**TCEQ GENERAL PERMIT NO. TXR050000**

**EXECUTIVE DIRECTOR'S 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 This response addresses all timely received public comments, whether or not withdrawn.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:

AECOM in Houston (AECOM), American Electric Power (AEP), Babcock & Wilcox Technical Services Pantex, LLC (B&W Pantex), Calpine Corporation (Calpine), Harris County, Harris County Flood Control District (HCFCD), Lloyd Gosselink Rochelle & Townsend, P.C. (Lloyd Gosselink), Logos Environmental (Logos), NRG Texas Power LLC (NRG), Linda Pechacek, Port of Corpus Christi Authority (PCCA), Safety-Kleen Systems, Inc (SKS), STP Nuclear Operating Company (STPNOC), Texas Aggregates and Concrete Association (TACA), Texas Campaign for the Environment (TCE), Texas Landfill Management, LLC (TLM), United Parcel Service (UPS), Victoria WLE, LP (submitted by Consolidated Asset Management Services, LLC), and Westward Environmental, Inc. (Westward).

The public comment period ended on April 12, 2011 at the conclusion of the public meeting on the draft permit. Late public comments were received by the Office of the Chief Clerk from Back to Nature, Inc., Living Earth, PSEG, South Plains Compost, Inc., and the City of Dallas. 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 April 12, 2011. 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 previous version of the TPDES general permit was issued on August 14, 2006 and expires on August 14, 2011. 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*, *San Antonio Express News*, and in the *Texas Register* on March 11, 2011. A public meeting was held in Austin on April 12, 2011, 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.

## General Comments

Comment: TCE comments that the timing of the permit renewal is bad because many of the advocates on the environmental side are involved in the ongoing legislative process and have not had an opportunity to look at the MSGP issue, given the short comment

period. TCE urges TCEQ to extend the comment deadline and to do a better job of informing people about the permit.

Response: While TCEQ appreciates that the timing of this renewal and comment period may not be ideal, TCEQ respectfully declines to extend the period any longer. Agency rules require TCEQ to provide at least 30 days for members of the public and the regulated community to respond to a draft general permit. In this case, the comment period began on March 2, 2011, and lasted through April 12, 2011, for a total of 41 days.

Comment: AECOM recommends changing terms used on the cover page by substituting "General Permit to Discharge under the Texas Pollutant Discharge Elimination System" for the current language: "General Permit to Discharge Wastes."

Response: TCEQ agrees with this comment and the recommended change was made to the MSGP. This change is consistent with a change made to the TPDES general permit for small municipal separate storm sewer systems (MS4s), TXR040000.

Comment: Harris County and HCFCD comment that portions of Parts III and V state that records must "be made readily available for review by authorized TCEQ personnel on request." Harris County and HCFCD note that the TWC also gives local authorities the right to inspect and enforce water quality violations. Therefore, the review language should be modified to state: "[m]ade readily available for review by authorized TCEQ personnel and the local pollution control agency with jurisdiction." Harris County and HCFCD comment that this language can be found in TCEQ air quality and municipal solid waste rules and is consistent with past practice.

Response: Texas Water Code (TWC) §26.173 provides local government the same power as the TCEQ under TWC §26.014 to enter public and private territory within its territorial jurisdiction to make inspections and investigations relating to water quality. Therefore, each instance in the permit where the phrase "be made readily available for review by authorized TCEQ personnel on request" occurs was changed to "be made readily available for review upon request by authorized TCEQ personnel as well as any local pollution control agency with jurisdiction."

Comment: AECOM would like the opportunity to review the DMR forms when they become available.

Response: DMRs will be revised as needed and made available to the regulated public after the permit has been issued. Currently, information on the DMRs can be found on the TCEQ's storm water permitting web pages at:
http://www.tceq.texas.gov/permitting/water_quality/stormwater/TXR05_dmr.html

**Part I - Definitions**

Comment: Westward comments that the definition of "diffuse point source" is intended to differentiate between sheet flows and diffuse point sources. However, Westward requests the permit also define "true sheet flow" and clarify whether the permit applies to both flows,

or if sheet flow is exempt from coverage.

Response: The MSGP would authorize the point source discharge of storm water and certain non-storm water flows in accordance with state and federal rules. True sheet flow is not a point source of discharge requiring a permit. However, flow from a diffuse point source is often confused with sheet flow and thought to be a nonpoint source. To further clarify which discharges are required to obtain permit coverage, the draft MSGP included a definition of diffuse point source, and also referred to the term within a revised definition of "point source."

In response to the comment, the following definition for "sheet flow" was added to Part I of the draft permit, since the term is used in the definition of "diffuse point source."

> "Sheet Flow**.** An overland flow or downslope movement of water taking the form of a thin, continuous film over relatively smooth soil or rock surfaces that have not been changed or graded, where there are no defined channels, and the flood water spreads out over a large area at a uniform depth. This definition does not include changing the surface of land or establishing grading patterns on land where a facility described in this permit is located, which would result in a point source as defined in this permit."

Comment: AECOM recommends revising the definition of "Discharge" to add at the end the phrase "surface water in the state."

Response: In order to provide additional clarity regarding when a permit is required, the definition of "discharge" was revised as requested, and now reads as follows:

> "Discharge. For the purpose of this permit, the drainage, release, or disposal of storm water associated with industrial activity and certain allowable non-storm water sources listed in this general permit to surface water in the state."

Comment: Westward requests clarification of the intention of TCEQ in the definition of "drought" by indicating a time interval duration rather than using the term "extended." Furthermore, Westward asks if the Palmer Drought Severity Index, which provides a numerical value for drought be considered an acceptable source reference to demonstrate that an area or site was actually in a drought.

Response: TCEQ declines to add a time interval in this definition and notes that the term may vary based on factors such as location, rainfall amounts, or water supply. TCEQ thinks that the current permit language adequately addresses facilities that experience drought or periods where no rainfall occurs during the sampling and monitoring periods outlined in the permit. For example, Part III.D.4.(a)(1) provides that requirements to sample, inspect, examine, or otherwise monitor storm water discharges within a prescribed monitoring period may be temporarily suspended for adverse conditions that would prevent access to a discharge, including a lack of rainfall.

Comment: AECOM comments that in the definition of "Edwards Aquifer" there is a word that talks about that portion of an "accurate" belt of porous rocks and the correct

term that should be used is “arcuate.”

Response: The term “accurate” was changed to “arcuate” in the definition of “Edwards Aquifer for consistency with 30 TAC §213.3(8). The term “arcuate” means curved like a bow.

Comment: Lloyd Gosselink states that TCEQ currently defines an "existing discharge" to mean a discharge of storm water "associated with industrial activity that has been authorized previously." Lloyd Gosselink recommends revising this definition for consistency with the definition of "discharge" to provide that an existing discharge is a discharge of storm water "associated with industrial activity and certain allowable non-storm water sources that has been authorized previously."

Response: In response to the comment, TCEQ revised the definition as follows:

> “Existing Discharge. For the purpose of this permit, this term applies to the discharge of storm water associated with industrial activity and certain allowable non-storm water sources listed in this general permit that has been authorized previously under an NPDES or TPDES general or individual permit.”

Comment: Lloyd Gosselink comments that TCEQ currently defines "impaired waters" to include those waters with an established Total Maximum Daily Load (TMDL) and those waters "where a TMDL has not yet been approved or established." This language suggests that all water bodies (those with a TMDL and those without a TMDL) in the state will be considered impaired, so TCEQ should revise this definition to reflect that impaired waters include those waters “where a TMDL has been proposed by TCEQ, but has not yet been approved or established" or clarify the intent. Westward recommends adding the following language to match other references of the §303d list to review: "the most recently approved §303(d) list."

Response: TCEQ recognizes that this definition may be somewhat confusing, and revised it as follows to address the comment:

> Impaired Water. A surface water body that is identified on the latest approved Clean Water Act §303(d) List as not meeting applicable state water quality standards. Impaired waters include waters with approved or established total maximum daily loads (TMDLs), and those where a TMDL has been proposed by TCEQ but has not yet been approved or established.”

Comment: Westward comments that the term “operator” is applicable to all sectors of the MSGP and thinks that the CGP language in the definition will lead to confusion about who should file an NOI and be responsible for the SWP3. Westward recommends limiting the definition of “operator” to those sectors that contain authorized construction-related discharges.

Response: TCEQ declines to make the requested change, because the definition proposed in the draft MSGP utilizes the two-tiered approach to make it clear that an entity with

operational control at an industrial facility would need to obtain permit coverage. This definition is consistent with EPA's MSGP as well. TCEQ recognizes that in most cases, a facility will only have one operator, and believes that the proposed definition will provide clarity regarding who must apply.

Comment: AECOM recommends retaining the definitions in the current version of the MSGP for "separate storm sewer system" and "solid waste management unit." If not, AECOM requests an explanation why they are no longer needed.

Response: The term "solid waste management unit" as it applies to storm water treatment is described in Part III.E.7.(a)(1) of the draft permit (related to industrial solid waste). However, the term is also used within the definition of "landfill" based on TCEQ's solid waste regulations. In order to avoid confusion between storm water controls and other waste management units regulated under TCEQ's solid waste regulations, TCEQ is not including a separate definition of "waste management unit," but instead is relying on the paragraph in III.E.7.(a)(1) to provide clarification about when a storm water control might be considered a waste management unit.

However, in response to the comment and because the term "separate storm sewer system" is used in Sector C of the MSGP, the definition in the current version of the MSGP was added to the new version as follows:

> "Separate storm sewer system. A conveyance or system of conveyances (including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains), designed or used for collecting or conveying storm water; that is not a combined sewer, and that is not part of a publicly owned treatment works (POTW)."

**Part II**

Comment: Lloyd Gosselink comments that this section identifies permit applicability and coverage. Lloyd Gosselink recommends revising this provision to reflect that the MSGP provides "authorization for point source discharges of storm water discharges associated with industrial activity ..." Lloyd Gosselink states that such an amendment clarifies the coverage as required under the Clean Water Act.

Response: In response to the comment, the first sentence of Part II of the MSGP was revised as requested, except that the word "discharges" currently following the term "storm water" was removed to avoid being redundant. The revised sentence now reads:

> "This general permit provides authorization for point source discharges of storm water associated with industrial activity and certain non-storm water discharges to surface water in the state (including direct discharges to surface water in the state and discharges to municipal separate storm sewer systems, or MS4s)."

**Part II.A.1**

Comment: TACA and Westward ask for clarification regarding how TCEQ will categorize concrete crushing facilities.

Response: TCEQ will continue to use the SIC code system to identify facilities that need to obtain authorization under the MSGP. Once identified by the facility operator, if the facility (or "primary") SIC code is covered by the permit, the facility will then be classified into the sector of coverage specific to that type of facility. It is possible that some concrete crushing facilities will be regulated under the MSGP based on the primary activity occurring at the site. However, others may not be regulated.
Comment: Westward asks TCEQ to define what activities or types of facilities are captured by the revised applicability standard.

