TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for General Permit Adoption

AGENDA REQUESTED: August 14, 2024

DATE OF REQUEST: July 26, 2024

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Candice Slater, Texas Register Coordinator, (512) 239-6087

CAPTION: Docket No. 2023-0526-MIS. Consideration of the adoption of the renewal with amendment of the Texas Pollutant Discharge Elimination System Small Municipal Separate Storm Sewer System General Permit, TXR040000, which authorizes the discharge of stormwater and certain non-stormwater discharges to surface water in the state from small municipal separate storm sewer systems located in urban areas with a population of at least 50,000 people, as defined by the United States Census Bureau. Public notice of the proposed general permit was published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4684). (Rebecca L. Villalba, Aubrey Pawelka) (Non-Rule Project No. 2023-111-OTH-NR)

Cari-Michel La Caille
Director

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Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** July 26, 2024

Thru: Laurie Gharis, Chief Clerk
Kelly Keel, Executive Director

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

Docket No.: 2023-0526-MIS

Subject: General Permit: Commission Approval for Adoption
Renewal with Amendment of General Permit No. TXR040000
Project Number: 2023-111-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 municipal separate storm sewer systems (MS4s) located in an urban area with a population of at least 50,000 people. The general permit also authorizes certain allowable non-stormwater discharges. The renewal with amendment will replace the current permit which expired on January 24, 2024, and is administratively continued.

Basic requirements:

A. Applicability

The existing TPDES Small (Phase II) MS4 General Permit No. TXR040000 regulates discharges from small MS4s that are fully or partly located in urbanized areas (UAs), as defined by the U.S. Census Bureau in either the 2000 or 2010 Decennial Censuses.

B. Permit Requirements

Permit requirements in the existing "Two-Step or Procedural" general permit include the development and implementation of a comprehensive stormwater management program (SWMP) that includes measurable goals and best management practices (BMPs) to implement the six Minimum Control Measures (MCMs) of the general permit, compliance with applicable water quality standards, and an optional MCM for stormwater discharges from construction activities, where the MS4 is the site operator. Each MCM must be implemented to reduce the discharge of pollutants to the maximum extent practicable (MEP).

In the existing general permit, operators of small MS4s must develop and implement a SWMP and submit it along with a Notice of Intent (NOI) to the Texas Commission on Environmental Quality (TCEQ) to obtain authorization under this general permit. Technical reviews of NOIs and SWMPs are required to determine that they meet the MEP permit standard. In addition, a public notice with opportunity for the public to submit public comment and request a public meeting is required. Two waiver options are provided for a small MS4 that serves a population of less than10,000 or less than 1,000 within a UA.

C. Fees

The existing NOI application fee is $400, and the annual Water Quality fee is $100. A fee is not required for submission of a waiver application.

Number of current/expected authorizations:
The current universe of TPDES Small (Phase II) MS4 General Permits includes 527 MS4 authorizations and 42 waiver options authorized under this general permit. The number of newly regulated small MS4 operators seeking coverage under the general permit is expected to increase as a result of the 2020 Decennial Census, but an exact estimate cannot be determined at this time. The U.S. Environmental Protection Agency (EPA) is preparing the necessary data for each state to determine the new universe of regulated MS4s. Following the 2010 Decennial Census approximately 200 new small MS4s were added to the number regulated; a similar number of new small MS4s is expected to come in as a result of the 2020 Decennial Census.

Proposed changes from the current permit:

1. Revised the general permit to meet the Comprehensive General Permit option rather than the Two-Step or Procedural General Permit option under the *NPDES MS4 General Permit Remand Rule* (*Federal Register*, Vol. 81, No. 237, December 9, 2016). The Comprehensive General Permit option:
    a. clarifies all the terms and conditions required to meet the MS4 permit standard,
    b. provides public notice of the defined terms and conditions that will determine compliance for each permittee during the master general permit public notice process, and
    c. simplifies the permitting process for applicants by removing requirements for small MS4s to submit the SWMP to TCEQ with applications for review and approval; additionally, it removes the public notice requirements for NOIs, including the SWMPs, and certain Notices of Change (NOCs).
2. Updated language throughout the general permit to comply with the *NPDES Small MS4 Urbanized Area Clarification Rule* issued on June 12, 2023, by replacing the term "Urbanized Area or UA" with the phrase "urban area with a population of at least 50,000".
    a. Updated language in the permit for the small MS4s eligible for coverage under the general permit to encompass newly regulated MS4s located in urban areas with a population of at least 50,000 as determined by the 2020 Decennial Census by the U.S. Census Bureau.
    b. Clarified that MS4 levels for the 2024 Small MS4 General Permit are determined based on the 2020 Decennial Census information for the population served by the small MS4 within the 2020 urban area with a population of at least 50,000 people.
3. Revised the list of MCMs in the general permit to separate *MCM 1 - Public Education, Outreach, and Involvement* to match the federal rules: *MCM 1 - Public Education and Outreach* and *MCM 2- Public Involvement/Participation* (see 40 CFR § 122.34(b)(1)-(6)). The remaining MCMs are renumbered as MCMs 3-8.
4. Added more specific BMPs and measurable goals for each MCM to specify the clear, specific, and measurable requirements for the activities, goals, and deadlines that must be implemented by permittees based on their MS4 level to comply with the Comprehensive General Permit approach. These are represented throughout the permit in the form of tables.

5. Added a requirement in the *Public Education and Outreach* MCM for permittees to select and address the following based on their MS4 level:
    a. target audiences, including a list of target audience options available to the permittee, and
    b. pollutants and sources, including a list of pollutant and source options available to the permittee.
6. Clarified that permittees must update their NOI and SWMP when TCEQ lowers a Total Maximum Daily Load (TMDL) waste load allocation during the general permit term.
7. Added more specific BMPs and measurable goals for bacteria impaired water bodies with an approved TMDL to specify the clear, specific, and measurable requirements for the activities, goals, and deadlines that must be implemented by permittees discharging to these water bodies. This is represented in the permit in the form of a table.
8. Clarified that permittees discharging to water quality impaired water bodies with a TMDL for bacteria must use the table of BMPs and measurable goals to implement alternative equivalent BMPs or when the TMDL I-Plan BMPs do not currently address all the items.
9. Modified MS4 levels to separate non-traditional MS4s from traditional MS4s within Level 2 to: Level 2a – Traditional MS4s and Level 2b – Non-Traditional MS4s.
10. Revised permit language to require all NOIs/applications and annual reports under the general permit to be submitted electronically through EPA's NPDES electronic permitting and reporting system for the MS4 program known as NeT-MS4 for compliance with federal *NPDES Electronic Reporting Rule*.
11. Revised annual reporting year options to only allow for one reporting year schedule rather than three as required by EPA's NeT-MS4. Calendar Year would be the available reporting option as this is the most common option used by permittees currently.
12. Clarified what is considered a shared MS4 program, that shared programs are coalitions, and that applicants participating in a coalition must identify in the NOI the coalition member responsible for submitting the shared annual report.
13. Added a requirement for permittees implementing optional MCM 8 to:
    a. conduct an observation and evaluation of dewatering controls on the days where dewatering discharges occur to be consistent with the TPDES Construction General Permit (TXR150000), issued on March 5, 2023, and
    b. submit Delegation of Signatory forms electronically using TCEQ's online State of Texas Environmental Electronic Reporting System (STEERS) for compliance with federal *NPDES Electronic Reporting Rule*.
14. Miscellaneous and editorial changes throughout the permit to remove redundant information, improve readability, and consolidate similar information where appropriate.

Stakeholder involvement:
The Water Quality Division identified stakeholders for this general permit and reached out to seek preliminary input. Stakeholders included current permitted operators, consultants, and other interested parties. An initial e-mail was sent advising them of the upcoming renewal, date of the scheduled stakeholder meeting, and providing an opportunity to submit recommendations for permit revisions.

A stakeholder meeting was held at TCEQ on September 27, 2022. Staff presented and requested comments from stakeholders on a list of preliminary proposed changes and draft permit language for two MCMs. Approximately 50 stakeholders attended either in person or via webcast. Comments were received from some stakeholders during the two-week informal comment period.

Updates and presentations on the general permit renewal were provided at the following events:

- Water Quality Advisory Workgroup Meetings held on August 23, 2022; October 25, 2022; January 24, 2023; April 25, 2023; July 25, 2023; October 24, 2023; January 16, 2024; and April 16, 2024.
- Watershed Protection Stormwater Compliance Workshop hosted by the City of Waco on September 13, 2022,
- Texas American Public Works Association Workshop held on February 6, 2023,
- TCEQ Annual Environmental Trade Fair and Conferences held on May 17, 2023, and May 14, 2024,
- Lower Rio Grande Valley Stormwater Conference held on May 25, 2023,
- City of Waco Green Communities Conference held on September 19, 2023,
- South Central International Erosion Control Association Texas Regional Conference held on October 18, 2023, and
- Water Quality and Stormwater Seminar held on October 19, 2023.

Updates were also provided via GovDelivery messages and the TCEQ Advocate Newsletter (published on September 15, 2023) sent to stakeholders by the Small Business and Local Government Assistance group.

EPA Review:
On March 22, 2023, the draft permit was sent to EPA for their review. On June 9, 2023, TCEQ received an approval letter with a couple of recommendations from EPA related to per-and polyfluoroalkyl substances (PFAS). For example, EPA recommended that TCEQ include permit language to address PFAS such as BMPs to address PFAS-containing firefighting foams. No changes were made to the draft permit in response to the recommendations.

Public comment:
A public notice was published in the *Texas Register* and *Houston Chronicle* on August 25 and August 18, 2023, respectively. A hybrid virtual and in-person public meeting was held at TCEQ on September 18, 2023. The meeting was attended by 62 stakeholders representing 41 entities. A total of 19 formal comments/letters were submitted with a total of 81 combined comments received from the following: Dallas-Fort Worth Airport,

City of Mansfield, North Central Texas Council of Governments (on behalf of three members), Quiddity, City of Conroe, Jefferson County Drainage District No. 7, LJA Engineering, San Antonio River Authority, City of Kyle, City of San Marcos, Montgomery County, City of Grapevine, City of Lewisville, and Chambers County. The public comment period ended on September 25, 2023.

The comments received included concerns about the Comprehensive General Permit option, specific measurable goals, BMPs/activities for addressing bacteria impairments, NeT-MS4, certain MCMs, enforcement authority, target audiences, terminology, treatment standards, etc. Additional comments received included editorial suggestions, clarifications, and grammatical errors. Changes were made to the draft permit in response to comments. The proposed Executive Director's Response to Comments is attached.

Potential controversial concerns and legislative interest:
Legislative interest or issues from the general public or EPA are not anticipated. Some existing permittees expressed concerns about moving to the Comprehensive General Permit and some requested to review the complete draft general permit prior to TCEQ sending the draft permit package to EPA for review and approval. Following renewal of this general permit, TCEQ plans to notify both existing and newly regulated small MS4s of the completed general permit renewal and the need to submit an application. As a result of this notification, some newly regulated small MS4s may express concerns about the need for them to obtain coverage under the general permit.

Effect on the:

A. **Regulated community:**
- This draft Comprehensive General Permit option would simplify the application and reporting processes for permittees by:
    - requiring submittal of applications and annual reports electronically rather than in paper;
    - no longer requiring the submittal of SWMPs with the NOIs for TCEQ review and approval since the master general permit prescribes the required BMPs and measurables goals; and
    - no longer requiring notice publication for the individual NOIs and SWMPs prior to approval since the master general permit requires public notice and is developed with stakeholder input.
        - Removal of the public notice for individual NOIs and SWMPs will result in a significant cost savings for many applicants.
- The draft Comprehensive General Permit option would simplify SWMP development by requiring permittees to implement the BMPs and measurable goals prescribed in the permit.
    - Minimal impact to the permittees existing programs is anticipated, because the BMPs and measurable goals included in this draft permit are representative of the BMPs and measurable goals currently implemented by permittees.

- Existing small MS4s will have 180 days from the effective date of this general permit to develop and update their SWMP and submit an NOI to TCEQ to renew permit coverage. This timeframe allows applicants to:
    - reorganize their SWMPs to separate existing MCM 1 into MCMs 1 and 2 as defined in the draft general permit,
    - update their activities/BMPs and measurable goals, as appropriate for consistency with the draft comprehensive general permit, and
    - prepare and submit an NOI electronically in the NeT-MS4 system
- New small MS4s located within or partially within an urban area with a population of at least 50,000 people, defined by the 2020 Decennial Census, will be regulated under this general permit and will need to develop a SWMP and submit an NOI electronically in the NeT-MS4 system within 180 days from the effective date of this general permit.

B. Public:

- This draft Comprehensive General Permit option would not change the information shared with the public about the controls implemented by permittees.
- This draft permit would simplify the public notice process by giving the public the opportunity to review and comment on the comprehensive master general permit.
    - The master general permit describes in detail the specific BMPs and measurable goals required to be implemented by permittees.
        - Notice of the detailed prescriptive comprehensive permit removes the need for permittees to provide notice of their individual SWMPs.
    - Under the existing Two-Step General Permit, which only described the roadmap for SWMP development, permittee's specific BMPs and measurable goals were defined in their individual SWMPs which necessitated public notice of each permittee's individual SWMP.

C. Agency programs:

- The permit renewal is expected to impact the WQD's workload due to the anticipated increase in regulated small MS4s as a result of the 2020 Decennial Census, either by permit or by waivers.
    - There will be a significant short-term spike in the number of applications filed and processed, and the agency expects to receive questions from permittees and the public related to the revised and new permit conditions under the comprehensive permitting approach.
    - The total number of annual reports submitted to the agency for review and approval will increase.
- As a result of the increase in regulated small MS4s from the 2020 Decennial Census, staff from other TCEQ program areas will have an increased workload performing stormwater inspections and assisting local governments with administrative and technical questions.
- Additional outreach will be needed, especially for the newly regulated small MS4s. This effort will involve an interagency approach. For example, WQD is

working with SBLGA to provide workshops or webinars for applicants to learn about the renewed general permit and application process.

- Although there will be an increase in the number of applications and annual reports submitted to the agency, the electronic application and annual report review processes will be simplified because permittees would be required to submit applications and annual reports electronically in NeT-MS4.
    - NOI reviews by TCEQ staff are expected to be limited to reviewing compliance histories and delinquent fees.
    - TCEQ staff will also need to complete data entry in TCEQ's systems for certain data elements from the applications.
    - Annual report reviews are expected to be completed automatically by the electronic system.
- Under the Comprehensive General Permit option, TCEQ staff workload is greatly reduced because this permitting option would no longer require technical reviews or coordination of the public notice for individual NOIs and SWMPs since the master general permit prescribes the required BMPs and measurable goals for all permittees.

Key dates in the proposed general permit schedule:
Published notice in *Texas Register* and newspaper: August 25 and August 18, 2023, respectively.
Public comment period ended: September 25, 2023
Scheduled Commission Agenda Date: August 14, 2024

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.

Agency Contacts:

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Candice Slater, Texas Register/Agenda Coordinator, General Law Division (512)239-6087

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

cc: Chief Clerk, 7 copies

Texas Commission on Environmental Quality

GENERAL PERMIT TO DISCHARGE UNDER THE

TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM

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

This permit supersedes and replaces
TPDES General Permit No. TXR040000, issued January 24, 2019

Small (Phase II) Municipal Separate Storm Sewer Systems located in the State of Texas may discharge directly to surface water in the state only according to requirements and conditions set forth in this Comprehensive 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 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, five years after the permit effective date.

EFFECTIVE DATE:

ISSUED DATE:

_____

For the Commission

TCEQ GENERAL PERMIT NUMBER TXR040000
RELATING TO DISCHARGES FROM
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

Table of Contents

Part I. Definitions

Arid Areas – Areas with an average annual rainfall of less than ten inches.

Benchmarks – A benchmark pollutant value is a guidance level indicator that helps determine the effectiveness of chosen best management practices (BMPs). This type of monitoring differs from "compliance monitoring" in that exceedances of the indicator or benchmark level are not permit violations, but rather indicators that can help identify problems at the Municipal Separate Storm Sewer System (MS4) with exposed or unidentified pollutant sources; or control measures that are either not working correctly, whose effectiveness need to be re-considered, or that need to be supplemented with additional BMP(s).

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 runoff, spills or leaks, waste disposal, or drainage from raw material storage areas.

Catch Basins – Storm drain inlets and curb inlets to the storm drain system. Catch basins typically include a grate or curb inlet that may accumulate sediment, debris, and other pollutants.

Classified Segment – A water body that is listed and described in Appendix A or Appendix C of the Texas Surface Water Quality Standards, at 30 Texas Administrative Code (TAC) § 307.10.

Clean Water Act (CWA) – The Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, and Pub. L. 97-117, 33 U.S.C. 1251 et. seq.

Common Plan of Development or Sale – A construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. 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.

Construction Activity – Soil disturbance, including clearing, grading, excavating, and other construction related activities (e.g., stockpiling of fill material and demolition); and not including 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 right-of-ways, and similar maintenance activities). Regulated construction activity is defined in terms of small and large construction activity.

> **Small Construction Activity** is construction activity that results in land disturbance of equal to or greater than one acre and less than five acres of land. Small construction activity also includes the disturbance of less than one 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 and less than five acres of land.
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> **Large Construction Activity** is construction activity that results in land disturbance of equal to or greater than five acres of land. Large construction activity also includes the disturbance of less than five 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 acres of land.

Construction Site Operator – The entity or entities associated with a small or large construction project that meet(s) either of the following two criteria:

(a) The entity or entities that have operational control over construction plans and specifications (including approval of revisions) to the extent necessary to meet the requirements and conditions of this general permit; or

(b) The entity or entities that 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).

Control Measure – Any BMP or other method used to prevent or reduce the discharge of pollutants to water in the state.

Conveyance – Curbs, gutters, man-made channels and ditches, drains, pipes, and other constructed features designed or used for flood control or to otherwise transport stormwater runoff.

Discharge – When used without a qualifier, refers to the discharge of stormwater runoff or certain non-stormwater discharges as allowed under the authorization of this general permit.

Edwards Aquifer – As defined in 30 TAC § 213.3 (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 on the TCEQ website or in the offices of the TCEQ.

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

(a) All soil disturbing activities at the site have been completed and a uniform (for example, evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent (%) 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, gabions, or geotextiles) 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.

(c) For construction activities on land used for agricultural purposes (for example 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 a surface water and areas which 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 (e.g., 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 percent (%) vegetative coverage within three years.

General Permit – A permit issued to authorize the discharge of waste into or adjacent to water in the state for one or more categories of waste discharge within a geographical area of the state or the entire state as provided by Texas Water Code (TWC) § 26.040.

Groundwater Infiltration – For the purposes of this permit, groundwater that enters a municipal separate storm sewer system (including sewer service connections and foundation drains) through such means as defective pipes, pipe joints, connections, or manholes.

High Priority Facilities – High priority facilities are facilities with a high potential to generate stormwater pollutants. These facilities must include, at a minimum, the MS4 operator's maintenance yards, hazardous waste facilities, fuel storage locations, and other facilities where chemicals or other materials have a high potential to be discharged in stormwater. Among the factors that must be considered when giving a facility a high priority ranking are: the amount of urban pollutants stored at the site, the identification of improperly stored materials, activities that must not be performed outside (for example, changing automotive fluids, vehicle washing), proximity to water bodies, proximity to sensitive aquifer recharge features, poor housekeeping practices, and discharge of pollutant(s) of concern to impaired water(s).

Hyperchlorinated Water – Water resulting from hyperchlorination of waterlines or vessels, with a chlorine concentration greater than 10 milligrams per liter (mg/L).

Illicit Connection – Any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

Illicit Discharge – Any discharge to an MS4 that is not entirely composed of stormwater, except discharges pursuant to this general permit or a separate authorization and discharges resulting from emergency fire-fighting activities.

Impaired Water – A surface water body that is identified as impaired on the latest U.S. Environmental Protection Agency (EPA) approved Clean Water Act (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.

Implementation Plan (I-Plan) – A detailed plan of action that describes the measures or activities necessary to achieve the pollutant reductions identified in the total maximum daily load (TMDL).

Indian Country – Defined in 18 U.S.C. § 1151 as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States (U.S.) Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the U.S. whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition includes all land held in trust for an Indian tribe.

Indicator Pollutant – An easily measured pollutant, that may or may not impact water quality that indicates the presence of other stormwater pollutants.

Industrial Activity – Any of the ten categories of industrial activities included in the definition of "stormwater discharges associated with industrial activity" as defined in 40 Code of Federal Regulations (CFR) § 122.26(b)(14)(i)-(ix) and (xi).

Infeasible – For the purpose of this permit, infeasible means not technologically possible, or not economically practicable and achievable in light of best industry practices. The TCEQ notes that it does not intend for any small MS4 general permit requirement to conflict with state water right laws.

Maximum Extent Practicable (MEP) – The technology-based discharge standard for MS4s to reduce pollutants in stormwater discharges that was established by the CWA § 402(p). A discussion of MEP as it applies to small MS4s is found in 40 CFR § 122.34.

MS4 Operator – For the purpose of this permit, the public entity or the entity contracted by the public entity, responsible for management and operation of the small municipal separate storm sewer system that is subject to the terms of this general permit.

Municipal Separate Storm Sewer System (MS4) – A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(a) Owned or operated by the U.S., a state, city, town, borough, county, parish, 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 district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under the CWA § 208 that discharges to surface water in the state;

(b) That is designed or used for collecting or conveying stormwater;

(c) That is not a combined sewer; and

(d) That is not part of a publicly owned treatment works (POTW) as defined in 40 CFR § 122.2.

Non-traditional Small MS4 – A small MS4 that often cannot pass ordinances and may not have the enforcement authority like a traditional small MS4 would have to enforce the stormwater management program. Examples of non-traditional small MS4s include counties, transportation authorities (including the Texas Department of Transportation), municipal utility districts, drainage districts, military bases, prisons, and universities.

Notice of Change (NOC) – A written notification from the permittee to the executive director providing changes to information that was previously provided to the agency in a Notice of Intent.

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 permittee authorized under a general permit requesting termination of coverage under this general permit.

Outfall – A point source at the point where a small MS4 discharges to Waters of the U.S. and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels, or other conveyances that connect segments of the same stream or other Waters of the U.S. and are used to convey Waters of the U.S. For the purpose of this permit, sheet flow leaving a linear transportation system without channelization is not considered an outfall. Point sources such as curb cuts; traffic or right-of-way barriers with drainage slots that drain into open culverts, open swales, or an adjacent property, or otherwise not actually discharging into Waters of the U.S. are not considered an outfall.

Permittee – The MS4 operator authorized under this general permit.

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

Pollutant(s) of Concern (POCs) – For the purpose of this permit, includes biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids (TSS), turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from an MS4. (Definition from 40 CFR § 122.32(e)(3)).

Redevelopment – Alterations of a property that changed the "footprint" of a site or building in such a way that there is a disturbance of equal to or greater than one acre of land. This term does not include such activities as exterior remodeling, routine maintenance activities, and linear utility installation.

Semiarid Areas – Areas with an average annual rainfall of at least ten inches, but less than 20 inches.

Small Municipal Separate Storm Sewer System (MS4) – A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

(a) Owned or operated by the U.S., a state, city, town, borough, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under CWA § 208;

(b) Designed or used for collecting or conveying stormwater;

(c) Which is not a combined sewer;

(d) Which is not part of a POTW as defined in 40 CFR § 122.2; and

(e) Which was not previously regulated under a National Pollutant Discharge Elimination System (NPDES) or a Texas Pollutant Discharge Elimination System (TPDES) individual permit as a medium or large municipal separate storm sewer system, as defined in 40 CFR §§ 122.26(b)(4) and (b)(7).

This term includes systems similar to separate storm sewer systems at military bases, large hospitals or prison complexes, and highways and other thoroughfares. This term does not include separate storm sewers in very discrete areas, such as individual buildings. For the purpose of this permit, a very discrete system also includes storm drains associated with certain municipal offices and education facilities serving a nonresidential population, where those storm drains do not function as a system, and where the buildings are not physically interconnected to a small MS4 that is also operated by that public entity.

Stormwater and Stormwater Runoff – Rainfall runoff, snow melt runoff, and surface runoff and drainage.

Stormwater Associated with Construction Activity – Stormwater runoff from an area where there is either a large construction or a small construction activity.

Stormwater Management Program (SWMP) – A comprehensive program to manage the quality of discharges from the MS4.

Structural Control (or Practice) – A pollution prevention practice that requires the construction of a device, or the use of a device, to capture or prevent pollution in stormwater runoff. Structural controls and practices may include but are not limited to wet ponds, bioretention, infiltration basins, stormwater wetlands, silt fences, earthen dikes, drainage swales, vegetative lined ditches, vegetative filter strips, 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 (MHWM) 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 nonnavigable, 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. 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.

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

Traditional Small MS4 – A small MS4 that can pass ordinances and have the enforcement authority to enforce the stormwater management program. An example of traditional MS4s includes cities.

Urban Area – A statistical geographic entity consisting of a densely settled core created from census blocks and contiguous qualifying territory that together have at least 2,000 housing units or 5,000 persons as defined and used by the U.S. Census Bureau in the 2020 Decennial Census.

Urbanized Area (UA) – A retired statistical geographic entity type consisting of a densely settled core created from census tracts or blocks and adjacent densely settled territory that together have a minimum population of 50,000 people which was used by the U.S. Census Bureau in the 2000 and the 2010 Decennial Census.

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

This Comprehensive General Permit provides authorization for stormwater and certain non-stormwater discharges from small (Phase II) municipal separate storm sewer systems (MS4) to surface water in the state. The general permit contains the required permit terms and conditions along with clear, specific, and measurable requirements applicable to all small MS4s that are eligible for coverage under this general permit (see 40 CFR § 122.28(d)(1)).

Section A. Small MS4s Eligible for Authorization under this General Permit

Discharges from a small MS4 must be authorized if any of the following criteria are met and may be authorized under this general permit if coverage is not otherwise prohibited.

1. Small MS4s Located in an Urban Area with a Population of at Least 50,000 People

Operators of small MS4s that are fully or partially located within an urban area with a population of at least 50,000 people, as determined by the 2000,2010, or 2020 Decennial Censuses by the U.S. Census Bureau, must obtain authorization for the discharge of stormwater runoff and are eligible for coverage under this general permit unless otherwise prohibited.

NOTE: Urban areas with a population of at least 50,000 people were referred to as Urbanized Areas in the 2000 and 2010 Decennial Censuses by the U.S. Census Bureau. The term Urbanized Area was retired in the 2020 Decennial Census by the U.S. Census Bureau.

2. Designated Small MS4s

A small MS4 that is outside an urban area with a population of at least 50,000 people that is *designated* by TCEQ based on evaluation criteria as required by 40 CFR §§ 122.32(a)(2) or 122.26(a)(1)(v) and adopted by reference in 30 TAC § 281.25, is eligible for coverage under this general permit. The criteria that the executive director may consider is as follows:

- The location of the discharge with respect to Waters of the U.S. as defined at 40 CFR § 122.2;
- The size of the discharge;
- The quantity and nature of the pollutants discharged to Waters of the U.S.; and
- Other relevant factors.

Following designation, operators of small MS4s must obtain authorization under this general permit or apply for coverage under a TPDES individual stormwater permit within 180 days of notification of their designation.

3. Regulated Portion of Small MS4

The portion of the small MS4 that is required to meet the conditions of this general permit are those portions that are located within the urban area with a population of at least 50,000 people as defined and used by the U.S. Census Bureau in the 2000, 2010, or 2020 Decennial Censuses, as well as any portion of the small MS4 that is designated by TCEQ.

For the purpose of this permit, the regulated portion of a small MS4 for a transportation entity is the land owned by the permittee within the urban area with a population of at least 50,000 people which functions as or is integral to a transportation system with drainage conveyance. Non-contiguous property that does not drain into the transportation drainage system is not subject to this general permit.

Section B. Categories of Regulated Small MS4s

This general permit defines small MS4 operators by the following categories, or levels, based on the population served by the MS4 within the 2020 urban area with a population of at least 50,000 people. The level of an MS4 is based on population in the most recent Decennial Census at the time of permit issuance. A national Census held during a permit term will not affect the level of an MS4 until the next permit renewal.

For the purpose of this section, "serve a population" means the residential population within the *regulated* portion of the small MS4 based on the population data from the 2020 Decennial Census, except for non-traditional small MS4s listed in Level 2b below.

The level of a small MS4 may change during the permit term based on the MS4 operator acquiring or giving up regulated area(s), such as by annexing land or if land is annexed away. However, the level of a small MS4 will not change during the permit term based on other population fluctuations.

- Level 1: Operators of traditional small MS4s that serve a population of less than 10,000 within an "urban area with a population of at least 50,000 people".
- Level 2a: Operators of traditional small MS4s that serve a population of at least 10,000 but less than 40,000 within an "urban area with a population of at least 50,000 people".
- Level 2b: Operators of all non-traditional small MS4s such as counties, drainage districts, transportation entities, military bases, universities, colleges, correctional institutions, municipal utility districts and other special districts regardless of population served within the "urban area with a population of at least 50,000 people", unless the non-traditional MS4 can demonstrate that it meets the criteria for a waiver from permit coverage based on the population served.
- Level 3: Operators of traditional small MS4s that serve a population of at least 40,000 but less than 100,000 within an "urban area with a population of at least 50,000 people".
- Level 4: Operators of traditional small MS4s that serve a population of 100,000 or more within an "urban area with a population of at least 50,000 people".

Section C. Available Waivers from Coverage

The TCEQ may waive permitting requirements for regulated small MS4 operators if the criteria are met for Waiver Option 1 or Option 2 below. To obtain Waiver Option 1 or Option 2, the MS4 operator must submit the request on the appropriate waiver form submitted electronically via the NPDES Electronic Reporting Tool for MS4s (NeT-MS4) online electronic permitting (e-permitting) system, unless the MS4 operator requested and obtained an Electronic Reporting Waiver as described in Part II.F.11. MS4 operators that are granted an Electronic

Reporting Waiver shall submit the request for a waiver from permit coverage on a paper Waiver Option 1 or Option 2 form, as applicable, provided by the executive director.

NOTE: To obtain Waiver Option 2, the MS4 operator must contact the executive director and coordinate the activities required to meet the waiver conditions prior to preparing and submitting the Waiver Option 2 form.

Provisional coverage begins upon electronic submittal of the appropriate waiver form that is administratively complete via the NeT-MS4 online e-permitting system available through the TCEQ website. Alternatively, for paper applications with an approved Electronic Reporting Waiver provisional coverage begins 30 days after an administratively complete paper waiver form is postmarked for delivery to TCEQ.

Following review of the small MS4's waiver form, the executive director may:

(1) determine that the waiver form is technically complete and approve the waiver by providing a notification and a waiver number;

(2) determine that the waiver form is incomplete and deny the waiver until a technically completed waiver form is submitted; or

(3) deny the waiver and require that permit coverage be obtained by submitting an application.

If the conditions of an approved waiver are not met by the MS4 operator, then the MS4 operator must submit an application for coverage under this general permit or a separate TPDES individual permit application.

At any time, TCEQ may require a previously waived MS4 operator to comply with this general permit or another TPDES permit if circumstances change so that the conditions of the waiver are no longer met. Changed circumstances can also allow a regulated MS4 operator to request a waiver at any time.

The TCEQ can request to review any waivers granted to MS4 operators to determine whether any of the information required for granting the waiver has changed, at any time. At a minimum TCEQ will review all waivers when MS4 operators submit their renewal waiver applications.

For the purpose of obtaining an Option 1 or Option 2 Waiver, the population served refers to:

- the residential population within the regulated portion of the small MS4 for
    - traditional small MS4s, and
    - certain non-traditional small MS4s with a residential population (such as counties and municipal utility districts), or
- the number of people using the small MS4 on an average operational day for certain non-traditional small MS4s without a residential population.

1. Waiver Option 1:

The small MS4 serves a population of less than 1,000 within an urban area with a population of at least 50,000 people and meets the following criteria:

(a) The small MS4 is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES / TPDES stormwater program (40 CFR § 122.32(d)); and

(b) If the small MS4 discharges any pollutant(s) that have been identified as a cause of impairment of any water body to which the small MS4 discharges, stormwater controls

are not needed based on waste load allocations that are part of an EPA approved or established Total Maximum Daily Load (TMDL) that addresses the pollutant(s) of concern (POCs).

2. Waiver Option 2:

The small MS4 serves a population under 10,000 within an urban area with a population of at least 50,000 people and meets the following criteria:

(a) The TCEQ has evaluated all Waters of the U.S., including small streams, tributaries, lakes, and ponds, that receive a discharge from the small MS4;

(b) For all such waters, the TCEQ has determined that stormwater controls are not needed based on waste load allocations that are part of an approved or established TMDL that addresses the POCs or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the POCs;

(c) The TCEQ has determined that future discharges from the small MS4 do not have the potential to exceed Texas Surface Water Quality Standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts; and

(d) For the purpose of Waiver Option 2, the POCs include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids (TSS), turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the small MS4.

Section D. Allowable Non-Stormwater Discharge

The following non-stormwater sources may be discharged from the small MS4 and are not required to be addressed in the small MS4's Illicit Discharge and Detection or other minimum control measures, unless they are determined by the permittee or TCEQ to be significant contributors of pollutants to the small MS4, or they are otherwise prohibited by the MS4 operator:

1. Water line flushing (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);
2. Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;
3. Discharges from potable water sources that do not violate Texas Surface Water Quality Standards;
4. Diverted stream flows;
5. Rising ground waters and springs;
6. Uncontaminated ground water infiltration;
7. Uncontaminated pumped ground water;

8. Foundation and footing drains;
9. Air conditioning condensation;
10. Water from crawl space pumps;
11. Individual residential vehicle washing;
12. Flows from wetlands and riparian habitats;
13. Dechlorinated swimming pool discharges that do not violate Texas Surface Water Quality Standards;
14. Street wash water excluding street sweeper wastewater;
15. Discharges or flows from emergency fire-fighting activities (emergency fire-fighting activities do not include washing of trucks, runoff water from training activities, test water from fire suppression systems, and similar activities);
16. Other allowable non-stormwater discharges listed in 40 CFR § 122.26(d)(2)(iv)(B)(1);
17. Non-stormwater discharges that are specifically listed in the TPDES Multi-Sector General Permit (MSGP) TXR050000 or the TPDES Construction General Permit (CGP) TXR150000;
18. Discharges that are authorized by a TPDES or NPDES permit or that are not required to be permitted; and
19. Other similar occasional incidental non-stormwater discharges such as spray park water, unless the TCEQ develops permits or regulations addressing these discharges.

Section E. Limitations on Permit Coverage

1. Discharges Authorized by Another TPDES Permit

Discharges authorized by an individual or other general TPDES permit may be authorized under this TPDES general permit only if the following conditions are met:

(a) The discharges meet the applicability and eligibility requirements for coverage under this general permit;

(b) A previous application or permit for the discharges has not been denied, terminated, or revoked by the executive director as a result of enforcement or water quality related concerns. The executive director may provide a waiver to this provision based on new circumstances at the regulated small MS4; and

(c) The executive director has not determined that continued coverage under an individual permit is required based on consideration of an approved TMDL model and TMDL Implementation Plan, anti-backsliding policy, history of substantive non-compliance or other 30 TAC Chapter 205 considerations and requirements, or other site-specific considerations.

2. Discharges of Stormwater Mixed with Non-Stormwater

Stormwater discharges that combine with sources of non-stormwater are not eligible for coverage by this general permit, unless either the non-stormwater source is described in Part II.D of this general permit or the non-stormwater source is authorized under a separate TPDES permit.

3. Compliance with Texas Surface Water Quality Standards

Discharges to surface water in the state that would cause, has the reasonable potential to cause, or contribute to a violation of Texas Surface Water Quality Standards (30 TAC Chapter 307) or that would fail to protect and maintain existing designated uses are not eligible for coverage under this general permit except as described in Part III. The executive director may require an application for a TPDES individual permit or alternative general permit to authorize discharges to surface water in the state if the executive director determines that an activity will cause has the reasonable potential to cause, or contribute to, a violation of Texas Surface Water Quality Standards or is found to cause, have the reasonable potential to cause, or contribute to the impairment of a designated use of surface water in the state. The executive director may also require an application for a TPDES individual permit based on factors described in Part II.G.2.

4. Discharges to the Edwards Aquifer Recharge Zone

Discharges of stormwater from regulated small MS4s, and other non-stormwater discharges, are not authorized by this general permit where those discharges are prohibited by 30 TAC Chapter 213 (Edwards Aquifer Rule). New discharges located within the Edwards Aquifer Recharge Zone, or within that area upstream from the recharge zone and defined as the Contributing Zone, 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.

For existing discharges, the requirements of the TCEQ 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 effluent limitation requirements found in Part VII.E.7. of this general permit.

The permittee's TCEQ approved WPAPs that are required by the Edwards Aquifer Rule must be referenced in the SWMP. Additional TCEQ approved WPAPs received after the SWMP submittal must be recorded in the annual report required by this general permit for each respective permit year. For discharges originating from the small MS4 permitted area and located on or within ten stream miles upstream of the Edwards Aquifer recharge zone, applicants must also submit a copy of the MS4 Notice of Intent (NOI) to the appropriate TCEQ Regional Office with each WPAP application.

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, Bldg. A, Rm 179
Austin, Texas 78753
(512) 339-2929

5. Discharges to Specific Watersheds and Water Quality Areas

Discharges of stormwater from regulated small MS4s and other non-stormwater discharges are not authorized by this general permit where prohibited by 30 TAC Chapter 311 (relating to Watershed Protection) for water quality areas and watersheds.

6. Protection of Streams and Watersheds by Home Rule Municipalities

This general permit does not limit the authority of a home-rule municipality established in Texas Statue.

7. Indian Country Lands

Stormwater runoff from small MS4s that occur 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 EPA.

8. Endangered Species Act

Discharges that would adversely affect a listed endangered or threatened species or its critical habitat are not authorized by this general permit. 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 shall contact TCEQ for additional information prior to submittal of the NOI. If adverse impact is determined after submittal of the NOI, the permittee shall contact TCEQ immediately to determine corrective action.

Section F. Obtaining Authorization

1. Application for Coverage

Applicants seeking authorization to discharge under this general permit must prepare a SWMP as described in Part II.F.5 and Part IV prior to submitting a complete NOI and application fee for coverage as described in Part II.F.4 to the executive director. The NOI must be submitted electronically via the NeT-MS4 online e-permitting system, unless the MS4 operator requested and obtained an Electronic Reporting Waiver as described in Part II.F.11. MS4 operators that are granted an Electronic Reporting Waiver shall submit the request on a paper NOI form provided by the executive director.

