

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

The executive director of the Texas Commission on Environmental Quality (commission or TCEQ) files this Response to Public Comment (Response) on Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR150000, the Construction General Permit for Stormwater Discharges (CGP). As required by Texas Water Code (TWC), §26.040(d) and 30 Texas Administrative Code (30 TAC) Section (§)205.3(e), before a general permit is issued, the executive director must prepare a response to all timely, relevant and material, or significant comments. The response must be made available to the public and filed with the Office of the Chief Clerk at least ten days before the commission considers the approval of the general permit. This response addresses all timely received public comments, whether or not withdrawn. Timely public comments were received from the following entities:

American Electric Power (AEP), City of Amarillo (Amarillo), Associated General Contractors of Texas (AGC), Army Corp of Engineers, Dallas Area Rapid Transit (DART), Harris County, Lower Colorado River Authority (LCRA), Luminant Generation Company LLC (Luminant), Oncor Electric Generation (Oncor), City of Plano (Plano), Project Compliance, LLC, City of Round Rock (Round Rock), Texas Association of Builders (TAB), and the Texas Department of Transportation (TXDOT).

### **BACKGROUND**

The CGP renewal with changes authorizes the discharge of stormwater runoff associated with small and large construction sites and certain non-stormwater discharges into surface water in the state. This general permit identifies the sites that may be authorized under the permit. Additionally, it identifies construction activities that may obtain waivers and that may be eligible for coverage without submitting a notice of intent (NOI). The CGP also identifies under what circumstances a construction activity must obtain individual permit coverage. The CGP also authorizes the discharge of stormwater associated with industrial activities at construction sites that directly support the construction activity and are located at, adjacent to, or in close proximity to the permitted construction site.

On September 14, 1998, TCEQ received delegation authority from the United States Environmental Protection Agency (EPA) to administer the National Pollutant Discharge Elimination System (NPDES) program under the TPDES program. As part of that delegation, TCEQ and EPA signed a Memorandum of Agreement (MOA) that authorizes the administration of the NPDES program by TCEQ as it applies to the State of Texas. The original TPDES CGP was issued on March 5, 2003 and was renewed with changes with an effective date of March 5, 2008. This renewal of the CGP will continue to authorize discharges from regulated construction activities in Texas for five years until March 5, 2018.

The CGP is issued under the statutory authority of the TWC: 1) TWC, §26.121, which makes it unlawful to discharge pollutants into or adjacent to water in the state except as

authorized by a rule, permit, or order issued by the commission, 2) TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state, and 3) TWC, §26.040, which provides the commission may authorize waste discharges by general permit.

The federal stormwater regulations for discharges from large construction activities are in the federal rules at 40 Code of Federal Regulations (CFR) §122.26, which were adopted by reference by TCEQ at 30 TAC §281.25(a). The federal Phase II stormwater regulations were published on December 8, 1999 in the *Federal Register*, requiring regulated small construction activities to obtain permit coverage by March 10, 2003. The small construction site regulations are in the federal rules at 40 CFR §122.26(a)(9)(i)(B) and (c), which were adopted by reference by TCEQ at 30 TAC §281.25(a)(4). Federal rules effluent guidelines for construction activities were adopted in 40 CFR Part 450 with an effective date of February 1, 2010 and those rules were adopted by TCEQ by reference in 30 TAC §305.541 on November 3, 2010. However, TCEQ did not adopt the turbidity numeric effluent limitation originally included in the Part 450 rules and EPA is currently seeking to revise those rules. TCEQ will have to conduct additional rulemaking to implement any changes EPA makes to the current stormwater rules.

Notice of availability and an announcement of the public meeting for this permit were published in the *Austin-American Statesman*, *Houston Chronicle*, the *Amarillo Globe-News*, the *Waco Herald Tribune*, the *El Paso Times*, the *San Antonio Express News*, the *Lubbock Avalanche Journal*, *Dallas Morning News*, the *Tyler Morning Telegraph*, and the *Texas Register* on October 12, 2012. A public meeting was held in Austin on November 12, 2012, and the comment period ended at the close of the business the same day.

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

### **General Comments**

**Comment:** The Army Corp of Engineers recommends that TCEQ create two separate construction site notices for small construction activities, one for primary operators and one for secondary operators.

**Response:** TCEQ considers having separate construction site notices for primary and secondary operators unnecessary and could lead to confusion if there is more than one operator at a construction site. For this reason, TCEQ declines to make the suggested change to the permit.

Comment: The Army Corp of Engineers asks whether TCEQ can provide an example of when a discharge of stormwater will not enter an MS4.

Response: If the stormwater runoff from the construction site discharges directly into a naturally occurring water body, or if the stormwater conveyance is not owned by a public entity, then the discharge is not considered to be into an MS4.

Comment: TAB comments that overall the proposed construction general permit (CGP) is written in simpler language than the current CGP, which will be appreciated by our members in the field.

Response: TCEQ appreciates the comment.

Comment: TAB comments that the proposed CGP implements the construction and development effluent limitation guidelines promulgated by EPA in 2009. TAB comments that following petitions and a lawsuit challenging the new rule EPA is in the process of reconsidering the rule. Given these potential pending changes, TAB respectfully requests that TCEQ extend the existing permit for at least a year, when the final result of the potential changes should be known. Oncor comments that it would be extremely difficult for linear transmission projects to comply with the most current iteration of these new rules. Oncor comments that the rules make no distinction for electric utility transmission line projects and their unique construction parameters and easement rights, despite acknowledging the potential difficulties. Prior to the EPA's implementation of the construction and development rule, Oncor feels a workgroup or discussion forum might be beneficial for electric utilities operating in the state of Texas and TCEQ.

Response: TCEQ adopted the construction and effluent limitation guidelines adopted by EPA in 40 CFR Part 450 in 2011 by reference in 30 TAC §305.541, minus the numeric effluent limitation for turbidity. Any changes to EPA's rules will require additional rulemaking by TCEQ to adopt. However, TCEQ is statutorily prohibited by TWC §26.040(i) to issue a permit for a term more than five years and it contains no provision for an extension of the current CGP as suggested.

If TCEQ was in the process of renewing the CGP and failed to issue the new permit by the current CGP expiration date, the current permit would be administratively continued for existing construction operations with active authorizations until TCEQ acted to issue the new CGP. However, TCEQ would have no general permitting options available for new construction activities that needed to obtain CGP coverage after March 5, 2013, the expiration date of the current CGP. New construction activities could not be retroactively covered under the expired CGP and the only permitting option would be to seek an individual TPDES permit. The process to obtain an individual permit is lengthy (approximately 330 days) and the cost is considerably more than obtaining coverage under the CGP.

Comment: AGC comments that the Texas Department of Transportation (TXDOT) requires an executed "Contractor Certification of Compliance with Stormwater

Requirements" for all projects. AGC comments that the TXDOT certification statement requires the contractor to acknowledge responsibility for a number of requirements relating to the CGP. However, AGC notes that it is TXDOT that prepares and develops the stormwater pollution prevention plan (SWP3) for the majority of TXDOT projects; and maintains operational control at the construction sites. AGC maintains that only TXDOT meets the definition of "operator" for TXDOT contracts.

Response: TCEQ generally agrees that a contractor who does not develop and implement the SWP3 or have operational control over compliance with the SWP3 does not meet the definition of "operator" under the CGP. However, resolving AGC differences with TXDOT over TXDOT contract language and requirements is beyond the scope of this response. TCEQ recommends that AGC coordinate with TXDOT to resolve differences on the content and language of contracts between AGC members and TXDOT.

To address situations where multiple operators exist at a construction site and share a common SWP3, TCEQ revised Part II.E.8.(f) of the CGP to state that the confirmation for an operator may be limited to its obligations under the SWP3 provided all obligations and requirements are confirmed by at least one operator. The certification requirements in Part E. of the NOI were also revised accordingly. See responses under that Part II.E.8. for revised language.

