

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for General Permit Adoption

**AGENDA REQUESTED:** February 22, 2023

**DATE OF REQUEST:** February 3, 2023

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Gwen Ricco, Texas Register Coordinator, (512) 239-2678

**CAPTION: Docket No. 2022-1047-MIS.** Consideration of the adoption of an amendment with renewal of the Construction General Permit, TXR150000 which authorizes discharges of stormwater and certain allowable non-stormwater discharges from regulated construction activities into or adjacent to surface water in the state. Public notice of the proposed general permit was published in the September 16, 2022 issue of the *Texas Register* (47 TexReg 5879). (Macayla Coleman, Aubrey Pawelka) (Non-Rule Project No. 2022-001-OTH-NR)

Cari-Michel La Caille  
Director

Robert Sadlier  
Deputy Director

Gwen Ricco  
Agenda Coordinator

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** February 3, 2023

**Thru:** Laurie Gharis, Chief Clerk  
Erin E. Chancellor, Interim Executive Director

**From:** Cari-Michel La Caille, Director  
Office of Water

**Docket No.:** 2022-1047-MIS

**Subject:** General Permit: Commission Approval for Adoption  
Renewal with Amendment of the Construction General Permit No.  
TXR150000  
Project Number: 2022-001-OTH-NR

### **Summary and background:**

This is a renewal with amendment of the Texas Pollutant Discharge Elimination System (TPDES) general permit that authorizes stormwater discharges into or adjacent to surface water in the state from small and large construction activities. The general permit also authorizes discharges of stormwater associated with construction support activities, and certain allowable non-stormwater discharges. The renewal with amendment will replace the current permit (amended on January 28, 2022, to encompass discharges from oil and gas activities) which expires on March 5, 2023.

### **Basic requirements:**

#### **A. Applicability:**

The TPDES Construction General Permit (CGP), TXR150000, regulates stormwater runoff from construction activities according to the amount of land disturbed.

- Large construction activities disturb five or more acres or are part of a larger common plan of development that will disturb five or more acres.
- Small construction activities disturb at least one but less than five acres or are part of a larger common plan that will disturb at least one but less than five acres.

Construction activities that disturb less than one acre and are not part of a larger common plan of development that would disturb one acre or more, are not required to obtain coverage under this general permit.

#### **B. Permit Requirements:**

Permit requirements include the development and implementation of a stormwater pollution prevention plan (SWP3), periodic inspections of best management practices, compliance with applicable water quality standards, benchmark sampling of stormwater runoff from concrete batch plants, and final stabilization of the construction site prior to termination of permit authorization.

Operators of large construction activities must develop and implement a SWP3, submit a Notice of Intent (NOI) to the Texas Commission on Environmental Quality (TCEQ or commission) to obtain authorization under this general permit, and post a construction site notice. An NOI is an application that is required for operators

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to submit to TCEQ to obtain authorization for discharges from large construction sites. Provisional coverage begins immediately if the completed NOI is submitted electronically using TCEQ's online e-permitting system, or 48 hours after the completed paper NOI is postmarked for delivery to TCEQ.

Operators of small construction activities must develop and implement a SWP3, post a construction site notice, and send a copy of the site notice to the Municipal Separate Storm Sewer System (MS4) operator in their area.

Stormwater runoff from certain small construction activities may be automatically authorized under the general permit without being required to develop a SWP3 if construction occurs when there is a low potential for erosion. Alternatively, if an operator does not qualify for the automatic authorization option, then a Low Rainfall Erosivity Waiver (LREW) must be submitted using TCEQ's online e-permitting system.

**C. Fees:**

The permit fee is \$225 if the NOI is submitted electronically or \$325 if a paper NOI is submitted. This covers the application fee as well as a prorated annual Water Quality fee.

**Number of current/expected authorizations:**

There are currently approximately 30,508 construction operator authorizations and nineteen LREWs for certain small activities authorized under this general permit.

**Proposed changes from the current permit:**

Principal changes include:

1. Added the definition of High-Level Radioactive Waste and added language to the Limitations on Permit Coverage to prohibit authorization of discharges from construction activities associated with the construction or operation of a facility that is licensed for the storage of high-level radioactive waste by the United States Nuclear Regulatory Commission under 10 Code of Federal Regulations (CFR) Part 72 based on Texas Health and Safety Code (THSC) §401.0525 and House Bill 7, second special session of the 87th Legislature, 2021.
2. Clarified that discharges from emergency fire-fighting activities are considered an allowable non-stormwater discharge for consistency with the 2021 TCEQ Multi-Sector General Permit (MSGP) and the 2022 United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) CGP.
3. Clarified throughout the permit that applications must be submitted electronically using TCEQ's e-permitting system, unless the applicant requests and obtains a waiver from electronic reporting.
4. Changed provisional coverage from seven days to 48 hours for paper applications to be consistent with other water quality general permits and the time necessary to review paper applications with the implementation of electronic reporting requirements.
5. Added a requirement that Delegation of Signatory Authority forms for large construction site operators must be submitted electronically using TCEQ's online

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State of Texas Environmental Electronic Reporting System (STEERS). Delegation of Signatory forms for small construction site operators must continue to be submitted by paper.

6. Added that estimated construction Start Date and End Date are required on the NOI to comply with federal electronic reporting requirements in Title 40 CFR Part 127.
7. Clarified that transfer of operational control, including transfer of ownership of a company, cannot be included on a Notice of Change (NOC) for consistency with the TCEQ MSGP.
8. Clarified that compliance with the conditions and requirements of the permit is required until a Notice of Termination (NOT) is submitted and approved by TCEQ.
9. Clarified that the SWP3 may be prepared and kept electronically.
10. Clarified the items required to be on the detailed site map, such as property boundaries and location of demolition activities.
11. Added language specifying that inspections may be suspended during adverse conditions, along with a requirement to document the adverse conditions present at the site when inspections are suspended.
12. Modified the definition of Dewatering, clarified that dewatering must be managed by controls to prevent sedimentation and erosion, and added a requirement for evaluation and observation of the controls during dewatering for clarification and consistency with the 2022 EPA NPDES CGP.
13. Added requirements to Pollution Prevention Measures including good housekeeping measures related to waste clean-up at the site and requirements to minimize sanitary waste by locating portable toilets in secure locations away from surface water in the state and stormwater inlets.
14. Added requirements for operators to document when they have determined that it is infeasible at their site to utilize outlet structures that withdraw water from the surface of basins and impoundments.

Made other miscellaneous and minor revisions to update and clarify existing permit requirements or address comments from EPA, stakeholders, and internal agency staff (see Section V of the Fact Sheet).

**Planned stakeholder involvement:**

The Water Quality Division identified stakeholders for this general permit and reached out to seek preliminary input. Stakeholders included current permitted operators and other interested parties. A notification e-mail was sent about the upcoming renewal, date of the scheduled stakeholder meeting, and opportunity to submit preliminary suggestions or recommendations for permit revisions.

A virtual stakeholder meeting was held on October 21, 2021. Approximately 54 stakeholders attended. Verbal comments were received from some stakeholders at the meeting, and written comments were submitted during the two-week comment period following the meeting. Commentors requested revisions and provided suggestions to improve or change existing permit requirements.

Information about the renewal and preliminary proposed changes, including the presentation and handout from the stakeholder meeting, are posted on the TCEQ Stormwater webpages.

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Presentations and updates on the renewal were given by the Water Quality Division staff to the public as follows:

- Water Quality Advisory Work Group Meetings on October 19, 2021; January 20, 2022; June 7, 2022; August 23, 2022; and October 25, 2023.
- South Central International Erosion Control Association Texas Regional Conference, October 20, 2021.
- TCEQ Environmental Trade Fair & Conference on May 11, 2022.

A statewide public notice was published in the *Texas Register* and *Houston Chronicle* on September 16, 2022. A public meeting was held on October 17, 2022.

**EPA Review:**

On April 14, 2022, the draft permit was sent to EPA for their review. On July 22, 2022, the TCEQ received an interim objection letter with comments from the EPA.

The specific comments included objections, recommendations, and suggested clarifications and revisions to make requirements in the permit more clear, enforceable, and consistent with federal rules. The three objections resulted in the following revisions:

- Clarified that the effluent limitations in the permit include New Source Performance Standards (NSPS), Best Available Technology Economically Achievable (BAT), and Best Conventional Pollutant Control Technology (BCT) in addition to the Best Practicable Control Technology (BPT).
- Removed additional language about determining when buffers are necessary and clarified the federal effluent limitations guideline (ELG) requirement by quoting the federal rule.
- Added language referring to federal response requirements for spills and leaks.

Additionally, EPA provided recommendations for TCEQ to address which resulted in the following revisions:

- Clarified throughout the permit that coverage is required and compliance with permit conditions is required until final stabilization has been achieved.
- Clarified that stormwater discharges from currently or formerly operating nuclear power reactors and nuclear research and test reactors operated by a university are not prohibited by THSC §401.0525.
- Clarified that certain operators may be automatically authorized for low rainfall erosivity if all the permit conditions listed in Part II.E.1 are met prior to the commencement of construction.
- Clarified that applicants are automatically authorized following confirmation of receipt of the electronic application form by the TCEQ.
- Clarified the description of the NOI question regarding projects associated with oil and gas activities.
- Clarified that applicants for the low rainfall erosivity waiver must submit applications electronically unless they obtain an electronic reporting waiver.
- Modified certain permit requirements for consistency with the ELG provisions.

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- Clarified in the permit and fact sheet that the SWP3 and Part IV of the permit both establish effluent limits.
- Clarified in the fact sheet that the change to provisional coverage for paper applications was also related to the reduced time required to review paper applications as a result of the implementation of electronic reporting.
- Clarified in the fact sheet that small site operators are automatically authorized after meeting certain conditions.
- Clarified in the fact sheet that discharges following an emergency fire-fighting event require clean-up of contaminated water and discharge prevention.
- Clarified in the fact sheet that stormwater permits generally do not contain numeric water quality-based effluent limitations (WQBELs).

The TCEQ submitted a letter and revised draft permit to EPA for their re-review on August 4, 2022, in response to EPA's interim objections and comments. The EPA withdrew their interim objection on the draft general permit in a letter dated August 18, 2022. The withdrawal letter contained suggestions that reiterated some of their recommendations from the August 4, 2022, letter which TCEQ did not accept. No changes were made in response to the withdrawal letter.

**Public comment:**

During the public meeting and 30-day public comment period, TCEQ received comments from 15 entities. The public comments were consolidated into 43 comments, and the proposed executive director's response to comments (RTCs) is attached. The comments received included concerns about electronic SWP3s, submittal of Delegation of Signatories forms electronically, CGP forms, dewatering inspections, inspections within 24-hours of a storm event, and outlet structures from sedimentation basins to withdraw water from the surface. Additional comments received included editorial suggestions, clarifications, and grammatical errors. Changes were made to the draft permit in response to comments.

**Potential controversial concerns and legislative interest:**

Legislative interest or issues with the public are not anticipated.

**Effect on the regulated community, the public, or agency programs:**

This renewal with amendments is not expected to have any significant effect on the regulated community, the public, or agency programs. There will be a significant short-term spike in the number of applications filed and processed, and the agency will likely receive questions from permittees and the public related to the revised and new permit conditions.

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**Key dates in the proposed general permit schedule:**

Published notice in *Texas Register* and newspapers: September 16, 2022

Public comment period ended: October 17, 2022

Scheduled Commission Agenda Date: February 22, 2023

**Statutory authority:**

- Texas Water Code (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;
- 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
- TWC, §26.040, which provides the commission with authority to amend rules to authorize waste discharges by general permit.
- TWC, §26.131, which authorizes the commission to issue permits for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production and development of oil, natural gas, or geothermal resources.

**Agency Contacts:**

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Gwen Ricco, Texas Register Coordinator, 512-239-2678

Attachments: Draft Permit, Fact Sheet, and Response to Comments

cc: Chief Clerk, 7 copies

# Texas Commission on Environmental Quality

P.O. Box 13087, Austin, Texas 78711-3087



## GENERAL PERMIT TO DISCHARGE UNDER THE TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM

under provisions of  
Section 402 of the Clean Water Act  
and Chapter 26 of the Texas Water Code

This permit supersedes and replaces  
TPDES General Permit No. TXR150000,  
effective March 5, 2018, and amended January 28, 2022

Construction sites that discharge stormwater associated with construction activity located in the state of Texas may discharge to surface water in the state only according to monitoring requirements and other conditions set forth in this general permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ or Commission), the laws of the State of Texas, and other orders of the Commission of the TCEQ. The issuance of this general permit does not grant to the permittee the right to use private or public property for conveyance of stormwater and certain non-stormwater discharges along the discharge route. This includes property belonging to but not limited to any individual, partnership, corporation or other entity. Neither does this general permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This general permit and the authorization contained herein shall expire at midnight, on March 5, 2028.

EFFECTIVE DATE:

ISSUED DATE:

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For the Commission



**TPDES GENERAL PERMIT NUMBER TXR150000**  
**RELATING TO STORMWATER DISCHARGES ASSOCIATED WITH**  
**CONSTRUCTION ACTIVITIES**

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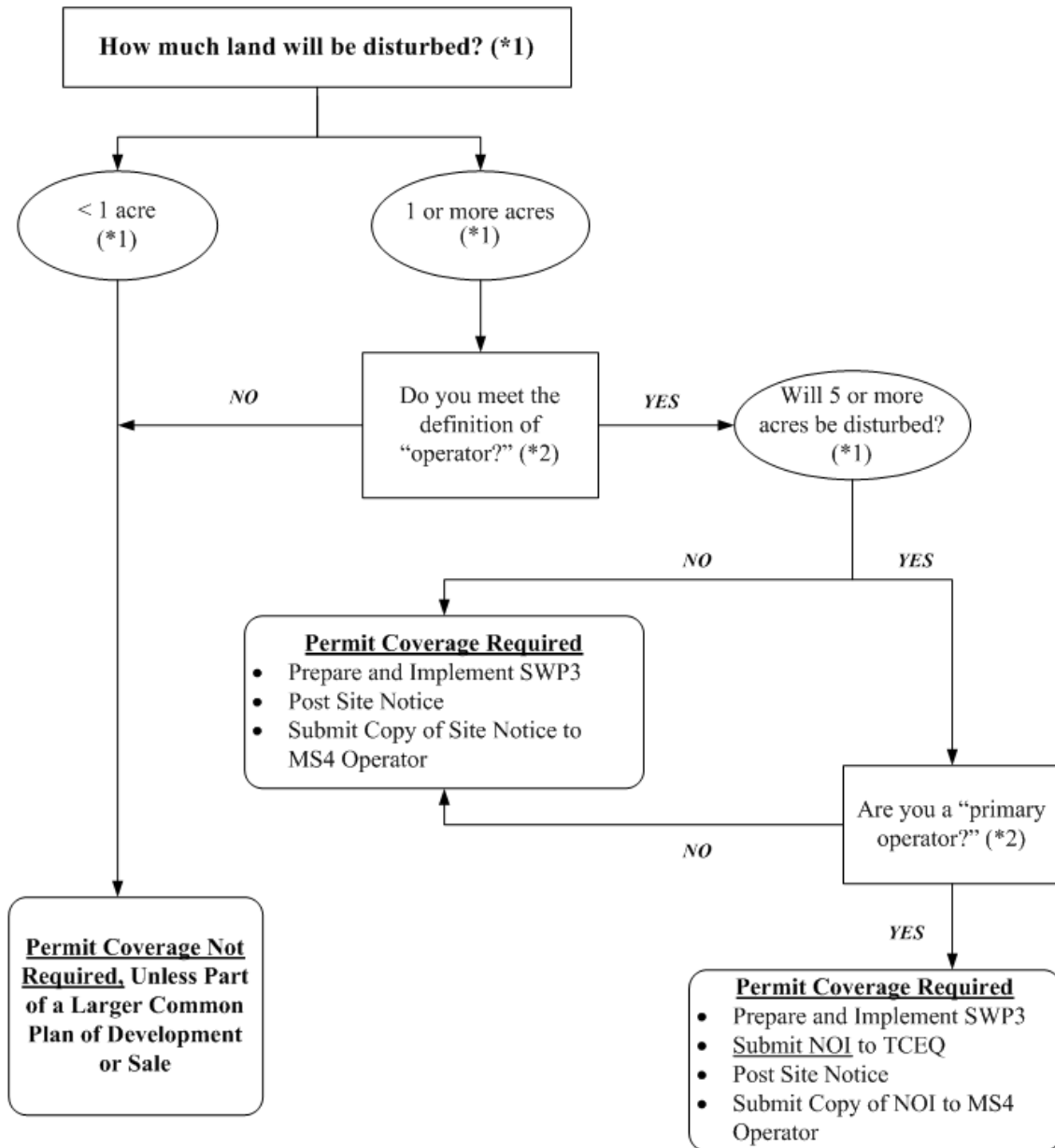
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**Part I. Flow Chart and Definitions**

**Section A. Flow Chart to Determine Whether Coverage is Required**

*When calculating the acreage of land area disturbed, include the disturbed land-area of all construction and construction support activities.*



(\*1) To determine the size of the construction project, use the size of the entire area to be disturbed, and include the size of the larger common plan of development or sale, if the project is part of a larger project (refer to Part I.B., "Definitions," for an explanation of "common plan of development or sale").

(\*2) Refer to the definitions for "operator," "primary operator," and "secondary operator" in Part I, Section B. of this permit.

**Section B. Definitions**

**Arid Areas** – Areas with an average annual rainfall of zero (0) to ten (10) inches.

**Best Management Practices (BMPs)** – Schedules of activities, prohibitions of practices, maintenance procedures, structural controls, local ordinances, and other management practices to prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures, and practices to control construction site runoff, spills or leaks, waste disposal, or drainage from raw material storage areas.

**Commencement of Construction** – The initial disturbance of soils associated with clearing, grading, or excavation activities, as well as other construction-related activities (e.g., demolition; grubbing; stockpiling of fill material; placement of raw materials at the site).

**Common Plan of Development** – A construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. A common plan of development (also known as a “common plan of development or sale”) is identified by the documentation for the construction project that identifies the scope of the project, and may include plats, blueprints, marketing plans, contracts, building permits, a public notice or hearing, zoning requests, or other similar documentation and activities. A common plan of development does not necessarily include all construction projects within the jurisdiction of a public entity (e.g., a city or university). Construction of roads or buildings in different parts of the jurisdiction would be considered separate “common plans,” with only the interconnected parts of a project being considered part of a “common plan” (e.g., a building and its associated parking lot and driveways, airport runway and associated taxiways, a building complex, etc.). Where discrete construction projects occur within a larger common plan of development or sale but are located one quarter (1/4) mile or more apart, and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale, provided that any interconnecting road, pipeline or utility project that is part of the same “common plan” is not included in the area to be disturbed.

**Construction Activity** – Includes soil disturbance activities, including clearing, grading, excavating, construction-related activity (e.g., stockpiling of fill material, demolition), and construction support activity. This does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (e.g., the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing rights-of-way, and similar maintenance activities). Regulated construction activity is defined in terms of small and large construction activity.

**Construction Support Activity** – A construction-related activity that specifically supports construction activity, which can involve earth disturbance or pollutant-generating activities of its own, and can include, but are not limited to, activities associated with concrete or asphalt batch plants, rock crushers, equipment staging or storage areas, chemical storage areas, material storage areas, material borrow areas, and excavated material disposal areas. Construction support activity must only directly support the construction activity authorized under this general permit.

**Dewatering** – The act of draining accumulated stormwater or groundwater from building foundations, vaults, trenches, and other similar points of accumulation.

**Discharge** – For the purposes of this permit, the drainage, release, or disposal of pollutants in stormwater and certain non-stormwater from areas where soil disturbing activities (e.g., clearing, grading, excavation, stockpiling of fill material, and demolition), construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck wash out, fueling), or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

**Drought-Stricken Area** – For the purposes of this permit, an area in which the National Oceanic and Atmospheric Administration’s U.S. Seasonal Drought Outlook indicates for the period during which the construction will occur that any of the following conditions are likely: (1) “Drought to persist or intensify”, (2) “Drought ongoing, some improvement”, (3) “Drought likely to improve, impacts ease”, or (4) “Drought development likely”. See [http://www.cpc.ncep.noaa.gov/products/expert\\_assessment/seasonal\\_drought.html](http://www.cpc.ncep.noaa.gov/products/expert_assessment/seasonal_drought.html).

**Edwards Aquifer** – As defined under Texas Administrative Code (TAC) § 213.3 of this title (relating to the Edwards Aquifer), that portion of an arcuate belt of porous, water-bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil’s River Limestone, Person Formation, Kainer Formation, Edwards Formation, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut Formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

**Edwards Aquifer Recharge Zone** – Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the offices of the Texas Commission on Environmental Quality (TCEQ) and the appropriate regional office. The Edwards Aquifer Map Viewer, located at <https://www.tceq.texas.gov/gis/edwards-viewer.html>

**Edwards Aquifer Contributing Zone** – The area or watershed where runoff from precipitation flows downgradient to the recharge zone of the Edwards Aquifer. The contributing zone is located upstream (upgradient) and generally north and northwest of the recharge zone for the following counties: all areas within Kinney County, except the area within the watershed draining to Segment No. 2304 of the Rio Grande Basin; all areas within Uvalde, Medina, Bexar, and Comal Counties; all areas within Hays and Travis Counties, except the area within the watersheds draining to the Colorado River above a point 1.3 miles upstream from Tom Miller Dam, Lake Austin at the confluence of Barrow Brook Cove, Segment No. 1403 of the Colorado River Basin; and all areas within Williamson County, except the area within the watersheds draining to the Lampasas River above the dam at Stillhouse Hollow reservoir, Segment No. 1216 of the Brazos River Basin. The contributing zone is illustrated on the Edwards Aquifer map viewer at <https://www.tceq.texas.gov/gis/edwards-viewer.html>

**Effluent Limitations Guideline (ELG)** – Defined in 40 Code of Federal Regulations (CFR) § 122.2 as a regulation published by the Administrator under § 304(b) of the Clean Water Act (CWA) to adopt or revise effluent limitations.

**Facility or Activity** – For the purpose of this permit, referring to a construction site, the location of construction activity, or a construction support activity that is regulated under this general permit, including all contiguous land and fixtures (for example, ponds and materials stockpiles), structures, or appurtenances used at a construction site or industrial site.

**Final Stabilization** – A construction site status where any of the following conditions are met:

- (a) All soil disturbing activities at the site have been completed and a uniform (that is, evenly distributed, without large bare areas) perennial vegetative cover with a density of at least 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, or gabions) have been employed.
- (b) For individual lots in a residential construction site by either:
  - (1) the homebuilder completing final stabilization as specified in condition (a) above; or
  - (2) the homebuilder establishing temporary stabilization for an individual lot prior to the time of transfer of the ownership of the home to the buyer and after informing the homeowner of the need for, and benefits of, final stabilization. If temporary stabilization is not feasible, then the homebuilder may fulfill this requirement by retaining perimeter controls or BMPs, and informing the homeowner of the need for removal of temporary controls and the establishment of final stabilization. Fulfillment of this requirement must be documented in the homebuilder's stormwater pollution prevention plan (SWP3).
- (c) For construction activities on land used for agricultural purposes (such as pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface water and areas that are not being returned to their preconstruction agricultural use must meet the final stabilization conditions of condition (a) above.
- (d) In arid, semi-arid, and drought-stricken areas only, all soil disturbing activities at the site have been completed and both of the following criteria have been met:
  - (1) temporary erosion control measures (for example, degradable rolled erosion control product) are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years without active maintenance by the operator, and
  - (2) the temporary erosion control measures are selected, designed, and installed to achieve 70% of the native background vegetative coverage within three years.

**High-Level Radioactive Waste** – Meaning as assigned by 42 United States Code (U.S.C.) Section 10101 (12) and includes spent nuclear fuel as defined by 42 U.S.C. Section 10101 (23).

**Hyperchlorination of Waterlines** – Treatment of potable water lines or tanks with chlorine for disinfection purposes, typically following repair or partial replacement of the waterline or tank, and subsequently flushing the contents.

**Impaired Water** – A surface water body that is identified as impaired on the latest approved CWA § 303(d) List or waters with an EPA-approved or established total maximum daily load (TMDL) that are found on the latest EPA approved *Texas Integrated Report of Surface Water Quality for CWA Sections 305(b) and 303(d)*, which lists the category 4 and 5 water bodies.

**Indian Country Land** – (1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (2) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (40 CFR § 122.2)

**Indian Tribe** – Any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian Reservation (40 CFR § 122.2).

**Infeasible** – Not technologically possible, or not economically practicable and achievable in light of best industry practices. (40 CFR § 450.11(b)).

**Large Construction Activity** – Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than five (5) acres of land. Large construction activity also includes the disturbance of less than five (5) acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than five (5) acres of land. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (for example, the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities).

**Linear Project** – Includes the construction of roads, bridges, conduits, substructures, pipelines, sewer lines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities in a long, narrow area.

**Low Rainfall Erosivity Waiver (LREW)** – A written submission to the executive director from an operator of a construction site that is considered as small construction activity under the permit, which qualifies for a waiver from the requirements for small construction activities, only during the period of time when the calculated rainfall erosivity factor is less than five (5).

**Minimize** – To reduce or eliminate to the extent achievable using stormwater controls that are technologically available and economically practicable and achievable in light of best industry practices.

**Municipal Separate Storm Sewer System (MS4)** – A separate storm sewer system owned or operated by the United States, a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over the disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, that discharges to surface water in the state.

**Notice of Change (NOC)** – Written notification to the executive director from a discharger authorized under this permit, providing changes to information that was previously provided to the agency in a notice of intent form.

**Notice of Intent (NOI)** – A written submission to the executive director from an applicant requesting coverage under this general permit.

**Notice of Termination (NOT)** – A written submission to the executive director from a discharger authorized under this general permit requesting termination of coverage.

**Operator** – The person or persons associated with a large or small construction activity that is either a primary or secondary operator as defined below:

**Primary Operator** – The person or persons associated with construction activity that meets either of the following two criteria:

- (a) the person or persons have on-site operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or



- (b) the person or persons have day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with a Stormwater Pollution Prevention Plan (SWP3) for the site or other permit conditions (for example, they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions).

**Secondary Operator** – The person or entity, often the property owner, whose operational control is limited to:

- (a) the employment of other operators, such as a general contractor, to perform or supervise construction activities; or
- (b) the ability to approve or disapprove changes to construction plans and specifications, but who does not have day-to-day on-site operational control over construction activities at the site.

Secondary operators must either prepare their own SWP3 or participate in a shared SWP3 that covers the areas of the construction site, where they have control over the construction plans and specifications.

If there is not a primary operator at the construction site, then the secondary operator is defined as the primary operator and must comply with the requirements for primary operators.

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

**Permittee** – An operator authorized under this general permit. The authorization may be gained through submission of a notice of intent, by waiver, or by meeting the requirements for automatic coverage to discharge stormwater runoff and certain non-stormwater discharges from construction activity.

**Point Source** – Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff (40 CFR § 122.2).

**Pollutant** – Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any surface water in the state. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland. For the purpose of this permit, the term "pollutant" includes sediment.

**Pollution** – The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any surface water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose (Texas Water Code (TWC) § 26.001(14)).

**Rainfall Erosivity Factor (R factor)** – The total annual erosive potential that is due to climatic effects, and is part of the Revised Universal Soil Loss Equation (RUSLE).

**Receiving Water** – A “Water of the United States” as defined in 40 CFR § 122.2 or a surface water in the state into which the regulated stormwater discharges.

**Semi-arid Areas** – Areas with an average annual rainfall of 10 to 20 inches.

**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 stormwater; that is not a combined sewer, and that is not part of a publicly owned treatment works (POTW).

**Small Construction Activity** – Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one (1) acre and less than five (5) acres of land. Small construction activity also includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one (1) and less than five (5) acres of land. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (for example, the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities).

**Steep Slopes** – Where a state, Tribe, local government, or industry technical manual (e.g., stormwater BMP manual) has defined what is to be considered a “steep slope”, this permit’s definition automatically adopts that definition. Where no such definition exists, steep slopes are automatically defined as those that are 15 percent or greater in grade.

**Stormwater (or Stormwater Runoff)** – Rainfall runoff, snow melt runoff, and surface runoff and drainage.

**Stormwater Associated with Construction Activity** – Stormwater runoff, as defined above, from a construction activity.

**Structural Control (or Practice)** – A pollution prevention practice that requires the construction of a device, or the use of a device, to reduce or prevent pollution in stormwater runoff. Structural controls and practices may include but are not limited to: silt fences, earthen dikes, drainage swales, sediment traps, check dams, subsurface drains, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins.

**Surface Water in the State** – Lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state (from the mean high water mark (MHW) out 10.36 miles into the Gulf), and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; except that waters in treatment systems which are authorized by state or federal law, regulation, or permit, and which are created for the purpose of waste treatment are not considered to be water in the state.

**Temporary Stabilization** – A condition where exposed soils or disturbed areas are provided a protective cover or other structural control to prevent the migration of pollutants. Temporary stabilization may include temporary seeding, geotextiles, mulches, and other techniques to reduce or eliminate erosion until either permanent stabilization can be achieved or until further construction activities take place.

**Thawing Conditions** – For the purposes of this permit, thawing conditions are expected based on the historical likelihood of two (2) or more days with daytime temperatures greater than 32 degrees Fahrenheit (°F). This date can be determined by looking at historical weather data.

NOTE: The estimation of thawing conditions is for planning purposes only. During construction, the permittee will be required to conduct site inspections based upon actual conditions (i.e., if thawing conditions occur sooner than expected, the permittee will be required to conduct inspections at the regular frequency).

**Total Maximum Daily Load (TMDL)** – The total amount of a pollutant that a water body can assimilate and still meet the Texas Surface Water Quality Standards.

**Turbidity** – A condition of water quality characterized by the presence of suspended solids and/or organic material.

**Waters of the United States** – Waters of the United States or waters of the U.S. means the term as defined in 40 CFR § 122.2.

## **Part II. Permit Applicability and Coverage**

### **Section A. Discharges Eligible for Authorization**

#### **1. Stormwater Associated with Construction Activity**

Discharges of stormwater runoff and certain non-stormwater discharges from small and large construction activities may be authorized under this general permit, except as described in Part II.C. of this permit.

#### **2. Discharges of Stormwater Associated with Construction Support Activities**

Discharges of stormwater runoff and certain non-stormwater discharges from construction support activities as defined in Part I.B. of this general permit may be authorized, provided that the following conditions are met:

- (a) the construction support activities are located within one (1) mile from the boundary of the construction site where the construction activity authorized under the permit is being conducted that requires the support of these activities;
- (b) an SWP<sub>3</sub> is developed and implemented for the permitted construction site according to the provisions in Part III.F. of this general permit, including appropriate controls and measures to reduce erosion and the discharge of pollutants in stormwater runoff according to the provisions in Part IV. of this general permit;
- (c) the activities are directly related to the construction site;
- (d) the activities are not a commercial operation, nor serve other unrelated construction projects; and
- (e) the activities do not continue to operate beyond the completion of the construction activity at the project it supports.

Construction support activities that operate outside the terms provided in (a) through (e) above must obtain authorization under a separate Texas Pollutant Discharge Elimination System (TPDES) permit, which may include the TPDES Multi-Sector General Permit (MSGP), TXR050000 (related to stormwater discharges associated with industrial activity), an alternative general permit (if available), or an individual water quality permit.

#### **3. Non-Stormwater Discharges**

The following non-stormwater discharges from sites authorized under this general permit are also eligible for authorization under this general permit:

- (a) discharges from emergency fire-fighting activities (emergency fire-fighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, or similar activities);
  - (b) uncontaminated fire hydrant flushings (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life), which include flushings from systems that utilize potable water, surface water, or groundwater that does not contain additional pollutants (uncontaminated fire hydrant flushings do not include systems utilizing reclaimed wastewater as a source water);
  - (c) water from the routine external washing of vehicles, the external portion of buildings or structures, and pavement, where solvents, detergents, and soaps are not used, where spills or leaks of toxic or hazardous materials have not occurred (unless spilled materials have been removed; and if local state, or federal regulations are applicable, the materials are removed according to those regulations), and where the purpose is to remove mud, dirt, or dust;
  - (d) uncontaminated water used to control dust;
  - (e) potable water sources, including waterline flushings, but excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life;
  - (f) uncontaminated air conditioning condensate;
  - (g) uncontaminated ground water or spring water, including foundation or footing drains where flows are not contaminated with industrial materials such as solvents; and
  - (h) lawn watering and similar irrigation drainage.
4. Other Permitted Discharges

Any discharge authorized under a separate National Pollutant Discharge Elimination System (NPDES), TPDES, or TCEQ permit may be combined with discharges authorized by this general permit, provided those discharges comply with the associated permit.