Response: There was no change to the applicability of this permit, which is based on federal rules at 40 CFR §122.26 that were adopted by TCEQ by reference in 30 TAC §281.25(a). The new version of the MSGP does include a clarification stating that an industrial facility that discharges storm water or certain non storm water flows described in the federal effluent limitations guidelines (ELGs) found at 40 CFR Parts 400-471 must obtain permit coverage and may utilize the MSGP for that coverage unless otherwise prohibited. This helps to clarify that a facility discharging storm water described in the ELGs may obtain coverage under the MSGP even if the primary SIC code is not regulated. The NOI will include a question asking applicants whether they intend to discharge any storm water regulated under the ELGs. If the answer is "yes" then the NOI will be processed regardless of the primary SIC code.

**Part II.A.5(b)**

Comment: Lloyd Gosselink comments that the draft MSGP provides that publicly operated facilities that conduct activities regulated under the MSGP must obtain permit coverage. However, Lloyd Gosselink notes that this section suggests that a regulated industrial activity that is not the "primary industrial activity" at a publicly operated facility is not regulated. A general vehicle maintenance area at a city motor pool is given as an example. It is unclear what is meant by the term "primary industrial activity" in this context. Municipally owned vehicle and equipment maintenance facilities that are auxiliary to other municipal functions should not be regulated under the MSGP. For example, if a municipality owns a disposal facility (i.e., a landfill) that receives refuse transported by garbage trucks, then the vehicle maintenance facility for the garbage trucks, assuming it is located separate from the landfill site should be classified as SIC Code 4953 and should not be required to obtain permit coverage. Pursuant to Part 11.A.3. of the draft MSGP, only municipal vehicle maintenance facilities that are co-located at the site of an otherwise regulated industrial facility should be required to comply with the provisions of the MSGP. Lloyd Gosselink asks for confirmation of this understanding and asks TCEQ to provide clarification in the MSGP regarding this matter.

Response: The intent of this section is to apply the "primary SIC code" assessment to each separate municipally-operated facility. At each of these facilities, if the facility's

primary SIC code is regulated under the MSGP, then permit coverage is required for that facility. In addition, all facilities that have an "industrial activity code" in the permit (HZ, LF, SE, or TW) are regulated. For regulated facilities, all secondary activities that are described under the MSGP must also be included under the SWP3.

For the examples provide in the comment, the following clarifications are provided. While a municipally-operated landfill is regulated under Sector L of the MSGP, a stand-alone transfer station would fall under Sector P, Land Transportation and Warehousing. Facilities that fall under Sector P only require storm water permit coverage if there are any areas where the following maintenance/fueling types of activities are performed: vehicle and equipment maintenance, vehicle and equipment rehabilitation, mechanical repairs, painting, fueling, lubrication, and cleaning.

Permit coverage would not be required for a transfer station that does not perform any of these activities, even if the primary industrial activity at the site is the transport of refuse. However, a transfer station located within the property boundaries or immediately adjacent to a landfill would be regulated under Sector L for landfills; and not under Sector P. Such a facility would need to revise its storm water pollution prevention plan (SWP3) to include the location of the transfer station.

To clarify the requirements regarding a city motor pool, the last sentence of Part II.A.5.(b) is revised as follows:

> "However, the general vehicle maintenance shop for a city's motor pool would not typically be regulated unless the vehicles being maintained would classify the maintenance yard under an SIC code in the 4100 or 4200 series (for example if the city motor pool also maintains the city's public transportation busses and the yard performs at least 50% of its maintenance activities on the city's public transportation busses)."

**Part II.A.6(a)**

Comment: Lloyd Gosselink comments that the draft MSGP identifies allowable non-storm water discharges, including discharges from "emergency fire lighting activities." Such allowable discharges should not be limited to "emergency" situations, as discharges from any fire fighting activity should be considered necessary and appropriate. Thus, Lloyd Gosselink requests that this section be amended, accordingly.

Response: TCEQ believes that the language about discharges from emergency fire fighting activities and uncontaminated fire hydrant flushings is appropriate as it excludes fire fighting activities associated with training or any controlled burning situation. This is consistent with the EPA's current MSGP, and was included based on recommendations from EPA's Region 6 office during review of the draft permit.

**Part II.B.**

Comment: Lloyd Gosselink comments that the draft MSGP outlines several limitations

and discharges that are not covered under the MSGP. However, the draft MSGP does not provide for any release from liability for spills or events that are beyond the control of a permittee (e.g., 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). TCEQ's regulations provide for a *force majeure* defense for an event that would otherwise be a violation of a permit, if such event was caused solely by an act of God, war, strike, riot, or other catastrophe. Lloyd Gosselink requests that language be added to the MSGP to clarify that such a defense is available to industrial permittees and that such permittees will not be liable for either spills caused by third parties or spills caused so as to prevent the loss of life, personal injury, or severe property damage.

Response: TCEQ agrees with this comment and in response to the comment added the following paragraphs under Part II (new Sections B.14. and B.15.):

"14. Transfer of Liability

This permit does not transfer liability for the act of discharging without, or in violation of, a NPDES or a TPDES permit from the operator of the discharge to the permittee(s).

15. Force Majeure

Nothing in Part II. of the general permit is intended to negate any person's ability to assert the *force majeure* (act of God, war, strike, riot, or other catastrophe) defenses found in 30 TAC §70.7."

Comment: TLM objects to removing previous exclusions to permit requirements without any evidence of a problem with the current exclusions. TLM comments that the draft permit makes materials with no potential to contaminate storm water obtain permit coverage. TLM points out that materials like sheet metal, plastic, wood chips, mulch, and glass, which would no longer be excluded because they meet the definition of "essentially insoluble" in 30 TAC §330.3(49) and are allowed to be used as fill material. TLM recommends not changing the list of exclusions in the current permit and re-adopting them in the new version of the MSGP.

Response: TCEQ disagrees that the current MSGP allows sheet metal, plastic, and glass to be stored outside and exposed to rainfall at a facility claiming conditional "no exposure" to storm water. TCEQ added this information to the permit to provide clarification about the existing requirements for operators of regulated facilities that have or wish to obtain coverage under a NEC. However, there were no changes made to the exceptions allowed under the NEC provision of the MSGP.

To address the concern by TLM that some of these materials may be utilized as fill and not considered to be waste, TCEQ does not think that this provision would prohibit that activity so long as it is done in accordance with other applicable regulations, including 30 TAC Chapter 330. However, an operator of such a site would still need to evaluate whether permit coverage would be required based on the facility's primary SIC code or whether a regulated industrial activity code (HZ, LF, SE, or TW) is conducted at the site.

Comment: TCE questions the exemption for coal piles that are not used for steam generation of electricity. TCE comments that no runoff from coal piles into state waters should be allowed.

Response: In the 2006 MSGP renewal, TCEQ removed numeric effluent limits for coal pile runoff not associated with steam electric facilities. The effluent limits were based on 40 CFR Part 423 and are appropriate for coal pile runoff at steam electric plants, and removal of the numeric limits for other facilities was consistent with the EPA MSGP as well. If another facility has coal piles, the runoff would need to be authorized if the facility's SIC code is covered by the MSGP. Alternatively, TCEQ could require an individual permit (or an authorization under Sector AD of the proposed MSGP) for runoff from coal piles at a facility that is not covered by the MSGP.

**Part II.B.3**

Comment: TACA comments that the language regarding storm water discharges in this section is confusing. TACA suggests adding a qualifier to the last sentence of the paragraph that leads into bullet points (a) through (c), such as: "For any other sector…"

Response: At one time TCEQ considered the possibility of including authorization for the discharge of storm water from certain construction activities at regulated mining facilities. However, these discharges were not included because of uncertainties related to the federal storm water effluent limitations guidelines. To avoid confusion, the references to construction at mining operations were removed, so that this paragraph now reads:

> "Storm water discharges associated with construction activities are not eligible for authorization under this general permit. Discharges of storm water that are regulated under this permit and that combine with storm water from construction activities are not eligible for coverage under this general permit unless the construction site runoff meets one of the following conditions:
>
> (a) authorization is under a separate TPDES permit;
> (b) authorization is under a separate National Pollutant Discharge Elimination System (NPDES) permit; or
> (c) TPDES or NPDES permit coverage is not required."

Comment: Westward asks if construction site runoff become subject to numeric effluent limitations and how pending changes to construction storm water discharges affect these elements in the MSGP.

Response: As described above, the references to construction site runoff were removed from the MSGP and any construction that occurs at a regulated facility would need to be authorized under TCEQ's Construction General Permit (TXR150000), an individual TPDES permit, or an alternative permit.

**Part II.B.7**

Comment: Westward asks how often a permittee is expected to check to see if a TMDL has been adopted for its watershed.

Response: TCEQ recommends that a permittee check to see if a TMDL has been completed and an implementation plan adopted at least during each quarterly site inspection and when conducting the annual comprehensive site compliance evaluation. If a TMDL has been completed, the permittee will need to also meet any applicable requirements of the TMDL. If a TMDL has not been completed, the permittee will still be required to comply with Part III.B.7, related to impaired water bodies and TMDL requirements.

Comment: AECOM requests clarification in Part II.B.7 regarding impaired water bodies and TMDL requirements. Specifically, AECOM wants clarification for existing discharges to impaired water bodies that have an approved TMDL, but do not have an adopted TMDL implementation plan.

Response: The proposed MSGP would require that a new or existing discharge to an impaired water body with an approved TMDL be consistent with the TMDL, even if a TMDL Implementation Plan (I-Plan) has not been adopted. If an industrial facility does discharge into such a water body and the TMDL includes storm water requirements, then the facility operator may need to contact TCEQ to determine what additional permit requirements apply to the facility. For clarity, the term “and TMDL Implementation Plan” was removed from the heading of Part II.B.7.(d).

**Part II.B.10**

Comment: Lloyd Gosselink comments that this section of the draft MSGP provides that "discharges that would adversely affect a listed endangered or threatened species or its critical habitat are not authorized by this permit." Lloyd Gosselink comments that a permittee cannot know, without direction from a state or federal agency, whether its industrial storm water discharge is adversely affecting a listed endangered or threatened species. Thus, Lloyd Gosselink recommends that this sentence be removed and that this section should only provide that federal requirements related to endangered species apply to TPDES permits.

Response: TCEQ coordinated with the EPA Region 6 regarding this language and the commentor’s concern, and believes that it is appropriate to retain this language to help insure that dischargers are aware that there may be additional requirements under federal law related to protection of Endangered Species.

**Part II.B.13**

Comment: AECOM comments that Part II.B.13, the automatic authorization of certain industrial activities, seems to expand the number of entities that will be covered by the MSGP and would, for example, include small business activities conducted in residential

homes. AECOM asks whether these activities were considered by TCEQ to be covered in the existing permit.

Response: The existing MSGP includes any facility described by an SIC code regulated in the federal regulations at 40 CFR §122.26(b)(14). TCEQ recognizes that many very small businesses operating out of residential homes with no exposure of industrial activity did not submit NEC forms, but maintains that the regulations do not provide for an exemption from permitting based on size of the business. TCEQ believes that adding this allowance will help operators of very small businesses inside of homes or shopping malls, with no possibility for exposure of industrial activity, to obtain streamlined coverage. This allowance will also be useful for MS4 operators who are seeking to regulate industrial storm water discharges in accordance with their MS4 permit.