Comment: Harris County comments that on the TCEQ stormwater construction website there was a notice that TCEQ was considering requiring all NOIs for the CGP to be submitted electronically. Harris County has numerous construction projects that require coverage under the CGP and the logistics of complying with an electronic-only submission would be very burdensome. Pursuant to TCEQ rules, Harris County notes that its NOIs are signed by the County Judge. Generally, Harris County states that their NOI fees are paid for by contractors because they have a credit card, unlike the county. Harris County comments that the logistics of coordinating the electronic submittal of the County Judge's signed paperwork simultaneously with electronic payment is daunting. Accordingly, Harris County requests that a mailing option remain for NOI submissions.

Oncor comments that they prefer to retain the ability to submit a paper copy of the NOI because if NOI submittals become electronic-only, their integrity may be jeopardized and it would require a duplication of effort. Additionally, Oncor comments that there are technical challenges that would impede electronic-only submittal of the NOI and respectfully opposes the CGP requiring all NOIs be submitted electronically.

Response: TCEQ appreciates the comments, and does not plan to require the electronic-only submittal of NOIs during this permit term. Permittees will continue to have the option to submit the NOI electronically (e-NOI) or submit a paper NOI by mail.

## **Part I.B. – Definitions**

Comment: Plano comments that the use of a national drought outlook map in the definition of “drought-stricken area” does not provide adequate geographic or physical references to identify those areas and does not provide regulatory guidance necessary for implementation of drought-stricken area items in the proposed CGP. Plano recommends the use of a map similar to the one found at the following link showing drought boundaries for reference and the drought boundaries being set for a minimum of a one year: [http://droughtmonitor.unl.edu/DM\\_state.htm?TX,S](http://droughtmonitor.unl.edu/DM_state.htm?TX,S)

Response: The definition of “drought-stricken area” and the national drought outlook map it references are the same in the TPDES CGP as it is in the EPA CGP. TCEQ declines to make the change because the map being used is sufficient to provide the references needed to identify drought-stricken areas for the purposes of the permit.

Comment: TXDOT comments that the definition of “final stabilization” requires “70% vegetative coverage within three years” in arid, semi-arid, and drought-stricken areas. TXDOT requests that this provision allow for achievement of “70% of the native background vegetative cover” in order to be consistent with the definition of “final stabilization” under other circumstances.

Response: In response to the comment, the Part D.2. of the definition was revised to read: “The temporary erosion control measures are selected, designed, and installed to achieve 70% of the native background vegetative coverage within three years.”

Comment: TXDOT questions the definition of “impaired water” included in the CGP. TXDOT comments that the first sentence indicates that an impaired water is a water that is on the latest approved CWA §303(d) list, but the second sentence indicates that impaired waters also include those with an approved TMDL. TXDOT’s understanding is that once a TMDL is established for a water body, it is removed from the §303(d) list. Therefore, TXDOT notes that the first sentence of this definition seems to contradict the second. TXDOT asks whether “impaired waters” include both those on the §303(d) list and those with an approved TMDL; or does the term just include those water bodies on the §303(d) list.

Response: As used in the CGP, the definition of “impaired waters” includes water bodies on the Clean Water Act §303(d) list and those water bodies that have an approved TMDL or TMDL Implementation Plan, where the applicable water quality standards have not been successfully achieved. The §303(d) list is comprised of impaired water bodies that do not have an approved TMDL, while the intent of the CGP “impaired water” definition is to address all impaired water bodies, i.e. those that do not meet current water quality standards, with or without a TMDL.

Comment: TAB comments that neither the draft permit or fact sheet includes a definition of the word “minimize,” which is used extensively in Section III.G.1 of the CGP. TAB recommends adding a definition in Part I of the CGP that is consistent with the definition of “minimize” in the federal CGP. The federal definition reads as follows:

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

Response: In response to the comment, a definition of "minimize" was added to the permit. The definition reads: "To reduce or eliminate to the extent achievable using stormwater controls that are technologically available and economically practicable and achievable in light of best industry practices."

Comment: The Army Corp of Engineers recommends that TCEQ add a definition for "operational control."

Response: TCEQ considers the proposed definition of "primary operator" in the CGP is sufficient to clarify the meaning of operational control. The emphasis in subsection (b) of the "primary operator" portion of the definition is whether the operator has day-to-day control "to ensure compliance with" the SWP3. No changes were made to the permit as a result of this comment.

Comment: Plano comments that the sub-definition of "secondary operator" under the definition of "operator" is still confusing. Plano recommends adding two items to the last paragraph of the definition: 1) Add the following from the current TCEQ Regulatory Guidance Document RG-468, sub-paragraph (b): "Secondary operators cannot initiate changes to the construction plans and specifications." 2) Per the TCEQ response to EPA's Interim Objection Letter, add the following: "Secondary operators must either prepare their own SWP3 or participate in a shared SWP3 that covers the areas of the construction site where they have control over the plans and specifications."

Response: For clarification purposes, TCEQ revised section (b) of the definition of "secondary operator" to include the following language: "Secondary operators must either prepare their own SWP3 or participate in a shared SWP3 that covers the areas of the construction site where they have control over the plans and specifications."

Comment: Plano comments that the term "pollutants of concern" used in Part II.C.4. is not defined in the CGP and requests that a definition be included in the permit.

Response: TCEQ declines to add a definition for "pollutants of concern" to the CGP. Part II.C.4. already states that "pollutants of concern" are the pollutants that have caused a water body to be listed as impaired.

Comment: TAB recommends adding a definition of "receiving water(s)" to the permit. TAB notes that the term is used in several sections of the CGP and is needed to provide clarity for the regulated community regarding the use of this term. TAB recommends adding the following definition of "receiving water" to the CGP: "The first surface water accepting the discharge from the project in cases where the discharge is to surface water; and, in cases where the project discharges into an MS4, as the first surface water accepting the discharge from the MS4."

Response: In response to the comment, TCEQ added the following definition of “receiving water” from EPA’s CGP to the permit: “Receiving Water - A ‘Water of the United States’ as defined in 40 CFR §122.2 into which the regulated stormwater discharges.”

Comment: TAB notes that the term “steep slope” is used in Part III.G.1. of the CGP and that neither the draft permit or the fact sheet include a definition for the term. TAB notes that absent a definition, what is or is not a “steep slope” is arbitrary and subjective. TAB comments that the CGP should include the definition of “steep slope” or offer guidance on how to determine whether a slope is considered steep.

Response: In response to the comment, TCEQ added the following definition of “steep slopes” from EPA’s CGP to the permit: “Steep Slopes – Where a state, Tribe, local government, or industry technical manual (e.g. stormwater BMP manual) has defined what is to be considered a “steep slope,” this permit’s definition automatically adopts that definition. Where no such definition exists, steep slopes are automatically defined as those that are 15 percent or greater in grade.”

Comment: Plano recommends changing the phrase “...capture or prevent pollution...” to “...reduce or prevent pollution...” in the first sentence of the definition of “structural control.” Plano comments that none of the examples given capture all of the pollution from a construction site and notes that even the most efficient structural BMP just reduces the pollution load leaving a site.

Response: TCEQ revised the definition of “structural control” as requested, as this is consistent with the definition of “stormwater control measure” in EPA’s CGP. The first sentence of the definition now reads: “A pollution prevention practice that requires the construction of a device, or the use of a device, to reduce or prevent pollution in stormwater runoff.”

## **Part II.A.2.**

Comment: LCRA comments that the revised CGP in Part II.A.2 states that “discharges of stormwater runoff from construction support activities may be authorized under this general permit provided that the following conditions are met: (a) activities are located within one mile from the boundary of the permitted construction site and directly support the construction activity.” LCRA comments that this paragraph is unclear regarding whether that means that support activities located farther than one mile from permitted construction site cannot be authorized by this permit. For example, if an equipment staging area was set up solely for your permitted construction site, but it is located 1.2 miles from your site, does that mean because it is more than one mile from your site, your only option is to get a separate authorization for it.