### **Section B. Concrete Truck Wash Out**

The wash out of concrete trucks at regulated construction sites must be performed in accordance with the requirements of Part VI of this general permit.

### **Section C. Limitations on Permit Coverage**

#### 1. Post Construction Discharges

Discharges that occur after construction activities have been completed, and after the construction site and any supporting activity site have undergone final stabilization, are not eligible for coverage under this general permit. Discharges originating from the sites are not authorized under this general permit following the submission of the notice of termination (NOT) or removal of the appropriate TCEQ site notice, as applicable, for the regulated construction activity.

#### 2. Prohibition of Non-Stormwater Discharges

Except as otherwise provided in Part II.A. of this general permit, only discharges that are composed entirely of stormwater associated with construction activity may be authorized under this general permit.

### 3. Compliance with Water Quality Standards

Discharges to surface water in the state that would cause, have the reasonable potential to cause, or contribute to a violation of water quality standards or that would fail to protect and maintain existing designated uses of surface water in the state are not eligible for coverage under this general permit. The executive director may require an application for an individual permit or alternative general permit (see Parts II.H.2. and 3.) to authorize discharges to surface water in the state if the executive director determines that any activity will cause, has the reasonable potential to cause, or contribute to a violation of water quality standards or is found to cause, has the reasonable potential to cause, or contribute to, the impairment of a designated use. The executive director may also require an application for an individual permit considering factors described in Part II.H.3. of this general permit.

### 4. Impaired Receiving Waters and Total Maximum Daily Load (TMDL) Requirements

The permittee shall determine whether the authorized discharge is to an impaired water body on the latest EPA-approved CWA § 303(d) List or waters with an EPA-approved or established TMDL that are found on the latest EPA-approved *Texas Integrated Report of Surface Water Quality for CWA Sections 305(b) and 303(d)*, which lists the category 4 and 5 water bodies.

New sources or new discharges of the pollutants of concern to impaired waters are not authorized by this permit unless otherwise allowable under 30 TAC Chapter 305 and applicable state law. Impaired waters are those that do not meet applicable water quality standard(s) and are listed as category 4 or 5 in the current version of the *Texas Integrated Report of Surface Water Quality for CWA Sections 305(b) and 303(d)*, and waterbodies listed on the CWA § 303(d) List. Pollutants of concern are those for which the water body is listed as impaired.

Discharges of the pollutants of concern to impaired water bodies for which there is a TMDL are not eligible for coverage under this general permit unless they are consistent with the approved TMDL. Permittees must incorporate the conditions and requirements applicable to their discharges into their SWP3, in order to be eligible for coverage under this general permit. For consistency with the construction stormwater-related items in an approved TMDL, the SWP3 must be consistent with any applicable condition, goal, or requirement in the TMDL, TMDL Implementation Plan (I-Plan), or as otherwise directed by the executive director.

### 5. Discharges to the Edwards Aquifer Recharge or Contributing Zone

Discharges cannot be authorized by this general permit where prohibited by 30 TAC Chapter 213 (relating to Edwards Aquifer). In addition, commencement of construction (see definition for commencement of construction in Part I.B. above) at a site regulated under 30 TAC Chapter 213, may not begin until the appropriate Edwards Aquifer Protection Plan (EAPP) has been approved by the TCEQ's Edwards Aquifer Protection Program.

- (a) For new discharges located within the Edwards Aquifer Recharge Zone, or within that area upstream from the recharge zone and defined as the Contributing Zone (CZ), operators must meet all applicable requirements of, and operate according to, 30 TAC Chapter 213 (Edwards Aquifer Rule) in addition to the provisions and requirements of this general permit.

- (b) For existing discharges located within the Edwards Aquifer Recharge Zone, the requirements of the agency-approved Water Pollution Abatement Plan (WPAP) under the Edwards Aquifer Rule are in addition to the requirements of this general permit. BMPs and maintenance schedules for structural stormwater controls, for example, may be required as a provision of the rule. All applicable requirements of the Edwards Aquifer Rule for reductions of suspended solids in stormwater runoff are in addition to the requirements in this general permit for this pollutant.
- (c) For discharges located within ten (10) stream miles upstream of the Edwards Aquifer recharge zone, applicants shall also submit a copy of the NOI to the appropriate TCEQ regional office.

Counties: Comal, Bexar, Medina, Uvalde, and Kinney

**Contact:** TCEQ Water Program Manager  
San Antonio Regional Office  
14250 Judson Road  
San Antonio, Texas 78233-4480  
(210) 490-3096

Counties: Williamson, Travis, and Hays

**Contact:** TCEQ Water Program Manager  
Austin Regional Office  
12100 Park 35 Circle  
Room 179, Building A  
Austin, Texas 78753  
(512) 339-2929

#### 6. Discharges to Specific Watersheds and Water Quality Areas

Discharges otherwise eligible for coverage cannot be authorized by this general permit where prohibited by 30 TAC Chapter 311 (relating to Watershed Protection) for water quality areas and watersheds.

#### 7. Protection of Streams and Watersheds by Other Governmental Entities

This general permit does not limit the authority or ability of federal, other state, or local governmental entities from placing additional or more stringent requirements on construction activities or discharges from construction activities.

#### 8. Indian Country Lands

Stormwater runoff from construction activities occurring on Indian Country lands are not under the authority of the TCEQ and are not eligible for coverage under this general permit. If discharges of stormwater require authorization under federal NPDES regulations, authority for these discharges must be obtained from the U.S. Environmental Protection Agency (EPA).

#### 9. Exempt Oil and Gas Activities

The CWA § 402(l)(2) provides that stormwater discharges from construction activities related to oil and gas exploration, production, processing, or treatment, or transmission facilities are exempt from regulation under this permit. The term “oil and gas exploration, production, processing, or treatment operations, or transmission facilities” is defined in 33 U.S.C. Annotated § 1362 (24).

The exemption in CWA § 402(l)(2) *includes* stormwater discharges from construction activities regardless of the amount of disturbed acreage, which are necessary to prepare a site for drilling and the movement and placement of drilling equipment, drilling waste management pits, in field treatment plants, and in field transportation infrastructure (e.g., crude oil pipelines, natural gas treatment plants, and both natural gas transmission pipeline compressor and crude oil pumping stations) necessary for the operation of most producing oil and gas fields. Construction activities are defined in 33 U.S. Code § 1362(24) and interpreted by EPA in the final rule. *See* June 12, 2006 Amendments to the NPDES Regulations for Storm Water Discharges Associated with Oil and Gas Exploration, Production, Processing, or Treatment Operations or Transmission Facilities (71 FR 33628, Part V. Terminology).

The exemption *does not include* stormwater discharges from the construction of administrative buildings, parking lots, and roads servicing an administrative building at an oil and gas site, as these are considered traditional construction activities.

As described in 40 CFR § 122.26(c)(1)(iii) [*regulations prior to 2006*], discharges from oil and gas construction activities are waived from CWA § 402(l)(2) permit coverage *unless* the construction activity (or construction support activity) has had a discharge of stormwater resulting in the discharge of a reportable quantity of oil or hazardous substances or the discharge contributes to a violation of water quality standards.

Exempt oil and gas activities which have lost their exemption as a result of one of the above discharges, must obtain permit coverage under this general permit, an alternative general permit, or a TPDES individual permit prior to the next discharge.

#### 10. Stormwater Discharges from Agricultural Activities

Stormwater discharges from agricultural activities that are not point source discharges of stormwater are not subject to TPDES permit requirements. These activities may include clearing and cultivating ground for crops, construction of fences to contain livestock, construction of stock ponds, and other similar agricultural activities. Discharges of stormwater runoff associated with the construction of facilities that are subject to TPDES regulations, such as the construction of concentrated animal feeding operations, would be point sources regulated under this general permit.

#### 11. Endangered Species Act

Discharges that would adversely affect a listed endangered or threatened aquatic or aquatic-dependent species or its critical habitat are not authorized by this permit, unless the requirements of the Endangered Species Act are satisfied. Federal requirements related to endangered species apply to all TPDES permitted discharges and site-specific controls may be required to ensure that protection of endangered or threatened species is achieved. If a permittee has concerns over potential impacts to listed species, the permittee may contact TCEQ for additional information.

#### 12. Storage of High-Level Radioactive Waste

Discharges of stormwater from construction activities associated with the construction of a facility that is licensed for the storage of high-level radioactive waste by the United States Nuclear Regulatory Commission under 10 CFR Part 72 are not authorized by this general permit. Texas Health and Safety Code (THSC) § 401.0525 prohibits TCEQ from issuing any TPDES authorizations for the construction or operation of these facilities.

Discharges of stormwater from the construction activities associated with the construction of a facility located at the site of currently or formerly operating nuclear power reactors and currently or formerly operating nuclear research and test reactors operated by a university are not prohibited under THSC § 401.0525 and continue to be regulated under this general permit.

## 13. Other

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

**Section D. Deadlines for Obtaining Authorization to Discharge**

## 1. Large Construction Activities

- (a) New Construction – Discharges from sites where the commencement of construction activity occurs on or after the effective date of this general permit must be authorized, either under this general permit or a separate TPDES permit, prior to the commencement of those construction activities.
- (b) Ongoing Construction – Operators of large construction activities continuing to operate after the effective date of this permit, and authorized under the TPDES Construction General Permit (CGP) TXR150000 (effective on March 5, 2018, and amended on January 28, 2022), must submit an NOI to renew authorization or an NOT to terminate coverage under this general permit within 90 days of the effective date of this general permit. During this interim or grace period, as a requirement of this TPDES permit, the operator must continue to meet the conditions and requirements of the issued and amended 2018 TPDES CGP.

## 2. Small Construction Activities

- (a) New Construction – Discharges from sites where the commencement of construction activity occurs on or after the effective date of this general permit must be authorized, either under this general permit or a separate TPDES permit, prior to the commencement of those construction activities.
- (b) Ongoing Construction – Discharges from ongoing small construction activities that commenced prior to the effective date of this general permit, and that do not meet the conditions to qualify for termination of this permit as described in Part II.F. of this general permit, must meet the requirements to be authorized, either under this general permit or a separate TPDES permit, within 90 days of the effective date of this general permit. During this interim period, as a requirement of this TPDES permit, the operator must continue to meet the conditions and requirements of the issued and amended 2018 TPDES CGP.

**Section E. Obtaining Authorization to Discharge**

## 1. Automatic Authorization for Small Construction Activities with Low Potential for Erosion

Operators of small construction activity, as defined in Part I.B. of this general permit, shall not submit an NOI for coverage, unless otherwise required by the executive director.

Operators of small construction activities, which occur in certain counties and during periods of low potential for erosion that do not meet the conditions of the waiver described in Part II.G. of this general permit, may be automatically authorized under this general permit if all the following conditions are met prior to the commencement of construction.

- (a) The construction activity occurs in a county and during the corresponding date range(s) listed in Appendix A;



- (b) The construction activity is initiated and completed, including either final or temporary stabilization of all disturbed areas, within the time frame identified in Appendix A for the location of the construction site;
- (c) All temporary stabilization is adequately maintained to effectively reduce or prohibit erosion, permanent stabilization activities have been initiated, and a condition of final stabilization is completed no later than 30 days following the end date of the time frame identified in Appendix A for the location of the construction site; the permittee signs a completed TCEQ Small Construction Site Notice for low potential for erosion (Form TCEQ-20964), including the certification statement;
- (d) A signed and certified copy of the TCEQ Small Construction Site Notice for low potential for erosion is posted at the construction site in a location where it is readily available for viewing by the general public, local, state, and federal authorities prior to commencing construction activities, and maintained in that location until final stabilization has been achieved;

NOTE: Posted TCEQ site notices may have a redacted signature as long as there is an original signed and certified TCEQ site notice, with a viewable signature, located on-site and available for review by any applicable regulatory authority.

- (e) A copy of the signed and certified TCEQ Small Construction Site Notice for low potential for erosion is provided to the operator of any MS4 receiving the discharge at least two (2) days prior to commencement of construction activities;
- (f) Discharges of stormwater runoff or other non-stormwater discharges from any supporting concrete batch plant or asphalt batch plant is separately authorized under an individual TPDES permit, another TPDES general permit, or under an individual TCEQ permit where stormwater and non-stormwater is disposed of by evaporation or irrigation (discharges are adjacent to water in the state); and
- (g) Any non-stormwater discharges are either authorized under a separate permit or authorization, are not considered by TCEQ to be a wastewater, or are captured and routed for disposal at a publicly operated treatment works or licensed waste disposal facility.

If all of the conditions in (a) – (h) above are met, then the operator(s) of small construction activities with low potential for erosion are not required to develop a SWP3.

If an operator is conducting small construction activities and any of the above conditions (a) – (h) are not met, the operator cannot declare coverage under the automatic authorization for small construction activities with low potential for erosion and must meet the requirements for automatic authorization (all other) small construction activities, described below in Part II.E.2.

For small construction activities that occur during a period with a low potential for erosion, where automatic authorization under this section is not available, an operator may apply for and obtain a waiver from permitting (Low Rainfall Erosivity Waiver – LREW), as described in Part II.G. of this general permit. Waivers from coverage under the LREW do not allow for any discharges of non-stormwater and the operator must ensure that discharges on non-stormwater are either authorized under a separate permit or authorization.

## 2. Automatic Authorization for Small Construction Activities

Operators of small construction activities as defined in Part I.B. of this general permit shall not submit an NOI for coverage, unless otherwise required by the executive director.

Operators of small construction activities, as defined in Part I.B. of this general permit or as defined but who do not meet in the conditions and requirements located in Part II.E.1 above, may be automatically authorized for small construction activities, provided that they meet all of the following conditions:

- (a) develop a SWP3 according to the provisions of this general permit, that covers either the entire site or all portions of the site for which the applicant is the operator, and implement the SWP3 prior to commencing construction activities;
- (b) all operators of regulated small construction activities must post a copy of a signed and certified TCEQ Small Construction Site Notice (Form TCEQ-20963), the notice must be posted at the construction site in a location where it is safely and readily available for viewing by the general public, local, state, and federal authorities, at least two (2) days prior to commencing construction activity, and maintain the notice in that location until completion of the construction activity (for linear construction activities, e.g. pipeline or highway, the TCEQ site notice must be placed in a publicly accessible location near where construction is actively underway; notice for these linear sites may be relocated, as necessary, along the length of the project, and the notice must be safely and readily available for viewing by the general public; local, state, and federal authorities);
- (c) operators must maintain a posted TCEQ Small Construction Site Notice on the approved TCEQ form at the construction site until final stabilization has been achieved; and

NOTE: Posted TCEQ site notices may have a redacted signature as long as there is an original signed and certified TCEQ Small Construction Site Notice, with a viewable signature, located on-site and available for review by an applicable regulatory authority.

- (d) provide a copy of the signed and certified TCEQ Small Construction Site Notice to the operator of any municipal separate storm sewer system (MS4) receiving the discharge at least two (2) days prior to commencement of construction activities.
- (e) if signatory authority is delegated by an authorized representative, then a Delegation of Signatory form must be submitted as required by 30 TAC § 305.128 (relating to Signatories to Reports). Operators for small construction activities must submit this form via mail following the instructions on the approved TCEQ paper form. A new Delegation of Signatory form must be submitted if the delegation changes to another individual or position.

As described in Part I.B of this general permit, large construction activities include those that will disturb less than five (5) acres of land, but that are part of a larger common plan of development or sale that will ultimately disturb five (5) or more acres of land and must meet the requirements of Part II.E.3. below.

### 3. Authorization for Large Construction Activities

Operators of large construction activities that qualify for coverage under this general permit must meet all of the following conditions:

- (a) develop a SWP3 according to the provisions of this general permit that covers either the entire site or all portions of the site where the applicant is the operator. The SWP3 must be developed and implemented prior to obtaining coverage and prior to commencing construction activities;
- (b) primary operators of large construction activities must submit an NOI prior to commencing construction activity at a construction site. A completed NOI must be submitted to TCEQ electronically using the online e-Permits system on TCEQ's website.

Operators with an electronic reporting waiver must submit a completed paper NOI to TCEQ at least seven (7) days prior to commencing construction activity to obtain provisional coverage 48-hours from the postmark date for delivery to the TCEQ. An authorization is no longer provisional when the executive director finds the NOI is administratively complete, and an authorization number is issued to the permittee for the construction site indicated on the NOI.

If an additional primary operator is added after the initial NOI is submitted, the additional primary operator must meet the same requirements for existing primary operator(s), as indicated above.

If the primary operator changes due to responsibility at the site being transferred from one primary operator to another after the initial NOI is submitted, the new primary operator must submit an electronic NOI, unless they request and obtain a waiver from electronic reporting, at least ten (10) days prior to assuming operational control of a construction site and commencing construction activity.

- (c) all operators of large construction activities must post a TCEQ Large Construction Site Notice on the approved TCEQ form (Form TCEQ-20961) in accordance with Part III.D.2. of this permit. The TCEQ site notice must be located where it is safely and readily available for viewing by the general public, local, state, and federal authorities prior to commencing construction activities, and must be maintained in that location until final stabilization has been achieved. For linear construction activities, e.g., pipeline or highway, the TCEQ site notice must be placed in a publicly accessible location near where construction is actively underway; notice for these linear sites may be relocated, as necessary, along the length of the project, and the notice must be safely and readily available for viewing by the general public, local, state, and federal authorities;
- (d) two days prior to commencing construction activities, all primary operators must:
  - i. provide a copy of the signed NOI to the operator of any MS4 receiving the discharge and to any secondary construction operator, and
  - ii. list in the SWP3 the names and addresses of all MS4 operators receiving a copy;
- (e) if signatory authority is delegated by an authorized representative, then a Delegation of Signatories form must be submitted as required by 30 TAC § 305.128 (relating to Signatories to Reports). Primary operators must submit this form electronically using the State of Texas Environmental Electronic Reporting System (STEERS), TCEQ's online permitting system, or by paper if the permittee requested and obtained an electronic reporting waiver. A new Delegation of Signatories form must be submitted, if the delegation changes to another individual or position;
- (f) all persons meeting the definition of "secondary operator" in Part I of this permit are hereby notified that they are regulated under this general permit, but are not required to submit an NOI, provided that a primary operator at the site has submitted an NOI, or prior to commencement of construction activities, a primary operator is required to submit an NOI and the secondary operator has provided notification to the operator(s) of the need to obtain coverage (with records of notification available upon request). Any secondary operator notified under this provision may alternatively submit an NOI under this general permit, may seek coverage under an alternative TPDES individual permit, or may seek coverage under an alternative TPDES general permit if available; and

- (g) all secondary operators of large construction activities must post a copy of the signed and certified TCEQ Large Construction Site Notice for Secondary Operators on the approved TCEQ form (Form TCEQ-20962) and provide a copy of the signed and certified TCEQ site notice to the operator of any MS4 receiving the discharge at least two (2) days prior to the commencement construction activities.

NOTE: Posted TCEQ site notices may have a redacted signature as long as there is an original signed and certified TCEQ Large Construction Site Notice for Secondary Operators, with a viewable signature, located on-site and available for review by an applicable regulatory authority.

Applicants must submit an NOI using the online e-Permits system (accessed using STEERS) available through the TCEQ website, or request and obtain a waiver from electronic reporting from the TCEQ. Waivers from electronic reporting are not transferrable and expire on the same date as the authorization to discharge.

#### 4. Waivers for Small Construction Activities:

Operators of certain small construction activities may obtain a waiver from coverage under this general permit, if applicable. The requirements are outlined in Part II.G. below.

#### 5. Effective Date of Coverage

- (a) Operators of small construction activities as described in either Part II.E.1. or II.E.2. above are authorized immediately following compliance with the applicable conditions of Part II.E.1. or II.E.2. Secondary operators of large construction activities as described in Part II.E.3. above are authorized immediately following compliance with the applicable conditions in Part II.E.3. For activities located in areas regulated by 30 TAC Chapter 213, related to the Edwards Aquifer, this authorization to discharge is separate from the requirements of the operator's responsibilities under that rule. Construction may not commence for sites regulated under 30 TAC Chapter 213 until all applicable requirements of that rule are met.
- (b) Primary operators of large construction activities as described in Part II.E.3. above that electronically submit an NOI are authorized immediately following confirmation of receipt of the electronic form by the TCEQ, unless otherwise notified by the executive director.

Operators with an electronic reporting waiver are provisionally authorized 48-hours from the date that a completed paper NOI is postmarked for delivery to the TCEQ, unless otherwise notified by the executive director. An authorization is no longer provisional when the executive director finds the NOI is administratively complete and an authorization number is issued to the permittee for the construction site indicated on the NOI.

For construction activities located in areas regulated by 30 TAC Chapter 213, related to the Edwards Aquifer, this authorization to discharge is separate from the requirements of the operator's responsibilities under that rule. Construction activities may not commence for sites regulated under 30 TAC Chapter 213 until all applicable requirements of that rule are met.

- (c) Operators are not prohibited from submitting late NOIs or posting late site notices to obtain authorization under this general permit. The TCEQ reserves the right to take appropriate enforcement action for any unpermitted activities that may have occurred between the time construction commenced and authorization under this general permit was obtained.

- (d) If operators that submitted NOIs have active authorizations for construction activities that are ongoing when this general permit expires on March 5, 2028, and a new general permit is issued, a 90-day interim (grace) period is granted to provide coverage that is administratively continued until operators with active authorizations can obtain coverage under the newly issued CGP. The 90-day grace period starts on the effective date of the newly issued CGP.

## 6. Contents of the NOI

The NOI form shall require, at a minimum, the following information:

- (a) the TPDES CGP authorization number for existing authorizations under this general permit, where the operator submits an NOI to renew coverage within 90 days of the effective date of this general permit;
- (b) the name, address, and telephone number of the operator filing the NOI for permit coverage;
- (c) the name (or other identifier), address, county, and latitude/longitude of the construction project or site;
- (d) the number of acres that will be disturbed by the applicant;
- (e) the estimated construction project start date and end date;
- (f) confirmation that the project or site will not be located on Indian Country lands;
- (g) confirmation if the construction activity is associated with an oil and gas exploration, production, processing, or treatment, or transmission facility (see Part II.C.9.)
- (h) confirmation that the construction activities are not associated with the construction of a facility that is licensed for the storage of high-level radioactive waste by the United States Nuclear Regulatory Commission under 10 CFR Part 72 (see Part II.C.12.);
- (i) confirmation that a SWP<sub>3</sub> has been developed in accordance with all conditions of this general permit, that it will be implemented prior to commencement of construction activities, and that it is compliant with any applicable local sediment and erosion control plans; for multiple operators who prepare a shared SWP<sub>3</sub>, the confirmation for an operator may be limited to its obligations under the SWP<sub>3</sub> provided all obligations are confirmed by at least one operator;
- (j) name of the receiving water(s);
- (k) the classified segment number for each classified segment that receives discharges from the regulated construction activity (if the discharge is not directly to a classified segment, then the classified segment number of the first classified segment that those discharges reach); and
- (l) the name of all surface waters receiving discharges from the regulated construction activity that are on the latest EPA-approved CWA § 303(d) List of impaired waters or *Texas Integrated Report of Surface Water Quality for CWA Sections 305(b) and 303(d)* as not meeting applicable state water quality standards.

## 7. Notice of Change (NOC)

- (a) If relevant information provided in the NOI changes, the operator that has submitted the NOI must submit an NOC to TCEQ at least fourteen (14) days before the change occurs. Where a 14-day advance notice is not possible, the operator must submit an NOC to TCEQ within fourteen (14) days of discovery of the change. If the operator becomes aware that it failed to submit any relevant facts or submitted

incorrect information in an NOI, the correct information must be submitted to TCEQ in an NOC within fourteen (14) days after discovery.

- (b) Information on an NOC may include, but is not limited to, the following:
- i. a change in the description of the construction project;
  - ii. an increase in the number of acres disturbed (for increases of one (1) or more acres);
  - iii. or the name of the operator (where the name of the operator has changed).
- (c) Electronic NOC.

Applicants must submit an NOC using the online e-Permits system available through the TCEQ website, or request and obtain a waiver from electronic reporting from the TCEQ. All waivers from electronic reporting are not transferrable. Electronic reporting waivers expire on the same date as the authorization to discharge, except for temporary waivers that expire one (1) year from issuance. A copy of the NOC form or letter must also be placed in the SWP3 and provided to the operator of any MS4 receiving the discharge. Operators are authorized immediately following confirmation of receipt of the electronic form by the TCEQ, unless otherwise notified by the executive director.

- (d) Paper NOC.

Applicants who request and obtain an electronic reporting waiver shall submit the NOC on a paper form provided by the executive director, or by letter if an NOC form is not available.

- (e) A copy of the NOC form or letter must also be placed in the SWP3 and provided to the operator of any MS4 receiving the discharge. A list that includes the names and addresses of all MS4 operators receiving a copy of the NOC (or NOC letter) must be included in the SWP3. Information that may not be included on an NOC includes but is not limited to the following:
- i. transfer of operational control from one operator to another, including a transfer of the ownership of a company. A transfer of ownership of a company includes changes to the structure of a company, such as changing from a partnership to a corporation or changing corporation types, so that the filing or charter number that is on record with the Texas Secretary of State (SOS) must be changed.
  - ii. coverage under this general permit is not transferable from one operator to another. Instead, the new operator will need to submit an NOI or LREW, as applicable, and the previous operator will need to submit an NOT.
  - iii. a decrease in the number of acres disturbed. This information must be included in the SWP3 and retained on site.

8. Signatory Requirement for NOI Forms, NOT Forms, NOC Forms, and Construction Site Notices

NOI forms, NOT forms, NOC forms, and Construction Site Notices that require a signature must be signed according to 30 TAC § 305.44 (relating to Signatories for Applications).

**Section F. Terminating Coverage****1. Notice of Termination (NOT) Required**

Each operator that has submitted an NOI for authorization of large construction activities under this general permit must apply to terminate that authorization following the conditions described in this section of the general permit.

Authorization of large construction must be terminated by submitting an NOT electronically via the online e-Permits system available through the TCEQ website, or on a paper NOT form to TCEQ supplied by the executive director with an approved waiver from electronic reporting. Authorization to discharge under this general permit terminates at midnight on the day a paper NOT is postmarked for delivery to the TCEQ or immediately following confirmation of the receipt of the NOT submitted electronically by the TCEQ.

Applicants must submit an NOT using the online e-Permits system available through the TCEQ website, or request and obtain a waiver from electronic reporting from the TCEQ. Waivers from electronic reporting are not transferrable and expire on the same date as the authorization to discharge, except for temporary waivers that expire one (1) year from issuance.

The NOT must be submitted to TCEQ, and a copy of the NOT provided to the operator of any MS4 receiving the discharge (with a list in the SWP3 of the names and addresses of all MS4 operators receiving a copy), within 30 days after any of the following conditions are met:

- (a) final stabilization has been achieved on all portions of the site that are the responsibility of the operator;
- (b) a transfer of operational control has occurred (See Section II.F.4. below); or
- (c) the operator has obtained alternative authorization under an individual TPDES permit or alternative TPDES general permit.

Compliance with the conditions and requirements of this permit is required until the NOT is submitted and approved by TCEQ.

**2. Minimum Contents of the NOT**

The NOT form shall require, at a minimum, the following information:

- (a) if authorization for construction activity was granted following submission of an NOI, the permittee's site-specific TPDES authorization number for a specific construction site;
- (b) an indication of whether final stabilization has been achieved at the site and a NOT has been submitted or if the permittee is simply no longer an operator at the site;
- (c) the name, address, and telephone number of the permittee submitting the NOT;
- (d) the name (or other identifier), address, county, and location (latitude/longitude) of the construction project or site; and
- (e) a signed certification that either all stormwater discharges requiring authorization under this general permit will no longer occur, or that the applicant is no longer the operator of the facility or construction site, and that all temporary structural erosion controls have either been removed, will be removed on a schedule defined in the SWP3, or have been transferred to a new operator if the new operator has applied for permit coverage. Erosion controls that are designed to remain in place for an indefinite period, such as mulches and fiber mats, are not required to be removed or scheduled for removal.

3. Termination of Coverage for Small Construction Sites and for Secondary Operators at Large Construction Sites
- (a) Each operator that has obtained automatic authorization for small construction or is a secondary operator for large construction must perform the following when terminating coverage under the permit:
- i. remove the TCEQ site notice;
  - ii. complete the applicable portion of the TCEQ site notice related to removal of the TCEQ site notice; and
  - iii. submit a copy of the completed TCEQ site notice to the operator of any MS4 receiving the discharge (or provide alternative notification as allowed by the MS4 operator, with documentation of such notification included in the SWP3).
- (b) The activities described in Part II.F.3.(a) above must be completed by the operator within 30 days of meeting any of the following conditions:
- i. final stabilization has been achieved on all portions of the site that are the responsibility of the operator;
  - ii. a transfer of day-to-day operational control over activities necessary to ensure compliance with the SWP3 and other permit conditions has occurred (See Section II.F.4. below); or
  - iii. the operator has obtained alternative authorization under an individual or general TPDES permit.

For Small Construction Sites and Secondary Operators at Large Construction Sites, authorization to discharge under this general permit terminates immediately upon removal of the applicable TCEQ construction site notice. Compliance with the conditions and requirements of this permit is required until the TCEQ construction site notice is removed. The construction site notice cannot be removed until final stabilization has been achieved.

4. Transfer of Day-to-Day Operational Control
- (a) When the primary operator of a large construction activity changes or operational control over activities necessary to ensure compliance with the SWP3 and other permit conditions is transferred to another primary operator, the original operator must do the following:
- i. submit an NOT within ten (10) days prior to the date that responsibility for operations terminates, and the new operator must submit an NOI at least ten (10) days prior to the transfer of operational control, in accordance with condition (c) below; and
  - ii. submit a copy of the NOT from the primary operator terminating its coverage under the permit and its operational control of the construction site and submit a copy of the NOI from the new primary operator to the operator of any MS4 receiving the discharge in accordance with Part II.F.1. above.
- (b) For transfer of operational control, operators of small construction activities and secondary operators of large construction activities who are not required to submit an NOI must do the following:
- i. the existing operator must remove the original TCEQ construction site notice, and the new operator must post the required TCEQ construction site notice prior to the transfer of operational control, in accordance with the conditions in Part II.F.4.(c) i or ii below; and



- ii. a copy of the TCEQ construction site notice, which must be completed and provided to the operator of any MS4 receiving the discharge, in accordance with Part II.F.3. above.
- (c) Each operator is responsible for determining its role as an operator as defined in Part I.B. and obtaining authorization under the permit, as described above in Part II.E. 1. – 3. Where authorization has been obtained by submitting an NOI for coverage under this general permit, permit coverage is not transferable from one operator to another. A transfer of operational control can include changes to the structure of a company, such as changing from a partnership to a corporation, or changing to a different corporation type such that a different filing (or charter) number is established with the Texas Secretary of State (SOS). A transfer of operational control can also occur when one of the following criteria is met, as applicable:
- i. another operator has assumed control over all areas of the site that do not meet the definition for final stabilization;
  - ii. all silt fences and other temporary erosion controls have either been removed, scheduled for removal as defined in the SWP3, or transferred to a new operator, provided that the original permitted operator has attempted to notify the new operator in writing of the requirement to obtain permit coverage. Records of this notification (or attempt at notification) shall be retained by the operator transferring operational control to another operator in accordance with Part VI of this permit. Erosion controls that are designed to remain in place for an indefinite period, such as mulches and fiber mats, are not required to be removed or scheduled for removal; or
  - iii. a homebuilder has purchased one (1) or more lots from an operator who obtained coverage under this general permit for a common plan of development or sale. The homebuilder is considered a new operator and shall comply with the requirements of this permit. Under these circumstances, the homebuilder is only responsible for compliance with the general permit requirements as they apply to the lot(s) it has operational control over in a larger common plan of development, and the original operator remains responsible for common controls or discharges, and must amend its SWP3 to remove the lot(s) transferred to the homebuilder.

### **Section G. Waivers from Coverage**

The executive director may waive the otherwise applicable requirements of this general permit for stormwater discharges from small construction activities under the terms and conditions described in this section.