**Part II.C.1(a)(1) and (2)**

Comment: Lloyd Gosselink comments that the draft MSGP provides procedures for permittees to seek an NEC from permit requirements and identifies activities that are not required to be isolated from storm water in order to meet the NEC, including materials that "are not deteriorated." Lloyd Gosselink requests that TCEQ define or clarify what qualifies for a material to not be deteriorated.

Response: As the term “deteriorated” is used in Parts II.C.1.(a)(1) and (2), it means that any container or final product that is impaired in quality, function, or condition to the point that there is a potential for material associated with the regulated industrial activity (including material contained within or on the surface of the container or product) to come into contact with storm water or storm water runoff in a manner that would violate the terms of no exposure.

**Part II.C.1(a)(8)**

Comment: PCCA asks for clarification regarding the meaning of “delivery vehicle” as the term is used in the conditional no exposure exclusion.

Response: The term “delivery vehicle,” includes a vehicle that transports fuel to an above-ground storage tank (AST). These vehicles may also receive fuel from an AST. The term does not apply to other types of vehicles at a facility that receive fuel from an AST. An AST that provides fuel to non-delivery vehicles would be considered exposed. However, if the fueling activity is not part of the regulated industrial activity at the site, then it is possible that the AST would not need to be considered in the determination of “no exposure.”

**Part II.C.1(b)**

Comment: TLM comments that this section addresses materials “that could be mobilized by wind.” TLM does not believe the TPDES program is the appropriate mechanism for the regulation of air emissions. TLM notes that the facilities covered by

the MSGP currently have Texas Clean Air Act requirements that must be met to address air emissions.

Response: TCEQ declines to make the requested change, because the requirement related to exceptions for no exposure is consistent with the EPA's "Guidance Manual for Conditional No Exposure from Storm Water Permitting Based on 'No Exposure' of Industrial Activities to Storm Water," as well as TCEQ's No Exposure Guidance Document, RG-467. TCEQ believes that it is appropriate to keep this provision in the permit because particles that could be mobilized by wind are clearly exposed to the environment and could come into contact with storm water or storm water runoff. However, TCEQ also points out that Part II.C.1.(a)(7) does allow for certain roof stacks and vents to qualify for "no exposure" so long as they are compliance with any applicable air permitting requirements. For clarification, EPA and TCEQ's no exposure guidance documents were added to the Administrative Record listed in Part XIV of the Fact Sheet and Executive Director's Preliminary Decision.

**Part II.C.2(a)**

Comment: Lloyd Gosselink comments that this section of the draft MSGP addresses how a permittee obtains authorization for storm water discharges. Lloyd Gosselink notes that this section provides that once an NOI is filed for authorization, the MSGP provides for provisional authorization seven days from the date the NOI is postmarked, "unless otherwise notified by the executive director." Such notification, if made, should be done "in writing." Additionally, if TCEQ determines that an NOI or NEC is incomplete and requests additional information, such notice and request should also be made in writing to provide sufficient notice. Thus, Lloyd Gosselink requests that TCEQ revise this section accordingly.

Response: In response to the comment, the phrase "in writing" is now included in the first sentence of (a), before the phrase "by the executive director." Also, the section was reorganized slightly to describe when provisional authorization begins for electronic submittals and to clarify that both electronic and paper NOIs are subject to review by the TCEQ. The revised language follows:

(a) Paper Notices of Intent (NOIs) and No Exposure Certifications (NECs).
  (1) Paper NOIs and NECs. Provisional authorization begins seven (7) days from the date that a completed NOI or NEC is postmarked for delivery to the TCEQ, unless otherwise notified in writing by the executive director.
  (2) Electronic NOIs and NECs. If electronic submission of NOIs or NECs is provided, and unless otherwise notified by the executive director, provisional authorization begins immediately following confirmation of receipt of the electronic NOI or NEC form by the TCEQ.
  (3) Following review of the NOI or NEC, the executive director will:
    a. determine that the NOI or NEC is complete and confirm coverage by providing a written notification and an authorization number; or
    b. determine that the NOI or NEC is incomplete and request additional information needed to complete the NOI or NEC; or

c. deny coverage in writing. Denial of coverage will be made in accordance with TCEQ rules at 30 TAC § 205.4, related to Authorizations and Notices of Intent.

**Part II.C.2(c)**

Comment: Harris County and HCFCD ask whether the omission of the NEC is an error and notes that it should be added to this section since it is included in Part II.C.2(c).

Response: In response to the comment, TCEQ added a reference to the NEC form in Part II.B.13. of the MSGP.

**Part II.C.3(a)(1)**

Comment: SKS comments that this section specifies that permittees who were authorized under the current MSGP permit can continue to operate under the provisions of that permit for up to 90 days until authorization is obtained under this MSGP. SKS asks whether that means that current permittees will not be subject to the new SWPPP requirements until an NOI for authorization is submitted to TCEQ.

Response: Upon expiration of the current MSGP on August 14, 2011, all permittees will receive provisional coverage for 90 days from the effective date of the reissued permit. During this time period, permittees who were authorized under the current MSGP will continue to operate under the provisions of that permit, and will not be subject to the requirements of the new permit until such time as they submit an NOI for authorization or the 90 day period ends.

Comment: Lloyd Gosselink comments that the draft MSGP, like the existing MSGP, requires the development and implementation of a SWP3 before submitting a Notice of Intent (NOI) for authorization. Lloyd Gosselink notes that the SWP3 requirements in the draft MSGP were revised and additional requirements were added for permittees to address, including more extensive development of BMPs. For permittees with existing MSGP coverage, some extensive revisions to their current SWP3 may be required based on the draft MSGP, once adopted. Thus, Lloyd Gosselink requests that TCEQ provide existing permittees with at least 180 days from submission of the NOI to implement any new or revised portions of their SWP3s. Lloyd Gosselink comments that the implementation of a revised SWP3 with new elements may require, in part, extensive coordination with other divisions or departments of the municipality or facility, governing board or council approval and action, and significant costs that will need to be addressed and funded. Thus, it is appropriate to provide some additional time to fully implement any new SPWP3 elements. This request is consistent with the time given to perform the necessary investigation for non-storm water discharges and SWP3 updates addressed in Part III.B.1(b).

Response: TCEQ believes that additional time is not necessary for permittees with existing MSGP coverage to incorporate the new and revised requirements into their SWP3. The MSGP requires that an SWP3 must be developed and implemented prior to

the submittal of an NOI. TCEQ notes that the general permit may be issued as soon as July 20, 2011, which is 117 days before the deadline of November 14, 2011 for permittees to submit an NOI for authorization under the new version of the MSGP.

**Part II.C.3(a)(3)**

Comment: Lloyd Gosselink comments that the draft MSGP provides that permit coverage for facilities currently covered under the existing MSGP "will expire 90 days following the effective date" of the new MSGP if permit coverage is not renewed during this period. Lloyd Gosselink asks for confirmation whether such facilities with existing MSGP coverage that do not need to renew such coverage under the new version of the MSGP, once issued, need to file a Notice of Termination (NOT) under the current MSGP or whether they can allow the existing MSGP authorization to expire and not renew coverage under the new MSGP, once issued.

Response: Facilities with storm water discharges authorized under the existing MSGP that no longer need permit coverage will not be required to file an NOT, as any authorizations not renewed within 90 days will be automatically cancelled. However, if an NOT is not submitted on or before September 1, 2011, the operator will be assessed an annual water quality fee of $200.00 for Fiscal Year 2012. The reason for this is because annual fees are assessed to each regulated facility that is "active" on September 1 of each year; and permittees who have provisional coverage under the MSGP will be considered "active" unless they submit an NOT. To clarify the requirement, Part II, Section C.3.(a)(3) has been revised to add the following language after the existing sentence:

> "(3)…However, facilities that do not submit a notice of termination on or before September 1, 2011, will be considered active facilities on that date and will be assessed an annual fee for Fiscal Year 2012, as described in Part II, Section C.10.(b) below."

**Part II.C.8**

Comment: B&W Pantex requests clarification on whether there is a TCEQ form to be used for delegation of signatory authority pursuant to 30 TAC §305.44(a)(1).

Response: The referenced rule provides that for a corporation, authority to sign documents such as a permit application, may be assigned or delegated to a manager meeting certain criteria in the rule. If assigned or delegated in accordance with corporate procedures that govern authority to sign documents, then the NOI, NOT, NOC, or NEC form may be signed by that person or position rather than a responsible corporate officer such as a president or vice president. This assignment or delegation is an internal corporate process and TCEQ does not have any forms that address this delegation of signatory authority under 30 TAC §305.44(a)(1).

**Part II.D.1**

Comment: Westward comments that an individual permit application must be submitted 330 days prior to commencement of the regulated activity. Westward asks why this timeline was extended from the original 180 days and asks for the regulatory basis for the 330 day timeframe.

Response: TCEQ has rules governing the timeframes for processing permit applications, which can be found in 30 TAC Chapter 281, and generally can take up to 330 days for an individual permit to be issued after the application is submitted. Therefore, if an individual permit is needed, an applicant needs to allow a sufficient amount of time to obtain coverage, as discharge is not allowed without a valid permit issued by the Commission.

**Part II.D.3(d)**

Comment: Westward comments that in November 2010, the TCEQ Sunset Commission recognized the disproportionate effect of compliance history calculations on small businesses and mandates the Agency correct the rules: "The TCEQ's approach to compliance history fails to accurately measure entities' performance, negating its use as an effective tool." Westward recommends removing Section D.3(d) language regarding poor performer classification under 30 TAC Chapter 60.

Response: TCEQ agrees that the TCEQ Sunset Commission recommended changes to TCEQ's compliance history calculations, but as of the issuance of this permit TCEQ rules regarding compliance history remain in place. Note that the rules currently in effect in 30 TAC §60.3 prevent an entity with a compliance classification of "poor" from obtaining a general permit authorization.

**Part III.A.1(a)**

Comment: B&W Pantex believes that a clarifying statement in paragraph three is warranted. B&W Pantex suggests the wording be revised to read: "The SWP3 must be modified whenever changes are made to the facility that would change the quality or nature of the storm water runoff from the facility."

Response: TCEQ will maintain the language in the MSGP due to the fact that there are changes that could be made at the facility that would require the permittee to modify the SWP3, but that would not affect the nature of the storm water being discharged from the site.

**Part III.A.2(a)**

Comment: SKS comments that this section requires that a member of the storm water pollution prevention team must be identified by name and by title. SKS believes that simply referencing the job title/position should suffice instead of having to name the specific individual(s) since specific individuals may often change throughout the 5-year term of the permit.

Response: The MSGP states that if it is not feasible to provide the name of each team member, then the SWP3 may identify a position or positions within the organization that comprise the team. Members of the organization or the ranking employees or executive officers at the facility must be able to identify the particular individual(s) comprising the team. No changes were made in response to the comment.