LCRA comments that if the answer is “yes,” then if the equipment staging area disturbs less than one acre, their interpretation is that the staging does not require CGP coverage because it does not meet the one acre threshold. Also, LCRA asks that if support activities are located less than one mile from the construction site, does the primary

operator have the option to consider it a separate site. Lastly, LCRA asks that if you have an equipment staging area 0.9 miles from your site, can you elect to not cover it under the main construction site authorization and instead authorize it separately. LCRA presumes that means that if the staging area is less than one acre, then it would not require CGP coverage.

Response: Construction support activities that are located more than one mile from an authorized construction site cannot be covered under the construction site's SWP3 and would require their own coverage under an appropriate individual or general permit based on the activity being conducted. For example, stormwater runoff from a borrow pit may be considered a mining activity and required to be authorized under TXR050000, the multi-sector industrial general permit for stormwater (MSGP). If the construction support activity is located within one mile of the construction site associated with it, it may be authorized separately if the operator chooses to do so.

If the equipment staging area is located more than one mile from the regulated construction activity, but is less than one acre in size, then CGP coverage is not required so long as it is not part of a larger common plan of development. In some cases, multiple related construction activities would not need to be considered as part of a larger common plan of development (see Part II.A.2(c)); while those within 1/4 mile of each other would need to be considered together. This is consistent with guidance provided by EPA and that TCEQ used in evaluating projects for municipalities and similar entities conducting similar land disturbance activities throughout their jurisdiction.

Comment: LCRA respectfully requests that TCEQ take out the one mile reference and instead provide the same requirements as EPA's CGP. The language would read: "Stormwater discharges eligible for authorization under this permit include stormwater from construction support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided: i. The support activity is directly related to the construction site required to have permit coverage for stormwater discharges; ii. The support activity is not a commercial operation, nor does it serve multiple unrelated construction projects; iii. The support activity does not continue to operate beyond the completion of the construction activity at the project it supports; and iv. Stormwater controls are implemented in accordance with Parts F and G, if applicable."

Response: TCEQ declines to make the change, as the current language is consistent with the existing CGP and EPA guidance. See response to the previous comment.

#### **Part II.C.4.**

Comment: The Army Corp of Engineers asks that if a classified water body is on the Section 303(d) list, but runoff from the construction activity feeds into an unnamed tributary that is a significant distance upstream, for example 5 miles from the classified water body, does the runoff from the construction activity still need to meet the requirements of the TMDL I-Plan. TAB asks how far downstream the impaired waters

body needs to be in order for it to not impact the permitting process. TAB comments that the permit language should identify the criteria to establish the relative location of the applicable water bodies the permittee must take into consideration when determining permitting and discharge requirements.

Response: For purposes of the CGP, if the construction activity is within the watershed of an impaired water body, the limits apply. However, if a construction activity is not a source for the pollutant of concern(s) causing the impairment then the TMDL requirements in the CGP would not apply.

Comment: TAB comments that this section includes a sentence in the second paragraph reading: "For consistency with an approved TMDL, the SWP3 must be consistent with any condition, goal, or requirement in the applicable TMDL, TMDL Implementation Plan (I-Plan), or as otherwise directed by the executive director." TAB comments that some of its members believe this language is too vague and could lead to inconsistent enforcement. TXDOT recommends deleting the referenced sentence because they are concerned with what appears to be a revised definition of consistency with an approved TMDL and the transformation of a TMDL or TMDL I-Plan goal into a regulatory requirement. At the least, TXDOT requests modification of the sentence so that non-regulatory goals are not misinterpreted as regulatory requirements.

Response: TCEQ recognizes that there are items in a TMDL and TMDL I-Plan that do not apply to stormwater. For clarification purposes, TCEQ revised the last sentence of Part II.C.4 as follows: "For consistency with the construction stormwater-related items in an approved TMDL, the SWP3 must be consistent with any applicable condition, goal, or requirement in the TMDL, TMDL Implementation Plan (I-Plan), or as otherwise directed by the executive director."

Comment: TAB comments that in the second paragraph of the section, the language authorizes a discharge of pollutants of concern to an impaired water body as long as the discharge meets the criteria included in an established TMDL and developed SWP3. However, TAB notes that in the first paragraph that the language does not authorize a discharge of pollutants of concern under the general construction permit from a new source or new discharge if the operator is discharging to an impaired water body that does not have an established TMDL. TAB comments that requiring an individual permit for discharges from new sources and new discharges to impaired water with no established TMDL will significantly impact the cost and scheduling of construction activity with limited environmental benefit. TAB further notes that there are significant costs for a project to remain dormant while seeking individual permit coverage.

TAB suggests that TCEQ consider an alternate method of granting permit coverage in cases where the project discharges to an impaired water body that does not have an established TMDL. For example, the permit could first define the impact zone or distance from the project to the impaired water that will trigger the need for the alternate method of obtaining permit coverage. Next, the operator could develop a SWP3 to include appropriate BMPs to address the potential discharges of pollutants of concern, and then submit the SWP3 to TCEQ for comment and approval. Once

evaluated and approved, TCEQ could allow permit coverage under the CGP rather than requiring the operator to obtain an individual permit.

Response: Part II.C.4 does not prohibit coverage under the CGP for discharge of stormwater associated with construction activities into water bodies that do not have a TMDL. This section only applies to discharges to impaired receiving waters with TMDL and TMDL I-Plan requirements. If the construction site discharges stormwater to a receiving water that does not have an approved TMDL, an individual permit is not required.

### **Part II.C.11.**

Comment: TAB comments that this section added limitations on discharges that would otherwise be covered by the Endangered Species Act (ESA). TAB comments that there is not enough information provided regarding how a permittee will address these requirements. TAB comments that more information is needed on ways to comply with ESA requirements and utilize the proposed CGP. For example, if the ESA requirements are addressed through federal coordination and permitting programs, TAB comments that it is not clear why this section prohibits the use of the CGP. TAB notes that in the EPA CGP, if a permit applicant can demonstrate that they meet certain criteria to address the protection of species that are federally listed as endangered or threatened under the ESA or federally designated critical habitat then they are eligible to use the CGP. Project Compliance LLC asks whether the SWP3s must make any mention of whether or not endangered species are on or around a construction site. TXDOT requests modifying the first sentence to read: "...discharges that would adversely affect a listed endangered or threatened species or its critical habitat are not authorized by this permit, unless the requirements of the Endangered Species Act (ESA) are satisfied." TXDOT comments that it would not make sense to require an individual TPDES permit if an issue is already addressed through the proper regulatory process. Plano comments that the use of the phrase "...Federal requirement related to endangered species..." is very vague and open to interpretation. Plano requests that TCEQ provide clarification for site operators as to what is specifically required in their SWP3 document related to this item, if anything.

Response: The permit was previously submitted to the United States Fish and Wildlife Service (USFWS) for review and evaluation. USFWS did not request any changes to the permit regarding the language on the potential impact on any endangered species. The permit does not specifically include the federally listed species that might be impacted by the permit because the minimum SWP3 permit requirements must be met regardless of whether or not the discharge of stormwater from the site is to receiving waters that serves as habitat for listed species. The permit requires compliance with water quality standards approved by EPA for all areas of the state. These water quality standards are established in accordance with 30 TAC Chapter 307 to protect both aquatic and aquatic dependent species. Water quality standards approved by EPA are reviewed and analyzed by USFWS for consistency with ESA mandates. If there are any ESA requirements that are applicable to the area where the construction activity is occurring, then the SWP3 must specifically address these ESA requirements.

In response to the comments, TCEQ revised the first sentence of Part II.C.11. as follows: “Discharges that would adversely affect a listed endangered or threatened aquatic or aquatic-dependent species or its critical habitat are not authorized by this permit, unless the requirements of the Endangered Species Act are satisfied.”