Following review of the NOI, the executive director may: 1) determine that the submission is complete and approve the NOI; 2) determine that the NOI is incomplete, deny coverage, and require that a new complete NOI be submitted; 3) determine that the NOI needs revisions, provide a written description of the required revisions along with any compliance schedule(s), and approve the NOI after revisions are complete; or 4) deny coverage under this general permit

and provide a deadline by which the small MS4 operator must submit an application for a TPDES individual permit.

Following approval of the NOI by the executive director, either with or without changes, the applicant is authorized to discharge upon notification by TCEQ. Denial of coverage under this general permit is subject to the requirements of 30 TAC § 205.4(c).

2. Application Deadlines

Application deadlines are as follows:

(a) Small MS4s Located in a 2000 or 2010 urban area with a population of at least 50,000 people (Previously Regulated Small MS4s)

(1) Operators of small MS4s described in Part II.A.1 that applied for authorization under the 2019 TPDES Small MS4 General Permit TXR040000 based on the 2000 and 2010 urban areas with a population of at least 50,000 people shall submit an NOI within 180 days following the effective date of this general permit.

(2) Operators of small MS4s described in Part II.A.1 that did not submit an application for authorization under the 2019 TPDES Small MS4 General Permit TXR040000 and were required to obtain permit coverage based on the 2000 and 2010 urban areas with a population of at least 50,000 people shall submit an NOI immediately.

(b) Designated and Newly Regulated Small MS4s Located in a 2000, 2010, or 2020 urban area with a population of at least 50,000 people as defined by the U.S. Census Bureau

(1) Following designation, operators of small MS4s described in Part II.A.2 shall develop and maintain a SWMP and submit an NOI, or apply for coverage under a TPDES individual permit, within 180 days of being notified in writing by the TCEQ of the need to obtain permit coverage.

(2) Operators of small MS4s newly regulated under this general permit due to a change in ownership or operational control shall develop and maintain a SWMP and submit an NOI, or apply for coverage under a TPDES individual permit, within 180 days of obtaining ownership or operational control of a small MS4 in a regulated area.

(3) Operators of small MS4s newly regulated under this general permit due to the new or expanded urban areas with a population of at least 50,000 people in the 2020 Decennial Census shall develop and maintain a SWMP and submit an NOI, or apply for coverage under a TPDES individual permit, within 180 days following the effective date of this general permit.

(c) Individual Permit Alternative

If an operator of a small MS4 described in Part II.A.1 of this general permit elects to apply for a TPDES individual permit, the application must be submitted within 90 days following the effective date of this general permit.

3. Late Submission of the NOI

If an NOI is submitted by a small MS4 operator after the deadlines established in Part II.F.2, then this general permit provides authorization only for discharges that occur after permit coverage is obtained. The TCEQ reserves the right to take appropriate enforcement actions for any unpermitted discharges.

4. Contents of the NOI

The NOI must contain the following minimum information:

(a) MS4 Operator Information

(1) The name, mailing address, electronic mail (email) address, telephone number, and facsimile (fax) number of the MS4 operator; and

(2) The legal status of the MS4 operator (for example, federal government, state government, county government, city government, or other government).

(b) Site Information

(1) The name, physical location description, and latitude and longitude of the approximate center of the regulated portion of the small MS4;

(2) County or counties where the small MS4 is located;

(3) An indication if all or a portion of the small MS4 is located on Indian Country Lands;

(4) The name, mailing address, telephone number, email (if available) and fax number of the designated person(s) responsible for implementing or coordinating implementation of the SWMP;

(5) A signature and certification on the NOI, according to 30 TAC § 305.44, that a SWMP has been developed according to the provisions of this general permit;

(6) The name of each classified segment that receives discharges, directly or indirectly, from the small MS4. If one or more of the discharge(s) is not directly to a classified segment, then the name of the first classified segment that those discharges reach must be identified;

(7) The name of any MS4 receiving the discharge prior to discharge into Waters of the U.S.;

(8) The name of all surface water(s) receiving discharges from the small MS4 that are on the latest EPA-approved CWA § 303(d) List of impaired waters;

(9) An indication of whether the small MS4 discharges within the Recharge Zone, the Contributing Zone or the Contributing Zone within the Transition Zone of the Edwards Aquifer; and

(10) Any other information deemed necessary by the executive director.

(c) General Characteristics

(1) An indication of the activities/BMPs and measurable goals to be implemented in the SWMP for each MCM;

(2) An indication of the activities/BMPs and measurable goals to be implemented in the SWMP for impaired water bodies, if applicable;

(3) For small MS4 operators participating in a coalition to implement a shared SWMP:

a. The names of all participating small MS4 operators;

b. An indication of which small MS4 operator is responsible for each activity/BMP and measurable goal to be implemented in the SWMP;

(4) Any other information deemed necessary by the executive director.

5. SWMP General Requirements

A SWMP must be developed for eligible discharges that will reach Waters of the U.S., including discharges from the regulated small MS4 to other MS4s or to privately-owned separate storm sewer systems that subsequently drain to Waters of the U.S. The SWMP must be developed according to the requirements of Part IV of this general permit prior to submitting an NOI to obtain authorization to discharge.

The SWMP must include, as appropriate, the months and years in which the permittee will undertake required actions, including interim milestones and the frequency of the action throughout the permit term.

New elements in the SWMP must be completely implemented within five years of the effective date of this general permit, or within five years of being designated for those small MS4s which are designated following their permit authorization issuance. Previously regulated MS4s shall assess existing SWMP elements set forth in the previous permit term, modify as necessary, and develop and implement new elements, as necessary, to continue reducing the discharge of pollutants from the small MS4 to the maximum extent practicable (MEP).

6. Changes to the NOI Submitted and SWMP

Changes to the NOI and SWMP that are made after TCEQ approval of the NOI may be made by submittal and approval of a Notice of Change (NOC) unless the changes are non-substantial. Changes may be made as follows:

(a) Changes to the SWMP that do not require an NOC

The following changes may be implemented without submitting an NOC. The changes may be made immediately following revision of the SWMP.

Minor modifications to the SWMP that include administrative or non-substantial changes as follows:

(1) A change in personnel, or a reorganization of departments responsible for implementing the SWMP or portions of the SWMP;

(2) Minor clarifications to the existing BMPs;

(3) Correction of typographical errors; or

(4) Other similar administrative or non-substantive comments.

(b) Changes to the NOI and SWMP that require an NOC

Modifications to the NOI and SWMP that include, but are not limited to, the following changes require submittal of an NOC. The changes may be implemented once the permittee receives TCEQ approval of the NOC.

(1) Changing one or more contacts listed in the NOI or updating their contact information;

(2) Adding components, controls, or requirements to the SWMP;

(3) Adding areas such as by annexing land, or otherwise acquire additional land that expands the boundary of the small MS4, or subtracting areas, such as by de-annexing lands;

(4) Adding impaired water bodies that are identified pursuant to Part III.;

(5) Adding more frequent monitoring or reporting by the permittee; or

(6) Replacing a BMP specifically identified in the NOI and SWMP with an alternative BMP, (for example, replacing a structural BMP with a non-structural BMP would be considered a replacement). The SWMP must include documentation for changes as described below:

a. For changes to BMPs for impaired water bodies with a TMDL, document the following:

(i) an analysis of why the BMP is ineffective or infeasible (including cost prohibitive);

(ii) expectations of the effectiveness of the replacement BMP; and

(iii) an analysis of why the replacement BMP is expected to achieve the goals of the BMP to be replaced.

b. For all other BMP changes, document the reason for the change.

7. Notice of Change (NOC)

If the small MS4 operator becomes aware that it failed to submit any relevant facts, or submitted incorrect information in the NOI, the correct information must be provided to the executive director in an NOC within 30 days after discovery. If any information provided in the NOI changes, an NOC must be submitted within 30 days from the time the permittee becomes aware of the change. The NOC must be submitted electronically via the NeT-MS4 online e-permitting system, unless the MS4 operator requested and obtained an Electronic Reporting Waiver as described in Part II.F.11. MS4 operators that are granted an Electronic Reporting Waiver shall submit the request on a paper NOC form provided by the executive director.

Any revisions that are made to the SWMP must be made in accordance with Parts II.F.6 and Part IV.A-B. Changes that are made to the NOI and SWMP following NOI approval must be made using an NOC form, in accordance with Part II.F.6.

8. Change in Operational Control of a Small MS4

If the operational control of the regulated small MS4 changes, the previous small MS4 operator must submit a Notice of Termination (NOT) and the new small MS4 operator must prepare a SWMP and submit an NOI. The NOT and NOI must be submitted concurrently not more than ten calendar days after the change occurs. Existing permittees who are expanding coverage of their MS4 area (e.g., city annexes part of unincorporated county MS4) are not required to submit a new NOI but must submit an NOC and update the SWMP in accordance with Part II.F.7 and Part IV.C.1.(c).

9. Notice of Termination (NOT)

A permittee may terminate coverage under this general permit by submitting an NOT electronically via the NeT-MS4 online e-permitting system, unless the permittee requested and obtained an Electronic Reporting Waiver as described in Part II.F.11. Permittees that are granted an Electronic Reporting Waiver shall submit the request on a paper NOT form provided by the executive director.

Authorization to discharge terminates immediately following confirmation of receipt of the electronic NOT form by the TCEQ or at midnight on the day that a paper NOT is postmarked

for delivery to the TCEQ. An NOT must be submitted within 30 days after the small MS4 operator obtains coverage under an individual permit.

10. Signatory Requirement for NOI, NOT, NOC, and Waiver Forms

All NOI, NOT, NOC, Waiver Option 1 or Option 2, and Electronic Reporting Waiver forms must be signed and certified consistent with 30 TAC § 305.44(a) and (b) (relating to Signatories to Applications).

11. Electronic Reporting Waiver

To request a waiver from electronic reporting, small MS4 operators must contact the TCEQ Stormwater Team to obtain the Request for Electronic Reporting Waiver Form (TCEQ-20754). This form must be submitted along with submittal of a paper application (NOI, NOT, NOC, Waiver Option 1 and 2) for authorization under this general permit.

A waiver from electronic reporting may be granted to small MS4 operators in limited cases, such as for lack of internet access, or when additional training to submit applications electronically is needed. Electronic Reporting Waivers are not transferrable and expire on the same date as the authorization to discharge except for waivers granted to small MS4 operators who need additional training to submit applications electronically which will expire after one year.

12. Fees

An application fee of $400.00 must be submitted with each NOI. A fee is not required for submission of the following forms: Waiver Option 1, Waiver Option 2, NOT, or NOC.

A permittee authorized under this general permit must pay an annual Water Quality fee of $100.00 as authorized under TWC § 26.0291 and 30 TAC Chapter 205 (relating to General Permits for Waste Discharges).

13. Permit Expiration

(a) This general permit is effective for five years from the permit effective date. Authorizations for discharge under the provisions of this general permit will continue until the expiration date of the general permit. This general permit may be amended, revoked, or canceled by the commission or renewed by the TCEQ for an additional term not to exceed five years.

(b) If the executive director proposes to reissue this general permit before the expiration date, the general permit will remain in effect until the date on which the commission takes final action on the proposal to reissue this general permit. For existing permittees, general permit coverage will remain in effect after the expiration date of the existing general permit, in accordance with 30 TAC Chapter 205. No new NOIs will be accepted, and no new authorizations will be processed under the general permit after the expiration date.

(c) Following issuance of a renewed or amended general permit, all permittees, including those covered under the expired general permit, may be required to submit an NOI according to the requirements of the new general permit or to obtain a TPDES individual permit for those discharges. The renewed permit will include a deadline to apply for coverage, and authorization for existing permittees will be automatically extended until the deadline to apply for coverage, or until an application is submitted for renewal, whichever occurs first.

(d) If TCEQ does not propose to reissue this general permit within 90 days before the expiration date, permittees must apply for authorization under a TPDES individual permit or an alternative general permit. If the application for an individual permit is submitted before the expiration date of this general permit, authorization under this expiring general permit remains in effect until the issuance or denial of an individual permit.

14. Suspension of Permit Coverage

The executive director may suspend an authorization under this general permit for the reasons specified in 30 TAC § 205.4(d) by providing the discharger with written notice of the decision to suspend that authority, and the written notice will include a brief statement of the basis for the decision. If the decision requires an application for an individual permit or an alternative general permit, the written notice will also include a statement establishing the deadline for submitting an application. The written notice will state that the authorization under this general permit is either suspended on the effective date of the commission's action on the permit application, unless the commission expressly provides otherwise, or immediately, if required by the executive director.

Section G. Permitting Options

1. Authorization Under the General Permit

An operator of a small MS4 is required to obtain authorization either under this general permit, or under a TPDES individual permit if the MS4 is located in an urban area with a population of at least 50,000 people or designated by the TCEQ as per Part II.A.2. Multiple small MS4s with separate operators must individually submit an NOI to obtain coverage under this general permit, regardless of whether the systems are physically interconnected, located in the same urban area with a population of at least 50,000 people, or are located in the same watershed.

Coalition Participants

Multiple small MS4s that are physically interconnected, located in the same urban area with a population of at least 50,000 people, or are located in the same watershed may combine or share efforts as a coalition in meeting one or more of the BMP requirements described in the general permit. Each regulated small MS4 will be required to submit an individual NOI and be issued a distinct permit authorization number. MS4 operators in a coalition that share

SWMP development and implementation responsibilities must meet the following conditions:

(a) The SWMP must clearly list the name and permit number for each MS4 operator that chooses to contribute to development or implementation of the SWMP, and provide written confirmation that the contributing MS4 operator(s) has/have agreed to contribute. If a contributing small MS4 has submitted an NOI to TCEQ, but has not yet received written notification of approval, along with the accompanying permit authorization number, a copy of the submitted NOI form must be made readily available or be included in the SWMP.

(b) Each permittee is entirely responsible for meeting SWMP requirements within the boundaries of its small MS4. Where a separate MS4 operator is contributing to implementation of the SWMP, the SWMP must clearly define each minimum control measure and the component(s) each entity agrees to implement, within which MS4 area(s) each entity agrees to implement and clearly identify the contributing MS4 operator. The obligation and written acceptance for each coalition participant shall be described and maintained as part of the SWMP.

2. Alternative Coverage Under an Individual TPDES Permit

A small MS4 operator eligible for coverage under this general permit may alternatively be authorized under a TPDES individual permit according to 30 TAC Chapter 305 (relating to Consolidated Permits). The executive director may require a small MS4 operator, authorized by this general permit, to apply for a TPDES individual permit because of: the conditions of an approved TMDL or TMDL implementation plan (I-Plan); a history of substantive non-compliance; or other 30 TAC Chapter 205 considerations and requirements; or other site-specific considerations. The executive director shall deny or suspend a facility's authorization for disposal under this general permit based on a rating of "unsatisfactory performer" according to commission rules in 30 TAC § 60.3, Use of Compliance History. An applicant who owns or operates a facility classified as an "unsatisfactory performer" is entitled to a hearing before the commission prior to having its coverage denied or suspended, in accordance with TWC § 26.040(h).

Part III. Impaired Water Bodies and Total Maximum Daily Load (TMDL) Requirements

Discharges of the POCs to impaired water bodies for which there is a TCEQ and EPA approved TMDL are not eligible for this general permit unless they are consistent with the approved TMDL. A water body is impaired for purposes of the permit if it has been identified, pursuant to the latest TCEQ and EPA approved CWA § 303(d) List or the *Texas Integrated Report of Surface Water Quality for CWA Sections 305(b) and 303(d)* which lists the category 4 and 5 water bodies, as not meeting Texas Surface Water Quality Standards.

The permittee shall check annually, in conjunction with preparation of the annual report, whether an impaired water body within its permitted area has been added to the latest EPA approved CWA § 303(d) List or the *Texas Integrated Report of Surface Water Quality for CWA Sections 305(b) and 303(d)* which lists the category 4 and 5 water bodies. Within two years following the approval date of the new list(s) of impaired waters, the permittee shall comply with the requirements of Part III.B (with the exception of 1.(c), and shall identify any newly listed waters in the annual report (consistent with Part V.B.2.f) and SWMP (consistent with Part IV.C.2.f).

The permittee shall control the discharges of POCs parameters to impaired waters and waters with approved TMDLs as provided in Sections A and B below, and shall assess the progress in controlling those pollutants.

Section A. Discharges to Water Quality Impaired Water Bodies with an Approved TMDL

If the small MS4 discharges to an impaired water body with an approved TMDL, where stormwater has the potential to cause or contribute to the impairment, the permittee shall include in the SWMP controls targeting the POCs along with any additional or modified controls required in the TMDL and this section.

The SWMP and required annual reports must include information on implementing any targeted controls required to reduce the POCs as described below:

1. Targeted Controls

The SWMP must include a detailed description of all targeted controls to be implemented, including at a minimum, expanding or modifying the following:

(a) existing Public Education and Outreach and Public Involvement/Participation programs to reduce the discharge of POCs,

(b) existing Illicit Discharge Detection and Elimination program to specifically address the POCs, and

(c) existing ordinances or other regulatory mechanisms to require the reduction or control of POCs, enforcement procedures for noncompliance, and develop additional ordinances, or other regulatory mechanisms, as necessary.

2. Measurable Goals

For each targeted control, the SWMP must include a measurable goal and an implementation schedule describing activities/BMPs to be implemented during each year of the permit term.

3. Identification of Benchmarks

The SWMP must identify a benchmark for the POCs. Benchmarks are designed to assist in determining if the BMPs established are effective in addressing the POCs in stormwater discharge(s) from the MS4 to the MEP. The BMPs addressing the POC must be re-evaluated on an annual basis for progress towards the benchmarks and modified as necessary within an adaptive management framework. These benchmarks are not numeric effluent limitations or permit conditions but intended to be guidelines for evaluating progress towards reducing pollutant discharges consistent with the benchmarks. The exceedance of a benchmark is not a permit violation and does not in itself indicate a violation of instream water quality standards.

The benchmark must be determined based on only one of the following options:

(a) If the small MS4 is subject to a TMDL that identifies a Waste Load Allocation(s) (WLA) for permitted MS4 stormwater sources, then the SWMP may identify it as the benchmark. Where an aggregate allocation is used as a benchmark, all affected MS4 operators are jointly responsible for progress in meeting the benchmark and shall (jointly or individually) develop a monitoring/assessment plan as required in Part III.A.6.

(1) When TCEQ revises a TMDL WLA identified by the MS4 to decrease the load, permittees must revise the SWMP and submit an NOC to identify the revised WLA within 90 days of TCEQ publishing the change.

(2) When TCEQ revises a TMDL WLA identified by the MS4 to increase the load, permittees are not required to update the SWMP or submit an NOC to identify the revised WLA until the next permit term.

(b) Alternatively, if multiple small MS4s are discharging into the same impaired water body with an approved TMDL, with an aggregate WLA for all permitted stormwater MS4s, then the MS4s may combine or share efforts to determine an alternative sub-benchmark value for the POCs (e.g., bacteria) for their respective small MS4. The SWMP must clearly define this alternative approach and must describe how the sub-benchmark value would cumulatively support the aggregate WLA. Where an aggregate benchmark has been broken into sub-benchmark values for individual MS4s, each permittee is only responsible for progress in meeting its sub-benchmark value.

4. Annual Report

The annual report must include an analysis of how the selected activities/BMPs will be effective in contributing to achieving the benchmark value.

5. Impairment for Bacteria

If the POC is bacteria, the permittee shall implement BMPs addressing each of the below areas, as applicable, in the SWMP and implement as appropriate. If a TMDL I-Plan is available, the permittee must do one of the following: (1) refer to the I-Plan for appropriate BMPs, or (2) implement alternative equivalent BMPs. Table 1 below includes the appropriate alternative equivalent BMPs to implement for item (2) above or when a TMDL I-Plan is not available. Where BMPs included in the TMDL I-Plan for item (1) above are completed or where the I-Plan does not address all the below areas, the permittee shall refer to Table 1 for the appropriate BMPs to implement so that each of the areas below are addressed, as applicable.

The SWMP and annual report must include the selected BMPs. Permittees may not exclude BMPs associated with the minimum control measures (MCMs) required under 40 CFR § 122.34 from their list of BMPs.

The BMPs shall, as appropriate, address the following including Table 1.:

(a) Sanitary Sewer Systems

(1) Make improvements to sanitary sewers to reduce overflows;

(2) Address lift station inadequacies;

(3) Improve reporting of overflows; and

(4) Strengthen sanitary sewer use requirements to reduce blockage from fats, oils, and grease.

(b) On-site Sewage Facilities (for entities with appropriate jurisdiction)

(1) Identify and address failing systems; and

(2) Address inadequate maintenance of on-site sewage facilities (OSSFs) (i.e., septic systems).

(c) Illicit Discharges and Dumping

Place additional effort to reduce waste sources of bacteria, for example, from OSSFs, grease traps, and grit traps.

(d) Animal Sources

Expand existing management programs to identify and target animal sources such as zoos, pet waste, and horse stables.

(e) Residential Education

Increase focus to educate residents on:

(1) Bacteria discharging from a residential site either during runoff events or directly;

(2) Fats, oils, and grease clogging sanitary sewer lines and resulting overflows;

(3) Maintenance and operation of decorative ponds; and

(4) Proper disposal of pet waste.

Table 1: Alternative Equivalent BMPs for Bacteria Impaired Water Bodies

Activity/BMP	**Measurable Goal**
Sanitary Sewer Systems as described by Part III.A.5.(a).	Conduct a review of 100% of the sanitary sewer system in the MS4 area within the impairment watershed to identify areas for improvement within the first two years of the permit term. Initiate all feasible improvement projects by the end of the permit term. Conduct weekly lift station inspections at 100% of the MS4 owned and operated lift stations in the MS4 area within the impairment watershed each year. Investigate and address 100% of sanitary sewer overflow complaints identified through the public reporting mechanism implemented by the MS4 each year. Strengthen sanitary sewer use requirements to reduce blockage from fats, oils, and grease by reviewing and updating ordinances or other regulatory mechanisms and inspection programs at least one time annually.

Activity/BMP	**Measurable Goal**
On Site Sewage Facilities (OSSFs) as described by Part III.A.5.(b).	Develop and implement procedures to screen 20% of the MS4 area within the impairment watershed annually to identify failing OSSFs. • Maintain an inventory of 100% of the identified OSSFs and their status each year. ○ Review and update this inventory at least one time each year to address changes or additions. • Address 100% of failing OSSFs each year by requiring the responsible party to perform all necessary corrective actions to eliminate the illicit discharge. Investigate and address 100% of OSSF complaints identified through the public reporting mechanism implemented by the MS4 each year.
Illicit Discharges and Dumping as described by Part III.A.5.(c).	Ensure 100% of procedures and ordinances or other regulatory mechanisms established for BMPs in MCM 3: Illicit Discharge Detection and Elimination address discharges that may contribute bacteria including from OSSFs, grease traps, and grit traps.
Animal Sources as described by Part III.A.5.(d).	Implement at least one of the following: • Provide and maintain at least one pet waste station in 100% of public parks or similar greenspaces in the MS4 area within the impairment watershed each year. • Assess and address, if feasible, 100% of complaints received about feral hogs in the MS4 area within the impairment watershed each year. If infeasible to address the complaint, maintain documentation of the reason. Prohibit the feeding of ducks and geese in 100% of public parks or similar greenspaces the MS4 area within the impairment watershed each year. • Develop and distribute educational materials related to animal sources of bacteria to 75% of the intended audiences identified by the MS4 in MCM 1: Public Education and Outreach each year. Develop and implement a tracking system to estimate what percentage of the intended audience is reached for determining BMP effectiveness.

Activity/BMP	Measurable Goal
Residential Education as described by Part III.A.5.(e).	Implement at least one additional BMP from MCM 1: Public Education and Outreach and Table 4 annually (e.g., a Level 1 small MS4 operator must implement at least four total BMPs under MCM 1 each year in the permit cycle instead of the three BMPs required by Part IV.D.1.(a)3.b). In addition, ensure at least one of the BMPs implemented for MCM 1: Public Education and Outreach focuses on at least one of the following: • Bacteria discharging from a residential site either during runoff events or directly; • Fats, oils, and grease clogging sanitary sewer lines and resulting overflows; • Identifying and reporting illicit discharges or illegal dumping; • Maintenance and operation of decorative ponds; and • Proper disposal of pet waste.

6. Monitoring or Assessment of Progress

The permittee shall develop a Monitoring/Assessment Plan to monitor or assess progress in achieving benchmarks and determine the effectiveness of BMPs, and shall include documentation of this monitoring or assessment in the SWMP and annual reports. In addition, the SWMP must include methods to be used.

(a) The permittee may use either of the following methods to evaluate progress towards the benchmark and improvements in water quality in achieving the water quality standards as follows:

(1) Evaluating Program Implementation Measures

The permittee may evaluate and report progress towards the benchmark by describing the activities and BMPs implemented, by identifying the appropriateness of the identified BMPs, and by evaluating the success of implementing the measurable goals.

The permittee may assess progress by using program implementation indicators such as: (1) number of sources identified or eliminated; (2) decrease in the number of illegal dumpings; (3) increase in illegal dumping reporting; (4) number of educational opportunities conducted; (5) reductions in sanitary sewer overflows (SSOs); or (6) increase in illegal discharge detection through dry screening, etc.

(2) Assessing Improvements in Water Quality

The permittee may assess improvements in water quality by using available data for segment and assessment units of water bodies from other reliable sources, or by proposing and justifying a different approach such as collecting additional instream or outfall monitoring data, etc. Data may be acquired from TCEQ, local river authorities, partnerships, or other local efforts as appropriate.

(a) Progress towards achieving the benchmark shall be reported in the annual report. Annual reports shall report the benchmark and the year(s) during the permit term that the MS4 conducted additional sampling or other assessment activities.

7. Observing No Progress Towards the Benchmark

If, by the end of the third year from the effective date of the permit, the permittee observes no progress toward the benchmark either from SWMP implementation or water quality assessments as described in Part III.A.6, the permittee shall identify alternative focused BMPs that address new or increased efforts towards the benchmark or, as appropriate, shall develop a new approach to identify the most significant sources of the POCs and shall develop alternative focused BMPs for those sources (this may also include information that identifies issues beyond the MS4's control). These revised BMPs must be included in the SWMP and subsequent annual reports.

Where the permittee originally used a benchmark value based on an aggregated WLA, the permittee may combine or share efforts with other MS4s discharging to the same watershed to determine an alternative sub-benchmark value for the POCs for their respective small MS4s, as described in Part III.A.3(b) above. Permittees must document, in their SWMP for the next permit term, the proposed schedule for the development and subsequent adoption of alternative sub-benchmark value(s) for the POCs for their respective MS4s and associated assessment of progress in meeting those individual benchmarks.

Section B. Discharges Directly to Water Quality Impaired Water Bodies Without an Approved TMDL

The permittee shall also determine whether the permitted discharge is directly to one or more water quality impaired water bodies where a TMDL has not yet been approved by TCEQ and EPA. If the permittee discharges directly into an impaired water body without an approved TMDL, the permittee shall perform the following activities:

1. Discharging a Pollutant of Concern

(a) The permittee shall determine whether the small MS4 may be a source of the POCs by referring to the CWA § 303(d) List and then determining if discharges from the MS4 would be likely to contain the POCs at levels of concern.

(b) If the permittee determines that the small MS4 may discharge the POCs, the permittee shall ensure that the SWMP includes focused BMPs, along with corresponding measurable goals, that the permittee will implement, to reduce, the discharge of POCs that contribute to the impairment of the water body.

(c) In addition, the permittee shall submit an NOC to amend the SWMP in accordance with Part II.F.6 to include any additional BMPs to address the POCs. This requirement does not apply to BMPs implemented to address impaired waters that are listed after a small MS4's permit authorization pursuant to Part III.

2. Impairment for Bacteria

Where the impairment is for bacteria, the permittee shall identify potential significant sources and develop and implement focused BMPs for those sources. The permittee must implement the BMPs listed in Part III.A.5 and Table 1 for the identified sources.

3. Annual Report

The annual report must include information on compliance with the Discharges Directly to Water Quality Impaired Water Bodies Without an Approved TMDL section, including results of any sampling conducted by the permittee.

Part IV. Stormwater Management Program (SWMP)

To the extent allowable under state and local law, a SWMP must be developed, implemented, and enforced according to the requirements of Part II.F.5 and Part IV of this general permit for stormwater discharges that reach Waters of the U.S., regardless of whether the discharge is conveyed through a separately operated storm sewer system. The SWMP must be developed, implemented, and enforced to reduce the discharge of pollutants from the small MS4 to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and the TWC.

A permittee that implements activities/BMPs and measurable goals consistent with the provisions of this general permit fulfills the requirements to reduce pollutants to the MEP and will be deemed in compliance with Part IV of this permit. This general permit does not extend any compliance deadlines set forth under the 2019 TPDES Small MS4 General Permit TXR040000.

Section A. SWMP Review

The permittee shall participate in an annual review of its SWMP in conjunction with preparation of the annual report required in Part V.B.2. Results and date(s) of the review shall be documented in the annual report.

Section B. SWMP Updates Required by TCEQ

Changes may be made to the SWMP during the permit term. The TCEQ may notify the permittee of the need to modify the SWMP to be consistent with the general permit, in which case the permittee will have 90 days to finalize such changes to the SWMP, unless otherwise directed by TCEQ.

Section C. Developing a Stormwater Management Program (SWMP)

1. SWMP Development and Schedule

(a) Existing Regulated Small MS4s

Permittees who were regulated under the 2019 TPDES Small MS4 General Permit TXR040000, shall develop and update the SWMP under this general permit prior to submittal of the NOI for coverage.

Existing small MS4 operators shall ensure full implementation of any new elements in the revised SWMP as soon as practicable, but no later than five years from the permit effective date. Permittees authorized under any previous TPDES Small MS4 General Permit TXR040000 shall continue to implement existing elements in their latest TCEQ approved SWMP until the renewal NOI has been approved.

(b) Designated and Newly Regulated Small MS4s

Small MS4 operators that operate either:

- a designated small MS4 as per Part II.A.2, or
- a newly regulated small MS4 under this general permit,

must develop a SWMP under this general permit prior to submittal of the NOI for coverage and achieve full implementation of the SWMP as soon as practicable, but no later than five years from designation or obtaining ownership or operational control of a newly regulated small MS4, as applicable.

(c) Transfer of Ownership, Operational Authority, or Responsibility

The permittee that has been transferred ownership, operational authority, or responsibility of an MS4 area located in an urban area with a population of at least 50,000 people or designated by TCEQ shall implement the SWMP:

(1) on all new areas added to its portion of the small MS4 (or where the permittee becomes responsible for implementation of stormwater quality controls) as expeditiously as possible, but no later than three years from addition of the new area. Implementation may be accomplished in a phased manner to allow additional time for controls that cannot be implemented immediately; and

(2) within ninety (90) days of a transfer of ownership, operational authority, or responsibility for SWMP implementation, the permittee shall have a plan for implementing the SWMP in all affected areas. The plan must include schedules for implementation, and information on all new annexed areas. Any resulting updates required to the SWMP shall be submitted in the annual report.

2. Contents of the SWMP

At a minimum, the permittee shall include the following information in its SWMP:

(a) A description of MCMs with measurable goals, including, as appropriate, the months and years when the permittee will undertake required actions, including interim milestones and the frequency of the action for each required MCM and if selected, the optional 8th MCM described in Part IV.D;

(b) A measurable goal that includes the development of ordinances or other regulatory mechanisms allowed by state, federal and local law, providing the legal authority necessary to implement and enforce the requirements of this permit, including information on any limitations to the legal authority;

(c) The measurable goals selected by the permittee must be clear, specific, and measurable (40 CFR §122.34);

(d) A summary of written procedures (e.g., periodic review of ordinances or other enforcement mechanisms, tracking of SWMP implementation by relevant departments, etc.) describing how the permittee will implement the provisions in Parts III and IV of this general permit;

(e) A description of a program or a plan of compliance with the impaired water bodies and TMDL requirements in Part III; and

(f) Identification of any impaired waters that have been added in accordance with Part III.

3. Legal Authority

(a) Traditional small MS4s, such as cities:

(1) Within two years from the permit effective date, the permittee shall review and revise, if needed, its relevant ordinance(s) or other regulatory mechanism(s), or shall adopt a new ordinance(s) or other regulatory mechanism(s) that provide the permittee with adequate legal authority to control pollutant discharges into and from its small MS4 in order to meet the requirements of this general permit.

(2) To be considered adequate, this legal authority must, at a minimum, address the following:

a. Authority to prohibit illicit discharges and illicit connections;

b. Authority to respond to and contain other releases e.g., control the discharge of spills, and prohibit dumping or disposal of materials other than stormwater into the small MS4);

c. Authority to require compliance with conditions in the permittee's ordinances, permits, contracts, or orders;

d. Authority to require installation, implementation, and maintenance of control measures;

e. Authority to receive and collect information, such as stormwater plans, inspection reports, and other information deemed necessary to assess compliance with this permit, from operators of construction sites, new or redeveloped land, and industrial and commercial facilities;

f. Authority, as needed, to enter and inspect private property including facilities, equipment, practices, or operations related to stormwater discharges to the small MS4;

g. Authority to respond to non-compliance with BMPs required by the small MS4;

h. Authority to assess penalties, including monetary, civil, or criminal penalties; and

i. Authority to enter into interagency or interlocal agreements or other maintenance agreements, as necessary.

(b) Non-traditional small MS4s, such as counties, drainage districts, transportation entities, municipal utility districts, military bases, prisons, and universities:

(1) Where the permittee lacks the authority to develop ordinances or to implement enforcement actions, the permittee shall exert enforcement authority as required by this general permit for its facilities, employees, contractors, and any other entity over which it has operational control within the portion of the urban area with a population of at least 50,000 people under the jurisdiction of the permittee. For discharges from third party actions, the permittee shall perform inspections and exert enforcement authority to the MEP.

(2) If the permittee does not have inspection or enforcement authority and is unable to meet the goals of this general permit through its own powers, then, unless otherwise stated in this general permit, the permittee shall perform the following actions in order to meet the goals of the permit:

a. Enter into interlocal agreements with municipalities where the small MS4 is located. These interlocal agreements must state the extent to which the municipality will be responsible for inspections and enforcement authority in order to meet the conditions of this general permit; or

b. If it is not feasible for the permittee to enter into interlocal agreements, the permittee shall report discharges or incidents that it cannot itself enforce against to an adjacent MS4 operator with enforcement authority or the appropriate TCEQ Regional Office. In determining feasibility for entering into interlocal agreements, the permittee shall consider all factors, including, without limitations, financial considerations and the willingness of the municipalities in which the small MS4 is located.

4. Resources

It is the permittee's responsibility to ensure that it has adequate resources and funding to implement the requirements of this general permit.

5. Effluent Limitations

The controls and activities/BMPs included in the SWMP constitute effluent limitations for the purposes of compliance with state rules. This includes the requirements of 30 TAC Chapter 319, Subchapter B (Hazardous Metals), which lists the maximum allowable concentrations of hazardous metals for discharge to water in the state.

6. Enforcement Measures

Permittees with enforcement authority (i.e., traditional small MS4s) shall develop a standard operating procedure (SOP) to respond to violations to the extent allowable under state and local law. When the permittee does not have enforcement authority over the violator, and the violations continue after violator has been notified by the permittee, or the source of the illicit discharge is outside the small MS4's boundary, the permittee shall notify either the adjacent MS4 operator with enforcement authority or the appropriate TCEQ Regional Office.

7. General Requirements

Permittees shall provide information in the SWMP documenting the development and implementation of the small MS4 program. At a minimum, the documentation must include:

(a) A list of all small MS4 operators contributing to the development and implementation of the SWMP, including a clear description of the role and responsibilities of each small MS4 operator, if applicable;

(b) A list of any public or private entities assisting with the development or implementation of the SWMP, including a clear description of the relationship, role, and responsibilities of each entity, if applicable;

(c) A list of all activities/BMPs and measurable goals for each of the MCMs;

(d) A schedule for the implementation of all SWMP requirements. The schedule must include, as appropriate, the months and years in which the permittee will undertake required actions, including interim milestones and the frequency of the action throughout the permit term;

(e) A description of how each measurable goal will be evaluated; and

(f) A rationale statement that addresses the overall program, including an overall statement describing how the activities/BMPs and measurable goals were selected.

Section D. Minimum Control Measures (MCMs)

Operators of small MS4s seeking coverage under this general permit shall develop, implement, and maintain a SWMP that includes the following eight MCMs, as applicable.

- MCMs 1-6 apply to all small MS4s regardless of their level as described in Part II.B.
- MCM 7 only applies to Level 4 small MS4s.
- MCM 8 is optional.
- Specific program elements under each MCM shall be implemented by all MS4 operators, unless otherwise noted as applicable for certain levels of small MS4s.

Existing permittees shall assess program elements that were described in their previous TCEQ approved SWMP. Permittees must modify their SWMP as necessary to develop and implement new elements or revise existing BMPs to comply with the requirements in this general permit and continue reducing the discharge of pollutants from the small MS4 to the MEP.

Permittees shall provide justification within the SWMP for any requirements that were not implemented because they were not applicable as described in each MCM. For example, where a small MS4 operator does not have OSSFs in their MS4 area, the requirement to inspect these facilities is not applicable to that small MS4 operator.

1. Public Education and Outreach

(a) The small MS4 operator shall implement a public education and outreach program to distribute educational materials to the community and conduct equivalent outreach about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff.

(1) The public education and outreach program shall at a minimum include the following target audiences, as applicable:

a. *Traditional MS4s* and counties shall address the residents being served;

b. *Non-traditional MS4s* (other than counties) shall address the community served by the MS4 as listed below:

(i) Universities shall target the faculty, other staff, and students;

(ii) Military bases shall target military personnel (and dependents), and employees (including contractors);

(iii) Prison complexes or other multi-building complexes shall target staff and contractors;

(iv) Municipal Utility Districts and other special districts shall target residents served, staff, and contractors; and

(v) Transportation authorities shall address staff, contractors, and users.

c. Small MS4 operators shall address additional target audiences within the small MS4 service area (such as but not limited to, those listed in Table 2) as listed below:

(i) Levels 1, 2a, and 2b: No requirement for additional audiences;

(ii) Level 3: A minimum of one additional audience; or

(iii) Level 4: A minimum of two additional audiences.