**Part III.A.3.**

Comment: STPNOC comments that TCEQ should eliminate inconsistent terminology associated with spill information requirements. Specifically, in Part IILA.3(b)(11) and Part III.A.5(a)(4) define "significant spills and leaks" to be those involving a "reportable quantity" to be consistent with Part III.A.3(d)(13). Also, STPNOC recommends specifying in Part III.A.3(e) that the list be updated with subsequent "reportable quantity" spills not "all" spills. Same comment for Part III.B.5(a)(4).

Response: TCEQ disagrees that the terminology is inconsistent and responds that the intent is for the permittees to evaluate reportable quantity spills before the NOI is submitted, as it may not be feasible to include spills less than a reportable quantity for the three years preceding NOI submittal. However, it is the intent that all spills and leaks be included on the list that is to be updated and maintained in the SWP3.

A significant spill and leak might not meet the threshold for a reportable quantity spill, but still needs to be reported because it might cause a negative impact on water quality. TCEQ disagrees that it is necessary to update Part III.A.3(e) or Part III.B.5(a)(4) because recognizing the location of spills and having these documented as a part of the facility's SWP3, will assist the storm water pollution prevention team in assessing potential future spills and the need for revising existing BMPs. TCEQ points out that spills of a reportable quantity as defined in the federal rules at 40 CFR §302.4 and state rules at 30 TAC §327.4 must be reported to TCEQ separately.

Comment: STPNOC comments that the MSGP should allow the option to include certain information in a narrative description in the SWP3 instead of on the maps. Specifically, in PartIII.A.3(c) and Part III.A.3(d), surface area of the facility, impaired waters, documentation that all unauthorized discharges have been eliminated, and the description of pollutants in runon are best described in a narrative format in the body of the SWP3.

Response: The requirements for the content of the drainage site map correspond to the requirements in EPA's current MSGP issued in 2008. TCEQ disagrees that the information required on the map in this section would better described in a narrative format. No changes were made based on this general comment. However, Part III.A.3(d)(14) was changed to be consistent with EPA's current MSGP and now reads as follows:

> "(14) locations and sources of runon to the site from adjacent property that contains significant quantities of pollutants;"

**Part III.A.3(a)**

Comment: NRG suggests revising the first sentence to not include materials located in an area where the storm water discharges are permitted by another TPDES permit. NRG suggest wording the sentence as follows: "An inventory must be developed that lists materials currently handled at the facility that may be exposed to precipitation or runoff such that the runoff will be discharged via a storm water outfall and not a permitted wastewater outfall."

Response: In order to address the concern that the requirement could be construed to mean the inventory needs to include materials in an area covered under another TPDES permit, the requested sentence is revised as follows:

> "Inventory of Exposed Materials. An inventory must be developed that lists materials currently handled at the facility that may be exposed to precipitation or runoff in a drainage area of an outfall covered under this permit…"

Comment: B&W Pantex comments that the term "significant change" is defined twice in the third paragraph in different contexts. B&W Pantex recommends relocating these definitions to Part I – Definitions.

Response: TCEQ declines to make the requested change, because the existing descriptions within this section are adequate to describe the term. In addition, because the term "significant change" in this paragraph is used to describe two separate things, types of materials and material management practices, leaving the description within this paragraph will be less confusing than moving the definition to Part I. Finally, this is appropriate because the terms only occur in this section of the MSGP.

**Part III.A.3(b)(11)**

Comment: NRG suggests changing the word "significant" in the first sentence to "reportable." The revised language would read: "locations where all reportable spills and leaks…"

Response: TCEQ agrees that clarification of this item would be useful, and revised Part III.A.3(b)(11) as follows to describe what is meant by the term "significant" in this section:

> "locations where all significant spills and leaks (for example, reportable quantity spills and spills or leaks that have the potential to cause impacts on water quality) of oil or toxic or hazardous pollutants occurred at exposed areas that drained to a storm water conveyance in the three (3) years prior to the date the SWP3 was prepared or amended."

Comment: NRG recommends deleting the second paragraph because the site map already requires that the location of reportable spills be marked and because the site

map includes drainage path directions to the storm water outfall. NRG states that this comment also applies to "areas with a high potential for significant soil erosion." NRG believes that it is redundant to require this information as a narrative and on the site map.

Response: TCEQ will maintain the language in the second paragraph, because it will help to identify exposed pollutants or areas of concern. This paragraph provides enough flexibility to include this information on a site map or, alternatively, in the narrative description.

**Part III.A.3(c)**

Comment: Westward asks for clarification that the site map does not require depictions on a USGS Quadrangle Map.

Response: The site map must contain enough detail to identify the location of the facility and the surface waters that could potentially receive storm water discharges from the site. A USGS quadrangle map is given as an example of the style of map that could be used to satisfy this requirement.

Comment: Westward asks for clarification regarding the number of receiving streams intended to be depicted on this map, the immediate receiving water(s), or downstream tributaries, etc., to a classified stream segment, etc. Westward comments that the citation implies that the flow from one stream to another to another should be included on the map, potentially all the way to the ocean. Westward recommends including the nearest receiving water or water(s) if more than one could be reached by a direct discharge.

Response: This item is referring to the first surface water receiving discharges from each outfall, though a permittee may elect to include the discharge route until the discharge reaches a classified receiving water body. No changes were made in response to this comment.

**Part III.A.3(d)(8)**

Comment: NRG recommends deleting the requirement to put the surface area on the map. If needed, NRG comments that it should be in a narrative.

Response: TCEQ agrees in part with the commentor, and revised this item as follows to say that either the surface area or a clear scale must be provided on the map to insure that the approximate surface area can be calculated using the map:

> "the surface area of the facility (i.e., size in acres or square feet), or a clear scale such that the approximate surface area may be calculated;..."

**Part III.A.3(d)(9)**

Comment: NRG recommends deleting the requirement for information on impaired waters on the map. NRG comments that this information should be in a narrative.

Response: TCEQ declines to make the requested change because including impaired waters on the site map will be useful in assessing the potential for pollutant sources that flow to impaired water bodies and for choosing and implementing BMPs to address pollutants of concern if needed.

**Part III.A.3(d)(12)**

Comment: NRG recommends deleting the requirement to indicate if significant quantities of pollutants are present in the runon. NRG comments that this information should be in a narrative.

Response: TCEQ agrees in part, since some of the information requested may be difficult to include on a map. However, it is often useful for both the permittee and an inspector at a site to be able to look at the site map and determine if there are any particular areas of concern.

In response to the comment, TCEQ revised Part III.A.3.(d)(14) as follows to provide for the permittee to note if there are any particular areas of interest, such as areas where significant quantities of pollutants are present in the runon:

> "locations and sources of runon to the site from adjacent property that contain significant quantities of pollutants"

In addition, the requirement to describe if significant quantities of pollutants are present in the runon, was moved to the second sentence of the narrative requirements of Part III.A.3(b) as follows:

> "…This description must include locations and sources of runon to the site from adjacent property, and an indication if significant quantities of pollutants are present in the runon."

Comment: Westward recommends eliminating the requirement to include "descriptions" of non-storm water discharges and documentation of all unauthorized discharges on a map. Westward comments that language could be required in associated text, but inclusion of this information on the map will make the map illegible. NRG recommends deleting the requirement for showing the location of unauthorized discharges on the map and rather include it in the narrative.

Response: TCEQ agrees in part and removed the second section of Part III.A.3.(d)(12), related to documentation, because this should be included in the Inspection and Certification of Non-Storm Water Discharges required in Part III.B.1 of the MSGP. The requirement to describe the non-storm water discharges was retained, as this requirement could likely be accomplished with a short notation of the type of discharge (for example, air conditioning condensate or irrigation runoff).

**Part III.A.3(e)**

Comment: NRG suggests changing the word "all" to "reportable" in the second sentence requiring that the list of spills be updated quarterly. Also, NRG recommends clarifying the language to state that the list would be updated quarterly if a reportable spill has occurred. NRG states that the list should not need to be updated if there were no spills during the quarter.

Response: TCEQ believes that the language about reportable quantity spills in Part III.A.3.(e) is appropriate and respectfully declines to make the requested change. This language is consistent with the existing MSGP and is useful to help indicate areas of concern at the facility. Requiring permittees to update the list of spills on a quarterly basis will emphasize that the SWP3 is a living document that should always reflect current conditions on the site.

**Part III.A.4(a)**

Comment: TACA comments that the language of this section seems to indicate the list of pollution prevention measures is all inclusive and that every listed measure or control be utilized or a description of why the measure or control is infeasible. TACA recommends that TCEQ recognize that, even if feasible, a specific measure or control may have no measurable effect on the quality of storm water discharging from the site. TACA comments that the appropriateness of the operator's chosen methods and controls should be determined based upon the water quality sampling and other monitoring required by the permit. TACA believes the list should be clearly identified as guidance.

Lloyd Gosselink comments that the draft MSGP requires the development and implementation of BMPs to reduce the discharge and potential discharge of pollutants found in storm water. The draft MSGP was expanded to require that permittees implement a certain list of specific BMPs or document in their SWPPP why such BMPs are not feasible. This requirement is unnecessary and overly burdensome. Permittees should be focused on developing and implementing site-and industry-specific BMPs, rather than addressing a pre-determined list of BMPs that may or may not be appropriate for a specific facility conducting a specific industrial activity. Lloyd Gosselink requests that TCEQ amend this section of the draft MSGP to either remove this language or to clarify that the listed BMPs are suggestions only for permittee consideration.

Westward comments that the requirement (last sentence under (a) states "...the permittee shall implement the following specific controls, or shall document why they are not feasible:") to divert, infiltrate, reuse, contain, or otherwise reduce storm water runoff in order to minimize discharges of pollutants deviates from water quality based limitations to water quantity limitations. Westward recommends that this language be altered to indicate that these are preferred practices, but the use of all of the controls listed in (4)(a)(1) and (10) is not always necessary whether certain practices

are "feasible" or not. Especially considering that sites located on aquifer recharge zones may discourage or outright prohibit the use of infiltration practices. Westward disagrees that documentation of infeasibility should be included. Westward asks what would make a particular BMP "infeasible."

Response: In response to the comment, TCEQ revised the second paragraph as follows to clarify that the listed BMPs are simply suggestions and not requirements.

> "Examples of BMPs that the permittee may use to comply with this section include the following:"

However, paragraph (11), related to salt storage piles, is not simply a suggestion, but is a requirement and therefore was reworded slightly and moved to Part II, Section B.4, related to Storm Water Discharges from Salt Storage Piles.

> "The permittee(s) shall prevent exposure of salt storage piles, or piles containing salt, used for deicing or other commercial or industrial purposes, including maintenance of paved surfaces. This material must be enclosed or covered. Appropriate BMPs (for example, good housekeeping, diversions, containment) must be implemented to minimize exposure resulting from adding to or removing materials from the pile(s)."

**Part III.A.4(f)(1)**

Comment: NRG recommends revising the requirement that training activities must be maintained in the SWP3 to include a reference to an accessible database or other filing system. STPNOC recommends amending the training record maintenance requirements to allow alternative methods that ensure records are maintained in a manner that is readily recoverable, e.g. in an electronic database or other standard business training record process that may be described in the SWP3.