#### **Part II.D.1.(b)**

Comment: TXDOT requests modifying the provision regarding operators of ongoing construction activities such that the applicable section reads: "...an NOT to terminate coverage or an NOI to renew authorization..." is required to be submitted within 90 days so that projects that will reach final stabilization within that time may terminate coverage without first applying for coverage under the new CGP.

Response: TCEQ revised the permit language as requested. Part II.D.1.(b) of the CGP now reads as follows: “Ongoing Construction - Operators of large construction activities continuing to operate after the effective date of this permit, and authorized under TPDES general permit TXR150000 (effective on March 5, 2008), must submit an NOI to renew authorization or a NOT to terminate coverage under this general permit within 90 days of the effective date of this general permit.”

#### **Part II.E.**

Comment: The Army Corp of Engineers asks if MS4 notification is required to be sent only to MS4s that are regulated or is notification required to un-regulated MS4s as well. Also, the Army Corp of Engineers asks whether TCEQ has a publicly accessible database so that permittees can confirm what MS4s require notification.

Response: The permit requires each construction operator to notify the operator of any MS4 receiving the stormwater discharge from the construction site, regardless of whether the MS4 is regulated or not. Determining whether an MS4 operator is regulated, authorized under a waiver, or not regulated can be more difficult for the construction site operator than simply providing the required notice if it is discharging into any MS4. The permit requirements ensure that the notices will be made available to any MS4 operator receiving discharges from the construction site. Permittees can search the TCEQ Central Registry to determine if a public entity has a MS4 permit. The Central Registry website can be searched at: <http://www.tceq.texas.gov/>.

#### **Part II.E.2(c)**

Comment: LCRA comments that under Part II.E.2(c), the primary operator of a small construction site must provide a copy of the signed and certified construction site notice to the operator of any MS4 receiving the discharge at least two days prior to commencing construction activities. However, LCRA notes that under Part II.E.3(d), the primary operator of a large construction site must provide a copy of the signed Notice of Intent (NOI) to the operator of any MS4 receiving the discharge prior to commencing construction activities. LCRA recommends requiring changing the small

MS4 notification requirement, to reflect the same NOI notification requirements as the large construction sites.

Response: In response to the comment, Part II.E.2(c) was revised to read: "...provide a copy of the signed and certified construction site notice to the operator of any municipal separate storm sewer system (MS4) receiving the discharge prior to commencement of construction activities." The specific two day requirement was removed for consistency.

### **Part II.E.3.**

Comment: Harris County recommends adding back the following language was removed from the language in this section in the previous version of the CGP because removing it adversely impacts the county: "All primary operators must also post a copy of the signed NOI at the construction site in a location where it is readily available for viewing by the general public, local, state and federal authorities prior to commencing construction activities, and must maintain the NOI in that location until completion of the construction activity."

Harris County comments that in fulfilling its requirements under a joint TPDES Phase 1 MS4 permit and as the local authority that inspects and enforces water quality violations, utilizes the information in an NOI to conduct field investigations at construction sites. For instance, if an investigator notes a violation during an investigation, Harris County may use the contact information in the NOI to notify the operator of the violation. Additionally, a posted NOI provides notice that the operator has applied for coverage under the CGP. Such information is especially important when key operator staff is off-site and Harris County investigators need to perform an inspection. Accordingly, by removing the posting requirement, a readily available source of information is lost and Harris County investigators' workload is increased, thus impacting the ability to monitor and compel compliance at these sites.

Response: The removal of the requirement was the suggestion of TCEQ stormwater inspectors. The permit already requires that a site notice be posted and a copy of the NOI must be included as part of the SWP3, which must be retained on-site or be made readily available at the time of an on-site inspection. For this season, TCEQ declines to add the language back to the permit.

### **Part II.E.3.(d)**

Comment: Plano comments that if a secondary operator is required to have an SWP3, then they recommend adding the following to paragraph (d): "Provide a copy of the signed and certified Secondary Operator construction site notice to the operator of any MS4 receiving the discharge at least two days prior to commencement of construction activities."

Response: In response to the comment, TCEQ revised the permit to add a requirement for secondary operators to provide a copy of the signed Secondary Operator site notice to the operator of any MS4 that receives stormwater discharges from the construction

site. This new requirement was added as Part II.E.3.(f), and reads as follows: “all secondary operators must provide a copy of the signed and certified Secondary Operator construction site notice to the operator of any MS4 receiving the discharge prior to commencement of construction activities.”

#### **Part II.E.8.(f)**

Comment: TXDOT comments that if multiple operators have agreed on a shared SWP3, an operator who under that SWP3 is not responsible for preparation of the SWP3 in compliance with the CGP, should not be required to certify the plan was developed in accordance with the CGP when a different operator has assumed responsibility to prepare the SWP3 and make the certification. Secondly, TXDOT comments that while the required confirmation only applies to "applicable" local requirements, for TXDOT projects it is especially difficult and confusing for a contractor to confirm the applicable local requirements. With respect to certain TXDOT contracts, it desires to be a primary operator and responsible for the preparation of the SWP3 in compliance with the CGP. TXDOT has no objections to making the required confirmation in the NOI as proposed, but does not believe it is reasonable or necessary to require the same confirmation from an operator who did not develop the plan.

Therefore, TXDOT recommends adding the following phrase at the end of (f): “...for multiple operators who prepare a shared SWP3, the confirmation for an operator may be limited to its obligations under the SWP3 provided all obligations are confirmed by at least one operator.”

Response: TCEQ revised Part II.E.8.(f) of the permit as requested. The requirement now reads as follows: “confirmation that a SWP3 has been developed in accordance with this general permit, that it will be implemented prior to construction, and that it is compliant with any applicable local sediment and erosion control plans; for multiple operators who prepare a shared SWP3, the confirmation for an operator may be limited to its obligations under the SWP3 provided all obligations are confirmed by at least one operator;...”

#### **Part II.E.8.(h)**

Comment: TXDOT comments that in some cases (e.g. particularly in west Texas, where few waters have been classified), the first classified segment that is hydrologically connected to a project's discharge location may actually be a hundred or more miles from the project. TXDOT requests modifying this provision to require the segment number if there is a classified segment within a maximum distance downstream (e.g. within one stream mile).

Response: Each receiving stream has its own watershed, and the drainage area of a watershed is not determined by distance. Any pollutant that is discharged into a receiving water that drains into a watershed has the potential to reach any segment of that watershed. Therefore, TCEQ declines to make the requested change.

## **Part II.H.2.**

Comment: TAB recommends changing the term "receiving stream" to "receiving water" in this section for consistency with the term used in other sections of the CGP.

Response: In response to the comment, TCEQ changed the term "receiving stream" to "receiving water" in this section.

## **Part III**

Comment: Project Compliance, LLC comments that throughout the permit the defined term "operator" is used, but in the first sentence of Part III, the permit uses the term "regulated construction site operators." Project Compliance, LLC comments if this phrase has the same meaning as "operator" as used throughout the permit, why not just use the one-word description for consistency.

Response: The intent of Part III is that all operators who are associated with construction projects that are regulated under the CGP must prepare a SWP3. For that reason, the section uses the term "regulated construction site operators." TCEQ declines to make the change, as the term is consistent with the existing CGP and with similar language in EPA's 2012 CGP.

Comment: Plano comments that if a secondary operator is required to have a SWP3, then the text in the first paragraph does not match that requirement and needs to be modified similar to the following: "Secondary operators must either prepare their own SWP3 or participate in a shared SWP3 that covers the areas of the construction site where they have control over the plans and specifications."

Response: The second paragraph of Part III states that individual operators may either prepare separate SWP3s that cover only their portion of the construction project, or they participate in the development of a single comprehensive SWP3. It is the intent of the permit that secondary operators are included under "operator." Therefore, no revisions were made to the permit language in response to the comment.

## **Part III.A.**

Comment: TXDOT requests adding the following sentence as the second sentence of this section: "The SWP3 may provide that one operator is responsible for preparation of an SWP3 in compliance with the CGP and another operator is responsible for implementation of the SWP3 at the project site." TxDOT believes the proposed change is necessary to make the CGP clear that multiple operators responsibilities under a shared SWP3 may be based on a geographic division of a project site or based on a division of roles (i.e. one operator who is responsible for preparing the SWP3 and another operator who is responsible for implementing the SWP3).

