrial Activities

Comment 103:

Westward Environmental points out that the certain parameters have been added to the table in Part IV.B. but have not been added to the corresponding tables in Part V. of the permit, and requests that the tables in Part IV.B. and Part V. be modified to be consistent. Specifically, Westward identifies the following sectors and parameters:

*a) Sector C (Industrial Organic Chemicals) - total suspended solids (TSS)*

- b) *Sector E (Clay Products) - TSS, pH*
- c) *Sector E (Concrete Products) - pH*
- d) *Sector F (Steel Works, Blast Furnaces, and Rolling and Finishing Mills) - TSS*
- e) *Sector J (Dimension Stone, Crushed Stone, and Nonmetallic Minerals (except fuels)) - pH*
- f) *Sector K (Hazardous Waste Treatment, Storage, and Disposal) - Ammonia-Nitrogen*
- g) *Sector O (Steam Electric Generating Facilities) - TSS*
- h) *Sector Q (Water Transportation Facilities) - TSS*
- i) *Sector S (Airports with deicing activities) - Ammonia-Nitrogen*
- j) *Sector AA (Fabricated Metal Products Except Coating) - TSS*

Winstead states that the benchmark parameters indicated in the table are not consistent with those listed in Part V.J. of the permit. PHA also comments that the Fact Sheet and Part IV.B. of the permit indicate that TSS was added as a benchmark monitoring parameter under Sector Q, Water Transportation, but that Part V.Q.6. of the permit does not include TSS.

Response 103:

The benchmark parameters in Part V. were revised for consistency with the table included in Part IV.B. and with the information included in the Fact Sheet (Part X.V. and Appendix A). For those sectors required to sample for ammonia, the term was clarified as ammonia-nitrogen. Also, as discussed in Response to Comment 136, the level for ammonia-nitrogen was raised from 0.19 mg/L to 8.11 mg/L.

Comment 104:

Harris County, AFS, CMC Recycling, TCMA, Fort Worth Aluminum Foundry, and Thompson & Knight comment that TCEQ should wait before revising benchmark levels until they have additional data that would provide TCEQ with the opportunity to more adequately evaluate certain benchmark monitoring levels so they are set at the appropriate levels. Harris County requests additional explanation for the proposed changes to the metals levels. Harris County believes that the data is insufficient at this time to revise the benchmark monitoring levels for certain parameters. AGC of Texas requests further review of the benchmark levels for aluminum, iron, and total copper. AGC of Texas notes that all facilities in the Houston area are unlikely to meet the aluminum and iron benchmark levels and recycling facilities to meet the total copper level without on-site retention ponds. CMC Recycling, Lloyd Gosselink, Thompson & Knight, and ISRI comment that technology-based standards would be more appropriate on a sector-specific basis.

Response 104:

The benchmark values were revised based on the data received from facilities that were sampled in 2003. TCEQ did not verify whether every regulated facility submitted benchmark samples, and also did not include incomplete data or data that was unclear. However, the data that was evaluated did provide a good basis for revising the levels for certain values over the next permit term. To provide some clarification regarding how data was analyzed, the following additional

paragraph was added to Appendix A of the Fact Sheet as item 1, entitled “Methods Used to Evaluated Data”:

The benchmark monitoring information submitted by the permitted entities was entered into a benchmark database. Each entry into the database contained the permit number, SIC code, sector, outfall number (for those entities that have multiple outfalls covered under one permit), the measurement for the pollutant (only the pollutants originally assigned to the individual SIC code groups by the EPA), the associated quarter, and an option to indicate no storm events (no discharge). If the benchmark monitoring information included either no-storm event, a severe storm or flood, or no discharge from the facility as a reason for not carrying out analytical monitoring for a specific quarter, then the database entry included that information. In general, whenever a no-storm event was reported, pollutant data was absent. The analysis eliminated entries with a no-storm event and only calculated entries that included pollutant data (i.e. storm water discharge present). If the pollutant concentration was reported to be non-detectable, then the entry was recorded as zero in the appropriate field. This analysis did not include a review of the permitted facilities to identify which, if any, did not submit data.

TCEQ plans to review the benchmark data collected during the new permit term to better assess whether the proposed values are appropriate or can be further revised. It is recognized that some facilities that have developed and are already implementing effective SWP3s may still discharge pollutants at levels above the benchmark value based on the nature of the pollutants at the facility. TCEQ may consider revising benchmark levels on a sector-specific basis, establishing sector-specific BMPs, or adding additional conditions based on the data collected over the next permit term. It may also be beneficial to review data based on geographical area, if sector-specific levels will not address certain pollutants. However, at this time, the TCEQ declines to perform additional analysis on the benchmark levels for aluminum, iron, and copper, as requested by one commentator. The data that was collected did not incorporate information on the geographic location of the discharge. During the next permit term, TCEQ will review whether resources should be used to evaluate data within separate geographical areas as well as between different sectors.

The values for total aluminum, total iron, and total copper were each revised based on the median result reported from the 2003 benchmark sampling that was evaluated by TCEQ. Aluminum and iron was previously set by EPA at a level equivalent to federal water quality criteria for the acute protection of freshwater aquatic life. The values for aluminum and iron were raised to the median result reported, while the value for copper was reduced by 40% based on the median result. TCEQ Water Quality staff reviewed the proposed increase in levels and determined that the increase would not have an adverse impact on water quality standards. It is recognized that half of all results reported still were above the median result and it is appropriate to use the median as a threshold to trigger a requirement for permittees to evaluate their SWP3s.