Response: At this time, TCEQ will not require that a database or electronic filing system be used to maintain the records of training activities. However, it a permittee may find it beneficial to utilize such a system of recordkeeping. The permit language was not revised, as it already provides enough flexibility for an electronic database, provided that the information in the database is referenced in the SWP3 and is readily available. The electronic database would then be considered part of the SWP3, though it would be separate from the actual SWP3 document.

Comment: STPNOC recommends specifying that training conducted to comply with other regulatory required programs, e.g. 40 C.F.R. § 112 training, may be used to satisfy the training requirements of this section to the extent that such training addresses the components specified.

Response: TCEQ acknowledges that the training requirements listed in the MSGP may overlap the requirements that are within other regulatory programs, but respectfully declines to specify that training conducted to comply with other regulatory required

programs may be used to satisfy the training requirements. The permittee may combine the training requirements of the MSGP with requirements with those in other regulatory programs so long as compliance is maintained with the MSGP and with any other regulations.

**Part III.A.5**

Comment: B&W Pantex requests clarification of the term "significant" as it is used in this section so that the regulated community has clarity on the intent of record-keeping. B&W Pantex states that this provision could be re-worded to state: "Descriptions and dates of any releases of reportable quantities of materials that result in the discharge of pollutants to surface waters;..."

Response: TCEQ provides clarification that the term "significant" includes, but is not limited to reportable quantity spills and leaks, as well as other (smaller) spills and leaks that have a potential to migrate off site (such as may reach an MS4 or surface water body), that recur on a frequent basis, that have a potential to cause water quality or other environmental problems. The permittee may develop additional criteria for determining a significant release for the purpose of this section.

Comment: STPNOC requests clarification that records required in A.5(b) may alternatively be maintained in accordance with other standard business record processes as described in the SWP3.

Response: Paragraph III.A.5.(b) requires the permittee to include the listed information as an attachment to the SWP3, "or made readily available" upon request. The language does not limit the type of records that a permittee may use, so a permittee may use a variety of processes for keeping the required records so long as they are easily accessible upon request by TCEQ or other authorized personnel.

**Part III.B.1(b)**

Comment: B&W Pantex requests that this section be modified to read: "The SWP3 must ensure that non-storm water sources are not combined with storm water discharges authorized by this permit unless the discharges are authorized by another permit issued pursuant to the Texas Water Code."

Response: TCEQ agrees that this revision may provide more clarification of the intent, that non-storm water flows not be allowed to commingle with the permitted storm water unless it is being discharged under a TPDES permit. Therefore, the last sentence of the first paragraph of Part III.B.1(b) was revised as follows:

> "The SWP3 must ensure that non-storm water sources are not combined with storm water discharges authorized by this permit unless otherwise allowable under Part II.B.5. of this general permit."

TCEQ declines to change the term “TPDES permit” as suggested by the commentor, since all surface water discharge permits are in accordance with the TPDES program and consistent with the Texas Water Code.

**Part III.B.2(a)**

Comment: NRG recommends deleting the requirement to perform a quarterly inspection during a period when storm water is discharging. NRG comments that it is virtually impossible to collect the required samples at multiple outfalls and also perform a complete inspection. STPNOC suggests clarifying that the "period when a storm water discharge is occurring" for purposes of conducting a facility inspection includes some defined period following a qualified storm event or in the alternative, deleting the requirement.

Response: The existing language is sufficient because it indicates that performing a routine facility inspection during a period when storm water is discharging is required only “if feasible.” Therefore, where collecting samples from multiple outfalls is “virtually impossible” it would meet the exception provided in the current language of “if feasible.”

**Part III.B.2.**

Comment: Westward asks for clarification regarding the "certification" language required, if any. Otherwise, Westward assumes that the inspection report only needs to be signed by a signatory authority, per 30 TAC Chapter 305 and request that the word "certification" be changed to "signed."

Response: The certification language is required by 30 TAC §305.128 for the signing of any report required by the MSGP and is quoted verbatim from that rule. Also, *see* Part III.E.6(c) of the MSGP, which is referenced in Part III.B.2. The signatory requirement used for NOIs is in 30 TAC §305.44(b), relating to Signatories to Applications. The following is the certification language in §305.128:

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

However, the reference to “certification” in the sentence following the list in Part III, Section B.2.(c) is meant to refer to the documentation of inspections; therefore, the word “certification” was replaced with “documentation” in this sentence.

**Part III.B.3**

Comment: NRG requests clarification of what “normal” hours means when the facility is fully staffed and not staffed with minimal personnel. STPNOC requests that TCEQ specify that "normal business hours" refers to normal work schedule hours for qualified personnel performing the monitoring.

Response: The language requiring visual monitoring during the normal hours of operation for the facility applies to those hours that the facility is actively involved in The language requiring visual monitoring during the normal hours of operation for the facility applies to those hours that the facility is actively involved in performing regulated industrial activities. Changes were made during the previous renewal process in response to comments concerning employee safety and additional costs associated with having employees that are on call for sampling during hours other than normal hours of operation. Monitoring must be conducted during daylight hours or in a well lit area to prevent unnecessary exposure of employees to adverse conditions.

TCEQ declines to revise the permit to include only those hours that qualified personnel are present at the facility, and encourages permittees to provide training for staff that will be present during the facility’s operating hours to collect visual samples.

Comment: TCE agrees with the provision that requires quarterly visual inspections by TCEQ, but does not think there are adequate TCEQ personnel to perform these inspections.

Response: TCEQ appreciates the comment, but would like to point out that the requirement to conduct regular visual inspections is the responsibility of the permittee. TCEQ will inspect some facilities authorized under this permit, but not at a specified frequency. Results of all self-inspections by the permittee must be documented and kept with the SWP3.

**Part III.B.3(c)(6)**

Comment: STPNOC recommends moving the requirement to identify the probable sources of any observed contamination to Part III.B.3(d). STPNOC comments that this responsibility more appropriately belongs to the storm water pollution prevention team with input from the qualified personnel conducting the visual monitoring.

Response: TCEQ declines to make the suggested change because the language about identifying the probable sources of any observed contamination in Part III.B.3(c)(6) is appropriate to include in the MSGP. However, TCEQ recognizes that the personnel performing the visual monitoring may not always be able to determine the exact source, but instead may need to notify the storm water pollution prevention team.

**Part III.B.4.**

Comment: AECOM requests clarification in Part III.B.4 whether water quality monitoring will be required for facilities who determine that the pollutant of concern is not present under Part II.B.7.

Response: Monitoring under this section is only required for new discharges to water quality impaired receiving waters that discharge the pollutant of concern at a level of concern as described in Part II.B.7(c)(3)e. In addition, Part II.B.7(c)(3)e. was revised to include the same reference the "level of concern" in the first paragraph:

> "(a) The permittee shall monitor the discharge from the facility at all outfall(s) determined to be discharging a pollutant of concern at a level of concern under Part II, Section B.7, Water Bodies and Total Maximum Daily Load (TMDL) Requirements."

In addition, Part II.B.7(e) was revised to include the same reference in the first paragraph:

> "e. If sampling results indicate that the pollutant of concern is present in the discharge at a level of concern, then the permittee shall perform the following activities:…"

**Part III.B.4.(c)**

Comment: Regarding the requirement to contact TCEQ for guidance on what pollutants to monitor, Westward asks TCEQ to identify the specific program area responsible for addressing these requests. Westward notes that TCEQ Regional Offices or certain municipalities may not have engineering staff that have the technical expertise to provide appropriate guidance. Westward thinks it may be more appropriate for TCEQ technical staff to develop and publish written guidelines for the regulated community to utilize.

Response: In response to the comment, the MSGP was revised to indicate that the TCEQ's Wastewater Permitting Section (MC-148) should be contacted for guidance on benchmark levels for additional pollutants. In addition, an allowance was added for use of TCEQ guidance on the matter in lieu of submitting a form request, if such guidance is developed by TCEQ. The second sentence of Part III.B.4.(c) was revised as follows:

> "…For the following pollutants of concern, monitoring must be conducted for the following alternative pollutants, unless an alternate is approved in writing by TCEQ's Wastewater Permitting Section (MC-148) or the TCEQ develops separate written guidance:"

Comment: AECOM would like to know what TCEQ considers a benchmark for bacteria in Part III.B.4.(f).

Response: At the current time, TCEQ has not determined a benchmark level for bacteria to be used for compliance with this section of the permit and will work with permittees as needed to provide a benchmark for their discharges.

**Part III.B.5(a)(4)**

Comment: B&W Pantex requests this section be re-worded to read: "(4) all areas where spills or releases of reportable quantities have occurred in the last three (3) years;…" B&W Pantex comments that the modified wording would add a degree of clarity for the regulated community and would be consistent with other regulations.

Response: TCEQ declines to revise the language to only require examination and assessment of areas where reportable quantity spills or releases occurred, because areas where other spills or releases have occurred may be especially useful in determining if changes are needed to the SWP3, particularly if repeated releases have occurred over the permit year.

**Part III.B.5(a)(5)**

Comment: AECOM requests that TCEQ revise the requirements for the training records in Part III.B.5(a)(5) to be located with the SWP3. AECOM thinks that the training records could be referenced in the SWP3 and made readily available as is similarly done with other records.

Response: TCEQ recognizes that training records may be separate from the SWP3 but does intend for basic information such as training dates be included in the SWP3. Additional information may be appropriate to include as an attachment or reference in the SWP3, and TCEQ does not believe that any additional changes are required to the permit language.

**Part III.B.5(b)(6)**

Comment: B&W Pantex comments that the term "incident of non-compliance" is defined in this section and recommends moving it to Part I – Definitions.

Response: The term "incident of non-compliance" is defined in this section and the term is only used in that section of the permit. Therefore, TCEQ respectfully declines to make the requested change.

**Part III.D.1(a)**

Comment: PCCA asks if there is a substantially significant discharge amount that must occur in order to be considered a "qualifying event."

Response: The current MSGP requires that sampling be conducted on discharges of runoff that result from a storm event that measures at least one-tenth of an inch. In the draft MSGP, TCEQ removed the requirement for the sampling to be conducted based on

the size rain event and instead requires sampling be conducted on an actual discharge from the site that results from a "measureable" storm event. A qualifying storm event under the MSGP is now one that produces any amount of discharge from an outfall regulated under the MSGP.

Comment: UPS requests that if the proposed language regarding "qualifying storm events" is adopted, that the requirement to maintain and monitor a rain gauge at every location be removed since it would no longer be applicable.

Response: TCEQ disagrees that the change in the MSGP related to a qualifying storm event reduces the need for a rain gauge. It will still be useful for a permittee and for a TCEQ inspector to be able to demonstrate that a measurable rainfall event did or did not occur when evaluating whether a sample should have been collected.

**Part III.D.1(c)**

Comment: SKS comments that this section contains a new requirement to maintain a rain gauge on-site and to monitor the rain gauge once per week; and once per day during storm events. SKS comments that there are going to be times when a storm event will take place and either there will be no one at the facility to monitor the rain gauge or any rainfall events occurred in the evening or during a weekend or a holiday when no one was available to conduct the monitoring of the rain gauge. SKS requests that this section be clarified regarding what would be expected when no one will be available to conduct the required rain gauge monitoring.