Response: In response to the comment, TCEQ added the requested sentence as a new Part III.A.3. The new section now reads as follows: "The SWP3 may provide that one

operator is responsible for preparation of an SWP3 in compliance with the CGP and another operator is responsible for implementation of the SWP3 at the project site.”

#### **Part III.D.1.**

Comment: TAB comments that this section states that a copy of the SWP3 must be onsite if there is an onsite office and also states that if there is not an onsite office; one must post the location where the plan can be found. However, TAB notes that the section goes on to state that the plan must be made available for any inspector when he/she arrives to do an inspection. TAB recommends adding the following or something similar for clarity: "If the plan is kept offsite the permittee shall have up to 24 hours to produce said plan to the inspector after proper notification."

Response: In response to the comment, TCEQ added the following two sentences at the end of Part III.D.1.: “If the SWP3 is retained off-site, then it shall be made available as soon as reasonably possible. In most instances, it is reasonable that the SWP3 shall be made available within 24 hours of the request.”

#### **Part III.D.2.**

Comment: Harris County comments that the following language was omitted from the draft version of the CGP and requests it be added back to the permit because its absence adversely impacts the county: “In addition to the requirement to post the NOI.” Harris County notes that in the previous version of the CGP this section read: “In addition to the requirement to post the NOI, a primary operator of a large construction activity must post the site notice provided in Attachment 4 of this permit near the main entrance of the construction site.”

Harris County comments that in fulfilling its requirements under a joint TPDES Phase 1 MS4 permit and as the local authority that inspects and enforces water quality violations, utilizes the information in an NOI to conduct field investigations at construction sites. Such information is especially important when key operator staff is off-site and Harris County investigators need to perform an inspection. Accordingly, by removing the posting requirement, a readily available source of information is lost and Harris County investigators’ workload is increased, thus impacting the ability to monitor and compel compliance at these sites.

Response: The removal of the language was the suggestion of TCEQ stormwater inspectors. The permit already requires that a site notice be posted and a copy of the NOI must be included as part of the SWP3, which must be retained on-site or be made readily available at the time on an on-site inspection. For this season, TCEQ declines to add the language back into the permit.

#### **Part III.F.1.(c)**

Comment: TAB comments that language was added at the end of this section that may be difficult for home builders to meet. TAB comments that the added language reads

"...including estimated start dates and duration of activities." However, TAB notes that the first part of this section already requires a description of the intended schedule or sequence of activities. TAB comments that due to the fact that the proposed new requirement appears to be a commercial type of scheduling exercise, it is suggested that there should be an exception for residential construction.

Response: TCEQ added the language "including estimated start dates and duration of activity" to the CGP at the request of EPA. The added language is consistent with that in EPA's 2012 CGP. However, please note that these dates are estimates only and may be changed. If changes occur due to unforeseen circumstances or for other reasons, the requirement is not meant to "lock in" the operator to meeting these projections. When departures from initial projections are necessary; this should be documented in the SWP3 itself or in associated records, as appropriate.

### **Part III.F.1.(g)(i)**

Comment: TAB comments that (g)(i) requires a detailed map showing drainage patterns anticipated before grading activities. TAB comments that this requirement showing where the water drains before the start of construction could be problematic because many homebuilders do not get topographic information on each individual lot. TAB notes that those builders can determine how water will drain after grading is completed, but may not have the proper information to determine drainage patterns before the grading activity. TAB comments that to get such information may add another survey and additional costs for building the home. TAB recommends deleting the "before" requirement.

Response: TCEQ agrees that determining drainage patterns before grading activities commence may be difficult for some construction developments. In response to the comment, TCEQ revised Part III.F.1.(g)(i) to remove "before" from the requirement. This change is consistent with the existing CGP, and the section now reads: " (i) drainage patterns and approximate slopes anticipated after major grading activities."

### **Part III.F.1.(g)(iii)**

Comment: TXDOT requests moving this provision from Part III.F.1(g) (contents of the site map) to Part III.F.1 (project description). TXDOT comments that a written description of buffers, in some cases, could more effectively communicate their location (e.g. "A 10-foot vegetated buffer will be maintained along the length of the project"), without cluttering the site map. Also, TXDOT notes that it could be problematic to include off-site buffers (which are allowed by Part III.G.1.(h)) on the project's site map, depending on where they are in relation to the area covered by the site map.

Response: TCEQ declines to make the requested change to Part III.F.1.(g), as the provision is consistent with the existing CGP. The permit does not preclude the operator from providing a narrative description of the structural controls (buffers) in addition to indicating their locations on the site map.

However, in response to this comment and others, TCEQ revised Part III.G.1.(i) of the permit to remove the reference to buffer areas that the permittee does not own or that are otherwise outside their operational control. See Part III.G.1.(h) and (g) of this response for the specific language.

### **Part III.F.1.(g)(vi)**

Comment: TAB comments that language was added requiring a detailed map "indicating impaired waters." TAB comments that there were concerns expressed by their members that this cannot be reasonably determined and that the receiving waters are oftentimes quite distant from the site. Questions included the following: 1) If water runs two or three miles through drainage ditches and finally runs into a creek or river that is "impaired," do home builders have to note that on the site map; and 2) How far away is considered far enough away to not include such on a site map. TAB suggests deleting this new requirement.

Response: The requirement to indicate water bodies that are listed as impaired is consistent with the existing CGP and EPA's 2012 CGP. Each receiving water drains into a particular watershed, and the drainage area of a watershed is not determined by distance. It is possible for any pollutant discharged into the receiving stream to reach any segment of the watershed, so if there is an impaired water body in the discharge route up to the first classified segment, it must be indicated on the site map.

Comment: Plano comments that the additional wording at the end of the item should be corrected to read: "...to the site, and also indicating those that are impaired waters;..." Plano comments that as currently written it appears to only require showing surface waters that are impaired.

Response: TCEQ revised the language as requested. Part III.F.1.(g)(vi) of the permit now reads as follows: " (vi) surface waters (including wetlands) either at, adjacent, or in close proximity to the site, and also indicating those that are impaired waters;"

### **Part III.F.1.(g)(viii)**

Comment: TAB comments that language was added requiring a detailed map showing "designated sites where vehicles will exit onto paved roads." TAB comments that this appears to be applicable to commercial construction activities, not residential construction activities. TAB states that concern arises if applied to home building activities, which are significantly different from commercial building activities. TAB notes that in some cases, site access to a residential site may vary from day-to-day. On a similar note, TAB comments that one of the most misapplied BMP requirements is that each site is to have a crushed stone entryway about 20 feet wide by 50 feet long. Again, TAB comments that this appears to be applicable to commercial construction sites, but impractical for residential construction activities. TAB suggests TCEQ include an exception for residential construction in the CGP in both instances.

TXDOT requests deleting the requirement that the site map show the "designated sites where vehicles will exit onto paved roads: TXDOT comments that on a long, linear project where construction may progress rapidly from one end of the project to the other, vehicle exits can constantly change. Keeping the site map current with vehicle exit locations would be an administrative burden that, since vehicle exits must be inspected on a defined schedule and sediment must be controlled to the extent practicable regardless, would not result in any additional environmental benefit. TXDOT comments that this requirement is more appropriate for a traditional, box-shaped construction project, where the vehicle exits would rarely, if ever, change.

Response: In response to the comments, TCEQ revised Part III.F.1.(g)(ix) as follows: "(ix) designated points on the site where vehicles will exit onto paved roads (for instance, this applies to construction transition from unstable dirt areas to exterior paved roads)." This language is consistent with site map requirements in EPA's 2012 CGP.

Designated construction entry and exit points need to be monitored to prevent off-site tracking of sediment. This requirement is intended to apply to construction from unstable dirt areas to exterior paved roads. Once access roads are paved within a residential development, entry point tracking may no longer be required.

