

COMMISSIONERS' RESPONSE TO PUBLIC COMMENT ON GENERAL PERMIT NO. TXG110000

The executive director of the Texas Commission on Environmental Quality (commission or TCEQ) files this Response to Public Comment on General Permit Number TXG110000, which authorizes discharges of facility wastewater and stormwater associated with industrial activities into or adjacent to water in the state from ready-mixed concrete plants, concrete products plants, and their associated facilities (Standard Industrial Codes 3271, 3272, and 3273). As required by Texas Water Code (TWC), §26.040(d) and Title 30 Texas Administrative Code (TAC) §205.3(e), 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 This response addresses all timely received public comments, whether or not withdrawn.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 comment letters were received from Michael Moore, CEMEX, Martin Marietta, and Blue Water Environmental LLC.

Background

General Permit No. TXG110000 authorizes discharges of facility wastewater and stormwater associated with industrial activities into or adjacent to water in the state from ready-mixed concrete plants, concrete products plants, and their associated facilities (Standard Industrial Codes 3271, 3272, and 3273).

This general permit will replace the current permit when it expires on November 7, 2016. Permittees currently authorized under the general permit will be required to submit a Notice of Intent (NOI) to continue authorization under the amended general permit. Applicants that are not currently authorized under the general permit must submit an NOI to the TCEQ to obtain authorization under the general permit. Provisional coverage will begin 48-hours after the postmark date on the NOI, or immediately after receipt of an electronically submitted NOI.

Procedural Background

TCEQ published notice of the draft permit to solicit public comment in *The Dallas Morning News*, *Houston Chronicle*, *San Antonio Express-News*, and the *Texas Register* on January 22, 2016. The public comment period ended on February 22, 2016.

Comments and Responses

Comment 1:

CEMEX and Martin Marietta are concerned about the reduced Minimum Analytical Levels (MALs), specifically for Total Mercury. The commenters note that the test method required to detect mercury to that level will significantly increase the sampling costs each year and require specialized sampling procedures. Lastly, the commenters note that not all laboratories are capable of analyzing mercury to this level of sensitivity which could force permittees to find new laboratories.

Response 1:

The permittee is not required to use an analytical test method that detects down to the MAL. The permittee is required to use a test method that has a detection level at or below the effluent limit in the permit and that complies with 40 Code of Federal Regulation (CFR) Part 136. MALs are used to allow the permittee to submit analytical results as non-detect. Non-detect analytical results are assumed to represent a concentration of zero (0) mg/L.

For mercury, the applicant must use a test method that can detect mercury levels at or below the effluent limit of 0.01 mg/L. The permittee could report "non-detect" or "0 mg/L" only if they used a test method that can detect mercury levels at or below the MAL of 0.000005 mg/L and the test result was non-detect. In response to this comment, the commission added a footnote below the tables for Hazardous Metals Numeric Effluent Limitations and Monitoring Frequencies.

This procedure is consistent with RG-194 *Procedures to Implement the Texas Surface Water Quality Standards*, which was approved by the commission on June 30, 2010.

Comment 2:

Blue Water Environmental LLC notes that there are a number of facilities that have not operated for an extended period of time and/or operate once or twice a year. The commenter states that it is burdensome to require that personnel be available to go to the site in the event of a rain event that results in a discharge. The commenter recommends that the general permit allow an "inactive status" for operations that discharge wastewater and/or wastewater combined with stormwater.

Response 2:

The commission agrees with this comment. If a facility is not in operation, wastewater would not be generated. Stormwater would be the only source of water discharging. Currently, for a permittee to avail themselves of the inactive status, they would have to submit a notice of change to notify TCEQ that the outfalls are stormwater only and notify TCEQ that the facility is inactive. When the facility becomes active again, the permittee would be required to notify the TCEQ that it is reverting to active status and changing the outfall to wastewater

or wastewater commingled with stormwater. Allowing inactive status would streamline the process. In response to this comment, the commission revised the permit to allow an "inactive status" for operations that discharge wastewater and/or wastewater combined with stormwater when the facility is not in operation. When a facility is in inactive status, permit requirements to sample, inspect, examine, or otherwise monitor stormwater discharges are waived. The annual fee is not waived for inactive status.

Comment 3:

Blue Water Environmental LLC recommends that the general permit be revised to cover "adverse conditions" similar to General Permit No. TXR050000.