TCEQ recognizes that some facilities that were previously able to meet or exceed the original benchmark levels in the existing MSGP may have difficulty in meeting the levels in the MSGP renewal. It should be reiterated that the benchmark levels are not effluent limits and are not enforceable as such, but discharges above the levels to trigger a requirement to assess the

effectiveness of the SWP3. Though the benchmark was lowered for total copper, and for certain other pollutants, it does not necessarily mean that a permitted facility must add new BMPs, only that the facility must review its existing BMPs and determine if any additional actions can be taken to reduce the level of pollutants. Settling ponds may be a good resource to lower the level of pollutants that are discharged from the site and may provide other benefits as well. However, the permit does not require that BMPs be changed to “meet” the levels.

The revised levels for other metals were established based on the median results reported where there was enough sampling data to make a change. These metals include aluminum (increased by approximately 60% from original level), total copper (decreased by approximately 40% of original level), iron (increased by 30%), total lead (decreased by approximately 85% of original level), and total zinc (increased by approximately 37% of original level). The levels for total mercury and total selenium were reduced based on the maximum level reported because, although there was only a small number of analyses available for each of these metals, no reported result exceeded the revised level. Finally, the levels for other metals (total arsenic, total cadmium, and total silver) were retained from the current MSGP because there was not a sufficient amount of data available.

Comment 105:

CMC Recycling, ISRI, TCMA, TMRA, and Lloyd Gosselink are concerned about the accuracy of the underlying data and the methodology used to set the benchmark levels in the permit. CMC Recycling and TCMA question whether the data is complete. ISRI, TCMA, FWSBLGAC, TMRA, and Lloyd Gosselink question calculations based in the average or median values of all the reported 2003 benchmark monitoring data across all of the disparate industry sectors subject to benchmark reporting. For example, it appears that TCEQ’s approach may have resulted in overall median or average values for particular pollutants that tend to reflect the values obtained from certain specific industry sectors, especially those with numerous reporting facilities, rather than many or most individual sectors.

Response 105:

As discussed in the previous response, TCEQ evaluated data that it received from facilities during calendar year 2003. Additional information was added to the Fact Sheet to explain how the data was entered. TCEQ did not confirm that all facilities submitted data and may not have included all data in its calculations. TCEQ did not verify the permit numbers nor the SIC codes that were listed on the forms, and did not include data from reports that appeared to be incomplete. Further review of data that was not included during the initial analysis for revising benchmark levels resulted in the following revisions to certain benchmark monitoring levels in the Permit and Fact Sheet: COD was revised from 52 mg/L to 55 mg/L; copper was revised from 0.027 mg/L to 0.030 mg/L; and lead was revised from 0.013 mg/L to 0.010 mg/L. Although some information was not included in the data set, the information that was evaluated provides sufficient data to make the decision to revise some of the benchmark levels during this renewal permit term. Additional comprehensive changes may be made during future permit actions because of the data collected this permit term.

As an example of how the TCEQ may reevaluate data on a sector-specific basis during the next permit term, a preliminary review of data for total copper suggests that Sector F (Primary Metals Facilities) facilities may benefit from additional review over the next permit term. It appears that the median results of copper levels from other sectors required to sample (Sector A and Sector N) are consistently below the proposed level of 0.027 mg/l, but that some SIC codes within Sector F reported analytical results above the original benchmark level as well as above the new proposed level. It should be noted that the average of the values reported for total copper was significantly higher than the median result, partly because of the results of sampling from Sector F facilities. When evaluating what, if any, additional BMPs are needed to address the discharge of pollutants sampled under the benchmark program, a permittee may wish to look at the average level of a particular pollutant that was reported. In this case, the average level of 0.25 mg/l may pose a water quality concern in certain areas. However, it may be a good reference to use for comparison to other discharges and when making plans to revise an SWP3.

Comment 106:

ISRI supports the change in benchmark monitoring frequency from once per quarter to twice per year because this approach gives greater flexibility to the affected facilities for identifying the storm events to monitor. Winstead comments that the monitoring frequency should be once per quarter rather than twice per year. Winstead comments that if the frequency of benchmark monitoring is required more often than numeric effluent limitation monitoring, it should be clarified that the numerical limitations still apply to the results of the benchmark monitoring.

Response 106:

The permit adequately explains that discharges subject to benchmark sampling are also subject to numeric effluent limitations, as each industrial sector that requires sampling for a hazardous metal includes language to that effect. For example, the final paragraph under the benchmark sampling table for Sector C states: "Facilities sampling for the following pollutants as part of benchmark sampling are also subject to the numeric effluent limits and reporting requirements listed in Part III.D.1. of the permit: total lead and total zinc." TCEQ declines to revise the monitoring frequency to once per quarter. Extending the sampling requirements to include the whole permit term should provide sufficient sampling data to make additional changes in future permit actions.

Comment 107:

Steele requests clarification on how to handle issues where zinc benchmark values exceed the 0.16 mg/L value where no pollution was generated should be addressed. Steele comments that there are anecdotal reports of storm water being collected before it hits the ground, yet samples still show a high level of zinc, which possibly derive from the ubiquitous presence of galvanized building materials.

Response 107:

TCEQ notes that there may be additional factors such as galvanized building materials that may affect zinc levels. However, these benchmark levels are not numeric limits and if exceeded would not be considered a permit violation. If a benchmark level is exceeded, and TCEQ is able to relate the cause of the exceedance to runoff from situations such as runoff from galvanized

buildings, then subsequent exceedances of benchmark values for that pollutant may be resolved by referencing the earlier finding in the SWP3.

Comment 108:

Westward Environmental asks for clarification regarding whether changes to metals benchmark values are related to a change from toxicity characteristic leaching procedure metals to total metals for Sectors C, E, F, G, H, K, L, M, N, O, Q, S, Y, and AA. If so, please indicate “totals” to tables, if not, please provide justification for the changes.