Comment: Plano comments that the additional new language at the end of this sub-paragraph should be separated into a new sub-paragraph as follows: "(viii) vehicle wash areas and (ix) designated sites where vehicles will exit onto paved roads."

Response: In response to the comment, TCEQ separated the former (viii) into sections (viii) and (ix) and revised (ix) as indicated in the previous response.

### **Part III.F.1.(j)**

Comment: Round Rock comments that including a copy of the entire general permit within the SWP3 seems redundant since permittees are certifying that they have met the requirements of the general permit. Round Rock also comments that this requirement also makes it difficult to include the SWP3 in construction plans where it would be most useful to contractors. Therefore, Round Rock recommends removing "(j) A copy of this TPDES general permit;..." from the CGP.

Response: The purpose of the requirement is so that operators will have a copy of the CGP for reference in the event changes occur at the construction site that requires revision of the SWP3. In the event that there are multiple operators at the site, having the CGP as part of the SWP3 helps ensure that each operator understands his or her responsibilities under the permit.

### **Part III.F.1.(l)**

Comment: TAB comments that this subsection regarding "storm drain inlets" could prove difficult to implement if the inlets are not right in front of the lot. TAB comments

that the phrase "in the immediate vicinity" is too vague and could lead to inconsistent enforcement.

Response: The requirement to show storm drain inlets in the immediate vicinity of the site on the site map only applies to those inlets that are easily identifiable from the site or from a publicly accessible area immediately adjacent to the site.

### **Part III.F.2. (b)**

Comment: LCRA comments that often on projects such as transmission line projects, there are areas on the rights of way that are not intended to be stabilized because they will continue to be utilized in their current state, i.e. access roads, staging areas, transmission pole pads. In addition, LCRA notes that some of these areas are also used by landowners, such as access roads or paths. LCRA recommends revising the CGP to include a new paragraph Part III.F.2(b)(v) similar to the note in the EPA's 2012 CGP, Section 2.2, which reads as follows with TCEQ substituted for EPA: "(v) TCEQ does not expect that temporary or permanent stabilization measures to be applied to areas that are intended to be left un-vegetated or un-stabilized following construction (e.g., dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, or materials)."

Response: TCEQ added the requested language to the permit as Part III.F.2(b)(v).

### **Part III.F.2. (b)(iii)**

Comment: TAB comments that the initiation of erosion control and stabilization language was changed from "as soon as practical" in the current CGP to "immediately" in this version of the CGP. TAB comments that this creates significant enforcement issues due to the fact that actions cannot always be done immediately. TAB requests that the language be changed to read "within 48 hours" or a similar time frame. Plano comments that replacing "as soon as practicable" with "immediately" in this paragraph is not necessary. Plano comments that the language in the current CGP is adequate for any jurisdiction that actively enforces the CGP requirements. Luminant comments that this provision, included in the last two versions of the CGP, had a 21-day exception to initiating soil stabilization in the event that construction activities temporarily cease for more than 14 days, but would resume within 21 days. To account for such situations, Luminant requests that the 21-day exception be added back to the CGP. TXDOT comments that it is not always appropriate to immediately initiate site stabilization when construction activities temporarily cease for short periods of time (e.g. when weather temporarily prohibits work). TXDOT requests that that TCEQ not require the initiation of site stabilization if work will resume within 14 calendar days. Also, TXDOT requests, at minimum, that TCEQ not require the completion of stabilization in less time than EPA does (i.e. within 14 days of the initiation of stabilization, rather than within 14 days after the construction activity has ceased).

TXDOT recommends wording (b)(iii) as follows: "Erosion control and stabilization measures must be initiated immediately in portions of the site where construction

activities have temporarily ceased and will not resume for a period exceeding 14 calendar days. Stabilization measures that provide a protective cover must be initiated immediately in portions of the site where construction activities have permanently ceased. Except as provided in (A) through (D) below, temporary stabilization must be completed within 28 calendar days after the initiation of soil stabilization no more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased and final stabilization must be achieved prior to termination of permit coverage:...”

Response: The term “immediately” is used to define the deadline for initiating stabilization measures. In the context of this requirement, “immediately” means as soon as practicable, but no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased. This definition was taken from EPA’s 2012 CGP.

However, in response to the comments from TAB and Plano, TCEQ revised Part III.F.2(b)(iii) so that it reads as follows: “Erosion control and stabilization measures must be initiated immediately in portions of the site where construction activities have temporarily ceased and will not resume for a period exceeding 14 calendar days. Stabilization measures that provide a protective cover must be initiated immediately in portions of the site where construction activities have permanently ceased. The term ‘immediately’ is used to define the deadline for initiating stabilization measures. In the context of this requirement, ‘immediately’ means as soon as practicable, but no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased. Except as provided in (A) through (D) below, these measures must be completed as soon as practicable, but no more than 14 calendar days after the initiation of soil stabilization measures:”

Federal regulations in 40 CFR §450.21 require that soil stabilization measures must be initiated immediately if construction activities have ceased and will not resume for a period exceeding 14 calendar days. This requirement is echoed in the CGP, and is the reason why the 21-day soil stabilization exception in the existing permit was removed. If work on the site will resume within 14 calendar days, site stabilization is not required at that time. TCEQ declines to change the deadline for completing temporary stabilization from 14 to 28 days, as the 14 day deadline is consistent with the requirement in both the existing permit and EPA’s 2012 CGP.

Comment: Plano and Project Compliance LLC request that TCEQ provide a real world definition or some guidance for the determining what is meant by the phrase “temporarily ceased.” Project Compliance LLC comments that construction often temporarily ceases every night, every weekend, and over holidays and without defining “temporarily ceased” it could be argued by some that stabilization measures must be initiated every night, weekend, and holiday.

Response: For the purposes of the CGP, earth-disturbing activities have temporarily ceased when clearing, grading, and excavation within any area of the site that will not include permanent structures will not resume (i.e., the land will be idle) for a period of

14 or more calendar days, but such activities will resume in the future. This interpretation is consistent with the existing TCEQ permit and with EPA's 2012 CGP.

Comment: TXDOT recommends adding a new (b)(iii)(D) that states: "If the initiation and/or completion of vegetative stabilization is affected by circumstances beyond the control of the permittee vegetative stabilization must be initiated and/or completed as soon as conditions or circumstances allow it on the site. The requirement to initiate stabilization is triggered as soon as it is known with reasonable certainty that work will be stopped for 14 or more additional calendar days." TXDOT notes that their suggested language paraphrases the exception included in EPA's 2012 CGP.

Response: In response to TxDOT's comment, TCEQ added a new paragraph (D) to Part III.F.2(b)(iii) of the CGP to address situations where the initiation or completion of stabilization measures cannot be performed due to circumstances beyond the control of the permittee. The new language is consistent with a similar requirement in EPA's CGP and reads as follows: "If the initiation or completion of vegetative stabilization is affected by circumstances beyond the control of the permittee, vegetative stabilization must be initiated or completed as soon as conditions or circumstances allow it on the site. The requirement to initiate stabilization is triggered as soon as it is known with reasonable certainty that work will be stopped for 14 or more additional calendar days."

#### **Part III.F.2.(b)(iii)(a)**

Comment: Luminant proposes that language be added to this provision to include other extreme weather conditions; i.e. a series of significant rain events, flooding, etc. TXDOT requests that TCEQ include provisions that allow exceptions to both the initiation and completion of stabilization timeframes in circumstances beyond the permittee's control. TXDOT comments that many factors can influence the timing of stabilization initiation and completion, including weather, season, location of the project, availability of materials, etc. For example, in December and January, the ground may simply be too cold to initiate temporary stabilization. TXDOT also requests an exception to the initiation of temporary stabilization in cases where construction is expected to resume within 14 days, but unexpectedly exceeds that timeframe.