#### **1. Waiver Applicability and Coverage**

Operators of small construction activities may apply for and receive a waiver from the requirements to obtain authorization under this general permit, when the calculated rainfall erosivity (R) factor for the entire period of the construction project is less than five (5).

The operator must submit a Low Rainfall Erosivity Waiver (LREW) certification form to the TCEQ electronically via the online e-Permits system available through the TCEQ website. The LREW form is a certification by the operator that the small construction activity will commence and be completed within a period when the value of the calculated R factor is less than five (5).

Applicants who request and obtain an electronic reporting waiver shall submit the LREW on a paper form provided by the executive director at least seven (7) days prior to commencing construction activity to obtain provisional coverage 48-hours from the postmark date for delivery to the TCEQ. An authorization is no longer provisional when the executive director finds the LREW is administratively complete, and an authorization number is issued to the permittee for the construction site indicated on the LREW. Waivers from electronic reporting are not transferrable and expire on the same date as the authorization to discharge, except for temporary waivers that expire one (1) year from issuance.

This waiver from coverage does not apply to any non-stormwater discharges, including what is allowed under this permit. The operator must ensure that all non-stormwater discharges are either authorized under a separate permit or authorization or are captured and routed to an authorized treatment facility for disposal.

## 2. Steps to Obtaining a Waiver

The construction site operator may calculate the R factor to request a waiver using the following steps:

- (a) estimate the construction start date and the construction end date. The construction end date is the date that final stabilization will be achieved.
- (b) find the appropriate Erosivity Index (EI) zone in Appendix B of this permit.
- (c) find the EI percentage for the project period by adding the results for each period of the project using the table provided in Appendix D of this permit, in EPA Fact Sheet 2.1, or in USDA Handbook 703, by subtracting the start value from the end value to find the percent EI for the site.
- (d) refer to the Isoerodent Map (Appendix C of this permit) and interpolate the annual isoerodent value for the proposed construction location.
- (e) multiply the percent value obtained in Step (c) above by the annual isoerodent value obtained in Step (d). This is the R factor for the proposed project. If the value is less than five (5), then a waiver may be obtained. If the value is five (5) or more, then a waiver may not be obtained, and the operator must obtain coverage under Part II.E.2. of this permit.

Alternatively, the operator may calculate a site-specific R factor utilizing the following online calculator: <https://lew.epa.gov/>, or using another available resource.

A copy of the LREW certification form is not required to be posted at the small construction site.

## 3. Effective Date of an LREW

Unless otherwise notified by the executive director, operators of small construction activities seeking coverage under an LREW are provisionally waived from the otherwise applicable requirements of this general permit 48-hours from the date that a completed paper LREW certification form is postmarked for delivery to TCEQ, or immediately upon receiving confirmation of approval of an electronic submittal, made via the online e-Permits system available through the TCEQ website.

Applicants seeking coverage under an LREW must submit an application for an LREW using the online e-Permits system available through the TCEQ website, or request and obtain a waiver from electronic reporting from the TCEQ. Waivers from electronic reporting are not transferrable and expire on the same date as the authorization to discharge.

#### 4. Activities Extending Beyond the LREW Period

If a construction activity extends beyond the approved waiver period due to circumstances beyond the control of the operator, the operator must either:

- (a) recalculate the R factor using the original start date and a new projected ending date, and if the R factor is still under five (5), submit a new waiver certification form at least two (2) days before the end of the original waiver period; or
- (b) obtain authorization under this general permit according to the requirements for automatic authorization for small construction activities in Part II.E.2. of this permit, prior to the end of the approved LREW period.

### Section H. Alternative TPDES Permit Coverage

#### 1. Individual Permit Alternative

Any discharge eligible for coverage under this general permit may alternatively be authorized under an individual TPDES permit according to 30 TAC Chapter 305 (relating to Consolidated Permits). Applications for individual permit coverage must be submitted at least 330 days prior to commencement of construction activities to ensure timely authorization. Existing coverage under this general permit should not be terminated until an individual permit is issued and in effect.

#### 2. General Permit Alternative

Any discharges eligible for authorization under this general permit may alternatively be authorized under a separate general permit according to 30 TAC Chapter 205 (relating to General Permits for Waste Discharges), as applicable.

#### 3. Individual Permit Required

The executive director may require an operator of a construction site, otherwise eligible for authorization under this general permit, to apply for an individual TPDES permit in the following circumstances:

- (a) the conditions of an approved TMDL or TMDL I-Plan on the receiving water;
- (b) the activity being determined to cause, has a reasonable potential to cause, or contribute to a violation of water quality standards or being found to cause, or contribute to, the loss of a designated use of surface water in the state; and
- (c) any other consideration defined in 30 TAC Chapter 205 (relating to General Permits for Waste Discharges) including 30 TAC § 205.4(c)(3)(D), which allows the commission to deny authorization under the general permit and require an individual permit if a discharger has been determined by the executive director to have been out of compliance with any rule, order, or permit of the commission, including non-payment of fees assessed by the executive director.

A discharger with a TCEQ compliance history rating of “unsatisfactory” is ineligible for coverage under this general permit. In that case, 30 TAC § 60.3 requires the executive director to deny or suspend an authorization to discharge under a general permit. However, per TWC § 26.040(h), a discharger is entitled to a hearing before the commission prior to having an authorization denied or suspended for having an “unsatisfactory” compliance history.

Denial of authorization to discharge under this general permit or suspension of a permittee’s authorization under this general permit for reasons other than compliance history shall be done according to commission rules in 30 TAC Chapter 205 (relating to General Permits for Waste Discharges).

**Section I. Permit Expiration**

1. This general permit is effective for a term not to exceed five (5) years. All active discharge authorizations expire on the date provided on page one (1) of this permit. Following public notice and comment, as provided by 30 TAC § 205.3 (relating to Public Notice, Public Meetings, and Public Comment), the commission may amend, revoke, cancel, or renew this general permit. All authorizations that are active at the time the permit term expires will be administratively continued as indicated in Part II.I.2. below and in Part II.D.1.(b) and D.2.(b) of this permit.
2. If the executive director publishes a notice of the intent to renew or amend this general permit before the expiration date, the permit will remain in effect for existing, authorized discharges until the commission takes final action on the permit. Upon issuance of a renewed or amended permit, permittees may be required to submit an NOI within 90 days following the effective date of the renewed or amended permit, unless that permit provides for an alternative method for obtaining authorization.
3. If the commission does not propose to reissue this general permit within 90 days before the expiration date, permittees shall apply for authorization under an individual permit or an alternative general permit. If the application for an individual permit is submitted before the expiration date, authorization under this expiring general permit remains in effect until the issuance or denial of an individual permit. No new NOIs will be accepted nor new authorizations honored under the general permit after the expiration date.

**Part III. Stormwater Pollution Prevention Plans (SWP3)**

All regulated construction site operators shall prepare an SWP3, prior to submittal of an NOI, to address discharges authorized under Parts II.E.2. and II.E.3. of this general permit that will reach waters of the U.S. This includes discharges to MS4s and privately owned separate storm sewer systems that drain into surface water in the state or waters of the U.S.

Individual operators at a site may develop separate SWP3s that cover only their portion of the project, provided reference is made to the other operators at the site. Where there is more than one (1) SWP3 for a site, operators must coordinate to ensure that BMPs and controls are consistent and do not negate or impair the effectiveness of each other. Regardless of whether a single comprehensive SWP3 is developed or separate SWP3s are developed for each operator, it is the responsibility of each operator to ensure compliance with the terms and conditions of this general permit in the areas of the construction site where that operator has control over construction plans and specifications or day-to-day operations.

An SWP3 must describe the implementation of practices that will be used to minimize to the extent practicable the discharge of pollutants in stormwater associated with construction activity and non-stormwater discharges described in Part II.A.3., in compliance with the terms and conditions of this permit.

An SWP3 must also identify any potential sources of pollution that have been determined to cause, have a reasonable potential to cause, or contribute to a violation of water quality standards or have been found to cause or contribute to the loss of a designated use of surface water in the state from discharges of stormwater from construction activities and construction support activities. Where potential sources of these pollutants are present at a construction site, the SWP3 must also contain a description of the management practices that will be used to prevent these pollutants from being discharged into surface water in the state or waters of the U.S.

NOTE: Construction support activities can also include vehicle repair areas, fueling areas, etc. that are present at a construction site solely for the support construction activities and are only used by operators at the construction site.

The SWP3 is intended to serve as a road map for how the construction operator will comply with the effluent limits and other conditions of this permit. Additional portions of the effluent limits are established in Part IV. of the permit.

### **Section A. Shared SWP3 Development**

For more effective coordination of BMPs and opportunities for cost sharing, a cooperative effort by the different operators at a site is encouraged. Operators of small and large construction activities must independently obtain authorization under this permit but may work together with other regulated operators at the construction site to prepare and implement a single, comprehensive SWP3, which can be shared by some or all operators, for the construction activities that each of the operators are performing at the entire construction site.

1. The SWP3 must include the following:
  - (a) for small construction activities – the name of each operator that participates in the shared SWP3;
  - (b) for large construction activities – the name of each operator that participates in the shared SWP3, the general permit authorization numbers of each operator (or the date that the NOI was submitted to TCEQ by each operator that has not received an authorization number for coverage under this permit); and
  - (c) for large and small construction activities – the signature of each operator participating in the shared SWP3.
2. The SWP3 must clearly indicate which operator is responsible for satisfying each shared requirement of the SWP3. If the responsibility for satisfying a requirement is not described in the plan, then each permittee is entirely responsible for meeting the requirement within the boundaries of the construction site where they perform construction activities. The SWP3 must clearly describe responsibilities for meeting each requirement in shared or common areas.
3. The SWP3 may provide that one operator is responsible for preparation of a SWP3 in compliance with the CGP, and another operator is responsible for implementation of the SWP3 at the project site.

### **Section B. Responsibilities of Operators**

1. Secondary Operators and Primary Operators with Control Over Construction Plans and Specifications

All secondary operators and primary operators with control over construction plans and specifications shall:

- (a) ensure the project specifications allow or provide that adequate BMPs are developed to meet the requirements of Part III of this general permit;
- (b) ensure that the SWP3 indicates the areas of the project where they have control over project specifications, including the ability to make modifications in specifications;
- (c) ensure that all other operators affected by modifications in project specifications are notified in a timely manner so that those operators may modify their BMP s as necessary to remain compliant with the conditions of this general permit; and

- (d) ensure that the SWP3 for portions of the project where each operator has control indicates the name and site-specific TPDES authorization number(s) for operators with the day-to-day operational control over those activities necessary to ensure compliance with the SWP3 and other permit conditions. If a primary operator has not been authorized or has abandoned the site, the secondary operator is considered to be the responsible party and must obtain authorization as a primary operator under the permit, until the authority for day-to-day operational control is transferred to another primary operator. The new primary operator must update or develop a new SWP3 that will reflect the transfer of operational control and include any additional updates to the SWP3 to meet requirements of the permit.

## 2. Primary Operators with Day-to-Day Operational Control

Primary operators with day-to-day operational control of those activities at a project that are necessary to ensure compliance with an SWP3 and other permit conditions must ensure that the SWP3 accomplishes the following requirements:

- (a) meets the requirements of this general permit for those portions of the project where they are operators;
- (b) identifies the parties responsible for implementation of BMPs described in the SWP3;
- (c) indicates areas of the project where they have operational control over day-to-day activities; and
- (d) the name and site-specific TPDES authorization number of the parties with control over project specifications, including the ability to make modifications in specifications for areas where they have operational control over day-to-day activities.

### **Section C. Deadlines for SWP3 Preparation, Implementation, and Compliance**

The SWP3 must be prepared prior to obtaining authorization under this general permit, and implemented prior to commencing construction activities that result in soil disturbance. The SWP3 must be prepared so that it provides for compliance with the terms and conditions of this general permit.

### **Section D. Plan Review and Making Plans Available**

1. The SWP3 must be retained on-site at the construction site or, if the site is inactive or does not have an on-site location to store the plan, a notice must be posted describing the location of the SWP3. The SWP3 must be made readily available at the time of an on-site inspection to: the executive director; a federal, state, or local agency approving sediment and erosion plans, grading plans, or stormwater management plans; local government officials; and the operator of a municipal separate storm sewer receiving discharges from the site. If the SWP3 is retained off-site, then it shall be made available as soon as reasonably possible. In most instances, it is reasonable that the SWP3 shall be made available within 24 hours of the request.

NOTE: The SWP3 may be prepared and kept electronically, rather than in paper form, if the records are: (a) in a format that can be read in a similar manner as a paper record; (b) legally valid with no less evidentiary value than their paper equivalent; and (c) immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form.

2. Operators with authorization for construction activity under this general permit must post a TCEQ site notice at the construction site at a place readily available for viewing by the general public, and local, state, and federal authorities.

- (a) Primary and secondary operators of large construction activities must each post a TCEQ construction site notice, respective to their role as an operator at the construction site, as required above and according to requirements in Part II.E.3. of this general permit.
  - (b) Primary and secondary operators of small construction activities must post the TCEQ site notice as required in Part III.D.2.(a) above and for the specific type of small construction described in Part II.E.1. and 2. of the permit.
  - (c) If the construction project is a linear construction project, such as a pipeline or highway, the notices must be placed in a publicly accessible location near where construction is actively underway. TCEQ construction site notices for small and large construction activities at these linear construction sites may be relocated, as necessary, along the length of the project, but must still be readily available for viewing by the general public; local, state, and federal authorities; and contain the following information:
    - i. the site-specific TPDES authorization number for the project if assigned;
    - ii. the operator name, contact name, and contact phone number;
    - iii. a brief description of the project; and
    - iv. the location of the SWP3.
3. This permit does not provide the general public with any right to trespass on a construction site for any reason, including inspection of a site; nor does this permit require that permittees allow members of the general public access to a construction site.

### **Section E. Revisions and Updates to SWP3s**

The permittee must revise or update the SWP3, including the site map, within seven (7) days of when any of the following occurs:

1. a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants and that has not been previously addressed in the SWP3;
2. changing site conditions based on updated plans and specifications, new operators, new areas of responsibility, and changes in BMPs; or
3. results of inspections or investigations by construction site personnel authorized by the permittee, operators of a municipal separate storm sewer system receiving the discharge, authorized TCEQ personnel, or a federal, state or local agency approving sediment and erosion plans indicate the SWP3 is proving ineffective in eliminating or significantly minimizing pollutants in discharges authorized under this general permit.

### **Section F. Contents of SWP3**

The SWP3 must be developed and implemented by primary operators of small and large construction activities and include, at a minimum, the information described in this section and must comply with the construction and development effluent guidelines in Part IV. of the general permit.

1. A site or project description, which includes the following information:
  - (a) a description of the nature of the construction activity;
  - (b) a list of potential pollutants and their sources;
  - (c) a description of the intended schedule or sequence of activities that will disturb soils for major portions of the site, including estimated start dates and duration of activities;

- (d) the total number of acres of the entire property and the total number of acres where construction activities will occur, including areas where construction support activities (defined in Part I.B. of this general permit) occur;
- (e) data describing the soil or the quality of any discharge from the site;
- (f) a map showing the general location of the site (e.g., a portion of a city or county map);
- (g) a detailed site map (or maps) indicating the following:
  - i. property boundary(ies);
  - ii. drainage patterns and approximate slopes anticipated before and after major grading activities;
  - iii. areas where soil disturbance will occur (note any phasing), including any demolition activities;
  - iv. locations of all controls and buffers, either planned or in place;
  - v. locations where temporary or permanent stabilization practices are expected to be used;
  - vi. locations of construction support activities, including those located off-site;
  - vii. surface waters (including wetlands) either at, adjacent, or in close proximity to the site, and also indicate whether those waters are impaired;

NOTE: Surface waters adjacent to or in close proximity to the site means any receiving waters within the site and all receiving waters within one mile downstream of the site's discharge point(s).

- viii. locations where stormwater discharges from the site directly to a surface water body or a municipal separate storm sewer system;
  - ix. vehicle wash areas; and
  - x. designated points on the site where vehicles will exit onto paved roads (for instance, this applies to construction transition from unstable dirt areas to exterior paved roads).
- Where the amount of information required to be included on the map would result in a single map being difficult to read and interpret, the operator shall develop a series of maps that collectively include the required information.
- (h) the location and description of support activities authorized under the permittee's NOI, including asphalt plants, concrete plants, and other activities providing support to the construction site that is authorized under this general permit;
  - (i) the name of receiving waters at or near the site that may be disturbed or that may receive discharges from disturbed areas of the project;
  - (j) a copy of this TPDES general permit (an electronic copy of this TPDES general permit or a current link to this TPDES general permit on the TCEQ webpage is acceptable);
  - (k) the NOI and the acknowledgement of provisional and non-provisional authorization for primary operators of large construction sites, and the TCEQ site notice for small construction sites and for secondary operators of large construction sites;
  - (l) if signatory authority is delegated by an authorized representative, then a copy of the formal notification to TCEQ, as required by 30 TAC 305.128 relating to Signatories to Reports must be filed in the SWP3 and made available for review upon request by TCEQ or local MS4 Operator. For primary operators of large construction activities, the formal notification to TCEQ must be submitted either electronically through



STEERS, TCEQ's electronic reporting system, or, if qualifying for an electronic reporting waiver, by paper on a Delegation of Signatories form. For operators or small construction activities, the formal notification to TCEQ must be submitted by paper on a Delegation of Signatories form.

- (m) stormwater and allowable non-stormwater discharge locations, including storm drain inlets on site and in the immediate vicinity of the construction site where construction support activities will occur; and
- (n) locations of all pollutant-generating activities at the construction site and where construction support activities will occur, such as the following: Paving operations; concrete, paint and stucco washout and water disposal; solid waste storage and disposal; and dewatering operations.

2. A description of the BMPs that will be used to minimize pollution in runoff.

The description must identify the general timing or sequence for installation and implementation. At a minimum, the description must include the following components:

(a) General Requirements

- i. Erosion and sediment controls must be designed to retain sediment on-site to the extent practicable with consideration for local topography, soil type, and rainfall.
- ii. Control measures must be properly selected, installed, and maintained according to good engineering practices, and the manufacturer's or designer's specifications.
- iii. Controls must be developed to minimize the offsite transport of litter, construction debris, construction materials, and other pollutants required of Part IV.D.

(b) Erosion Control and Stabilization Practices

The SWP3 must include a description of temporary and permanent erosion control and stabilization practices for the construction site, where small or large construction activity will occur. The erosion control and stabilization practices selected by the permittee must be compliant with the requirements for sediment and erosion control, located in Part IV. of this permit. The description of the SWP3 must also include a schedule of when the practices will be implemented. Site plans must ensure that existing vegetation at the construction site is preserved where it is possible.

- i. Erosion control and stabilization practices may include but are not limited to: establishment of temporary or permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of existing trees and vegetation, slope texturing, temporary velocity dissipation devices, flow diversion mechanisms, and other similar measures.
- ii. The following records must be maintained and either attached to or referenced in the SWP3, and made readily available upon request to the parties listed in Part III.D.1 of this general permit:
  - (A) the dates when major grading activities occur;
  - (B) the dates when construction activities temporarily or permanently cease on a portion of the site; and
  - (C) the dates when stabilization measures are initiated.
- iii. Erosion control and stabilization measures must be initiated immediately in portions of the site where construction activities have temporarily ceased and will not resume for a period exceeding fourteen (14) calendar days. Stabilization

measures that provide a protective cover must be initiated immediately in portions of the site where construction activities have permanently ceased. The term “immediately” is used to define the deadline for initiating stabilization measures. In the context of this requirement, “immediately” means as soon as practicable, but no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased. Except as provided in (A) through (D) below, these measures must be completed as soon as practicable, but no more than fourteen (14) calendar days after the initiation of soil stabilization measures:

- (A) where the immediate initiation of vegetative stabilization measures after construction activity has temporarily or permanently ceased due to frozen conditions, non-vegetative controls must be implemented until thawing conditions (as defined in Part I.B. of this general permit) are present, and vegetative stabilization measures can be initiated as soon as practicable.
  - (B) in arid areas, semi-arid areas, or drought-stricken areas, as they are defined in Part I.B. of this general permit, where the immediate initiation of vegetative stabilization measures after construction activity has temporarily or permanently ceased or is precluded by arid conditions, other types of erosion control and stabilization measures must be initiated at the site as soon as practicable. Where vegetative controls are infeasible due to arid conditions, and within fourteen (14) calendar days of a temporary or permanent cessation of construction activity in any portion of the site, the operator shall immediately install non-vegetative erosion controls in areas of the construction site where construction activity is complete or has ceased. If non-vegetative controls are infeasible, the operator shall install temporary sediment controls as required in Part III.F.2.(b)iii.(C) below.
  - (C) in areas where non-vegetative controls are infeasible, the operator may alternatively utilize temporary perimeter controls. The operator must document in the SWP3 the reason why stabilization measures are not feasible, and must demonstrate that the perimeter controls will retain sediment on site to the extent practicable. The operator must continue to inspect the BMPs at the frequencies established in Part III.F.8.(c) for unstabilized sites.
  - (D) the requirement for permittees to initiate stabilization is triggered as soon as it is known with reasonable certainty that construction activity at the site or in certain areas of the site will be stopped for 14 or more additional calendar days. If the initiation or completion of vegetative stabilization is prevented by circumstances beyond the control of the permittee, the permittee must employ and implement alternative stabilization measures immediately. When conditions at the site changes that would allow for vegetative stabilization, then the permittee must initiate or complete vegetative stabilization as soon as practicable.
- iv. Final stabilization must be achieved prior to termination of permit coverage.
  - v. TCEQ does not expect that temporary or permanent stabilization measures to be applied to areas that are intended to be left un-vegetated or un-stabilized following construction (e.g., dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, or materials).
- (c) Sediment Control Practices

The SWP3 must include a description of any sediment control practices used to remove eroded soils from stormwater runoff, including the general timing or

sequence for implementation of controls. Controls selected by the permittee must be compliant with the requirements in Part IV. of this permit.

- i. Sites With Drainage Areas of Ten (10) or More Acres
  - (A) Sedimentation Basin(s) or Impoundments
    - (1) A sedimentation basin or similar impoundment is required, where feasible, for a common drainage location that serves an area with ten (10) or more acres disturbed at one time. A sedimentation basin or impoundment may be temporary or permanent, and must provide sufficient storage to contain a calculated volume of runoff from a 2-year, 24-hour storm from each disturbed acre drained. When calculating the volume of runoff from a 2-year, 24-hour storm event, it is not required to include the flows from offsite areas and flow from onsite areas that are either undisturbed or have already undergone permanent stabilization, if these flows are diverted around both the disturbed areas of the site and the sediment basin or similar impoundment. Capacity calculations shall be included in the SWP3. Sedimentation basins must be designed for and appropriate for controlling runoff at the site and existing detention or retention ponds at the site may not be appropriate.
    - (2) Where rainfall data is not available, or a calculation cannot be performed, the sedimentation basin must provide at least 3,600 cubic feet of storage per acre drained until final stabilization of the site.
    - (3) If a sedimentation basin or impoundment is not feasible, then the permittee shall provide equivalent control measures until final stabilization of the site. In determining whether installing a sediment basin or impoundment is feasible, the permittee may consider factors such as site soils, slope, available area, public safety, precipitation patterns, site geometry, site vegetation, infiltration capacity, geotechnical factors, depth to groundwater, and other similar considerations. The permittee shall document the reason that the sediment basins or impoundments are not feasible, and shall utilize equivalent control measures, which may include a series of smaller sediment basins or impoundments.
    - (4) Unless infeasible, when discharging from sedimentation basins and impoundments, the permittee shall utilize outlet structures that withdraw water from the surface.
  - (B) Perimeter Controls: At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries of the construction area, and for those side slope boundaries deemed appropriate as dictated by individual site conditions.
- ii. Controls for Sites with Drainage Areas Less than Ten (10) Acres:
  - (A) Sediment traps and sediment basins may be used to control solids in stormwater runoff for drainage locations serving less than ten (10) acres. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries of the construction area, and for those side slope boundaries deemed appropriate as dictated by individual site conditions.
  - (B) Alternatively, a sediment basin that provides storage for a calculated volume of runoff from a 2-year, 24-hour storm from each disturbed acre drained may be utilized. Where rainfall data is not available or a calculation cannot be performed, a temporary or permanent sediment

basin providing 3,600 cubic feet of storage per acre drained may be provided. If a calculation is performed, then the calculation shall be included in the SWP3.

- (C) If sedimentation basins or impoundments are used, the permittee shall comply with the requirements in Part IV.F. of this general permit.

### 3. Description of Permanent Stormwater Controls

A description of any stormwater control measures that will be installed during the construction process to control pollutants in stormwater discharges that may occur after construction operations have been completed must be included in the SWP3. Permittees are responsible for the installation and maintenance of stormwater management measures, as follows:

- (a) permittees authorized under the permit for small construction activities are responsible for the installation and maintenance of stormwater control measures prior to final stabilization of the site; or
- (b) permittees authorized under the permit for large construction activities are responsible for the installation and maintenance of stormwater control measures prior to final stabilization of the site and prior to submission of an NOT.

### 4. Other Required Controls and BMPs

- (a) Permittees shall minimize, to the extent practicable, the off-site vehicle tracking of sediments and dust. The SWP3 shall include a description of controls utilized to control the generation of pollutants that could be discharged in stormwater from the site.
- (b) The SWP3 must include a description of construction and waste materials expected to be stored on-site and a description of controls to minimize pollutants from these materials.
- (c) The SWP3 must include a description of potential pollutant sources in discharges of stormwater from all areas of the construction site where construction activity, including construction support activities, will be located, and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.
- (d) Permittees shall place velocity dissipation devices at discharge locations and along the length of any outfall channel (i.e., runoff conveyance) to provide a non-erosive flow velocity from the structure to a water course, so that the natural physical and biological characteristics and functions are maintained and protected.
- (e) Permittees shall design and utilize appropriate controls in accordance with Part IV. of this permit to minimize the offsite transport of suspended sediments and other pollutants if it is necessary to pump or channel standing water from the site.
- (f) Permittees shall ensure that all other required controls and BMPs comply with all of the requirements of Part IV. of this general permit.
- (g) For demolition of any structure with at least 10,000 square feet of floor space that was built or renovated before January 1, 1980, and the receiving waterbody is impaired for polychlorinated biphenyls (PCBs):
  - i. implement controls to minimize the exposure of PCB-containing building materials, including paint, caulk, and pre-1980 fluorescent lighting fixtures to precipitation and to stormwater; and
  - ii. ensure that disposal of such materials is performed in compliance with applicable state, federal, and local laws.

## 5. Documentation of Compliance with Approved State and Local Plans

- (a) Permittees must ensure that the SWP3 is consistent with requirements specified in applicable sediment and erosion site plans or site permits, or stormwater management site plans or site permits approved by federal, state, or local officials.
- (b) SWP3s must be updated as necessary to remain consistent with any changes applicable to protecting surface water resources in sediment erosion site plans or site permits, or stormwater management site plans or site permits approved by state or local official for which the permittee receives written notice.
- (c) If the permittee is required to prepare a separate management plan, including but not limited to a WPAP or Contributing Zone Plan in accordance with 30 TAC Chapter 213 (related to the Edwards Aquifer), then a copy of that plan must be either included in the SWP3 or made readily available upon request to authorized personnel of the TCEQ. The permittee shall maintain a copy of the approval letter for the plan in its SWP3.

## 6. Maintenance Requirements

- (a) All protective measures identified in the SWP3 must be maintained in effective operating condition. If, through inspections or other means, as soon as the permittee determines that BMPs are not operating effectively, then the permittee shall perform maintenance as necessary to maintain the continued effectiveness of stormwater controls, and prior to the next rain event if feasible. If maintenance prior to the next anticipated storm event is impracticable, the reason shall be documented in the SWP3 and maintenance must be scheduled and accomplished as soon as practicable. Erosion and sediment controls that have been intentionally disabled, run-over, removed, or otherwise rendered ineffective must be replaced or corrected immediately upon discovery.
- (b) If periodic inspections or other information indicates a control has been used incorrectly, is performing inadequately, or is damaged, then the operator shall replace or modify the control as soon as practicable after making the discovery.
- (c) Sediment must be removed from sediment traps and sedimentation ponds no later than the time that design capacity has been reduced by 50%. For perimeter controls such as silt fences, berms, etc., the trapped sediment must be removed before it reaches 50% of the above-ground height.
- (d) If sediment escapes the site, accumulations must be removed at a frequency that minimizes off-site impacts, and prior to the next rain event, if feasible. If the permittee does not own or operate the off-site conveyance, then the permittee shall work with the owner or operator of the property to remove the sediment.

## 7. Observation and Evaluation of Dewatering Controls Pursuant to Part IV.C. of this General Permit

- (a) Personnel provided by the permittee must observe and evaluate dewatering controls at a minimum of once per day on the days where dewatering discharges from the construction site occur. Personnel conducting these evaluations must be knowledgeable of this general permit, the construction activities at the site, and the SWP3 for the site. Personnel conducting these evaluations are not required to have signatory authority for reports under 30 TAC § 305.128 (relating to Signatories to Reports).
- (b) Requirements for Observations and Evaluations
  - i. A report summarizing the scope of any observation and evaluation must be completed within 24-hours following the evaluation. The report must also include, at a minimum, the following:

- (A) date of the observations and evaluation;
  - (B) name(s) and title(s) of personnel making the observations and evaluation;
  - (C) approximate times that the dewatering discharge began and ended on the day of evaluation, or if the dewatering discharge is a continuous discharge that continues after normal business hours, indicate that the discharge is continuous (this information can be reported by personnel initiating the dewatering discharge);
  - (D) estimates of the rate (in gallons per day) of discharge on the day of evaluation;
  - (E) whether or not any indications of pollutant discharge were observed at the point of discharge (e.g., foam, oil sheen, noticeable odor, floating solids, suspended sediments, or other obvious indicators of stormwater pollution); and
  - (F) major observations, including: the locations of where erosion and discharges of sediment or other pollutants from the site have occurred; locations of BMPs that need to be maintained; locations of BMPs that failed to operate as designed or proved inadequate for a particular location; and locations where additional BMPs are needed.
- ii. Actions taken as a result of evaluations, including the date(s) of actions taken, must be described within, and retained as a part of, the SWP3. Reports must identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report must contain a certification that the facility or site is in compliance with the SWP3 and this permit. The report must be retained as part of the SWP3 and signed by the person and in the manner required by 30 TAC § 305.128 (relating to Signatories to Reports).
  - iii. The names and qualifications of personnel making the evaluations for the permittee may be documented once in the SWP3 rather than being included in each report.
8. Inspections of All Controls
- (a) Personnel provided by the permittee must inspect disturbed areas (cleared, graded, or excavated) of the construction site that do not meet the requirements of final stabilization in this general permit, all locations where stabilization measures have been implemented, areas of construction support activity covered under this permit, stormwater controls (including pollution prevention controls) for evidence of, or the potential for, the discharge of pollutants, areas where stormwater typically flows within the construction site, and points of discharge from the construction site.
    - i. Personnel conducting these inspections must be knowledgeable of this general permit, the construction activities at the site, and the SWP3 for the site.
    - ii. Personnel conducting these inspections are not required to have signatory authority for inspection reports under 30 TAC § 305.128 (relating to Signatories to Reports).
  - (b) Requirements for Inspections
    - i. Inspect all stormwater controls (including sediment and erosion control measures identified in the SWP3) to ensure that they are installed properly, appear to be operational, and minimizing pollutants in discharges, as intended.
    - ii. Identify locations on the construction site where new or modified stormwater controls are necessary.