Response 108:

In response to the comment, the tables that identify the benchmark requirements included in each sector of the permit were revised to indicate “total” for each metal where it was not already included.

#### Part V. - Sector C - Chemicals and Allied Products

Comment 109:

Harris County and Houston request adding the following to the Benchmark Parameters to Sector C for the corresponding SIC codes: 1) Add total dissolved solids for SIC 2812-2819 to indicate water-soluble inorganic chemicals and 2) Add total organic carbon or chemical oxygen demand (COD) for SIC 2841-2844 to indicate water-soluble constituents for this category.

Based on the experiences of Harris County and Houston with implementing their industrial inspection program, facilities listed under the SIC codes noted sometimes store and use water-soluble chemicals that are exposed to precipitation. There is currently no benchmark requirement to detect these chemicals in storm water. Visual monitoring may not be sufficient if the chemicals are odorless and colorless.

Response 109:

TCEQ declines to include additional benchmark monitoring values to Sector C at this time. Each permittee authorized under the MSGP must implement an SWP3 that effectively reduces the discharge of pollutants into surface water in the state and the addition of a new benchmark monitoring requirement does not affect this requirement. If a municipality that receives discharges into its MS4 from a permittee authorized under the MSGP determines that a facility’s SWP3 is not adequate, then the municipality may consider addressing this concern through local ordinances.

Comment 110:

Houston comments that composting operations are defined within SIC codes 2861 - 2869. Houston notes the North American Industry Classification System for composting manufacturing is number 325314, which converts to SIC code 2875. Houston requests that a description of commercial composting operations be included in this sector.

Response 110:

SIC code 2875 is listed under Sector C, related to Agricultural Chemicals. In response to the comment, relevant sections of the permit and Fact Sheet relating to Sector C facilities were revised to incorporate the following description of SIC code 2875:

2873 - 2879 Agricultural Chemicals (Including Fertilizers, Pesticides, Fertilizers Solely from Leather Scraps and Leather Dust, and Mixing of Fertilizers, Compost, and Potting Soils)

Part V. - Sector E - Glass, Clay, Cement, Concrete, and Gypsum Products

Comment 111:

Houston requests that sand and gravel distribution centers be included in this sector since these centers perform similar activities to concrete batch or ready-mix plants.

Response 111:

The wholesale distribution of sand and gravel would be classified as SIC Code 5032, "Wholesale Trade - Durable Goods; Brick, Stone, and Related Construction Materials." SIC code 5032 is not listed in the definition for "storm water associated with industrial activity," as established in the federal rules at 40 CFR §122.26(b)(14). On a case-by-case basis, TCEQ may designate any facility that is determined to need authorization to control pollution related to storm water discharges and that do not meet the description of an industrial activity covered by Sectors A - AC. TCEQ declines to expand the definition of regulated facilities at this time.

Comment 112:

Lloyd Gosselink and TMRA request revising Part V.E.2. to provide that process wastewater may be discharged under authority of a separate TPDES or NPDES permit because some facilities may still be discharging process wastewater under an NPDES permit.

Response 112:

Based on the comment, the requested language was added, and the paragraph also includes additional revisions for the purpose of general clarification as follows:

“. . . shall provide additional certification that process wastewater resulting from washing of trucks, mixers, transport buckets, concrete forms, and other equipment will not discharge into surface water in the state, or shall provide certification that such process wastewater is discharged under authority of a separate TPDES or NPDES permit.”

Comment 113:

Lloyd Gosselink, Thompson & Knight, and TMRA comment that Part V.E.3. requires facilities to conduct regular inspections and then generate a narrative discussion considering the benefit to the quality of the discharge from conducting more frequent inspections. Lloyd Gosselink, Thompson & Knight, and TMRA recommend removal of the narrative discussion requirement so the permittee can focus on performing inspections and improving the SWP3. Lloyd Gosselink, Thompson & Knight, and TMRA also note that TCEQ removed similar language from Sector L before the initial MSGP was issued in response to public comment.

Response 113:

The requirement to perform inspections and improve the SWP3 is adequate. Therefore, it is appropriate to remove this requirement. In response to the comments, the last two sentences in Part V.E.3.(c) were deleted from the permit.

#### Part V. - Sector F - Primary Metals

Comment 114:

Thompson & Knight comment that Part V.F.3.(a) provides that the SWP3 for covered facilities include general housekeeping requirements, including having to clean all impervious areas of the facility where dust, debris, or other particulate matter may accumulate. Thompson & Knight contend that this requirement is unreasonable and overly burdensome, and request deleting it from the MSGP.

Response 114:

TCEQ disagrees that the requirement is too burdensome, as facilities that manufacture primary metals have the potential to discharge elevated levels of hazardous metals. The current language is identical to the existing MSGP, and is also similar to the EPA's 2000 MSGP. In order to provide general clarification, the first two sentences of Part V.E.2.(a) were revised as follows:

This section of the SWP3 must include a program for cleaning and maintaining all impervious areas of the facility where dust, debris, or other particulate matter may accumulate, especially areas where material loading/unloading, storage, handling and processing occur.

Comment 115:

Lloyd Gosselink comments that the requirement in Part V.F.4. requiring "numeric effluent limits" should be replaced with "narrative effluent limits" for total zinc and total copper. Lloyd Gosselink comments that numeric, concentration-based, effluent limitations for the Chapter 319 hazardous metals should not be applicable to storm water discharges.