Table 2: Additional Target Audiences

Additional Target Audiences
Schools, educational organizations, or youth service and youth groups
Businesses, including commercial facilities, home-base and mobile businesses
Institutions or formal organizations such as churches, hospitals, and service organizations
Developers or construction site operators
Homeowner or neighborhood associations
Industrial facilities
Visitors/tourists

(2) Small MS4 operators shall target specific pollutant(s) in the permittee's education program (such as, but not limited to, those listed in Table 3). Each small MS4 shall have a minimum of one target pollutant for each target audience from Part IV.D.1(a)(1).a-c of this permit. Small MS4s may implement more than one target pollutant where desired or appropriate to address pollutants in stormwater discharges to the MEP. The target pollutant must be appropriate for the target audience. The same pollutant may be used for more than one target audience and the target pollutant(s) may change annually as needed.

Table 3: Pollutants and Sources

Pollutants and Sources
Grass clippings and leaf litter
Fertilizer and pesticides
Litter, trash containment, balloon releases
Dumping of solid waste
Illegal disposal of household hazardous waste
Pet waste
Failing septic systems
Swimming pool discharge, including saltwater pools
De-icing/rock salt usage/ storage
Oil, grease, fluids from vehicles
Sediment runoff from construction activities
Unauthorized discharge of restaurant waste
Vehicle washing
Washwater/grey water

(3) Small MS4 operators must use appropriate educational resources as BMPs (materials, events, activities, etc.) in conjunction with the selected pollutants for the selected audiences. The message delivered by these BMPs must be applicable to the target audience and relate to the target pollutant (such as a newsletter article about updated illegal dumping and discharge ordinances distributed to auto mechanic businesses or a hazardous household waste disposal flyer when applying for trash or recycling services). BMPs which are ongoing throughout the year or permit term may be counted as one annual BMP. Permittees shall explain how each BMP relates to the target pollutant and target audience. Small MS4 operators may change BMPs during the permit cycle if determined appropriate through annual reviews and a different BMP may be more effective for the small MS4's target pollutant or target audience. Any changes shall be reflected in the SWMP and explained in the annual report.

a. If the permittee has a public website, the permittee shall post its SWMP and the annual reports required under Part V.B.2 or a summary of the annual report on the permittee's website.

(i) The SWMP must be posted no later than 30 days after the NOI or NOC approval date; and

(ii) The annual report no later than 30 days after the due date.

b. Over the permit term, small MS4 operators shall implement a minimum number of public education and outreach BMPs from Table 4, as follows:

(i) Level 1: three BMPs;

(ii) Levels 2a and 2b: four BMPs; or

(iii) Levels 3 and 4: five BMPs.

Table 4: Required Public Education and Outreach BMPs

Activity/BMP	**Measurable Goals**
Information on the MS4 operator's website.	Maintain a webpage with current and accurate information and working links. • All links shall be checked, and the page shall be updated as necessary at a minimum of once annually. • Must be maintained for the full year, each year.

Activity/BMP	**Measurable Goals**
Social media posts, social media campaign.	Post a minimum of four times each year on a minimum of one social media platform. • The message shall address ways attendees can minimize or avoid adverse stormwater impacts or practices to improve the quality of stormwater runoff. • The messages shall be seasonally appropriate. • Must make a minimum of one post per quarter and all quarterly posts must be visible by attendees for the full year, each year.
Maintain or mark storm drains and inlets with, "No Dumping – Drains to Creek" or a similar message.	Placard, stencil, or paint a minimum of 10% of all known stormwater inlets in either high-impact areas identified by the small MS4 operator or impairment watersheds within the MS4 area each year. Where all known stormwater inlets have been marked, inspect, and maintain the markers for a minimum of 15% of all known stormwater inlets in either high-impact areas identified by the small MS4 operator or impairment watersheds within the MS4 area each year.
Media/advertising campaign/public service announcements in areas of high visibility: Billboard/poster; Bus shelter/bench; radio/television/movie theatre; and kiosks.	Develop topics that address activities or pollutants of concern. Advertisement must be active for a minimum of three weeks each year; or must have an estimated public exposure for the duration of the advertising campaign that is equal to twice the population for the small MS4 area (based on the most recent U.S. Census Bureau decennial population value for the small MS4 area).
Publish articles in local newspaper or newsletter, may be electronic.	Develop article topics that are group specific and address activities or pollutants of concern at a seasonally appropriate time. A minimum of two articles must be published or emailed to target audience groups each year.
Fact sheets/brochures/ utility bill inserts/door hangers.	Develop material topics that are group specific and address activities or pollutants of concern. Fact sheets, brochures, bill inserts, door hangers, or handouts shall be distributed each year for at least 75% of the intended audience. Develop and implement a tracking system to estimate what percentage of the intended audience is reached for determining BMP effectiveness.

Activity/BMP	Measurable Goals
Permanent stormwater related signage.	Place signage in a location where the message is relevant, and highly visible to target audience. Signage will count as an annual BMP for the year it was put in place and for each subsequent year of this permit cycle as long as each of those years, the permittee inspects and maintains, as necessary, 100% of the signage once annually.
Promote, host, or develop educational meetings, seminar, or trainings.	Hold, host, or promote a minimum of one event for level 1 and 2 MS4s or two events for level 3 and 4 MS4s annually. • The events shall address ways attendees can minimize or avoid adverse impacts to stormwater or practices to improve the quality of stormwater runoff. • These events may address different pollutants and audiences.
Targeted education campaign via mail, email, or in person.	Minimum of one campaign annually distributed to at least 75% of the intended audience, or with a specific event advertised to at least 75% of the intended audience. Develop and implement a tracking system to estimate what percentage of the intended audience is reached for determining BMP effectiveness. (Examples: Sediment control with small building permit; leaf litter email during street sweeping season, or education brochure to all businesses conducting certain activity)

c. Small MS4 operators shall create/host or support the public education and outreach BMP(s) in Part IV.D.1.(a)(3) and Table 4. To be considered support given to the coordinating groups, the small MS4 operator shall at minimum conduct at least one of the following or similar:

(i) Plan, or assist with planning, the distribution of materials;

(ii) Coordinate volunteers;

(iii) Contribute supplies, materials, tools, or equipment;

(iv) Provide assistance from MS4 staff to distribute the materials; or

(v) Provide financial support.

d. Small MS4 operators may partner with other MS4 operators to maximize the program and cost effectiveness of the required outreach.

2. Public Involvement/Participation

All permittees, except prisons/correctional facilities, shall involve the public, and, at minimum, comply with any state and local public notice requirements in the planning and implementation activities related to developing and implementing the SWMP. The small

MS4 operator must create opportunities, or support activities that are coordinated by citizen groups, for residents and others to become involved with the SWMP. The activities/BMPs must demonstrate an impact on stormwater runoff by improving water quality.

(a) Over the permit term, small MS4 operators shall implement a minimum number of public involvement/participation activities and measurable goals from Table 5 as follows:

(1) Level 1 small MS4: two BMPs;

(2) Levels 2a and 2b small MS4: three BMPs; or

(3) Levels 3 and 4 small MS4: four BMPs.

Table 5: Public Involvement/Participation BMPs

Activity/BMP	**Measurable Goals**

Stream/lake or watershed clean-up events; litter/trash clean-up events such as Adopt-A-Highway, Adopt-A-Spot, Adopt-A-Street, Adopt-A-Stream, etc.	Host or support at a minimum one event for level 1 and 2 MS4s or two events for level 3 and 4 MS4s annually.
	• To be considered an event, the land area cleaned must be a minimum of:
	  ○ two acres,
	  ○ 400 yards of steam/streambank/riparian area, or
	  ○ two miles of roadside
	• These may be combined (such as one acre of land and 200 yards of stream).

Habitat improvement; Tree planting; Invasive Vegetation removal; Stream restoration.	Host or support at a minimum one event for level 1 and 2 MS4s or two events for level 3 and 4 MS4s annually. • To be considered an event, the project must be a minimum of 0.5 acres or 25 yards. • An event may take place in streams, parks, areas adjacent to public waterways, or other green space. • An event may be a combination of locations and areas.
Volunteer water quality monitoring such as Texas Stream Team.	Host or support a minimum one event annually. To be considered an event, the monitoring must be conducted at minimum once each year.
Stormwater related speaker series.	Provide or support a minimum of one session for level 1 and 2 MS4s or two sessions for level 3 and 4 MS4s each year. These may be different speakers or audiences.
MS4 area-wide stormwater survey for input on program implementation.	Provide or support a minimum of one public survey annually for input on the program implementation to be distributed to at least 75% of the intended audience. Develop and implement a tracking system to estimate what percentage of the intended audience is reached for determining BMP effectiveness.

Activity/BMP	Measurable Goals
Hold events to train residents, or work a project for homeowner associations (HOAs), or other public groups to cover stormwater topics such as: Building rain barrels; Fertilizer application training; Rain garden/bio retention creation or maintenance; How to recognize illicit discharge activities and communicate observations to appropriate MS4 staff.	Provide or support at minimum one project or training annually.
Educational display/booth at a school, public event, or similar event to provide information or displays that work to improve public understanding of issues related to water quality.	Provide or support one booth or display at minimum annually. The booth or display must be staffed during the time which the event is open to the public.
Public meeting for input on the program implementation such as a city council meeting, board meeting, or stakeholder meeting.	Host or support a minimum of one meeting annually for input on the program implementation to be advertised to at least 75% of the intended audience. Develop and implement a tracking system to estimate what percentage of the intended audience is reached for determining BMP effectiveness.

(b) Small MS4 operators shall create/host or support the public involvement/participation BMP(s) in Part IV.D.2.(a) and Table 5. To be considered support given to the coordinating groups the small MS4 operator shall at minimum conduct at least one of the following or similar:

(1) Plan, or assist with planning, the event or activity;

(2) Contribute supplies, materials, tools, or equipment;

(3) Provide assistance from MS4 staff during the activity;

(4) Provide assistance with recruiting volunteers for events;

(5) Make a space available for projects, meetings, or events;

(6) Advertisement for the events;

(7) Supply disposal services;

(8) Arrange land or stream access;

(9) Provide financial support; or

(10) Provide donations of goods and services such as food.

(c) Small MS4 operators may partner with other MS4 operators to maximize the program and cost effectiveness of the required public involvement/participation activities.

3. Illicit Discharge Detection and Elimination (IDDE)

(a) Program Development

(1) All permittees shall develop, implement, and enforce a program to investigate, detect, and eliminate illicit discharges into the small MS4. The program must include a plan to detect and address non-stormwater discharges, including illegal dumping to the small MS4.

The Illicit Discharge Detection and Elimination (IDDE) program must include the following:

a. A current and accurate MS4 map (see Part IV.D.3.(c)(1));

b. Methods for informing and training MS4 field staff (see Part IV.D.3.(c)(2));

c. Methods for facilitating public reporting of illicit discharges and illegal dumping (see Part IV.D.3.(c)(3));

d. Procedures for responding to illicit discharge, illegal dumping, and spills (see Part IV.D.3.(c)(4));

e. Procedures for tracing the source of an illicit discharge and illegal dumping (see Part IV. D.3.(c)(5));

f. Procedures for removing the source of the illicit discharge and illegal dumping (see Part IV.D.3.(c)(5));

g. Conduct inspections in response to complaints including follow-up inspections, and procedures for inspections (see Part IV.D.3.(c)(6));

h. For Levels 2, 3 and 4, if applicable, procedures to prevent and correct any leaking on-site sewage disposal systems that discharge into the small MS4;

i. For Level 4, procedures for identifying priority areas within the small MS4 likely to have illicit discharges and illegal dumping, and a list of all such areas identified in the small MS4 (see Part IV.D.3.(e)(1));

j. For Level 4, dry weather field screening to detect illicit discharges and illegal dumping (see Part IV.D.3.(e)(2)); and

k. For Level 4, procedures to reduce the discharge of floatables in the small MS4 (see Part IV.D.3.(e)(3)).

(2) For non-traditional small MS4s, if illicit connections, illegal dumping, or illicit discharges are observed related to another operator's MS4, the permittee shall notify the other MS4 operator within 48 hours of discovery. If notification to the other MS4 operator is not practicable, then the permittee shall notify the appropriate TCEQ Regional Office of the possible illicit connection, illegal dumping, or illicit discharge.

(3) If another MS4 operator notifies the permittee of an illegal connection, illegal dumping, or illicit discharge to the small MS4, then the permittee shall follow the requirements specified in Part IV.D.3.(c)(5).

(b) Allowable Non-Stormwater Discharges

Non-stormwater discharges listed in Part II.D do not need to be considered by the permittee as an illicit discharge requiring elimination unless the permittee or the TCEQ identifies the discharge as a significant source of pollutants to the small MS4.

(c) Requirements for All Permittees

All permittees shall meet all the following requirements, including Table 6.

(1) MS4 Mapping

All permittees shall maintain a current and accurate MS4 map, which must be located on site and available for review by TCEQ. The MS4 map must show at a minimum the following information:

a. The location of all small MS4 outfalls that are operated by the permittee and that discharge into Waters of the U.S.;

b. The location and name of all surface waters receiving discharges from the small MS4 outfalls; and

c. Priority areas identified under Part IV.D.3.(e)(1), if applicable.

(2) Education and Training

All permittees shall implement a method for informing or training all the permittee's field staff that may come into contact with or otherwise observe an illicit discharge, illegal dumping, or illicit connection to the small MS4 as part of their normal job responsibilities. Training program materials and attendance lists must be maintained onsite and made available for review by the TCEQ.

(3) Public Reporting of Illicit Discharges and Spills

All permittees shall publicize and facilitate public reporting of illicit discharges, illegal dumping, or water quality impacts associated with discharges into or from the small MS4. The permittee shall provide a central contact point to receive reports; for example, by including a telephone number for complaints and spill reporting.

(4) All permittees shall develop and maintain onsite procedures for responding to illicit discharges, illegal dumping, and spills.

(5) Source Investigation and Elimination

a. Minimum Investigation Requirements – Upon becoming aware of an illicit discharge or illegal dumping, all permittees shall conduct an investigation to identify and locate the source of such illicit discharge or illegal dumping as soon as practicable.

(i) All permittees shall prioritize the investigation of discharges based on their relative risk of pollution. For example, sanitary sewage may be considered a high priority discharge.

(ii) All permittees shall report to the TCEQ immediately upon becoming aware of the occurrence of any illicit flows believed to be an immediate threat to human health or the environment.

(iii) All permittees shall track all investigations and document, at a minimum, the date(s) the illicit discharge or illegal dumping was

observed; the results of the investigation; any follow-up of the investigation; and the date the investigation was closed.

b. Identification and Investigation of the Source of the Illicit Discharge –All permittees shall investigate and document the source of illicit discharges and illegal dumping where the permittees have jurisdiction to complete such an investigation. If the source of illicit discharge or illegal dumping extends outside the permittee's boundary, all permittees shall notify the adjacent permitted MS4 operator or the appropriate TCEQ Regional Office.

c. Corrective Action to Eliminate Illicit Discharge

If and when the source of the illicit discharge or illegal dumping has been determined, all permittees shall immediately notify the responsible party of the problem, and shall require the responsible party to perform all necessary corrective actions to eliminate the illicit discharge and illegal dumping.

(6) Inspections – The permittee shall conduct inspections, in response to complaints, and shall conduct follow-up inspections to ensure that corrective measures have been implemented by the responsible party.

The permittee shall develop written procedures describing the basis for conducting inspections in response to complaints and conducting follow-up inspections.

Table 6: Required IDDE BMPs

Activity/BMP	**Measurable Goals**
Maintain a current and accurate MS4 map as described in Part IV.D.3.(c)(1).	Review and update, as necessary, at least one time annually to include features which have been added, removed, or changed.
Conduct training for all the permittee's field staff as described in Part IV.D.3.(c)(2). Training may be conducted in person or using self-paced training materials such as videos or reading materials.	Conduct a minimum of one training annually for 100% of MS4 field staff that may come into contact with or otherwise observe an illicit discharge, illegal dumping, or illicit connection to the small MS4 as part of their normal job responsibilities.

Activity/BMP	**Measurable Goals**
Maintain and publicize a public reporting method for the public to report illicit discharges, illegal dumping, or water quality impacts associated with discharges into or from the small MS4 such as a reporting hotline, online form, or other similar mechanism as described in Part IV.D.3.(c)(3).	Maintain a minimum of one public reporting mechanism 100% of the time during the permit term. Publicize the public reporting mechanism a minimum of two times annually in a method designed to reach the majority of the intended audience. Develop and implement a tracking system to estimate what percentage of the intended audience is reached for determining BMP effectiveness. In addition, if the MS4 operator has a public website, the public reporting mechanism must be publicized on the public website 100% of the time during the permit term.
Develop and maintain procedures for responding to illicit discharges, illegal dumping, and spills as described in Part IV.D.3.(c)(4).	Review and update the procedures at least one time annually to address changes and make improvements to the established procedures where applicable.
Source investigation and elimination of illicit discharges and illegal dumping as described in Part IV.D.3.(c)(5).	Respond to 100% of known illicit discharges and illegal dumping incidents each year to investigate sources (or some Level 2b MS4s must notify the appropriate agency with the authority to act). Respond to 100% of high priority discharges each year, such as sanitary sewer discharges within 24 hours (or some Level 2b MS4s must notify the appropriate agency with the authority to act). For 100% of known illicit discharges or illegal dumping incidents where the small MS4 does not have jurisdiction, notify the adjacent MS4 operator or the applicable TCEQ regional office each year. Notify TCEQ immediately of 100% of illicit flows believed to be an immediate threat to human health or the environment throughout the permit term.
Corrective action to eliminate illicit discharges and illegal dumping as described in Part IV.D.3.(c)(5).	For 100% of illicit discharges or illegal dumping where a source has been determined, notify the responsible party of the problem within 24 hours. Require the responsible party to perform all necessary corrective actions to eliminate the illicit discharge.
Inspection Procedures as described in Part IV.D.3.(c)(6).	Review and update the procedures at least one time annually to address changes and make improvements to the established procedures where applicable.

Activity/BMP	Measurable Goals
Inspections in response to complaints as described in Part IV.D.3.(c)(6).	Conduct inspections in response to 100% of complaints each year according to the established procedures (or some Level 2b MS4s must notify the appropriate agency with the authority to act). Conduct follow up inspections in 100% of cases each year where necessary as described in the established procedures (except for some Level 2b MS4s without the appropriate authority to act).

(d) Additional Requirements for Levels 3 and 4 small MS4s

In addition to the requirements described in Parts IV.D.3.(c), permittees who operate Levels 3 or 4 small MS4s shall meet the following requirements, including those described in Table 7.

Source Investigation and Elimination

Permittees who operate Levels 3 or 4 small MS4s shall upon being notified that the discharge has been eliminated, conduct a follow-up investigation or field screening, consistent with Part IV.D.2.(e)(2), to verify that the discharge has been eliminated. Follow-up investigations shall be completed within five business days, on average. The permittee shall document its follow-up investigation. The permittee may seek recovery and remediation costs from responsible parties consistent with Part IV.C.3, and require compensation-related costs. Resulting enforcement actions must follow the procedures for enforcement action in Part IV.C.3 and 6. If the suspected source of the illicit discharge is authorized under an NPDES/TPDES permit or the discharge is listed as an authorized non-stormwater discharge, as described in Part II.D, no further action is required.

Table 7: Additional Required IDDE BMPs for Levels 3 and 4 small MS4s

Activity/BMP	Measurable Goals
Conduct follow-up investigations or field screenings when notified that a discharge has been eliminated.	Conduct follow-up investigations or field screening in response to 100% of notifications each year. Complete the follow-up investigations within five business days, on average.

(e) Additional Requirements for Level 4 Small MS4s

In addition to the requirements described in Parts IV.D.3.(c)-(d) above, permittees who operate Level 4 small MS4s shall meet the following requirements including Table 8:

(1) Identification of Priority Areas

Permittees who operate Level 4 small MS4s shall identify priority areas likely to have illicit discharges or illegal dumping, shall document the basis for the

selection of each priority area, and shall create a list of all priority areas identified. This priority area list must be available for review by the TCEQ.

(2) Dry Weather Field Screening

By the end of the permit term, permittees who operate Level 4 small MS4s shall develop and implement a written dry weather field screening program to assist in detecting and eliminating illicit discharges and illegal dumping to the small MS4. Dry weather field screening program must consist of (1) field observations; and (2) field screening as described below.

For dry weather field screening, at a minimum, the permittee shall:

a. Conduct dry weather field screening in priority areas as identified by the permittee in Part IV.D.3.(e)(1). By the end of the permit term, all of those priority areas, although not necessarily all individual outfalls, must be screened.

b. Field observation requirements – The permittee shall develop written procedures for observing flows from outfalls when there has been at least 72 hours of dry weather. The written procedures must include the basis used to determine which outfalls will be observed. The permittee shall record visual observations such as odor, color, clarity, floatables, deposits, or stains.

c. Field screening requirements – The permittee shall develop written procedures to determine which dry weather flows will be screened, based on results of field observations or complaint from the public or the permittee's trained field staff. At a minimum, when visual observations indicate a potential problem such as discolored flows, foam, surface sheen, and other similar indicators of contamination, the permittee shall conduct a field screening analysis for selected indicator pollutants. The basis for selecting the indicator pollutants must be described in the written procedures. Screening methodology may be modified based on experience gained during the actual field screening activities. The permittee shall document the method used.

(3) Reduction of Floatables

The permittee shall implement a program to reduce the discharge of floatables (for example, litter and other human-generated solid refuse) in the small MS4. The permittee shall include source controls at a minimum and structural controls and other appropriate controls where necessary.

The permittee shall maintain two locations where floatable material can be removed before the stormwater is discharged to or from the small MS4. Floatable material shall be collected at the frequency necessary for maintenance of the removal devices, but not less than twice per year. The amount of material collected shall be estimated by weight, volume, or by other practical means. Results shall be included in the annual report.

Table 8: Additional Required IDDE BMPs for Level 4 small MS4s

Activity/BMP	**Measurable Goals**
Identification of priority areas as described in Part IV.D.3.(e)(1).	Develop and maintain a list of 100% of the priority areas identified by the small MS4 operator each year. At a minimum, small MS4 operators must consider the following in developing the priority areas: • Sanitary sewer lines • Industrial areas • Commercial areas • Areas with history of past illicit discharges or illegal dumping Review and update the list at least one time annually to include new, removed, or changed areas based on the criteria established by the small MS4 for identifying priority areas.
Dry weather field screening as described in Part IV.D.3.(e)(2).	Develop and implement written procedures to determine which dry weather flows will be screened, based on results of field observations or complaint from the public or the permittee's trained field staff. Review and update the procedures at least one time annually to address changes and make improvements to the established procedures where applicable. • New Level 4 small MS4s shall develop the procedures within one year of obtaining their authorization under this general permit. Develop and implement written procedures for observing flows from outfalls when there has been at least 72 hours of dry weather. Review and update the procedures at least one time annually to address changes and make improvements to the established procedures where applicable. New Level 4 small MS4s shall develop the procedures within one year of obtaining their authorization under this general permit. Conduct dry weather field screening in 100% of the priority areas as identified by the permittee in Part IV.D.2.(e)(1) by the end of the permit term with interim milestones established for screening each year.

Activity/BMP	Measurable Goals
Floatable Reduction as described in Part IVI.D.3.(e)(3).	Develop and implement at least two source controls each year to address floatables such as, but not limited to, establishing and maintaining waste collection sites, clean-up events, and anti-littering campaigns. Develop and implement at least two structural controls each year such as, but not limited to, inlet protections, boom sites, hazardous materials traps, trash racks, outfall netting, and catch basins. Annually maintain at least two locations where floatable material can be removed before the stormwater is discharged to or from the small MS4. These locations may be the same as the areas where source controls and structural controls are implemented. Floatable material shall be collected at the frequency necessary for maintenance of the removal devices, but not less than two times per year.

4. Construction Site Stormwater Runoff Control

(a) Requirements and Control Measures

All permittees shall develop, implement, and enforce a program requiring operators of small and large construction activities to select, install, implement, and maintain stormwater control measures that prevent illicit discharges to the MEP. The program must include the development and implementation of an ordinance or other regulatory mechanism, as well as sanctions to ensure compliance to the extent allowable under state, federal, and local law, to require erosion and sediment control.

If TCEQ waives requirements for stormwater discharges associated with small construction from a specific site(s), the permittee is not required to enforce the program to reduce pollutant discharges from such site(s).

(b) Requirements for All Permittees

All permittees shall meet the following requirements including Table 9.

(1) All permittees shall require that construction site operators implement appropriate erosion and sediment control BMPs. The permittee's construction program must ensure erosion and sediment controls, soil stabilization, and BMP requirements are effectively implemented for all small and large construction activities discharging to its small MS4 consistent with the TPDES CGP, TXR150000.

(2) Prohibited Discharges - The following discharges are prohibited:

a. Wastewater from washout of concrete and wastewater from water well drilling operations, unless managed by an appropriate control;

b. Wastewater from washout and cleanout of stucco, paint, from release oils, 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. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, unless managed by appropriate BMPs.

(3) Construction Plan Review Procedures

To the extent allowable by state, federal, and local law, all permittees shall maintain and implement site plan review procedures that describe which plans will be reviewed as well as when an operator may begin construction. For those permittees without legal authority to enforce site plan reviews, this requirement is limited to those sites operated by the permittee and its contractors and located within the permittee's regulated area. The site plan procedures must meet the following minimum requirements:

a. The site plan review procedures must incorporate consideration of potential water quality impacts.

b. The permittee may not approve any plans unless the plans contain appropriate site-specific construction site control measures that, at a minimum, meet the requirements described in the TPDES CGP, TXR150000.

The permittee may require and accept a plan, such as a stormwater pollution prevention plan (SWP3), that has been developed pursuant to the TPDES CGP, TXR150000.

(4) Construction Site Inspections and Enforcement

To the extent allowable by state, federal, and local law, all permittees shall implement procedures for inspecting large and small construction projects. Permittees without legal authority to inspect construction sites shall at a minimum conduct inspection of sites operated by the permittee or its contractors and that are located in the permittee's regulated area.

a. The permittee shall conduct inspections based on the evaluation of factors that are a threat to water quality, such as: soil erosion potential; site slope; project size and type; sensitivity of receiving water bodies; proximity to receiving water bodies; non-stormwater discharges; and past record of non-compliance by the operators of the construction site.

b. Inspections must occur during the active construction phase.

(i) All permittees shall develop and implement updated written procedures outlining the inspection and enforcement requirements. These procedures must be maintained on-site or in the SWMP and be made available to TCEQ.

(ii) Inspections of construction sites must, at a minimum:

1. Determine whether the site has appropriate coverage under the TPDES CGP, TXR150000. If no coverage exists, notify the permittee of the need for permit coverage;

2. Conduct a site inspection to determine if control measures have been selected, installed, implemented, and maintained according to the small MS4's requirements;
3. Assess compliance with the permittee's ordinances and other regulations; and
4. Provide a written or electronic inspection report.

c. Based on site inspection findings, all permittees shall take all necessary follow-up actions (for example, follow-up-inspections or enforcement) to ensure compliance with permit requirements and the SWMP. These follow-up and enforcement actions must be tracked and documentation maintained for review by the TCEQ.

For non-traditional small MS4s with no enforcement powers, the permittee shall notify the adjacent MS4 operator with enforcement authority or the appropriate TCEQ Regional Office.

(5) Information Submitted By the Public

All permittees shall develop, implement, and maintain procedures for receipt and consideration of information submitted by the public.

(6) MS4 Staff Training

All permittees shall ensure that all staff whose primary job duties are related to implementing the construction stormwater program (including permitting, plan review, construction site inspections, and enforcement) are informed or trained to conduct these activities. The training may be conducted by the permittee or by outside trainers.

Table 9: Required Construction Site Stormwater Runoff Control BMPs

Activity/BMP	**Measurable Goals**
Develop and maintain an ordinance or other regulatory mechanism as described in Part IV.D.4.(a).	Review and update the ordinance or other regulatory mechanism at least one time during the permit term to address changes and make improvements to the ordinance where applicable.
Prohibit discharges as described in Part IV.D.4.(b)(2).	Develop and maintain an ordinance or other regulatory mechanism to prohibit these discharges. Review and update the ordinance or other regulatory mechanism at least one time during the permit term to address changes and make improvements to the ordinance where applicable.
Maintain and implement site plan review procedures that describe which plans will be reviewed as well as when an operator may begin construction as described in Part IV.D.4.(b)(3).	Review and update site plan review procedures at least one time annually to address changes and make improvements to the established procedures where applicable. Implement site plan review procedures for 100% of new construction site plans received each year.

Activity/BMP	Measurable Goals
Implement procedures for inspecting large and small construction projects as described in Part IV.D.4.(b)(4).	Review and update inspection procedures at least one time annually to address changes and make improvements to the established procedures where applicable.
Conduct construction site inspections as described in Part IV.D.4.(b)(4).	Conduct inspections at a minimum of 80% of active construction sites annually according to the established procedures (or some Level 2b small MS4s must notify the appropriate agency with the authority to act). Each year, conduct follow up inspections in 100% of cases where necessary as described in the established procedures (except for some Level 2b small MS4s without the appropriate authority to act).
Develop, implement, and maintain procedures for receipt and consideration of information submitted by the public as described in Part IV.D.4.(b)(5).	Review and update procedures for the receipt and consideration of information submitted by the public at least one time annually to address changes and make improvements to the established procedures where applicable. Maintain one webpage, hotline, or similar method for receipt of information submitted by the public throughout the permit term.
Conduct training for all the MS4 staff whose primary job duties are related to implementing the construction stormwater program as described in Part IV.D.4.(b)(6). Training may be conducted in person or using self-paced training materials such as videos or reading materials.	Conduct a minimum of one training annually for 100% of MS4 staff whose primary job duties are related to implementing the construction stormwater program.

(c) Additional Requirements for Levels 3 and 4 small MS4s

In addition to the requirements described in Parts IV.D.4.(b) above, permittees who operate Levels 3 or 4 small MS4s shall meet the following requirements including Table 10.

Construction Site Inventory

Permittees who operate Levels 3 or 4 small MS4s shall maintain an inventory of all TPDES permitted active public and private construction sites in the small MS4 area, that result in a total land disturbance of one or more acres or that result in a total land disturbance of less than one acre if part of a larger common plan or development or sale. Notification to the small MS4 must be made by submittal of a copy of an NOI or a

small construction site notice, as applicable. The permittee shall make this construction site inventory in the small MS4 area available to the TCEQ upon request for review.

Table 10: Additional Required Construction Site Stormwater Runoff Control BMPs for Levels 3 and 4 Small MS4s

Activity/BMP	**Measurable Goals**
Maintain a Construction Site inventory as described in Part IV.D.4.(c).	Maintain an annual inventory of 100% of TPDES permitted active public and private construction sites in the small MS4 area, that result in a total land disturbance of one or more acres or that result in a total land disturbance of less than one acre if part of a larger common plan or development or sale. • New Levels 3 or 4 small MS4s shall develop the inventory within one year of obtaining their authorization under this general permit.

5. Post Construction Stormwater Management in New Development and Redevelopment

(a) Post-Construction Stormwater Management Program

All permittees shall meet the requirements below including Table 11.

(1) All permittees shall develop, implement, and enforce a program, to the extent allowable under state, federal, and local law, to control stormwater discharges from new development and redeveloped sites that discharge into the small MS4 that disturb one acre or more, including projects that disturb less than one acre that are part of a larger common plan of development or sale. The program must be established for private and public development sites. The program may utilize an offsite mitigation and payment in lieu of components to address this requirement.

(2) All permittees shall use, to the extent allowable under state, federal, and local law and local development standards, an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects. The permittees shall establish, implement, and enforce a requirement that owners or operators of new development and redeveloped sites design, install, implement, and maintain a combination of structural and non-structural BMPs appropriate for the community and that protects water quality. If the construction of permanent structures is not feasible due to space limitations, health and safety concerns, cost effectiveness, or highway construction codes, the permittee may propose an alternative approach to TCEQ.

(b) Requirements for All Permittees

All permittees shall meet all the following requirements including Table 11.

(1) All permittees shall document and maintain records of enforcement actions and make them available for review by the TCEQ.

(2) Long-Term Maintenance of Post-Construction Stormwater Control Measures

All permittees shall, to the extent allowable under state, federal, and local law, ensure the long-term operation and maintenance of structural stormwater control measures installed through one or both of the following approaches:

a. Maintenance performed by the permittee. (See Part IV.D.6)

b. Maintenance performed by the owner or operator of a new development or redeveloped site under a maintenance plan. The maintenance plan must be filed in the real property records of the county in which the property is located. The permittee shall require the owner or operator of any new development or redeveloped site to develop and implement a maintenance plan addressing maintenance requirement for any structural control measures installed on site. The permittee shall require operation and maintenance performed is documented and retained on site, such as at the offices of the owner or operator, and made available for review by the small MS4.

Table 11: Required Post Construction Stormwater Management in New Development and Redevelopment BMPs

Activity/BMP	**Measurable Goals**
Develop and maintain an ordinance or other regulatory mechanism as described in Part IV.D.5.(a)(2).	Review and update the ordinance or other regulatory mechanism at least one time during the permit term to address changes and make improvements to the ordinance where applicable.
Document and maintain records of enforcement actions and make them available for review by the TCEQ as described in Part IV.D.5.(b)(1).	Maintain records of 100% of enforcement actions taken each year. Make 100% of enforcement records available to TCEQ for review within 24 hours of request.
Ensure the long term operation and maintenance of structural stormwater control measures installed as described in Part IV.D.5.(b)(2).	Each year, implement a maintenance plan and schedule established by the small MS4 operator addressing 100% of stormwater control measures where the small MS4 operator is responsible for maintenance. Each year, require 100% of the owners or operators of any new development or redeveloped sites to develop and implement a maintenance plan addressing maintenance requirement for any structural control measures installed on site. Require the site owner or operators to maintain documentation, such as a tracking log, onsite of 100% of the maintenance performed and made available for review by the small MS4 operator or TCEQ within 24 hours of the request.

(c) Additional Requirements for Level 4 small MS4s

In addition to the requirements described in Parts IV.D.5.(b)(1)-(2), permittees who operate Level 4 small MS4s shall meet the following requirements including Table 12.

(1) Inspections – Permittees who operate Level 4 small MS4s shall develop and implement an inspection program to ensure that all post construction stormwater control measures are operating correctly and are being maintained as required consistent with its applicable maintenance plan. For small MS4s with limited enforcement authority, this requirement applies to the structural controls owned and operated by the small MS4 or its contractors that perform these activities within the small MS4's regulated area.

(2) Inspection Reports – The permittee shall document its inspection findings in an inspection report and make them available for review by the TCEQ.

Table 12: Additional Required Post Construction Stormwater Management in New Development and Redevelopment BMPs for Level 4 Small MS4s

Activity/BMP	**Measurable Goals**
Develop and implement an inspection program as described in Part IV.D.5.(c)(1).	Develop and implement an inspection program to ensure that of post construction stormwater control measures in the small MS4 area are operating correctly and are being maintained as required consistent with its applicable maintenance plan each year. At a minimum, the small MS4 operator must inspect 20% of the post construction stormwater controls in the small MS4 area each year, or more if required by the MS4 maintenance plan. For small MS4s with limited enforcement authority, this requirement applies only to 100% of the structural controls owned and operated by the small MS4 or its contractors that perform these activities within the small MS4's regulated area each year. New Level 4 small MS4s shall develop the inspection program within one year of obtaining their authorization under this general permit.
Maintain Inspection Reports as described in Part IV.D.5.(c)(2).	Document inspection findings in an inspection report for 100% of inspections performed each year. Make 100% of inspection reports available to TCEQ staff for review within 24 hours of request.

6. Pollution Prevention and Good Housekeeping for Municipal Operations

(a) Program Development

All permittees shall develop and implement an operation and maintenance program (O&M), including an employee training component that has the ultimate goal of preventing or reducing pollutant runoff from municipal activities and municipally owned areas including but not limited to: park and open space maintenance; street, road, or highway maintenance; fleet and building maintenance; stormwater system

maintenance; new construction and land disturbances; municipal parking lots; vehicle and equipment maintenance and storage yards; waste transfer stations; and salt/sand storage locations.

(b) Requirements for All Permittees

All permittees shall meet the requirements described below including Table 13.

(1) Permittee-owned Facilities and Control Inventory

All permittees shall develop and maintain an inventory of facilities and stormwater controls that it owns and operates within the regulated area of the small MS4. The inventory must include all applicable permit numbers, registration numbers, and authorizations for each facility or controls. The inventory must be available for review by TCEQ and must include, but is not limited, to the following, as applicable:

a. Composting facilities;

b. Equipment storage and maintenance facilities;

c. Fuel storage facilities;

d. Hazardous waste disposal facilities;

e. Hazardous waste handling and transfer facilities;

f. Incinerators;

g. Landfills;

h. Materials storage yards;

i. Pesticide storage facilities;

j. Buildings, including schools, libraries, police stations, fire stations, and office buildings;

k. Parking lots;

l. Golf courses;

m. Swimming pools;

n. Public works yards;

o. Recycling facilities;

p. Salt storage facilities;

q. Solid waste handling and transfer facilities;

r. Street repair and maintenance sites;

s. Vehicle storage and maintenance yards; and

t. Structural stormwater controls.

(2) Training and Education

All permittees shall inform or train appropriate employees involved in implementing pollution prevention and good housekeeping practices. All permittees shall maintain a training attendance list for review by TCEQ when requested.

(3) Disposal of Waste Material – Waste materials removed from the small MS4 must be disposed of in accordance with 30 TAC Chapters 330 or 335, as applicable.

(4) Contractor Requirements and Oversight

a. Any contractors hired by the permittee to perform maintenance activities on permittee-owned facilities must be contractually required to comply with all of the stormwater control measures, good housekeeping practices, and facility-specific stormwater management operating procedures described in Parts IV.D.6.(b)(2)-(6).

b. All permittees shall provide oversight of contractor activities to ensure that contractors are using appropriate control measures and SOPs. Oversight procedures must be maintained on-site and made available for inspection by TCEQ.