Response: The requirement to maintain a rain gauge on site is continued from the existing permit and will be retained in the renewed MSGP. The rain gauge provides the permittee a mechanism for demonstrating that a measurable rain event did or did not occur at the site that could have resulted in a discharge.

**Part III.D.2(b)**

Comment: Westward comments that the inclusion of a coefficient of runoff for drainage area deviates from water quality based limitations to water quantity limitations. While Westward recognizes that TCEQ included more information related to erosion and sedimentation controls throughout the MSGP in support of certain sectors being authorized to discharge construction-related storm water runoff; Westward recommends limiting these required practices to sectors that are allowed to discharge construction activity storm water runoff.

Response: This provision was included based on EPA's current MSGP, and TCEQ believes it is appropriate to retain in the permit in order to help determine if separate outfalls are indeed substantially similar for the purpose of reducing monitoring.

**Part III.D.2(b)(4)**

Comment: PCCA comments that they are opposed to having to monitor from each outfall that has been determined to be substantially similar, on a rotating basis. PCCA notes that they have installed permanent storm water monitors/samplers and having to move them would be burdensome and costly. PCCA questions whether if they are able to show that all the outfalls are substantially similar, why samples must be collected from each individual outfall on a rotating basis. NRG recommends deleting the requirement to rotate monitoring requirements at substantially similar outfalls. NRG comments that the monitoring point at some outfalls may be very difficult to reach and if there is a similar outfall that can be monitored more readily, it should be used. NRG recommends deleting the requirement to rotate monitoring requirements at substantially similar outfalls.

Response: TCEQ acknowledges that requiring that an operator monitor from each outfall that has been determined to be substantially similar, on a rotating basis may not be necessary based on the additional requirements that have been included for establishing substantially similar outfalls. Therefore, in response to the comments, the first sentence of Part III.D.2(b)(4) was removed, related to the requirement to rotate the outfall.

**Part III.D.3(b)**

Comment: Harris County and HCFCD comment that this section requires sampling, inspections, and examinations on a semiannual basis in the first full period following submission of a NOI. Harris County and HCFCD note that Part IV.B.1(a) requires benchmark sampling to be initiated during the first full period following permit issuance. Harris County and HCFCD believe that this language is ambiguous and difficult to enforce since the permit issuance date may occur in a different period than the NOI submittal date. Harris County and HCFCD request that the commencement of semi-annual monitoring be consistent throughout the permit.

Response: TCEQ acknowledges the concern, but notes that the purpose of benchmark sampling is partly to insure that TCEQ has reviewed benchmark data from all regulated sectors. Existing facilities will be renewing coverage before the end of the calendar year 2011, and all semiannual sampling will be required to commence beginning with the January through June 2012 period. However, for new facilities, benchmark sampling will only be required during the calendar year following NOI submittal, since the annual average result is reported (see IV.B.1.(b)). It is expected that this discrepancy will be worked out in subsequent MSGP permit renewals.

**Part III.D.4(a)(1)**

Comment: NRG and STPNOG recommend including poor lighting conditions as an example of adverse conditions. NRG comments that it is dangerous to attempt to collect samples when lighting is poor.

Response: TCEQ did not add the requested language to the permit because the existing language is sufficient to address the situation raised by the commenter. TCEQ did not intend for the list of examples of adverse weather conditions to be exhaustive and recognizes that there may be additional situations other than those listed when monitoring requirements may be temporarily suspended or waived. If a permittee 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. This would also apply in circumstances where there is insufficient light to collect required samples.

Comment: AECOM asks that TCEQ address whether the environmental testing accreditation and certification requirement would prohibit an industrial facility from using its own laboratory in Part III.E.4.

Response: A facility operator may use its own laboratory if it is operated in accordance with 30 TAC §25.6 and analyses are conducted in accordance with 30 TAC Chapter 319.

**Part IV.A.1**

Comment: NRG recommends stating in this section that the benchmark monitoring requirements are subject to the exceptions to the monitoring requirements in Part III.D.4. STPNOC recommends including the adverse condition exceptions to the benchmark monitoring requirements in this section.

Response: Although a reference to Part III.D.4 is included in Part IV.B.2, it may be more clear to include specific language regarding adverse weather condition exceptions in Part IV.A.1. as well. Therefore, TCEQ added the following new paragraph to Part IV.A.5. to reference adverse weather conditions in Part III.D.4. of the permit:

> "5. Adverse Weather Conditions
> Sampling under this section is subject to the exceptions related to adverse weather conditions or drought in accordance with Part III, Section D.4. of this general permit."

Comment: TACA and Westward comment that they are unaware of any scientific basis that would justify the reduction of the TSS benchmark value on portions of Sectors A, C, E, U and all of Sectors D, H, J, O, Q, and AA to 50 mg/l from the existing 100 mg/l. TACA and Westward note that 50 mg/l is below the background concentration from undeveloped areas of the Edwards Aquifer Recharge Zone, which is 80 mg/l. TACA and Westward recommend keeping the benchmark value for TSS at 100 mg/l. NRG also recommends keeping the benchmark value for TSS at 100 mg/l for Sector O, and if not, explaining why steam electric generating facilities should be subject to a more stringent TSS benchmark value.

Response: The proposed benchmark values are based on analytical data submitted to TCEQ during calendar years 2007 and 2008. TCEQ performed statistical analysis of the data and lowered the TSS benchmark values for those sectors or part of sectors where

the median of the data was below or very close to 50 mg/L. Analytical results that exceed a benchmark value are not in violation of the permit, but rather indicators that modifications to the SWP3 may be necessary. However, if the benchmark values are set too high or too low, they may not serve as good indicators of performance of best management practices. The median of the analytical data for TSS in sector O was 29.5 mg/L, so it was determined that lowering the TSS benchmark to 50mg/L would provide permittees with a better indicator in this sector. This data will be evaluated again during the next permit renewal based on benchmark data submitted during this permit term.

Comment: Lloyd Gosselink comments that the draft MSGP provides a table of benchmark values that permittees shall compare against the results of their sector-specific analyses. Lloyd Gosselink asks that TCEQ confirm that this section of the MSGP does not require that all regulated sectors monitor for all constituents listed in this section, but that specific requirements to conduct benchmark monitoring for particular constituents are specified in Part V.

Response: Benchmark sampling is only required for a subset of regulated activities under the MSGP. To provide additional clarification, the first paragraph of Part IV, Section A.1. was changed to reflect that not all facilities are required to conduct benchmark sampling. The provision now reads:

> "(a) The permittee shall compare the results of analyses to the benchmark values listed below in Table 3 for any pollutants that the permittee is required to monitor in Part V of this general permit, and shall include this comparison in the overall assessment of the SWP3's effectiveness…."

The reference to Part V was not included; however, because there are some cases where a discharger to an impaired water body may be required to conduct sampling for a pollutant of concern that is included in this list.

**Part V.D.4(a)**

Comment: TACA and Westward request clarification why it is necessary and whether it is feasible for storm water runoff from asphalt paving and roofing emulsion production areas to be sampled prior to the runoff combining with storm water runoff or other waste streams that may be covered under the MSGP.

Response: Storm water runoff from a facility that manufactures asphalt paving and roofing emulsion is regulated under EPA's effluent limitations guidelines, specifically in 40 CFR Part 443, Subchapter A. This rule establishes technology-based effluent limits for process wastewaters and storm water runoff, so the concentrations provided in the MSGP, which were calculated from the mass and volume limits provided in the rule, must be met for the storm water runoff from these specific areas. Due to the intermittent nature of storm water, it is not possible to combine flows from asphalt paving and roofing emulsion areas with other areas while ensuring that the discharge from the emulsion production areas meets the required effluent limits. TCEQ notes that

if a facility cannot separate flows, or if the facilities discharge any process wastewater from these emulsion production areas, an individual permit may be required.

**Part V.J.**

Comment: Linda Pechacek supports the proposed benchmark change to 50 mg/l for TSS for the SIC codes listed in Table 20 of Sector J.

Response: TCEQ thanks the commentor for the feedback.

Comment: Linda Pechacek comments there are numerous sand mines operating in the Coastal Bend area of Texas. Ms. Pechacek states that once groundwater starts pooling at the bottom of a sand pit, the potential for contaminated groundwater seeping from those industrial activities is markedly increased. Ms. Pechacek recommends including appropriate BMPs to prevent the mixing of storm water with non-storm water; and to prevent erosion.

Response: Industrial activities related to mineral mining are required to implement a series of BMPs, in addition to BMPs described in Part III, to address the discharge of pollutants from a mining site. The MSGP authorizes the discharge of certain non-contaminated non-storm water discharges such as groundwater. However, if groundwater is comingled with pollutant sources then those combined waters would not be authorized to be discharged under the MSGP. TCEQ declines to revise the permit and notes that the proposed conditions are included in the existing MSGP.

Comment: Linda Pechacek comments that because the loading of dump trucks with sand/clay mixture occurs in a manner such that the trucks are not covered, sand mine sites should not be eligible for a No-Exposure Exclusion from MSGP requirements. Additionally, Ms. Pechacek comments that truck ingress and egress areas should be stabilized to minimize the generation of dust and off-tracking of raw materials or intermediate products, final products or waste materials.

Response: The conditional no-exposure exclusion is available for all sectors listed in the MSGP, in accordance with federal storm water rules at 40 CFR §122.26. However, if TCEQ determines that a facility does not meet the requirements described under the no-exposure exclusion, then the facility is ineligible for the NEC. In general, the loading and unloading of materials, intermediates, or products must be covered or be conducted indoors to be considered "no exposure." Problems related to dust and off-tracking from a site must be addressed by using appropriate BMPs as described in Part III of the permit, and would not be allowable at a facility seeking a no-exposure exclusion. TCEQ declines to revise the permit, which is consistent with the existing MSGP.

Comment: Linda Pechacek comments that sand mining increases erosion potential at a site. Therefore, erosion and sediment control measures should be developed to reduce soil erosion, sedimentation, and to prevent the contamination of groundwater with TSS or other contaminants.

Response: All industrial sites, including sites where mining activities are performed, must implement erosion and sediment control measures to address soil erosion and sediment control. This is described in Part III in the permit; therefore additional requirements are not proposed.

Comment: Linda Pechacek comments that when a mine closes, a closure plan is needed to address long-term erosion, problems, or industrial pollutant hotspots resulting from these types of industrial activities.

Response: Section V.J.11, Termination of Permit Coverage, includes final stabilization requirements for facilities to be allowed to terminate coverage, which is consistent with the requirements in EPA's current MSGP. TCEQ disagrees that a separate closure plan is required.

Note that certain quarries located within the water quality protection area in the John Graves Scenic Riverway, are regulated under TPDES general permit TXG500000, which has more stringent closure requirements than the proposed MSGP.