Response 115:

The requirement to sample for hazardous metals is a requirement for every discharge regulated under the MSGP. This is consistent with the existing TPDES MSGP and the reference effluent limits were retained. In the existing MSGP, TCEQ provided a provision allowing a facility to obtain a waiver from sampling for a portion or all of the metals by certifying that the limited metals either are not present at the site or are not exposed to storm water. In this renewal, TCEQ added an additional waiver option that may be obtained by collecting a sample and demonstrating that no detectable levels of the listed metals are present. Compliance with the waiver requirements would equal compliance with the numeric effluent limits established in TCEQ rules at 30 TAC Chapter 319, Subchapter B, related to Hazardous Metals.

The purpose of the final sentence of Part V.F.4. is to notify dischargers that additional effluent limits may apply. However, TCEQ notes that there may be situations where benchmark sampling is required following runoff from a regulated area, but the runoff from that area does not discharge through a final outfall before commingling with other facility wastewater.

Sampling for the hazardous metals listed in Part III.D.1. is required where the discharge leaves the facility (or prior to entering surface water in the state) so there may be circumstances where the benchmark sampling is conducted at an “internal” outfall and not subject to the numeric effluent limits for hazardous metals. In that case, the sampling for numeric effluent limits would need to be performed separately from the benchmark sampling. As discussed in Response to Comment 85, the following language was used to replace the final paragraph of Part III.D.1.:

*(f) Relation to Benchmark Monitoring - If a facility is required to sample for any of the above hazardous metals as part of the benchmark requirements in Part V of this permit, then the permittee is subject to the effluent limitations listed in Part III.D.1. of this general permit for all hazardous metals sampled at a final outfall as part of benchmark monitoring. There are no waivers available for pollutants that are required in Part V of the general permit. If sampling for benchmark metals is not performed at a final outfall, then the above effluent limits may not apply for the benchmark sample if the sample is not representative of the discharge from the site. In this situation, the discharge must also be sampled at each final outfall to comply with the sampling and analyses requirements of this section.*

#### Part V. - Sector G - Metal Mining (Ore Mining and Dressing)

##### Comment 116:

Houston requests an explanation for decreasing the benchmark monitoring requirements for this sector.

##### Response 116:

As discussed in the Fact Sheet, benchmark levels were revised on a pollutant-by-pollutant basis, rather than by sector. TCEQ may utilize data collected during the next permit term to better characterize discharges from specific industrial activities; thereby establishing either sector-specific benchmark levels, sector-specific BMPs, numeric effluent limits, or removal of existing requirements. The reasoning behind the changes to benchmark levels is discussed in the Fact Sheet at Part X.C. and Appendix A. The justification for removing the section entitled “Additional Benchmark Requirements” is discussed in the summary of changes for the Fact Sheet.

Sector G has historically included benchmark monitoring requirements unique to discharges from waste rock and overburden piles regulated under this sector and the general permit continues those requirements. However, the existing permit also included biannual reporting requirements for certain pollutants from specific types of ore mining and dressing operations, and these reporting requirements were removed. It is appropriate to continue the initial benchmark sampling for waste rock and overburden piles from all active ore mining or dressing operations and to require continued sampling for the life of the permit for any listed pollutant that exceeds the benchmark value during the first sampling event. This list is more comprehensive than the reporting requirements required in the original permit for specific metal ore mining and dressing facilities and it is appropriate to direct ongoing sampling based on the results of the initial event rather than to require sampling once every two years for a select number of pollutants.

## Part V. - Sector J - Mineral Mining and Dressing Facilities

### Comment 117:

Lloyd Gosselink and TMRA comment that requiring Sector J facilities to perform annual numeric effluent monitoring for TSS and pH is inappropriate because these facilities are already required to perform such monitoring under EPA's regulations in subchapter N of 40 CFR 436. Based on the definition of "storm water associated with industrial activity," TCEQ must construe the definition as regulating those portions of the facility not otherwise regulated under 40 CFR Subchapter N and the numeric effluent monitoring requirements should be removed.

### Response 117:

The requirement to perform annual numeric effluent monitoring for TSS and pH is a result of the technology-based limitations included in 40 CFR Part 436, and is not intended to duplicate existing permit requirements. In order for certain Sector J facilities to obtain authorization under the MSGP for mine dewatering discharges (an authorized non-storm water discharge), the MSGP must include the technology-based numeric effluent limitations required in 40 CFR Subchapter N, specifically 40 CFR Part 436 for Sector J facilities. A facility that obtains authorization for its storm water and mine dewatering discharges under the MSGP would not be required to perform additional monitoring under 40 CFR Part 436 beyond what is included in the MSGP. However, if a facility discharges storm water under an individual industrial wastewater permit, then that permit would also contain the numeric effluent limitations in 40 CFR Part 436, likely at a different monitoring frequency than once per year. Also, if a facility obtains authorization for its mine dewatering and process water discharges under an individual permit, but retains the MSGP only for other storm water runoff, then that facility must meet the requirements of the individual TPDES permit for the mine dewatering and process water discharges. In this situation, the sampling under Part V.E.5. of the MSGP would not be required because the outfall would be separately regulated under an individual TPDES permit. The facility would need to include this information in its SWP3.

### Comment 118:

Lloyd Gosselink and TMRA comment that the effluent limit for TSS conflicts with the benchmark requirements within the MSGP. The MSGP requires Sector J facilities to perform semiannual benchmark monitoring for TSS. The benchmark value for these facilities for TSS is 100 mg/l, while the numeric effluent limit for TSS is 25 mg/l as a daily average and 45 mg/l as a daily max. Requiring certain facilities to perform benchmark monitoring for TSS on a semi-annual basis essentially creates a semiannual numeric effluent monitoring requirement for the parameter. 30 TAC §319.5(e) provides that if a permittee monitors any pollutant more frequently than required, "the results of such monitoring that indicate permit noncompliance" shall be included in effluent reports. Thus, a benchmark result for TSS that is greater than 25 mg/l on a daily average or 45 mg/l on a daily max, but less than 100 mg/l may be considered a permit violation of the effluent limit, even though such a result is within the established benchmark value. Lloyd Gosselink and TMRA request removal of the numeric effluent limitations requirements from this sector. Winstead requests that TCEQ reduce the TSS benchmark value for Sector J from 100 mg/l to 45 mg/l.