- iii. Check for signs of visible erosion and sedimentation that can be attributed to the points of discharge where discharges leave the construction site or discharge into any surface water in the state flowing within or adjacent to the construction site.
  - iv. Identify any incidents of noncompliance observed during the inspection.
  - v. Inspect locations where vehicles enter or exit the site for evidence of off-site sediment tracking.
  - vi. If an inspection is performed when discharges from the construction site are occurring: identify all discharge points at the site, and observe and document the visual quality of the discharge (i.e., color, odor, floating, settled, or suspended solids, foam, oil sheen, and other such indicators of pollutants in stormwater).
  - vii. Complete any necessary maintenance needed, based on the results of the inspection and in accordance with the requirements listed in Part III.F.6. above.
- (c) Inspection frequencies:
- i. Inspections of construction sites must be conducted at least once every fourteen (14) calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater, unless as otherwise provided below in Part III.F.8.(c)ii. – v. below.
    - (A) If a storm event produces 0.5 inches or more of rain within a 24-hour period (including when there are multiple, smaller storms that alone produce less than 0.5 inches but together produce 0.5 inches or more in 24 hours), you are required to conduct one inspection within 24 hours of when 0.5 inches of rain or more has fallen. When the 24-hour inspection time frame occurs entirely outside of normal working hours, you must conduct an inspection by no later than the end of the next business day.
    - (B) If a storm event produces 0.5 inches or more of rain within a 24-hour period on the first day of a storm and continues to produce 0.5 inches or more of rain on subsequent days, you must conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the last day of the storm that produces 0.5 inches or more of rain (i.e., only two (2) inspections would be required for such a storm event). When the 24-hour inspection time frame occurs entirely outside of normal working hours, you must conduct an inspection by no later than the end of the next business day.
  - ii. Inspection frequencies must be conducted at least once every month in areas of the construction site that meet final stabilization or have been temporarily stabilized.
  - iii. Inspection frequencies for construction sites, where runoff is unlikely due to the occurrence of frozen conditions at the site, must be conducted at least once every month until thawing conditions begin to occur (see definitions for thawing conditions in Part I.B.). The SWP3 must also contain a record of the approximate beginning and ending dates of when frozen conditions occurred at the site, which resulted in inspections being conducted monthly, while those conditions persisted, instead of at the interval of once every fourteen (14) calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.
  - iv. In arid, semi-arid, or drought-stricken areas, inspections must be conducted at least once every month and within 24 hours after the end of a storm event of 0.5 inches or greater. The SWP3 must also contain a record of the total rainfall measured, as well as the approximate beginning and ending dates of when

drought conditions occurred at the site, which resulted in inspections being conducted monthly, while those conditions persisted, instead of at the interval of once every fourteen (14) calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

- v. As an alternative to the inspection schedule in Part III.F.8.(c)i. above, the SWP3 may be developed to require that these inspections will occur at least once every seven (7) calendar days. If this alternative schedule is developed, then the inspection must occur regardless of whether or not there has been a rainfall event since the previous inspection.
  - vi. The inspection procedures described in Part III.F.8.(c)i. – v above can be performed at the frequencies and under the applicable conditions indicated for each schedule option, provided that the SWP3 reflects the current schedule and that any changes to the schedule are made in accordance with the following provisions: the inspection frequency schedule can only be changed a maximum of once per calendar month and implemented within the first five (5) business days of a calendar month; and the reason for the schedule change documented in the SWP3 (e.g., end of “dry” season and beginning of “wet” season).
- (d) Utility line installation, pipeline construction, and other examples of long, narrow, linear construction activities may provide inspection personnel with limited access to the areas described in Part III.F.8.(a) above.
- i. Inspection of linear construction sites could require the use of vehicles that could compromise areas of temporary or permanent stabilization, cause additional disturbance of soils, and result in the increase the potential for erosion. In these circumstances, controls must be inspected at least once every fourteen (14) calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater, but representative inspections may be performed.
  - ii. For representative inspections, personnel must inspect controls along the construction site for 0.25 mile above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the areas described in Part III.F.8.(a) above. The conditions of the controls along each inspected 0.25-mile portion may be considered as representative of the condition of controls along that reach extending from the end of the 0.25-mile portion to either the end of the next 0.25-mile inspected portion, or to the end of the project, whichever occurs first.  
  
As an alternative to the inspection schedule described in Part III.F.8.(c)i. above, the SWP3 may be developed to require that these inspections will occur at least once every seven (7) calendar days. If this alternative schedule is developed, the inspection must occur regardless of whether or not there has been a rainfall event since the previous inspection.
  - iii. the SWP3 for a linear construction site must reflect the current inspection schedule. Any changes to the inspection schedule must be made in accordance with the following provisions:
    - (A) the schedule may be changed a maximum of one time each month;
    - (B) the schedule change must be implemented at the beginning of a calendar month, and
    - (C) the reason for the schedule change must be documented in the SWP3 (e.g., end of “dry” season and beginning of “wet” season).



- (e) Adverse Conditions.
- Requirements for inspections may be temporarily suspended for adverse conditions. Adverse conditions are conditions that are either dangerous to personnel (e.g., high wind, excessive lightning) or conditions that prohibit access to the site (e.g., flooding, freezing conditions). Adverse conditions that result in the temporary suspension of a permit requirement to inspect must be documented and included as part of the SWP3. Documentation must include:
- i. the date and time of the adverse condition,
  - ii. names of personnel that witnessed the adverse condition, and
  - iii. a narrative for the nature of the adverse condition.
- (f) In the event of flooding or other adverse conditions which prohibit access to the inspection sites, inspections must be conducted as soon as access is practicable. Inspection Reports.
- i. A report summarizing the scope of any inspection must be completed within 24-hours following the inspection. The report must also include the date(s) of the inspection and major observations relating to the implementation of the SWP3. Major observations in the report must include: the locations of where erosion and discharges of sediment or other pollutants from the site have occurred; locations of BMPs that need to be maintained; locations of BMPs that failed to operate as designed or proved inadequate for a particular location; and locations where additional BMPs are needed.
  - ii. Actions taken as a result of inspections, including the date(s) of actions taken, must be described within, and retained as a part of, the SWP3. Reports must identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report must contain a certification that the facility or site is in compliance with the SWP3 and this permit. The report must be retained as part of the SWP3 and signed by the person and in the manner required by 30 TAC § 305.128 (relating to Signatories to Reports).
  - iii. The names and qualifications of personnel making the inspections for the permittee may be documented once in the SWP3 rather than being included in each report.
- (g) The SWP3 must be modified based on the results of inspections, as necessary, to better control pollutants in runoff. Revisions to the SWP3 must be completed within seven (7) calendar days following the inspection. If existing BMPs are modified or if additional BMPs are necessary, an implementation schedule must be described in the SWP3 and wherever possible those changes implemented before the next storm event. If implementation before the next anticipated storm event is impracticable, these changes must be implemented as soon as practicable. If necessary, modify your site map to reflect changes to your stormwater controls that are no longer accurately reflected on the current site map.
9. The SWP3 must identify and ensure the implementation of appropriate pollution prevention measures for all eligible non-stormwater components of the discharge, as listed in Part II.A.3. of this permit.
  10. The SWP3 must include the information required in Part III.B. of this general permit.
  11. The SWP3 must include pollution prevention procedures that comply with Part IV.D. of this general permit.

**Part IV. Erosion and Sediment Control Requirements Applicable to All Sites**

Except as provided in 40 CFR §§ 125.30-125.32, any discharge regulated under this general permit, with the exception of sites that obtained waivers based on low rainfall erosivity, must achieve, at a minimum, the following effluent limitations representing the degree of effluent reduction attainable by application of the best practicable control technology currently available (BPT). The BPT are also required by and must satisfy the Effluent Limitations Guideline (ELG) permitting requirement for application of 40 CFR § 450.24 New Source Performance Standards (NSPS), 40 CFR § 450.22 Best Available Technology Economically Achievable (BAT), and 40 CFR § 450.23 Best Conventional Pollutant Control Technology (BCT).

**Section A. Erosion and Sediment Controls**

Design, install, and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed, and maintained to:

1. control stormwater volume and velocity within the site to minimize soil erosion in order to minimize pollutant discharges;
2. control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge point(s);
3. minimize the amount of soil exposed during construction activity;
4. minimize the disturbance of steep slopes;
5. minimize sediment discharges from the site. The design, installation, and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
6. provide and maintain appropriate natural buffers around surface water in the state. Direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible. If providing buffers is infeasible, the permittee shall document the reason that natural buffers are infeasible and shall implement additional erosion and sediment controls to reduce sediment load;
7. preserve native topsoil at the site, unless the intended function of a specific area of the site dictates that the topsoil be disturbed or removed, or it is infeasible; and
8. minimize soil compaction. In areas of the construction site where final vegetative stabilization will occur or where infiltration practices will be installed, either:
  - (a) restrict vehicle and equipment use to avoid soil compaction; or
  - (b) prior to seeding or planting areas of exposed soil that have been compacted, use techniques that condition the soils to support vegetative growth, if necessary and feasible;

minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted.

9. TCEQ does not consider stormwater control features (e.g., stormwater conveyance channels, storm drain inlets, sediment basins) to constitute "surface water" for the purposes of triggering the buffer requirement in Part IV.A.(6) above.

**Section B. Soil Stabilization**

Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding fourteen (14) calendar days. In the context of this requirement, “immediately” means as soon as practicable, but no later than the end of the next workday, following the day when the earth-disturbing activities have temporarily or permanently ceased. Temporary stabilization must be completed no more than fourteen (14) calendar days after initiation of soil stabilization measures, and final stabilization must be achieved prior to termination of permit coverage. In arid, semi-arid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative non-vegetative stabilization measures must be employed as soon as practicable. Refer to Part III.F.2.(b) for complete erosion control and stabilization practice requirements. In limited circumstances, stabilization may not be required if the intended function of a specific area of the site necessitates that it remain disturbed.

**Section C. Dewatering**

Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited, unless managed by appropriate controls to address sediment and prevent erosion. Operators must observe and evaluate the dewatering controls once per day while the dewatering discharge occurs as described in Part III.F.7. of this general permit.

**Section D. Pollution Prevention Measures**

Design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

1. minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
2. minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater;
3. minimize the exposure of waste materials by closing waste container lids at the end of the workday and during storm events. For waste containers that do not have lids, where the container itself is not sufficiently secure enough to prevent the discharge of pollutants absent a cover and could leak, the permittee must provide either a cover (e.g., a tarp, plastic sheeting, temporary roof) to minimize exposure of wastes to precipitation, stormwater, and wind, or a similarly effective means designed to minimize the discharge of pollutants (e.g., secondary containment). Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use);
4. minimize exposure of wastes by implementing good housekeeping measures. Wastes must be cleaned up and disposed of in designated waste containers on days of operation at the site. Wastes must be cleaned up immediately if containers overflow;

5. minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures. Where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs during a 24-hour period, you must notify the National Response Center (NRC) at (800) 424-8802 in accordance with the requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 as soon as you have knowledge of the release. You must also, within seven (7) calendar days of knowledge of the release, provide a description of the release, the circumstances leading to the release, and the date of the release; and
6. minimize exposure of sanitary waste by positioning portable toilets so that they are secure and will not be tipped or knocked over, and so that they are located away from surface water in the state and stormwater inlets or conveyances.

### **Section E. Prohibited Discharges**

The following discharges are prohibited:

1. wastewater from wash out of concrete, unless managed by an appropriate control;
2. wastewater from wash out and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
3. fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
4. soaps or solvents used in vehicle and equipment washing; and
5. toxic or hazardous substances from a spill or other release.

### **Section F. Surface Outlets**

When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible. If infeasible, the permittee must provide documentation in the SWP3 to support the determination, including the specific conditions or time periods when this exception will apply.

## **Part V. Stormwater Runoff from Concrete Batch Plants**

Discharges of stormwater runoff from concrete batch plants present at regulated construction sites and operated as a construction support activity may be authorized under the provisions of this general permit, provided that the following requirements are met for concrete batch plant(s) authorized under this permit. Only the discharges of stormwater runoff and non-stormwater from concrete batch plants that meet the requirements of a construction support activity can be authorized under this permit (see the requirements for “Non-Stormwater Discharges” in Part II.A.3. and “Discharges of Stormwater Associated with Construction Support Activity” in Part II.A.2.).

If discharges of stormwater runoff or non-stormwater from concrete batch plants are not authorized under this general permit, then discharges must be authorized under an alternative general permit or individual permit [see the requirement in Part II.A.2.(c)].

This permit does not authorize the discharge or land disposal of any wastewater from concrete batch plants at regulated construction sites. Authorization for these wastes must be obtained under an individual permit or an alternative general permit.

**Section A. Benchmark Sampling Requirements**

- Operators of concrete batch plants authorized under this general permit shall sample the stormwater runoff from the concrete batch plants according to the requirements of this section of this general permit, and must conduct evaluations on the effectiveness of the SWP3 based on the following benchmark monitoring values:

Table 1. Benchmark Parameters

<b>Benchmark Parameter</b>	<b>Benchmark Value</b>	<b>Sampling Frequency</b>	<b>Sample Type</b>
Oil and Grease (*1)	15 mg/L	1/quarter (*2) (*3)	Grab (*4)
Total Suspended Solids (*1)	50 mg/L	1/quarter (*2) (*3)	Grab (*4)
pH	6.0 – 9.0 Standard Units	1/quarter (*2) (*3)	Grab (*4)
Total Iron (*1)	1.3 mg/L	1/quarter (*2) (*3)	Grab (*4)

(\*1) All analytical results for these parameters must be obtained from a laboratory that is accredited based on rules located in 30 TAC § 25.4 (a) or through the National Environmental Laboratory Accreditation Program (NELAP). Analysis must be performed using sufficiently sensitive methods for analysis that comply with the rules located in 40 CFR § 136.1(c) and 40 CFR § 122.44(i)(1)(iv).

(\*2) When discharge occurs. Sampling is required within the first 30 minutes of discharge. If it is not practicable to take the sample, or to complete the sampling, within the first 30 minutes, sampling must be completed within the first hour of discharge. If sampling is not completed within the first 30 minutes of discharge, the reason must be documented and attached to all required reports and records of the sampling activity.

(\*3) Sampling must be conducted at least once during each of the following periods. The first sample must be collected during the first full quarter that a stormwater discharge occurs from a concrete batch plant authorized under this general permit.

January through March

April through June

July through September

October through December

For projects lasting less than one full quarter, a minimum of one sample shall be collected, provided that a stormwater discharge occurred at least once following submission of the NOI or following the date that automatic authorization was obtained under Part II.E.2., and prior to terminating coverage.

(\*4) A grab sample shall be collected from the stormwater discharge resulting from a storm event that is at least 0.1 inches of measured precipitation that occurs at least 72 hours from the previously measurable storm event. The sample shall be collected downstream of the concrete batch plant, and where the discharge exits any BMPs utilized to handle the runoff from the batch plant, prior to commingling with any other water authorized under this general permit.

2. The permittee must compare the results of sample analyses to the benchmark values above, and must include this comparison in the overall assessment of the SWP3's effectiveness. Analytical results that exceed a benchmark value are not a violation of this permit, as these values are not numeric effluent limitations. Results of analyses are indicators that modifications of the SWP3 should be assessed and may be necessary to protect water quality. The operator must investigate the cause for each exceedance and must document the results of this investigation in the SWP3 by the end of the quarter following the sampling event.

The operator's investigation must identify the following:

- (a) any additional potential sources of pollution, such as spills that might have occurred;
- (b) necessary revisions to good housekeeping measures that are part of the SWP3;
- (c) additional BMPs, including a schedule to install or implement the BMPs; and
- (d) other parts of the SWP3 that may require revisions in order to meet the goal of the benchmark values.

Background concentrations of specific pollutants may also be considered during the investigation. If the operator is able to relate the cause of the exceedance to background concentrations, then subsequent exceedances of benchmark values for that pollutant may be resolved by referencing earlier findings in the SWP3. Background concentrations may be identified by laboratory analyses of samples of stormwater run-on to the permitted facility, by laboratory analyses of samples of stormwater run-off from adjacent non-industrial areas, or by identifying the pollutant is a naturally occurring material in soils at the site.

## **Section B. Best Management Practices (BMPs) and SWP3 Requirements**

Minimum SWP3 Requirements – The following are required in addition to other SWP3 requirements listed in this general permit, which include, but are not limited to the applicable requirements located in Part III.F.8. of this general permit, as follows:

1. Description of Potential Pollutant Sources – The SWP3 must provide a description of potential sources (activities and materials) that can cause, have a reasonable potential to cause or contribute to a violation of water quality standards or have been found to cause, or contribute to, the loss of a designated use of surface water in the state in stormwater discharges associated with concrete batch plants authorized under this permit. The SWP3 must describe the implementation of practices that will be used to minimize to the extent practicable the discharge of pollutants in stormwater discharges associated with industrial activity and non-stormwater discharges (described in Part II.A.3. of this general permit), in compliance with the terms and conditions of this general permit, including the protection of water quality, and must ensure the implementation of these practices.

The following must be developed, at a minimum, in support of developing this description:

- (a) Drainage – The site map must include the following information:
  - i. the location of all outfalls for stormwater discharges associated with concrete batch plants that are authorized under this permit;
  - ii. a depiction of the drainage area and the direction of flow to the outfall(s);
  - iii. structural controls used within the drainage area(s);

- iv. the locations of the following areas associated with concrete batch plants that are exposed to precipitation: vehicle and equipment maintenance activities (including fueling, repair, and storage areas for vehicles and equipment scheduled for maintenance); areas used for the treatment, storage, or disposal of wastes; liquid storage tanks; material processing and storage areas; and loading and unloading areas; and
  - v. the locations of the following: any bag house or other dust control device(s); recycle/sedimentation pond, clarifier or other device used for the treatment of facility wastewater (including the areas that drain to the treatment device); areas with significant materials; and areas where major spills or leaks have occurred.
- (b) Inventory of Exposed Materials – A list of materials handled at the concrete batch plant that may be exposed to stormwater and precipitation and that have a potential to affect the quality of stormwater discharges associated with concrete batch plants that are authorized under this general permit.
- (c) Spills and Leaks – A list of significant spills and leaks of toxic or hazardous pollutants that occurred in areas exposed to stormwater and precipitation and that drain to stormwater outfalls associated with concrete batch plants authorized under this general permit must be developed, maintained, and updated as needed.
- (d) Sampling Data – A summary of existing stormwater discharge sampling data must be maintained, if available.
2. Measures and Controls – The SWP3 must include a description of management controls to regulate pollutants identified in the SWP3’s “Description of Potential Pollutant Sources” from Part V.B.1. of this permit, and a schedule for implementation of the measures and controls. This must include, at a minimum:
- (a) Good Housekeeping – Good housekeeping measures must be developed and implemented in the area(s) associated with concrete batch plants.
    - i. Operators must prevent or minimize the discharge of spilled cement, aggregate (including sand or gravel), settled dust, or other significant materials from paved portions of the site that are exposed to stormwater. Measures used to minimize the presence of these materials may include regular sweeping or other equivalent practices. These practices must be conducted at a frequency that is determined based on consideration of the amount of industrial activity occurring in the area and frequency of precipitation, and shall occur at least once per week when cement or aggregate is being handled or otherwise processed in the area.
    - ii. Operators must prevent the exposure of fine granular solids, such as cement, to stormwater. Where practicable, these materials must be stored in enclosed silos, hoppers or buildings, in covered areas, or under covering.
  - (b) Spill Prevention and Response Procedures – Areas where potential spills that can contribute pollutants to stormwater runoff and precipitation, and the drainage areas from these locations, must be identified in the SWP3. Where appropriate, the SWP3 must specify material handling procedures, storage requirements, and use of equipment. Procedures for cleaning up spills must be identified in the SWP3 and made available to the appropriate personnel.
  - (c) Inspections – Qualified facility personnel (i.e., a person or persons with knowledge of this general permit, the concrete batch plant, and the SWP3 related to the concrete batch plant(s) for the site) must be identified to inspect designated equipment and areas of the facility specified in the SWP3. Personnel conducting these inspections are not required to have signatory authority for inspection reports under 30 TAC § 305.128. Inspections of facilities in operation must be performed

once every seven (7) days. Inspections of facilities that are not in operation must be performed at a minimum of once per month. The current inspection frequency being implemented at the facility must be recorded in the SWP3. The inspection must take place while the facility is in operation and must, at a minimum, include all areas that are exposed to stormwater at the site, including material handling areas, above ground storage tanks, hoppers or silos, dust collection/containment systems, truck wash down and equipment cleaning areas. Follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections must be maintained and be made readily available for inspection upon request.

- (d) Employee Training – An employee training program must be developed to educate personnel responsible for implementing any component of the SWP3, or personnel otherwise responsible for stormwater pollution prevention, with the provisions of the SWP3. The frequency of training must be documented in the SWP3, and at a minimum, must consist of one (1) training prior to the initiation of operation of the concrete batch plant.
  - (e) Record Keeping and Internal Reporting Procedures – A description of spills and similar incidents, plus additional information that is obtained regarding the quality and quantity of stormwater discharges, must be included in the SWP3. Inspection and maintenance activities must be documented and records of those inspection and maintenance activities must be incorporated in the SWP3.
  - (f) Management of Runoff – The SWP3 shall contain a narrative consideration for reducing the volume of runoff from concrete batch plants by diverting runoff or otherwise managing runoff, including use of infiltration, detention ponds, retention ponds, or reusing of runoff.
3. Comprehensive Compliance Evaluation – At least once per year, one or more qualified personnel (i.e., a person or persons with knowledge of this general permit, the concrete batch plant, and the SWP3 related to the concrete batch plant(s) for the site) shall conduct a compliance evaluation of the plant. The evaluation must include the following:
- (a) visual examination of all areas draining stormwater associated with regulated concrete batch plants for evidence of, or the potential for, pollutants entering the drainage system. These include, but are not limited to: cleaning areas, material handling areas, above ground storage tanks, hoppers or silos, dust collection/containment systems, and truck wash down and equipment cleaning areas. Measures implemented to reduce pollutants in runoff (including structural controls and implementation of management practices) must be evaluated to determine if they are effective and if they are implemented in accordance with the terms of this permit and with the permittee's SWP3. The operator shall conduct a visual inspection of equipment needed to implement the SWP3, such as spill response equipment.
  - (b) based on the results of the evaluation, the following must be revised as appropriate within two (2) weeks of the evaluation: the description of potential pollutant sources identified in the SWP3 (as required in Part V.B.1., "Description of Potential Pollutant Sources"); and pollution prevention measures and controls identified in the SWP3 (as required in Part V.B.2., "Measures and Controls"). The revisions may include a schedule for implementing the necessary changes.
  - (c) the permittee shall prepare and include in the SWP3 a report summarizing the scope of the evaluation, the personnel making the evaluation, the date(s) of the evaluation, major observations relating to the implementation of the SWP3, and actions taken in response to the findings of the evaluation. The report must identify any incidents of noncompliance. Where the report does not identify incidences of noncompliance, the report must contain a statement that the evaluation did not identify any



incidence(s), and the report must be signed according to 30 TAC § 305.128 (relating to Signatories to Reports).

- (d) the Comprehensive Compliance Evaluation may substitute for one of the required inspections delineated in Part V.B.2.(c) of this general permit.

### **Section C. Prohibition of Wastewater Discharges**

Wastewater discharges associated with concrete production including wastewater disposal by land application are not authorized under this general permit. These wastewater discharges must be authorized under an alternative TCEQ water quality permit or otherwise disposed of in an authorized manner. Discharges of concrete truck wash out at construction sites may be authorized if conducted in accordance with the requirements of Part VI of this general permit.

### **Part VI. Concrete Truck Wash Out Requirements**

This general permit authorizes the land disposal of wash out from concrete trucks at construction sites regulated under this general permit, provided the following requirements are met. Any discharge of concrete production wastewater to surface water in the state must be authorized under a separate TCEQ general permit or individual permit.

- A.** Discharge of concrete truck wash out water to surface water in the state, including discharge to storm sewers, is prohibited by this general permit.
- B.** Concrete truck wash out water shall be disposed in areas at the construction site where structural controls have been established to prevent discharge to surface water in the state, or to areas that have a minimal slope that allow infiltration and filtering of wash out water to prevent discharge to surface water in the state. Structural controls may consist of temporary berms, temporary shallow pits, temporary storage tanks with slow rate release, or other reasonable measures to prevent runoff from the construction site.
- C.** Wash out of concrete trucks during rainfall events shall be minimized. The discharge of concrete truck wash out water is prohibited at all times, and the operator shall insure that its BMPs are sufficient to prevent the discharge of concrete truck wash out as the result of rainfall or stormwater runoff.
- D.** The disposal of wash out water from concrete trucks, made under authorization of this general permit must not cause or contribute to groundwater contamination.
- E.** If a SWP<sub>3</sub> is required to be implemented, the SWP<sub>3</sub> shall include concrete wash out areas on the associated site map.

### **Part VII. Retention of Records**

The permittee must retain the following records for a minimum period of three (3) years from the date that a NOT is submitted as required in Part II.F.1. and 2. of this permit. For activities in which an NOT is not required, records shall be retained for a minimum period of three (3) years from the date that the operator terminates coverage under Section II.F.3. of this permit. Records include:

- A.** a copy of the SWP<sub>3</sub>;
- B.** all reports and actions required by this permit, including a copy of the TCEQ construction site notice;
- C.** all data used to complete the NOI, if an NOI is required for coverage under this general permit; and
- D.** all records of submittal of forms submitted to the operator of any MS<sub>4</sub> receiving the discharge and to the secondary operator of a large construction site, if applicable.

**Part VIII. Standard Permit Conditions**

- A.** The permittee has a duty to comply with all permit conditions. Failure to comply with any permit condition is a violation of the permit and statutes under which it was issued (CWA and TWC), and is grounds for enforcement action, for terminating, revoking and reissuance, or modification, or denying coverage under this general permit, or for requiring a discharger to apply for and obtain an individual TPDES permit, based on rules located in TWC § 23.086, 30 TAC § 305.66 and 40 CFR § 122.41 (a).
- B.** Authorization under this general permit may be modified, suspended, revoked and reissued, terminated or otherwise suspended for cause, based on rules located in TWC § 23.086, 30 TAC § 305.66 and 40 CFR § 122.41(f). Filing a notice of planned changes or anticipated non-compliance by the permittee does not stay any permit condition. The permittee must furnish to the executive director, upon request and within a reasonable time, any information necessary for the executive director to determine whether cause exists for modifying, revoking and reissuing, terminating or, otherwise suspending authorization under this permit, based on rules located in TWC § 23.086, 30 TAC § 305.66 and 40 CFR § 122.41 (h). Additionally, the permittee must provide to the executive director, upon request, copies of all records that the permittee is required to maintain as a condition of this general permit.
- C.** It is not a defense for a discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the permit conditions.
- D.** Inspection and entry shall be allowed under TWC Chapters 26-28, Texas Health and Safety Code §§ 361.032-361.033 and 361.037, and 40 CFR § 122.41(i). The statement in TWC § 26.014 that commission entry of a facility shall occur according to an establishment's rules and regulations concerning safety, internal security, and fire protection is not grounds for denial or restriction of entry to any part of the facility or site, but merely describes the commission's duty to observe appropriate rules and regulations during an inspection.
- E.** The discharger is subject to administrative, civil, and criminal penalties, as applicable, under TWC Chapter 7 for violations including but not limited to the following:
1. negligently or knowingly violating the federal CWA §§301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under CWA §402, or any requirement imposed in a pretreatment program approved under CWA §§ 402(a)(3) or 402(b)(8);
  2. knowingly making any false statement, representation, or certification in any record or other document submitted or required to be maintained under a permit, including monitoring reports or reports of compliance or noncompliance; and
  3. knowingly violating CWA §303 and placing another person in imminent danger of death or serious bodily injury.
- F.** All reports and other information requested by the executive director must be signed by the person and in the manner required by 30 TAC § 305.128 (relating to Signatories to Reports).
- G.** Authorization under this general permit does not convey property or water rights of any sort and does not grant any exclusive privilege.
- H.** The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

- I.** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.
- J.** The permittee shall comply with the monitoring and reporting requirements in 40 CFR § 122.41(j) and (l), as applicable.
- K.** Analysis must be performed using sufficiently sensitive methods for analysis that comply with the rules located in 40 CFR § 136.1(c) and 40 CFR § 122.44(i)(1)(iv).

**Part IX. Fees**

- A.** A fee of must be submitted along with the NOI:
  - 1. \$225 if submitting an NOI electronically, or
  - 2. \$325 if submitting a paper NOI.
- B.** Fees are due upon submission of the NOI. An NOI will not be declared administratively complete unless the associated fee has been paid in full.
- C.** No separate annual fees will be assessed for this general permit. The Water Quality Annual Fee has been incorporated into the NOI fees as described above.