(5) Municipal Operation and Maintenance Activities

a. Assessment of permittee-owned operations

All permittees shall evaluate operation and maintenance (O&M) activities for their potential to discharge pollutants in stormwater, including but not limited to:

(i) Road and parking lot maintenance, including such areas as pothole repair, pavement marking, sealing, and re-paving;

(ii) Bridge maintenance, including such areas as re-chipping, grinding, and saw cutting;

(iii) Cold weather operations, including plowing, sanding, and application of deicing and anti-icing compounds and maintenance of snow disposal areas; and

(iv) Right-of-way maintenance, including mowing, herbicide and pesticide application, and planting vegetation.

b. All permittees shall identify pollutants of concern that could be discharged from the above O&M activities (for example, metals; chlorides; hydrocarbons such as benzene, toluene, ethyl benzene, and xylenes; sediment; and trash).

c. All permittees shall develop and implement a set of pollution prevention measures that will reduce the discharge of pollutants in stormwater from the above activities. These pollution prevention measures must include at least two the following:

(i) Replacing materials and chemicals with more environmentally friendly materials or methods;

(ii) Tracking application of deicing and anti-icing compounds;

(iii) Using suspended tarps, booms, or vacuums to capture paint, solvents, rust, paint chips and other pollutants generated by regular bridge maintenance; and

(iv) Placing barriers around or conducting runoff away from deicing chemical storage areas to prevent discharge into surface waters.

d. Inspection of pollution prevention measures - All pollution prevention measures implemented at permittee-owned facilities must be visually inspected to ensure they are working properly. The permittee shall develop written procedures that describes frequency of inspections occurring at least one time annually and how they will be conducted. A log of inspections must be maintained and made available for review by the TCEQ upon request.

(6) Structural Control Maintenance

If BMPs include structural controls, maintenance of the controls must be performed by the permittee and consistent with maintaining the effectiveness of the BMP. The permittee shall develop written procedures that define the frequency of inspections occurring at least one time annually and how they will be conducted.

Table 13: Required Pollution Prevention and Good Housekeeping for Municipal Operations BMPs

Activity/BMP	**Measurable Goals**
Permittee-owned Facilities and Control Inventory as described by Part IV.D.6.(b)(1).	Develop and maintain an annual inventory for 100% of the small MS4 owned and operated facilities and controls in the small MS4 area. Review and update the inventory at least one time annually to address changes or additions to the facilities and controls where applicable.
Training and Education as described in Part IV.D.6.(b)(2). Training may be conducted in person or using self-paced training materials such as videos or reading materials.	Conduct a minimum of one training annually for 100% of employees involved in implementing pollution prevention and good housekeeping practices. For small MS4s which use only contractors to implement pollution prevention and good housekeeping practices, ensure training of 100% of applicable contract staff is conducted at least one time annually using contract language or another similar method.
Disposal of Waste Material as described in Part IV.D.6.(b)(3).	Ensure that 100% of waste from the MS4 is disposed of in accordance with 30 TAC Chapters 330 or 335, as applicable each year.

Activity/BMP	**Measurable Goals**
Contractor Requirements and Oversight as described in Part IV.D.6.(b)(4).	Each year, ensure that 100% of contractors hired by the MS4 to perform maintenance activities on permittee-owned facilities is contractually required to comply with all of the stormwater control measures, good housekeeping practices, and facility-specific stormwater management operating procedures described in Parts IV D.6.(b)(2)-(6). Implement oversight procedures of contractor activities in 100% of contracts to ensure that contractors are using appropriate control measures and SOPs each year. Oversight procedures must be maintained on-site 100% of the time and made available for review by TCEQ within 24 hours of request.
Assessment of permittee-owned operations as described in Part IV.D.6.(b)(5)a.	Evaluate 100% of O&M activities, in conjunction with procedure reviews if appropriate, for their potential to discharge pollutants in stormwater annually including but not limited to: • Road and parking lot maintenance, including such areas as pothole repair, pavement marking, sealing, and re-paving; • Bridge maintenance, including such areas as re-chipping, grinding, and saw cutting; • Cold weather operations, including plowing, sanding, and application of deicing and anti-icing compounds and maintenance of snow disposal areas; and • Right-of-way maintenance, including mowing, herbicide and pesticide application, and planting vegetation.
Identify pollutants of concern as described in Part IV.D.6.(b)(5)b.	Identify pollutants of concern that could be discharged from all of the O&M activities described in Part IV.D.6.(b)(5)b and maintain a list of 100% of the pollutants identified. Including for example, metals; chlorides; hydrocarbons such as benzene, toluene, ethyl benzene, and xylenes; sediment; and trash. Review and update the pollutants of concern list at least one time annually to address changes or additions to the O&M activities where applicable.

Activity/BMP	**Measurable Goals**
Pollution Prevention Measures as described in Part IV.D.6.(b)(5)c.	Develop and implement a set of pollution prevention measures that will reduce the discharge of pollutants in stormwater from the permittee-owned operations. Implement at least two of the following pollution prevention measures: • Replace at least 50% of the MS4's materials and chemicals with more environmentally friendly materials or methods by the end of the permit term; • Track 100% of the application of deicing and anti-icing compounds in the MS4 area and record the amount of compound used for each application annually; • Use suspended tarps, booms, or vacuums to capture paint, solvents, rust, paint chips and other pollutants during 80% of regular bridge maintenance each year; and • Place barriers around or conduct runoff away from 100% of deicing chemical storage areas to prevent discharge into surface waters each year.
Inspection of Pollution Prevention Measures as described in Part IV.D.6.(b)(5)d.	At least one time annually, visually inspect 100% of pollution prevention measures implemented at permittee-owned facilities to ensure they are working properly. Develop and maintain written procedures that describe the frequency of inspections and how they will be conducted. Review and update the inspection procedures at least one time annually to address changes or additions to the pollution prevention measures. Maintain a log of 100% of the inspections conducted annually and make the log available for review by the TCEQ within 24 hours of a request.
Structural Control Maintenance as described by Part IV.D.6.(b)(6).	At least one time annually, perform maintenance of 100% of the structural controls which require maintenance. Maintenance must follow a plan and schedule developed by the small MS4 operator to be consistent with maintaining the effectiveness of the BMP. The permittee shall develop and maintain written procedures that define the frequency of inspections and how they will be conducted. Review and update the maintenance procedures at least one time annually to address changes or additions to the pollution prevention measures.

(c) Additional Requirements for Levels 3 and 4 small MS4s:

In addition to the requirements described in Part IV.D.6.(b) above, permittees who operate Levels 3 or 4 small MS4s shall meet the following requirements including Table 14.

(1) Storm Sewer System Operation and Maintenance

a. Permittees who operate Levels 3 or 4 small MS4s shall develop and implement an O&M program to reduce to the MEP the collection of pollutants in catch basins and other surface drainage structures.

b. Permittees who operate Levels 3 or 4 small MS4s shall develop a list of potential problem areas. The permittees shall identify and prioritize problem areas for increased inspection (for example, areas with recurrent illegal dumping).

(2) Operation and Maintenance Program to Reduce Discharges of Pollutants from Roads

Permittees who operate Levels 3 or 4 small MS4s shall implement an O&M program that includes at least one of the following: a street sweeping and cleaning program, or an equivalent BMP such as an inlet protection program, which must include an implementation schedule and a waste disposal procedure. The basis for the decision must be included in the SWMP. If a street sweeping and cleaning program is implemented, the permittee shall evaluate the following permittee-owned and operated areas for the program: streets, road segments, and public parking lots including, but not limited to, high traffic zones, commercial and industrial districts, sport and event venues, and plazas, as well as areas that consistently accumulate high volumes of trash, debris, and other stormwater pollutants.

a. Implementation schedules – If a sweeping program is implemented, the permittee shall sweep the areas in the program (for example, the streets, roads, and public parking lots) in accordance with a frequency and schedule determined in the permittee's O&M program to address at a minimum 75% of the areas in the program annually.

b. For areas where street sweeping is technically infeasible (for example, streets without curbs), the permittee shall focus implementation of other trash and litter control procedures, or provide inlet protection measures to minimize pollutant discharges to storm drains and creeks.

c. Sweeper Waste Material Disposal – If utilizing street sweepers, the permittee shall develop a procedure to dewater and dispose of street sweeper waste material and shall ensure that water and material will not reenter the small MS4.

(3) Mapping of Facilities

Permittees who operate Levels 3 or 4 small MS4s shall, on a map of the area regulated under this general permit, identify where the permittee-owned and operated facilities and stormwater controls are located.

(4) Facility Assessment

Permittees who operate Levels 3 or 4 small MS4s shall perform the following facility assessment in the regulated portion of the small MS4 operated by the permittee:

a. Assessment of Facilities' Pollutant Discharge Potential – The permittee shall review the facilities identified in Part IV.D.6.(b)(1) once per permit term for their potential to discharge pollutants into stormwater.

b. Identification of *high priority* facilities – Based on the assessment above, the permittee shall identify as *high priority* those facilities that have a high potential to generate stormwater pollutants and shall develop and maintain a list of these facilities. Among the factors that must be considered in giving a facility a high priority ranking are the amount of urban pollutants stored at the site, the identification of improperly stored materials, activities that must not be performed outside (for example, changing automotive fluids, vehicle washing), proximity to water bodies, proximity to sensitive aquifer recharge features, poor housekeeping practices, and discharge of POCs to impaired water(s). High priority facilities must include, at a minimum, the permittee's maintenance yards, hazardous waste facilities, fuel storage locations, and any other facilities at which chemicals or other materials have a high potential to be discharged in stormwater.

c. Documentation of Assessment Results – The permittee shall document the results of the assessments and maintain copies of all site evaluation checklists used to conduct the assessments. The documentation must include the results of the permittee's initial assessment, and any identified deficiencies and corrective actions taken.

(5) Development of Facility-Specific Procedures

Permittees who operate Levels 3 or 4 small MS4s shall develop facility-specific stormwater management SOPs. The permittee may utilize existing plans or documents that may contain the following required information:

a. For each high priority facility identified in Part IV.D.6.(c)(4)b, the permittee shall develop a SOP that identifies BMPs to be installed, implemented, and maintained to minimize the discharge of pollutants in stormwater from each facility.

b. A hard or electronic copy of the facility-specific stormwater management SOP (or equivalent existing plan or document) must be maintained and be available for review by the TCEQ. The SOP must be kept onsite when possible and must be kept up-to-date.

(6) Stormwater Controls for High Priority Facilities

Permittees who operate Levels 3 or 4 small MS4s shall implement the following stormwater controls at all high priority facilities identified in Part IV.D.6.(c)(4)b. A description of BMPs developed to comply with this requirement must be included in each facility specific SOP:

a. General good housekeeping – Material with a potential to contribute to stormwater pollution must be sheltered from exposure to stormwater.

b. De-icing and anti-icing material storage – The permittee shall ensure, to the MEP, that stormwater runoff from storage piles of salt and other de-icing

and anti-icing materials is not discharged; or shall ensure that any discharges from the piles are authorized under a separate discharge permit.

c. Fueling operations and vehicle maintenance – The permittee shall develop SOPs (or equivalent existing plans or documents) that address spill prevention and spill control at permittee-owned and operated vehicle fueling, vehicle maintenance, and bulk fuel delivery facilities.

d. Equipment and vehicle washing – The permittee shall develop SOPs that address equipment and vehicle washing activities at permittee-owned and operated facilities. The discharge of equipment and vehicle wash water to the small MS4 or directly to receiving waters from permittee-owned facilities is not authorized under this general permit. To ensure that wastewater is not discharged under this general permit, the permittee's SOP may include installing a vehicle wash reclaim system, capturing and hauling the wastewater for proper disposal, connecting to sanitary sewer (where applicable and approved by local authorities), ceasing the washing activity, or applying for and obtaining a separate TPDES permit.

(7) Inspections

Permittees who operate Levels 3 or 4 small MS4s shall develop and implement an inspection program, which at a minimum must include periodic inspections of high priority permittee-owned facilities. The results of the inspections and observations must be documented and available for review by the TCEQ.

Table 14: Additional Required Pollution Prevention and Good Housekeeping for Municipal Operations BMPs for Levels 3 and 4 Small MS4s:

Activity/BMP	**Measurable Goals**
Storm Sewer System Operation and Maintenance Program as described by Part IV.D.6.(c)(1)a.	Develop and implement an O&M program to reduce to the MEP the collection of pollutants in catch basins and other surface drainage structures each year. Implement at least two of the following: • Inspect at least 25% of the small MS4 owned and operated detention basins each year. • Inspect at least 20% of the small MS4 owned and operated stormwater inlets in problem areas identified by the small MS4 operator (for example, areas with recurrent illegal dumping) each year. • Inspect and clean at least 20% of the small MS4 owned and operated surface drainage system in problem areas identified by the small MS4 operator (for example, areas with recurrent illegal dumping) each year. • Collect and dispose of or recycle used oil and other household hazardous waste (HHW) from the public in at least three events each year. An event is any day in which the public has an opportunity to dispose of or recycle HHW either through collection or drop off

Activity/BMP	**Measurable Goals**
Storm Sewer System Operation and Maintenance Problem Areas as described by Part IV.D.6.(c)(1)b.	Develop a list of 100% of the identified potential problem areas. Identify and prioritize problem areas for increased inspection (for example, areas with recurrent illegal dumping). Review and update the list of potential problem areas at least one time annually to address changes or additions to the list.

Operation and Maintenance Program to Reduce Discharges of Pollutants from Roads as described by Part IV.D.6.(c)(2).	Implement the following:
	• A street sweeping and cleaning program to address 75% of the MS4 area where street sweeping is technically feasible annually.
	  ○ Ensure 100% of the MS4 area where street sweeping is technically feasible is addressed at least two times by the end of the permit term.
	• One or a combination of the following non-street sweeping controls:
	  ○ an inlet protection program addressing 100% of the small MS4 area where street sweeping is technically infeasible by the end of the permit term, which must include an implementation schedule and a waste disposal procedure, or
	  ○ Ensure that trash receptacles, or similar trash capturing devices are provided and maintained in 100% of the areas identified as high trash generating areas within the areas where street sweeping is technically infeasible (such as areas near parks, event spaces, etc.).

Mapping of Facilities as described by Part IV.D.6.(c)(3).	On a map of the area regulated under this general permit, identify where 100% of the permittee-owned and operated facilities and stormwater controls are located. Review and update the map at least one time annually to address changes or additions to the facilities and controls.
Assessment of Facilities' Pollutant Discharge Potential as described by Part IV.D.6.(c)(4)a.	Review 100% of the facilities identified in Part IV.D.6.(b) at least one time per permit term for their potential to discharge pollutants into stormwater.

Activity/BMP	**Measurable Goals**
Identification of high priority facilities as described by Part IV.D.6.(c)(4)b.	Based on the assessment in Part IV.D.6.(c)(4)a., the permittee shall identify as *high priority* those facilities that have a high potential to generate stormwater pollutants. A list of 100% of the identified facilities must be developed and maintained each year. Review and update the list of high priority facilities at least one time annually to address changes or additions to the facilities.
Documentation of Assessment Results as described by Part IV.D.6.(c)(4)c.	Document the results of all the assessments and maintain copies of 100% of the site evaluation checklists used to conduct the assessments each year. The documentation must include: • the results of the permittee's initial assessment, and any identified deficiencies and corrective actions taken.
Development of Facility-Specific SOPs as described by Part IV.D.6.(c)(5).	Develop facility-specific stormwater management SOPs for 100% of the MS4 owned and operated facilities. A description of 100% of the BMPs developed to comply with Part IV.D.6.(c)(6) must be included in each facility-specific SOP. Review and update the facility-specific SOPs at least one time annually to address changes or additions to the facilities. If requested, SOPs must be made available to TCEQ within 24 hours of the request for review.
Stormwater Controls for High Priority Facilities, General Good Housekeeping as described by Part IV.D.6.(c)(6)a.	Shelter from exposure to stormwater 100% of material with a potential to contribute to stormwater pollution (such as, fertilizers, solvents, paints, cleaners, automotive products, etc.) each year.
Stormwater Controls for High Priority Facilities, De-icing and anti-icing material storage as described by Part IV.D.6.(c)(6)b.	Implement one or a combination of the following: Ensure that 100% of stormwater runoff from storage piles of salt and other de-icing and anti-icing materials is not discharged each year. Or ensure that 100% of discharges from the piles are authorized under a separate discharge permit each year.
Stormwater Controls for High Priority Facilities, Fueling and vehicle maintenance as described by Part IV.D.6.(c)(6)c.	Develop and implement SOPs that address spill prevention and spill control at 100% of permittee-owned and operated vehicle fueling, vehicle maintenance, and bulk fuel delivery facilities each year. Review and update the facility specific SOPs at least one time annually to address changes or additions to the facilities.

Activity/BMP	**Measurable Goals**
Stormwater Controls for High Priority Facilities, Equipment and vehicle washing as described by Part IV.D.6.(c)(6)d.	Develop and implement SOPs that address equipment and vehicle washing activities at 100% of the permittee-owned and operated facilities where washing occurs. To ensure that wastewater is not discharged under this general permit, the permittee's SOP must include one or more of the following: • installing a vehicle wash reclaim system, • capturing and hauling the wastewater for proper disposal, • connecting to sanitary sewer (where applicable and approved by local authorities), • ceasing the washing activity, or • applying for and obtaining a separate TPDES permit. Review and update the facility specific SOPs at least one time annually to address changes or additions to the facilities.
Inspections as described by Part IV.D.6.(c)(7).	Develop and implement an inspection program, which at a minimum must include inspections of 100% of high priority permittee-owned facilities one time per year. The results of 100% of the inspections and observations must be documented and available for review by the TCEQ each year.

(d) Additional Requirements for Level 4 small MS4s:

In addition to all the requirements described in Parts IV.D.6.(b)-(c) above, permittees who operate Level 4 small MS4s shall meet the following requirements including Table 15.

(1) Pesticide, Herbicide, and Fertilizer Application and Management

a. Landscape maintenance – The permittee shall evaluate the materials used and activities performed on public spaces owned and operated by the permittee such as parks, schools, golf courses, easements, public rights of way, and other open spaces for pollution prevention opportunities. Maintenance activities for the turf landscaped portions of these areas may include mowing, fertilization, pesticide application, and irrigation. Typical pollutants include sediment, nutrients, hydrocarbons, pesticides, herbicides, and organic debris.

b. The permittee shall implement the following practices to minimize landscaping-related pollutant generation with regard to public spaces owned and operated by the permittee:

(i) Educational activities, permits, certifications, and other measures for the permittee's applicators and distributors;

(ii) Pest management measures that encourage non-chemical solutions where feasible. Examples may include:

(a) Use of native plants or xeriscaping;

(b) Keeping clippings and leaves out the small MS4 and the street by implementing mulching, composting, or landfilling;

(c) Limiting application of pesticides and fertilizers if precipitation is forecasted within 24 hours, or as specified in label instructions; and

(d) Reducing mowing of grass to allow for greater pollutant removal, but not jeopardizing motorist safety.

c. The permittee shall develop schedules for chemical application in public spaces owned and operated by the permittee that minimize the discharge of pollutants from the application due to irrigation and expected precipitation; and

d. The permittee shall ensure collection and proper disposal of the permittee's unused pesticides, herbicides, and fertilizers.

(2) Evaluation of Flood Control Projects

The permittee shall assess the impacts of the receiving water(s) for all flood control projects. New flood control structures must be designed, constructed, and maintained to provide erosion prevention and pollutant removal from stormwater. The retrofitting of existing structural flood control devices to provide additional pollutant removal from stormwater shall be implemented to the MEP.

Table 15: Additional Required Pollution Prevention and Good Housekeeping for Municipal Operations BMPs for Level 4 Small MS4s:

Activity/BMP	**Measurable Goals**
Pesticide, Herbicide, and Fertilizer applicator and distributor measures as described by Part IV.D.6.(d)(1)b.(i).	Require 100% of pesticide, herbicide, and fertilizer applicators and distributors working in the public spaces owned and operated by the permittee, including contract workers, to demonstrate at least one of the following each year: • Training in application or distribution • Permit to apply or distribute • Certification for application or distribution

Activity/BMP	**Measurable Goals**
Landscape maintenance as described by Part IV.D.6.(d)(1)a.	Evaluate at least one time each year the materials used, and activities performed on 100% of the public spaces owned and operated by the permittee for pollution prevention opportunities such as: • parks, • schools, • golf courses, • easements, • public rights of way, and • other open spaces.
Non-chemical solutions as described by Part IV.D.6.(d)(1)b.(ii).	Utilize at least one of the following non-chemical solutions each year in 100% of the public spaces owned and operated by the permittee: • Use of native plants or xeriscaping in 10% of each public space's landscaping area; • Keep clippings and leaves out the small MS4 and the street by implementing mulching, composting, or landfilling; • Limit application of pesticides and fertilizers if precipitation is forecasted within 24 hours, or as specified in label instructions; or • Reduce mowing of grass frequency to allow for greater pollutant removal, but not jeopardizing motorist safety. If it is not feasible for the small MS4 operator to implement at least one of these measures in one or more public spaces owned and operated by the permittee, written documentation of the reason must be maintained and made available to the TCEQ upon request.
Schedules for chemical application as described by Part IV.D.6.(d)(1)c.	Develop and implement chemical application schedules for use in 100% of applicable public spaces owned and operated by the permittee each year. Schedules must minimize the discharge of pollutants from the chemical application due to irrigation and expected precipitation.
Collection and disposal of pesticides, herbicides, and fertilizers as described by Part IV.D.6.(d)(1)d.	Ensure collection and proper disposal of 100% of the permittee's unusable pesticides, herbicides, and fertilizers each year.

Activity/BMP	Measurable Goals
Evaluation of Flood Control Projects as described by Part IV.D.6.(d)(2).	Assess the impacts of the receiving water(s) for 100% of the flood control projects each year. 100% of new flood control structures must be designed, constructed, and maintained to provide erosion prevention and pollutant removal from stormwater. The retrofitting of 20% of the existing structural flood control devices each year to provide additional pollutant removal from stormwater shall be implemented unless infeasible. • If it is not feasible for the small MS4 operator to retrofit 20% of the existing control devices each year, written documentation of the reason must be maintained and made available to the TCEQ for review upon request.

7. Industrial Stormwater Sources

Permittees operating a Level 4 small MS4 shall meet the requirements below including Table 16.

(a) Permittees who operate Level 4 small MS4s shall identify and control pollutants in stormwater discharges to the small MS4 from the permittee's landfills; other treatment, storage, or disposal facilities for municipal waste (for example, transfer stations and incinerators); hazardous waste treatment, storage, disposal and recovery facilities and facilities that are subject to Emergency Planning and Community Right-to-Know Act (EPCRA) Title III, Section 313; and any other industrial or commercial discharge the permittee determines are contributing a substantial pollutant loading to the small MS4.

(b) The program must include priorities and procedures for inspections and for implementing control measures for such industrial discharges.

Table 16: Required Industrial Stormwater Sources BMPs for Level 4 Small MS4s

Activity/BMP	Measurable Goals
Industrial facilities as described by Part IV.D.7.(a).	Identify and control pollutants in stormwater discharges to the small MS4 from 100% of the permittee's landfills; other treatment, storage, or disposal facilities for municipal waste (for example, transfer stations and incinerators); hazardous waste treatment, storage, disposal and recovery facilities and facilities that are subject to Emergency Planning and Community Right-to-Know Act (EPCRA) Title III, Section 313; and any other industrial or commercial discharge the permittee determines are contributing a substantial pollutant loading to the small MS4.

Activity/BMP	Measurable Goals
Inspections as described by Part IV.D.7.(b).	Inspect 100% of small MS4 owned and operated facilities described by Part IV.D.7.(a) at least one time annually. Inspect 100% of industrial facilities permitted under the TPDES MSGP, TXR050000, and located within the small MS4 area at least one time annually.
Priorities and Procedures as described by Part IV.D.7.(b).	Develop and implement SOPs for 100% of inspections of facilities as described by Part IV.D.7.(b) and industrial facilities permitted under the TPDES MSGP, TXR050000, and within the small MS4 area. Review and update the facility inspection SOPs at least one time annually to address changes or additions.

8. Authorization for Construction Activities where the Small MS4 is the Site Operator

The development of this MCM for construction activities, where the small MS4 is the construction site operator, is optional and provides an alternative to the MS4 operator seeking coverage under TPDES CGP, TXR150000, for each construction activity. Permittees that choose to develop and implement this MCM will be authorized to discharge stormwater and certain non-stormwater from construction activities only where the MS4 operator meets the definition of a construction site operator. This MCM only authorizes the small MS4 operator and does not provide authorization for other construction site operators at a municipal project.

When developing this measure, permittees are required to meet all requirements of, and be consistent with the following: (1) applicable effluent limitation guidelines for the Construction and Development industry (40 CFR Part 450), (2) TPDES CGP TXR150000, (3) Part IV.D.4 and Part VII of this general permit.

The authorization to discharge under this MCM is limited to the small MS4's regulated area, such as the portion of the small MS4 located within an urban area with a population of at least 50,000 people or the area designated by TCEQ as requiring coverage. However, an MS4 operator may also utilize this MCM over additional portions of their small MS4 that are also in compliance with all of the MCMs listed in this general permit.

This MCM must be developed as a part of the SWMP. If this MCM is developed after submitting the initial NOI, an NOC must be submitted notifying the executive director of this change, and identifying the geographical area or boundary where the activities will be conducted under the provisions of this general permit.

Utilization of this MCM does not preclude a small MS4 from obtaining coverage under the TPDES CGP, TXR150000, or under a TPDES individual permit.

Controls required under this MCM must be implemented prior to discharge from a municipal construction site into surface water in the state.

The MCM must include:

(a) A description of how construction activities will generally be conducted by the permittee taking into consideration local conditions of weather, soils, and other site-specific considerations;

(b) A description of the area that this MCM will address and where the permittee's construction activities are covered (for example within the boundary of the urban area with a population of at least 50,000 people, the corporate boundary, a special district boundary, an extra territorial jurisdiction, or other similar jurisdictional boundary);

(c) Either a description of how the permittee will supervise or maintain oversight over contractor activities to ensure that the SWP3 requirements are properly implemented at the construction site; or how the permittee will make certain that contractors have a separate authorization for stormwater discharges;

(d) A general description of how a SWP3 will be developed for each construction site, according to Part VII of this general permit; and

(e) Records of municipal construction activities authorized under this optional MCM, in accordance with Part VII of this general permit.

Part V. Recordkeeping and Reporting

Section A. Recordkeeping

1. The permittee shall retain all records, a copy of this TPDES general permit (maintained physically or electronically), and records of all data used to complete the application (NOI) for this general permit, for a period of at least three years, or for the remainder of the term of this general permit, whichever is longer. This period may be extended by request of the executive director at any time.
2. The permittee shall submit the records to the executive director only when specifically asked to do so. The SWMP required by this general permit must be retained at a location accessible to the TCEQ for review upon request.
3. The permittee shall make the NOI and the SWMP available to the public at reasonable times during regular business hours, if requested to do so in writing. Copies of the SWMP must be made available within ten working days of receipt of a written request. Other records must be provided in accordance with the Texas Public Information Act. However, all requests for records from federal facilities must be made in accordance with the Freedom of Information Act.
4. The period during which records are required to be kept shall be automatically extended to the date of the final disposition of any administrative or judicial enforcement action that may be instituted against the permittee.

Section B. Reporting

1. General Reporting Requirements

(a) Noncompliance Notification

According to 30 TAC § 305.125(9), any noncompliance which may endanger human health or safety, or the environment, must be reported by the permittee to the TCEQ.

Report of such information must be provided orally or by fax to the TCEQ Regional Office within 24 hours of becoming aware of the noncompliance. A written report must be provided by the permittee to the appropriate TCEQ Regional Office and to the TCEQ Enforcement Division (MC-224) within five working days of becoming aware of the noncompliance. The written report must contain:

(1) A description of the noncompliance and its cause;

(2) The potential danger to human health or safety, or the environment;

(3) The period of noncompliance, including exact dates and times;

(4) If the noncompliance has not been corrected, the anticipated time it is expected to continue; and

(5) Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(b) Other Information

When the permittee becomes aware that it either submitted incorrect information or failed to submit complete and accurate information requested in an NOI, NOT, NOC, Option 1 Waiver, Option 2 Waiver, or any other report, the permittee shall promptly submit the facts or information to the executive director.

2. Annual Report

The small MS4 operator shall submit a concise annual report to the executive director by March 31st of each year for the previous calendar year.

For permittees authorized under the 2019 TPDES Small MS4 General Permit, the first annual report for this general permit, that is due on March 31, 2025, shall address the period beginning on the day after the last day of the permittee's reporting period (fiscal year, calendar year, or permit year) under the general permit issued January 4, 2019, and shall end on December 31, 2024.

The small MS4 operator shall make a copy of the annual report readily available for review by TCEQ personnel upon request.

The annual report must include:

(a) The status of the compliance with permit conditions, an assessment of the appropriateness of the identified activities/BMPs, progress towards achieving the statutory goal of reducing the discharge of pollutants to the MEP, the measurable goals for each of the MCMs, and an evaluation of the success of the implementation of the measurable goals;

(b) A summary of the results of information collected and analyzed, during the reporting period, including monitoring data used to assess the success of the program at reducing the discharge of pollutants to the MEP;

(c) If applicable for receiving water bodies, a summary of any activities taken to address the discharge to impaired water bodies, including a summary of the small MS4s BMPs used to address the pollutant of concern, and if sampling was conducted include the sampling results;

(d) A summary of the stormwater activities the small MS4 operator plans to undertake during the next reporting year;

(e) Proposed changes to the SWMP, including changes to any activities/BMPs or any identified measurable goals that apply to the program elements;

(f) A description and schedule for implementation of additional activities/BMP's that may be necessary, based on monitoring results, to ensure compliance with applicable TMDLs and implementation plans. For water bodies that are listed as impaired after discharge authorization pursuant to Part III., include a list of such water bodies and the pollutant(s) causing the impairment, and a summary of any actions taken to comply with the requirements of Part III.;

(g) Notice that the small MS4 operator is relying on another government entity to satisfy some of its permit obligations (if applicable);

(h) The number of construction activities where the small MS4 is the operator and authorized under the optional 8th MCM, including the total number of acres disturbed; and

(i) The number of construction activities that occurred within the jurisdictional area of the small MS4 (as noticed to the permittee by the construction operator), and that were not authorized under the optional 8th MCM.

Small MS4s authorized under the 2019 TPDES Small MS4 General Permit must prepare an annual report whether or not the NOI has been approved by the TCEQ. If the permittee has either not implemented the SWMP or not begun to implement the SWMP because it has not received approval of the NOI, then the annual report may include that information.

The annual report must be signed (in accordance with 30 TAC § 305.128 relating to Signatories to Reports) and submitted using the online electronic reporting system, NeT - MS4, available through the TCEQ website unless the permittee requests and obtains an Electronic Reporting Waiver.

If the permittee obtains an Electronic Reporting Waiver, the annual report must be submitted with the appropriate paper annual report forms provided by the executive director and submitted to the following locations:

- Original – TCEQ Austin Headquarters Office c/o the Stormwater Team (MC-148), and
- Copy – The TCEQ Regional Office that serves the area of the regulated small MS4.

If permittees share a common SWMP (*i.e.*, coalitions), they shall contribute to a single system-wide annual report for all participating members and the designated coalition participant shall submit the annual report. At a minimum, each permittee shall sign and certify the annual report in the NeT-MS4 electronic system in accordance with 30 TAC § 305.128 (relating to Signatories to Reports). If the coalition participant designated to submit the annual report changes during the permit term, all participating members must submit an NOC to update the designated member.

Part VI. 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 general permit and statutes under which it was issued, and is grounds for enforcement action, for terminating coverage under this general permit, or for requiring a discharger to apply for and obtain a TPDES individual permit.

B. It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

C. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

D. Authorization under this general permit may be suspended or revoked for cause. Filing a notice of planned changes or anticipated non-compliance by the permittee does not stay any permit condition. The permittee shall furnish to the executive director, upon request and within a reasonable timeframe, any information necessary for the executive director to determine whether cause exists for modifying, revoking, suspending, reissuing, or terminating authorization under this general permit. Additionally, the permittee shall provide to the executive director, upon request, copies of all records that the permittee shall maintain as a condition of this general permit.

E. The permittee shall, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the conditions of this permit and with the condition of the permittee's SWMP. Proper O&M also includes adequate laboratory controls and appropriate quality assurance procedures. Proper O&M requires the operation of backup or auxiliary facilities or similar systems, installed only when the operation is necessary to achieve compliance with the conditions of this permit.

F. Inspection and entry shall be allowed under the TWC Chapters 26-28, 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.

G. The discharger is subject to administrative, civil, and criminal penalties, as applicable, under the TWC, Chapters 26 - 28, and the Texas Health and Safety Code, Chapter 361 for violations including but not limited to the following:

1. Negligently or knowingly violating CWA §§ 301, 302, 303, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under CWA § 402; and
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.

H. All reports and other information requested by or submitted to the executive director must be signed by the person and in the manner required by 30 TAC § 305.128 (relating to Signatories to Reports).

I. Authorization under this general permit does not convey property or water rights of any sort and does not grant any exclusive privilege.

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

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

Part VII. Authorization for Municipal Construction Activities – Applicable only if the Optional 8th MCM is Selected

The small MS4 operator may obtain authorization under TPDES CGP, TXR150000, to discharge stormwater runoff from each construction activity performed by the small MS4 operator that results in a land disturbance of one acre or more of land or less than one acre of land, if the construction activity is part of a larger common plan of development or sale that would disturb one acre or more. Alternatively, the small MS4 operator may develop the SWMP to include the optional 8th MCM listed in Part IV.D.8 of this general permit if the eligibility requirements in Part VII.A. below are met.

Even if a small MS4 operator has developed the optional 8th MCM, the small MS4 operator may apply under TPDES CGP, TXR150000, for authorization for certain municipal construction activities including those activities that occur during periods of low potential for erosion (for which no SWP3 must be developed).

Section A. Eligible Construction Sites

Discharges from construction activities within the regulated area where the small MS4 operator meets the definition of construction site operator are eligible for authorization under this general permit. Discharges from construction activities outside of the regulated area, where the small MS4 operator meets the definition of construction site operator, are only eligible for authorization under this general permit in those areas where the small MS4 operator meets all the requirements of Parts IV.D.1-8. of this general permit.

Section B. Discharges Eligible for Authorization

1. Stormwater Associated with Construction Activity

Discharges of stormwater runoff from small and large construction activities may be authorized under this general permit.

2. Discharges of Stormwater Associated with Construction Support Activities

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 may be authorized under this general permit provided:

(a) The activity is located within a one-mile distance from the boundary of the permitted construction site and directly supports the construction activity;

(b) A SWP3 is developed according to the provisions of this general permit and includes appropriate controls and measures to control sediment and erosion and discharge of pollutants in stormwater runoff from the supporting construction activity site;

(c) The construction support activity either does not operate beyond the completion date of the construction activity or obtains separate TPDES permit authorization for discharges as required; and

(d) The discharge of stormwater from concrete production facilities meets the requirements in Section F below.

3. Non-Stormwater Discharges

This general permit authorizes the following non-stormwater discharges from construction sites authorized under this general permit:

(a) Discharges from emergency fire-fighting activities (emergency fire-fighting activities do not include washing of trucks, runoff water from training activities, test water from fire suppression systems, and 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 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 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 (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; and

(g) Uncontaminated groundwater or spring water, including foundation or footing drains where flows are not contaminated with industrial materials such as solvents.

4. Other Permitted Discharges

Any discharge authorized under a separate TPDES or TCEQ permit may be combined with discharges from construction sites operated by the small MS4, provided the discharge complies with the associated permit.

Section C. Limitations on Permit Coverage

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 Part VII of the general permit.

Section D. Stormwater Pollution Prevention Plan (SWP3) Requirements

Operators of municipal construction activities that qualify for coverage under this general permit and that discharge stormwater associated with construction activities into surface water in the state must:

(a) Develop a SWP3 according to the provisions of this general permit that covers the entire site and begin implementation of that plan prior to commencing construction activities (NOTE: small MS4 operators may develop and implement a shared SWP3 with other operators covered under the TPDES CGP, TXR150000);

(b) Post a signed copy of the applicable TCEQ approved site notice form in a location at the construction site where it is readily available for viewing prior to commencing construction activities and maintain the notice in that location until completion of the construction activity and final stabilization of the site;

(c) Ensure the project specifications allow or provide that adequate BMPs may be developed and modified as necessary to meet the requirements of this general permit and the SWP3;

(d) Ensure all contractors are aware of the SWP3 requirements, are aware that municipal personnel are responsible for the day-to-day operations of the SWP3, and who to contact concerning SWP3 requirements; and

(e) Ensure that the SWP3 identifies the municipal personnel responsible for implementation of control measures described in the plan.

Section E. Contents of SWP3

The SWP3 must include, at a minimum, the information described in this section.

1. Site Description

A site description, or project description, which must include:

(a) A description of the nature of the construction activity, potential pollutants and sources;

(b) A description of the intended schedule or sequence of major activities that will disturb soils for major portions of the site;

(c) The number of acres of the entire construction site property and the total number of acres of the site where construction activities will occur, including off-site material storage areas, overburden and stockpiles of dirt, and borrow areas;

(d) Data describing the soil type or the quality of any discharge from the site;

(e) A map showing the general location of the site (*e.g.*, a portion of a city or county map);

(f) A detailed site map indicating the following:

(1) Drainage patterns and approximate slopes anticipated after major grading activities;

(2) Areas where soil disturbance will occur;

(3) Locations of all major structural controls either planned or in place;

(4) Locations where temporary or permanent stabilization practices are expected to be used;

(5) Locations of construction support activities, including off-site activities that are authorized under the permittee's NOI, including material, waste, borrow, fill, or equipment storage areas;

(6) Surface waters (including wetlands) either at, adjacent, or in close proximity to the site;

(7) Locations where stormwater discharges from the site directly to a surface water body or an MS4; and

(8) Vehicle wash areas.

(g) The location and description of asphalt plants and concrete plants (if any) providing support to the construction site and that are also authorized under this general permit;

(h) The name of receiving waters at or near the site that will be disturbed or that will receive discharges from disturbed areas of the project; and

(i) A copy of Part VII of this TPDES general permit.

2. Structural and non-structural controls

The SWP3 must describe the structural and the non-structural controls (BMPs) that will be used to minimize pollution in runoff. The description must identify the general timing or sequence for implementation and the party responsible for implementation. At a minimum, the description must include the following components:

Erosion and Sediment Controls

(a) Erosion and sediment controls must be designed to retain sediment on-site to the MEP with consideration for local topography and rainfall.

(b) Control measures must be properly selected, installed, and maintained according to the manufacturer's or designer's specifications. If periodic inspections or other information indicates a control has been used incorrectly, or that the control is performing inadequately, the operator must replace or modify the control.

(c) Sediment must be removed from sediment traps and sedimentation ponds no later than the time that design capacity has been reduced by 50%.

(d) If sediment escapes the site, accumulations must be removed at a frequency to minimize further negative effects and, whenever feasible, prior to the next rain event.