Response 118:

The numeric effluent limits established in accordance with 40 CFR Part 436 apply only to mine dewatering operations from construction sand and gravel, industrial sand, and crushed stone mining facilities. Storm water runoff that does not accumulate in the mine pit would not be subject to the numeric effluent limits. Therefore, the benchmark levels would not conflict with the established effluent limits for those discharges. However, there still could be situations where a sample result could exceed the effluent limit and still be below the established benchmark level. TCEQ declines to lower the benchmark level for this industrial sector because it is appropriate to retain the same levels for all industrial sectors, until such time that TCEQ obtains additional data and performs sufficient analysis to justify sector-by-sector benchmark levels.

Comment 119:

Thompson & Knight comment that the numeric effluent limitation requirements for Sector J are inconsistent with federal guidelines for best practicable control technology (BPT), codified in 40 CFR Part 436. The proposed permit requires all Sector J facilities to meet the BPT requirements, while EPA only applies to facilities that process industrial sand. This ignores the distinction between operations, including their potential effect on water quality between the various industrial subcategories recognized in 40 CFR Part 436. Thompson & Knight recommend amending the effluent limitation requirements in Sector J to follow the BPT requirements EPA promulgated in 40 CFR Part 436. Specifically, they recommend removing the numeric effluent limit for TSS for those facilities that mine crushed stone and construction sand and gravel.

Response 119:

TCEQ evaluated the numeric effluent limits required under 40 CFR Part 436 for applicable facilities and agrees that TSS limits apply only to mine dewatering discharges, which are subject to numeric effluent limits for TSS under Subpart D of Part 436, related to the Industrial Sand Subcategory. Subparts B and C (related to Crushed Stone Subcategory and Construction Sand and Gravel Subcategory, respectively) only include effluent limits for pH. Therefore, the existing table of effluent limits in Part V.J.5.(a) was replaced with the following items (Part V.J.5.(a)(i) and (ii)), to differentiate between the applicable effluent limits for each industrial subcategory:

- (i) For mine dewatering discharges from facilities regulated under 40 CFR Part 436, Subpart B (Crushed Stone Subcategory) and Subpart C (Construction Sand and Gravel Subcategory), the following effluent limits apply:

<u>Parameter</u>	<u>Limitations</u>		<u>Monitoring</u>
	<u>Daily Avg</u>	<u>Daily Max</u>	<u>Frequency</u>
pH	between 6 and 9 S.U.		1/Year

- (ii) For mine dewatering discharges from facilities regulated under 40 CFR Part 436, Subpart D (Industrial Sand Subcategory), the following effluent limits apply:

Parameter	Limitations		Monitoring Frequency
	Daily Avg	Daily Max	
Total Suspended Solids	25 mg/l	45 mg/l	1/Year
pH	between 6 and 9 S.U.		1/Year

Additionally, a waiver from numeric effluent limits is available in 40 CFR Part 436 for those discharges that result from an overflow from structural control facilities that are designed, constructed, and maintained to contain and treat the volume of dewatering waters that would result from a 10-year, 24-hour storm event. Therefore, Part V.J.5.(d) was added to clarify that this waiver is available, with instructions on obtaining the waiver. The revision is consistent with similar allowances in Sector E and Sector O facilities:

*(d) Waivers from Numeric Effluent Limitations*

*Numeric effluent limitations for mine dewatering do not apply to discharges that overflow from structural control facilities that are designed, constructed, and maintained to contain or treat the volume of mine dewatering wastewater that would result from a 10-year, 24-hour storm event. The permittee shall maintain, as a part of the SWP3, the following information in order to receive this waiver: engineering design records that demonstrate structural controls are adequate to intercept, contain, and treat the volume of runoff from a 10-year, 24-hour storm event; and records of rainfall from either a rain gauge that is located onsite or a rain gauge maintained in the immediate area of the site. Rainfall records are only required to document events that equal or exceed a 10-year, 24-hour event.*

Finally, two portions of the Fact Sheet were revised to include this information. Part V.K. of the Fact Sheet (related to Changes from the Existing Permit) was revised to add a bullet describing the available waiver from effluent limits and a new Part V.T. was added to the Fact Sheet to state that the permit was changed to require TSS effluent limits only for the Industrial Sand Subcategory.

Comment 120:

Thompson & Knight comment that Sector J is internally inconsistent because its benchmark monitoring requirements increase the required sampling for TSS at dewatering outfalls from once per year, as provided in the effluent limit subsection, to once every six months. Part V.J.5.(a) requires annual numeric limitation testing for TSS at dewatering outfalls. Part V.J.6. and Part IV.C. require numeric sampling for TSS every six months at all storm water outfalls, including dewatering outfalls that discharge storm water. If a facility is covered under Sector J and conducts the required benchmark sampling for TSS and the result of the sampling indicates TSS concentrations at a dewatering outfall greater than the limitations in Sector J, the facility is required by 30 TAC §319.5(e) to report the sample as evidence of noncompliance with the permit.