**Appendix A: Automatic Authorization**

## Periods of Low Erosion Potential by County – Eligible Date Ranges

Andrews: Nov. 15 - Apr. 30	Foard: Dec. 15 - Feb. 14
Archer: Dec. 15 - Feb. 14	Gaines: Nov. 15 - Apr. 30
Armstrong: Nov. 15 - Apr. 30	Garza: Nov. 15 - Apr. 30
Bailey: Nov. 1 - Apr. 30, or Nov. 15 - May 14	Glasscock: Nov. 15 - Apr. 30
Baylor: Dec. 15 - Feb. 14	Hale: Nov. 15 - Apr. 30
Borden: Nov. 15 - Apr. 30	Hall: Feb. 1 - Mar. 30
Brewster: Nov. 15 - Apr. 30	Hansford: Nov. 15 - Apr. 30
Briscoe: Nov. 15 - Apr. 30	Hardeman: Dec. 15 - Feb. 14
Brown: Dec. 15 - Feb. 14	Hartley: Nov. 15 - Apr. 30
Callahan: Dec. 15 - Feb. 14	Haskell: Dec. 15 - Feb. 14
Carson: Nov. 15 - Apr. 30	Hockley: Nov. 1 - Apr. 14, or Nov. 15 - Apr. 30
Castro: Nov. 15 - Apr. 30	Howard: Nov. 15 - Apr. 30
Childress: Dec. 15 - Feb. 14	Hudspeth: Nov. 1 - May 14
Cochran: Nov. 1 - Apr. 30, or Nov. 15 - May 14	Hutchinson: Nov. 15 - Apr. 30
Coke: Dec. 15 - Feb. 14	Irion: Dec. 15 - Feb. 14
Coleman: Dec. 15 - Feb. 14	Jeff Davis: Nov. 1 - Apr. 30 or Nov. 15 - May 14
Collingsworth: Jan. 1 - Mar. 30, or Dec. 1 - Feb. 28	Jones: Dec. 15 - Feb. 14
Concho: Dec. 15 - Feb. 14	Kent: Nov. 15 - Jan. 14 or Feb. 1 - Mar. 30
Cottle: Dec. 15 - Feb. 14	Kerr: Dec. 15 - Feb. 14
Crane: Nov. 15 - Apr. 30	Kimble: Dec. 15 - Feb. 14
Crockett: Nov. 15 - Jan. 14, or Feb. 1 - Mar. 30	King: Dec. 15 - Feb. 14
Crosby: Nov. 15 - Apr. 30	Kinney: Dec. 15 - Feb. 14
Culberson: Nov. 1 - May 14	Knox: Dec. 15 - Feb. 14
Dallam: Nov. 1 - Apr. 14, or Nov. 15 - Apr. 30	Lamb: Nov. 1 - Apr. 14, or Nov. 15 - Apr. 30
Dawson: Nov. 15 - Apr. 30	Loving: Nov. 1 - Apr. 30, or Nov. 15 - May 14
Deaf Smith: Nov. 15 - Apr. 30	Lubbock: Nov. 15 - Apr. 30
Dickens: Nov. 15 - Jan. 14, or Feb. 1 - Mar. 30	Lynn: Nov. 15 - Apr. 30
Dimmit: Dec. 15 - Feb. 14	Martin: Nov. 15 - Apr. 30
Donley: Jan. 1 - Mar. 30, or Dec. 1 - Feb. 28	Mason: Dec. 15 - Feb. 14
Eastland: Dec. 15 - Feb. 14	Maverick: Dec. 15 - Feb. 14
Ector: Nov. 15 - Apr. 30	McCulloch: Dec. 15 - Feb. 14
Edwards: Dec. 15 - Feb. 14	Menard: Dec. 15 - Feb. 14
El Paso: Jan. 1 - Jul. 14, or May 15 - Jul. 31, or Jun. 1 - Aug. 14, or Jun. 15 - Sept. 14, or Jul. 1 - Oct. 14, or Jul. 15 - Oct. 31, or Aug. 1 - Apr. 30, or Aug. 15 - May 14, or Sept. 1 - May 30, or Oct. 1 - Jun. 14, or Nov. 1 - Jun. 30, or Nov. 15 - Jul. 14	Midland: Nov. 15 - Apr. 30
Fisher: Dec. 15 - Feb. 14	Mitchell: Nov. 15 - Apr. 30
Floyd: Nov. 15 - Apr. 30	Moore: Nov. 15 - Apr. 30
	Motley: Nov. 15 - Jan. 14, or Feb. 1 - Mar. 30
	Nolan: Dec. 15 - Feb. 14
	Oldham: Nov. 15 - Apr. 30

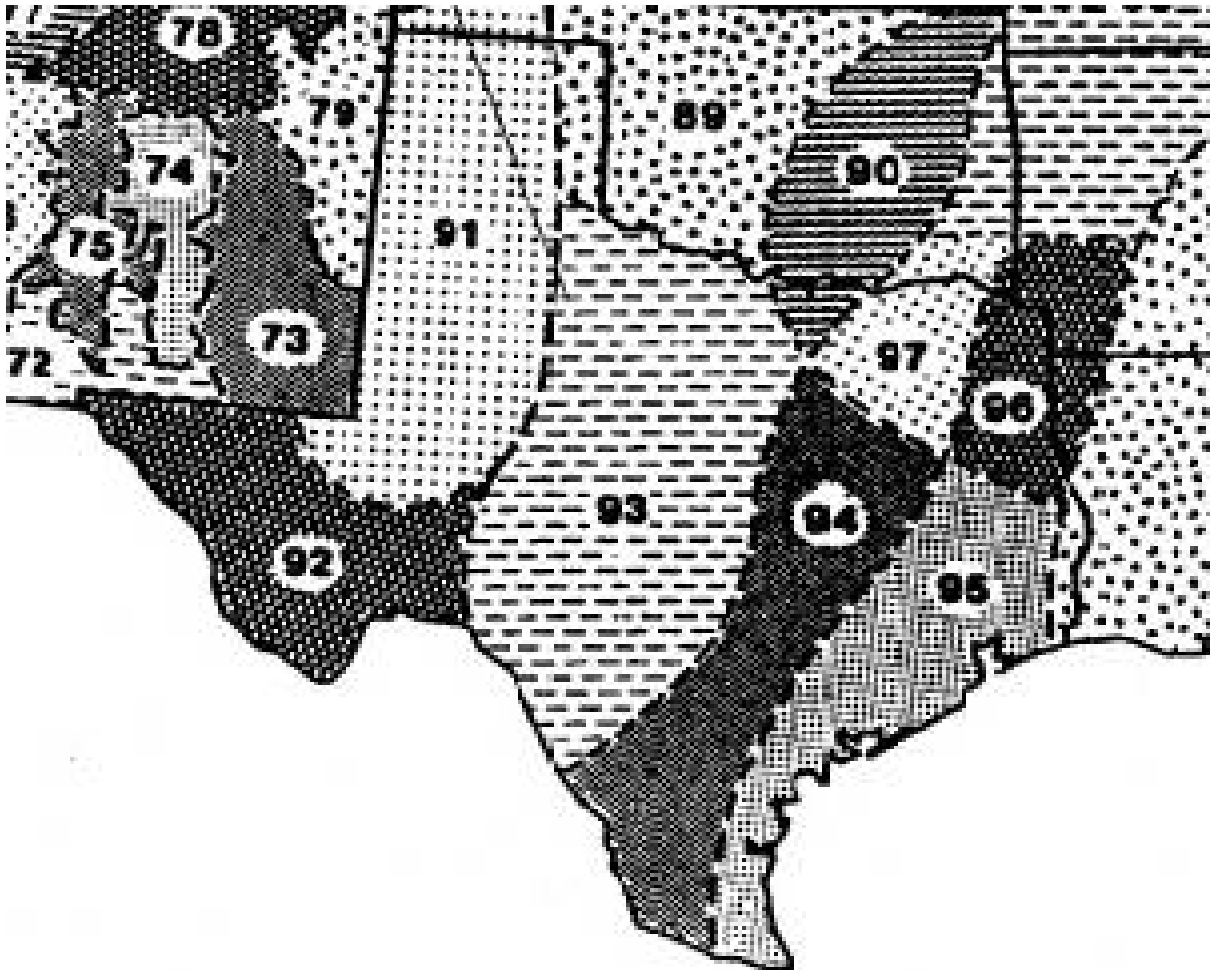
Construction General Permit

TPDES General Permit No. TXR150000  
Appendix A

Parmer: Nov. 1 - Apr. 14, or Nov. 15 - Apr. 30  
Pecos: Nov. 15 - Apr. 30  
Potter: Nov. 15 - Apr. 30  
Presidio: Nov. 1 - Apr. 30, or Nov. 15 - May 14  
Randall: Nov. 15 - Apr. 30  
Reagan: Nov. 15 - Apr. 30  
Real: Dec. 15 - Feb. 14  
Reeves: Nov. 1 - Apr. 30, or Nov. 15 - May 14  
Runnels: Dec. 15 - Feb. 14  
Schleicher: Dec. 15 - Feb. 14  
Scurry: Nov. 15 - Apr. 30  
Shackelford: Dec. 15 - Feb. 14  
Sherman: Nov. 15 - Apr. 30  
Stephens: Dec. 15 - Feb. 14  
Sterling: Nov. 15 - Apr. 30  
Stonewall: Dec. 15 - Feb. 14  
Sutton: Dec. 15 - Feb. 14

Swisher: Nov. 15 - Apr. 30  
Taylor: Dec. 15 - Feb. 14  
Terrell: Nov. 15 - Apr. 30  
Terry: Nov. 15 - Apr. 30  
Throckmorton: Dec. 15 - Feb. 14  
Tom Green: Dec. 15 - Feb. 14  
Upton: Nov. 15 - Apr. 30  
Uvalde: Dec. 15 - Feb. 14  
Val Verde: Nov. 15 - Jan. 14, or Feb. 1 - Mar. 30  
Ward: Nov. 1 - Apr. 14, or Nov. 15 - Apr. 30  
Wichita: Dec. 15 - Feb. 14  
Wilbarger: Dec. 15 - Feb. 14  
Winkler: Nov. 1 - Apr. 30, or Nov. 15 - May 14  
Yoakum: Nov. 1 - Apr. 30, or Nov. 15 - May 14  
Young: Dec. 15 - Feb. 14  
Wheeler: Jan. 1 - Mar. 30, or Dec. 1 - Feb. 28  
Zavala: Dec. 15 - Feb. 14

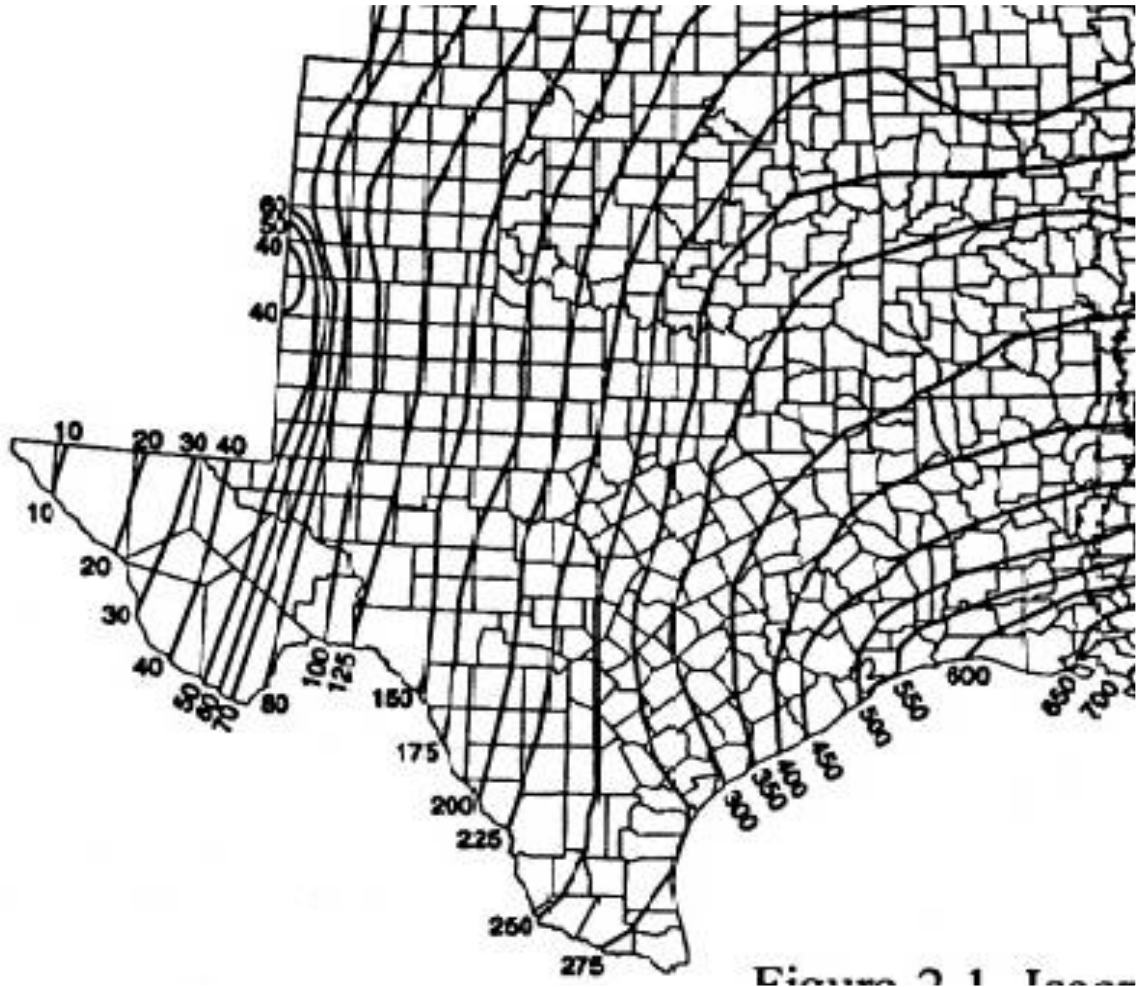
**Appendix B: Storm Erosivity (EI) Zones in Texas**



**Figure B.** EI Distribution Zones

*Adapted from Chapter 2 of USDA Agriculture Handbook 703: "Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE)," U.S. Department of Agriculture, Agricultural Research Service*

**Appendix C: Isoerodent Map**



**Figure C.** Isoerodent Map of Texas. Units are hundreds  $\text{ft} \cdot \text{tonf} \cdot \text{in} \cdot (\text{ac} \cdot \text{h} \cdot \text{yr})^{-1}$

*Adapted from Chapter 2 of USDA Agriculture Handbook 703: "Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE)," U.S. Department of Agriculture, Agricultural Research Service*

**Appendix D: Erosivity Indices for EI Zones in Texas**

**Table D.** EI as percentage of average annual computed selected geographic areas (EI number) by date period (month/day).

**Date Periods\* (Month/Day)**

EI #	1/1	1/16	1/31	2/15	3/1	3/16	3/31	4/15	4/30	5/15	5/30	6/14	6/29	7/14	7/29	8/13	8/28	9/12	9/27	10/12	10/27	11/11	11/26	12/11	12/31
<b>89</b>	0	1	1	2	3	4	7	2	8	27	38	48	55	62	69	76	83	90	94	97	98	99	100	100	100
<b>90</b>	0	1	2	3	4	6	8	13	21	29	37	46	54	60	65	69	74	81	87	92	95	97	98	99	100
<b>91</b>	0	0	0	0	1	1	1	2	6	16	29	39	46	53	60	67	74	81	88	95	99	99	100	100	100
<b>92</b>	0	0	0	0	1	1	1	2	6	16	29	39	46	53	60	67	74	81	88	95	99	99	100	100	100
<b>93</b>	0	1	1	2	3	4	6	8	13	25	40	49	56	62	67	72	76	80	85	91	97	98	99	99	100
<b>94</b>	0	1	2	4	6	8	10	15	21	29	38	47	53	57	61	65	70	76	83	88	91	94	96	98	100
<b>95</b>	0	1	3	5	7	9	11	14	18	27	35	41	46	51	57	62	68	73	79	84	89	93	96	98	100
<b>96</b>	0	2	4	6	9	12	17	23	30	37	43	49	54	58	62	66	70	74	78	82	86	90	94	97	100
<b>97</b>	0	1	3	5	7	10	14	20	28	37	48	56	61	64	68	72	77	81	86	89	92	95	98	99	100
<b>106</b>	0	3	6	9	13	17	21	27	33	38	44	49	55	61	67	71	75	78	81	84	86	90	94	97	100

\*Each period begins on the date listed in the table above and lasts until the day before the following period. The final period begins on December 11 and ends on December 31.

Table adapted from Chapter 2 of USDA Agriculture Handbook 703: "Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE)," U.S. Department of Agriculture, Agricultural Research Service.



For proposed Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR150000 to authorize the discharge of stormwater runoff and certain non-stormwater discharges from construction activities into surface water in the state.

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Permit Action: Renewal of a General Stormwater Permit for Construction Activities

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**I. Summary**

The Texas Commission on Environmental Quality (TCEQ or Commission) is proposing a renewal with amendments of TPDES Construction General Permit (CGP), Permit No. TXR150000, issued on February 8, 2018, effective on March 5, 2018, and amended on January 28, 2022, which authorizes discharges from construction activities into surface water in the state. The general permit specifies which construction activities must obtain permit coverage, which are eligible for waivers, and which may be required to obtain individual permit coverage. The general permit specifies that where discharges will reach Waters of the United States, a stormwater pollution prevention plan (SWP3) must be developed and implemented unless certain conditions are met. The general permit provides authorization for discharges from large and small construction sites, according to federal Phase I and Phase II stormwater regulations finalized in the *Federal Register* of November 16, 1990, and December 8, 1999, respectively.

The principal changes to the existing CGP include:

- A.** Revised the definition of Commencement of Construction in Part I.B. to clarify and describe construction support activities consistent with the 2022 Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) CGP.
- B.** Modified the definition of Dewatering in Part I.B. for clarity and for consistency with the 2022 EPA NPDES CGP.
- C.** Added the definition of High-Level Radioactive Waste in Part I.B. and added Part II.C.12 to prohibit authorization of discharges from construction activities associated with the construction or operation of a facility that is licensed for the storage of high-level radioactive waste by the United States Nuclear Regulatory Commission under 10 Code of Federal Regulations (CFR) Part 72.
- D.** Changed provisional coverage from seven days to 48 hours for paper applications to be consistent with other water quality general permits and the time necessary to review paper applications with the implementation of electronic reporting requirements.
- E.** Clarified in Part II.E. that applications must be submitted electronically using TCEQ's online State of Texas Environmental Electronic Reporting System (STEERS), unless the applicant requests and obtains a waiver from electronic reporting.
- F.** Added in Part II.E. and III.F. that Delegation of Signatories forms for large construction site operators must be submitted electronically using TCEQ's online STEERS. Delegation of Signatories forms for small construction site operators must be submitted by paper.
- G.** Revised Part II.E. to move *Contents of the Notice of Intent* (NOI) before the *Notice of Change* section and added items required on the NOI to comply with federal electronic reporting requirements in 40 CFR Part 127.
- H.** Clarified in Part II.E. that compliance with the conditions and requirements of the permit is required until an NOT is submitted and approved by TCEQ.
- I.** Clarified in Part III.D. that the SWP3 may be prepared and kept electronically.
- J.** Clarified in Part III.F. items required on the detailed site map.
- K.** Added in Part III.F. that inspections may be suspended during adverse conditions with requirements to document the adverse conditions at the site.

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- L. Moved Part III.G. regarding Erosion and Sediment Controls to new Part IV to clarify that these requirements are federal effluent limitations. Changes were made to references throughout the permit as a result of this change to address the new Part.
- M. Clarified in Part IV.C. that dewatering must be managed by controls to prevent sedimentation and erosion and added a requirement for evaluation of the controls during dewatering to be consistent with the 2022 EPA NPDES CGP.
- N. Added in Part IV.D. requirements for good housekeeping measures related to wastes.
- O. Added in Part IV.F. requirements to document when it is infeasible to utilize outlet structures that withdraw water from the surface of basins and impoundments.

**II. Executive Director's Recommendation**

The executive director has made a preliminary decision that this general permit, if issued, meets all statutory and regulatory requirements. It is proposed that the general permit be issued to expire five years from the effective date, following the requirements of 30 Texas Administrative Code (TAC) § 205.5(a).

**III. Permit Applicability and Coverage**

- A. This general permit authorizes the discharge of stormwater and certain allowable non-stormwater associated with regulated small and large construction activities into or adjacent to surface water in the state. This general permit specifies which construction activities may be authorized under this general permit, which are eligible for waivers, and which must be authorized by an individual permit.
- B. This general permit authorizes the discharge of stormwater associated with other industrial activities at construction sites, in compliance with permit requirements, as follows: discharges of stormwater runoff from construction support activities, including concrete batch plants, asphalt batch plants, equipment staging areas, material storage yards, material borrow areas, and excavated material disposal areas that are located at, adjacent to, or in close proximity to the permitted construction site and directly support the construction activity. The above supporting activities must not operate beyond the completion date of the construction activity, must not be a commercial operation, nor serve other unrelated construction projects.
- C. The general permit does not authorize the discharge of process wastewater. In addition, the general permit does not authorize other non-stormwater discharges, except for the following:
  - 1. discharges from emergency fire-fighting activities (emergency fire-fighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);
  - 2. uncontaminated fire hydrant flushings (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life), which include flushings from systems that utilize potable water, surface water, or groundwater that does not contain additional pollutants (uncontaminated fire hydrant flushings do not include systems utilizing reclaimed wastewater as a source water);
  - 3. water from the routine washing of vehicles, the external portion of buildings or structures, and pavement where solvents, detergents, and soaps are not used and where spills or leaks of toxic or hazardous materials have not occurred (unless spilled materials have been removed; and if local, state, or federal regulations are

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applicable, the materials are removed according to those regulations), and where the purpose is to remove mud, dirt, or dust;

4. uncontaminated water used to control dust;
5. potable water sources, including waterline flushings (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);
6. uncontaminated air conditioning condensate;
7. uncontaminated groundwater or spring water, including foundation or footing drains where flows are not contaminated with industrial materials such as solvents; and
8. lawn watering and similar irrigation drainage.

The purpose of providing this list in the general permit is to clarify that certain non-stormwater discharges that may occur during normal activities at a construction site do not require additional permit coverage. Discharges from emergency firefighting that occur during normal activities at the construction site is allowed, but following the emergency event, operators must clean up contaminated water and prevent discharges, including where aqueous film forming foams (AFFF) were used. The intention of including the above list of non-stormwater discharges in the general permit is not meant to prohibit these discharges in non-regulated construction activity.

The non-stormwater discharges listed above are not authorized in small construction activities with automatic authorization under the general permit, where there is a low potential for erosion.

- D.** The on-site disposal of water resulting from the wash out of concrete trucks may be conducted at regulated construction sites, provided that certain requirements of the general permit are met. Operators may also find recommendations for addressing concrete wash out from the EPA at the following web site:  
<https://www3.epa.gov/npdes/pubs/concretewashout.pdf>
- E.** The following discharges are not eligible for coverage under the general permit and must be authorized under an individual permit or an alternative general permit, if one is available:
1. Discharges that would cause or contribute to a violation of water quality standards or that would fail to protect and maintain existing designated uses of receiving waters;
  2. New sources or new discharges of the constituents of concern to impaired waters, unless otherwise allowable under Commission rules, applicable state law, and any Total Maximum Daily Load (TMDL) that exists for the applicable receiving water; or
  3. Discharges otherwise prohibited under existing state rules.
- F.** The following stormwater discharges are not eligible for coverage under the general permit and may require individual or alternative general permit coverage:
- Discharges that occur after construction activities have been completed and after the construction site and any supporting activity at the site have undergone final stabilization.
- G.** Construction activities that would disturb less than one acre, and not part of a larger common plan of development, are not required to obtain permit coverage under the general permit nor an individual permit unless required by the executive director.

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- H.** Primary and secondary operators of small construction activities receive automatic authorization when they have complied with the requirements for the applicable type of small construction in Part II.E.1 and 2 of the permit.
- I.** Primary operators for small construction activities that are not part of a larger common plan of development for large construction are not required to submit an NOI and therefore do not receive a permit authorization number.
- J.** The requirements for the transfer of day-to-day operational control, as described in Part II.F.4, apply to operators with automatic authorization for small construction activities described in Part II.E.1 and E.2 and operators with authorization for large construction activities described in Part II.E.3 of the general permit.
- K.** The following stormwater discharges are not under the authority of the Commission, are not eligible for coverage under the general permit, and may require authorization from the EPA under a separate NPDES permit:

Stormwater runoff from construction activities occurring on Indian Country lands. (Information on the location and contact information for Indian Country Lands in Texas may be accessed at the following EPA web site:

<https://www.epa.gov/tribal/region-6-tribal-program>. Contact information for federally recognized tribes may be found at:  
<http://www.indians.org/Resource/FedTribes99/fedtribes99.html>.)

### **IV. Permit Conditions**

#### **A. Notice of Intent and Site Notice**

Primary operators of large construction sites must submit a notice of intent (NOI) that indicates the operator will comply with the conditions of the general permit, including development of a Stormwater Pollution Prevention Plan (SWP3). An NOI is not required for secondary operators.

All primary and secondary operators must post a site notice in plain view at the construction site entrance prior to the commencement of construction activities and maintain the notice until either final stabilization occurs or control of the site is turned over to a separate operator. A copy of the NOI must also be supplied to the operator of any municipal separate storm sewer system (MS4) to which the operator discharges, so that the MS4 operator can conduct its own inspection and enforcement activities according to its NPDES or TPDES permit or local ordinances. This includes MS4s that are not regulated by an NPDES or TPDES permit.

The general permit includes notification to secondary operators of large construction activities that they are regulated under the general permit and are not required to submit an NOI. This statement is consistent with federal rules at 40 CFR § 122.28(b)(2)(vi) and as adopted by reference in 30 TAC Chapter 281, which states that the director may notify a discharger that it is covered by a general permit, even if the discharger has not submitted an NOI for permit coverage.

An NOI is not required for the authorization of certain discharges, as allowed by 40 CFR § 122.28(b)(2)(v) and as adopted by reference in 30 TAC Chapter 281, where the executive director determines that an NOI is inappropriate. The proposed general permit incorporates this alternative as an option and automatically authorizes certain small construction activities if specific conditions are met. In making the determination that an NOI is inappropriate for small construction activities, the executive director considered the short-term nature of small construction activities, the number of construction sites that will be authorized, and the administrative burden on both the Commission and the regulated community. The executive

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director also considered the nature and type of proposed discharges authorized under the general permit, the expected potential for toxic and conventional pollutants, and the expected volumes. The requirements and conditions of the general permit are appropriate to control the discharges from small construction sites authorized under the general permit and to protect water quality. The administrative burden on the permittee to submit an NOI and on the commission to respond to the NOI would be excessive and not directly necessary to control these discharges.

Operators of small construction sites are not required to submit an NOI, but are automatically authorized after developing an SWP3 (with the exception of those sites described in Part IV.D. below) and posting a site notice containing information regarding the operator's authorization under the general permit. Operators of small construction sites may alternatively apply for a waiver from permit requirements if activities are shown to occur in certain regions and during certain seasons where the potential for erosion are below an established threshold or erosivity factor. Operators applying for these waivers are also required to provide a copy of the waiver form to the operator of any MS4 that will receive the discharges from the construction site. This includes MS4s that are not regulated by an NPDES or TPDES permit.

### **B. Stormwater Pollution Prevention Plan (SWP3)**

1. All large construction site activities as well as all small construction site activities not specifically described in Part IV.D. below, with discharges that reach Waters of the United States, must develop an SWP3 according to the provisions of the proposed general permit prior to requesting authorization. Operators must implement that SWP3 prior to commencing construction activities.

Waters of the United States are defined in the general permit by reference to 40 CFR §122.2.

2. The required contents of the SWP3 are based on federal Phase II rules (December 8, 1999 *Federal Register*) related to stormwater permitting, as well as the current TPDES general permit for large construction sites based on federal Phase I rules (November 16, 1990 *Federal Register*). The purpose of the SWP3 is to identify and address potential sources of pollution that are reasonably expected to affect the quality of stormwater discharges from the construction site, including off-site material storage areas, overburden and stockpiles of dirt, and borrow areas. Separate SWP3s may be developed for each construction site operator where multiple operators exist. However, the general permit also allows a shared SWP3 to promote a more efficient and coordinated effort between multiple operators at a single site. The SWP3 may provide that one operator is responsible for the preparation of an SWP3 in compliance with the CGP, and another operator is responsible for implementation of the SWP3 at the project site. Under this alternative, each individual operator would be required to submit an NOI for coverage, and each would be individually responsible for compliance with the terms of the general permit in the areas of the site where the person is the responsible operator.
3. The specific requirements of the SWP3 include the following minimum provisions:
  - (a) A detailed project description, including a site map that indicates the site location, property boundaries, the construction site details, and information on receiving waters.
  - (b) A description of the structural and the non-structural controls (best management practices, or BMPs) that will be used to minimize pollution in

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- runoff during construction, as well as stabilization practices during and at the completion of the activity.
- (c) Demonstration of compliance with other state and local plans, such as the Edwards Aquifer Protection Program.
  - (d) A description of how BMPs will be maintained and how controls may be revised upon a finding that the control measures are either not working properly or adequately.
  - (e) A description of how observation and evaluation of dewatering controls will be conducted. Observation and evaluation is required on each day that dewatering occurs.
  - (f) A description of how inspections of BMPs will be conducted. Inspections are required at a minimum frequency of at least once every fourteen (14) calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater during active construction activities. Where there are multi-day storm events, inspection is required within 24 hours of the first day of the storm and within 24 hours after the last day of the storm that produces 0.5 inches or greater. An alternative inspection schedule of at least once every seven (7) calendar days is also available. If this alternative schedule is developed, then the inspection must occur regardless of whether or not there has been a rainfall event since the previous inspection. Where sites have been temporarily stabilized, inspections must be conducted at least once every month. Special provisions allowing for representative inspections are provided for long, linear projects where access along the site is limited and travel along the site may damage stabilized areas or cause potential for erosion.
  - (g) Identification and description of the implementation of appropriate pollution prevention measures for all eligible non-stormwater components of the discharge.
4. The SWP3 may be prepared and kept electronically rather than in paper form if the records can be read, are legally valid, and immediately accessible to the same extent as a paper copy would be. Although the SWP3 may be prepared and kept electronically, all reports requested by this permit and other information requested by the executive director to be submitted must be signed in "wet ink" in accordance with 30 TAC § 305.128 and § 305.44. (CGP applications and Delegation of Signatories forms submitted online in the STEERS/ePermitting system provided by TCEQ do not require "wet ink" signatures as this system is approved and Cross-Media Electronic Reporting Rule (CROMERR) compliant which ensures the same enforceability and legal sufficiency of information collected electronically as the corresponding paper submittal).
5. TCEQ emphasizes that while the requirement to develop an SWP3, to keep it updated, and to include in it all of the required minimum contents consistent with Part III of the general permit are enforceable permit requirements, any other site-specific details of these SWP3s do not establish separately enforceable limits of the permit. The SWP3 is intended to serve as a road map for how the construction operator will comply with the effluent limits and other conditions of this permit. Additional portions of the effluent limits are established in Part IV of the permit. The fact that the SWP3 is an external tool and not considered to include effluent limits enables the operator to be able to modify and retool its approach during the course of the permit term in order to continually improve how it complies with the permit.



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**C. Terminating Coverage**

The general permit includes information on when and how an operator may terminate coverage under the general permit. Primary operators of large construction sites must submit a notice of termination (NOT) form. Operators of small construction sites and secondary operators of large construction sites must remove the applicable site notice once final stabilization of the site has been achieved. The specific requirements are included in the general permit.

An operator may terminate coverage when certain conditions are met. In establishing vegetation to achieve final stabilization, an operator is not required to utilize the same vegetation that was previously utilized at the site, provided that the stabilized area contains at least 70% coverage of the original percentage of coverage of land for the disturbed area, and provided that the operator utilizes vegetation appropriate for the area that provides acceptable coverage. The general permit also allows construction operators located in arid, semi-arid, or drought-stricken areas the flexibility to implement non-vegetative erosion control measures if vegetative controls are not feasible.

**D. Alternative Permit Requirements for Small Construction Activities Occurring During Conditions of Low Potential Erosion**

Stormwater runoff from certain small construction activities may be authorized under the general permit without being required to develop an SWP3 if construction occurs when there is a low potential for erosion. This option is consistent with the existing general permit, and is not available for large construction sites, including smaller construction sites that are part of a larger common development that will disturb five (5) or more acres. This option is available for stormwater discharges, and would not include authorization for non-stormwater discharges that are otherwise required to be permitted. These mechanisms for alternative authorization are included to encourage construction to occur during times when the potential for erosion is limited. The alternative requirements apply to small construction sites where the rainfall erosivity factor, or R-factor, is less than five (5) for the duration of the activity.

The R-factor is defined as the total annual erosive potential that is due to climatic effects, and is part of the Revised Universal Soil Loss Equation (RUSLE). An R-factor is calculated based on information available from the U.S. Department of Agriculture (USDA) and EPA. Annual R-factors are provided in the USDA Handbook No. 703. The following authorization options require determination of an R-factor for a portion of the year.

1. Automatic Authorization Option: A mechanism for automatic authorization is provided to include a very efficient authorization process for certain activities occurring during periods of low erosion potential. Appendix A of the general permit includes a list of time periods within certain counties when the potential for erosion is very low and where small construction activities may be automatically authorized. Not all counties in Texas are included in Appendix A, and those that are included only demonstrate an R-factor less than five (5) for the specific time period(s) shown.

Small site construction activities that commence on or after the start date for one of the listed time periods and conclude by the end date of the same listed time period are not required to submit an NOI nor to develop an SWP3. Instead, the general permit requires the operator of such a site to complete and post a specific site notice for the duration of the activity and to provide a copy of the site notice

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to the operator of any MS4 that would receive a discharge from the site. This includes MS4s that are not regulated by an NPDES or TPDES permit. The site notice must be maintained at the site until final stabilization has been achieved.

This automatic authorization permit option is based on construction site conditions that might otherwise qualify for a permit waiver using an R-factor calculation. Instead of requiring the construction site operator to calculate the R-factor for every possible discharge, the executive director calculated time periods within the year where the R-factor is known to be less than five (5). An application for a permit waiver requires the operator to calculate the R-factor, complete a low rainfall erosivity waiver (LREW) form, and submit the waiver request, which is described in the next section of this fact sheet.

In developing Appendix A, the executive director used the most conservative assumptions for each county in the state. The annual R-factor values included in the USDA handbooks are annual factors, and the lowest annual R-factor in Texas is ten (10), which occurs only in El Paso County. While no county in Texas would automatically qualify for this automatic authorization option for the entire year, R-factors for specific time periods within the year can be identified by multiplying the annual R-factor by the percentage of the total annual isoerodent factor that occurs during the period in question.

In Texas, there are ten (10) isoerodent zones that cross state lines, and those are listed in the table below. The map of zones is located in Chapter 2 of USDA Handbook 703: "Predicting Soil Erosion by Water," [https://www.ars.usda.gov/arsuserfiles/64080530/rusle/ah\\_703.pdf](https://www.ars.usda.gov/arsuserfiles/64080530/rusle/ah_703.pdf), referenced in EPA Fact Sheet 3.1: "Stormwater Phase II Final Rule – Construction Rainfall Erosivity Waiver" (<https://www.epa.gov/sites/default/files/2015-10/documents/fact3-1.pdf>), and is included as Appendix B of the permit.

To identify partial year R-factors less than five (5), the executive director first identified the potential start dates and end dates of construction projects, and then added the correlating total percentages for the time period. In the Erosivity Index (EI) Table developed in the USDA Handbook 703, the first period is always listed as zero (0), and with each period, a portion of the annual percentage is added until the final number for the last period equals or approaches 100 for each isoerodent zone. For the purposes of establishing Appendix A, the TCEQ did not add each period so that the values were larger for each time period; but rather included only the portion of the annual percentage that was attributable to the period in question. The end result was that each EI zone resulted in a value near 100 when all of the periods were added. Where the results were less than 100, the TCEQ included the difference for the first period beginning January 1. This resulted in an increase for several of the EI zones in the first period from zero (0), which results in a more conservative calculation.

Each county is located within one or more EI zones and contains within it a range of annual isoerodent values. For the automatic R-factor permitting option, the executive director determined isoerodent zones by identifying the highest isoerodent line that crosses through the county and assigning a value of the next highest isoerodent line, since some value greater than the highest line crossing through the county would be present within the county. Generally, the value of the line located outside of and east of the county was assigned as the value for the county, as the isoerodent values generally increase to the east. The EI zones may be found in the EPA Fact Sheet 3.1 (Figure 2) or in USDA Handbook 703 (Figure 2-1) and in Appendix B of the permit. The Isoerodent Map is provided at Appendix C of the permit, and is also included in the USDA Handbook 703 and referenced in the EPA Fact Sheet.