Comment: TACA is concerned with several aspects in the proposed draft permit regarding Sector J. TACA and Westward comment that it appears TCEQ has included several requirements that are beyond the scope of the MSGP, such as requirements regarding safety (highwalls) and reclamation. TACA and Westward state that Texas does not currently have statutory authority to require mine reclamation and such a technically complex subject is not best addressed in the MSGP. Additionally, TACA comments that several of the requirements may conflict with existing contractual obligations between operators and landowners; and to not give any consideration regarding their appropriateness with respect to the after-mining use of the land. TACA requests that any requirements outside the scope of this permit be removed, particularly with regards to safety concerns and reclamation related issues.

Response: The TCEQ agrees in part with the commentor, and revised the permit as described below to be more consistent with the current EPA MSGP. It is appropriate to include some criteria for a permittee to determine when the regulated industrial activity has ceased, and the existing MSGP does not include any such guidance. TCEQ utilized this language to revise Part V.J.12 (renumbered as Part V.J.11), related to Termination of Permit Coverage. As a result, the definition for "final stabilization" that was proposed for Sector J was also removed

Additionally, note that the MSGP is not requiring mine reclamation, but in Part V.J.11(b)(2) is conditioning termination of MSGP permit coverage on a site having engaged in activities "to return the land to an appropriate post-mining use" once the regulated industrial activity is no longer taking place. This requirement is consistent with termination of MSGP coverage in other sectors once the regulated industrial activity has ended. For clarification purposes, the term "reclamation" was replaced with the phrase "alternative post mining use," where applicable, and additional language clarifying this section was included in the draft permit.

The language in Part V.J.11 (previously Part V.J.12) was revised as follows:

"11. Termination of Permit Coverage

(a) The permittee shall continue to meet the requirements of this general permit until authorization under the general permit is terminated. The permittee may terminate coverage by submitting an NOT in accordance with Part II.C.7 of this general permit. For the purposes of this section (Sector J), Part II.C.7.(a)(1)c. of the general permit, related to termination of coverage, means either that final stabilization of the site must be achieved or the site must be returned to an alternative post-mining use.

(b) A site or portion of a site is considered to have achieved final stabilization or to be returned to an alternative post mining use if the permittee can demonstrate that it has accomplished either of the following conditions, (1) or (2):

(1) Final Stabilization. To achieve final stabilization, the permittee shall insure that all of the following requirements (a through d) have been met:

a. Storm water runoff that comes into contact with raw materials, intermediate byproducts, finished products, and waste products does not have the potential to cause or contribute to violations of state water quality standards.

b. Soil disturbing activities related to mining at the site or portion of the site have been completed.

c. The site or portion of the site has been stabilized to minimize soil erosion.

d. If appropriate depending on the type, location, or size of the site, and its potential to contribute pollutants to storm water discharges, the site or portion of the site has been revegetated, will be amenable to natural revegetation, or will be left in a condition consistent with the post-mining land use described in paragraph (2) below.

(2) Alternative Post Mining Use: For the purposes of this section, a permittee may submit an NOT to terminate coverage if the land has been returned to an alternative post-mining land use. For example, this may include construction pad sites or lakes.

Comment: Regarding Part V.J.12(b)(1)(a), Westward comments that the establishment of vegetative cover may not be a practicable solution for quarry sites intended for an alternative end use (construction pad site, lake, etc.). Additionally, Westward comments that quarry activities will have removed topsoil and active soil horizons necessary for the re-growth of vegetation. The remaining soils will not be comparable to the "native background." The replacement of soils and the implementation of native re-growth will have a significant negative economic

impact on quarry operations. Westward asks TCEQ for a fiscal analysis of what the costs of these proposed requirements would be. Westward also recommends modifying Parts V.J.12(b)(1)a(iii) and (1)b(iii) to require stabilization, without requiring revegetation.

Response: As describe above, the specific requirements to establish vegetative cover was revised for clarity and for consistency with EPA's MSGP. TCEQ thinks that these changes, along with the other revisions described in the previous response, will address the commentor's concern.

Comment: Westward comments that the Part V.J.12.(b)(1)c.(ii) regarding the requirement for permanent structural controls to be adequate to manage remaining on-site drainage is vague and does not provide sufficient information to the regulated community to adhere to a compliance standard. Westward states that this appears to regulate water quantity discharges rather than water quality discharges and does not provide a measurable standard (e.g., non-erosive flow at the discharge point, etc.). Westward recommends a modification to this requirement to provide a non-erosive flow velocity or other measurable metrics to achieve a water quality objective.

Response: In response to the comment, this paragraph was removed. Section V.J.11(b) was also revised as described in a previous response, to be more consistent with the EPA's MSGP.

Comment: In regards to Part J.12.b(1)(e)(i), Westward comments that some quarry operations screen and sell topsoil removed during the overburden stripping process. This material may also be utilized in the construction of perimeter berms required for highwall safety (MSHA standard) or for flow diversion (structural controls).

Response: TCEQ recognizes that this material would not be considered a waste if it is removed and sold. In fact, removal of topsoil for sale would be classified as a mining activity and regulated under Sector J of the MSGP.

Comment: Westward recommends modifying Part J.12.b.(1)(e)(ii) to utilize on-site materials in the preparation of the final elevations to prevent erosive flow surfaces to the extent practicable.

Response: In response to the comment and to other comments made regarding this section, TCEQ removed this paragraph and revised Section V.J.11.(b) as described in a previous response.

Comment: Westward comments that there are numerous quarries in the state where the landowner leases the site for specific projects such as Texas Department of Transportation (TxDOT) highway projects. TxDOT requires that the operator obtain any and all necessary permits, including storm water coverage. The owner of the site, however, will require that the operator leave the site as an un-reclaimed quarry so that future operators can use the site for future projects. Westward

comments that proposed Part J.12.(b)(1)(3) would place the operator in the impossible position where they could not file a NOT, because reclamation had not been accomplished and due to a lease that expired upon completion of a project, they may be legally unable to access the site to maintain BMPs. Westward notes that there are also cases where a longer term lease expires and the owner chooses not to extend the lease with the current operator and may in fact later lease the site to another operator. In cases such as these, were there are minable reserves remaining and the operator no longer has leasehold rights to the property, Westward asks how will the operator be able to terminate coverage and will the duty to stabilize or reclaim then fall to the owner.

Response: TCEQ believes that it is appropriate to require site stabilization for mining operations in order to insure that the regulated industrial activity as defined in 40 CFR §122.26(b)(14)(iii), related to active and inactive mining operations, has ceased and permit coverage is no longer required. There is also a provision allowing termination of coverage if a site is returned to an alternative post mining land use. If there is no operator at a site, but there are still regulated mining activities present at the site, it is possible that a landowner would need to retain or get separate coverage under the MSGP for the inactive mine until a new operator takes over the operation. Coverage under the MSGP is not transferrable, so a new operator would be required to submit an NOI for coverage if the site has not been finally stabilized or entered the reclamation phase. As described in an earlier response, the language regarding termination of coverage was revised for consistency with EPA's MSGP.

**Part V.L.**

Comment: TCE comments that the draft MSGP authorizes storm water runoff that comes into contact with garbage at landfills. TCE believes this is in conflict with other landfill rules that prohibit such runoff from leaving the landfill. TCE encourages TCEQ to maintain the exemptions for landfills and to not reduce monitoring at landfills.

Response: TCEQ recognizes that authorizing contaminated storm water may cause some confusion with respect to municipal solid waste regulations and the TPDES program, but disagrees that it would conflict with those regulations. However, in response to the comments and in order to prevent the possibility of a permittee utilized the MSGP to discharge storm water that has commingled with any landfill wastewater, including leachate, contaminated storm water was removed from the MSGP. This change will result in similar requirements as the existing MSGP, which does not allow the discharge of contaminated storm water. Similar changes were made to Sector K, related to hazardous waste landfills.

Comment: TLM comments that the proposed changes in Sector L conflict with the municipal solid waste rules in 30 TAC Chapter 330 by allowing leachate, not collected in a leachate collection system, to be discharged under a MSGP authorization.

Response: TCEQ points out that the MSGP includes a statement that the discharge of leachate and other landfill wastewater is not allowed under this permit (see Part V, Section L.4.(a)). As described in a previous response, the discharge of contaminated storm water was removed from the MSGP in response to comments.

Comment: TLM comments that it will be difficult for landfill operators to separate contaminated storm water from landfill leachate and in some cases, from noncontaminated storm water.

Response: TCEQ recognizes that it is important to insure that the only discharges occurring under the MSGP include storm water runoff and believes that the change described in the previous two comments address the commentor's concern, because the MSGP will not allow the discharge of storm water that has come into contact with landfill waste.

Comment: TLM expresses concern that the required sampling does not address the variety of pollutants found in municipal solid waste (MSW) landfills.

Response: TCEQ declines to revise the benchmark sampling parameters, which were established by EPA in their original MSGP and adopted by TCEQ in the original issuance of the MSGP as a TPDES permit. However, since contaminated storm water was removed from the list of authorized discharges, the effluent limits specific to contaminated storm water from MSW landfills was also removed. With the additional changes that are proposed in the previous comments, the existing provisions should be protective.

Comment: TLM states that the reference to 40 CFR Part 445 creates confusion with implementation of the state's authorized program.

Response: 40 CFR Part 445 contains federal technology-based effluent limitations for wastewater and storm water that may be discharged from a landfill regulated under this sector. Since contaminated storm water was removed from the list of authorized discharges in this section, the only reference to 40 CFR Part 445 is related to the definitions and to the prohibition on discharge of landfill wastewater under the MSGP.

Comment: TLM comments that they are unaware of any deficiency of the current MSGP requirements for landfills and the proposed changes are inadequate to address the issues associated with "contaminated water" discharges, impossible to appropriately enforce, and create an added regulatory burden on those landfills that chose not to discharge the newly defined "contaminated water" through their MSGP authorizations. TLM recommend re-adopting the current requirements in the MSGP for Sector L.

Response: As described in earlier responses, TCEQ removed contaminated storm water from the list of allowable discharges under this section. This change should alleviate the concerns of the commentor..

Comment: STPNOC recommends changing the term "uncontaminated" in Part V.

L.3(a)(1) to "non-contaminated" to be consistent with the Part V. L.2 definitions.

Response: This change was made as requested.

Comment: TCE is concerned that the draft MSGP does not require adequate monitoring for landfills and other waste facilities.

Response: The monitoring requirements established for landfills in the draft permit are at least as stringent as the previous MSGP, as well as EPA's current MSGP, and TCEQ respectfully declines to make additional changes. New controls were added to Part V.L.5, "Additional SWP3 Requirements," which TCEQ thinks will result in an improved SWP3 and more detailed periodic monitoring.

**Part V.N.**

Comment: TCE opposes reductions in requirements for scrap recycling facilities because of the prevalence of "sham" recycling facilities.

Response: TCEQ disagrees that the requirements are less stringent for scrap recycling facilities, and notes that the permit simply clarifies that certain specific types of facilities are considered to be "industrial activities" as described in the federal storm water regulations. The requirements of this permit do not negate or override any requirements related to solid waste, air, or other regulations. The renewed permit should actually provide additional controls for recycling facilities, because Section V.N.3. now includes more specific controls based on the type of material being recycled.