Response 120:

The benchmark requirements in Sector J do not contain monitoring requirements specific to mine dewatering discharges. A permittee must perform semiannual benchmark monitoring on

all storm water discharges from internal outfalls that follow a BMP or treatment system. Annual monitoring for numeric effluent limitations from mine dewatering discharges must be performed after the BMP or treatment system, but before the discharge commingles with other storm water. If a facility utilizes its benchmark monitoring results to determine compliance with effluent limitations, and the results show that the level of TSS exceeds the limitation, then this would be considered a violation and would require reporting. However, as noted in the previous response, discharges of mine dewatering may be subject to a waiver in certain conditions. If a discharge occurs from a storm event listed in the available waiver, then the discharger would be subject to the benchmark requirements, but not the effluent limit.

Comment 121:

Winstead comments that Part V.J.5.(a) indicates that the numeric limitations do not apply to Sector J facilities that are not subject to federal guidelines and asks TCEQ to identify the SIC codes that the limitations apply to.

Response 121:

The numeric effluent limits apply to Sector J facilities that discharge storm water from sand, gravel, and crushed stone mining operations that are subject to federal effluent limits. The following SIC codes are subject to numeric effluent limits for mine dewatering: 1422 - 1429 (Crushed Stone), 1442 (Construction Sand and Gravel), and 1446 (Industrial Sand). As discussed in Response to Comment 119, the effluent limits for TSS would only apply to the Industrial Sand Subcategory (SIC code 1446). Effluent limits for pH would apply to all of the mentioned SIC codes and each may be eligible for a waiver in certain circumstances.

Comment 122:

Winstead comments that sand and gravel mining operations have a benchmark monitoring requirement for nitrate + nitrate N that is not required for other facilities within Sector J. Winstead comments that stone mining operations that use nitrate-containing explosives should also be required to monitor for nitrate + nitrate N.

Response 122:

The benchmark monitoring values included in the existing MSGP were based on information collected by EPA that identified potential sources of pollutants. The proposed benchmark parameters for Sector J are consistent with both the existing 2000 EPA MSGP and proposed 2006 EPA renewal permit. The MSGP renewal revises many of the benchmark values and includes several additional parameters that TCEQ believes are potential pollutants. TCEQ declines to include a benchmark monitoring requirement for nitrate + nitrite N for stone mining facilities at this time based on current practice for permitting similar facilities. However, if additional information indicates that this parameter is a potential source of pollutants, TCEQ will consider adding nitrate + nitrite N in a future permit action.

Part V. - Sector L - Landfills and Land Application Facilities

Comment 123:

Lloyd Gosselink requests revising Part V.L.3. to state that “discharges subject to federal effluent guidelines at 40 CFR Part 445 must be authorized under an individual TPDES or NPDES permit.” Lloyd Gosselink notes that some facilities may still be discharging this type of effluent under an individual NPDES permit.

Response 123:

Sector L should not include any industries that are not required to obtain a permit from the TCEQ. However, there may be cases where EPA has retained authority to issue an NPDES permit to a particular facility. Therefore, the requested language was added.

Comment 124:

Lloyd Gosselink comments that Part V.L. of the permit requires inspections once per week for active landfills, once per month for active landfills located in areas where local rainfall is less than 20 inches per year, and once per month for landfill sites where landfill activities are complete and soils stabilized. Lloyd Gosselink requests that a simple standard of once per month for all landfills be adopted.

Response 124:

The inspection requirements are continued from the existing MSGP and the requirements are also consistent with EPA’s 2000 MSGP and Draft 2006 MSGP. TCEQ believes that the existing inspection frequency is appropriate. Therefore, no changes were made.

#### Part V. - Sector M - Automotive Salvage Yards

Comment 125:

Houston requests an explanation for increasing the benchmark values of aluminum and iron.

Response 125:

As discussed in Response to Comment No. 104, the values for total aluminum and total iron were each revised based on the median result reported from the 2003 benchmark sampling for all categories of industry that submitted complete analytical information to TCEQ. Aluminum and iron, previously set by EPA at a level equivalent to federal water quality criteria for the acute protection of freshwater aquatic life, was raised to the median result reported. TCEQ Water Quality staff reviewed the proposed increase and determined that it would not have an adverse impact to water quality. It is recognized that half of all results reported were above the median result and TCEQ believes that it is appropriate to use the median as a threshold to trigger action by the permittees in evaluating their SWP3s. Additional changes may be proposed in future permit actions on a sector-specific basis.

#### Part V. - Sector N - Scrap and Waste Recycling Facilities

Comment 126:

Houston requests an explanation for increasing the benchmark values for copper, aluminum, iron, zinc, TSS, and COD.

Response 126:

The values for total aluminum, total iron, and total zinc were each increased based on the median result reported from the 2003 benchmark sampling activities. The original benchmark levels were previously set by EPA at a level equivalent to federal water quality criteria for the acute protection of freshwater aquatic life. Utilizing information from actual discharge levels is more appropriate for the purposes of permitting storm water, as long as the new levels would not result in a negative impact to water quality. Total copper and COD were each decreased due to the level reflected by the median result of all samples evaluated. The original levels were established based on factors other than water quality, as the COD level was based on a factor of four times the benchmark level for North Carolina for biochemical oxygen demand and the copper level was based on a factor of 3.18 times the method detection level for those pollutants. Revisions to reflect actual discharge conditions are more appropriate for the purposes of this permit. There was no change in TSS since the original level was based on storm water data from the National Urban Runoff Program and the level is consistent with TCEQ practice for permitting storm water outfalls.

Comment 127:

Westward Environmental requests that concrete crushing be removed from Sector N (SIC 5093) since it is not scrap metal recycling and placed under Sector J (SIC 1795), which currently is not listed in the MSGP.