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The R-factor for each time period was determined by calculating the percentage of the isoerodent value that is necessary to achieve an R-factor of less than five (5). For a small construction activity to be authorized under this provision, construction must commence no earlier than the start date for a specific date range and county listed in Appendix A of the general permit, and final stabilization must occur no later than the end date of that same date range. If a construction project begins during one date range and ends past that same date range (even if it is within another date range for the same county), then the resulting R-factor will be over 5, and the automatic authorization is not available. If construction activities last longer than expected so that final stabilization will occur outside of an approved date range, then the operator must either 1) apply for and obtain a waiver, if appropriate, or 2) obtain authorization under Section II.E.2. of the general permit, related to all other small construction activities, and develop and implement an SWP3 and post the required site notice.

Two example calculations are shown below:

Example No. 1: In El Paso County, the highest annual isoerodent value is ten (10), and El Paso County is located in EI Zone No. 92.

In order to determine the portion of the isoerodent value (referred to below as "x") that would result in an R factor less than 5, the executive director divided the maximum allowable R-factor, five (5), by the annual isoerodent value. Then the result was multiplied by 100 to correct for percentage.

$$x < (5 / 10) * 100$$

$$x < 50$$

To achieve an R-factor less than five (5) in El Paso County, the EI from Zone 92 (see table below) must be less than 50 when subtracting the value for the start date from the value for the end date, for any period of construction. This is possible for several ranges of dates in the county, and those date ranges are listed in Appendix A.

Example No. 2: In Dallas County, the highest annual isoerodent value for the county is 350, and Dallas County is located in zone 97.

$$x < (5 / 350) * 100$$

$$x < 1.43$$

To achieve an R-factor less than five (5) in Dallas County, the EI from Zone 97 (see table below) must be less than 1.43 when subtracting the value for the start date from the value for the end date, for any period of construction. There are no ranges of dates in the county that meet these criteria, and therefore construction sites in Dallas County would not qualify for this automatic authorization.

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**Table of Erosivity Indices (EI) for EI Zones in Texas:**

EI #	1/1	1/16	1/31	2/15	3/1	3/16	3/31	4/15	4/30	5/15	5/30	6/14	6/29	7/14	7/29	8/13	8/28	9/12	9/27	10/12	10/27	11/11	11/26	12/11	12/31
89	0	1	1	2	3	4	7	2	8	27	38	48	55	62	69	76	83	90	94	97	98	99	100	100	100
90	0	1	2	3	4	6	8	13	21	29	37	46	54	60	65	69	74	81	87	92	95	97	98	99	100
91	0	0	0	0	1	1	1	2	6	16	29	39	46	53	60	67	74	81	88	95	99	99	100	100	100
92	0	0	0	0	1	1	1	2	6	16	29	39	46	53	60	67	74	81	88	95	99	99	100	100	100
93	0	1	1	2	3	4	6	8	13	25	40	49	56	62	67	72	76	80	85	91	97	98	99	99	100
94	0	1	2	4	6	8	10	15	21	29	38	47	53	57	61	65	70	76	83	88	91	94	96	98	100
95	0	1	3	5	7	9	11	14	18	27	35	41	46	51	57	62	68	73	79	84	89	93	96	98	100
96	0	2	4	6	9	12	17	23	30	37	43	49	54	58	62	66	70	74	78	82	86	90	94	97	100
97	0	1	3	5	7	10	14	20	28	37	48	56	61	64	68	72	77	81	86	89	92	95	98	99	100
106	0	3	6	9	13	17	21	27	33	38	44	49	55	61	67	71	75	78	81	84	86	90	94	97	100

If an operator cannot meet the automatic authorization option, then a waiver calculation may be performed to determine if the site-specific R-factor is less than five (5) for a small construction site. The waiver option is described below.

2. **Low Rainfall Erosivity Waiver (LREW) Option:** A small construction site operator may calculate a site-specific R-factor and apply to the TCEQ for a permit waiver (LREW). The R-factor would be calculated using site-specific location information to determine the specific isoerodent line to be used in the calculation. The operator may utilize the table in the previous section of this fact sheet to calculate the isoerodent values for the specific zone where the site is located. Alternatively, the operator may reference EPA Fact Sheet 3.1 or USDA Handbook 703. The map of isoerodent lines is also provided as Appendix C of the general permit. An operator can identify the specific isoerodent line that relates to the site’s location, rather than utilizing the most conservative line that was used to develop Appendix A of the general permit.

This waiver may be an important option for shorter duration projects in counties that are located in high isoerodent areas, and may also be important for longer duration projects located in portions of counties that have a lower isoerodent value than the conservative protocol that was utilized to develop Appendix A of the general permit.

The operator may calculate a site-specific R-factor using the steps outlined in EPA Fact Sheet 3.1: “Stormwater Phase II Final Rule – Construction Rainfall Erosivity Waiver” (<https://www.epa.gov/sites/default/files/2015-10/documents/fact3-1.pdf>), by using the online calculator developed by EPA: <https://lew.epa.gov>, <https://lew.epa.gov> using an alternative mechanism that follows appropriate methodology, or by using the following steps:

- (a) Estimate the construction start date and the construction end date. The construction end date is the date that final stabilization will be achieved.
- (b) Find the EI zone from Appendix B of the general permit.
- (c) Find the EI percentage for the project period by subtracting the EI for the start date of the project from the EI of the end date using the table above. Alternatively, use the table provided in EPA Fact Sheet 2.1 or USDA Handbook 703 in a similar manner, by subtracting the start value from the end value on the table. If the project goes past January 1, add 100 to the end date EI to obtain the appropriate value.

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- (d) Refer to the Isoerodent Map (Appendix C of the general permit) and interpolate the annual isoerodent value for the construction site location.
- (e) Multiply the percent value obtained in Step 3 by the annual isoerodent value obtained in Step 4. This is the R factor for the project. If the value is less than five (5), then a waiver may be obtained.

Under the waiver option, the operator must submit to the executive director an LREW form approved by the executive director, and must provide a copy of the waiver form to the operator of any MS4 that receives the discharge. This includes MS4s that are not regulated by an NPDES or TPDES permit. The operator is not required to develop an SWP3 nor to post the waiver certification form at the entrance to the small construction site. This waiver does not authorize discharges of non-stormwater that would otherwise be required to be permitted.

**E. Qualifying Local Programs**

This general permit does not include by reference any qualifying local programs (see federal rules at 40 CFR § 122.44(s)); however, the permit may be amended in the future to include appropriate programs that are currently being implemented or that will be implemented in the future by regulated MS4s.

**V. Changes from Existing General Permit**

- A. Updated the hyperlink to the Edwards Aquifer Map Viewer in Part I. for the definitions for Edwards Aquifer Recharge Zone and Edwards Aquifer Contributing Zone.
- B. Modified the definition of Commencement of Construction in Part I.B. to clarify and describe construction support activities consistent with the 2022 EPA NPDES CGP.
- C. Modified the definition of Dewatering in Part I.B. for clarification and consistency with the 2022 EPA NPDES CGP.
- D. Removed the regulatory language in the definition of Waters of the United States in Part I.B., and instead cited 40 CFR § 122.2 because the definition in the CGP was outdated.
- E. Revised Part II.A.3.(a) to clarify that only discharges from emergency fire-fighting activities are considered an allowable non-stormwater discharge and not just firefighting
- F. Added the definition of High-Level Radioactive Waste in Part I.B. and added Part II.C.12 to prohibit authorization of discharges from construction activities associated with the construction or operation of a facility that is licensed for the storage of high-level radioactive waste by the United States Nuclear Regulatory Commission under 10 CFR. Part 72 based on Texas Health Code Section 401.0525.
- G. Revised Part II.C.7 to remove an out-of-date reference to local government code §401.002.
- H. Clarified in Part II.E.1. that small construction site operators must meet conditions (a)-(h) prior to commencing construction activities.
- I. Revised Part II.E.1.(e) to clarify that Small Construction Site Notices for low potential for erosion must be maintained until final stabilization is achieved.
- J. Added Part II.E.2.(e) to require Delegation of Signatories forms for small construction site operators be submitted via mail consistent with other water quality general permits.

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- K.** Revised Part II.E.3. and Part II.F.1. to clarify that applications must be submitted electronically unless applicants request and obtain a waiver from electronic reporting to comply with federal electronic reporting requirements in 40 CFR Part 127.
- L.** Changed provisional coverage from seven (7) days to 48-hours in Part II.E.3.(b), Part II.E.5.(b)., and Part II.F.3.
- M.** Added Part II.E.3.(e) to require Delegation of Signatories form for large construction site operator be submitted electronically using the TCEQ State of Texas Environmental Electronic Reporting System (STEERS) consistent with other water quality general permits.
- N.** Clarified in Part II.E.3.(c) that large construction site notices must be maintained until final stabilization has been achieved.
- O.** Added language in Part II.E.6.(c) to clarify when electronic reporting waivers expire and that operators are automatically authorized immediately after confirmation of receipt of a NOC by the TCEQ.
- P.** Moved the *Contents of the NOI* from Part II.E.8 to Part II.E.6. and revised the contents to require that the NOI include estimated construction project start date and end date to comply with federal electronic reporting requirements in 40 CFR Part 127.
- Q.** Added language in Part II.E.8.(h) to require that the NOI include confirmation that the construction activities are not associated with a facility licensed to store high - level radioactive waste by the United States Nuclear Regulatory Commission.
- R.** Clarified in Part II.F.1. that compliance with the conditions of the permit is required until the NOT is submitted and approved by TCEQ.
- S.** Updated the hyperlink to the R factor calculator in Part II.F.2.
- T.** Clarified in Part II.F.3. that construction site notices must be maintained until final stabilization has been achieved.
- U.** Clarified in Part II.G.1. that waiver applications must be submitted electronically unless applicants obtain an electronic reporting waiver.
- V.** Revised Part II.H. to indicate that any discharge authorized under this general permit may also be authorized under an alternative general permit if applicable. This change removes duplicate information and makes language consistent with the 2021 Multi-Sector General Permit (MSGP, TXR050000).
- W.** Clarified in Part III. that the SWP3 is used to comply with effluent limits and other permit conditions and that Part IV of the permit establishes additional effluent limits.
- X.** Clarified in Part III.B.1. that the SWP3 must identify portions of the project where each operator has control.
- Y.** Clarified in Part III.D.1 that the SWP3 may be prepared and kept electronically rather than in paper form if the records can be read, are legally valid, and immediately accessible to the same extent as a paper copy would be consistent with the EPA NPDES CGP.
- Z.** Clarified in Part III.E. that revisions and updates to the SWP3 include site map changes.
- AA.** Added requirements for the detailed site map in Part III.F.1.(g) to include property boundaries, drainage patterns and approximate slopes anticipated before and after major grading activities, and areas where soil disturbance will occur (note any phasing), including any demolition activities consistent with the 2022 EPA NPDES CGP.
- BB.** Added a note to Part III.F.1.(g)(vii) to clarify that surface waters adjacent to or in close proximity to the site means any receiving waters within the site and all receiving waters within one mile downstream of the site's discharge point(s) consistent with the 2022 EPA NPDES CGP.
- CC.** Added language in Part III.F.1.(j) that an electronic copy of the TPDES CGP or a link to the TPDES CGP on the TCEQ webpage is acceptable.

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- DD.** Added in Part III.F.1.(l) a requirement to maintain a copy of the Delegation of Signatories form submitted to TCEQ.
- EE.** Added language in Part III.F.2.(a) and Part III.F.2.(c) for consistency with federal effluent limitations for BMPs used to minimize pollution in runoff.
- FF.** Clarified in Part III.F.4.(e), that the controls identified in the SWP3 to minimize offsite transport of suspended sediments and other pollutants must be consistent with Part IV.
- GG.** Added in Part III.F.2.(c).i.(A)(1) that sedimentation basins must be designed for and appropriate for runoff at the site and that existing detention or retention ponds at the site may not be appropriate.
- HH.** Clarified language in Part III.F.4.(a) that permittees must minimize the offsite vehicle tracking of sediments and dust consistent with the EPA NPDES CGP. The SWP3 must include a description of controls utilized to control the generation of pollutants that could be discharged in stormwater from the site.
- II.** Added in Part III.F.7. requirements for operators to observe and evaluate dewatering controls to be more consistent with the 2022 EPA NPDES CGP.
- JJ.** Clarified in Part III.8.(c).i. that inspections conducted within 24 hours of the end of a storm event of 0.5 inches must occur on the first and last day of a storm for multi-day storm events and when the 24-hour inspection time frame occurs entirely outside of normal working hours, operators must conduct the inspection by the end of the next business day consistent with the 2022 EPA NPDES CGP.
- KK.** Clarified in Part III.F.8.(c)(vi) that inspection frequency schedules can only be changed once per month and implemented within the first five business days of a calendar month.
- LL.** Added in Part III.F.8.(e) a requirement that inspections may be temporarily suspended for adverse conditions for consistency with other water quality general permits. Documentation of adverse conditions must be included in the SWP3.
- MM.** Added in Part III.F.8.(g) that inspection reports must include the dates of actions taken as a result of inspections for consistency with the EPA NPDES CGP.
- NN.** Clarified in Part III.F.8.(h) that site maps need to be updated as a result of inspections.
- OO.** Moved Part III.G. regarding Erosion and Sediment Controls to new Part IV to clarify that these requirements are federal effluent limitations. Changes were made to references throughout the permit as a result of this change to address the new Part.
- PP.** Clarified in Part IV that the effluent limitations representing the degree of effluent reduction attainable by application of the best practicable control technology currently available (BPT) also satisfy the effluent limitations requirements in 40 CFR §450.24, §450.22, and §450.23.
- QQ.** Revised Part IV.A.(f) for consistency with language in 40 CFR 450.21(a)(6).
- RR.** Clarified in Part IV.C. that dewatering must be managed by controls to prevent sedimentation and erosion and added a requirement for observation and evaluation of the controls during dewatering to be more consistent with the 2022 EPA NPDES CGP.
- SS.** Clarified in Part IV.D.3. that exposure of wastes to both precipitation and wind must be minimized and that minimization of exposure is not required where exposure to precipitation and stormwater will not result in discharge of pollutants or where a specific material or pollutant poses little risk of stormwater contamination for consistency with the EPA NPDES CGP.
- TT.** Added in Part IV.D.4. a requirement for cleaning waste and disposing of wastes in designated waste containers on days of operation at the site for consistency with the EPA NPDES CGP. Wastes must be cleaned up immediately if containers overflow.
- UU.** Added in Part IV.D.5. reference to federal rule requirements for reporting spills and leaks.

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- VV.** Added in Part IV.D.6. a requirement to position portable toilets so that they are secure and will not be tipped or knocked over, and so that they are located away from surface water in the state and stormwater inlets or conveyances for consistency with the EPA NPDES CGP.
- WW.** Added in Part IV.F. a requirement for permittees to provide documentation in support of infeasibility determinations for consistency with the EPA NPDES CGP.
- XX.** Clarified in Part V.B.1.(b)-(c) that operators must address exposure to both precipitation and stormwater.
- YY.** Added in Appendices B-D captions and additional identifying information, such as units, to improve understanding of the information.

### **VI. Addresses**

Questions concerning this general permit may be sent to:

TCEQ, Stormwater Team Leader  
Wastewater Permitting Section (MC-148)  
P.O. Box 13087  
Austin, Texas 78711-3087  
(512) 239-4671  
[swgp@tceq.texas.gov](mailto:swgp@tceq.texas.gov)

Comments on the proposed general permit renewal must be sent to:

By Mail:

TCEQ, Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

Electronically: [www14.tceq.texas.gov/epic/eComment/](http://www14.tceq.texas.gov/epic/eComment/)

Supplementary information on this Fact Sheet is organized as follows:

- VII. Legal Basis
- VIII. Regulatory Background
- IX. Permit Coverage
- X. Technology-Based Requirements
- XI. Water Quality-Based Requirements
- XII. Monitoring
- XIII. Procedures for Final Decision
- XIV. Administrative Record

### **VII. Legal Basis**

Texas Water Code (TWC) § 26.121 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. TWC § 26.027 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. TWC § 26.040 provides the Commission with authority to amend rules adopted under TWC § 26.040 prior to amendment of the statute by House Bill (HB) 1542 in the 75<sup>th</sup> Legislature, 1997, and to authorize waste discharges by general permit. On September 14, 1998, the TCEQ received authority from EPA to administer the TPDES program. The Commission and the EPA have signed a Memorandum of Agreement (MOA) that authorizes the administration of the TPDES program by the Commission as it applies to



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the State of Texas. TWC § 26.131, as amended by HB 2771 in the 86th Legislature, 2019, transfers regulatory authority for discharges into water in the state from oil and gas exploration, production, processing, or treatment operations, or transmission facilities from the EPA and the Railroad Commission of Texas (RRC) to TCEQ, upon EPA approval of NPDES authority for these discharges, which occurred on January 15, 2021.

Texas Health Code Section 401.0525, as amended by HB 7 in the second special session of the 87th Legislature, 2021, prohibits the Commission from issuing any TPDES authorizations for the construction or operation of a facility that is licensed for the storage of high-level radioactive waste by the United States Nuclear Regulatory Commission under 10 CFR Part 72 except for facilities located at the site of currently or formerly operating nuclear power reactors and currently or formerly operating nuclear research and test reactors operated by a university would be regulated under this general permit.

Clean Water Act (CWA), Parts 301, 304, and 401 and 33 United States Code (USC), Parts 1331, 1314, and 1341 include provisions that state that NPDES permits must include effluent limitations requiring authorized discharges to: meet standards reflecting levels of technological capability; comply with EPA-approved state water quality standards; and comply with other state requirements adopted under authority retained by states under CWA Part 510, and 33 USC Part 1370.

### **VIII. Regulatory Background**

In 1990, EPA promulgated rules establishing Phase I of the NPDES stormwater program. Among other discharges, Phase I addresses discharges from large construction activities disturbing five (5) acres or more of land. The Phase I NPDES stormwater rule identifies eleven (11) categories of industrial activity in the definition of “stormwater discharges associated with industrial activity” that must obtain an NPDES permit. Category (x) of this definition is construction activity, commonly referred to as “large” construction activity. Under category (x), the Phase I rule requires all operators of construction activities disturbing five (5) acres or greater of land to apply for an NPDES stormwater permit before beginning construction. Operators of sites disturbing less than five (5) acres are also required to obtain a permit if their activity is part of a “larger common plan of development or sale” with a planned disturbance of five (5) acres or greater. “Disturbance” refers to exposed soil resulting from activities such as clearing, grading, and excavating. Construction activities can include road building, construction of residential houses, office buildings, industrial sites, or demolition.

In 1992, the US Court of Appeals for the Ninth Circuit remanded portions of the existing Phase I stormwater regulation to the EPA. The remanded portions related to the category (x) of stormwater discharges associated with industrial activity, specifically, discharges from large construction activity (NRDC v. EPA, 966 F.2d at 1292). EPA responded to the Court’s decision by designating stormwater discharges from construction activity disturbing less than five (5) acres as sources that should be regulated to protect water quality. The Phase II Rule designated those sources as “stormwater discharges associated with *small construction* activity,” rather than as another category under “stormwater associated with *industrial* activity.” Phase II of the NPDES stormwater program requires authorization for small site construction activities disturbing between one (1) and five (5) acres. Phase II rules were final on December 8, 1999, and required authorizations be issued by March 10, 2003.

The Stormwater Phase II Rule automatically designated, as small construction activity under the NPDES stormwater permitting program, all operators of construction site activities that result in a land disturbance of equal to or greater than one (1) and less than five (5) acres. Site activities disturbing less than one (1) acre are also regulated as small

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construction activity if they are part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and less than five (5) acres, or if they are designated by the NPDES permitting authority.

On September 14, 1998, the TCEQ received authority to administer the NPDES permit program in Texas (the TPDES program), for those discharges under the regulatory authority of the Commission. Under the MOA between the two agencies, EPA agreed to continue to administer the construction stormwater general permit until the July 7, 2003 expiration date. The original TPDES CGP was issued on March 5, 2003, and expired on March 5, 2008. The current CGP was issued on February 8, 2018, effective on March 5, 2018, amended on January 28, 2022, and will expire on March 5, 2023. This general permit continues authorization for existing regulated construction activities in Texas for five (5) years from the effective date of the renewed permit. The Commission expects to reissue this general permit prior to the expiration date of the current permit, in which case the renewed permit would supersede and replace the existing permit.

Prior to the amendments of TWC § 26.131 via HB 2771, the RRC had state authority for non-exempt stormwater discharges from construction activities at oil and gas exploration, production, processing, or treatment operations, or transmission facilities and EPA had federal authority for these discharges. HB 2771 required TCEQ to request NPDES authority for these discharges from EPA and transferred state regulatory authority upon EPA approval of NPDES authority. On January 15, 2021, EPA approved the transfer of NPDES authority to TCEQ for these discharges.

This general permit authorizes non-exempt stormwater discharges from construction activities at oil and gas exploration, production, processing, or treatment operations, or transmission facilities. Entities with potentially exempt stormwater discharges are *generally* defined by the following North American Industrial Classification System (NAICS) Codes and Titles: 211 – Oil and Gas Extraction; 213111 – Drilling Oil and Gas Wells; 213112 – Support Activities for Oil and Gas Operations; 48611 – Pipeline Transportation of Crude Oil; and 48621 – Pipeline Transportation of Natural Gas. This description with reference codes is not intended to be an exhaustive list, but is provided as a guide regarding entities that may be exempt. More information about exempt and non-exempt activities can be found on the following EPA webpage:

<https://www.epa.gov/npdes/oil-and-gas-stormwater-permitting>.

On August 8, 2005, the President of the United States signed the Energy Policy Act of 2005. Section 323 of the Energy Policy Act of 2005 added a new paragraph (24) to section 502 of the CWA defining the term “oil and gas exploration, production, processing, or treatment operations, or transmission facilities” to mean “all field activities or operations associated with exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities.” This term is used in Section 402(l)(2) of the CWA to identify certain stormwater discharges from oil and gas activities that do not require an NPDES permit. The effect of this statutory change is to make construction activities at oil and gas sites eligible for the exemption established by CWA Section 402(l)(2). On January 6, 2006, EPA proposed amendments to the NPDES regulations for stormwater discharges associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities (71 FR 33628) to include the new provision in the Energy Policy Act of 2005. On June 12, 2006, EPA codified in the Agency’s regulations changes to the Federal Water Pollution Control Act, also known as the “Clean Water Act” or “CWA,” resulting from the Energy Policy Act of 2005 (71 FR 112). This action modified the NPDES regulations to provide that certain stormwater discharges from field activities or operations, including construction, associated with oil and gas exploration, production, processing, or treatment operations, or transmission

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facilities are exempt from NPDES permit requirements. EPA's 2006 Oil and Gas Stormwater Rule was vacated by an opinion from the Ninth Circuit on May 23, 2008 (Natural Resources Defense Council v. United States Environmental Protection Agency, 526 F.3d 591 (9th Cir. 2008)). Thus, EPA's previous regulations (November 16, 1990) regarding oil and gas stormwater apply to this permit.

On December 1, 2009, the EPA published ELGs and new source performance standards (NSPS) in 40 CFR Part 450, to control the discharge of pollutants from construction sites. All construction sites required to obtain permit coverage were required to implement a range of erosion and sediment controls and pollution prevention measures. The ELGs included a numeric effluent limitation for turbidity of 280 nephelometric turbidity units (NTU). Subsequently the EPA withdrew the limit to correct a calculation error that was identified in petitions filed by the Small Business Administration and the National Association of Homebuilders. On January 4, 2011, the EPA stayed indefinitely the turbidity effluent limit of 280 NTU in order to seek additional treatment performance data from construction and development sites before proposing a revised numeric turbidity limit. On February 16, 2012, the EPA issued their 2012 CGP which includes the new Construction and Development ELGs. The EPA CGP does not include the numeric effluent limitation for turbidity. The EPA amended the federal Construction and Development ELGs located in 40 CFR §§ 450.11, 450.21, and 450.22 and posted in the Federal Register, Volume 79, Number 44, March 6, 2014 and to 40 CFR § 450.22, which was posted in the *Federal Register*, Volume 80, Number 85, on May 4, 2015. The amendments added the definition of "infeasible" in 40 CFR § 450.11; revised the narrative limitations in paragraphs (a)(1), (a)(2), (a)(6), (a)(7), (b), and (d)(2) of 40 CFR § 450.21; added narrative limitations in paragraph (a)(8) to 40 CFR § 450.21; and made amendments to lift the indefinite stay on paragraphs (a) and (b) and removed and reserve paragraphs (a) and (b) of 40 CFR § 450.22.

### **IX. Permit Coverage**

- A. The general permit applies to discharges of stormwater runoff associated with construction activities, stormwater runoff associated with certain other supporting industrial activities, and certain non-stormwater discharges, into Waters of the United States. The general permit specifies which facilities are eligible for authorization by the general permit, which must be authorized by an alternative individual or general permit, and the specific conditions that must be met in order to be excluded from the requirement to develop an SWP3 and from the requirement to submit a notice of intent. The guidelines for small site construction activities were published in the *Federal Register* on December 8, 1999 (64 FR 68722).

The general permit defines large and small construction activities, and includes requirements for both. The general permit specifies that a smaller project is regulated if it is part of a larger common plan of development or sale that will disturb one or more acres. A common plan of development or sale is defined in the permit as a construction activity that is completed in separate stages, separate phases, or in combination with other construction activities, that is identified by the documentation for the construction project that identifies the scope of the project. A common plan of development does not necessarily include all construction projects within the jurisdiction of a public entity (e.g., a city or university). Construction of roads or buildings in different parts of the jurisdiction would be considered separate "common plans," with only the interconnected parts of a project being considered part of a "common plan" (e.g., a building and its associated parking lot and driveways, airport runway and associated taxiways, a building complex, etc.). Where discrete construction projects occur within a larger common plan of development or sale but are located one quarter (1/4) mile or more apart, and the area between the

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projects is not being disturbed, each individual project can be treated as a separate plan of development or sale, provided that any interconnecting road, pipeline or utility project that is part of the same "common plan" is not included in the area to be disturbed.

An example of a smaller construction project that is regulated under the general permit would include the building of single houses on lots of a quarter-acre each within a larger residential development of five (5) or more acres. Any primary operator constructing single homes within that development would be regulated as an operator of a large construction activity, and required to develop an SWP3 and submit an NOI. If the development was generally completed, then a builder may be able to look at the size of the remaining area to be disturbed in determining the size of the larger common plan of development or sale by answering a two part question. First, was the original plan, including modifications, ever substantially completed with less than one acre of the original "common plan of development or sale" remaining (e.g., <1 acre of the "common plan" was not built out at the time)? If so, then was there a clearly identifiable period of time with no on-going construction, including meeting the criteria for final stabilization? If the answer to both of the questions is "yes," then it would be appropriate to consider the new project of less than one acre as a new common plan of development. Another example of a "new" common plan of development or sale would be the addition of a swimming pool, fence, or similar addition to a lot by a homeowner after having purchased the lot. Even if the rest of the homes have not been built, the additional construction by the homeowner would be its own common plan unless it was specifically delineated in the plans for the overall development.

- B.** A primary operator seeking authorization to discharge stormwater runoff from a large construction site under this general permit must electronically submit a completed NOI on a form approved by the executive director, and must also complete the applicable required site notice and post the notice at the construction site. The NOI shall include, at a minimum, the legal name and address of the construction site operator, the facility name and address, a specific description of the site location, (including the street address, if applicable, and county), the type of construction occurring, the estimated construction project start date and end date, the name of the receiving water, and any other information requested by the executive director. A secondary operator of a large construction site and an operator of a small construction site seeking authorization under this permit must complete the applicable site notice and post the notice at the construction site.

Applicants can locate information regarding the classified segment(s) receiving the discharges from the construction site in the TCEQ's Surface Water Quality Viewer, at the following TCEQ web address. This map viewer includes identification numbers, descriptions, and maps:

Surface Water Quality Viewer:

<https://www.tceq.texas.gov/gis/segments-viewer>

Applicants can find the latest EPA-approved list of impaired water bodies (the Texas 303(d) List) at the following TCEQ web address:

[https://www.tceq.texas.gov/waterquality/assessment/305\\_303.html](https://www.tceq.texas.gov/waterquality/assessment/305_303.html)

- C.** Submission of an NOI or signing of the required site notice is an acknowledgment that the conditions of the general permit are applicable to the proposed discharges and that the applicant agrees to comply with the conditions of the general permit.

Effective September 1, 2018, all NOIs are required to be submitted to the TCEQ electronically. Operators who qualify for and obtain a waiver from electronic

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reporting may submit paper applications. Provisional authorization to discharge under the terms and conditions of the general permit begins immediately upon receipt of confirmation by TCEQ of an administratively complete NOI submitted electronically, 48-hours after a completed paper NOI is postmarked for delivery to the TCEQ unless otherwise specified in the general permit. If submitting a paper copy of the NOI, the NOI must be mailed to the address indicated on the NOI form with an approved waiver from electronic reporting. Following review of the NOI, the executive director will either confirm coverage by providing a notification and an authorization number to the applicant or notify the applicant that coverage under this general permit is denied.

Operators of existing sites that are required to submit an NOI for coverage must do so within the timeframe specified in the general permit in order to maintain authorization for the construction activity. Small construction sites must post the applicable required site notice as required in the general permit.

- D.** Coverage under the general permit is not transferable. If the primary operator of a large construction activity changes, then the original operator must submit an NOT electronically within 10 days prior to the date that responsibility for operations terminates, unless they qualify for a waiver from electronic reporting. The new operator must submit an NOI electronically at least ten (10) days before assuming operational control, unless they qualify for a waiver from electronic reporting. Operators who qualify for and obtain a waiver from electronic reporting may submit paper applications. Authorization for a termination of authorization is immediate, upon receipt of confirmation of an NOT form submitted electronically.

Provisional authorization to discharge under the terms and conditions of the general permit begins 48-hours after a completed paper NOI is postmarked for delivery to the TCEQ, with an approved waiver from electronic reporting, or immediately upon receipt of confirmation by TCEQ of an administratively complete NOI submitted electronically, prior to the new operator assuming operational control.

A change in operator includes changes to the structure of a company, such as changing from a partnership to a corporation, or changing corporation types that changes the filing (or charter) number with the Texas Secretary of State. Operators of small construction activities and secondary operators of large construction activities must remove the original site notice for the original operator, and the new operator must post the required site notice prior to assuming operational control for the site.

- E.** A primary operator of a large construction activity must submit current information to the executive director by submitting a Notice of Change (NOC) electronically, unless they request and obtain a waiver from electronic reporting, not later than 14 days before a change in information previously provided to the executive director in a NOI occurs (examples of changes may include changes to the operator's mailing address, a change to the project name, or an increase in the size of the project). NOC forms must be signed by a person authorized to sign permit applications. An operator of a small construction activity and a secondary operator of a large construction activity may revise the information in the required site notice.
- F.** A primary operator of a large construction activity may terminate coverage under the general permit when all construction activity has ceased by submitting an NOT electronically, unless they qualify for an electronic reporting waiver. Operators who qualify for and obtain an electronic reporting waiver may submit paper applications. If an NOT is submitted electronically, authorization to discharge terminates immediately following confirmation of receipt of the electronic NOT form by the TCEQ, unless otherwise specified in the general permit. Authorization to discharge terminates at midnight on the day that a paper NOT is postmarked for delivery to the

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TCEQ. Effective September 1, 2018, all NOTs are required to be submitted to the TCEQ electronically. An operator of a small construction activity and a secondary operator of a large construction activity may terminate coverage under the general permit by removing the required site notice after final stabilization has been met.

**X. Technology-Based Requirements**

**A. Construction and Development Effluent Limitations Guidelines (ELGs), 40 CFR §§ 450.11, 450.21, 450.22, 450.23, and 450.24**

Technology-based effluent limitations must be included in the proposed general permit. With regard to conventional pollutants, CWA § 301 (b)(2)(E) requires effluent limitations based on “best conventional pollution control technology” (BCT). The BCT effluent limitations may never be less stringent than corresponding effluent limitations based on best practicable control technology (BPT), a standard applicable to similar discharges before March 31, 1989 under CWA § 301(b)(1)(A).