Response 3:

The commission agrees with this comment and revised Part III.A. to allow discharge monitoring to be temporarily suspended for adverse weather conditions.

Comment 4:

Michael Moore comments that the draft general permit is not adequately protective of Lake Austin and Lake Travis water quality areas. Mr. Moore notes that Lake Travis is designated as having "exceptional" aquatic life issues and that such water bodies require special measures. Mr. Moore recommends that individual permits be required of industrial facilities that discharge stormwater to these water bodies.

Response 4:

The commission disagrees with this comment. Part II.B. states that discharges are not eligible for authorization under this general permit where prohibited by 30 TAC Chapter 311, Watershed Protection. 30 TAC Chapter 311 prohibits the discharge of pollutants into the Lake Austin Water Quality Area or the Lake Travis Water Quality Area, with exceptions, one of which is the discharge of stormwater runoff authorized by a Texas Pollutant Discharge Elimination System (TPDES) permit. The proposed general permit is a TPDES permit that authorizes both wastewater and stormwater from ready-mixed concrete plants, concrete products plants, and their associated facilities. Facilities that discharge stormwater only are required to use BMPs and technology-based limits that reduce pollutants to the maximum extent practicable. Facilities that discharge wastewater or wastewater commingled with stormwater within the Lake Austin Water Quality Area or the Lake Travis Water Quality Area are not eligible for authorization under the general permit because these types of discharges are prohibited by 30 TAC Chapter 311.

The commission declines to make the suggested changes because the general permit is consistent with the provisions of 30 TAC Chapter 311, as well as the requirements of the TWC and the federal Clean Water Act.

Comment 5:

Michael Moore comments that the draft permit does not provide adequate public participation in the development of discharge effluent limitations, including the Stormwater Pollution Prevention Plan (SWP3). Mr. Moore recommends public participation in the development of the terms of a SWP3 for an authorized facility.

Response 5:

For the general permit, TCEQ follows the requirements for public participation, public notice, public meetings, and public comments specified in TWC §26.040(b)-(d) and 30 TAC §205.3, both applicable to public notice requirements for general permits. During the general permit public participation process, the public has 30 days to submit written comments on the draft general permit. Notification of the general permit renewal is mailed to the common address for county judges in each county in the state, including Burnet and Travis Counties. Once an authorization under the general permit is issued, the public has 23 days from the date the authorization is issued to file a motion to overturn (MTO). A MTO is a request for the commission to review the executive director's approval of an authorization. *See* 30 TAC § 50.139, Motion to Overturn.

An applicant is responsible for the development and implementation of the SWP3. The applicant submits a NOI (application for authorization under the general permit) and signs the application documents according 30 TAC §305.44 and certifies that they have developed a SWP3 as required by the general permit. The SWP3s must be maintained onsite and available to TCEQ for inspection and verification of permit compliance. In addition, stormwater discharges in the Edwards Aquifer Recharge Zone (such as for Williamson, Travis, and Hays counties where Lake Travis and Lake Austin are located) are required to comply with the requirements of 30 TAC Chapter 213 (Edwards Aquifer). *See* Part II.B. - Limitations on Coverage. The commission declines to make the suggested change.

Comment 6:

Michael Moore comments that the draft permit fails to sufficiently address cumulative impacts from multiple facilities located close to each other or that are located in the same watershed. Mr. Moore comments that due to this shortcoming, the general permit does not sufficiently implement TCEQ's Tier 2 anti-degradation policy.

Response 6:

TCEQ has established that the controls for discharges in the proposed general permit are based on BMPs, technology-based limits, water quality based limits, or a combination of the three. The required monitoring of discharges by each facility provides the level of treatment consistent with the provisions of the TWC and the federal Clean Water Act; and complies with 30 TAC §307.5 (Antidegradation) and 30 TAC §307.9 (Determination of Standards Attainment). In accordance with 30 TAC §307.5 and the TCEQ Implementation Procedures for the Texas Surface Water Quality Standards, an antidegradation review of this

general permit was performed. The conditions in this general permit which include, implementation of a SWP3, routine monitoring and inspections, numeric effluent limitations, toxicity testing, and benchmark monitoring requirements have been determined to be sufficient to maintain and protect existing uses and preclude degradation of waters in the state. TCEQ declines to make any revisions to the general permit as a result of the comment.