(e) Controls must be developed to limit offsite transport of litter, construction debris, and construction materials by stormwater runoff.

3. Stabilization Practices

The SWP3 must include a description of interim and permanent stabilization practices for the site, including a schedule of when the practices will be implemented. Site plans must ensure that existing vegetation is preserved where possible.

(a) Stabilization practices may include but are not limited to: establishment of temporary vegetation, establishment of permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of existing trees and vegetation, and other similar measures.

(b) The following records must be maintained and either attached to or referenced in the SWP3 and made readily available upon request to the parties in Part VII.J of this general permit:

(1) The dates when major grading activities occur;

(2) The dates when construction activities temporarily or permanently cease on a portion of the site; and

(3) The dates when stabilization measures are initiated.

(c) Stabilization measures must be initiated immediately in portions of the site where construction activities have temporarily or permanently ceased, and will not resume for a period exceeding 14 calendar days, except as provided in (1) and (2) below.

(1) Where the initiation of stabilization measures by the 14th day after construction activity temporarily or permanently ceased is precluded by snow cover or frozen ground conditions, stabilization measures must be initiated as soon as practicable.

(2) Where the initiation of stabilization measures by the 14th day after construction activity has temporarily or permanently ceased is precluded by seasonably arid conditions, stabilization measures must be initiated as soon as practicable. These conditions exist in arid areas, semiarid areas, and areas experiencing drought conditions.

4. Structural Control Practices

The SWP3 must include a description of any structural control practices used to divert flows away from exposed soils, to limit the contact of runoff with disturbed areas, or to lessen the off-site transport of eroded soils.

(a) Sites with a drainage area of ten or more acres:

(1) A sediment basin is required, where feasible, for a common drainage location that serves an area with ten or more acres disturbed at one time. A sedimentation basin may be temporary or permanent, but 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 off-site areas and flow from on-site areas that are either undisturbed or have already undergone final stabilization, if these flows are diverted around both the disturbed areas of the site and the sediment basin. Capacity calculations must be included in the SWP3.

(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 the site reaches final stabilization.

(3) If a sedimentation basin is not feasible, then the permittee shall provide equivalent control measures until the site reaches final stabilization. In determining whether installing a sediment basin is feasible, the permittee may consider factors such as site soils, slope, available area, public safety, precipitation pattern, 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 are not feasible, and shall utilize equivalent control measures, which may include a series of smaller sediment basins.

(4) 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.

(b) Controls for sites with drainage areas less than ten acres:

(1) Sediment traps and sediment basins may be used to control solids in stormwater runoff for drainage locations serving less than ten 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.

(2) 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.

5. Permanent Stormwater Controls

A description of any measures that will be installed during the construction process to control pollutants in stormwater discharges that will occur after construction operations have been completed must be included in the SWP3. Permittees are only responsible for the installation and maintenance of stormwater management measures prior to final stabilization of the site.

6. Other Controls

(a) Off-site vehicle tracking of sediments and the generation of dust must be minimized.

(b) The SWP3 must include a description of construction and waste materials expected to be stored onsite and a description of controls to reduce pollutants from these materials.

(c) The SWP3 must include a description of pollutant sources from areas other than construction (including stormwater discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.

7. Effluent Limitations

The federal Effluent Limitations Guidelines at 40 CFR § 450.21 apply to all regulated construction activities under the optional 8th MCM, where the small MS4 is the operator.

8. Approved State and Local Plans

(a) The permittee shall ensure 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) All 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 whom the permittee receives written notice.

9. Maintenance

All erosion and sediment control measures and other protective measures identified in the SWP3 must be maintained in effective operating condition. If through inspections the permittee determines that BMPs are not operating effectively, maintenance must be performed before the next anticipated storm event or as necessary to maintain the continued effectiveness of stormwater controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable.

10. Inspections of Controls

(a) Inspection Requirements. Personnel provided by the permittee must inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, discharge locations, and structural controls for evidence of, or the potential for, pollutants entering the drainage system. Personnel conducting these inspections must be knowledgeable of this general permit, familiar with the construction site, and knowledgeable of the SWP3 for the site. Sediment and erosion control measures identified in the SWP3 must be inspected to ensure that they are operating correctly. Locations where vehicles enter or exit the site must be inspected for evidence of off-site sediment tracking.

(b) Inspection Frequency.

(1) Inspections must be conducted at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

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 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.

(2) Where sites have been finally or temporarily stabilized or where runoff is unlikely due to winter conditions (e.g., site is covered with snow, ice, or frozen ground exists), inspections must be conducted at least once every month.

(3) In arid or 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.

(4) As an alternative to the above-described inspection schedule of once every 14 calendar days and within 24 hours of a storm event of 0.5 inches or greater, the SWP3 may be developed to require that these inspections will occur at least once every seven calendar days. If this alternative schedule is developed, then the inspection must occur on a specifically defined day, regardless of whether or not there has been a rainfall event since the previous inspection.

(5) The inspections may occur on either schedule provided that the SWP3 reflects the current schedule and that any changes to the schedule are conducted in accordance with the following provisions: the schedule may be changed a maximum of one time each month, the schedule change must be implemented at the beginning of a calendar month, and the reason for the schedule change must be documented in the SWP3 (e.g., end of “dry” season and beginning of “wet” season).

(6) In the event of flooding or other adverse conditions that prohibit access to the inspection sites, inspections must be conducted as soon as access is practicable.

(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 VII.E.10.(a) above.

(1) Inspection of these areas could require that vehicles compromise temporarily or even permanently stabilized areas, cause additional disturbance of soils, and increase the potential for erosion. In these circumstances, controls must be inspected at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches, but representative inspections may be performed.

(2) For representative inspections, personnel must inspect controls along the construction site for 0.25 miles 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 VII.E.10.(a) above.

(3) The conditions of the controls along each inspected 0.25 miles portion may be considered as representative of the condition of controls along that reach extending from the end of the 0.25 miles portion to either the end of the next 0.25 miles inspected portion, or to the end of the project, whichever occurs first.

(e) 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:

(1) the date and time of the adverse condition,

(2) names of personnel that witnessed the adverse condition, and

(3) a narrative for the nature of the adverse condition.

(f) 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 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.

(g) A report summarizing the scope of the inspection, the date(s) of the inspection, and major observations relating to the implementation of the SWP3 must be made and retained as part of the SWP3. Major observations should include: The locations of discharges of sediment or other pollutants from the site; 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.

Actions taken as a result of inspections 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 signed by the person and in the manner required by 30 TAC § 305.128 (relating to Signatories to Reports).

(h) 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.

11. Observation and Evaluation of Dewatering Controls

(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

(1) 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 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.

(2) 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).

(3) 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.

12. Pollution Prevention Measures

The SWP3 must identify and ensure the implementation of appropriate pollution prevention measures for all eligible non-stormwater components of the discharge.

Section F. Stormwater Runoff from Concrete Batch Plant

Discharges of stormwater runoff from concrete batch plants at construction sites authorized under this general permit may be authorized under the provisions of this general permit provided that the requirements in this section are met. If discharges of stormwater runoff from concrete batch plants are not covered under this general permit, then discharges must be authorized under an alternative general permit or an individual permit. This general permit does not authorize the discharge or land disposal of any wastewater from concrete batch plants at construction sites authorized under this general permit. Authorization for these wastes must be obtained under an individual permit or an alternative general permit.

1. Benchmark Sampling Requirements

(a) Small MS4 operated concrete batch plants authorized under this section must sample the stormwater runoff from the concrete batch plants according to the requirements of this section of the general permit, and must conduct evaluations of the effectiveness of the SWP3 based on the following benchmark monitoring values:

Table 17. Benchmark Monitoring

Benchmark Parameters (*1)	**Benchmark Value**	**Sampling Frequency** (*2)(*3)	**Sample Type** (*4)
Oil and Grease	15 mg/L	1/quarter	Grab
Total Suspended Solids	50 mg/L	1/quarter	Grab
pH	6.0-9.0 S.U.[1]	1/quarter	Grab
Total Iron	1.3 mg/L	1/quarter	Grab

[1]Standard Units (S.U)

(*1) Analytical data intended for compliance with benchmark monitoring requirements must be analyzed by a National Environmental Laboratory Accreditation Program (NELAP) accredited laboratory based on state rules located in 30 TAC Chapter 25. Analysis must be performed using sufficiently sensitive methods for analysis that comply with the rules located in 40 CFR §§ 136.1(c) and 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 small MS4 NOI.

(*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.

(b) The permittee shall 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 small MS4 operator's investigation must identify the following:

(1) Any additional potential sources of pollution, such as spills that might have occurred;

(2) Necessary revisions to good housekeeping measures that are part of the SWP3;

(3) Additional BMPs, including a schedule to install or implement the BMPs; and

(4) 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 runoff on to the permitted facility, by laboratory analyses of samples of stormwater runoff from adjacent non-industrial areas, or by identifying the pollutant is a naturally occurring material in soils at the site.

2. BMPs and SWP3 Requirements for Concrete Batch Plants

The following are required for concrete batch plants in addition to other SWP3 requirements listed in this section:

(a) Description of Potential Pollutant Sources – The SWP3 must provide a description of potential sources (activities and materials) that may reasonably be expected to affect the quality of stormwater discharges associated with concrete batch plants authorized

under this permit. The SWP3 must describe practices that that will be used to reduce the pollutants in these discharges to assure compliance with 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:

(1) Drainage – The site map must include the following information:

a. The location of all outfalls for stormwater discharges associated with concrete batch plants that are authorized under this permit;

b. A depiction of the drainage area and the direction of flow to the outfall(s);

c. Structural controls used within the drainage area(s);

d. 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 listed in the TPDES CGP, TXR150000; liquid storage tanks; material processing and storage areas; and loading and unloading areas; and

e. The locations of the following: any bag house or other dust control device(s); recycle or 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.

(2) Inventory of Exposed Materials – A list of materials handled at the concrete batch plant that may be exposed to stormwater and that have a potential to affect the quality of stormwater discharges associated with concrete batch plants that are authorized under this general permit.

(3) Spills and Leaks – A list of significant spills and leaks of toxic or hazardous pollutants that occurred in areas exposed to stormwater and that drain to stormwater outfalls associated with concrete batch plants authorized under this general permit must be developed, maintained, and updated.

(4) Sampling Data – A summary of existing stormwater discharge sampling data must be maintained, if available.

(b) 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 VII.F.2.(a) of this permit, and a schedule for implementation of the measures and controls. This must include, at a minimum:

(1) Good Housekeeping – Good housekeeping measures must be developed and implemented in the area(s) associated with concrete batch plants.

a. 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.

b. 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.

(2) Spill Prevention and Response Procedures – Areas where potential spills that can contribute pollutants to stormwater runoff, 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.

(3) Inspections – Qualified facility personnel (for example, 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. The inspection frequency must be specified in the SWP3 based upon a consideration of the level of concrete production at the facility, but must be a minimum of once per month while the facility is in operation. 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 or 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 review upon request by the agencies and officials in Part VII.J of this general permit.

(4) 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 training prior to the initiation of operation of the concrete batch plant.

(5) 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.

(6) 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.

(c) Comprehensive Compliance Evaluation – At least once per year, one or more qualified personnel (for example, 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:

(1) 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 or 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 small MS4's SWP3. The operator shall conduct a visual inspection of equipment needed to implement the SWP3, such as spill response equipment.

(2) Based on the results of the evaluation, the following must be revised as appropriate within two weeks of the evaluation: the description of potential pollutant sources identified in the SWP3 (as required in Part VII.F.2(a), "Description of Potential Pollutant Sources"); and pollution prevention measures and controls identified in the SWP3 (as required in Part VII.F.2.(b) "Measures and Controls"). The revisions may include a schedule for implementing the necessary changes.

(3) 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.

(4) The Comprehensive Compliance Evaluation may substitute for one of the required inspections required in Part VII.F.2.(b)(3) of this general permit.

3. Concrete Truck Wash Out Requirements

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

(a) Direct discharge of concrete truck washout water to surface water in the state, including discharge to storm sewers, is prohibited by this general permit.

(b) Concrete truck washout water shall be discharged to areas at the construction site where structural controls have been established to prevent direct discharge to surface waters or to areas that have a minimal slope that allow infiltration and filtering of wash out water to prevent direct discharge to surface waters. 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 direct discharge of concrete truck washout water is prohibited at all times, and the operator shall insure that its BMPs are sufficient to prevent the discharge of concrete truck washout as the result of rain.

(d) The discharge of wash out water shall not cause or contribute to groundwater contamination.

(e) The SWP3 shall include concrete wash out areas on the associated map.

Section G. Effective Date of Coverage

Construction activities may not commence under this section until the small MS4 NOI is approved in writing by the TCEQ. Following approval of the NOI, operators of construction activities eligible for coverage under this general permit are authorized to discharge stormwater associated with construction activity immediately upon posting the signed applicable TCEQ approved construction site notice form required under this MCM.

Section H. Deadlines for SWP3 Preparation and Compliance

The SWP3 must:

1. Be completed and initially implemented prior to commencing construction activities that result in soil disturbance;
2. Be updated as necessary to reflect the changing conditions of new contractors, new areas of responsibility, and changes in BMPs; and
3. Provide for compliance with the terms and conditions of this general permit.

Section I. Plan Review and Making Plans Available

The SWP3 must be retained onsite at the construction site or made readily available at the time of an onsite inspection to: the executive director; a federal, state, or local agency approving sediment and erosion plans, grading plans, or stormwater management plans; and to local government officials.

Section J. Keeping Plans Current

The permittee shall amend the SWP3 whenever either of the following occurs:

1. There is 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; or
2. Results of inspections or investigations by site operators, 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 K. Delegation of Signatory Authority

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) using the State of Texas Environmental Electronic Reporting System (STEERS), TCEQ's online permitting system, unless the permittee requested and obtained an Electronic Reporting Waiver. A new Delegation of Signatory form must be submitted if the delegation changes to another individual or position during the permit term.

Section L. Additional Retention of Records

The permittee shall retain the following records for a minimum period of three years from the date that final stabilization has been achieved on all portions of the site. Records include:

1. A copy of the SWP3; and

2. All reports and actions required by this section, including copies of the approved TCEQ construction site notice forms.

Fact Sheet and Executive Director's Preliminary Decision

For proposed Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR040000 for discharges from small (Phase II) municipal separate storm sewer systems (MS4s) into surface water in the state.

Issuing Office:	Texas Commission on Environmental Quality P.O. Box 13087 Austin, TX 78711-3087
Prepared by:	Stormwater Team (MC-148) Wastewater Permitting Section Water Quality Division Office of Water (512) 239-4671
Date:	June 28, 2024
Permit Action:	Amendment and Reissuance of a Stormwater General Permit for Small (Phase II) Municipal Separate Storm Sewer Systems (MS4s)

Table of Contents

I. Summary

The Texas Commission on Environmental Quality (TCEQ) is proposing to amend and renew the statewide Texas Pollutant Discharge Elimination System (TPDES) general permit for small (Phase II) municipal separate storm sewer systems (MS4s), TXR040000. This general permit was first issued and effective on August 13, 2007, and authorizes discharges from small MS4s into surface water in the state. This general permit specifies which small MS4s must obtain permit coverage, which are eligible for waivers, and which must obtain individual permit coverage. This general permit also specifies that where discharges will reach Waters of the U.S., a stormwater management program (SWMP) must be developed and implemented, and includes the minimum requirements for the SWMP.

The principal changes to the existing general permit include the following:

1. Federal Phase II MS4 General Permit Remand Rule

   The general permit language was updated to comply with the federal *National Pollutant Discharge Elimination System (NPDES) MS4 General Permit Remand Rule* that became effective on January 9, 2017, and requires permit language that is "clear, specific, and measurable". (See *Federal Register,* Vol. 81, No. 237, December 9, 2016.)

   TCEQ selected to move the permitting approach for this general permit to the "Comprehensive General Permit" option under the NPDES rule. This is different from the option TCEQ currently uses ("Two-Step General Permit" or "Procedural" approach). *See* Part III.A. below for explanation.

   More specific requirements for the best management practices (BMPs) and measurable goals that must be implemented in SWMPs are added to the general permit to comply with the Comprehensive General Permit approach. These changes are further described below in Part I.4., Part I.5., Part I.6., and Part V of this fact sheet.

   This "Comprehensive General Permit" approach:

   a. simplifies the permitting process for applicants by removing requirements for small MS4s to submit the SWMP to TCEQ with applications for review and approval,

   b. removes the public notice requirements for Notices of Intent (NOIs), including SWMPs, and certain Notices of Change (NOCs),

   c. clarifies all the terms and conditions required to meet the MS4 permit standard under the federal rule, including the specific controls required to be followed by each permittee, and

   d. provides public notice of the defined terms and conditions that will determine compliance for each permittee during the statewide master general permit public notice process.

2. Federal Electronic Reporting Rule

   The general permit language was updated to comply with the federal *NPDES Electronic Reporting Rule* that became effective on December 21, 2015, and the *NPDES Electronic Reporting Rule – Phase II Extension* that became effective on

January 4, 2021. (See *Federal Register*, Vol. 80, No. 204, October 22, 2015, and Vol. 85, No. 212, November 2, 2020.) This permit was also revised for consistency with the federal *NPDES eRule Data Elements To Reflect MS4 General Permit Remand Rule* which EPA issued to update the data elements in the original eRule to be consistent with the current MS4 regulations that were revised as a result of the *NPDES MS4 General Permit Remand Rule* (see *Federal Register,* Vol. 85, No.73, April 15, 2020). The general permit requires that small MS4s submit applications and annual reports electronically using the United States Environmental Protection Agency's (EPA's) NPDES electronic permitting and reporting system for the MS4 program, NeT-MS4 for compliance with federal *NPDES Electronic Reporting Rule*.

3. Federal Small MS4 Urbanized Area Clarification Rule

   The general permit language was updated for consistency with the federal *NPDES Small MS4 Urbanized Area Clarification Rule* that became effective on July 12, 2023, and replaces the term "Urbanized Area" in the Phase II Stormwater regulations with the phrase "urban areas with a population of at least 50,000", which is the U.S. Census Bureau's longstanding definition of the term Urbanized Area. (See *Federal Register,* Vol. 88, No. 112, June 12, 2023.)

   References to Urbanized Areas were removed from the permit and replaced with the phrase "urban areas with a population of at least 50,000". The term Urbanized Area was discontinued in the 2020 Decennial Census by the U.S. Census Bureau. This general permit identifies regulated small MS4s located within or partially within the urban areas with a population of at least 50,000 people as determined by the 2000, 2010, or 2020 Decennial Censuses.

4. Application for Coverage

   a. The general permit expands the description of regulated operators of small (Phase II) MS4s to include existing and newly regulated small MS4s that are fully or partly located within an urban area with a population of at least 50,000 people, as determined by the 2000, 2010, or 2020 Decennial Censuses. These small MS4 operators must obtain authorization for the discharge of stormwater runoff, and are eligible for coverage under this general permit unless otherwise specified. (Permit Part II.A.1 and Part II.F.2)

   b. The general permit continues categorizing small MS4s into four levels with different permit requirements applied to each level for some of the program elements. The general permit clarifies that the level of a small MS4 for this general permit is based on the 2020 Decennial Census information for the population served by the small MS4 within the 2020 urban area with a population of at least 50,000 people. A new Decennial Census during a permit term, will not affect the level of a small MS4, until the permit is renewed. Non-traditional MS4s such as transportation entities, will continue to be categorized as Level 2 MS4s, but a distinction between traditional and non-traditional MS4s is shown as Levels 2a and 2b, respectively. (Permit Part II.B) The small MS4 levels are as follows:

      (1) Level 1: Operators of traditional small MS4s that serve a population of less than 10,000 within an "urban area with a population of at least 50,000 people".

(2) Level 2a: Operators of traditional small MS4s that serve a population of at least 10,000 but less than 40,000 within an "urban area with a population of at least 50,000 people".

(3) Level 2b: Operators of all non-traditional small MS4s such as counties, drainage districts, transportation entities, military bases, universities, colleges, correctional institutions, municipal utility districts and other special districts regardless of population served within the "urban area with a population of at least 50,000 people", unless the non-traditional MS4 can demonstrate that it meets the criteria for a waiver from permit coverage based on the population served.

(4) Level 3: Operators of traditional small MS4s that serve a population of at least 40,000 but less than 100,000 within an "urban area with a population of at least 50,000 people".

(5) Level 4: Operators of traditional small MS4s that serve a population of 100,000 or more within an "urban area with a population of at least 50,000 people".

5. Impaired Water Bodies and Total Maximum Daily Load (TMDL)

   a. Added language describing when permittees must update their SWMP and NOI to address when TCEQ has modified a TMDL waste load allocation (WLA) during the general permit term. (Permit Part III)

   b. Clarified that permittees discharging to water quality impaired water bodies with a TMDL for bacteria must either refer to the approved TMDL Implementation Plan for BMPs, or implement proposed and approved alternative equivalent BMPs. (Permit Part III)

   c. Added more specific BMPs and measurable goals for bacteria impaired water bodies with an approved TMDL to specify the clear, specific, and measurable: activities, goals, and deadlines that must be implemented, as appropriate, by permittees discharging to these water bodies. This is represented in the permit in a table. (Permit Part III)

6. Obtaining Authorization

   a. Revised general permit language throughout the permit to remove reference to SWMP submittal to TCEQ with NOIs or applications for review and approval. Although a SWMP must be developed and implemented, with a Comprehensive General Permit option, permittees are only required to submit an NOI.

   b. Removed requirements for permittees to implement public notice requirements for NOIs, including SWMPs, and NOCs. With a Comprehensive General Permit option, permittees are not required to provide public notice for changes to the SWMP since the master general permit provides the required public notice of the defined terms and conditions for each small MS4 by specifying the required controls and schedules.

7. Stormwater Management Program (SWMP)

    a. Revised the list of minimum control measures (MCMs) in the general permit to separate *MCM 1 - Public Education, Outreach, and Involvement* to match the federal rules: *MCM 1 - Public Education and Outreach* and *MCM 2- Public Involvement/Participation* (see 40 Code of Federal Regulations (CFR) § 122.34(b)(1)-(6)). The remaining MCMs were renumbered as MCMs 3-8. (Permit Part IV.D)

    b. Added a requirement for permittees to address specific target audiences and pollutants and sources for their MCM 1- Public Education and Outreach program based on their MS4 level and provided a list of target audiences and pollutants and sources for the MS4s to select and address. (Permit Part IV.D.1-2)

    c. Added more specific BMPs and measurable goals for each MCM to specify the clear, specific, and measurable: activities, goals, and deadlines that must be implemented by permittees based on their MS4 level to comply with the Comprehensive General Permit approach. These are represented throughout the permit in the form of tables. (Permit Part IV.D.1-7)

8. MS4-Operated Construction Sites (Optional 8th MCM)

    a. Added requirement for permittees to conduct observation and evaluation of dewatering controls on the days where dewatering discharges occur to be consistent with the TPDES Construction General Permit (CGP, TXR150000), issued on March 5, 2023. (Permit Part VII.E.11)

    b. Clarified 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 multiday 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 and 2023 TPDES CGP. (Permit Part VII.F.10)

    c. Added 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 Stormwater Pollution Prevention Plan (SWP3). (Permit Part VII.F.10)

    d. Added requirement for permittees to submit Delegation of Signatory forms electronically using TCEQ's online State of Texas Environmental Electronic Reporting System (STEERS). (Permit Part VII.K.) This is required for compliance with the federal NPDES Electronic Reporting Rule.

9. Miscellaneous and Editorial Changes

    Made changes throughout the permit to remove redundant information, improve readability, correct references and typographical errors, and consolidate similar information into similar sections where appropriate.

II. Executive Director's Recommendation

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

III. Permit Applicability and Coverage

There are two ways that a small MS4 would be required to obtain permit coverage. First, the federal NPDES Phase II stormwater rules at 40 CFR § 122.32(a)(1) require authorization for the discharge of stormwater from small MS4s located fully or partially within an urban area with a population of at least 50,000 people as defined by the U.S. Census Bureau. These small MS4s are often referred to as *regulated* small (or Phase II) MS4s. In addition, TCEQ can *designate* a small MS4 as requiring coverage (see federal Phase II stormwater rules at 40 CFR §§ 122.32(a)(2) and 123.35(b)). There are two groups that fall into this category. First, the rules require that TCEQ develop and apply designation criteria to small MS4s located outside of an urban area with a population of at least 50,000 people that serve a jurisdiction with 10,000 or more people, and that have an average density of 1,000 or more people/square mile (*See* 40 CFR § 123.35(a)(2)). This assessment was required by December 9, 2002, and the TCEQ after assessing those small MS4s that met these criteria did not designate any additional small MS4s requiring permit coverage. Secondly, the rules require TCEQ to designate any small MS4 as a regulated small MS4 where the small MS4 substantially contributes pollutants to a physically interconnected regulated MS4. Small MS4s meeting either of these criteria would be referred to as *designated* small MS4s. The rules also allow the TCEQ to designate additional small MS4s at any time. The portion of the small MS4 required to meet the conditions of the proposed general permit is that portion located within an urban area with a population of at least 50,000 people, as well as any portion that is individually designated by the TCEQ. Maps detailing urban areas are available at: https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html.

The urban area maps were updated by the U.S. Census Bureau during 2023 based on the results of the 2020 Decennial Census.

In the preamble to the Phase II stormwater rules (See *Federal Register* (FR) 64, Number 235, page 68749), the EPA discusses instances where a municipal separate storm sewer may not be considered a system. The TCEQ agrees that certain complexes may have storm drainage structures that operate independently of each other (such as roof top drains flowing to the city street) rather than operating as a system. The TCEQ does not consider most elementary and secondary schools to operate a system, because each school building would normally drain to a city's MS4 rather than to a system of drains operated by a school district.

Similarly, a public office building complex may include roof and parking lot drains that flow to another entity's system. Universities, federal facilities, and many other public complexes do have a constructed drainage system, which would be defined as a small MS4, even if the drains eventually reach another MS4. In this general permit, the definition for small MS4 excludes storm drains associated with municipal (publicly owned) office and education complexes, where the complexes serve a nonresidential population, and where the buildings are not part of a larger MS4.

A. NPDES Small MS4 General Permit Remand Rule

On December 9, 2016, EPA issued the *NPDES MS4 General Permit Remand Rule*, with an effective date of January 9, 2017, to respond to a remand from the United States Court of Appeals for the Ninth Circuit in Environmental Defense Center, et al. v. EPA, 344 F. 3d 832 (9th Cir. 2003). Under the rule, EPA revised the small MS4 regulations to ensure that states review BMPs to be used by MS4s to ensure that the small MS4s reduce the pollutant in the discharge from their systems to the maximum extent practicable (MEP) and that states provide public notice and the opportunity to request a hearing.

The rule establishes two alternative approaches that states can use to issue small MS4 general permits. The first option is to issue a general permit that includes all permit terms and conditions to require the MS4 operator to reduce the discharge of pollutants from its MS4 to the MEP to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act (CWA) in one comprehensive general permit.

The second option allows states to establish the necessary terms and conditions in two steps. The first step is to issue a base general permit that contains terms and conditions for all MS4s. The second step requires that MS4s develop individual terms and conditions in their SWMPs that states will review. Public notice, comment period, and opportunity to request a public hearing is available for both steps in the second option.

The rule also requires that permit terms and conditions be written in a language that is "clear, specific, and measurable" to avoid uncertainties as to what specific actions the small MS4 is expected to take, and therefore make it easier to comply with and assess compliance. The preamble (*Fed. Reg*. Vol. 81. No. 237, December 9, 2016. p. 89335) explains that permit requirements that include "caveat" language such as: "if feasible", "if practicable", "to the maximum extent practicable", "as necessary", or "as appropriate" unless defined would generally not qualify as "clear", "specific", and "measurable".

TCEQ selected the Comprehensive General Permit option to implement in this new permit term. Previously, TCEQ implemented the Two-Step General Permit option (procedural approach) since the state had managed its small MS4 program in that manner since the issuance of the first TPDES Small MS4 General Permit in 2007.

With implementation of the comprehensive permitting approach, the statewide master general permit is a comprehensive document detailing all the required terms and conditions for the small MS4 operators to implement in clear, specific, and measurable terms to meet the MS4 permit standard. The general permit includes the specific BMPs and measurable goals for each MS4 operator to implement. In some cases, the MS4 operator has the opportunity to choose the appropriate BMPs for their small MS4 from a menu of BMPs. This approach makes it clear for the public and permittees the specific controls and schedules required to be followed by each permittee and removes the public notice requirements for NOIs, including SWMPs, and NOCs.

TCEQ established terms and conditions under state rule 30 TAC Chapter 213 (Edwards Aquifer Rule), which is outside the NPDES program, are not considered part of the Remand Rule, therefore, general permit language related to the Edwards Aquifer Rule remains unchanged.

B. Regulated Small MS4s Subject to Permitting

The proposed general permit would continue to authorize the discharge of stormwater runoff and certain non-stormwater discharges from the following small MS4s:

1. Small MS4s located wholly or partially within an urban area with a population of at least 50,000 people as defined by the U.S. Census Bureau in the 2000, 2010, or 2020 Decennial Censuses, and
2. Small MS4s individually designated by the TCEQ as described in Section III.B of this fact sheet.

C. Designated Small MS4s Subject to Permitting

Certain small MS4s may be designated by the TCEQ as requiring permit coverage based on federal requirements at 40 CFR § 122.32(a)(2). The TCEQ has developed the following criteria, one or more of which may be considered in designating a small MS4:

1. Controls for discharges are determined to be necessary for source water protection of public drinking water resources based on the results of source water assessments by the TCEQ.
2. Controls for discharges are necessary to protect sea grass areas of Texas bays as delineated by the Texas Parks & Wildlife Department.
3. Controls for discharges are necessary to protect receiving waters designated as having an exceptional aquatic life use.
4. Controls are required for pollutants of concern expected to be present in discharges to a receiving water listed in the *Texas Integrated Report of Surface Water Quality for Clean Water Act (CWA) Sections 305(b) and 303(d)* which lists the category 4 and 5 water bodies.
5. Discharges from an adjacent small MS4 are determined by TCEQ to be significantly contributing pollutants to the regulated MS4. The TCEQ would make this determination after receiving a written request by a regulated adjacent MS4 operator.
6. Additional factors relative to the environmental sensitivity of receiving watersheds.

Specific thresholds are not established for each of the designation criteria. Instead, designation must occur following a case-by-case consideration and is based on a finding that controls are necessary to protect water quality. If designated, the small MS4 operator will be notified by the executive director and required to apply for authorization under either the proposed general permit or an individual TPDES stormwater permit. The application for either permit must be submitted within 180 days of the notice.

In 2002, the TCEQ applied these designation criteria to the small MS4s located outside of an urban area with a population of at least 50,000 which served a jurisdiction with 10,000 or more people, and which had an average density of 1,000 or more people per square mile. At that time, the TCEQ did not designate any small MS4 or portion of a small MS4 that was not located within an urban area with a population of at least 50,000. The TCEQ may evaluate small MS4s again that meet these criteria, as well as other small MS4s. Small MS4s that are not located within an

urban area with a population of at least 50,000 may be designated by TCEQ at any time in the future, and will be required to develop and maintain a SWMP and submit an NOI within 180 days of being notified in writing by TCEQ of that designation. TCEQ may also designate small MS4s as a result of a petition received based on 40 CFR § 123.35(c). According to the regulations, a determination would need to be made within 180 days of receiving such a written petition.

D. Permit Waivers

Two possible waivers from permitting requirements are provided in the federal rules at 40 CFR § 122.32 and are continued in the proposed general permit.

1. Waiver Option 1 - A small MS4 may qualify for a waiver if it serves a total population of less than 1,000 within an urban area or areas with a population of at least 50,000 people, and:
    a. The small MS4 is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the TPDES or NPDES stormwater program (40 CFR § 122.32(d)); and
    b. If the small MS4 discharges any pollutant(s) that have been identified as a cause of impairment of any water body to which the small MS4 discharges, stormwater controls are not needed based on waste load allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern.

    To meet this waiver, the small MS4 operator must submit a letter requesting the waiver including the certifying statement that the above-described criteria for Waiver Option 1 are met. This waiver request must be submitted on a form approved by the TCEQ.
2. Waiver Option 2 – A small MS4 may qualify for a waiver if it serves a total population of less than 10,000 within an urban area or areas with a population of at least 50,000 people and meets all the following criteria:
    a. The TCEQ has evaluated all Waters of the U.S., including small streams, tributaries, lakes, and ponds, which receive a discharge from the small MS4;
    b. For all such waters, the TCEQ has determined that stormwater controls are not needed based on waste load allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern; and
    c. The TCEQ has determined that future discharges from the small MS4 do not have the potential to exceed Texas Surface Water Quality Standards (TSWQS, 30 TAC Chapter 307), including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

The receiving waters evaluation for Waiver Option 2 is a TMDL-equivalent evaluation that may be performed by the small MS4 using TCEQ protocol with appropriate guidance from the TCEQ. The evaluation would need to include the pollutants of concern, including at a minimum: biochemical oxygen demand (BOD, 5-day); sediment (or a parameter that addresses sediment such as total suspended solids (TSS), turbidity, or siltation); pathogens; oil and grease; and any other pollutant that has been identified as a cause of impairment of any receiving water body. The small MS4 must coordinate with TCEQ Wastewater Permitting staff and Water Quality Assessment staff prior to initiating such a study.

Because of the comprehensive nature of the required receiving water evaluation, and the necessary finding that future discharges from the small MS4 could not potentially exceed water quality standards, Waiver Option 2 will be difficult to obtain. However, this option is allowed by federal rules and is therefore included in the proposed general permit and made available to certain small MS4s. The small MS4 would need to first coordinate with the TCEQ to determine if a waiver is attainable under this option and must complete a TCEQ waiver form after completing all the necessary studies.

E. Ineligible Discharges

The following discharges are not eligible for permit coverage under the proposed general permit and must obtain coverage under either an individual or an alternative general TPDES permit:

1. Discharges from Phase I (medium and large) MS4s (Phase I MS4s are those that are located in a city or county with a residential population of 100,000 or more based on the 1990 Decennial Census);
2. Discharges from small MS4s 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;
3. New sources or new discharges of the pollutant(s) of concern to impaired waters, unless otherwise allowable under TCEQ rules, applicable state law, and any TMDL and TMDL Implementation Plan (I-Plan) that exists for the applicable receiving water;
4. Stormwater discharges that combine with sources of non-stormwater, unless the non-stormwater source is an allowable non-stormwater discharge described in the proposed general permit, or the non-stormwater source is authorized under a separate TPDES permit;
5. Discharges otherwise prohibited under existing state rules; and
6. Discharges that would adversely affect a listed endangered or threatened species or its critical habitat are not authorized by this general permit. Federal requirements related to endangered species apply to all TPDES permitted activities, and site-specific controls may be required to ensure that protection of endangered or threatened species is achieved.

F. Allowable Non-stormwater Discharges

The following non-stormwater sources may be discharged from the small MS4 and are not required to be addressed in the small MS4's Illicit Discharge and Detection measure, or other MCMs, provided that they have not been determined by the MS4 operator or the TCEQ to be substantial sources of pollutants to the small MS4:

1. Water line flushing (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated, and discharges are not expected to adversely affect aquatic life);
2. Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;
3. Discharges from potable water sources that do not violate TSWQS;
4. Diverted stream flows;
5. Rising ground waters and springs;

6. Uncontaminated ground water infiltration;
7. Uncontaminated pumped ground water;
8. Foundation and footing drains;
9. Air-conditioning condensation;
10. Water from crawl space pumps;
11. Individual residential vehicle washing;
12. Flows from wetlands and riparian habitats;
13. Dechlorinated swimming pool discharges that do not violate TSWQS;
14. Street wash water excluding street sweeper wastewater;
15. Discharges or flows from emergency firefighting activities (firefighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);
16. Other allowable non-stormwater discharges listed in 40 CFR § 122.26 (d)(2)(iv)(B)(1);
17. Non-stormwater discharges that are specifically listed in the TPDES Multi-Sector General Permit (MSGP) TXR050000 or the TPDES CGP, TXR150000;
18. Discharges that are authorized by a TPDES or NPDES permit or that are not required to be permitted; and
19. Other similar occasional incidental non-stormwater discharges, such as spray park water, unless the TCEQ develops permits or regulations addressing these discharges.

Discharge of the waters listed above may contain pollutants that would need to be addressed by the small MS4. For example, discharges from water line flushing could contain levels of chlorine that could have an impact on aquatic life, in which case the small MS4 may need to require that controls be put on the discharge of chlorinated water line flushing.

G. Discharges from Small MS4 Construction Activities

The proposed general permit provides small MS4 operators an option to discharge stormwater runoff, and certain non-stormwater runoff, from construction sites under the authority of the small MS4 general permit, where the small MS4 is the operator of the construction activity.

For the MS4 operator to cover these activities under this general permit, an optional stormwater MCM must be developed and implemented to address these activities. The MCM must describe the general procedures the MS4 operator will develop to implement a stormwater pollution prevention plan (SWP3), with consideration for local weather and soil conditions, and the steps to be taken to meet and maintain the status as operator at small MS4 construction sites. The MS4 operator must also describe in the MCM the area within which construction related discharges will be authorized under this general permit. The permittee may choose to cover activities exclusively within the boundary of the urban area with a population of at least 50,000, within corporate limits or extra territorial jurisdiction (ETJ), within special districts, or within other similar jurisdictional boundaries of the permittee. However, discharges from construction activities outside of the regulated area, such as outside of the urban area with a population of at least 50,000 or outside of the area(s) designated by TCEQ, are only eligible for authorization under this general permit for

those areas where the MS4 operator meets the requirements of Parts III.D.1. through III.D.7 of the general permit, related to MCMs. The NOI will require the permittee to provide information or a description on the boundary of coverage.

A separate detailed SWP3 must be developed and implemented for each regulated construction site. Contractors at a construction site where the small MS4 is the sole operator are not required to obtain separate authorization for stormwater discharges, provided the MS4 operator can meet and maintain the status of sole operator for the site, where the contractor does not meet the definition of operator for the site, and where the SWP3 is developed to address the activities of the contractor. If the contractor meets the definition of construction site operator, then the contactor would need to obtain authorization under the TPDES CGP or an individual permit.