Response 127:

SIC Code 1795 includes concrete breaking for streets and highways - contractors, demolition of buildings or other structures, except marine - contractors; dismantling steel oil tanks, except oil field work-contractors; wrecking of buildings or other structures, except marine-contractors. This industry is not included in EPA's definition of storm water associated with industrial activity at 40 CFR §122.26(b)(14). Therefore, it is not being added to the general permit. SIC Code 5093 lists a variety of materials that may be used for scrap and recycling, but does not generally include facilities primarily in the business of crushing concrete. Concrete crushing operations that occur as part of another industrial activity would be regulated under that sector, such as sand and gravel mining that is regulated under Sector J of the MSGP.

Comment 128:

Lloyd Gosselink comments that the requirement in Part V.N.5. requiring "numeric effluent limits" should be replaced with "narrative effluent limits" for total zinc and total copper. Lloyd Gosselink comments that numeric, concentration-based, effluent limitations for the Chapter 319 hazardous metals should not be applicable to storm water discharges.

Response 128:

As discussed in Response to Comment 115 related to a similar comment for Sector F, no changes were made to the permit.

Part V. - Sector P - Land Transportation and Warehousing

Comment 129:

Houston requests clarification that the areas of Sector P facilities covered by the permit include the areas where storage and staging of trailers and equipment occur.

Response 129:

As stated in Part V.S.1., the requirements of the general permit only apply to areas where operations perform vehicle and equipment maintenance activities, vehicle and equipment rehabilitation, mechanical repairs, painting, fueling and lubrication, and cleaning activities. The only exception is that for those facilities described by SIC codes 4221 - 4225, the permit requirements apply to all areas of the facility where public warehousing and storage activities occur. For all other SIC codes, areas where storage and staging of trailers and equipment occur would be regulated only if those areas were also associated with areas that the trailers and equipment were repaired, painted, fueled, or cleaned. Simply storing the vehicles, such as in a parking lot, prior to renting them out to the public, would not trigger permit requirements absent a dedicated maintenance/fueling area.

Comment 130:

DFW requests that the permit provide additional guidance with respect to compliance for facilities who do not perform the previously listed activities. DFW comments that the permit states that storm water discharges from facilities described by SIC code 4225, which do not have areas for “vehicle and equipment maintenance activities, vehicle and equipment rehabilitation, mechanical repairs, painting, fueling and lubrication, and cleaning activities are authorized under this general permit and are not required to submit an NOI for permit coverage.” DFW requests adding a phrase at the end of that sentence that states: “. . . or implement a SWP3 according to the requirements of the general permit” to make it clear an NOI is not required, unless one of the listed activities is performed.

Response 130:

TCEQ agrees that the requested change would clarify that facilities described by SIC code 4225, which do not have areas for vehicle and equipment maintenance, etc., do not have to submit an NOI form or implement an SWP3, so long as the special requirements listed in this section are met. The second sentence of the third paragraph following the table in Part V.P.1. was revised as follows:

“Discharges of storm water from facilities described by SIC codes 4225 which do not have areas for vehicle and equipment maintenance activities, . . . are authorized under this general permit and are not required to submit an NOI for coverage nor implement an SWP3 according to the requirements of the general permit.”

In addition, the third sentence of the second bullet under Part V.E. of the Fact Sheet, related to the list of changes, was revised as follows:

Further, the general permit states that general warehousing and storage facilities (SIC Code 4225) without those areas are covered under the general permit without submitting an NOI, nor

implement a SWP3 according to the requirements of the general permit, provided that certain conditions are met.

#### Part V. - Sector Q - Water Transportation Facilities

##### Comment 131:

Harris County comments that the proposed MSGP includes a new requirement stating that discharge from pressure washing of boats is not authorized under this general permit. Harris County notes that discharge of rinse water not containing chemicals, surfactants, or elevated temperatures is generally allowed under other TPDES programs, even when the rinse water is produced by pressure washing. In the experience of Harris County, rinse water, with or without pressure washing, on boats and elsewhere, does not pose a substantial potential for the discharge of pollutants. Harris County comments that prohibiting the discharge of rinse water from pressure washing is an unnecessary and burdensome requirement and requests that this discharge be authorized under the MSGP.

##### Response 131:

It is common for TPDES storm water permits to authorize certain allowable non-storm water discharges. Powerwashing of vehicles, boats, windows, etc. has the potential to mobilize significant amounts of solids and is not considered an allowable non-storm water discharge under the MSGP. This determination is also consistent with EPA's 2000 MSGP and proposed 2006 MSGP. Therefore, no changes were made.

##### Comment 132:

Steele comments that Sector Q regulates land-based installations commonly referred to as boat yards, who do ship maintenance and refurbishment, but does not regulate a separate class of service provider known as underwater cleaners, who perform ship maintenance entirely below the waterline. Steele requests that the permit provide greater uniformity in regulating water transportation facilities (i.e., boat yards, underwater cleaners) that conduct hull repairs on vessels.

##### Response 132:

Sector Q regulates facilities described by SIC codes 4412 through 4499. Ship cleaning is included under SIC code 4499, which does not differentiate between cleaning activities that occur above versus below the water line. Sector R regulates activities described by SIC code 3731 and 3732, which include the building and repair of ships and boats. The listed SIC codes include repairs that occur above the water line as well as below and no additional clarifications were made to Sector Q or to Sector R.

#### Part V. - Sector S - Air Transportation

##### Comment 133:

Houston comments that the language in Part V.S.2. that states the permit does not authorize the discharge of deicing chemicals appears to conflict with other language in the permit. Houston comments that achieving a zero discharge of deicing chemicals is difficult, if not impossible, to

attain. Houston notes a 2000 deicing study indicates that airports with the most advanced deicing collection and treatment system can collect only a maximum of 70% of the applied deicing fluids. Houston suggests revising the language to state that the general permit does not authorize the intentional discharge of collected deicing chemicals in order to distinguish between operational deicing chemical usage and unauthorized disposal.