Response: To address situations where the initiation or completion of stabilization measures cannot be performed due to circumstances beyond the control of the permittee (e.g. problems with the supply of seed stock or with the availability of specialized equipment, unsuitability of soil conditions due to excessive precipitation or flooding), TCEQ added TxDOT's suggested language as paragraph (D) to Part III.F.2(b)(iii) of the CGP. This language is consistent with a similar requirement in EPA's 2012 CGP. See the previous response for the specific language.

Comment: Project Compliance, LLC, Plano, and TXDOT comment that there appears to be a conflict between Part III.F.2(b)(iii) and Part III.G.1(h)(2). The former section requires erosion controls and stabilization measures to be completed within 14 days. The latter section requires soil stabilization when earth disturbing activities are not to resume within 14 calendar days and gives 14 days after initiation to complete soil

stabilization measures. LCRA comments there is a big difference between the two. Under the first, you have to complete your temporary stabilization within the 14 days, but under the second as long as stabilization begins within the 14-day period you have an additional 14 days to complete the work. Project Compliance, LLC asks whether these should be the same or if there is some reason they are different. TXDOT questions the practicality of the time limits proposed for "initiation of stabilization" and "completion of stabilization."

Response: In response to the comments, TCEQ revised the last sentence of Part III.F.2(b)(iii) to state that, except for the reasons provided in the CGP, stabilization must be completed as soon as practicable, but no more than 14 calendar days after the initiation of soil stabilization measures. This change makes this section consistent with Part III.G.1(h)(2), which requires that temporary stabilization must be completed within 14 days after initiation of soil stabilization measures. The revised sentence in Part III.F.2(b)(iii) now states: "Except as provided in (A) through (D) below, these measures must be completed as soon as practicable, but no more than 14 calendar days after the initiation of soil stabilization measures:..."

#### **Part III.F.2.(c)(i)(A)(4)**

Comment: DART comments that the currently proposed language (also in Part III.G.6) regarding sedimentation basins states that a permittee shall utilize outlet structures that withdraw water from the surface, unless infeasible. DART comments that this language is too confining and doesn't appear to allow for a permittee constructing a basin to function as both a sedimentation basin and a secondary containment structure for petroleum products as part of a Spill Prevention Control and Countermeasures Plan. DART recommends that the permit language be modified to allow for optional basin discharge structures that can be modified depending on the discharge requirements of the situation. For example, a basin would utilize surface withdrawal discharge for sedimentation purposes during precipitation events; no discharge during dry weather for petroleum containment; and bottom (underflow) discharge for petroleum containment during precipitation. DART suggests modifying the language of (A)(4) and Part III.G.6. to replace the phrase "unless infeasible" with the phrase "when possible." Plano comments that the last portion of this sentence is redundant and not necessary. Plano recommends removing the following text "..., as required in Part III.G.6 of this general permit."

Response: It is not the intent of the permit that sedimentation basins at construction sites be used for anything other than stormwater retention. Therefore, TCEQ declines to make the suggested revision. However, in response to Plano's comment, TCEQ removed the phrase "as required in Part III.G.6 of this general permit" from Part III.F.2.(c)(i)(A)(4). That section now reads: "(4) Unless infeasible, when discharging from sedimentation basins and impoundments, the permittee shall utilize outlet structures that withdraw water from the surface."

Comment: TAB comments that language added at the end of the second paragraph of this section would require recording rainfall amounts, as well as beginning and ending

dates for drought conditions, in the SWP3. TAB comments that the requirement for drought conditions is impractical because droughts do not have exact start and end dates, thus making it almost impossible to comply with the new requirements. Also, in regards to recording the rainfall, TAB comments that if you do inspections every 14 days and on rain events it might make sense to record rainfall, but that if you do weekly inspections (and not for rain events), then keeping track of rainfall amounts is unnecessary.

Response: In response to the comment and to clarify the provision, the last sentence of the second paragraph in Part III.F.7.(a) was revised as follows: “The SWP3 must also contain a record of the total rainfall measured, as well as the approximate beginning and ending dates of winter or drought conditions resulting in monthly frequency of inspections.” This requirement is consistent with EPA’s 2012 CGP.

Comment: TAB notes that in the third paragraph, when doing alternative weekly inspections, they are required to occur on a specifically defined day. TAB suggests changing the requirement to “once per week” to give more flexibility rather than having to restrict the inspections to one specific day of the week.

Response: The option to inspect controls once every seven (7) calendar days is consistent with the existing TCEQ permit and EPA’s 2012 CGP. TCEQ declines to change the inspection frequency to once per week. However, in response to the comment, TCEQ revised identical sentences in Part III.F.7.(a) and (b) to remove the requirement that, if the alternative schedule is developed, the inspection must occur on a specifically defined day. The applicable sentence in both sections now reads: “If this alternative schedule is developed, then the inspection must occur regardless of whether or not there has been a rainfall event since the previous inspection.”

### **Part III.F.7.(a)**

Comment: Plano asks that since there is no requirement in the current CGP to measure rainfall, does the new language at the end of this paragraph impose a rainfall monitoring requirement. Plano says if the answer is “yes,” it wants to know whether it only imposed during the winter conditions and in the arid, semi-arid, or drought-stricken areas. Plano comments that the inclusion of the beginning and ending dates in the SWP3 is appropriate, but the imposition of rainfall monitoring is not necessary.

Response: The requirement to measure the rainfall is for periods where there is a reduction in the inspection frequency due to arid, semi-arid, or drought conditions. The operator must measure the rainfall to determine if a storm event of 0.5 inches or greater has occurred at the construction site, and must document the approximate beginning and ending dates of winter or drought conditions resulting in monthly frequency of inspections.

### **Part III.F.7.(b)**

Comment: Plano comments that the third sentence of this paragraph should have the phrase "or greater" inserted after the text ending with "...a storm event of 0.5 inches" to be consistent with the remainder of the CGP, which states "a storm event of 0.5 inches or greater."

Response: In response to the comment, TCEQ revised the language as requested to be consistent with the remainder of the CGP. The third sentence of Part III.F.7.(b) now reads: "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 or greater, but representative inspections may be performed."

### **Part III.G.**

Comment: TAB comments that the entirety of this section appears to be geared toward commercial construction and is impractical for home building. TAB recommends that the entire section exempt residential construction. Specifically, TAB comments that the first paragraph introduces the term "best practicable control technology currently available (BPT)." TAB says this term creates confusion among its members and asks who or what will determine what BPTs are currently available. TAB also notes that subsections 1(a) and (b) reference volume, velocity, and flow rates. TAB states that this appears to be geared toward commercial building and that residential builders generally do not engage in such activity and suggests that residential construction be exempt from these requirements. Additionally, TAB comments that in the last part of subsection 1(e) requiring "soil characteristics, including the range of the soil particle sizes expected to be present at the site" also appears to be geared toward commercial building. TAB comments that home builders generally do not engage in such activity and suggests exempting residential construction from this requirement. Finally, TAB comments that Subsections (2) through (6) appear aimed at commercial construction activities and are impractical for home building. TAB also suggests here that an exception be made for residential construction activities.

Response: The requirements in Part III.G were taken directly from the Construction and Development (C&D) Effluent Guidelines in 40 CFR §450.21 and adopted by reference by TCEQ in 30 TAC §305.541. These requirements are applicable to all construction sites, and there are no exemptions provided in the federal regulations for residential construction activities. However, if a requirement is found to be infeasible, it must be documented in the SWP3.

### **Part III.G.1.(b)**

Comment: LCRA comments that this section states that "... controls must be designed, installed, and maintained to control stormwater discharges, including both peak flow rates and total stormwater volume,... to minimize erosion at outlets..." LCRA understands the need to control stormwater discharges on conventional projects where stormwater is usually channelized; however, transmission line projects do not usually

cause changes to existing topography or change existing stormwater flow patterns. LCRA comments that applying this requirement to a transmission line project when stormwater flow is not channelized would be impracticable. LCRA recommends revising the language for consistency with EPA's 2012 CGP Section 2.1.1.1.a.ii, which reads as follows: "If any stormwater flow will be channelized at the site, stormwater controls must be designed to control both peak flowrates and total stormwater volume to minimize erosion at outlets and to minimize downstream channel and streambank erosion."