The general permit includes a requirement for construction operators to comply with the federal Construction and Development ELGs outlined in 40 CFR §§ 450.11, 450.21, 450.23, and 450.24. TCEQ adopted these guidelines by reference in 30 TAC § 305.541.

The general definitions (40 CFR § 450.11) include the following:

1. *New source*. New source means any source, whose discharges are defined in 40 CFR § 122.26(b)(14)(x) and (b)(15), that commences construction activity after the effective date of this rule.
2. *Infeasible*. Infeasible means not technologically possible, or not economically practicable and achievable in light of best industry practices.

The BPT effluent limitations (40 CFR § 450.21) and BCT effluent limitations (40 CFR § 450.23) are narrative in nature and are achieved through the implementation of BMPs.

Except as provided in 40 CFR §§ 125.30-125.32, any discharge regulated under this general permit, with the exception of sites that obtained waivers based on low rainfall erosivity, must achieve, at a minimum, the following effluent limitations representing the degree of effluent reduction attainable by application of the BPT currently available.

1. *Erosion and sediment controls*. Design, install, and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed, and maintained to:
  - (a) Control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges.
  - (b) Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.
  - (c) Minimize the amount of soil exposed during construction activity.
  - (d) Minimize the disturbance of steep slopes.

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- (e) Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site.
  - (f) Provide and maintain natural buffers around Waters of the United States, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible.
  - (g) Minimize soil compaction. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted.
  - (h) Unless infeasible, preserve topsoil. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.
  - (i) TCEQ does not consider stormwater control features (e.g., stormwater conveyance channels, storm drain inlets, sediment basins) to constitute "surface waters" for the purposes of triggering the buffer requirement in Part X.A.1.(f) above.
2. *Soil stabilization.* Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the permitting authority. Stabilization must be completed within a period of time determined by the permitting authority. In limited circumstances, stabilization may not be required if the intended function of a specific area of the site necessitates that it remain disturbed. Refer to Part III.F.2.(b) of the permit for complete erosion control and stabilization practice requirements.
3. *Dewatering.* Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited, unless managed by appropriate controls.
4. *Pollution prevention measures.* Design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
- (a) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
  - (b) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater. Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use); and

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- (c) Minimize the discharge of pollutants from spills and leaks, and implement chemical spill and leak prevention and response procedures.
- 5. *Prohibited discharges.* The following discharges are prohibited.
  - (a) Wastewater from wash out of concrete, unless managed by an appropriate control;
  - (b) Wastewater from wash out and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
  - (c) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
  - (d) Soaps or solvents used in vehicle and equipment washing; and
  - (e) Toxic or hazardous substances from a spill or other release.
- 6. *Surface Outlets.* When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible.

**B. Stormwater Pollution Prevention Plan (SWP<sub>3</sub>)**

The general permit continues the requirement to develop and implement an SWP<sub>3</sub> to control discharges of stormwater associated with construction activities, in accordance with the NPDES program. Conditions of the proposed general permit have been developed to comply with the technology-based standards of the Clean Water Act.

The general permit is based on a series of BMPs, in the form of a required SWP<sub>3</sub>, rather than numeric limitations, to prevent or minimize pollutants in stormwater discharges. BMPs may include erosion controls, sediment controls, stabilization practices, and nonstructural controls. Erosion controls provide the first line of defense in preventing off-site sedimentation and are designed to prevent erosion through protection and preservation of soil. Sediment controls are designed to remove sediment from runoff before the runoff is discharged from the site. Sediment and erosion controls can be further divided into two major classes of controls: stabilization practices and structural practices. Part IV.B. of this fact sheet describes the elements of the required SWP<sub>3</sub>. The SWP<sub>3</sub> must comply with the new construction and development effluent guidelines in Part IV of the general permit.

Small construction sites that obtain automatic authorization based on the precalculated R factor, or that receive a waiver from coverage based on a calculated R factor, are not required to prepare an SWP<sub>3</sub>.

**C. Benchmark Monitoring Requirements**

The 1998 NPDES CGP for EPA Region 6 for large construction activities included numeric effluent limitations for stormwater discharges from concrete batch plants in Texas. The original TPDES CGP continued these limits and applied them to all regulated construction activities. The TCEQ's original recommendation on the NPDES CGP was based on the requirements for wastewater and contact stormwater found in TCEQ's authorization by rule for concrete production facilities, 30 TAC § 321.155.

The proposed general permit continues the benchmark sampling requirements, BMPs, and SWP<sub>3</sub> requirements for the stormwater-only discharges from concrete batch plants that are found in the 2018 TCEQ CGP. This is consistent with TCEQ's MSGP for discharges of stormwater runoff associated with industrial activity and with TCEQ's Wastewater General Permit for Concrete Production Facilities, TXG110000.



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The following benchmark monitoring requirements are applicable to all discharges from concrete batch plants, and are not applicable to other discharges described in the general permit:

<b>Benchmark Parameter</b>	<b>Benchmark Value</b>
Oil and Grease	15 mg/L
Total Suspended Solids	50 mg/L
pH	6.0 - 9.0 Standard Units
Total Iron	1.3 mg/L

Sampling for the above parameters is required to be conducted at each outfall that includes stormwater runoff from a concrete batch plant. Sampling is required at each regulated construction site that utilizes a concrete batch plant authorized under this permit. A concrete batch plant may alternatively be authorized under another TPDES individual or applicable general permit.

Sampling is required at a frequency of once per quarter when discharge occurs. Sampling shall be conducted during the following periods:

<b>Period</b>	<b>Time Frame</b>
First Quarter	January - March
Second Quarter	April - June
Third Quarter	July - September
Fourth Quarter	October - December

Applicants shall begin sampling in the first full quarter following submission of the NOI. For projects lasting less than one (1) full quarter, a minimum of one (1) sample shall be collected, provided that a discharge occurred at least once following submission of the NOI or automatic authorization.

**XI. Water Quality-Based Requirements**

The Texas Surface Water Quality Standards (TSWQS) are located at 30 TAC Chapter 307, and state that “surface waters will not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with skin, or to terrestrial or aquatic life.” The methodology outlined in the *Procedures to Implement the Texas Surface Water Quality Standards*, RG-194 (June 2010) is designed to ensure compliance with 30 TAC Chapter 307. Specifically, the methodology is designed to ensure that no source will be allowed to discharge any wastewater which: (1) results in instream aquatic toxicity; (2) causes a violation of an applicable narrative or numerical state water quality standard; (3) results in the endangerment of a drinking water supply; or (4) results in aquatic bioaccumulation which threatens human health.

TPDES permits contain technology-based effluent limits reflecting the best controls available. Where these technology-based permit limits do not protect water quality or the

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designated uses of the receiving stream, additional conditions are included in the TPDES permits, which may include discharge limitations. State narrative and numerical water quality standards are used in conjunction with EPA criteria and other toxicity data bases to determine the adequacy of technology-based permit limits and the need for additional water-quality based controls.

TPDES stormwater permits generally do not contain numeric water quality-based effluent limitations (WQBELs). As stated in 30 TAC § 307.8(e), controls on the quality of permitted stormwater discharges are largely based on implementing BMPs or technology-based limits in combination with instream monitoring to assess standards attainment and to determine whether additional controls on stormwater are needed. Typically, a combination of stabilization practices, structural practices, and non structural BMPs are necessary throughout a construction site to provide adequate water quality protection. It has been preliminarily determined that if permit requirements are properly implemented, no significant degradation is expected and existing uses will be maintained and protected.

### **XII. Monitoring**

No discharge monitoring is proposed for this general permit beyond those described in Part X.B. of this fact sheet, related to benchmark sampling applicable to stormwater runoff associated with concrete batch plants. This approach is continued from the existing general permit.

### **XIII. Procedures for Final Decision**

The MOA between the EPA and TCEQ provides that EPA has up to 90 days to comment, object, or make recommendations to the general permit before it is published in the *Texas Register*. 30 TAC Chapter 205 requires that when the general permit is proposed, the executive director must publish notice, in at least one newspaper of statewide or regional circulation. The TCEQ may also publish notice in additional newspapers of statewide or regional circulation. Mailed notice must also be provided to the following:

- A. the county judge of the county or counties in which the discharges under the general permit could be located;
- B. if applicable, state and federal agencies for which notice is required in 40 CFR § 124.10(c);
- C. persons on a relevant mailing list kept under 30 TAC § 39.407, relating to Mailing Lists; and
- D. any other person the executive director or chief clerk may elect to include.

After notice of the general permit is published in the *Texas Register* and the newspaper(s), the public will have at least 30 days to provide public comment on the proposed permit.

A public meeting will be held at the end of the public comment period. A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the Administrative Procedure Act. The public will be given notice of the date, time, and place of the meeting, as required by Commission rules.

The executive director will respond to all significant public comments raised during the public comment period and make the response available to the public. The proposed general permit will then be filed with the Commission to consider final approval of the

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permit. The executive director's response to public comment will be made available to the public at least ten days before the Commission acts on the proposed general permit.

For additional information about this general permit, contact the Stormwater Team at (512) 239-4671.

**XIV. Administrative Record**

The following section is a list of the fact sheet citations to applicable statutory or regulatory provisions and appropriate supporting references.

**A. Code of Federal Regulations (CFR) and Federal Register (FR) Citations**

40 CFR Parts 122, 124, 450.21, 450.23, and 450.24

*Federal Register* dated February 29, 2012 (Volume 77, No. 40, Pages 12286-12293),  
Resissuance of NPDES General Permits for Stormwater Discharges From  
Construction Activities in Region 6; Notice

*Federal Register* dated November 5, 2010 (75 FR 68217)

*Federal Register* dated March 8, 2010 (75 FR 10439)

*Federal Register* dated December 1, 2009 (74 FR 63057)

*Federal Register* dated June 12, 2006 (Volume 71, No. 112, Pages 33628-33639)  
Amendments to the NPDES Regulations for Storm Water Discharges Associated with  
Oil and Gas Exploration, Production, Processing, or Treatment Operations, or  
Transmission Facilities

*Federal Register* dated December 8, 1999 (64 FR 68722)

**B. Letters/Memoranda/Records of Communication**

Interoffice Memorandum dated January 14, 2022 from the TCEQ Water Quality  
Standards Implementation Team.

Public comments received during the initial stakeholder meeting during development  
of the 2023 general permit.

Public comments received during the public notice period for the 2023 general  
permit.

EPA Interim Objection Letter dated July 20, 2022.

TCEQ Response Letter to EPA dated August 4, 2022.

EPA Approval Letter dated August 18, 2022.

**C. Miscellaneous**

TPDES Construction General Permit (CGP) No. TXR150000, issued on February 8,  
2018, effective on March 5, 2018, and amended on January 28, 2022.

TPDES Multi Sector General Permit (MSGP) No. TXR050000, issued on July 16,  
2021, and effective on August 14, 2023.

TPDES Concrete Batch Plant General Permit No. TXG110000, issued on October 20,  
2021, and effective on October 26, 2021.

U.S. Environmental Protection Agency's 2017 Construction General Permit,  
TXR10F000, modified on June 27, 2019.

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U.S. Environmental Protection Agency's 2022 Construction General Permit, TXR10F000, issued on January 18, 2022.

Addendum to Memorandum of Agreement Between Texas Commission of Environmental Quality and the U.S. Environmental Protection Agency, Region 6 Concerning the National Pollutant Discharge Elimination System, January 15, 2021.

Energy Policy Act of 2005, H.R. 6, 109th Cong., Pub. L. No. 109-58, 119 Stat. 594 (2005).

U.S. Environmental Protection Agency's Fact Sheet No. 3.1, *Stormwater Phase II Final Rule - Construction Rainfall Erosivity Waiver*, January 2001 (EPA 833-F-00-014), revised March 2012.

Agriculture Handbook No. 282, *Predicting Rainfall-Erosion Losses from Cropland East of the Rocky Mountains, Guide for Selection of Practices for Soil and Water Conservation*, U.S. Department of Agriculture, Agricultural Research Service, in Cooperation with Purdue Agricultural Experiment Station.

Agriculture Handbook No. 703, *Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE)*, U.S. Department of Agriculture, Agricultural Research Service.

Quality Criteria for Water (1986), EPA 440/5-86-001, 5/1/86.

The State of Texas Water Quality Inventory, 13th Edition, Publication No. SFR-50, Texas Natural Resource Conservation Commission, December 1996.

*Procedures to Implement the Texas Surface Water Quality Standards*, Texas Commission on Environmental Quality, Publication RG-194, June 2010.

*TNRCC Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits*, TNRCC Document No. 98-001.000-OWR-WQ, May 1998.

TCEQ Rules, including: 30 TAC Chapters 39, 205, 213, 281, 305, 307, 309, 311, 313, 319, 321, and 331.

**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT  
ON TCEQ's CONSTRUCTION GENERAL PERMIT NO. TXR150000**

The Executive Director of the Texas Commission on Environmental Quality (commission or TCEQ) files this Response to Public Comment (Response) on Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR150000, the Construction General Permit for Stormwater Discharges (CGP). As required by Texas Water Code (TWC), (Section) § 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 comments were received from the following entities: American Electric Power (AEP), Bexar County (Bexar), Compliance Resources Inc (CRI), Earth Works Environmental LLC (EWE), Bowman Engineering Consulting Inc (BEC), Cardinal Strategies Environmental Services, LLC (CSES), Lennar, Lower Colorado River Authority (LCRA), Merit Professional Services (Merit), New Mexico Environmental Department (NMED), Texas Association of Builders (TAB), Terradyne Group LLC (TERRADYNE), Texas Department of Transportation (TxDOT), Marty Savage (Mr. Savage), and Stormcon LLC (STORMCON).

**PERMIT BACKGROUND**

The 2023 CGP renewal with changes authorizes the discharge of stormwater runoff associated with regulated large and small construction sites and certain non-stormwater discharges into surface water in the state. Regulated large construction activities are those disturbing five acres or more. Regulated small construction activities are those disturbing at least one acre up to five acres. Construction activities are also grouped, and their total land area disturbance used, if they are part of a common plan of development. This general permit identifies the sites that may be authorized under the permit, as well as the construction activities that may obtain waivers and that may be eligible for coverage without submitting a Notice of Intent (NOI). The CGP also identifies the conditions when a construction activity must obtain individual permit coverage. The CGP also authorizes the discharge of stormwater associated with industrial activities, at construction sites, that directly support the construction activity and are located at, adjacent to, or in close proximity to the permitted construction site.

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 March 5, 2018, and expires on March 5, 2023. The amended and renewed general permit will continue to authorize discharges from regulated construction activities in Texas for five years from the date it is issued.

The CGP is issued under the statutory authority of the TWC: 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, 3) TWC § 26.040, which provides the commission may authorize waste discharges by general permit, and 4) TWC § 26.131, which authorizes the commission to issue permits for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production and development of oil, natural gas, or geothermal resources.

The federal stormwater regulations, Phase I, for discharges from large construction activities are located in the federal rules at Part 40 Code of Federal Regulations (CFR) § 122.26, which were adopted by reference by TCEQ in 30 TAC § 281.25(a). The Phase II small construction site regulations are located in the federal rules at 40 CFR § 122.26(a)(9)(i)(B) and (c), which were adopted by reference by TCEQ at 30 TAC § 281.25(a)(4). Subsequently, effluent guidelines for construction activities were adopted in 40 CFR Part 450 and adopted by TCEQ by reference in 30 TAC § 305.541 and were incorporated starting with the 2013 CGP.

## PROCEDURAL BACKGROUND

TCEQ published notice of the draft general permit to solicit public comment in the *Houston Chronicle*, and the *Texas Register* on September 17, 2022. The public comment period ended on October 17, 2022, and a public meeting was held on the same date.

## COMMENTS AND RESPONSES

Comments and responses are organized by section. Some comments have resulted in changes to the general permit. Those comments resulting in changes were identified in the respective responses. All other comments resulted in no changes. Some separate comments are combined with other related comments.

### General Comments

1. **Comment:** NMED comments that the State of New Mexico water quality standards are applicable for construction projects where the State of New Mexico is downstream of the discharge. For example, New Mexico may be downstream of discharges into the Rio Grande and the Delaware River.

NMED also identifies requirements that apply to these construction site operators in New Mexico regulations including: 1) reporting to NMED all spills to a waterbody where New Mexico is downstream of the spill as required by the New Mexico Water Quality Control Commission Regulations, 2) for sites with dewatering, maintain a list of potential pollutants and contaminants located within a noted distance from the project in the Stormwater Pollution Prevention Plan (SWP3), 3) provide information on the flow rate and potential to encounter contaminated groundwater, subsurface water, spring water, or dewatering water directly to NMED for dewatering activities, 4) characterize the quality of the groundwater and subsurface water, spring water, or dewatering water being considered for discharge with analytical results reported to EPA Region 6 Stormwater contact and NMED and results and correspondence documented in the SWP3.

**Response:** TCEQ appreciates the comment and information from the State of New Mexico. NMED has not demonstrated how the CGP, TXR150000, will not ensure compliance with the applicable water quality standards of the State of New Mexico. Further, Part II.C.7 of the CGP states, “[t]his general permit does not limit the authority or ability of federal, other state, or local governmental entities from placing additional

or more stringent requirements on construction activities or discharges from construction activities.” No changes were made in response to this comment.

2. **Comment:** TxDOT comments they appreciate TCEQ’s efforts to make the permit more readable but notes that it is still “convoluted and verbose in various places.” TxDOT recommends that TCEQ look for areas of the permit where wording can be simplified, and paragraphs shortened and suggests TCEQ look at the structure of the EPA CGP as an example.

TxDOT comments that TCEQ moved Part III.G. to a new section entitled Part IV. Erosion and Sediment Control Requirements Applicable to All Sites which is an improvement but feels this section should come before Part III.F. TxDOT suggests it would be better to integrate Part III.F and Part IV, along with Part VI into a single Section.

TxDOT notes that Part II.E.8, *Contents of the NOI*, comes after Part II.E.6. *Notice of Change (NOC)* while it seems that *Contents of the NOI* should come before the section on NOC as the NOI is filed before a NOC is filed. TxDOT comments that the new dewatering section in Part III.F.7 and Part III.F.8 have repeating information about inspection personnel and inspection documentation requirements which could be combined. TxDOT comments that Part VI Concrete Truck Washout Requirements appear completely disjunct from the SWP3 even though an entity should be incorporating that information into a SWP3 and, therefore, should be included in Part III.F. TxDOT recommends that TCEQ include footnotes to reference documents and additional clarifying items which would be very helpful for the reader to understand the intent of certain sections.

**Response:** TCEQ moved the *Contents of the NOI* section (Part II.8) before the NOC section (Part II.6). The remaining TxDOT suggestions are considered substantive revisions that would require additional public review and input. TCEQ appreciates this input and will make efforts to improve the CGP structure, with EPA’s CGP as a guide, for the next renewal.

3. **Comment:** Bexar comments that the CGP is based on the Clean Water Act and soil disturbance factor and during their reviews for a CGP, they noticed construction activities such as clearing and grading, temporary access roads, etc., are involved in the disturbance of potential Waters of the U.S. (WOTUS), and, therefore, may require 404 permits. Bexar comments that they are committed to protecting the surface water quality in the County and the lack of directions in the CGP on how to deal with this scenario make it difficult to address. Bexar requests that TCEQ address this concern in the 2023 renewal and provide guidance on how to deal with these scenarios.

**Response:** The CGP only authorizes stormwater discharges from construction activities and construction support activities. The CGP is separate from Section 404 permits issued by the United States Army Corps of Engineers (USACE). Concerned parties should contact USACE regarding projects that require a Section 404 permit. No changes were made in response to this comment.

4. **Comment:** TxDOT requests that TCEQ clarify in the CGP that an NOI and SWP3 as described in Part III.F are not required for emergency firefighting activities, such as emergency firebreaks/fireguards as interpreted by TCEQ (April 2021). TxDOT staff discussed this with TCEQ and were told that an SWP3 is not required, but post-emergency notification to TCEQ is required. TxDOT comments that should be clarified

in the CGP itself and email and phone call communications should not be the only way policy is documented.

**Response:** Part II.A.3 provides the non-stormwater discharges from sites authorized under the CGP. This general permit does not cover discharges from non-emergency fire-fighting activities or firefighting activities occurring outside of a regulated construction site. Discharges from emergency firefighting activities occurring at a regulated construction sites are automatically covered under the operator's existing authorization and no additional application is required. No changes were made in response to this comment.

5. **Comment:** CRI recommends that TCEQ include the associated authorization number in the auto-generated "State of Texas Environmental Electronic Reporting System (STEERS) Construction General Permit Application Notification of Final Action" emails. CRI comments this will allow for easier tracking of STEERS actions by applicants and preparers with multiple authorizations.

**Response:** TCEQ agrees with CRI and confirms that the authorization numbers will be included in the automated email notifications for all applications under the renewed 2023 CGP.

6. **Comment:** TAB comments that they appreciate the timely renewal of this permit and the opportunity to provide comments.

**Response:** TCEQ acknowledges TAB's comment.

7. **Comment:** TxDOT recommends that TCEQ communicate with Municipal Separate Storm Sewer System (MS4) operators regarding TCEQ's pending amendment of the CGP to cover stormwater discharges from oil and gas activities. TxDOT recommends that TCEQ make readily available the list of impacted sites and ensure MS4 operators impacted by the changes are adequately notified by TCEQ and that TCEQ also develop guidance to communicate any other additional relevant information that MS4 operators need to know regarding these sites.

**Response:** TCEQ appreciates the comment from TxDOT regarding the oil and gas activities covered under this permit. TCEQ communicated about the January 28, 2022 CGP Amendment to include oil and gas activities through the public notice process and during several stakeholder meetings.

The online TCEQ Water Quality General Permits Search Engine is available to the public and MS4 operators to identify construction projects within their jurisdiction. The search engine is available at [https://www2.tceq.texas.gov/wq\\_dpa/index.cfm](https://www2.tceq.texas.gov/wq_dpa/index.cfm). TCEQ encourages MS4 operators to utilize the EPA resources currently available at:

<https://www.epa.gov/npdes/stormwater-discharges-municipal-sources> to learn more about regulating construction sites, including oil and gas construction sites. In addition, TCEQ has online resources for construction operators, which may also be helpful for MS4 operators, currently at:

<https://www.tceq.texas.gov/assistance/water/stormwater/sw-construction.html>. No changes were made in response to this comment.

8. **Comment:** TxDOT requests that TCEQ separate "highway/road" and "utility" as separate types of activities on the NOI and Low Rainfall Erosivity Waiver (LREW) forms.



**Response:** TCEQ appreciates the feedback from TxDOT and confirms that the CGP application forms have been developed to allow applicants to select either “highway/road” *or* “utility” as separate options.

9. **Comment:** CRI recommends that the approved TCEQ paper forms referenced throughout the proposed CGP be made available as soon as possible to facilitate their review and allow for feedback.

**Response:** The application and site notice forms are updated by TCEQ staff to reflect changes in the CGP but are not made available to the public for formal review and comment with the proposed permit and Fact Sheet. TCEQ welcomes feedback at any time on how these forms can be improved by contacting TCEQ staff by email at [SWPermit@TCEQ.Texas.gov](mailto:SWPermit@TCEQ.Texas.gov). No changes were made in response to this comment.

### **Part I.B.**

10. **Comment:** TxDOT suggests that TCEQ revise the proposed definition of “dewatering.” TxDOT recommends that the definition be revised to match language in other sections of the permit and proposes the term “excavations” be included in the definition as follows:

“the act of draining accumulated stormwater or groundwater from building foundations, vaults, trenches, excavations and other similar points of accumulation.”

**Response:** The proposed definition for dewatering is consistent with the definition in EPA’s 2022 CGP and the phrase “and other similar points of accumulation” is intended to encompass excavations. To clarify, the Fact Sheet, Part IV.C. of the CGP, and 40 CFR §450.21 indicate dewatering discharges, including dewatering from excavations, are permissible under the permit if managed with appropriate controls. No changes were made in response to this comment.

### **Part II.A.**

11. **Comment:** TxDOT comments that the definition for non-stormwater discharges originating from routine washing activities is inconsistent. TxDOT comments that Part II.A.3.b of the proposed permit and Part III.C.3. of the Fact Sheet and Executive Director’s Preliminary Decision document provide inconsistent definitions for non-stormwater discharges originating from routine washing activities. TxDOT requests that if TCEQ’s intent is to no longer allow pressure washing under the CGP, then the Fact Sheet be revised to describe the available permitting mechanism to authorize pressure washing activities. TxDOT comments that TCEQ needs to define what would be considered pressure washing (e.g., specify a PSI level).

**Response:** TCEQ acknowledges the feedback provided by TxDOT and the Fact Sheet has been revised to remove the “where pressure washing is not conducted” language to establish consistency with the proposed permit.

Pressure washing is an allowable non-stormwater discharge. Pressure washing is not defined, as it is not a term used in this permit. No changes were made to the CGP in response to this comment.

12. **Comment:** AEP comments that the allowable non-stormwater discharge list combined existing bullets point b.) and c.). AEP recommends that TCEQ expand the consolidated list in order to improve readability.

**Response:** TCEQ agrees and Part II.A.3 of the CGP has been revised to separate the combined items b.) and c.) noted by AEP.

#### Part II.C.

13. **Comment:** TxDOT comments that the requirement for operators to submit a copy of the NOI to the regional office for sites within ten miles upstream of the Edwards Aquifer is redundant and unnecessary. TxDOT comments that TCEQ receives the NOI through STEERS and it would be more efficient for TCEQ to handle these intra-agency communications internally. TxDOT requests that TCEQ remove the requirement to submit a copy of the NOI to the TCEQ regional office for discharges within ten stream miles upstream of the Edwards Aquifer recharge zone.

**Response:** 30 TAC § 213.5 requires notification of construction activities to the TCEQ regional office and the requirement is included in all stormwater general permits. This notification ensures that the TCEQ regional office is notified of new construction stormwater discharges in the Edwards Aquifer Recharge Zone and in most of the Edwards Aquifer Contributing Zone. No changes were made in response to this comment.

#### Part II.E.

14. **Comment:** LCRA and AEP recommend that submittal of the Delegation of Signatories forms be submitted by corporation/business or Customer Number (CN) and not per project. Additionally, AEP requests that TCEQ allow Delegation of Signatories forms be submitted either via STEERS or the TCEQ approved form, irrespective of project size. AEP comments that submitting Delegation of Signatories forms per project will complicate and delay the permitting process for their company.

AEP comments that they anticipate a delay in coverage for automatic authorizations in order to accommodate time to prepare and submit the TCEQ Delegation of Signatories form via mail and that additional time and coordination will be required if a “wet ink signature” is required on the TCEQ submittal. AEP comments that with the added delays and coordination requirements, the benefits of obtaining automatic coverage for small projects becomes obsolete.

**Response:** The new Delegation of Signatories form in the STEERS system must be applied to a specific authorization. The STEERS Delegation of Signatories form allows searches by CN and the option to apply the form to either all authorizations or individual authorizations associated to the CN. This allows operators to easily submit one Delegation of Signatories form for all authorizations associated with a specific CN. No changes were made in response to this comment.

15. **Comment:** LCRA requests a STEERS option for submitting the Delegation of Signatories for small sites. LCRA comments that the permittee could submit the STEERS Delegation of Signatory form associated with a CN number, and keep a copy of the delegation form in the SWP3. This would allow TCEQ to have an electronic copy of all delegation forms for small construction activities without the burden on the permittee to mail a paper copy for each small construction activity.

AEP comments that requiring different submittals for large and small projects will require AEP to submit identical delegations via two different platforms.

CSES requests clarification if Delegation of Signatories forms must be submitted on paper forms for small sites. CSES comments that they hope for all electronic submittals this permit cycle.

**Response:** At this time, TCEQ cannot accept Delegation of Signatories for small construction site authorizations through STEERS. Small construction site operators are not required to submit an NOI to TCEQ; therefore, they do not have an authorization number and may not be associated to a CN, or regulated entity number to identify the site in STEERS. TCEQ will continue research efforts to determine the feasibility of electronic Delegation of Signatories form submissions for small construction sites. Small construction site operators must continue to submit a Delegation of Signatories form via mail with a “wet” signature as required in 30 TAC § 305.128 (relating to Signatories to Reports). No changes were made in response to this comment.

16. **Comment:** TxDOT urges TCEQ to not add a requirement to submit a delegation of signature authority with every NOI in STEERS and a paper copy for every small construction site. TxDOT also comments that it is not clear how TCEQ plans to manage the Delegation of Signatories submittals for small construction sites if they are not already collecting relevant site information and creating regulated entity numbers.

TxDOT comments that it is redundant to require the submittal of the Delegation of Signatories form and require a copy to be kept in the SWP3, when TCEQ theoretically would already have a copy of it. If TCEQ insists that a copy of the Delegation of Signatories form be submitted to the agency, TxDOT requests the requirement that it be kept with the SWP3 be removed.

**Response:** TCEQ acknowledges TxDOT’s feedback, however, 30 TAC § 305.128 (relating to Signatories to Reports) requires that reports be signed by the appropriate signatory and if signatory authority is delegated by an authorized representative, then a copy of the formal notification must be submitted to TCEQ. For those small sites without an associated RN or CN, TCEQ currently associates the form to the customer by the name provided on the form for physical document filing.

The Delegation of Signatories form is required to be kept in the SWP3 so that on-site staff know that a Delegation of Signatories form for the site was submitted to TCEQ and to determine who has been delegated to sign the reports. Records are required to be maintained on-site to demonstrate compliance with the CGP during inspections by any local, state, or federal agency. No changes were made in response to this comment.

17. **Comment:** Lennar and Merit comment that the language in Part II.E.3.(b) repeats “prior to,” and should be revised as follows: “...at least seven (7) days ~~prior to~~ prior to commencing construction activity...”

**Response:** TCEQ has made the necessary revisions in the CGP as requested.

18. **Comment:** TxDOT requests that TCEQ consider an exemption to the proposed requirement for site notices to remain in place until final stabilization is achieved in arid, semi-arid, and drought-stricken regions that are having issues achieving final stabilization. TxDOT comments that the requirement to maintain a posting in a location where no active construction activities are ongoing becomes burdensome and

nonsensical. TxDOT also comments that it can pose a safety issue in the long term as it continues to be a freestanding object within the right-of-way that can be impacted during a collision.

TxDOT comments that TCEQ has the location for all sites that have filed NOIs as GPS coordinates and site location information are submitted to create the Regulated Entity Number (RN), so TCEQ can use internal databases to locate responsible parties if there are erosion and maintenance issues.

TxDOT recommends the following modification be made to the proposed new requirement in all sections of the permit where TCEQ proposes to add the requirement to maintain the site notice until final stabilization:

“The site notice must be located where it is safely and readily available for viewing by the general public, local, state, and federal authorities prior to commencing construction activities, and must be maintained in that location until completion of the construction site final stabilization has been achieved, or in arid, semi-arid, and drought-stricken regions until the completion of the construction at the site.”

**Response:** Operators of small construction activities, as defined in Part I.B of this general permit, are not required to submit an NOI for coverage, unless otherwise required by the Executive Director. Posting the Small Construction Site Notice provides the general public, local, state, and federal authorities assurance that the construction site has permit coverage, provides information on who to contact if there is a problem, may facilitate reporting by the public, and is consistent with the requirements of the EPA CGP.

Final stabilization must be achieved for all authorization types prior to either submitting Notice of Termination (NOT) for large construction site operators or prior to removal of a site notice for small construction site operators.

Operators can claim final stabilization for arid, semi-arid, and drought-stricken sites when both criteria outlined in the “final stabilization” definition in Part I, Section B of the CGP are met. No changes were made in response to this comment.

19. **Comment:** TxDOT requests that TCEQ revise its construction site notice templates as the current templates for large and small construction sites do not designate whether the operator is Primary with “day-to-day” operational control, or “control of plans and specifications,” or both.

**Response:** The control type for each primary operator may be described in the SWP3 for the project and made available to inspectors. TCEQ notes that the purpose of the site notice is to provide the public and inspectors who drive past the site, in one easy to read page, assurance that the construction site has permit coverage, provide information on who to contact if there is a problem, and to identify the operator. The inclusion of the requested information in the TCEQ Site Notice form goes beyond the intent of the site notice and adding the additional information to the site notice template would make the site notice harder for the public or inspectors to read.

20. **Comment:** TxDOT comments that in Part II.E.8.e. of the proposed permit, TCEQ added a requirement to include in an NOI the estimated construction project start date and end

date. TxDOT requests that TCEQ provide clarification regarding whether an NOC will be required for NOIs if the project start or end date changes.