40 CFR § 122.28(b)(2)(i), as adopted by reference in 30 TAC § 205.7, requires the submittal of an NOI to authorize certain discharges under a general permit. While 40 CFR § 122.28(b)(2)(v) allows some exceptions to this requirement, it does not exclude the permittee from the requirement to submit an NOI for authorization of discharges of stormwater runoff associated with industrial activity. Because federal rules at 40 CFR § 122.26(b)(14)(x) includes large construction sites in its definition of industrial activity, discharges of construction activity of five or more acres (including activities which are part of a larger common plan of development) are required to submit an NOI. Therefore, if a small MS4 operator seeks to obtain coverage for these discharges under the proposed general permit, then the small MS4 operator must include information on the construction activities on its NOI required under this general permit. The applicant must develop a SWP3 and include site-specific information on how construction activities will be conducted to control pollution. This information must be formalized as an MCM and incorporated as a part of the small MS4 operator's SWMP.

The NOI and SWMP must include this optional 8th MCM in order for the permittee's construction activities to be eligible for authorization under this general permit. The NOI will include a certification statement that the small MS4 must sign, where the MS4 operator agrees to comply with the conditions and requirements of this general permit for its construction activities. This certification on the NOI will satisfy the previously cited regulatory requirement regarding the NOI. Separate NOIs for each construction activity are not required, provided that the appropriate information is included in the optional control measure. The MS4 operator must subsequently develop a separate SWP3 for each large and small construction activity, and must post a construction site notice that includes a signed certification that a SWP3 was developed and is implemented according to the conditions and requirements of this general permit. The site notice would be considered a "report" for the purposes of this general permit, and therefore may be signed by a person properly authorized by the MS4 operator under 30 TAC § 305.128, regarding delegation of signatory authority for reports.

If the small MS4 operator determines that it does not wish to implement the optional 8th MCM at the time of original application under this general permit, and at a later date does choose to utilize this option, then an NOC will be equivalent to the NOI required under the rules.

If this optional 8th MCM is not developed by the small MS4 operator, then discharges of stormwater runoff from large and small construction activities must be authorized under the TPDES CGP or a TPDES individual permit. Additionally, if the MS4 operator either cannot or chooses not to meet and maintain the status as the sole

operator for any specific construction activity, then authorization under a separate TPDES permit must be obtained for the additional operators during construction activities at that specific site. Finally, if the small MS4 operator chooses not to utilize this optional 8th MCM for one or more construction activities, then the small MS4 operator must obtain separate authorization for the site(s) under the TPDES CGP or a TPDES individual permit.

IV. Permit Conditions and Effluent Limitations

A. Notice of Intent (NOI)

The proposed general permit would require small MS4s to submit to the TCEQ an NOI to comply with the conditions of the general permit, along with a certification that a SWMP has been prepared according to the comprehensive general permit requirements.

B. Stormwater Management Program (SWMP)

The proposed SWMP requirements were developed based on:

1. The existing Phase II MS4 General Permit TXR040000 issued on January 24, 2019;
2. Input from the Stormwater Stakeholder Work Group;
3. Federal Phase II stormwater rules of 40 CFR §§ 122.28 and 122.32 - 122.35;
4. EPA *MS4 Permit Improvement Guide* (EPA, April 2010);
5. EPA *Compendium of MS4 Permitting Approaches* (EPA, 2016);
6. Federal *NPDES MS4 General Permit Remand Rule,* January 9, 2017;
7. Federal *NPDES Electronic Reporting Rule* of 40 CFR Part 127, December 21, 2015, and January 4, 2021 (Phase 2);
8. Federal *NPDES Small MS4 Urbanized Area Clarification Rule*, July 12, 2023; and
9. EPA approval letter on Small MS4 draft permit (June 9, 2023).

The proposed general permit allows small MS4s to share resources in meeting the responsibilities of the SWMP with other regulated MS4s that are either physically interconnected or that are located in the same watershed. This allowance will help to foster a more coordinated approach to resolving local water quality issues and to provide a more efficient use of local MS4 resources. MS4s may combine or share efforts necessary to meet the SWMP requirements of the general permit, but each MS4 must be separately authorized (individual NOIs are required). Additionally, individual SWMPs must be developed and maintained by each of the MS4s participating in the coalition. Each operator is separately responsible for compliance with the conditions of the general permit and the SWMP, even if efforts are combined or shared between or among the MS4s.

Small MS4s must develop a SWMP, according to the provisions of this general permit, to the extent allowable under state and local law, to address the portions of the small MS4 that are either located within the urban area with a population of at least 50,000 people or that are designated by the TCEQ, with discharges that reach Waters of the U.S. as defined in 40 CFR § 122.2.

The SWMP is a comprehensive document that details the steps that the small MS4 will take to reduce or eliminate pollutants in stormwater discharges to the MEP. The phrase "to the extent allowable under local law", as used in the paragraph above, means that small MS4s must develop any necessary ordinances, regulations, or other regulatory controls to meet the general permit requirements to the extent that their authority to make such ordinances is not prohibited by state or federal statutes or regulations.

Under the comprehensive general permitting approach, the small MS4 must implement, at a minimum, the BMPs and measurable goals identified in the general permit for each MCM. Operators may choose to implement more stringent measurable goals or additional BMPs to go beyond the minimum requirements of the general permit.

Operators of non-traditional small MS4s, such as counties, drainage districts, and transportation entities, may lack the authority to develop ordinances or to implement enforcement actions. For these MS4 operators, the general permit requires the permittee to enter into inter-local agreements with municipalities in which the small MS4 is located. These inter-local agreements must include procedures for enforcement and inspections to the extent necessary to meet the goals of the general permit. Where the permittee is unable to enter into an inter-local agreement, the permittee may report instances of non-compliance or possible illicit discharges to the appropriate TCEQ Regional Office for possible follow-up investigations or enforcements.

The general permit requires the small MS4 to ensure that it has adequate resources and funding necessary to meet all requirements of the permit.

The small MS4s must develop a SWMP to include the MCMs described below, which are based on federal rules at 40 CFR §§ 122.28, 122.34(b), and 122.26(d)(2)(iv). The MS4 must implement the required BMPs under each MCM along with the specified measurable goals that are used to determine the effectiveness of the SWMP. The general permit continues the tiered approach introduced in the Small MS4 General Permit issued on December 13, 2013, to meet the MCM requirements such that some categories, or Levels, of small MS4 operators are not required to implement all or all parts of the MCMs. The small MS4s continue to be categorized by the following four Levels:

- Level 1: Operators of small MS4s that serve a population less than 10,000 within an "urban area with a population of at least 50,000 people";

- Level 2a: Operators of small MS4s that serve a population of at least 10,000 but less than 40,000 within an "urban area with a population of at least 50,000 people";

- Level 2b: Operators of all non-traditional small MS4s such as counties, drainage districts, transportation entities, universities, colleges, correctional institutions, municipal utility districts and other special districts regardless of the population served within an "urban area or areas with a population of at least 50,000 people";

- Level 3: Operators of small MS4s that serve a population of at least 40,000 but less than 100,000 within an "urban area with a population of at least 50,000 people"; and

- Level 4: Operators of small MS4s that serve a population of 100,000 or more within an "urban area with a population of at least 50,000 people".

The eight MCMs are separately described below and include:

1. Public Education and Outreach

The federal Phase II rules require regulated small MS4 operators to implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff (see 40 CFR § 122.34(b)(1)).

The general permit requires small MS4s to educate the public about the impact of stormwater discharges on receiving water bodies and what steps they can take to reduce the contamination of stormwater. The small MS4s are encouraged to use existing public materials in their program, such as using examples from the EPA's Nonpoint Source Outreach Toolbox (www.epa.gov/nps/toolbox) or from other agencies and municipalities with similar public education goals.

2. Public Involvement/Participation

The federal Phase II stormwater rules require regulated small MS4 operators to implement a public involvement and participation program that complies with state and local public notice requirements (see 40 CFR § 122.34(b)(2)).

The SWMPs can be greatly improved by involving the community throughout the entire process of developing and implementing the program. Involving the community will benefit the permittee itself as well as the community. By listening to the public's concern and coming up with solutions together, the permittee will gain the support of the public and the community will become invested in the program. The permittee will likewise gain even more insight into the most effective ways to communicate its messages.

The general permit requires the permittee to involve the public (for example, hosting a public meeting on the program implementation to solicit public comment) in the development of the program. Public input and involvement can include many different activities such as meeting with local land planners and provide input on land use code or ordinance updates, stream clean-ups, storm drain marking, and volunteer monitoring.

As a continued requirement in this general permit, small MS4s having a public website are required to post their SWMP and the annual report on their website to share information with the public.

Permittees are encouraged to work together with other entities that have an impact on stormwater to implement this MCM.

3. Illicit Discharge Detection and Elimination (IDDE)

The Phase II regulations require regulated small MS4 operators to develop, implement, and enforce a program to detect and eliminate illicit discharges into the MS4 (*See* 40 CFR § 122.34(b)(3)). Through the IDDE MCM, the permittee is required to respond to complaints about illicit discharges, illegal dumping, or spills and to actively investigate illicit discharges and behaviors that could result in illicit

discharges such as illegal connection to the small MS4, improper disposal of wastes, or dumping of used motor oil or other chemicals.

The general permit requires the permittee to have an up to date MS4 map. Level 4 permittees are required to identify areas with a high-risk for illicit discharges and illegal dumping, and these areas must be prioritized for more frequent investigations. Priority areas could include: (1) Areas with older infrastructure that are more likely to have illicit discharges; (2) Industrial, commercial, or mixed use areas; (3) Areas with a history of illegal dumping; (4) Areas with a history of illegal discharges; (5) Areas with onsite sewage disposal systems; (6) Areas with older sewer lines or with a history of sanitary sewer overflows (SSOs) or cross-connections; (7) Areas that discharge to sensitive waterbodies; and (8) Areas within sensitive watersheds.

The CWA § 402(p)(3)(B)(ii), requires MS4 permits to "effectively prohibit non-stormwater discharges into the storm sewers". The general permit implements this requirement, in part by requiring the development of procedures to investigate and eliminate illicit discharges and illegal dumping. Standard Operating Procedures (SOPs) with necessary forms provide guidance to investigators and ensure that consistent investigations occur of every illicit discharge incident.

The public must have a central contact point, such as a stormwater hotline, to report observed illicit incidents. An incident could be anything from an overturned gasoline tanker to sediment leaving a construction site or a sanitary sewer overflow entering the storm drain.

The general permit requires the permittee to implement a method for informing or training field staff, who may come into contact or observe illicit discharges or illegal dumping, on the identification and proper procedures for reporting illicit discharges or illegal dumping at least once per year. Field staff to be trained may include, but are not limited to, municipal maintenance staff, inspectors, and other staff whose job responsibilities regularly take them out of the office and into areas within the MS4 area. Permittee field staff is out in the community on a day-to-day basis and are in the best position to locate and report spills, illicit discharges, illegal dumping, and potentially polluting activities. With proper training and information on reporting illicit discharges easily accessible, these field staff can greatly expand the reach of the IDDE program.

The general permit requires small MS4s serving a population more than 100,000 (Level 4 small MS4s) to develop a dry weather screening program. The program consists of field observations and field screening monitoring. Visually screening outfalls during dry weather and conducting field tests, where flow is occurring, will assist permittees in determining the source of illicit discharges and illegal dumping. For example, the presence of surfactants is an indicator that sewage could be present in the discharge and the parameters specific conductivity, ammonia, surfactant, pH and other chemicals may similarly be indicative of industrial sources.

Under this general permit, Level 4 small MS4s are also required to develop a program to reduce the discharge of floatables (for example, litter and other human-generated solid refuse) in the MS4. The MS4 will be required to implement the BMPs described in Table 8 of the general permit such as maintain at least two locations where floatable material can be removed before the stormwater is discharged to or from the MS4. This program has been in place for similar size MS4s under the federal Phase I MS4 regulations that were issued in 1990 and defined Phase I MS4s as MS4s located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the 1990 Decennial Census. (40 CFR § 122.26(b)(7)(i)). It is

therefore appropriate to include these requirements for these similar size MS4s regulated under this general permit.

4. Construction Site Stormwater Runoff Control

The Phase II regulations require regulated small MS4s to develop, implement, and enforce a program to reduce pollutants in stormwater runoff to the MS4 from construction activities that result in a land disturbance of one acre or greater (*See* 40 CFR § 122.34(b)(4)). In this general permit, the definition for construction activity is clarified to also include construction related activities such as stockpiling of fill material and demolition.

The general permit requires the permittee to ensure that construction site operators use appropriate erosion and sediment controls to reduce or eliminate impacts on receiving water bodies.

The permittee is required to implement procedures to conduct inspections of large and small construction projects. Level 3 and 4 small MS4s are further required to maintain an inventory of construction sites in their area. This will help the permittee to effectively know where the construction activities are occurring. A construction site inventory could track information such as project size, disturbed area, distance to any water body or flow channel, when the erosion and sediment control or stormwater plan was approved by the permittee, and whether the project is covered by the TPDES CGP. Such information will help the permittee to track and target its inspection.

The permit requires the permittee to develop and implement site plan review procedures, which describes which plans will be reviewed as well as when an operator may begin construction. The permittee is required to develop SOPs to perform the site plan reviews to ensure that the review process is consistent. The site plan review also provides the permittees with a way to track construction sites.

The general permit requires the permittee to implement procedures for performing inspections of construction sites. Inspection frequencies must be based on the evaluation of factors that are a threat to water quality such as soil erosion potential, site slope, proximity to receiving waters, and water quality status of the receiving water. The sites must be inspected during the active construction phase, to ensure that stormwater controls are maintained.

For inspections to be successful the permittee is required to develop inspection and enforcement procedures. The permit language includes minimum requirements that construction site inspections must include. Also, the permittee must ensure MS4 staff is trained to perform the inspections.

5. Post-Construction Stormwater Management in New Development and Redevelopment

The Phase II stormwater regulation requires regulated small MS4s to develop, implement, and enforce a program to address stormwater discharges from new development and redevelopment sites that disturb one acre or more, and requires that the program ensure controls are in place that would prevent or minimize water quality impacts (*See* 40 CFR § 122.34(b)(5)).

Developed land changes the hydrology of sites, potentially leading to higher stormwater discharge volume and higher pollutant loads. Frequently, the volume,

duration, and velocity of stormwater discharges can cause degradation to aquatic systems.

The general permit requires that MS4 operators have owners and developers install and maintain stormwater control measures appropriate for the community. In addition, permittees are required to maintain all long-term post-construction stormwater control measures. In many cases, controls will be located on private property, and it will be necessary to establish some provisions to assure the responsibility and accountability for the operation and maintenance of these controls.

Structural controls may include practices such as rainwater harvesting, rain gardens, permeable pavement, and vegetated swales, which are considered low impact development practices or green infrastructure BMPs.

The permittees are required to inspect post-construction controls to ensure that control measures are operating correctly and are being maintained. Without maintenance, stormwater controls will not be able to properly protect water quality.

For the purpose of this general permit "Redevelopment" does not include routine maintenance activities and linear utility installation. Examples of linear utility installation are construction activities that maintain the original line, grade, and hydraulic capacity of the surrounding areas, such as the installation of underground gas lines, fiber-optic cable, cable TV, electric, telephone, sewer mains, and water mains. Routine maintenance activities are construction activities that are performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility, including but not limited to: (1) Re-grading of gravel roads or parking lots; (2) Stream bank restoration projects (does not include the placement of spoil material);(3) Cleaning and shaping of existing roadside ditches and culverts that maintains the approximate original line and grade, and hydraulic capacity of the ditch; (4) Placement of aggregate shoulder backing that makes the transition between the road shoulder and the ditch or embankment; (5) Full depth milling and filling of exiting asphalt pavements, replacement of concrete pavements slabs, and similar work that does not expose soil or disturb the bottom six inches of subbase material; (6) Long-term use of equipment storage areas at or near highway maintenance facilities; (7) Removal of sediment from the edge of the highway to restore a previously existing sheet-flow drainage connection from the highway surface to the highway ditch or embankment; and (8) Replacement of curbs, gutters, sidewalk and guard rail posts.

6. Pollution Prevention and Good Housekeeping for Municipal Operations

The stormwater Phase II regulations require operators of regulated small MS4s to develop and implement an operation and maintenance program that includes a training component with the ultimate goal of preventing or reducing pollutant runoff from municipal operations (*See* 40 CFR § 122.34(b)(6)).

The general permit requires the small MS4 operator to maintain an inventory of municipal facilities and stormwater controls. Municipally owned facilities serve as hubs of activity for a variety of municipal staff from many different departments. Some municipalities will have one property where all activities take place (for example, the municipal maintenance yard), whereas others will have several specialized facilities. An inventory of facilities will assist staff responsible for stormwater compliance build a better awareness of their locations within the small MS4 service area and their potential contribution to stormwater pollution. The

facility inventory will also serve as a basis for setting up periodic facility assessments and developing, where necessary, facility stormwater pollution plans.

The general permit requires Level 3 and Level 4 permittees to perform, once per permit term, an assessment of its facilities to identify which of the facilities are most likely to contribute stormwater pollutants and that need stormwater controls. Those facilities with a high potential to generate stormwater pollutants must be described as *high priority* facilities and this category of facilities are required to have facility specific stormwater management SOPs. Developing and maintaining site-specific SOPs for each facility will help ensure that employees responsible for facility operation are aware of the stormwater controls required for the site.

The general permit requires Level 3 and Level 4 permittees to develop an inspection program to perform inspections of, at a minimum, high priority municipal facilities and to document the results of the inspections. Regular inspections will allow inspectors to observe different types of operations that occur at different times of the year (e.g., landscape maintenance crews are less active in the winter) and ensure that corrective action can be taken where necessary to improve stormwater controls.

The general permit includes requirements for MS4 operation and maintenance (O&M) activities, such as maintaining the storm sewer system, maintaining roads, and managing chemical applications. Level 3 and Level 4 small MS4s are required to develop an O&M program to reduce the collection of pollutants in catch basins and other surface drainage structures. Catch basins collect and trap stormwater pollutants such as sediments, metals, hydrocarbons, bacteria, pesticides, trash, and other pollutants. Since these basins collect solids, they need to be cleaned out on a regular basis to prevent pollutants from being discharged to water bodies. The materials removed from catch basins need to be treated and disposed of in a manner so that they do not reenter the small MS4.

The O&M of roads may, for Level 3 and Level 4 small MS4s, include a street sweeping program. Street sweeping removes both fine and large particles from streets and therefore has a positive effect on water quality. Some small MS4s have roads without curbs and gutters, and are therefore not suitable for street sweeping. In these cases, source controls or inlet protection measures, to minimize pollutant discharges to storm drains and creeks, can be used in place of sweeping.

The general permit includes requirements for Level 4 small MS4s for managing public spaces, such as addressing the application of pesticides, herbicides, and fertilizers. The general permit language encourages non-chemical solutions, such as using native plants that are adapted to local conditions and therefore requires fewer chemicals and to replace pesticide use with manual insect and weed removal thereby reducing chemical exposure to stormwater.

The Phase II regulations found at 40 CFR § 122.34(b)(6) specifically requires that small MS4s develop a "training component" that trains employees "to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance. The general permit requires the permittee to develop a training program to train all appropriate employees involved in implementing pollution prevention and good housekeeping practices at least once per year.

The general permit includes language for situations where small MS4s use third-party contractors to conduct municipal maintenance activities. Contractors must be held to the same standards as the permittee.

The general permit includes a requirement for Level 4 small MS4s to assess their flood control projects for their impacts on receiving waters and determine if existing structures could be retrofitted. New flood control projects must be designed, constructed, and maintained to provide erosion control and pollutant removal from stormwater. This program has been in place for similar size MS4s under the Phase I MS4 program since the federal Phase I stormwater regulations were issued in 1990, and it is therefore appropriate to add these requirements to these similar sized MS4s regulated under this general permit.

7. Industrial Stormwater Sources

The Phase I stormwater regulations, found at 40 CFR §§ 122.26(d)(2)(i)(B, C,E, and F), 122.26(d)(2)(iv), and 122.26(d)(2)(iv)(A), require permittees to develop and implement an inspection and oversight program to monitor and control pollutants in stormwater discharges from industrial facilities.

The general permit continues the Industrial Stormwater Sources MCM for small MS4s that serve a population of 100,000 or more within a UA. EPA's *MS4 Improvement Guide* recommends this MCM be included in Phase II permits, and TCEQ determined that it is appropriate to include it for those Phase II MS4s regulated under this general permit that have similar populations as the Phase I MS4s.

The general permit requires the permittee to identify and control pollutants in stormwater discharges to small MS4s from industrial or commercial sites that contributes a substantial pollutant loading to the small MS4. The general permit language under this MCM is similar to language in some Phase I MS4 individual permits.

8. Authorization for Construction Activities Where the MS4 is the Site Operator

The small MS4 operator may develop an optional 8th MCM for discharges from construction activities, and may obtain authorization under the general permit for discharges from construction activities where the MS4 is the operator. In order to qualify for this provision, MS4 operators must maintain control over the plans and specifications of the construction activity, or must maintain the status of the operator with day-to-day operational control over the construction site, to the extent necessary to meet the requirements of the SWP3 for that site.

Implementation of this option al 8th MCM allows the small MS4 to obtain the necessary authorization under the terms of this five-year term general permit and replaces the requirement to seek separate permit coverage for each construction activity that it conducts. Where the small MS4 is able to demonstrate it is the sole operator for these activities, by meeting both criteria listed in the definition of "construction site operator", contractors would not have to seek separate authorization. This provision is allowed for construction activities located in the regulated area, such as within an urban area with a population of at least 50,000 people or within an area designated by TCEQ.

Small MS4s are required to summarize in the annual report pertinent information related to the construction activities performed in the previous year. Small MS4s

electing this provision must notify the TCEQ when submitting the NOI. Utilization of the optional 8th MCM does not preclude a small MS4 from obtaining coverage under the TPDES CGP, TXR150000, or under a TPDES individual permit.

C. SWMP Implementation

The SWMP will be implemented on a scheduled stepwise basis throughout the term of the general permit. Permittees must implement the elements following the clear, specific, and measurable goals described in the general permit or follow a more stringent schedule than the general permit describes.

Implementation must be initiated upon receipt of written approval of the NOI from the TCEQ. The general permit contains provisions that allow non-substantial revisions to the SWMP throughout the term of the general permit, without immediate notification to the TCEQ, so that SWMPs can be adjusted based on experiences and findings to become more effective and efficient. Schedules for SWMP implementation, the status of the implementation schedules, and modifications to the SWMP must be summarized in the annual report. These general permit provisions allow small MS4s to develop and implement SWMPs according to available funding, manpower, and ability, and allow for revisions where more efficient or effective BMPs are identified. Complete implementation of the SWMP is required within five years from the date of issuance of the general permit.

Existing permittees must implement the SWMP that was approved by TCEQ under the previous 2019 Small MS4 General Permit term, and will have five years to implement new portions of the SWMP.

Federal rules at 40 CFR § 123.35(g) require permitting authorities to issue a menu of BMPs to assist small MS4s in complying with the Phase II regulations. TCEQ has adopted the EPA menu of BMPs by including that menu as a resource to small MS4s through a link on the TCEQ stormwater webpage at:

https://www.epa.gov/npdes/national-menu-best-management-practices-bmps-stormwater#edu

The TCEQ may develop additional guidance during the term of this general permit and will make any guidance available on the TCEQ's webpage at:

https://www.tceq.texas.gov/permitting/stormwater/ms4

and

https://www.tceq.texas.gov/assistance/water/stormwater/sw-ms4.html

D. Reporting Requirements

1. The proposed general permit requires small MS4s to provide documentation on the development, implementation, and evaluation of the SWMP. The documentation must be included as a part of the SWMP and may be required to be submitted in the annual report. The preparation and review of the annual report by the small MS4 may ensure progressive improvement of stormwater controls and reduce pollutants to the maximum extent practicable. At a minimum, the documentation must include:

a. A list of all small MS4 operators contributing to the development and implementation of the SWMP, including a clear description of the role and responsibilities of each MS4 operator, if applicable;

b. A list of any public or private entities assisting with the development or implementation of the SWMP, including a clear description of the relationship, role, and responsibilities of each entity, if applicable;

c. A list of all activities/BMPs and measurable goals for each of the MCM;

d. A schedule for the implementation of all SWMP requirements;

e. A description of how each measurable goal will be evaluated; and

f. A rationale statement that addresses the overall program, including how the activities/BMPs and measurable goals were selected.

2. Additionally, the small MS4 must evaluate the following items and must include the information in an annual report:

   a. Program compliance;

   b. The appropriateness of the chosen BMPs; and

   c. Progress toward achieving identified measurable goals.

3. On December 21, 2015, EPA issued the NPDES Electronic Reporting Rule (40 CFR Part 127) requiring NPDES regulated entities to report electronically. On November 2, 2020, EPA issued the NPDES Electronic Reporting Rule – Phase II Extension extending the date for compliance with the rule. (See *Federal Register*, Vol. 80, No. 204, October 22, 2015, and Vol. 85, No. 212, November 2, 2020.) Therefore, TCEQ requires small MS4s to submit applications and annual reports electronically by using the EPA's NPDES electronic permitting and reporting system for the MS4 program, NeT-MS4.

V. Changes from Existing General Permit

The major changes to the general permit include the following:

1. Removed the regulatory language in the definition of Waters of the United States in Part I., and instead cited 40 CFR § 122.2 because the definition in the general permit was outdated.

2. Added a description of the small MS4 designation criteria from the federal and state rules. (Part II.A.2 in the permit)

3. Updated language throughout the general permit to comply with the *NPDES MS4 General Permit Remand Rule* issued on December 9, 2016, to make the language consistent with the Comprehensive General Permit option.

4. Updated language throughout the general permit to comply with the *NPDES Small MS4 Urbanized Area Clarification Rule* issued on June 12, 2023, to refer to the phrase "urban area with a population of at least 50,000" instead of "Urbanized Area (UA)".

5. Updated language for the small MS4s eligible for coverage under the general permit to encompass newly regulated MS4s based on urban areas with a population of at least 50,000 people as determined by the 2020 Decennial Census by the U.S. Census Bureau. (Part II.A. in the permit)

6. Added that the levels of small MS4s for this general permit are based on the current population served within the 2020 urban area with a population of at least 50,000 people and is based on the most recent Decennial Census at the time of general permit issuance. (Part II.B. in the permit)

7. Updated the small MS4 levels to separate current Level 2 into Level 2a for traditional MS4s serving a population between 10,000 and 40,000 and Level 2b for all non-traditional MS4s and created new section for Categories of Regulated Small MS4s. (Part II.B. in the permit)

8. Clarified the description of "population served" for the purposes of obtaining a waiver from permit coverage. (Part II.C. in the permit)

9. Separated "application deadlines" from "application for coverage" to create a new item under Section F. (Obtaining Authorization). (Part II.F.2. in the permit)

10. Revised application deadlines to clarify requirements for newly regulated small MS4 operators. (Part II.F.2.(b) in the permit)

11. Revised to specify home-rule municipality as established in 'Texas statute' instead of the specific rule to ensure flexibility to accommodate future rule and citation changes. (Part II.E.6 in the permit)

12. Added additional items to the "Contents of the NOI" description to identify the additional information that must be provided with the Comprehensive General Permit option and electronic annual reporting and moved the section below "Application Deadlines" and "Late Submission of the NOI". (Part II.F.4 in the permit)

13. Revised language throughout the general permit to specify that applications and annual reports must be submitted electronically through EPA's NPDES electronic permitting and reporting system for the MS4 program known as NeT-MS4 unless the permittee obtains an electronic reporting waiver.

14. Added a section describing how operators may request and obtain an Electronic Reporting Waiver. (Part II.E.11 in the permit)

15. Removed references throughout the general permit to SWMP submittal and review in the application or change processes for this general permit consistent with the comprehensive permit option.

16. Clarified that applicants must pay a fee with the submittal of a complete NOI. (Part II.F.1. in the permit)

17. Consolidated information about application deadlines by moving all related information to Part II.F.2 (Application Deadlines). (Part II.F.2. in the permit)

18. Clarified that the SWMP must be developed prior to submitting an NOI. (Part II.F.5 in the permit)

19. Clarified that updating contacts included in the NOI requires an NOC. (Part II.F.6 in the permit)

20. Clarified that change in operational control of a small MS4 requires submittal of an NOC and updates to the SWMP. (Part II.F.8 in the permit)

21. Moved Impaired Water Bodies and Total Maximum Daily Load (TMDL) Requirements section from Part II. (Limitations on Permit Coverage) to new Part III. (Impaired Water Bodies and Total Maximum Daily Load (TMDL) Requirements). (Part III. in the permit)

22. Revised the required description of targeted controls for discharges to water quality impaired water bodies with an approved TMDL to further describe the minimum categories for these controls to address. (Part IIIA.1. in the permit)

23. Added language describing when permittees must update their SWMP to address when TCEQ has modified a WLA. (Part III.A.3.(a) in the permit)

24. Added a table with BMPs and measurable goals for bacteria impaired water bodies with an approved TMDL to specify the clear, specific, and measurable activities, goals, and deadlines that must be implemented by MS4s discharging to these water bodies, as appropriate. (Part III.A.5. in the permit)

25. Clarified that permittees discharging to water quality impaired water bodies with a TMDL for bacteria must either refer to the TMDL I-Plan for BMPs, or implement alternative equivalent BMPs identified in the permit. Permittees must use the table of BMPs and measurable goals identified in this section to implement alternative equivalent BMPs or when the TMDL I-Plan BMPs do not currently address all the items. (Part III.A.5. in the permit)

26. Clarified requirements for newly regulated small MS4s to develop and implement a SWMP. (Part IV.C.1 in the permit)

27. Consolidated information about developing and reviewing the SWMP by moving sections for "SWMP Review" and "SWMP Updates Required by TCEQ" under the SWMP section of the permit. (Part IV in the permit)

28. Moved "SWMP General Requirements" before "Minimum Control Measures." (Part IV.C.7. in the permit)

29. Moved information about transfer of ownership, operational authority, or responsibility to be under the SWMP section of the permit. (Part IV.C.1.(c) in the permit)

30. Clarified that existing MS4 operators must implement their previously approved SWMP until their renewal NOI is approved. (Part IV.C.1.(a) in the permit)

31. Clarified SWMP requirement to include a summary of written procedures describing how the permittee will implement the general permit by providing examples. (Part IV.C.2 in the permit)

32. Clarified that the SWMP requirement to include a rationale statement may be fulfilled with an overall statement rather than a statement for each BMP. (Part IV.C.7.(f) in the permit)

33. Revised the list of MCMs in the general permit to separate "Public Education and Outreach" from "Public Involvement/Participation". The MCMs are renumbered as MCMs 1-8. (Part IV.D.1. and 2. in the permit)

34. Added that municipal utility districts and other special districts must address residents served in their target audience for MCM 1. (Part IV.D.1(a)(1)b.(iv) in the permit)

35. Added a requirement for permittees to address specific target audiences for their Public Education and Outreach program based on their small MS4 level and provided a list of target audiences for the small MS4s to select and address in their SWMP. (Part IV.D.1 in the permit)

36. Added a requirement for permittees to address specific pollutants and sources in their Public Education and Outreach program based on their small MS4 level and provided a list of pollutants and sources for the small MS4s to select and address in their SWMP. (Part IV.D.1 in the permit).

37. Added tables with activities/BMPs and measurable goals for each MCM to specify the clear, specific, and measurable: activities, goals, and deadlines that must be implemented by small MS4s based on their small MS4 level to comply with the Comprehensive General Permit approach. (Part IV.D.1-7 in the permit)

38. Clarified that illegal dumping must be addressed in the required items for Illicit Discharge Detection and Elimination. (Part IV.D.3. in the permit)

39. Clarified that permittees must include in their SWMP documentation for the role, responsibilities, and relationship between the permittee and other entities or other MS4 operators contributing to the development and implementation of the SWMP. (Part IV.C.7. in the permit)

40. Clarified that permittees may maintain a copy of the general permit in their SWMP either physically or electronically. (Part V.A in the permit)

41. Revised available annual reporting year options to only allow for one reporting year schedule as required by the EPA electronic reporting system, NeT-MS4. All permittees are required to report on the Calendar Year schedule. (Part V.B.2 in the permit)

42. Clarified that a summary of actions taken to address impaired water bodies in the annual report is only required for small MS4 operators discharging to impaired water bodies and should include sampling results if sampling was conducted. (Part V.B.2 in the permit)

43. Moved information about force majeure to the Standard Permit Conditions section of the permit. (Part VI.J. in the permit)

44. Clarified that small MS4 operators implementing MCM 8 may develop and implement a shared SWP3 with other operators. (Part VII.D. in the permit)

45. Moved Contents of the SWP3 to be directly after SWP3 Requirements in Authorization for Municipal Construction Activities – Applicable only if the Optional 8th MCM is selected. (Part VII.E. in the permit)

46. Clarified for permittees implementing optional MCM 8 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 multiday 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 and 2023 TPDES CGP. (Part VII.F.10 in the permit)

47. Added for permittees implementing Optional MCM 8 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. (Part VII.F.10 in the permit)
48. Added requirement for permittees implementing optional MCM 8 to conduct observation and evaluation of dewatering controls on the days where dewatering discharges occur consistent with the 2023 TPDES CGP. (Part VII.E.11 in the permit)
49. Added requirement for permittees implementing optional MCM 8 to submit Delegation of Signatory forms electronically in STEERS unless an electronic reporting waiver is obtained. (Part VII.K in the permit)
50. Made additional changes throughout the permit to remove redundant information, improve readability, and consolidate similar information into one section where appropriate.

VI. Addresses

Questions concerning this proposed general permit should 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

Comments regarding the proposed general permit during the public comment period must be submitted either by mail to the following address, by facsimile (fax) followed by mail, or electronically as described below (please refer to the public notice for official instructions):

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

By Fax: (512) 239-3311*

*Fax must be followed by hard copy in mail to OCC at address above within three days of fax date.

Electronically:
https://www14.tceq.texas.gov/epic/eComment/

Questions Regarding Public Comments Should Be Directed to OCC: (512) 239-3300

VII. Legal Basis

Texas Water Code (TWC) Section (§) 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 1997, and to authorize waste discharges by general permit. On September 14, 1998, TCEQ and EPA executed a memorandum of agreement (MOA) delegating to TCEQ administration of the NPDES program, which is operated as the TPDES program in the state.

The CWA, §§ 301, 304, and 401 (33 United States Code (U.S.C.), §§ 1331, 1314, and 1341) include provisions that state that NPDES permits must include effluent limitations requiring authorized discharges to: (1) meet standards reflecting levels of technological capability; (2) comply with EPA-approved state water quality standards; and (3) comply with other state requirements adopted under authority retained by states under CWA, § 510 and 33 U.S.C., § 1370.

VIII. Regulatory Background

The 1972 amendments to the Federal Water Pollution Control Act, later referred to as the CWA, prohibit the discharge of any pollutant to navigable waters of the U.S. from a point source unless the discharge is authorized by an NPDES permit. Efforts to improve water quality under the NPDES program traditionally have focused on reducing pollutants in industrial process wastewater and municipal sewage treatment plant discharges. Over time, it has become evident that more diffuse sources of water pollution, such as stormwater runoff from small MS4s, are also significant contributors to water quality problems. EPA developed permit requirements for small MS4s that are intended to improve water quality by reducing the quantity of pollutants that stormwater discharges into storm sewer systems during storm events.

In 1990, EPA promulgated rules establishing Phase I of the NPDES stormwater program. Phase I addresses discharges from medium and large MS4s, which are those MS4s with a population of 100,000 people or more, based on the 1990 Decennial Census. Phase I MS4s were required by the EPA to obtain individual NPDES permits. No additional Phase I MS4s will be created by later census results.

The federal Phase II stormwater regulations extended permitting requirements to certain small MS4s, and required that a more general SWMP be developed than was required for medium and large MS4s under Phase I of the stormwater regulations. The Phase II stormwater regulations were published on December 8, 1999, in the *Federal Register*, requiring affected small MS4s to obtain permit coverage by March 10, 2003. The Phase II stormwater regulations are identified in federal rules at 40 CFR §§ 122.30 through 122.37, which were adopted by the TCEQ at 30 TAC § 281.25(b). This proposed TPDES general permit offers the necessary authorization for these small MS4 discharges.

In 2016, EPA issued the *NPDES MS4 General Permit Remand Rule*, which is a federal rule to promote greater public engagement through clear requirements on the opportunities for public participation in the permitting process for small MS4s. This rule was published in the *Federal Register* (Vol. 81, No. 237, December 9, 2016) with an effective date of January 9, 2017.The Phase II stormwater regulations were revised in 40 CFR §§ 122.33 and 122.34 and a new paragraph (d) was added to 40 CFR §

122.28 requiring permitting authorities to select a permitting approach from one of two general permit options. This proposed TPDES Comprehensive General Permit includes the terms and conditions to meet the clear, specific, and measurable requirements to regulate the discharges from small MS4.

In 2015, EPA issued the *NPDES Electronic Reporting Rule* (40 CFR Part 127) requiring NPDES regulated entities to report electronically. This rule was published in the *Federal Register* (Vol. 80, No. 204, October 22, 2015) with an effective date of December 21, 2015. In 2020, EPA issued the *Updates to NPDES eRule Data Elements to Reflect MS4 General Permit Remand Rule* to update the data elements in the original eRule to be consistent with the current MS4 regulations that were revised as a result of the *NPDES MS4 General Permit Remand Rule*. This rule was published in the *Federal Register* (Vol. 85, No. 73, April 15, 2020) with an effective date of May 15, 2020. Later in 2020, EPA issued the *NPDES Electronic Reporting Rule – Phase II Extension* extending the date for compliance with the rule to December 21, 2025. This extension was published in the *Federal Register* (Vol. 85, No. 212, November 2, 2020). Additionally, the general permit requires use of the EPA's NPDES electronic permitting and reporting system, NeT-MS4, to comply with the *NPDES Electronic Reporting Rule* deadline.

In 2023, EPA issued the *NPDES Small MS4 Urbanized Area Clarification Rule* to clarify the designation criteria for small MS4s following the U.S. Census Bureau's 2020 Decennial Census urban area mapping revisions. This rule was published in the *Federal Register* (Vol. 88, No. 112, June 12, 2023) with an effective date of July 12, 2023. The final rule clarifications were necessary due to the U.S. Census Bureau's March 24, 2022 publication of final program criteria in the *Federal Register* (Vol. 87, No. 57, March 24, 2022) that retired the term "urbanized area" and discontinued its practice of publishing the location of "urbanized areas" along with the 2020 Decennial Census and future censuses. The clarifications in the final *NPDES Small MS4 Urbanized Area Clarification Rule* replaced the term "urbanized area" in the Phase II stormwater regulations with the phrase "urban areas with a population of at least 50,000", which is the U.S. Census Bureau's longstanding definition of the term urbanized areas. This final rule retained the existing threshold for automatic designation of small MS4s for regulation under the Phase II stormwater regulations. The threshold for automatic designation was used following the 2000 and 2010 Decennial Censuses and is based on the MS4 being in an urbanized area of 50,000 or more people. This final rule maintains the threshold for automatic designations of small MS4s and ensures that the designation of new small MS4s will continue as originally required under the Phase II stormwater regulations.