Response: In response to the comment, TCEQ revised Part III.G.1.(b) of the permit to include the suggested language from EPA's CGP as follows: " (b) If any stormwater flow will be channelized at the site, stormwater controls must be designed to control both peak flowrates and total stormwater volume to minimize erosion at outlets and to minimize downstream channel and streambank erosion;..."

### **Part III.G.1.(f)**

Comment: LCRA comments that this section contains the following requirement: "Direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration." LCRA states that due to the nature of a transmission line projects, this requirement may not be feasible. LCRA recommends that TCEQ revise the sentence to be similar to the language in section 2.1.1.2(b) of the EPA's 2012 CGP. The revised sentence would read: "Direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration..., unless infeasible."

Response: In response to the comment, TCEQ revised the second sentence of Part III.G.1.(f) to include the suggested language from EPA's CGP. The sentence now reads: "Direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;..."

### **Part III.G.1.(g)**

Comment: Amarillo objects to the requirement described in this section that builders minimize soil compaction and, unless infeasible, preserve topsoil. Amarillo requests deletion of paragraph (g) from the permit, or in the alternative clarify the language to focus upon minimizing soil compaction in post construction pervious areas such that compaction is comparable to what it was before construction, if feasible.

Response: The requirement in Part III.G.1.(g) is taken directly from the Construction and Development Effluent Guidelines in 40 CFR §450.21 and adopted by reference by TCEQ in 30 TAC §305.541. However, TCEQ recognizes that some projects may be designed to be highly impervious after construction with little or no vegetation remaining. In these cases, preserving topsoil at the site would not be feasible. In order to provide clarification, TCEQ revised Part III.G.1. to include the following clarification language from EPA's 2012 CGP in (g) and (h): "(g) Preserve native topsoil at the site, unless infeasible; and (h) Minimize soil compaction in post-construction pervious areas. In areas of the construction site where final vegetative stabilization will occur or where

infiltration practices will be installed, either: (1) restrict vehicle and equipment use to avoid soil compaction; or (2) prior to seeding or planting areas of exposed soil that have been compacted, use techniques that condition the soils to support vegetative growth, if necessary and feasible...;

### **Part III.G.1.(h)**

Comment: Amarillo comments that they agree that vegetative buffer strips are an effective and practical erosion and sediment control. However, Amarillo believes that they should be employed only when practical. Amarillo comments that the last sentence of this section provides questionable authorization that could encourage operators to claim buffer strips that are located on private or public property as BMPs even when they do not own or possess operational control of the claimed buffer strip. Amarillo recommends deleting the last sentence in paragraph (h) or revising the language in the last sentence to protect offsite property owners outside the operational control of the operator.

Response: TCEQ agrees that the sentence in question could be interpreted as a presumption of authorization that may contradict the property rights in the jurisdiction of the building project. Therefore, in response to the comment, TCEQ removed the last sentence in paragraph (h) that read: “Also, areas that the permittee does not own or that are otherwise outside their operational control may be considered areas of undisturbed natural buffer for purposes of compliance with this requirement.”

### **Part III.G.2.**

Comment: AEP comments that this section states that: “Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site.” AEP comments that the term “immediately” is not defined and leaves room for various interpretations. AEP suggests using the term “as soon as practicable” or other language that gives consideration to possible circumstances in the field that might affect the stabilization process (i.e. weather conditions, project size). Luminant comments that this provision no longer identifies legitimate weather-related delays such as flooding, repetitive rainfall events, ice or snow cover, etc. in the requirement to stabilize disturbed areas once activities have permanently ceased or will be temporarily ceased for more than 14 calendar days. To account for such situations, Luminant proposes that the following sentence be added to the end of the paragraph of this requirement: “In the event of extreme weather-related conditions that prohibits soil stabilization of the disturbed area, stabilization will be conducted as soon as practicable.” TXDOT requests that that TCEQ not require the initiation of site stabilization if work will resume within 14 calendar days. TXDOT recommends changing the deadline from 14 to 28 days for completing temporary stabilization after those activities have been initiated.

Response: In response to the comments, TCEQ added a new second sentence to Part III.G.2 to clarify the term “immediately” as it is used to define the deadline for initiating

stabilization measures. The new sentence states: “In the context of this requirement, ‘immediately’ means as soon as practicable, but no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased.”

In response to the other concerns raised by these comments, TCEQ refers the commenters back to Part III.F.2(b)(iii)(A), which contains language to address situations where extreme weather conditions prevent the immediate initiation of stabilization measures. In such cases, the permit requires that operators initiate stabilization as soon as practicable. In response to comments, TCEQ also added a new paragraph (D) to Part III.F.2(b)(iii), which also references situations where the initiation of stabilization measures is affected by circumstances beyond the control of the permittee. See Part III.F.2(b) of this response for additional discussion and changes made in response to public comment.

### **Part III.G.3.**

Comment: AEP comments that this section states that dewatering activities are prohibited, unless managed by appropriate controls. AEP suggests omitting the word “prohibited” and stating that dewatering is allowed only if managed by appropriate controls. Also, AEP comments that the CGP does not define the term “dewatering” and it is unclear if the permit is referring to dewatering of only stormwater, or a combination of stormwater and groundwater. AEP suggests defining what is meant by dewatering as used in this section.

Response: TCEQ thinks that the term “prohibited” best describes the intent of the permit, in that operators may not discharge groundwater or accumulated stormwater removed from excavations, trenches, foundations, vaults, or other similar points of accumulation, unless such waters are first effectively managed by appropriate controls. However, in response to the comment and to help clarify the requirement, a definition of “dewatering” taken from EPA’s 2012 CGP was added to Part I.B. – Definitions. That definition reads as follows: “Dewatering – The act of draining rainwater or groundwater from building foundations, vaults, and trenches.”

### **Part III.G.4.**

Comment: AEP notes that III.G.4. requires the implementation of chemical spill and leak prevention; and response procedures. AEP comments that spill prevention and control countermeasures are regulations not associated with stormwater pollution prevention and should not be required as part of the CGP. AEP suggests re-wording this requirement to state that the permittee is required to comply with all other state and federal regulations.

Response: Consistent with the C&D ELGs in 40 CFR Part 450, the CGP requires operators to design, install, and maintain effective pollution prevention measures in order to prevent the discharge of pollutants from the construction site. The implementation of chemical spill and leak prevention and response procedures is

required under 40 CFR §450.21(d)(2). Therefore, TCEQ declines to make the suggested change.

#### **Part V.5.**

Comment: Plano comments in regards to the concrete truck washout requirements, that the phrase "associated map" should be changed to "associated site map" to keep the CGP language consistent for SWP3s.

Response: TCEQ revised the language to state "associated site map" as requested.  
Part VII.8.

Comment: Plano comments that the use of the term "sludge use or disposal" in this standard permit condition is not appropriate for the CGP and should be removed.

Response: TCEQ agrees with the comment and revised Part VII.8. of the CGP as follows: "The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment." The revision is consistent with the duty to mitigate requirement in EPA's 2012 CGP.

#### **Part VII.9.**

Comment: TAB comments that the second and third sentences in this section add requirements regarding "adequate laboratory controls" and "back-up or auxiliary facilities." TAB comments that these phrases have led to concern and confusion among its members and recommends clarifying these phrases meanings.

Response: The "adequate laboratory controls" requirement is intended to provide minimum standards for analytical testing and reporting of permit limits. The "back-up or auxiliary facilities" requirement is for when back-up power for a treatment unit is needed. The requirements in Part VII.9. were taken directly from 40 CFR §122.41(e), and is also included in the EPA 2012 CGP. These are standard conditions that are required for all NPDES (TPDES in Texas) permits, and are included in the permit based on a request from EPA.