Response 133:

In order to acknowledge that there may be unintentional discharge of deicing chemicals during wet weather that could not be collected, the first sentence of Part V.S.2. was revised to read: "This general permit does not authorize the dry weather discharge of deicing chemicals." This change is consistent with the existing MSGP language, as well as EPA's 2000 MSGP and EPA's Draft 2006 MSGP.

Comment 134:

Lloyd Gosselink requests revising Part V.S.2. to provide that deicing chemicals may be discharged under authority of a separate TPDES or NPDES permit because some facilities may still be discharging deicing chemicals under an NPDES permit.

Response 134:

Sector S should not include any industries that are still regulated by EPA. However, there may be special cases where EPA retained authority to issue an individual NPDES permit to a particular facility. Therefore, the requested language was added.

Comment 135:

Houston comments that benchmark monitoring is only required for permittees conducting deicing activities whose combined use of urea or ethylene glycol at an airport exceeds certain volumetric thresholds. Houston asks whether the thresholds that trigger the benchmark monitoring refer only to when those chemicals are used for deicing purposes. Houston also asks whether the volume of urea or ethylene glycol used in activities other than deicing is considered when determining whether benchmark monitoring will be required under the MSGP. DFW requests that the permit remain consistent with the current NPDES MSGP and require benchmark monitoring only for those outfalls that collect runoff from areas where aircraft deicing activities occur.

Response 135:

As discussed in Part V.S.5., the amounts of urea and ethylene glycol that would trigger the need to perform benchmark monitoring apply to those chemicals utilized for deicing and/or anti-icing purposes, consistent with the existing EPA NPDES MSGP. TCEQ agrees that it is appropriate to require benchmark monitoring only at outfalls that collect runoff from areas with deicing and/or anti-icing occurs, consistent with EPA's permit. Therefore, Part V.S.5. was revised to add a new third sentence to the first paragraph, so that the paragraph now reads:

"Benchmark monitoring is only required for permittees conducting deicing activities which 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.

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. Benchmark monitoring is only required to be performed at those outfalls from the airport facility which collect runoff from areas where deicing and/or anti-icing activities occur. The following subsector must conduct benchmark monitoring according to the requirements in Part IV of this general permit and conduct evaluations on the effectiveness of the facility SWP3 based on the following benchmark values: . . . .”

Comment 136:

Westward Environmental asks for the rationale for changing the ammonia limit from 19.0 mg/l to 0.19 mg/l.

Response 136:

The benchmark was lowered to the median result because the existing benchmark far exceeded the maximum level reported. However, upon further review, TCEQ determined that it is appropriate to establish the revised benchmark level at 8.11 mg/l, which is the maximum of all levels reported. This is appropriate based on the relatively small number of analyses which were evaluated and should not have a significant impact on regulated facilities since none which reported under the benchmark provisions discharged above 8.11 mg/l. Where applicable, the benchmark value for ammonia was changed from 0.19 mg/l to 8.11 mg/l in the permit and Fact Sheet.

Comment 137:

Houston notes the EPA is currently developing effluent limit guidelines for deicing operations at airports that may change benchmark values on a national basis and that the current schedule calls for implementation by 2009.

Response 137:

TCEQ appreciates the comment regarding possible effluent limitations for deicing operations. If EPA promulgates any numeric effluent limitation that may affect a discharge authorized under this permit, then the permit may be amended. However, no changes are proposed at this time.

#### Part V. - Sector T - Treatment Works

Comment 138:

Lloyd Gosselink notes that the MSGP adds a benchmark monitoring requirement for Sector T facilities for biological oxygen demand (BOD). Lloyd Gosselink notes that this benchmark level is based on sampling information from other sectors and may not be the appropriate level for this sector. Lloyd Gosselink requests removal of the benchmark parameter, until TCEQ has some sector-specific data on which to base an appropriate benchmark limit.

Response 138:

Benchmark levels were revised on a pollutant-by-pollutant basis, rather than by sector. Because BOD was added to Sector T benchmark sampling, the level was established at 30 mg/l to be consistent with other industrial sectors. The benchmark monitoring results obtained during the next permit term will provide TCEQ with data that will better characterize discharges from specific industrial activities. TCEQ may utilize this data to establish either sector-specific benchmark levels, sector-specific BMPs, numeric effluent limits, or removal of existing requirements. The proposed pollutant-specific values will remain in the permit until these industry specific values can be determined.

#### Part V. - Sector AA - Fabricated Metal Products

Comment 139:

Lloyd Gosselink comments that the requirement in Part V.AA.3. requiring “numeric effluent limits” should be replaced with “narrative effluent limits” for total zinc. Lloyd Gosselink comments that numeric, concentration-based, effluent limitations for the Chapter 319 hazardous metals should not be applicable to storm water discharges.

Response 139:

As discussed in Response to Comment 115 related to a similar comment for Sector F, no changes were made to the permit.

#### Part V. - Sector AD - Miscellaneous Industrial Activities Designated by the Executive Director

Comment 140:

TARA recommends the addition of SIC code 5012 - Automotive Auctions Wholesale, to the MSGP to add further protection to state water bodies. TARA notes that vehicles are often stored at these sites for long periods of time and are subject to the same risk of fluid leaks, freon releases, and other potential pollutants from storm water runoff as automobile recyclers, which are covered under Sector M.

Response 140:

TCEQ declines to expand the definition of storm water associated with industrial activity to include additional SIC codes that are not currently defined in federal rules at 40 CFR §122.26(b)(14). If a particular discharge is determined to cause water quality impacts, then TCEQ may designate that facility as requiring permit coverage under Sector AD.