IX. Permit Coverage

1. The proposed general permit would apply to discharges of stormwater runoff associated with small MS4s. The guidelines for small MS4s were published in the *Federal Register* on December 8, 1999 (64 FR 68722).
2. Applicants seeking authorization to discharge stormwater runoff from small MS4s under the conditions and requirements of the proposed general permit must submit a completed NOI by the deadlines specified in the permit. The NOI form will include at minimum, the legal name and address of the owner and operator, the facility name and address, a specific description of its location (including the street address, if applicable, and county), the type of facility and discharge, the name of the receiving water, information on impaired waters, the boundary of the area where construction activities are covered under the general permit (if the optional MCM is developed), and other information requested by

the TCEQ. The NOI must be signed according to TCEQ rules at 30 TAC § 305.44, which establishes requirements regarding who may sign an application for a permit, and requires that a legal certification be made regarding the permit application. The specific language in this rule can be found at:

http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=3&ti=30&pt=1

by selecting Chapter 305, Subchapter C (related to Application for Permit).

Small MS4 operators can locate information regarding the classified segment(s) receiving the discharges from the MS4 in the Surface Water Quality Segment and Data Viewers found at the TCEQ web address at:

https://www.tceq.texas.gov/waterquality/monitoring/index.html

Small MS4 operators can find the latest EPA-approved list of impaired water bodies (the Texas 303(d) List) and the *Texas Integrated Report of Surface Water Quality for Clean Water Act (CWA) Sections 305(b) and 303(d),* which lists the category 4 and 5 water bodies, at the following TCEQ web address:

https://www.tceq.texas.gov/waterquality/assessment

Small MS4 operators need to use the *Texas Integrated Report of Surface Water Quality for Clean Water Act (CWA) Sections 305(b) and 303(d)* which lists the category 4 and 5 water bodies to search for impaired water bodies with an approved TMDL, since those water bodies no longer are listed on the CWA 303(d) list.

If a waterbody with a TMDL eventually meets water quality standards, it is moved to category 1 and will be removed from the *Texas Integrated Report of Surface Water Quality for Clean Water Act (CWA) Sections 305(b) and 303(d)*. However, if the TMDL is still in place for the waterbody, MS4s must continue to follow the TMDL implementation plan for that waterbody to ensure that water quality standards are met.

3. Submission of an NOI is an acknowledgment by the regulated small MS4 that the conditions of this general permit are applicable to the proposed discharges and that the applicant agrees to comply with the conditions of the general permit. Discharge authorization begins when the applicant is notified by TCEQ that the NOI has been administratively and technically reviewed. The documents must be submitted electronically via the online NeT-MS4 e-permitting system, unless the permittee requested and obtained an electronic reporting waiver.

   Following review of the NOI, the executive director may: 1) determine the submission is complete and confirm coverage by providing a notification and an authorization number; 2) determine that the NOI is incomplete, deny coverage, and require that a new complete NOI be submitted; or 3) determine that the NOI needs revisions, provide a written description of the required revisions along with any compliance schedule(s), and approve the NOI after revisions are complete; or 4) deny coverage under this general permit and provide a deadline by which the MS4 operator must submit an application for an individual permit.

   Denial of coverage under the general permit is subject to the requirements of 30 TAC § 205.4(c). After receiving written approval from the TCEQ, the applicant must implement their updated SWMP in accordance with the terms and conditions of the general permit.

4. Applicants that fail to submit an NOI by the deadlines specified in the general permit will be subject to enforcement actions for any unpermitted discharges. All applicants which miss the application deadlines must submit an NOI

immediately, including newly regulated small MS4 operators based on the 2020 Decennial Census.

5. If the operational control of the small MS4 changes, the present operator must submit an NOT and the new operator must submit an NOI to obtain authorization under this general permit. The NOT and NOI must be submitted concurrently no greater than 10 days after the change occurs.
6. A permittee must submit current information to the executive director by submitting an NOC within 30-days from the time the permittee becomes aware of a change in information previously provided to the executive director within an NOI.

   An NOC is also required for changes to the SWMP that are made after TCEQ has approved the NOI.

   Updates to the SWMP during the general permit term may be made by submittal of an NOC unless the changes are non-substantial in which case no NOC is required. The general permit includes: 1) a list of changes that do not require an NOC; and 2) a list of changes that require an NOC.

   An NOC must be signed according to TCEQ rules at 30 TAC § 305.44. The general permit also includes information regarding time frames for implementing changes requested in an NOC.
7. A discharger may terminate coverage under the general permit by submitting a Notice of Termination (NOT) form to the executive director electronically via the online NeT-MS4 e-permitting system available through the TCEQ website. The NOT must be signed according to TCEQ rules at 30 TAC § 305.44. Authorization to discharge terminates 24 hours following confirmation of receipt of the electronic NOT by TCEQ.

   For paper NOTs submitted with an approved Electronic Reporting Waiver, authorization to discharge terminates at midnight on the day that an NOT is postmarked for delivery to the TCEQ.

X. Technology-Based Requirements

The conditions established by the general permit are based on CWA § 402(p)(3)(B) that mandates that a permit for discharges from MS4s must:

1. Effectively prohibit the discharge of non-stormwater to the MS4; and
2. Require controls to reduce pollutants in discharges from the MS4 to the MEP including BMPs, control techniques, and system, design and engineering methods, and such other appropriate provisions.

The conditions of the proposed general permit were developed to comply with the technology-based standards of the CWA. The draft general permit includes a SWMP requirement that includes MCMs utilizing a series of BMPs, rather than numeric effluent limitations, to address the minimization of pollutants in stormwater discharges to Waters of the U.S. The Federal Phase II regulations define a small MS4 SWMP as a program comprising of at least seven MCMs that collectively are expected to result in significant reductions of pollutants discharged into receiving water bodies. Implementation of the MEP standard will require the development and implementation of the BMPs listed in the general permit and the achievement of measurable goals specified for each BMP in the general permit to satisfy each of the seven MCMs. TCEQ considers that the clear, specific, and measurable requirements

of this general permit, if properly implemented, will meet the MEP standard required in the federal rules at 40 CFR § 122.34.

A statement is continued in the permit that indicates that the BMPs included in this general permit, which are required to be included in the small MS4's SWMP, constitute effluent limitations for the purposes of compliance with 30 TAC Chapter 319, Subchapter B.

The general permit provides for development of an optional 8th MCM that would authorize a small MS4 to discharge stormwater runoff from construction activities disturbing one or more acres where it is the operator. This provision allows the small MS4 the option of separate coverage for these construction activities under TPDES Small MS4 General Permit, TXR040000, rather than the TPDES CGP, TXR150000. Discharges for stormwater runoff from construction support activities including concrete batch plant, asphalt batch plants, equipment staging areas, material storage yards, material borrow areas, and excavated material disposal areas may be authorized under the general permit. The following proposed limitations and monitoring frequencies are applicable to stormwater discharges from concrete batch plants authorized as a support activity at regulated construction sites:

Table 1: Benchmark Monitoring for Concrete Batch plants

Benchmark Parameters	Benchmark Value	Sampling Frequency	Sample Type
Oil and Grease	15 mg/L	1/Quarter	Grab
Total Suspended Solids	50 mg/L	1/Quarter	Grab
pH	6.0-9.0 S.U.[1]	1/Quarter	Grab
Total Iron	1.3 mg/L	1/Quarter	Grab

[1] Standard Units

XI. Water Quality-Based Requirements

The Texas Surface Water Quality Standards (TSWQS) found at 30 TAC Chapter 307 state that "surface waters will not be toxic to man, or to terrestrial or aquatic life." The methodology outlined in the "*Procedures to Implement the Texas Surface Water Quality Standards*" 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 waste 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 that 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 designated uses, additional conditions are included in TPDES permits, which may include discharge limitations. State narrative and numerical water quality standards are used in conjunction with EPA criteria and other toxicity databases to determine the adequacy of technology-based permit limits and the need for additional water-quality-based controls.

As previously stated, TPDES stormwater permits do not typically contain water-quality-based effluent limits (WQBELs). As stated in 30 TAC § 307.8(e), controls on the quality of permitted stormwater discharges are largely based on implementing BMPs and/or technology-based limits in combination with instream monitoring to assess standards attainment and to determine whether additional controls on stormwater are needed. Also, according to EPA rules at 40 CFR § 122.34(a), narrative effluent limitations requiring implementation of BMPs are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the MEP) and to protect water quality for small MS4s. It was preliminarily determined that where permit requirements are properly implemented no significant degradation is expected and existing uses will be maintained and protected.

XII. Monitoring

If the small MS4 discharges stormwater from a construction project authorized under this general permit that includes a supporting concrete batch plant, compliance monitoring is required. Discharges from the concrete batch plant must be sampled at a minimum frequency of once per quarter (1/quarter).

The small MS4 operator may additionally sample discharges from the small MS4 in order to assess the effectiveness of stormwater MCMs, measure the effectiveness of BMPs, to detect illicit discharges to the small MS4, or for other similar reasons.

The permittee may also be required to identify sources of pollutant(s) of concern where the small MS4 discharges directly to a water body that is impaired for a pollutant present in the discharge. Examples of pollutants of concern that may be present in stormwater discharges are bacteria and sediment.

XIII. Procedures for Final Decision

The MOA between EPA and TCEQ provides that EPA has no more than 90 days to comment, object, or make recommendations to the draft general permit before it is proposed for consideration by the Commissioners of the TCEQ. According to 30 TAC Chapter 205, when the initial draft general permit is submitted for public comment prior to being proposed to the Commission of the TCEQ, notice must be published, at a minimum, in at least one newspaper of statewide or regional circulation and the *Texas Register*. The commission may also publish notice in additional newspapers of statewide or regional circulation. Mailed notice must also be provided to the following:

1. The county judge of the county or counties where the discharges under the general permit are located;

2. If applicable, state and federal agencies whose notice is required in 40 CFR, § 124.10(c);

3. Persons on a relevant mailing list kept under 30 TAC § 39.407, relating to Mailing Lists; and

4. 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 a newspaper in statewide or regional circulation, there will be a 30-day public comment period to allow the public to provide comment on the proposed general permit.

Any person, agency, or association may request a public meeting on the proposed general permit before the end of the public comment period. A public meeting will be held if the executive director determines, on the basis of requests that a significant degree of public interest in the draft general permit exists. A public meeting is for the purpose of receiving public comment and is not a contested case proceeding under the Administrative Procedure Act.

If the executive director decides to hold a public meeting, notice of the date, time, and place of the meeting will be published in the *Texas Register* a minimum of 30 days prior to the meeting, as required by commission rules. The public notice for the draft general permit and for the public meeting(s) may be combined. The public comment is automatically extended until the conclusion of all public meetings on the draft general permit. The executive director will prepare a response to all significant public comments on the draft general permit raised during the public comment period. The proposed general permit will then be filed with the commission to consider issuance of the general permit. The executive director's response to public comment will be made available to the public and filed with the chief clerk at least ten days before the commission acts on the proposed general permit, per commission rules.

TCEQs commissioners will consider issuance of the general permit at a regularly scheduled Commission Agenda. If issued, notice of the re-issued general permit will be published in the *Texas Register*. 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 Part 122

Federal Register dated February 17, 1998 (Volume 63, No. 31, Pages 7858-2906)

Federal Register dated December 8, 1999 (Volume 64, No. 235, Pages 68722-68851)

Federal Register dated October 22, 2015 (Volume 80, No. 204, Pages 64064-64158)

Federal Register dated December 9, 2016 (Volume 81, No. 237, Pages 89320-89352)

40 CFR Part 127

Federal Register dated April 15, 2020 (Volume 85, No. 73, Pages 20873-20885)

Federal Register dated November 2, 2020 (Volume 85, No. 212, Pages 69189 - 69206)

Federal Register dated March 24, 2022 (Volume 87, No. 57, Pages 16706-16715)

Federal Register dated June 12, 2023 (Volume 88, No. 112, Pages 37994 - 38000)

B. Letters/Memoranda/Records of Communication:

Memorandum from the U.S. EPA (Hanlon) dated April 16, 2004, from, "Implementing the Partial Remand of the Stormwater Phase II Regulations Regarding Notices of Intent & NPDES General Permitting for Phase II MS4s".

Stakeholder comments provided to the TCEQ in September 2022.

Memo from the Water Quality Standards Team of the Water Quality Assessment Section of the TCEQ dated November 22, 2022.

EPA approval letter on June 9, 2023.

Conference calls and emails between EPA and TCEQ on September 8, 2022; September 13, 2022; September 14, 2022; October 3, 2023; and October 13, 2023.

C. Miscellaneous:

MS4 Permit Improvement Guide, U.S. EPA, Office of Water. Office of Wastewater Management, Water Permits Division, April 2010 (EPA 833-R-10-001).

Compendium of MS4 Permitting Approaches, U.S. EPA, Office of Wastewater Management, Water Permits Division, November 2016.

NPDES Municipal Separate Storm Sewer System General Permit Remand Rule, 81 *Fed. Reg*. 237 [89320-89352], December 2016.

NPDES Electronic Reporting Rule, 80 Fed. Reg. 204 [64064-64158], October 22, 2015, and 85 Fed. Reg. 212 [69189-69206], November 2, 2020.

NPDES Small MS4 Urbanized Area Clarification Rule, 88 Fed. Reg. 112 [37994-38000], June 12, 2023.

U.S. Environmental Protection Agency's Fact Sheet No. 2.0, "Stormwater Phase II Final Rule - Small MS4 Stormwater Program Overview", January 2000 (EPA 833-F-00-002).

U.S. Environmental Protection Agency's Fact Sheet No. 2.1, "Stormwater Phase II Final Rule – Who's Covered? Designation and Waivers of Regulated Small MS4s", January 2000 (EPA 833-F-00-003).

U.S. Environmental Protection Agency's Fact Sheet No. 2.2, "Stormwater Phase II Final Rule - Urbanized Area - Definition and Description", December 1999 (EPA 833-F-00-004).

The Clean Water Act, 33 U.S.C. Chapter 26.

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

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

Texas Surface Water Quality Standards, 30 TAC Sections 307.1-307.10 (47 *TexReg* 6216, effective September 29, 2022).

Procedures to Implement the Texas Surface Water Quality Standards, Texas Commission on Environmental Quality, June 10, 2010.

30 TAC Chapters 39, 205, 213, 281, 311, 305, 307, 309, 319, 321, and 331.

COMMISSIONERS RESPONSE TO PUBLIC COMMENT ON TCEQ's SMALL (PHASE II) MS4 GENERAL PERMIT NO. TXR040000

The Texas Commission on Environmental Quality (commission or TCEQ) adopts this Response to Public Comment (Response) on Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR040000, the Small (Phase II) Municipal Separate Storm Sewer System (MS4) General Permit for stormwater discharges. As required by Texas Water Code (TWC), (Section) §26.040(d) and Title 30 of the Texas Administrative Code (30 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: Dallas-Fort Worth Airport (DFW), City of Mansfield (Mansfield), North Central Texas Council of Governments (NCTCOG) (on behalf of three members), Quiddity Engineering LLC (Quiddity), City of Conroe (Conroe), Jefferson County Drainage District No. 7 (JCDD7), LJA Engineering (LJA), San Antonio River Authority (SARA), City of Kyle (Kyle), City of San Marcos (San Marcos), Montgomery County (Montgomery), City of Grapevine (Grapevine), City of Lewisville (Lewisville), City of Tyler (Tyler), and Chambers County (Chambers).

PERMIT BACKGROUND

This general permit authorizes discharges of stormwater and certain non-stormwater discharges from small MS4s. Federal Phase II stormwater regulations adopted by TCEQ extend stormwater permitting requirements to small MS4s located in urban areas with a population of at least 50,000 people and issuing this permit provides coverage options for regulated small MS4s. Each regulated small MS4 operator must develop a stormwater management program (SWMP) addressing the seven minimum control measures (MCMs) according to the provisions of the permit prior to submitting a Notice of Intent (NOI). Under the permit, small MS4 operators will be authorized to discharge following approval of the NOI.

The permit is issued under the statutory authority of: 1) TWC §26.121, which makes it unlawful to discharge pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission; 2) TWC §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state; and 3) TWC §26.040, which provides the commission with authority to amend rules to authorize waste discharges by general permit.

On September 14, 1998, TCEQ received authority from the United States Environmental Protection Agency (EPA) to administer the TPDES program. TCEQ and EPA have a Memorandum of Agreement (MOA) that authorizes the administration of the National Pollutant Discharge Elimination System (NPDES) program by TCEQ as it applies to the State of Texas.

The federal Phase II stormwater regulations were published on December 8, 1999, in the *Federal Register*, requiring regulated small MS4s to obtain permit coverage. The first TPDES MS4 General Permit No. TXR040000 was issued on August 13, 2007. The Phase II (small) MS4 regulations are in the federal rules at 40 Code of Federal Regulations (CFR) §§122.30 through 122.37, which were adopted by reference by TCEQ at 30 TAC §281.25(b). TCEQ did not adopt by reference the guidance in 40 CFR §122.33 and §122.34.

In 2016, EPA issued the Small MS4 Remand Rule, effective January 9, 2017 (Remand Rule), which is a procedural federal rule ensuring that states review best management practices (BMPs) selected by the MS4s and ensures the public are provided notice and the opportunity to request a public meeting (equivalent to a "public hearing" in EPA rules) on applications for MS4 permit coverage. The Phase II regulations were revised in 40 CFR §§122.33 and 122.34 and a new paragraph (d) was added to 40 CFR §122.28 requiring permitting authorities to select one of two general permit options.

Stormwater and certain non-stormwater discharges from medium and large MS4s, within cities with a population of 100,000 or more, are currently authorized under individual TPDES stormwater permits.

PROCEDURAL BACKGROUND

Notice of availability and an announcement of public meetings for this general permit were published in the *Houston Chronicle* and the *Texas Register* on August 18, 2023, and August 25, 2023, respectively. Notice was also provided on the TCEQ webpages. A hybrid virtual and in person public meeting was held in Austin on September 18, 2023, and the comment period ended on September 25, 2023.

COMMENTS AND RESPONSES

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

General/Overall Comments:

Comment 1: JCDD7, LJA, Conroe, Montgomery, and Chambers comment that they are opposed to moving to a Comprehensive General Permit. The commenters state that they have invested significant resources into the development of their existing SWMPs. The commenters comment that there is a lack of quantitative data and the move to a Comprehensive General Permit places the burden on the MS4 operators while reducing the responsibilities of the TCEQ. The commenters recommend that TCEQ should make improvements to their application review process to facilitate a timely technical review and continue forward with the Two-Step General Permit approach or provide a hybrid permit approach to allow the MS4 operators who prefer the Two-Step General Permit approach to continue under that permit option.

Response 1: TCEQ understands that the implementation of a Comprehensive General Permit option after several iterations of the two-step general permit option will impact small MS4 operators. Based on input from stakeholders during the renewal process, the impact is expected to be minimal for the majority of small MS4 operators as the BMPs and measurable goals included in the permit were based on the activities reported by Texas Small MS4s during the 2019 general permit cycle as well as other states across the country.

Changes have been made to several measurable goals in the general permit in response to other comments which reduces the impact to Phase II MS4 operator's resources. Changes have been made where appropriate to tie the measurable goals to more specific and focused areas to address high risk or impaired areas which allows for a more targeted use of resources.

The Comprehensive General Permit option will benefit Phase II MS4 operators in a number of ways, including but not limited to:

- Removal of the public notice requirement for individual Notices of Intent (NOIs) and SWMPs will result in a significant cost savings for many applicants, in some cases $3,000 - 5,000;
- Application approvals will be completed in a timely manner allowing for more efficient implementation of the SWMP and more clear annual reporting timeframes;
- Removal of the public notice requirement for significant notice of change which will allow for faster approvals and easier implementation;
- Removal of the requirement to respond and address formal public comments and public meeting requests on the individual NOIs and SWMPs;
- Clear expectations for the maximum extent practicable standard that the Phase II MS4 operators must meet through SWMP implementation. The comprehensive permit elements clearly define what is necessary in each SWMP and removes the ambiguity for what each MS4 operator should implement. This allows MS4 operators to more easily and quickly develop a SWMP; and
- Streamlined annual reporting process to ensure operators report on the specific BMPs and measurable goals being implemented and identified in the application submitted by the MS4 operator.

With the consideration of the increasing universe and the implementation of the mandated federal *NPDES Electronic Reporting Rule* requirements it is evident that the comprehensive permitting approach will be the most beneficial option for the regulated community and TCEQ. Based on the input of stakeholders throughout the permit renewal process and the benefits outlined above, TCEQ maintains the comprehensive permit options rather than a two-step or hybrid option.

Alternatively, small MS4 operators continue to have the option to apply for an individual TPDES stormwater permit. An updated small MS4 individual permit application will be available on the following webpage: https://www.tceq.texas.gov/permitting/stormwater/ms4/WQ_ms4_small_TXRO4.html. New and existing small MS4 operators will have the same deadline to submit an individual permit application as an application under the general permit, 180-days from general permit issuance.

Comment 2: Mansfield asks that a SWMP template be available for small MS4 operators on the TCEQ website.

Response 2: TCEQ is finalizing the SWMP template for MS4 operators and it will be available on the following TCEQ webpage as an official TCEQ Regulatory Guidance: https://www.tceq.texas.gov/assistance/water/stormwater/sw-ms4.html.

Comment 3: Mansfield comments that for ease of reference and use of the permit document, the final permit should include table title on same page as the first item in the table.

Response 3: TCEQ agrees with the commenter and the final permit has been revised as suggested.

Comment 4: Quiddity asks that TCEQ revise the header to add the 2024 date throughout the permit.

Response 4: TCEQ agrees with the commenter and the permit header has been revised as requested.

Comment 5: Quiddity recommends that TCEQ make readily available a comprehensive list of the 2019 and 2024 General Permit Small MS4 Phase II operators. Quiddity comments that new MS4 operators need time to develop their SWMP under the General Permit.

Response 5: Existing permittees regulated under the 2019 General Permit can be located using TCEQ's publicly accessible database, the Water Quality General Permits Search on the following webpage, https://www2.tceq.texas.gov/wq_dpa/index.cfm. A list of regulated entities can be queried using the advanced search feature. Newly regulated permittees under the 2024 Phase II MS4 General Permit are currently being identified and will be notified of the requirement to obtain coverage via mail with sufficient time to plan and prepare to implement a stormwater management program.

Comment 6: Tyler comments that a definition for "dechlorinated" should be included in the general permit and the term should be defined with numerical limits or explained clearly. Tyler also comments that pool filter backwash should also be differentiated or included in the list of allowable non-stormwater discharges.

Response 6: To avoid adverse impacts to receiving waters and/or aquatic-dependent species, the discharge of dechlorinated swimming pool water is recognized by state and federal regulatory authorities as the absence of any detectable levels of chlorine. A definition is not included in the permit since the common understanding of the term "dechlorinated" to mean without chlorine is understood. Pool filter backwash is not included in the list of allowable non-stormwater discharge because this list is from 40 CFR §122.26(d)(2)(iv)(B)(1) and the federal rule does not include this discharge type.

Comment 7: Quiddity asks if a Core Data Form (CDF) will be required with the Notice of Intent (NOI). Quiddity also asks if the CDF can be submitted electronically using the NeT-MS4 online system or through a different process.

Response 7: The CDF is required as part of the application submittal process to ensure collection of the agency's core data. The NeT-MS4 system will allow applicants to upload and attach a copy of the CDF as part of the NOI and waiver application submission.

Comment 8: Quiddity asks if TCEQ will issue NOI approvals for all members of the SWMP "coalition" concurrently once all NOIs have been submitted.

Response 8: Where applicants indicate in their application that they are working in a coalition with other small MS4 operators, TCEQ intends to review and approve the applications for all coalition members concurrently.

Comment 9: Quiddity asks, for coalition members, how the responsible party for each MCM and the components of the shared-SWMP will be tracked in the electronic NeT-MS4 annual reporting system.

Response 9: The annual report in the NeT-MS4 system will include a field for the applicants to specify the name of the responsible party for each BMP.

Comment 10: Quiddity asks if and how small MS4 operators will be notified if the NeT-MS4 online annual reporting system is offline, when the system becomes available, and if the system is delayed. Quiddity has concerns and asks if when MS4 Operators are having technical difficulties with the system, a "help desk" support will be available, especially during the submittal deadlines.

Response 10: TCEQ will keep stakeholders apprised of the status and availability of the NeT-MS4 system for application and annual reporting. Information will be posted on TCEQ webpages and through additional outreach such as *The Advocate* Newsletter. Additionally, EPA will provide notices on the NeT-MS4 webpages alerting customers of any issues. EPA has assured TCEQ that the universe of TPDES Phase II MS4 operators will not overwhelm the NeT-

MS4 reporting and application system. EPA has experienced similar or larger numbers of users accessing the EPA NPDES electronic reporting tools at the same time and therefore does not believe there will be an issue with the Texas small MS4 universe accessing the NeT-MS4 system. EPA will have "help-desk" like support for NeT-MS4 users. Users may seek additional assistance with the NeT-MS4 system as follows:

- Submit an Ask a Question form at the following link: https://usepa.servicenowservices.com/oeca_icis?id=oeca_csm_get_help_1&sys_id=dcf6a9b51b0378104614ddb6bc4bcb34
- Send an email to NPDESeReporting@epa.gov.
- Or Call 877-227-8965.

Comment 11: Quiddity asks if TCEQ will notify MS4 Operators when the NeT-MS4 application system is online and live for TPDES MS4 Operators prior to the 2024 General Permit effective date so they may create an account and become familiar with the system.

Response 11: The Texas NeT-MS4 system is expected be available during the renewal period. TCEQ will provide notice to MS4 operators when the system is available. Notice will be provided on TCEQ webpages, in the TCEQ Advocate Newsletter, through GovDelivery emails, and other similar methods. TCEQ encourages MS4 operators to visit the following webpage to sign up to receive alerts by text or email regarding "Stormwater Permits and Rules" and *The Advocate* Newsletter: https://www.tceq.texas.gov/assistance/resources/the-advocate-1/the-advocate-1/e-advocate.html.

Comment 12: Quiddity asks if TCEQ plans to provide any guidance or training on how to use the electronic NeT-MS4 system.

Response 12: TCEQ plans to hold both a virtual and in person workshop to provide guidance on the renewal permit and electronic Texas NeT-MS4 application process. TCEQ plans to record the virtual workshop and make it available on the TCEQ YouTube channel so that MS4 operators may refer to it for guidance at their convenience while preparing their applications. TCEQ is also exploring the possibility of holding a future separate webinar for guidance on annual reporting in the NeT-MS4 system.

Comment 13: Conroe comments that much of the language of the draft permit implies that the measures currently being implemented are deficient or ineffective. Conroe comments that for example, the language in Part III.A.1 assumes that all these things need to be expanded or modified and the language gives no indication of what might be "enough" and that the language in Part III.A.6 "Monitoring or Assessment of Progress" implies that an MS4 can never do "enough."

In addition, Conroe comments that "enough" in this general permit appears to be complete elimination of all MS4 pollution which is unrealistic as there are likely other sources beyond the control of regulated entities contributing to the impairment. Conroe comments that "enough" needs to be defined as some combination of education, monitoring, and illicit discharge regulation that is sufficient, not a continually moving or increasing target.

Response 13: The federal rules specify that the ''compliance target'' for the design and implementation of municipal storm water control programs is, ''…to reduce pollutants to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act.'' Reductions to the MEP are realized through implementation of the MCMs. EPA specified in the Phase II Stormwater Regulation rulemaking that, "…application of the MEP standard as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards. Successive iterations of the mix of BMPs and measurable goals will be driven by the objective of

assuring maintenance of water quality standards. If, after implementing the six minimum control measures there is still water quality impairment associated with discharges from the MS4, after successive permit terms the permittee will need to expand or better tailor its BMPs within the scope of the six minimum control measures for each subsequent permit." Based on this, the permit language has been crafted to ensure that small MS4 operators are regularly evaluating their BMPs for effectiveness, particularly if their receiving water bodies become impaired. As a Comprehensive General Permit, the combination of BMPs under each MCM has been established to define the MEP but each MS4 operator must evaluate the effectiveness of their chosen BMPs, where applicable, and make changes as necessary.

Comment 14: Conroe comments that the BMPs pertaining to sanitary sewer are double regulation as they are already overseen by TCEQ, and reporting is already required.

Response 14: Small MS4 operators are required to address illicit discharges such as discharges from sanitary sewer systems under the federal Phase II MS4 regulations (40 CFR §122.34(b)(3)). Inflows from aging sanitary sewer collection systems are one of the most serious illicit discharge-related problems. Sanitary sewer systems frequently develop leaks and cracks, resulting in discharges of pollutants to receiving waters through MS4s. These pollutants include sanitary waste and materials from sewer main construction (e.g., asbestos cement, brick, cast iron, vitrified clay). Small MS4 operators are encouraged to coordinate within and between their departments to track their existing work on the sanitary sewer system and account for that work in the annual report when it overlaps with the Phase II MS4 permit requirements.

Comment 15: Kyle comments that the general permit should provide more BMPs to choose from for all MCMs. Kyle comments that for example, having to choose 5 options out of a total of 9 in MCM 1 is limiting and provides as an example additional BMP for the menu "having a stormwater hotline or utilizing an online complaint submission form".

Response 15: TCEQ understands the concern that there are not numerous BMPs to choose from for some MCMs. However, certain required elements of some MCMs inherently do not offer optionality. Where optionality could be incorporated, TCEQ structured the measurable goals to allow maximum flexibility for the small MS4s. TCEQ also notes that maintaining and promoting the use of a reporting hotline or similar mechanism to the target audience(s) is required under MCMs 3 and 4, and may also be addressed in the education materials developed for MCM 1.

Comment 16: Kyle comments that having the majority of all listed BMPs achieve a 100% goal is not feasible. San Marcos comments that the percentages should be lower so that they can have the option to exceed the goal. Kyle and San Marcos comment that things beyond the control of a small MS4 operator may prevent them from meeting 100%.

Response 16: TCEQ appreciates the feedback and has updated many of the measurable goals under MCMs 5, 6, and 7, and the goals in Table 1 with quantifiers of 100% to make them more attainable, clarify intent, or to maximize the potential to prevent pollution in stormwater discharges.

Comment 17: NCTCOG recommends that procedures listed in Table 6, Table 8, and Table 9, Table 13, and Table 14 only be required to be updated once per permit term because most MS4s will make changes as needed and having this included in the annual report would end up looking like "Reviewed, no changes needed".

Response 17: TCEQ believes it is essential for procedures to be reviewed for necessary updates each year. Although TCEQ understands that updates may not be necessary every year during the permit term, having a measurable goal for annual reviews ensures that necessary updates to the procedures are not overlooked. Including, "reviewed, no changes needed", in the annual reports is acceptable and demonstrates that the small MS4 operator has completed the annual review to determine if updates to the procedures are necessary.

Comment 18: NCTCOG recommends that training for all field staff in Table 6, Table 9, and Table 13 be completed twice in a permit term because this is more manageable for cities with fewer staff. Additionally, LJA, Chambers, and Conroe comment that establishing annual training goals for 100% of your staff is unreasonable and having 100% of staff available at any given time for a designated training session is not likely due to vacations, sick time/illness, maternity/paternity leave, etc. LJA, Chambers, and Conroe recommend establishing all training goals throughout the permit at a maximum of 80% of the applicable staff to be conducted at a minimum of twice during the permit term.

Response 18: TCEQ believes it is essential that all field staff are trained at least annually because every day, small MS4 operator employees engage in a variety of activities that influence water quality. This is supported by U.S. EPA's guidance manuals and fact sheets. TCEQ understands that all field staff may not be available on the same day to receive a formal classroom training; however, the staff training BMPs included in the general permit provide flexibility for training to be conducted in a variety of methods, including methods other than in-person trainings. If small MS4 operators host in-person trainings, self-paced materials may be used to address those staff unavailable on the "training day." For example, if there are staff out sick during the "training day", they may be provided a recording of the in-person training or a video module to complete the training on their own at another time during the year. Training materials may be created by the small MS4 operator or small MS4 operators may use training materials developed by TCEQ, EPA, or another entity to fulfill this BMP. The following EPA fact sheet provides more information on Municipal Employee Training and Education, including where to find some free or for-purchase training materials: https://www.epa.gov/system/files/documents/2021-11/bmp-municipal-employee-training-and-education.pdf.

Part II

Comment 19: Conroe comments that language in the general permit appears to indicate the individual permit option is only available to a small MS4 operator if TCEQ requires it. Conroe asks if small MS4 operators can opt for an individual permit regardless if TCEQ requires it. Kyle also asks for more information on the procedures for obtaining an individual permit.

Response 19: TCEQ offers all small MS4 operators the option to apply for an individual permit (30 TAC Chapter 305) instead of applying under the general permit. The general permit language describes the applicability of the general permit rather than describing all permitting options for small MS4 operators.

Individual permit applications are available on the following TCEQ webpage: https://www.tceq.texas.gov/permitting/stormwater/ms4/WQ_ms4_small_TXRO4.html. Applicants must submit one original and two copies of the application along with an application fee of $2,000 for new, renewal, and major amendment permit applications. The individual application process also requires the applicant to publish two public notices in English and in some cases additional alternative languages. The public has the opportunity to provide comments and request a public meeting or hearing on the application. Small MS4 operators interested in obtaining an individual permit may contact the TCEQ Stormwater Team to set up a pre-application meeting.

Comment 20: Kyle requests that the requirement to include the months and years in which the permittee will undertake required actions in the SWMP be revised to require only the years actions are undertaken as that is the most important.

Response 20: TCEQ continues the requirement to include the month when actions are undertaken in the SWMP to ensure the goals are clear, specific, and measurable. Including the month in the SWMP makes it clear for the small MS4 staff implementing the SWMP and for TCEQ when interim milestones are due as well as when the overall annual goals need to be met.

Small MS4 operators may include an overall statement in the SWMP to describe when annual goals are to take place such as, “all annual goals have a deadline of December 31, annually”, rather than including the same month with every annual BMP in the SWMP.

Comment 21: Quiddity recommends that Part II.F.12 be revised to include how the application fee will be paid. Quiddity asks if the fee will be paid electronically through TCEQ, or EPA’s NeT-MS4 system.

Response 21: Application fees can be paid electronically using the TCEQ ePay system or by check submitted through the mail. The application instructions will detail the methods for submitting payment with the NOI. The language in Part II.F.12. is consistent with other water quality general permits and allows flexibility in case payment options change during the permit cycle.

Comment 22: Quiddity recommends clarifying in Part II.G.1. that each coalition member must submit a fee with their individual NOIs.

Response 22: Clarification regarding application fees was added to Part II.F.1 discussing NOI submittal rather than in Part II.G.1(a) discussing coalition participants, to reduce repetitive language throughout the general permit and to keep similar information together.

Comment 23: Quiddity recommends revising Part II.G.1.(a) as follows, “The SWMP must clearly list the name and permit authorization number (if previously approved) for each MS4 operator.”

Response 23: Part II.G.1.(a) was revised to specify "permit authorization number” rather than “permit number”. For small MS4 operators participating in a shared SWMP with an existing (previously approved) authorization number, the number must be included in the shared SWMP. For small MS4 operators without an existing permit authorization number, the number must be included in the shared SWMP as soon as it is available.

Part III.

Comment 24: Kyle requests that TCEQ explain what the permit language in Part III.A.5. means in relation to a total maximum daily load (TMDL).

Response 24: Part III. A.5 of the general permit is applicable to small MS4s which discharge stormwater into a waterbody in a watershed with an approved TMDL for bacteria. Small MS4 operators must reference the most recently published and 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 to determine whether any waterbodies receiving discharge from the small MS4 meet this criterion.

Comment 25: LJA, Chambers, and Conroe comment that additional language should be added to the permit to clarify that Table 1 is only applicable if the approved TMDL Implementation Plan (I-Plan) does not include targeted BMPs/guidance for MS4 operators. LJA, Chambers, and Conroe comment that the development of a TMDL/I- Plan is an extensive process with consideration and focus on all potential pollutant sources to establish targeted BMPs in the I-Plan, therefore there is no reason to identify additional BMPs/measurable goals in the Phase II MS4 general permit.

Response 25: TCEQ agrees with the commenters that in most cases, if a small MS4 operator is implementing the BMPs from the applicable TMDL I-Plan, there is no need to implement Table 1. Language was added to Part III.A.5. to clarify that Table 1 includes the alternative equivalent BMPs for small MS4 operators to use in lieu of the TMDL I-Plan BMPs or when a TMDL I-Plan is not available. TCEQ also clarified that Table 1 will be used by small MS4 operators implementing the TMDL I-Plan when the TMDL I-Plan has not addressed one of the items included in Part III.A.5.(a)-(e) or where the BMP(s) in the TMDL I-Plan for one or more of these items has been completed.

Comment 26: LJA, Chambers, and Conroe comment that the measurable goal to conduct weekly lift station inspections at 100% of the MS4 owned and operated lift stations each year is unreasonable for some Phase II entities that operate an extensive number of lift stations and recommends changing the goal to address documenting 100% of lift station inspections. LJA, Chambers, and Conroe comment that for a community that operates 50 lift stations to meet the proposed goal would be conducting 2,600 inspections annually and 13,000 inspections during the 5-year permit term.

Response 26: TCEQ appreciates the feedback and has revised the measurable goal as a result of this comment. This measurable goal was revised as follows to require the small MS4 operator to conduct weekly lift station inspections at 100% of the MS4 owned and operated lift stations only in the MS4 area within the impairment watershed rather than the entire MS4 area.

> "Conduct a review of 100% of the sanitary sewer system in the MS4 area within the impairment watershed to identify areas for improvement within the first two years of the permit term. Initiate all feasible improvement projects by the end of the permit term.
>
> Conduct weekly lift station inspections at 100% of the MS4 owned and operated lift stations in the MS4 area within the impairment watershed each year."