Authorization for storm water discharges is required for any site meeting the applicability criteria in Part II.A.1 of the MSGP, and the provisions of Sector N apply to any regulated facility conducting an activity described by SIC code 5093. The draft MSGP that was available for public comment included a paragraph at Part V.N.2.(b), stating that certain municipally-operated facilities are not covered if they do not include activities described by SIC code 5093. TCEQ removed this paragraph in the revised draft MSGP, because Part II.B.5, regarding "Requirements for Military Installations and Other Publically-Owned Facilities," was also revised to provide clarification as to when a publicly-operated industrial activity must obtain permit coverage.

**Part V.O.**

Comment: AEP questions the need for monitoring for total iron in Sector O and recommends removing it. AEP comments that with mineral deposits or iron-enriched soil, natural backgrounds of iron could easily affect storm water sampling without being a direct cause of industrial pollution.

Response: While iron may be present in soils, it has also been identified as a potential pollutant in discharges from steam electric power generating facilities by EPA during development of the 1995 MSGP, and was retained as a parameter to sample in subsequent NPDES and TPDES MSGP.

Analytical results that exceed a benchmark value are not in violation of the permit, but rather are indicators that modifications to the SWP3 may be necessary. If the permittee continues to find that the elevated benchmark levels are due solely to background levels in the soil, then the permittee may document that finding in the SWP3. Iron is also present in coal piles, so coal fired plants would have iron in storm water discharges, in addition to simply having background levels from soil.

Comment: AEP requests removing the benchmark value of 50 mg/l for TSS in Sector O. AEP comments that this would be consistent with EPA's current MSGP. In the alternative, AEP requests TCEQ retain the 100 mg/l value for TSS in the current version of the MSGP. STPNOC also requests retaining the 100 mg/l value for TSS.

Response: The proposed benchmark values are based on analytical data submitted to TCEQ during calendar years 2007 and 2008. TCEQ staff performed statistical analysis of the data and lowered the TSS benchmark values for those sectors or SIC codes where the median of the data was below or very close to 50 mg/L. Analytical results that exceed a benchmark value are not in violation of the permit, but rather indicators that modifications to the SWP3 may be necessary. However, if the benchmark values are set too high or too low, they may not serve as good indicators of performance of BMPs. The median of the analytical data for TSS in Sector O was 29.5 mg/L, so lowering the TSS benchmark to 50mg/L would provide permittees with a better indicator for Sector O.

Comment: PSEG asks whether it is fair to assume that a solely fired natural gas fired combined-cycle combustion turbine (the commentor provided an example of a 160 megawatt turbine) that is equipped with a natural gas fired duct burner unit is not required to have a TCEQ or EPA general or individual storm water permit.

Victoria WLE comments that Section V.O.3(b) exempts certain types of steam electric generating facilities from coverage under the MSGP. In particular, Victoria WLE notes that the MSGP proposes to exempt certain types of gas turbine facilities and certain types of combined cycle facilities. Victoria WLS requests TCEQ revise the language in O.3(b)(4) to eliminate any ambiguity regarding the intent of the MSGP coverage and to specifically exempt single fuel natural gas fired combined-cycle plants with natural gas fire duct burners. Victoria suggests that the exemption on O.3(b)(4) be revised to read: "Combined-cycle facilities, if the steam turbine is fueled completely with exhaust from the gas turbine(s) or if the steam turbine is fueled completely with the exhaust from the gas turbine(s) and natural gas fired duct burners."

Calpine requests that TCEQ expand its Sector O limitations on coverage to incorporate descriptive language identical to that found in the 2008 EPA MSGP Fact Sheet. Specifically, Calpine comments that it would help if clarification were provided regarding the non-applicability of storm water permitting requirements for gas turbine facilities with HRSG duct burners fueled only with gaseous fuels.

Response: This understanding is correct. In response to this comment, and to provide improved clarification on the intent of the changes to this section, TCEQ revised the

MSGP to more closely mirror the applicability section of EPA's current MSGP. Sections V.O.2. and V.O.3. were revised as follows:

"**2. Covered Storm Water Discharges**

The requirements of this section apply to storm water discharges from the following facilities:

(a) Steam electric generating facilities as defined in 40 CFR §122.26(b)(14)(vii), that use coal, natural gas, oil, nuclear energy, or other fuel to produce a steam source, including facilities regulated under 40 CFR Part 423 (Steam Electric Power Generating Point Source Category);
(b) coal handling areas located at regulated facilities;
(c) coal pile runoff at regulated facilities; and
(d) dual fuel facilities that could employ a steam boiler.

**3. Limitations on Permit Coverage**

(a) Non-storm water discharges subject to effluent limitations guidelines at 40 CFR Part 423 are not eligible for coverage under this general permit.
(b) Storm water discharges from the following types of facilities are not required to obtain permit coverage and are not eligible for coverage under this general permit:
    (1) ancillary facilities (for example, fleet centers and substations) that are not contiguous to a steam electric power generating facility;
    (2) gas turbine facilities (providing the facility is not a dual-fuel facility that includes a steam boiler) and combined-cycle facilities where no supplemental fuel oil is burned (and the facility is not a dual-fuel facility that includes a steam boiler); and
    (3) cogeneration (combined heat and power) facilities utilizing a gas turbine."

In addition, new language was added to the fact sheet at Part V.B.(14)k, to provide more detail on permit applicability for Sector O facilities, consistent with EPA's fact sheet of 2008.

Comment: STPNOC recommends that the "immediate repair" requirements specified in Part V.O.4(c)(1) should be limited or applied to those situations that pose an immediate threat to storm water quality. STPNOC comments that minor issues that do not pose an immediate threat to storm water quality should be addressed in a reasonable timeframe to prevent potential storm water contamination.

Response: TCEQ agrees with the comment and revised the last sentence of Part V.O.4.(c)(1) to read:

> "If repairs are necessary, they must be performed as expeditiously as practicable; except that repairs must be made immediately if there is a risk to water quality."

**Part V.Q.2(a)**

Comment: Logos notes that the proposed permit, like the existing permit and the original EPA MSGP, identifies Sector Q - Water Transportation facilities as those facilities whose primary activity is identified by SIC Codes 4412 through 4499; and comments that the majority of Sector Q facilities permitted under the current permit are identified as SIC 4493 - Marinas. Logos comments that the primary qualifying activity for marinas and most other Sector Q facilities is fueling, though some minor maintenance takes place at some facilities. Further, Logos, comments that facilities sampling for lead and zinc as part of benchmark sampling are also subject to numeric effluent limits in the permit for lead and zinc. Logos objects to water transportation facilities having to perform benchmark sampling for aluminum, iron, lead, zinc, and TSS, as well as numeric effluent limits for total lead and total zinc, because of maintenance activities or fueling, since land and air transportation facilities (Sectors P and S), as well as ship and boat building and repair facilities (Sector R), are not required to do the same benchmark sampling. Logos comments that Sector R facilities often perform maintenance activities on a much larger scale than water transportation facilities and have neither benchmark sampling requirements nor sector-specific numeric effluent limits. Logos comments that marinas with fuel (SIC Code 4493) are already subject to TCEQ tank registration requirements, EPA's SPCC rule, and in some cases, a General Land Office Plan. Logos comments that the MSGP is redundant in regard to fueling operations, and is punitive and inappropriate for the majority of facilities in this sector. Logos proposes to apply the benchmark and Sector specific numeric effluent limit sampling requirements appropriately to Sector R facilities, (i.e. correct the original error). Then any Sector Q facility that has a secondary SIC Code activity that qualifies as a Sector R activity would be required to do benchmark sampling and sector-specific numeric effluent limit sampling.

Response: In the 1995 NPDES MSGP, the EPA provided guidance that marinas that only had retail fueling with no other maintenance or rehabilitation areas were not intended to be covered by the storm water regulations. *See* page 50985, 60 FR No. 189; September 29, 1995. From the 'Guidelines for the Determination of Regulatory Status of Marinas and Related Operations," EPA stated that:

"Facilities that are "primarily engaged" in operating marinas are best classified as SIC 4493—marinas. These facilities rent boat skips, store boats, and generally perform a range of other marine services, including boat cleaning and incidental boat repair. They frequently sell food, fuel, fishing supplies, and may sell boats. For facilities classified as 4493 that are involved in vehicle (vessel) maintenance activities (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or equipment cleaning operations, those portions of the facility that are involved in such vehicle maintenance activities are considered to be associated with industrial activity and are covered under the storm water regulations. Facilities classified as 4493 that are not involved in equipment cleaning or vessel maintenance activities (including vehicle rehabilitation, mechanical repairs, painting, and lubrication) are not intended to be covered under 40 CFR §122.26(b)(14)(viii) of the storm water permit application regulations. The retail sale of fuel alone at marinas, without any other vessel maintenance or equipment cleaning operations, is not considered to be grounds for coverage under the storm water regulations."

This is consistent with the use of facility SIC codes, in that a marina that generates most of its revenue from the retail sale of fuel would have an SIC code of 5541, related to gasoline service stations, and the secondary SIC code would be 4493, related to marinas.

In response to the comment and to clarify the intent, TCEQ revised Sections V.Q.2. and 3. as follows.

> "2. Covered Storm Water Discharges
>
> (a) Permit coverage is only required for storm water discharges from areas where the following activities are performed at facilities described by the SIC codes listed above: vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or equipment cleaning, except for retail fueling as described in paragraph 3.(b) below. Coverage …
>
> 3. Limitations on Coverage
>
> (a) This permit does not authorize the discharge of ….
>
> (b) The retail sale of fuel performed at a marina without slip rental, boat storage, and other services such as cleaning and incidental repair is classified as SIC code 5541 (which includes "marine service stations – retail"). If retail fueling is the primary activity performed at the site, then permit coverage is not required. However, if a marina (SIC 4493) has a secondary SIC code of 5541, then coverage would be required for any areas of the marina where vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or equipment cleaning operations occur, other than the retail fueling operation described by SIC 5541."

Because this change was made to clarify the applicability for marinas conducting fueling activities, TCEQ disagrees with the commentor that a change is required to the benchmark monitoring section for marinas.

Comment: PCCA asks for clarification regarding the requirement if the only maintenance function performed at the site is day-to-day fueling of support equipment and whether that would be considered "vehicle maintenance" triggering Sector Q requirements.

Response: As noted above, retail fueling at marinas would not trigger permit coverage; however, areas where other fueling activities occur at Sector Q facilities would be regulated, including day-to-day fueling of support equipment.

**Part V.S.2**

Comment: UPS asks whether the term "urea" applies to a pure product or to mixtures containing urea in any percentage. UPS requests that TCEQ specify that urea must be

the primary ingredient of the deicing materials in order for them to count towards the 100 ton threshold.

Response: For the purposes of this permit, the term “urea” applies to any deicing agent that contains urea as the primary component.

Comment: UPS is uncertain if urea could be used for deicing of locations at the airport not associated with the industrial activity, such as employee parking lots and sidewalks, without counting towards the 100 ton threshold.

Response: Urea used for deicing of areas of the airport not associated with industrial activity, such as parking lots and sidewalks, would still count towards the 100 ton threshold that would require benchmark monitoring, unless these areas are non-contiguous (i.e., completely separated and not sharing a common boundary) to areas where deicing activities are being performed.