**Response:** Operators are not required to submit an NOC if the estimated start or end dates for the project change after submittal of the NOI. TCEQ notes that these dates are estimates only and may be changed. If changes occur due to unforeseen circumstances or for other reasons, the requirement to include this information in the NOI is not meant to lock in the operator to meeting these projections. Departures from initial projections should be documented in the SWP3 or in associated records, as appropriate. No changes were made in response to this comment.

21. **Comment:** TxDOT comments that TCEQ needs to provide more clarification about what requires an NOC. TxDOT requests that TCEQ remove “may include, but not limited to” in Part II.E.6.b. of the CGP and replace it with a specific list of requirements. TxDOT comments that NOCs are generally administrative in nature and TCEQ should be able to set specific administrative requirements and provide an inclusive list, with little to no interpretation needed on the part of the regulated party.

**Response:** TCEQ application forms are not described in detail as this allows for flexibility for TCEQ to improve the forms during the permit term, as needed, in response to feedback from stakeholders, changes in rules, or changes in TCEQ policy. Operators should refer to the NOC form in STEERS or for paper applications TCEQ-20391 for instructions and guidance on what changes are necessary to submit to TCEQ. No changes were made in response to this comment.

22. **Comment:** TxDOT requests that TCEQ clarify the meaning of the phrase, “any MS4 receiving the discharge” for the purposes of the notification requirements outlined in Part II Sections E.1.e; E.2.d; E.3.d; E.3.g. E.6; F.1.12. TxDOT comments that the CGP does not provide any guidance regarding how to determine whether an MS4 “receives the discharge” from a construction site, and if so, which MS4(s) “receive the discharge.”

TxDOT urges TCEQ to develop a publicly accessible geospatial database where MS4 operator boundaries are documented, as well as contact information for those boundaries. TxDOT comments that there is a database called the “Water Quality Search Engine,” to search regulated entities within the MS4 operators’ boundaries, but this search engine does not contain contact information for the entity. TxDOT comments that TCEQ staff has stated that the only way to obtain that information is with an open records request which is inefficient when there are technologically advanced options available that many MS4 operators themselves have already implemented. TxDOT comments that if TCEQ expects the regulated community to follow permit requirements, then they need to make available the necessary information to do so.

TxDOT also comments that TCEQ should work towards a technological solution that automatically notifies MS4 operators when an applicant has determined a discharge from their site will go to an MS4.

**Response:** The CGP requires each construction site operator to notify the operator of any MS4 receiving the stormwater discharge from the construction site, regardless of whether the MS4 is regulated by TCEQ or not. TCEQ has information for regulated MS4s including mailing address that may be used for notification purposes. Contact information for TCEQ MS4 permit authorizations may be obtained from Central Registry currently at [https://www.tceq.texas.gov/permitting/central\\_registry](https://www.tceq.texas.gov/permitting/central_registry).

Not all MS4s in Texas are regulated and TCEQ does not maintain information on MS4s that are not regulated. Construction site operators should contact the nearest city, county, or drainage district to their project to identify the MS4 receiving their discharge. Operators may find the appropriate MS4 by reviewing the water and sewer provider information for the site or other similar resources. Many MS4s maintain webpages that provide contact information for this purpose.

TCEQ appreciates the suggestion for a publicly accessible geospatial database of MS4 operators and automatic notification to MS4 operators of CGP sites. These solutions cannot currently be implemented for a variety of reasons, for example, TCEQ does not receive:

- geospatial information from any MS4s,
- contact information for non-regulated MS4s, and
- applications from small construction site operators.

TCEQ updated the Stormwater Construction Webpages currently accessed at <https://www.tceq.texas.gov/permitting/stormwater/construction> to assist operators in identifying the appropriate MS4 operators and their contact information.

No changes were made in response to this comment.

#### **Part II.F.**

23. **Comment:** Bexar comments that for several projects the primary and secondary operators filed a Notice of Termination (NOT) when the 70% stabilization was not achieved and that the temporary BMPs were not removed from the site.

Bexar comments that this creates several issues, including but not limited to sediment runoff issues and injuries for the citizens. Bexar recommends adding language to the CGP that a verification letter from the local MS4 indicating that the permittee is ready to file the NOT be required before TCEQ accepts the NOT application request. Bexar comments that this verification letter may be uploaded to STEERS which will help TCEQ staff reviewer to verify if the NOT request can be granted or not.

**Response:** TCEQ requires operators to certify that final stabilization has been achieved to submit the NOT. This certification is used by TCEQ to ensure that operators comply with final stabilization. It is not within TCEQ's authority to require documentation from local authorities to approve an NOT. An additional form is not necessary as MS4s may use the certification to address operators that have terminated prematurely. MS4s may file a complaint with TCEQ to address these situations, if the MS4's enforcement authority is limited. No changes were made in response to this comment.

#### **Part III.A.**

24. **Comment:** TxDOT requests that TCEQ not include the requirement for a shared SWP3 to include the signature of each operator participating in the shared SWP3 in the renewed version of the CGP. TxDOT comments that the requirement is redundant, unnecessary, and burdensome, especially for a large state agency like TxDOT that coordinates many site operations with many different contractors operating under the CGP. TxDOT also comments that TCEQ should consider this similar to the administrative burden TCEQ recognizes to allow for small site operators to not submit NOIs.

TxDOT comments that when they, and similar agencies, hire a contractor to construct a highway project, both TxDOT and the contractor are primary operators. This means both TxDOT and the contractor must already:

- Sign and file separate NOIs and therefore must confirm that an SWP3 has been developed in accordance with the CGP, and that it will be implemented prior to commencement of construction activities.
- Post their own separate site notices as required by the CGP, including identifying the respective operator's location of the SWP3, and signed certification that the SWP3 will be implemented prior to construction.

TxDOT comments that by referencing the SWP3, the signed certification in the NOI or site notice already shows that each operator is aware of and agrees to the specific items regarding who is responsible for what in the SWP3 and there is no reason to also require signatures of both operators on the SWP3 itself. TxDOT comments that there is no such requirement for SWP3s developed by a single operator.

TxDOT also comments that TCEQ's rule requiring signatures applies only to "applications." TxDOT notes that in 30 TAC § 305.44, an "application" is defined as "a formal written request for commission action relative to a permit or a post-closure order, either on commission forms or other approved writing, together with all materials and documents submitted to complete the application." TxDOT comments that an SWP3 is not a document that is submitted with an application that is submitted to TCEQ and the rule requiring a signature does not apply to an SWP3.

TxDOT comments that the burden associated with collecting signatures on the SWP3 from both TxDOT personnel and contractors is substantial, especially when considering all the other administrative requirements in the CGP, and the number of highway projects being undertaken across the state at any given time.

**Response:** Certification from each operator participating in the shared SWP3 is necessary and ensures that all parties acknowledge and are held responsible to ensure compliance with the CGP and the contents of the shared SWP3. The shared SWP3 signatures also demonstrate to the participating operators the commitment of each operator to implement the SWP3 requirements. Operators may elect to develop and implement individual SWP3s, which do not require a signature, instead of a shared SWP3. TCEQ agrees that the signature of each operator in the SWP3 is not subject to 30 TAC § 305.44. No changes were made in response to this comment.

### **Part III.D**

25. **Comment:** TxDOT, EWE, CRI, Mr. Savage, Lennar, Merit, and Terradyne comment that TCEQ should modify the CGP to allow for operators to maintain an electronic SWP3. Terradyne and Lennar and Merit comment that digital documents are widely accepted and that technological platforms and devices are available for this purpose. Specifically, Lennar and Merit recommend revising the permit language to specify that the use of an electronically available SWP3 in lieu of a paper copy is allowed.

TxDOT and Mr. Savage recommend that TCEQ include similar language to the footnotes included in EPA's CGP regarding electronic SWP3s.

CRI recommends the CGP specify that if the SWP3 is maintained electronically, a notice must be posted with a Uniform Resource Locator (URL) of the SWP3.

**Response:** In response to these comments, the permit language in Part III.D.1. of the CGP has been revised as follows to add the following note:

“NOTE: The SWP3 may be prepared and kept electronically, rather than in paper form, if the records are: (a) in a format that can be read in a similar manner as a paper record; (b) legally valid with no less evidentiary value than their paper equivalent; and (c) immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form.”

TCEQ also notes that although the CGP SWP3 may be prepared and kept electronically, all reports requested by this permit must be either signed in “wet ink” in accordance with 30 TAC § 305.128 and § 305.44 or submitted online in the STEERS/ePermitting system provided by TCEQ. The STEERS/ePermitting system does not require “wet ink” signatures as this system is approved and Cross-Media Electronic Reporting Rule (CROMERR) compliant which ensures the same enforceability and legal sufficiency of information collected electronically as the corresponding paper submittal.

### **Part III.F.1**

26. **Comment:** TxDOT comments that the requirement for operators to maintain a copy of the CGP in the SWP3 should be removed. TxDOT comments that if TCEQ would not remove the requirement, operators should be able to instead include a link to the CGP. TAB, Lennar, and Merit also comments that TCEQ should allow for operators to maintain an electronic copy of the CGP such as adding the language “an electronic copy easily available to the stormwater team is also acceptable” or “an electronic copy that is readily accessed and available is also acceptable” to the requirement in Part III.F.1(j).

**Response:** TCEQ notes that the purpose of the requirement to include a copy of the CGP in the SWP3 is that it ensures operators have a copy of the CGP for reference, particularly in the event changes occur at the construction site that requires revision of the SWP3. Additionally, if there are multiple operators at the site, having the CGP as part of the SWP3 helps ensure that each operator understands their responsibilities under the permit. TCEQ declines to remove the permit requirement to include a copy of the CGP in the SWP3.

TCEQ agrees that an electronic copy of the CGP referenced in the SWP3 is acceptable and the language in Part III.F.1.(j) of the CGP has been revised as follows:

“a copy of this TPDES general permit (an electronic copy of this TPDES general permit or a current link to this TPDES general permit on the TCEQ webpage is acceptable);”

27. **Comment:** CRI comments that TCEQ should clarify Part III.F.1.(g)i. as to whether property boundaries required for site maps must include the entire extent of any property within the boundaries of the construction site or just what is in the disturbed area within the boundaries of construction. CRI recommends that alternatively, TCEQ provide specific guidance for linear projects where only a small portion of the property will be disturbed and providing the entirety of the property boundary provides little to no value.



**Response:** Site maps are intended to depict the area where construction will occur. Site maps must include the property boundaries for the intended project area and can be updated during construction if information changes. Where the inclusion of the property boundaries for a linear project would result in a single map being difficult to read and interpret, the operator is required to develop a series of maps that collectively include the required information for site maps. No changes were made in response to this comment.

28. **Comment:** Bexar recommends that TCEQ add a definition of the property boundary(ies), (i.e., plat, parcel, lot boundaries) referenced in Part III.F.1.(g)i.

**Response:** TCEQ did not define property boundary(ies) because TCEQ means the common use of the term. No changes were made in response to this comment.

29. **Comment:** Bexar comments that for Part III.F.1.(g)vii, regarding surface waters identified in the site map, the requirement to display surface waters at the site is clear; however, surface waters adjacent to the site or in close proximity of the site is always a debate between the consulting engineers and the regulatory agencies.

Bexar recommends replacing the “adjacent to or in close proximity” language with a specific distance such as X feet from the property boundary identified in (g)(i).

**Response:** Surface waters adjacent to or in close proximity to the site means any receiving waters within the site and all receiving waters within one mile downstream of the site’s discharge point(s). The clarification to display surface waters within one mile downstream of the site’s discharge is consistent with EPA’s 2022 CGP. TCEQ has added this clarification as a note to the permit in response to this comment.

#### **Part III.F.2.**

30. **Comment:** TxDOT comments that TCEQ added a clarification in Part III.F.2.(c).i.(A).(1) of the proposed permit that existing retention/detention ponds may not be appropriate for use as a sedimentation basin and TCEQ should provide written guidance on how this clarification will be interpreted in the design and field application. TxDOT comments that the word “may” is ambiguous and asks if this means TCEQ is allowing the use of existing detention/retention ponds or that in no case “may” an operator use an existing detention/retention pond.

**Response:** TCEQ notes that the design of sedimentation basins is not specified by the CGP. TCEQ will update the existing CGP guidance currently at <https://www.tceq.texas.gov/assistance/water/stormwater/sw-construction.html> to describe how sedimentation basins are expected to work to assist operators in determining how to implement them at their site.

The use of the word “may” in Part III.F.2.(c)i(A)(1) of the CGP is intended to describe that operators have the option to use existing detention or retention ponds in cases where it is appropriate for the site. No changes were made in response to this comment.

#### **Part III.F.4.**

31. **Comment:** TxDOT comments that in Part III.F.4.a. of the proposed permit, TCEQ attempted to clarify the intent to minimize dust by using similar language from EPA’s CGP, however for the regulated community this makes things less clear than the original permit language. TxDOT requests that TCEQ provide updated guidance on how the new

language will be interpreted by TCEQ regional investigators as the language makes it seem that only dust that ends up in stormwater is required to be considered in the SWP3 and not air pollutants.

**Response:** The proposed change is to clarify this general permit is only regulating sediments in stormwater from dust and not the generation of dust. The CGP only regulates discharges of stormwater. To comply with this permit operators must implement best management practices to reduce dust in stormwater. No changes were made in response to this comment.

### **Part III.F.7**

32. **Comment:** TxDOT comments that it is unclear why the added dewatering inspection requirements to Part III.F.7. of the proposed permit are needed and why the current inspection schedules in Part III.F.810 are insufficient. TxDOT also comments that the daily inspection requirement would create a burden on the construction workforce. TxDOT comments that TCEQ should not add this requirement unless there is data establishing that current inspection schedules are insufficient.

**Response:** TCEQ recognizes that dewatering activities represent a potentially significant source of pollutants at a construction site. For example, the high rate of flow from dewatering activities creates the potential for significant pollutant discharge if the controls are not working effectively or designed properly when compared to other controls such as silt fences. In response to other comments, TCEQ revised the permit language in this section to refer to “observations and evaluations” instead of “inspections.” Increased observation and evaluation give operators the opportunity to identify issues sooner and to respond with the appropriate urgency for the situation. Requiring increased evaluation of dewatering activities will be especially effective given the operator’s control over the discharge, including the ability to immediately shut off the discharge if necessary to evaluate and fix a problem on the site. No changes were made in response to this comment.

33. **Comment:** Lennar and Merit comment that the requirement in Part III.F.7 would require daily inspections, even if the water remains completely on the project site and does not enter a surface water of the State and is unnecessarily burdensome for the regulated community.

Lennar and Merit comment that trench and excavation dewatering generally: do not occur on a fixed schedule; is dependent on precipitation and site conditions; and availability of contractors at the site. Lennar and Merit comment that it is overly burdensome to monitor subcontractors and schedule dewatering times; sometimes they may only run the dewatering pumps for short periods of time.

Lennar and Merit comment that many operators in the State employ the use of third-parties to conduct and document regular and post-storm inspections. Many local agencies require inspectors to hold other qualifying certifications such as Certified Inspector of Sediment and Erosion Control (CISEC) or Certified Erosion, Sediment, and Stormwater Inspector (CESSWI). Third-party inspectors would be required to return to the site each day in the event there could be dewatering activities, or risk missing a dewatering event creating an undue economic burden for the permittees and the inspectors in the form of additional time, fuel, and labor.

CRI comments that they conduct over 800 stormwater inspections each week throughout Texas and any daily inspection requirement for dewatering would lead to widespread and unnecessary non-compliance due to the inability of operators and consultants to provide enough qualified personnel for dewatering inspections.

TAB comments that daily inspections present many burdens especially for qualified personnel where required by many municipalities.

Lennar and Merit comment that the intent of Part III, Section F.7 can be better addressed by requiring the Operator in control of the dewatering activities to provide daily monitoring of the dewatering operations and control measures and the qualified BMP inspector would still provide a thorough BMP inspection during the regular and post-storm inspections. Lennar and Merit recommend revising several parts of Part III.F.7., including changing “inspections” to “monitoring,” removing the reporting requirements, as well as several other changes.

TAB and CRI comment that instead of inspections, dewatering operations should be monitored daily by any operator conducting dewatering operations.

**Response:** TCEQ agrees with the commenters regarding inspections for dewatering discharges not leaving the site. The language in Part III.F.7.(a) of the CGP has been revised to clarify that the additional inspections are only required for dewatering discharges leaving the site.

TCEQ does not require inspectors to have specific certifications, however, TCEQ understands that municipalities often require inspectors identified in the CGP to hold specific certifications. To address these concerns, TCEQ revised Part III.F.7. to replace “inspect” with “observe and evaluate.”

Part III.F.7.(b)i.(C) was revised as follows:

“(C) approximate times that the dewatering discharge began and ended on the day of evaluation, or if the dewatering discharge is a continuous discharge that continues after normal business hours, indicate that the discharge is continuous inspection (this information can be reported by personnel initiating the dewatering discharge);”

Operators would still be required to provide daily oversight of the dewatering controls and document the observation and evaluation of these controls in a written report to be maintained in the SWP3.

34. **Comment:** Lennar and Merit comment that water pumps are rated for a specific maximum discharge rate but do not frequently operate at their maximum rate due to varying factors such as hose diameter, engine efficiency, length of suction and discharge hoses, topography (pumping up or downhill), and many other factors. Therefore, it is impracticable for a BMP inspector to provide estimates of daily pump rates. Lennar and Merit comment that BMP inspectors may not observe the times that the dewatering discharge began and ended on the day of inspection. If the dewatering activities are continuous (i.e., lasts for multiple days or weeks), this would require daily inspections throughout the entire dewatering event.

**Response:** TCEQ understands that it is not possible for operators to know the exact discharge rate during dewatering events and only requires that an estimate be provided

based on best professional judgment given the equipment and site conditions for the dewatering event. In response to other comments TCEQ revised this permit language to refer to observations and evaluations instead of inspections. TCEQ also acknowledges that the individuals performing the observation and evaluation of controls may not witness the start and end of dewatering activities but can obtain this information from other personnel on site to include in the written report. To clarify, Part III.F.7.(b)i.(C) of the CGP has been revised as follows:

“approximate times that the dewatering discharge began and ended on the day of evaluation, ~~inspection~~ or if the dewatering discharge is a continuous discharge that continues after normal business hours, indicate that the discharge is continuous (this information can be reported by personnel initiating the dewatering discharge);”

#### **Part III.F.8.**

35. **Comment:** TxDOT comments that they support the addition of Part III.F.8.e and Part III.F.8.f. relating to adverse conditions that impact inspections to the proposed permit.

**Response:** TCEQ acknowledges TxDOT’s comment in support of the new language allowing temporary suspension of inspections in adverse conditions.

36. **Comment:** Stormcom comments that there is not an exemption if an inspection day falls on a federal holiday such as Christmas, Thanksgiving, 4th of July, MLK Day, etc., and requests that the CGP include a federal holiday inspection exemption.

TAB comments that there are many burdens and impracticalities with conducting inspections during rain events as described in Part III.F.8.(c)i.(B) and, therefore, TAB requests that inspections be conducted on the last day of a multi-day rain event that exceeds 0.5 inches during the extended period.

Lennar and Merit comment that it is impractical and burdensome to permittees to require multiple inspections during a multiple-day rain event. Lennar and Merit also comment that multiple inspections may not result in timely correction of a problem during a multiple-day storm event. Construction sites are more likely to be inaccessible by workers or machinery during a prolonged rain event; and maintenance operations can only occur after areas where BMPs are installed have dried sufficiently to allow access. In many cases, corrective actions could not occur until after the last inspection of the multiple-day storm event is completed.

Lennar and Merit also comment that in addition to the 14-day inspection with post-storm inspections schedule proposed in the draft permit, many MS4 and Edwards Aquifer Protection Program entities already require BMP inspections to occur every seven days and within 24 hours of a half inch or greater rain event which already increases the number of inspections that are required to occur at sites within these respective jurisdictions. Lennar and Merit comment that the addition of another inspection frequency for multiple-day rain events will cause redundant inspections to occur.

Lennar and Merit also comment that accessing the site during saturated conditions could place the inspector in additional danger due to increased risk of slipping and falling, exposure to lightning and flooding, and the possibility of vehicles getting stuck or causing accidents due to reduced traction.

Lennar and Merit request that Part III, Section F. 8.(c)i.(B) of the draft permit be modified to remove the requirement to inspect within 24 hours after the last day of the storm.

TAB comments that the restriction to change inspections schedules only in the first five days of the calendar month appears to have no clear reasoning and no environmental benefit. TAB requests that TCEQ remove this requirement.

Lennar and Merit comment that this limited timeframe does not recognize the dynamic changes that can occur on a project site where site conditions that would trigger the ability of the permittee to change their inspection frequencies — such as frozen conditions, arid, semi-arid, or drought-stricken areas, etc. — occur indiscriminately and not on schedule. Lennar and Merit recommend that Part III, Section F.8(c)vi of the draft permit be modified as follows:

“the inspection procedures described in Part III.F.8.(c)i. - v above can be performed at the frequencies and under the applicable conditions indicated for each schedule option, provided that the SWP3 reflects the current schedule ~~and that any changes to the schedule are made in accordance with the following provisions: the inspection frequency schedule can only be changed within the first five (5) calendar days of a calendar month;~~ and the reason for the schedule change documented in the SWP3 (e.g., end of “dry” season and beginning of “wet” season).”

**Response:** TCEQ agrees with Stormcon’s suggestion to clarify when inspections must occur if the inspection-triggering storm event occurs outside of normal working hours, such as on a federal holiday. TCEQ added language to Part III.F.8.(c) of the CGP clarifying that when the 24-hour inspection time frame occurs entirely outside of normal working hours, the operator must conduct an inspection by no later than the end of the next business day.

The added language in Part III.F.8.(c)i. is included to clarify the inspection requirement when storm events span multiple days. During Stakeholder meetings, stakeholders indicated to TCEQ that this has been the more common interpretation of the 24-hour deadline rather than daily inspections during multi-day storm events. If problems are identified during a multi-day rain event, and if the rain prevents operators from correcting problems right away, the early detection allows for corrections to be prepared for on the first available day to implement them. Inspections are not required during adverse conditions.

Part III.F.8.(c).vi. of the existing CGP restricts changes of an inspection frequency to once per calendar month and requires implementation at the beginning of a calendar month. The specification of the first five calendar days was included in the proposed CGP to clarify the intent of this section. The TCEQ finds that this limitation to changes in inspection frequencies prevents operators from changing inspection frequencies too often which can lead to inconsistency in the implementation of inspections at the site. However, TCEQ agrees that the limit of the first five calendar days may be challenging for operators to implement in cases where a holiday falls in the first five calendar days of the calendar month. Therefore, this section of the CGP has been revised as follows:

“the inspection frequency schedule can only be changed a maximum of once per calendar month and implemented within the first five (5) business ~~calendar~~-days of a calendar month”

#### Part IV.C.

37. **Comment:** Lennar and Merit recommend that Part IV, Section C of the draft permit be modified to read:

“Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited, unless managed by appropriate controls to address sediment and prevent erosion. Operators in control of the dewatering activities must ~~perform an inspection of~~ monitor the dewatering controls once per day while the dewatering discharge occurs as described in Part III.F.7. of this general permit

**Response:** TCEQ partially agrees with this comment and Part IV.C of the CGP has been modified to replace “perform an inspection” with “observe and evaluate.”

38. **Comment:** Terradyne comments that after heavy rain events, sites may have numerous contractors dewatering different areas of the site and capturing data such as start/end time, rate of discharge seems impractical. Terradyne asks the following questions: “What constitutes dewatering activity? Should there not be a minimal amount in gallons defined? Any suggestions as to how to accomplish this? Is cleaning a clogged rock filter dam or storm drain inlet protector that’s holding water considered de-watering?”

**Response:** TCEQ acknowledges that the individuals performing the observation and evaluation of controls may not witness the start and end of dewatering activities but can obtain this information from other personnel on site to include in the written report. In response to this comment and other similar comments, Part III.F.7.(b)i.(C) of the CGP has been revised as follows:

“approximate times that the dewatering discharge began and ended on the day of evaluation, inspection or if the dewatering discharge is a continuous discharge that continues after normal business hours, indicate that the discharge is continuous (this information can be reported by personnel initiating the dewatering discharge);”

The term dewatering is defined in Part I, Section B of this permit as “the act of draining accumulated stormwater or groundwater from building foundations, vaults, trenches, and other similar points of accumulation.” All discharges described by the dewatering definition included in this permit are subject to the terms and requirements of Part IV, Section C. Cleaning a clogged rock filter dam or storm inlet protector is not considered dewatering. No changes were made in response to this comment.

#### Part IV.D.

39. **Comment:** TAB, Lennar, and Merit recommend that TCEQ revise the language in Part IV.D.3 of the draft permit to better align with the waste container requirements prescribed in Part 2.3.3.e(ii) of the EPA CGP. TAB, Lennar, and Merit request that Part IV.D.3 of the draft permit be modified to include additional language about how minimizing exposure is not required when exposure will not result in a discharge of pollutants or poses little risk of contamination.

**Response:** TCEQ agrees with the commenters and Part IV.D.3 of this permit has been modified to add the following language:

“Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use);”

40. **Comment:** BEC comments that the current permit language utilizing the definition of “infeasible” for the exception to surface withdrawal does not clearly include utilizing a control device to simultaneously address both sediment and floatable materials. BEC comments that adding an option to utilize a near surface withdrawal structure control measure would provide a greater protection of water quality discharge at sites with existing less-dense-than water material storage or contamination, particularly sites near petroleum storage facilities. BEC also comments that utilizing near surface withdrawal also contributes to better compliance with Parts IV.D.5 and IV.E of the general permit by controlling discharges from spills, leaks, and prohibited discharges. BEC comments that this item was addressed in a previous response to comments and inclusion of this topic within the actual permit language is much easier for permittees to find and understand.

BEC recommends that Part III.F.2.c.i.4 and Part IV.F. be revised to add language about how operators are required to utilize an outlet structure that withdraws water from the surface unless infeasible or necessary to capture sediment and address contamination at the surface of the water.

**Response:** Consistent with EPA’s 2022 CGP, Part IV.F. of this permit includes, “[w]hen discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible.” This permit allows enough flexibility for the use of near-surface withdrawal structures to prevent the discharge of petroleum or other pollutants floating at the surface. The operator would be required to document the reasons for the location of the withdrawal structure in their SWP3. No changes were made in response to this comment.

41. **Comment:** Lennar and Merit comment that to meet the requirement in Part IV, Section F. to withdraw water from the surface of any impoundment, many regulatory agencies allow for floating skimmer devices, floating pump intake hoses, weir overflow devices, among others. Lennar and Merit comment that some agencies restrict the use of these methods in favor of devices that provide filtration, such as perforated riser pipes wrapped with filter fabric which are included in TCEQ regulatory guidance, *Complying with the Edwards Aquifer Rules* (RG-348) as a discharge method.

Lennar and Merit comment that clay particles stay in suspension for long periods of time and therefore, requiring the outlet structure to withdraw of water from the surface will still allow the discharge of turbid water offsite. Lennar and Merit comment that there are municipalities in other States that prefer the use of a perforated riser pipe with a sediment filter media (e.g., filter fabric, stone, etc.) to reduce the potential for discharging turbid water offsite.

Lennar and Merit recommend providing the permittees with greater flexibility on implementing appropriate outlet structure types by modifying Part IV, Section F. of the draft permit to specify that outlet structures can include surface skimmers or

perforated riser pipes rather than specify that they must utilize outlet structures that withdraw water from the surface.

**Response:** This section of the CGP is consistent with EPA’s 2022 CGP. The language “unless infeasible” allows for operators to modify the device to comply with local or state rules. The operator would be required to document the reasons for the location of the withdrawal structure in their SWP3. No changes were made in response to this comment.

42. **Comment:** TAB requests that TCEQ provide more guidance to permittees on the allowable outlet structure types and, if applicable, how to determine the infeasibility of using allowable outlet structures in basins and impoundments.

**Response:** TCEQ appreciates the input from TAB requesting additional information. TCEQ will provide additional information about how operators can document infeasibility in the existing CGP guidance currently on the *Assistance Tools For Construction Stormwater General Permits* webpage at: <https://www.tceq.texas.gov/assistance/water/stormwater/sw-construction.html>.

### **Appendices**

43. **Comment:** TxDOT requests that TCEQ improve the CGP appendices to make them more user-friendly. TxDOT comments that the tables in Appendix A “Automatic Authorization” and Appendix D “Erosivity Indices for EI Zones in Texas” are a little difficult to read and interpret. TxDOT also comments that some counties, for example El Paso, have multiple eligible date ranges that run together, and the maps (Appendix B and C) are blurry and difficult to read and interpret as well.

**Response:** Appendices A, B, C, and D are adapted from Chapter 2 of USDA Agriculture Handbook 703: “Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE),” U.S. Department of Agriculture, Agricultural Research Service, originally published in 1997. Agricultural Handbook 703 is currently available online at <https://handle.nal.usda.gov/10113/11126> for further interpretation. Minor modifications to the appendices were made to improve interpretation. Use of these referenced materials will continue until the U.S. Department of Agriculture, Agricultural Research Service publishes updated guidance.



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**A RESOLUTION** in the matter of a Renewal with Amendment of a Texas Pollutant Discharge Elimination System General Permit Authorizing Discharges from Regulated Construction Activities; General Permit No. TXR150000; TCEQ Docket No. 2022-1047-MIS

**WHEREAS**, under Texas Water Code (TWC), § 26.121, no person may discharge waste or pollutants into or adjacent to any water in the state except as authorized by a rule, permit, or order issued by the Texas Commission on Environmental Quality (TCEQ or Commission);

**WHEREAS**, under TWC, § 26.027, the TCEQ has the authority to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state;

**WHEREAS**, under TWC, § 26.040, the TCEQ has the authority to issue a general permit to authorize the discharge of waste into or adjacent to water in the state;

**WHEREAS**, under TWC, § 26.131, the TCEQ has the authority to issue permits for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production and development of oil, natural gas, or geothermal resources;

**WHEREAS**, a renewal with amendment of a Texas Pollutant Discharge Elimination System (TPDES) general permit authorizing discharges of stormwater and certain allowable non-stormwater into or adjacent to water in the state from regulated construction activities in the state of Texas, was drafted and proposed by the Executive Director and is attached as Exhibit A;

**WHEREAS**, the TCEQ received public comments on the general permit, and drafted a Response to Public Comment, which is attached as Exhibit B;

**WHEREAS**, the Commission reviewed in accordance with Texas Natural Resources Code, § 33.205 and 30 Texas Administrative Code § 205.5(f) the changes to the general permit for consistency with the Texas Coastal Management Program (CMP) and found that the general permit is consistent with applicable CMP goals and policies and that the general permit will not adversely affect any applicable coastal natural resource areas as identified in the CMP;

**WHEREAS**, the Commission determined in accordance with TWC, § 26.040(a)(1) - (4) that the general permit would authorize dischargers who engage in the same or substantially similar types of operations, discharge the same types of waste, are subject to the same requirements regarding effluent limitations or operating conditions, and are subject to the same or similar monitoring requirements;

**WHEREAS**, the Commission finds in accordance with TWC, § 26.040(a)(5) that the general permit would apply to dischargers who are more appropriately regulated under a general permit than under individual permits and that:

(A) the general permit has been drafted to assure that it can be readily enforced and that the Commission can adequately monitor compliance with the terms of the general permit; and

(B) the category of discharges covered by the general permit will not include a discharge of pollutants that will cause significant adverse effects to water quality; and

**THEREFORE**, after consideration of all public comments and the responses to such comments, the Commission, by this resolution, hereby issues the general permit, attached as Exhibit A, as recommended by the Executive Director and as approved by the Commission during its February 22, 2023 public meeting. The Commission, by this resolution, also hereby issues the Executive Director's Response to Public Comment as approved by the Commission during its February 22, 2023 public meeting as the Commission's Response to Public Comment, attached as Exhibit B.

Furthermore, the Commission directs staff to make any non-substantive changes to the general permit and the Commission's Response to Public Comment to satisfy *Texas Register* format requirements and requests that the general permit and Commission's Response to Public Comment be made available to the public in accordance with the requirements of TWC, § 26.040(d) and 30 TAC § 205.3(e).

It is so **RESOLVED**.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Jon Niermann, Chairman

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Date Signed