Comment 27: LJA, Chambers, and Conroe comment that the draft permit language is unreasonable (logistically and financially) as it would require an inspection program that evaluates the operational status of 100% of the on-site sewage facilities (OSSFs) in the MS4 area which would require addressing thousands of OSSFs for counties. LJA, Chambers, and Conroe recommend that the measurable goals be revised to read "Maintain a current inventory of 100% of the identified OSSFs in your MS4 area on an annual basis. Investigate and address 100% of OSSF complaints identified through the public reporting mechanism implemented by the MS4 each year and track the number of complaint investigations conducted on an annual basis."

Conroe comments that although failing OSSFs might be contributing to stream impairments, BMPs addressing OSSFs should not be included in MS4 permits because jurisdiction of OSSFs frequently does not belong to the MS4s operator.

Response 27: TCEQ appreciates the feedback and has revised the measurable goals as a result of this comment. The measurable goals related to OSSFs in Table 1 have been revised to require small MS4 operators to develop and implement screening procedures in 20% of the MS4 area within an impairment watershed to identify failing OSSFs each year rather than to identify 100% of OSSFs in the MS4 area each year. Additionally, a companion goal was added for small MS4 operators to address 100% of failing OSSFs identified during screening each year by requiring the responsible party to perform corrective actions to eliminate the illicit discharge.

Comment 28: Conroe asks if the resident education BMP in Table 1 requires that in year one the small MS4 operator implement one, year two they upkeep the first and implement a second, year three they upkeep the first and second and implement the third, etc. until all are implemented. Conroe comments that if this is the intent it is an unreasonable requirement.

Response 28: The intent of this language in Table 1 is to require the small MS4 operator to implement only one additional BMP for residential education each year of the permit cycle not an increasing incrementally by one each year. The language in Table 1 was revised as follows to clarify the intent, "~~Each year,~~ Implement at least one additional BMP from MCM 1: Public Education and Outreach and Table 4 annually (e.g., a Level 1 small MS4 operator must implement at least four total BMPs under MCM 1 each year in the permit cycle instead of the three BMPs required by Part IV.D.1.(a)3.b)."

Comment 29: Quiddity asks that TCEQ define the term "decorative ponds," such as "decorative ponds are considered private water bodies, not owned, or maintained by the MS4 Operator."

Response 29: The term "decorative ponds" used in this permit is defined by the common understanding of the term: engineered water features that may contain aquatic plants and animals. The ponds are often located in residential subdivisions, parks, golf courses, office complexes, shopping centers, and new residential developments. The owner or operator of these ponds is not considered in the definition. Residential education may be focused on the maintenance of privately owned decorative ponds.

Comment 30: Conroe comments that they question if BMPs implemented under a single MS4's control will make a measurable improvement in water quality that can be proven with water quality data from streams. Conroe asks how the MS4 or TCEQ determine there is no progress toward the benchmark if the majority of MS4s cannot use the option of "assessing improvements in water quality", especially with multiple sources contributing to a water body, to determine they have done enough.

Response 30: TMDLs establish an aggregated waste load allocation (WLA) for all stormwater sources that include all permitted municipal, construction, and industrial stormwater sources; and the permit requires MS4 operators to use that WLA as a benchmark so they can evaluate how successful their stormwater management program is in achieving reductions and to continuously improve it, as applicable. The aggregated WLA provides the MS4 operators and other stakeholders in a TMDL watershed with the flexibility of managing pollutant loads on a watershed- wide basis using available resources. This effort is continued through time until the water quality standards are met. Specific measures for BMPs and other approaches to improving water quality with respect to stormwater are identified in the TMDL I-Plans.

TCEQ provides flexibility for small MS4 operators to assess progress toward the benchmark either via qualitative approaches by using program implementation indicators or via quantitative approaches such as monitoring or using existing data. These options allow small MS4 operators to evaluate progress in a manner that is appropriate for their unique conditions and complexities.

Where a small MS4 operator believes that quantitative data will not be reliable for demonstrating progress toward the benchmark, they may evaluate and report progress towards the benchmark by describing the activities and BMPs implemented, by identifying the appropriateness of the identified BMPs, and by evaluating the success of implementing the measurable goals. For example, the small MS4 operator may report the increase in illegal dumping reporting, the number of educational opportunities conducted, or reductions in sanitary sewer overflows.

Comment 31: Quiddity asks if TCEQ can define what constitutes a sub-benchmark and how the sub-benchmark is determined.

Response 31: The permit provides small MS4 operators the option of using the TMDL established aggregated WLA as their benchmark value in which they are jointly responsible for progress in meeting that benchmark with other MS4s in the watershed. Alternatively, small MS4 operators can combine or share efforts to develop disaggregated WLAs and use that as a sub-benchmark value. Calculating allocations for the individual sources can be very site specific in areas where the individual sources are separate and distinct and where the sources are adjacent to each other, or they occur within each other. Based on this, the permit requirements are written in a way to allow maximum flexibility for MS4s within an impaired watershed to develop an approach that meets their specific needs and conditions. Small MS4 operators interested in developing sub-benchmarks may meet with TCEQ staff to discuss a proposed method for disaggregating sources if additional guidance is needed.

Part IV, Sections A-C

Comment 32: Conroe comments that the language in Part IV is problematic and asks how TCEQ can require the implementation and enforcement of the SWMP for stormwater discharges into creeks that did not go through a public right of way or easement.

Response 32: The federal rules require small MS4 operators to address all stormwater discharges from the small MS4 whether direct and indirect discharges. The small MS4 operator is required to develop, implement, and enforce the SWMP for stormwater discharges from their small MS4 that reach Waters of the U.S., including indirect discharges to Waters of the U.S. that are conveyed by a separate neighboring small MS4's operator.

Comment 33: Conroe asks if the language in Part IV.C.3. means the city would have to take over jurisdiction from municipal utility districts (MUDs) that are in the city.

Response 33: The legal authority language in Part IV.C.3 is not intended to require a traditional small MS4, such as a city to take over jurisdiction from a non-traditional small MS4 like a MUD. This language provides the option for small MS4 operators to work together and develop inter-local agreements to meet the general permit requirements.

Comment 34: Kyle comments that 30 TAC, Chapter 319 is applicable to wastewater permits and not stormwater.

Response 34: 30 TAC Chapter 319, Subchapter B Hazardous Metals is applicable to any discharge into tidal or inland waters, not only wastewater discharges. All TPDES permits (also called waste discharge permits), including stormwater permits, have the requirements of this chapter incorporated.

Comment 35: Quiddity asks if the list of entities assisting with the development or implementation of the SWMP in Part IV.C.7.(b), can include only the title or position without including specific names or entities that might change numerous times during the permit cycle.

Response 35: TCEQ intends only for the organization(s) to be named, rather than position(s) or individual(s), assisting with the development or implementation of the program.

Comment 36: Quiddity asks if TCEQ can clarify what is considered an interim milestone in Part IV.C.7.(d) and if this is measured in the same manner as implementation of a regular BMP.

Response 36: An interim milestone is any goal created throughout the reporting year or permit term by a small MS4 operator to aid in achieving permit requirements. For example, if an MS4 operator was required to inspect 100% of permittee owned and operated facilities described by Part IV.D.7.(a). each year, they may choose to break this into smaller goals of 25% quarterly to ensure the goal is met. TCEQ will not require small MS4 operators to report on the status of interim goals for annual report purposes.

Comment 37: Quiddity asks if TCEQ can clarify what the rationale statement mentioned in Part IV.C.7.(f) encompasses. Quiddity asks if small MS4 operators should provide a rationale statement for each activity/BMP and measurable goal that was selected or if this is addressing the overall program.

Response 37: This rationale statement required by Part IV.C.7.(f) should encompass the entire program rather than a BMP-by-BMP basis. To clarify the original intent, the permit language was revised as follows: "A rationale statement that addresses the overall program, <u>including an overall statement describing</u> how the activities/BMPs and measurable goals were selected".

Part IV.D.1 - 2, MCM 1 & 2

Comment 38: Conroe asks if Public Education/Outreach has been demonstrated to actually function as a "control measure" and if there are data available demonstrating the effectiveness of this.

Response 38: The stormwater program was developed to include Public Education and Outreach and is required in the federal Stormwater Phase II rules for MS4s (40 CFR §122.35(b)(1)). In support of the Public Education and Outreach control measure, EPA stated the following in the *Federal Register* publication of the final NPDES Stormwater Phase II Rules, "as the public gains a greater understanding of the storm water program, the MS4 is likely to gain more support for the program (including funding initiatives). In addition, compliance with the program will probably be greater if the public understands the personal responsibilities expected of them. Well informed citizens can act as formal or informal educators to further disseminate information and gather support for the program, thus easing the burden on the municipalities to perform all educational activities."

Comment 39: Conroe comments that the most cost-effective means of public education would likely be TV/billboard/social media outreach by TCEQ throughout the State. Conroe comments that if TCEQ did not do the outreach, TCEQ could create materials.

Response 39: While TCEQ staff does participate in some public education opportunities throughout the year, the agency believes that a collaborative State and local approach, in conjunction with EPA technical support, will best meet the goal of targeting and reaching, specific local audiences. TCEQ depends on public education efforts by the small MS4 operators to reach their anticipated target audience(s) and focus on localized issues (some examples include illegal dumping or proper disposal of pet waste). TCEQ does not have or create public education materials for the small MS4s currently. However, the EPA has materials available for public use and they can be found on the following webpage: https://www.epa.gov/npdes/stormwater-smart-outreach-tools.

Comment 40: Quiddity recommends including "residents" or "users" in the list of target audiences for MUDs. Quiddity comments that most MUDs and other special districts serve and are largely comprised of residential communities and do not have "staff" or employees.

Response 40: TCEQ appreciates the feedback and agrees with the commenter's suggestion. "Residents served" was included to the target audiences identified for MUDs in Part IV.D.1.(a).(1).b.

Comment 41: Mansfield comments that it would be more effective to cease inlet labeling when a target of 60% is reached and that this will allow cities to focus on high traffic areas.

Lewisville requests that TCEQ consider reducing the percentage of known stormwater inlets that must be marked each year and describes the cost for Lewisville to meet this goal is approximately $10,000 per year for vinyl markers and approximately $30,000 per year for metal markers creating burden on municipal budgets.

San Marcos also comments that using a number such as "mark 30 inlets each year" will result in cost savings and that the goal of marking 10% of known inlets is too high for the City of San Marcos.

Response 41: TCEQ appreciates the feedback and agrees with Mansfield regarding the need to focus the inlet marking activity to a high impact area which will reduce costs and staff time spent on this activity. The goal for this activity has been revised to require markings at "a minimum of 10% of all known stormwater inlets in either high-impact areas identified by the small MS4 operator or impairment watersheds within the MS4 area each year", and maintenance of already marked inlets "for a minimum of 15% of all known stormwater inlets in either high-

impact areas identified by the small MS4 operator or impairment watersheds within the MS4 area each year." This will allow small MS4 operators to focus their efforts and budgets to mark inlets in targeted areas defined by the small MS4 operator, for example, areas with high pedestrian traffic, known illegal dumping, or where inlets contribute to an impaired waterbody. For this measurable goal, TCEQ maintains the percentage goal rather than a minimum number because this allows the goal to be tied to a proportion of the overall universe in the MS4 area and gives a clearer picture of the impact regardless of the size of the small MS4.

Comment 42: NCTCOG comments that it is not clear why the area that is cleaned is relevant for stream/lake or watershed clean-up events and notes that one person cleaning two acres could be considered an event but a group of 20 cleaning a smaller area would not count as an event. NCTCOG recommends that the BMP be reworked to require tracking of all cleanups that happen in the city throughout the year.

Response 42: The goal associated with stream/lake or watershed clean-up events is tied to the area cleaned because goals tied to the number of participants are difficult for small MS4 operators to achieve. Tracking cleanups that happen in the small MS4 area throughout the year is a measurable parameter rather than a measurable goal. Using a goal related to the area cleaned creates a connection between the BMP and the impact on reducing pollutants in discharges from the small MS4 area and therefore, TCEQ maintains the goal regarding the area cleaned.

Comment 43: Mansfield recommends that the measurable goal language for the volunteer water quality monitoring BMP in Table 5 be changed to, "Organize or support volunteer water quality monitoring or bioassay programs such as Texas Stream Teams, similar alternatives, or MS4 run programs."

Response 43: TCEQ agrees with the commenter and the volunteer water quality monitoring BMP was revised to include programs such as Texas Stream Teams.

Comment 44: NCTCOG comments that the BMPs for "Stormwater related speaker series and Educational display/booth at a school, public event, or similar event" is more like Public Education than Public Involvement.

Response 44: TCEQ understands that this BMP is similar to MCM 1, Public Education/Outreach but has included it as an option to address MCM 2, Public Participation/Involvement requirements to provide more flexibility to small MS4 operators for addressing involvement. EPA describes educators/speakers conducting workshops and encouraging public participation as a possible BMP to meet this goal which is similar to this BMP.

Comment 45: LJA, Chambers, and Conroe comment that most municipal clean-up events and other public involvement opportunities within small MS4s are conducted once per year and it would seem more reasonable to have that reflected in this measurable goal.

Response 45: TCEQ revised the measurable goals for hosting events under MCM 2 to require Level 1 and 2 small MS4 operators to host or support at least one event and for Level 3 and 4 operators to host or support at least two events annually.

Comment 46: Kyle and San Marcos comment that reaching 75% of all residents in an MS4, and proving it, is not feasible. San Marcos comments that the City of San Marcos contains a major university, so people leave for months at a time, decreasing their total audience.

LJA, Chambers, and Conroe comment that many of the proposed BMPs represent an increase in cost for communities compared to the existing plans that are being implemented. LJA, Chambers, and Conroe recommend that consideration should be given to incorporating BMPs that are geared towards making this information available on the MS4 permittee's website and/or social media pages. LJA, Chambers, and Conroe also comment that a more measurable

goal would be to "make the information available through at least 2 forms of media for the intended audience", rather than trying to evaluate if the materials reached a specific percentage of the target audience. Conroe recommends revising the goal for Utility Bill Inserts to distribution to 50% of the intended audience.

Response 46: The measurable goals for "75% of the intended audience" are included to ensure that education and outreach information shared by the small MS4 operator is shared with the audience that the small MS4 operator intended. The *intended audience* is not always the same as the *target audience*. For example, a small MS4 operator may wish to implement the BMP for distributing utility bill inserts to address residents (the target audience*).* The small MS4 operator must then establish the intended audience for the utility bill inserts BMP. The intended audience, for example, will be utility account holders (a subset of residents) and the small MS4 operator will ensure the bill inserts are sent to a minimum of 75% of utility account holders. TCEQ appreciates the feedback and to clarify this intent, the measurable goals referencing reaching 75% of an intended audience were revised to specify the items must be sent to or shared with 75% of the intended audience, rather than continue a goal to reach the intended audience. Although there is not a specific goal for a percentage of the audience reached, TCEQ has included a requirement for the small MS4 operator to estimate the audience reached for each of these BMPs to assist the small MS4 operator in determining BMP effectiveness. TCEQ believes this will require largely the same resources as the goals currently implemented by the majority of small MS4 operators.

Comment 47: San Marcos comments that advertising in high visibility areas will increase their costs, for example one billboard in San Marcos for 3 months costs $3,000.

Response 47: This public education BMP is not only limited to using a billboard. The BMP allows small MS4 operators to implement any of the following: billboard, poster, bus shelter or bench ad, radio or television ad, movie theatre posters or ads, and kiosks. Many of these options are an affordable alternative to purchasing a billboard advertisement at the cost mentioned. This BMP allows flexibility for the small MS4 operator to determine which method of advertising will be best based on their budgets, target audience, and campaign information.

Comment 48: San Marcos comments that requiring a newspaper article defeats the initial cost savings that TCEQ advertised when stating that MS4's will save money by not having to do a public notice. San Marcos comments that they will still have to pay the same fee, if not more, for a pollution prevention article.

Response 48: This Public Education BMP is not limited to using a newspaper. The BMP also allows small MS4 operators to publish articles in newsletters either electronically or in print. The newsletter may be published and distributed by the small MS4 operator themselves or a third party.

Comment 49: Conroe requests that the language for "support given" in both the Public Education/Outreach and the Public Involvement Participation be clarified to explain if the MS4 must do all the things in the list for it to count, or if not, how many must the MS4 do for it to count. NCTCOG asks what "hosted by the city" means.

Response 49: TCEQ intends for small MS4 operators to implement at least one of the items and not every item included in the list in Part IV.D.1.(a)(3) and Part IV.D.2.(b). To clarify, language was added to Part IV.D.1.(a)(3)c. as follows, "Small MS4 operators shall create/host or support the public education and outreach BMP(s) in Part IV.D.1.(a)(3) and Table 4. To be considered support given to the coordinating groups, the small MS4 operator shall at minimum conduct at least one of the following or similar…" and to Part IV.D.2.(b) as follows: "Small MS4 operators shall create/host or support the public involvement/participation BMP(s) in Part IV.D.2.(a) and Table 5. To be considered support given to the coordinating groups the small MS4 operator shall at minimum conduct at least one of the following or similar…" Finally, TCEQ revised the

majority of BMPs in Table 5 to indicate the small MS4 operator must support or host the events to clarify that the MS4 operator is not expected to be the sole organizer or contributor to events when fulfilling these BMPs.

Part IV.D.3, MCM 3

Comment 50: NCTCOG comments that the measurable goal to use anti-littering campaigns to address floatables is public education, and more related to MCM 1 and will be a duplication of information provided earlier in the permit.

Response 50: TCEQ understands that this BMP is related to MCM 1, Public Education/Outreach but has included it as an option to address MCM 3, Illicit Discharge Detection and Elimination requirements to provide more flexibility to small MS4 operators for addressing littering. Small MS4 operators may overlap this BMP with a BMP in MCM 1 and count the BMP efforts under both MCM 1 and MCM 3 in the annual report if desired.

Comment 51: NCTCOG requests clarification on the expectations for non-traditional MS4s under MCM 3 as they do not have enforcement authority.

Response 51: Where a non-traditional permittee lacks the authority to develop ordinances or to implement enforcement actions, the permittee shall exert enforcement authority as required by this general permit for its facilities, employees, contractors, and any other entity over which it has operational control within the portion of the urban area with a population of at least 50,000 people under the jurisdiction of the permittee. For discharges from third party actions, the permittee shall perform inspections and exert enforcement authority to the MEP. If the permittee does not have enforcement authority and is unable to meet the goals of this general permit through its own powers, then, unless otherwise stated in this general permit, the permittee shall perform the following actions in order to meet the goals of the general permit: Enter into interlocal agreements with municipalities where the MS4 is located, or, if the permittee is unable to enter into inter-local agreements, it may notify the appropriate TCEQ Regional Office as needed to report discharges or incidents when it does not have enforcement authority. These interlocal agreements must state the extent to which the municipality will be responsible for inspections and enforcement authority in order to meet the conditions of this permit.

Comment 52: NCTCOG asks if the requirement to "publicize the reporting mechanism…at least 75% of target audience," addresses the same target audiences from MCM 1.

Response 52: The goal under MCM 3 to "publicize the public reporting mechanism a minimum of two times annually in a method designed to reach at least 75% of the intended audience" is not necessarily meant to address the same target audiences from MCM 1. The small MS4 operator will determine their intended audience for this BMP, such as social media site visitors, and publicize the reporting mechanism on their social media site in an effort to reach social media site visitors. In addition, TCEQ has clarified language in the BMP that the method used must be designed to reach the majority of the intended audience rather than at least 75% and has added a requirement to estimate the audience reached to assist small MS4 operators in determining BMP effectiveness.

Part IV.D.4, MCM 4

Comment 53: LJA, Chambers, and Conroe comment that a measurable goal for conducting inspections at 80% of all active construction sites on an annual basis is not obtainable for MS4 operators with a significant amount of development/construction occurring. LJA and Chambers recommend that the goal incorporate an additional numeric option for reaching compliance with this specific such as, "Conduct inspections at 80% of active construction sites, or a minimum of 30 total inspections on an annual basis". LJA, Chambers, and Conroe comment that the current draft permit language regarding follow-up inspection frequencies is reasonable.

Conroe recommends that the goal be revised to require inspections at 50% of active sites or a minimum of 50 inspections annually.

Mansfield recommends the measurable goal be revised to qualify that "at least" 80% of active sites are inspected to allow MS4 operators to conduct inspections at a frequency they determine to be necessary for discharge compliance.

Response 53: TCEQ appreciates the feedback and agrees with Mansfield and has revised the language in Table 9 to clarify that 80% is a minimum goal and therefore provides the opportunity for small MS4 operators to address a larger universe if they wish.

The majority of small MS4 operators are implementing an inspection goal of 80% of active construction sites under existing programs. TCEQ continues the goal to inspect a minimum of 80% of active constructions sites each year. TCEQ also maintains the percentage goal rather than a minimum number because this allows the goal to be tied to a proportion of the overall universe in the MS4 area and gives a clearer picture of the impact regardless of number of construction sites operating in the small MS4 area.

Comment 54: Mansfield comments that the construction site inventory BMP under MCM 4 should be required of Level 1 and 2 cities because it would be impractical to implement a reliable workflow without an inventory.

Response 54: During the 2013 general permit cycle, stakeholders indicated that the inclusion of an inventory requirement would be burdensome to Level 1 and 2 small MS4 operators. In particular, the inventory requirement is challenging for non-traditional small MS4 operators who often do not have staff. Additionally, construction site operators often overlook Level 1 and 2 small MS4 operators in their notifications. For these reasons, TCEQ continues the requirement for only Level 3 and 4 small MS4 operators. Level 1 and 2 small MS4 operators may voluntarily implement an inventory if they wish.

Part IV.D.5, MCM 5

Comment 55: Conroe comments that establishing a separate BMP for Post Construction Management for New Development and Redevelopment is problematic in creating a separate category of properties in the city which must be inventoried and inspected according to different rules than all other properties in the city.

Response 55: Post-construction stormwater management in new development and redevelopment is required to be implemented in the federal rules (40 CFR §122.34(b)(5)). For example, the management of stormwater runoff from new development and redevelopment is addressed by requiring operators at each site to implement in site plans a combination of structural and non-structural BMPs appropriate for the community and that protects water quality. Studies indicate that prior planning and designing for the minimization of pollutants in stormwater discharges is the most cost-effective approach to stormwater quality management. Reducing pollutant concentrations in stormwater after the discharge enters a storm sewer system is often more expensive and less efficient than preventing or reducing pollutants at the source. Increased human activity associated with development often results in increased pollutant loading from stormwater discharges. If potential adverse water quality impacts are considered from the beginning stages of a project, new development and redevelopment provides more opportunities for water quality protection.

Comment 56: Conroe comments that language in the draft permit is vague regarding what stormwater control measures must be implemented and maintained, and asks who decides what is appropriate for the community and what protects water quality.

Response 56: The intent of this language is to provide flexibility to the small MS4 operator in establishing requirements under this MCM. It is up to each small MS4 operator to determine

which requirements are most appropriate for their community based on their unique conditions and community members. Small MS4 operators should consider space limitations, health and safety concerns, cost effectiveness, highway construction codes, local climate, community concerns, and other similar factors.

Comment 57: San Marcos comments that the city has implemented a triennial inspection program for all privately and publicly owned structural controls which is no longer on the Level 3 goal list.

Response 57: TCEQ notes that an inspection program as described has not been required for Level 3 small MS4 operators before and thanks San Marcos for implementing the program despite this. TCEQ encourages the city to continue implementing this program to address privately owned structural controls.

Comment 58: NCTCOG recommends that the goal in Table 11 to "Maintain 100% of stormwater control measures each year", be completed every permit term because this would mean 20% are checked each year and would be more manageable for cities with fewer staff.

Response 58: Language was added to the maintenance goal in Table 11 to clarify that small MS4 operators must address their maintenance requirements each year according to procedures and schedules developed by the small MS4 operator which may not require a maintenance action for every structure each year. The small MS4's maintenance plan may indicate that 20% of control measures are checked each year. The language was revised as follows: "Each year, implement a maintenance plan and schedule established by the small MS4 operator, addressing 100% of stormwater control measures where the small MS4 operator is responsible for maintenance."

Comment 59: NCTCOG comments that the goal in Table 11 to "Require the site owner or operators to maintain documentation onsite for 100% of the maintenance performed…" does not seem feasible for areas such as commercial shopping centers, where the units are rented by tenants and the property owner is responsible for maintenance. NCTCOG comments that it is infeasible for areas with controls like a vegetated swale that requires mowing every few weeks as maintenance and it would be difficult to provide and store documentation for mowing.

Response 59: The permit language specifies that the site owner or operator must be required to document maintenance. Therefore, in the example of a commercial shopping center, the small MS4 operator could require the owner rather than the tenants to document maintenance. TCEQ has revised the permit language to clarify that documentation of maintenance may be a tracking log of maintenance conducted and is not required to be more formal documentation. Small MS4 operators may accept a log of maintenance being completed, such as the dates when mowing occurs every few weeks as documentation. Many owners or operators will have documentation of mowing where the mowing is conducted by a third party which the owner or operator has hired. If the owner or operator is completing the maintenance themselves, they may track or log the activities as they complete them to keep documentation.

Comment 60: NCTCOG comments that in Table 12 it appears that the performance level is 100% and recommends the performance level be "to the maximum extent practicable under the prevailing conditions."

Response 60: The language in Table 12 has been revised to clarify that the small MS4 operator is not expected to inspect all control measures in the small MS4 area each year. The small MS4 operator must implement an inspection program consistent with their applicable maintenance plan each year to, at a minimum, involve inspecting 20% of stormwater controls in the small MS4 area each year.

Comment 61: DFW asks if it is correct that "field staff" in Part IV.D.3(c)(2) is intended to refer to those employees directly responsible for conducting IDDE inspections or investigations as part of normal job responsibilities and not any employee who may perform work in exterior environments.

Response 61: This training requirement is meant to apply to any staff whose main job scope is performed outside of the office setting and who may come into contact with or otherwise observe an illicit discharge, illegal dumping, or illicit connection to the small MS4 as part of their normal job responsibilities.

Comment 62: Mansfield asks that Part IV.D.5 (a) or (b) include language identifying a target pollutant of concern and a target treatment threshold, such as 80% total suspended solids removal, and include a reference to an independently verified agency for particular devices or practices.

Response 63: TCEQ believes that requiring small MS4 operators to meet a specific treatment threshold in the general permit would be a burden to small MS4 operators. The permit language provides flexibility for small MS4 operators to determine the appropriate controls for their unique MS4 conditions.

Comment 64: Mansfield requests that TCEQ provide guidance on how performance claims of manufactured treatment devices and practices are verified, such as the use of Technology Assessment Protocol - Ecology (TAPE), Technology Acceptance and Reciprocity Partnership (TARP), or American Society for Testing and Materials (ASTM), and recommends that the permit language in Part IV.D.5(a) or (b) be worded to permit new guidance to be utilized as it is developed (i.e. National Municipal Stormwater Alliance Stormwater Testing and Evaluation for Products and Practices (STEPP) program).

Response 64: The permit language provides small MS4 operators with the flexibility to determine which treatment devices and practices are appropriate for their specific and unique conditions. TCEQ believes that specifying or recommending the use of a third-party BMP verification program is overly prescriptive and reduces flexibility for small MS4 operators.

Part IV.D.6, MCM 6

Comment 65: Kyle and San Marcos comment that the requirements for contractor oversight is unattainable as it is written. Kyle comments that this requirement should be removed.

Response 65: TCEQ appreciates the feedback and has updated the measurable goals in Table 13 to clarify the intent of contractor oversight requirements. The intent of this requirement is to ensure the small MS4 operator has a process to implement oversight such as ensuring contractors follow guidelines, implement procedures properly, etc. rather than requiring small MS4 operators to watch every action performed by contractors. TCEQ maintains the requirement with revisions to specify the small MS4 operator must maintain oversight procedures for 100% of contracts. This revision to the measurable goals more closely aligns with the required elements of Part IV.D.6.(b).(4).

Comment 66: NCTCOG requests clarification on the language in Table 13 requiring permittees to “evaluate” operation and maintenance activities for their potential to discharge pollutants and asks if this is referring to having a Standard Operating Procedure or that the activity should be evaluated each time it is performed. NCTCOG recommends that the pollutants of concern list only be required to be updated once per permit term.

Response 66: The term “evaluate” in the permit language in Table 13 is meant to encompass either reviews of procedures when available, or reviewing the activities as they are performed. The small MS4 operator may determine the appropriate method of evaluation to accurately determine the potential to discharge pollutants. The permit language was revised as follows to

clarify the option to review procedures as a form of evaluation: "Evaluate 100% of O&M activities, in conjunction with procedure reviews if appropriate, for their potential to discharge pollutants in stormwater annually". As small MS4 operators are required to review procedures at least annually, TCEQ maintains the requirement for small MS4 operators to review and update the list of pollutants of concern at least annually to reflect any necessary updates based on the procedure reviews or activities conducted during the year.

Comment 67: NCTCOG comments that the requirement to "inspect and clean at least 25% of the small MS4 owned and operated drainage system each year" is not practicable with current technology. NCTCOG comments that because much of the drainage system is underground, CCTV is currently the most effective means to inspect and that the cost is approximately $52,800 per mile and for a 488-mile system in one Level 4 city the cost for the entire system is over $25 million.

Response 67: TCEQ appreciates the feedback and has revised the measurable goals within Table 14 as a result of this comment. The measurable goal quantifier relating to the inspection and cleaning of the small MS4 has been modified to require 20% of the system to be completed each year, which still ensures that 100% will be achieved by the end of the permit term. Additionally, the measurable goal has been modified to clarify the intent that the inspections and cleaning BMP is directed toward the surface drainage system in problem areas identified by the small MS4 operator, rather than system-wide and including underground portions.

Comment 68: LJA, Conroe, and Chambers comment that the estimated number of inlets for one known Level 3 small MS4 is approximately 6,000; which based on the current proposed language would require them to conduct documented inspections of 1,500 inlets per year. LJA, Conroe, and Chambers comment that this is an unrealistic goal and recommend that all percentages associated with the options included for this BMP be reduced to 10% per year.

Response 68: TCEQ understands the concerns of logistical challenges raised by the commenters and has revised the measurable goals relating to inlet inspections in Table 14 to require inspections of 20% of stormwater inlets in problem areas identified by the small MS4 operator (for example, areas with recurrent illegal dumping) each year. This revision allows the small MS4 operator to focus on a more targeted area and lowers the overall number of inspections required each year.

Comment 69: DFW requests clarification if the requirement in Part IV.D.6(b)(3) is referring to waste generated by the MS4 operator or any waste physically removed from the MS4 conveyance system.

Response 69: The language in this section is referring to waste physically removed from the MS4 conveyance system. TCEQ also notes that although this language and measurable goal is specifically referring to wastes removed from the conveyance system, wastes generated by the MS4 are also expected to be disposed of in accordance with all applicable solid waste rules.

Comment 70: NCTCOG comments that the BMP to "collect and dispose of or recycle used oil…" relates more to MCM 2 for Public Involvement and asks what qualifies as an event. NCTCOG comments that some MS4s offer year-round collection service and asks if that would qualify for this BMP. Additionally, Grapevine comments that some cities participate with other entities which limit household hazardous waste (HHW) collection events to once per year. Grapevine comments that some cities are moving to curbside HHW pick-up for disposal by their waste-hauler and asks how these cities will be able to meet these criteria.

Response 70: TCEQ understands that this BMP is similar to MCM 2, Public Involvement but has included it as an option to address MCM 6, Pollution Prevention and Good Housekeeping requirements to provide more flexibility to small MS4 operators for addressing pollutants in the small MS4. TCEQ has revised the permit language for this BMP and measurable goal to

clarify that an event is any day in which the public has an opportunity to dispose of or recycle HHW either through collection (such as curbside pick-up) or drop off. Where small MS4 operators offer year-round collection or drop off services they are fulfilling this measurable goal. In addition, if the small MS4 partners with adjacent small MS4 operators to offer these events, they are fulfilling this goal.

Comment 71: NCTCOG comments that sweeping streets with ditches is not a BMP and recommends changing the requirement to 100% of the curb and gutter streets. NCTCOG also asks for clarification of what is entailed in an inlet protection program.

Response 71: TCEQ appreciates the feedback and agrees that sweeping streets with ditches is not technically feasible as described in Part IV.D.6.(c)(2) and has clarified this by revising the permit language in Table 14 to require street sweeping to address 75% of the MS4 where street sweeping is technically feasible annually. This measurable goal has also been clarified to more clearly align with the permit requirements in Part IV.D.6.(c)(2) by specifying that either an inlet protection program must be utilized in areas where street sweeping is technically infeasible or the small MS4 operator must implement a newly added BMP and measurable goal to ensure trash capturing devices are maintained in all areas where street sweeping is technically infeasible.

Comment 72: NCTCOG recommends that the map in Table 14 only be required to be updated once per permit term.

Response 72: TCEQ believes it is essential for the facilities map to be reviewed for necessary updates each year. Although TCEQ understands that updates may not be necessary every year during the permit term, having a measurable goal for annual reviews ensures that necessary updates to the map are not overlooked.

Comment 73: NCTCOG comments that as facilities are reviewed for their potential to discharge, the MS4 operator will determine if they should be designated as high-priority facilities and it makes sense to update them on the same schedule, once per permit term.

Response 73: The goal for facilities to be reviewed for their potential discharge pollutants is set to once per permit term but TCEQ anticipates that small MS4 operators will set interim milestones to review a portion of these facilities every year, for example review 20% of facilities each year. Because some of the facilities will likely be reviewed each year, it is necessary for the small MS4 operator to review and update the list of high-priority facilities to address any changes or additions to the list based on the facility reviews that were conducted that year.

Comment 74: NCTCOG asks for clarification on what is meant by “material” in Table 14 and recommends defining it. Additionally, NCTCOG recommends the requirement to “shelter 100%” be changed to “Shelter to the maximum extent practicable."

Response 74: The term material is meant to refer to common chemicals such as fertilizers, solvents, paints, cleaners, and automotive products. To clarify this, the measurable goal language was revised to include examples of materials. TCEQ maintains the requirement to shelter 100% of these materials because keeping materials of this nature indoors or under a storm-resistant shelter is readily achievable for Level 3 and 4 small MS4s.

Comment 75: NCTCOG comments that all fuel facilities are automatically designated as high priority and recommends rewording the “Stormwater Controls for High Priority Facilities, Fueling and vehicle maintenance as described by Part IV.D.6.(c)(6)c,” language in Table 14.

Response 75: The general permit language in Part IV.D.6.(c)(6)c establishes more clear requirements for Level 3 and 4 small MS4 operators to implement standard operating procedures (SOPs) that address spill prevention and control at permittee-owned and operated vehicle fueling, vehicle maintenance, and bulk fuel delivery facilities. This BMP and measurable

goal in Table 14 is written to tie back to the permit language which describes the specific subset of high priority facilities rather than repeating the description.

Comment 76: NCTCOG comments that row 13 in Table 14 seems to be a duplicate of information included earlier in the general permit.

Response 76: The BMP and measurable goal included in row 13 of Table 14 is unique to inspections described in Part IV.D.6.(c)(7) and is not repeated elsewhere in the general permit.

Comment 77: NCTCOG recommends adding "of" to the measurable goal for clippings and leaves and recommends rewording the goal to include blowing leaves back onto grassy areas.

Response 77: Language in this measurable goal was revised to include the missing word "of". The goal for this BMP is meant to physically remove leaves from the MS4 area and prevent them from reaching the small MS4. This language provides flexibility for small MS4 operators to implement a combination of "mulching, composting, or landfilling" and "blowing leaves back onto grassy areas".

Comment 78: NCTCOG comments that the term "flood control structure" should be defined and asks if this includes every inlet. NCTCOG recommends rewording this measurable goal to retrofit flood control devices as needed or on a schedule basis because some small MS4s have fewer than ten structural flood control devices it is not feasible to retrofit 20% annually.

Response 78: TCEQ intends for the term "flood control structure" to mean the common definition of the term, "permanent structures that are specifically designed and used for reducing flood impact in local areas." Examples include detention ponds, floodwalls, and levees. Stormwater inlets are not intended to be encompassed in the definition of flood control structures. The general permit language provides the option for small MS4 operators to document when retrofitting 20% of structures is not feasible.

Comment 79: SARA comments that the permit should prioritize retrofitting of the 20% of existing flood control devices to include pollutant removal based on any local watershed protection plan (WPP) and/or existing water quality masterplans within the MS4 operator's watershed.

Response 79: The language in the general permit provides flexibility for each small MS4 operator to determine the schedule and location of flood control device retrofitting to address devices as appropriate for their unique conditions. In some cases, a small MS4 operator may not have a local WPP or water quality masterplan to refer to. The permit language flexibility provides the option for small MS4 operators to use these tools to prioritize their retrofitting, as appropriate.

Comment 80: SARA comments that where appropriate the permit should implement nature-based solutions to address water quality and erosion for flood control structures.

Response 80: The language in the general permit provides flexibility for each small MS4 operator to determine the appropriate design and maintenance to address erosion from flood control structures. TCEQ believes that prescribing specific designs or maintenance for flood control structures will be burdensome for small MS4 operators. Small MS4 operators may choose to implement nature-based solutions if appropriate for their unique conditions.

Part IV.D.8, MCM 8

Comment 81: Lewisville comments that when the City of Lewisville conducts regulated capital improvement projects (CIP) construction projects, the contract requires the general contractor to develop and implement a stormwater pollution prevention plan (SWPPP or SWP3) that is shared with the City. Lewisville requests that TCEQ clarify if cities are able to utilize this optional method of authorization in this scenario or if a city is required to develop and

implement its own SWPPP even where the general contractor is already obligated to provide one.

Response 81: TCEQ confirms that MS4 operators implementing the optional MCM 8 can participate in a shared SWP3 and meet the requirements of the general permit. Part VII.D.(a) has been updated with a statement to clarify this intent.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

A RESOLUTION in the matter of a Renewal with Amendments of a Texas Pollutant Discharge Elimination System General Permit Authorizing Stormwater Discharges from Small Municipal Separate Storm Sewer Systems; General Permit No. TXR040000; TCEQ Docket No. 2023-0526-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, a renewal with amendments of a Texas Pollutant Discharge Elimination System (TPDES) general permit authorizing discharges into or adjacent to water in the state from small municipal separate storm sewer systems, was drafted and proposed by the Executive Director and is attached as Exhibit A;

WHEREAS, the TCEQ received public comments on the proposed 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 TAC § 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 August 14, 2024 public meeting. The Commission, by this resolution, also hereby issues the Executive Director's Response to Comments as approved by the Commission during its August 14, 2024 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 Comments to satisfy *Texas Register* format requirements and requests that the general permit and Commission's Response to Public Comments 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

_____
Jon Niermann, Chairman

_____
Date Signed