Fact Sheet and Executive Director's Preliminary Decision
Stormwater Discharges from Construction Activities - TXR150000

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

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Prepared by:	Wastewater Permitting Section
	Water Quality Division
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Date:	February 13, 2013
Permit Action:	Reissuance of a General Stormwater Permit for Construction Activities

I. Summary

The Texas Commission on Environmental Quality (TCEQ) is proposing a renewal of TPDES Construction General Permit (CGP), Permit No. TXR150000, issued on February 15, 2008 and effective on March 5, 2008, which authorizes discharges from construction sites into surface water in the state. The general permit specifies which construction activities must obtain permit coverage, which are eligible for waivers, and which may be required to obtain individual permit coverage. The general permit specifies that where discharges will reach Waters of the United States, a stormwater pollution prevention plan (SWP3) must be developed and implemented unless certain conditions are met. The general permit provides authorization for discharges from small construction sites, according to federal Phase II stormwater regulations finalized in the *Federal Register* of December 8, 1999.

The principal changes to the existing CGP include:

A. Revised the section entitled "Impaired Receiving Waters and Total Maximum Daily Load (TMDL) Requirements" to address discharges to impaired water bodies listed in accordance with Section 303(d) of the federal Clean Water Act (CWA). (permit Part II.C.4).

B. Added effluent limitations guidelines for regulated construction sites based on the federal Effluent Limitation Guidelines (ELGs) at 40 CFR §§ 450.21, 450.23, and 450.24, which consist of a series of Best Management Practices (permit Part III.G).

C. Clarified that on-site disposal of wash out water from concrete trucks may be authorized under this permit, provided that certain requirements are met and the wastewater is properly contained on site and there is no discharge to surface waters. In the existing permit, this authorization is limited to wash out from concrete trucks associated with off-site concrete production facilities. This change is consistent with the 2012 EPA CGP and provides more flexibility for regulated operators.

D. Added definitions and provided clarification of permit requirements using language that is consistent with the 2012 EPA CGP.

II. Executive Director's Recommendation

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

III. Permit Applicability and Coverage

A. This general permit would authorize the discharge of stormwater runoff associated with small and large construction sites to surface water in the state. This general permit would specify which sites may be authorized under this general permit, which are eligible for waivers, and which must be authorized by individual permit.

B. This general permit would authorize the discharge of stormwater associated with other industrial activities at construction sites as follows: Discharges of stormwater runoff from supporting activities, including concrete batch plants, asphalt batch plants, equipment staging areas, material storage yards, material borrow areas, and excavated material disposal areas that are located at, adjacent to, or in close proximity to the permitted construction site and directly support the construction activity; and do not operate beyond the completion date of the construction activity.

C. The general permit would not authorize the discharge of process wastewater. In addition, the general permit would not authorize other non-stormwater discharges, except for the following:

1. discharges from fire fighting activities (fire fighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);

2. uncontaminated fire hydrant flushings (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life), which include flushings from systems that utilize potable water, surface water, or groundwater that does not contain additional pollutants (uncontaminated fire hydrant flushings do not include systems utilizing reclaimed wastewater as a source water);

3. water from the routine washing of vehicles, the external portion of buildings or structures, and pavement where 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), where pressure washing is not conducted, and where the purpose is to remove mud, dirt, or dust;

4. water used to control dust;

5. potable water sources, including waterline flushings (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);

6. uncontaminated air conditioning condensate;

7. uncontaminated ground water or spring water, including foundation or footing drains where flows are not contaminated with industrial materials such as solvents; and

8. lawn watering and similar irrigation drainage.

The purpose of providing this list in the general permit is to clarify that certain non-stormwater discharges that may occur during normal activities at a construction site do not require additional permit coverage. Inclusion of this list in the general permit is not meant to prohibit the above discharges in an activity, such as a non-regulated construction activity, which would otherwise be allowed without a TPDES permit.

D. The on-site disposal of water resulting from the wash out of concrete trucks may be conducted at regulated construction sites, provided that certain requirements of the general permit are met. Operators may also find recommendations for addressing concrete wash out from the EPA at the following web site: http://cfpub.epa.gov/npdes/stormwater/swppp.cfm This web page also includes general guidance on developing a construction site SWP3.

E. The following discharges are not eligible for coverage under the proposed general permit, and must be authorized under an individual permit or an alternative general permit, if one is available:

1. Discharges that would cause or contribute to a violation of water quality standards or that would fail to protect and maintain existing designated uses of receiving waters;

2. New sources or new discharges of the constituents of concern to impaired waters, unless otherwise allowable under commission rules, applicable state law, and any total maximum daily load (TMDL) that exists for the applicable receiving water;

3. Discharges otherwise prohibited under existing state rules.

F. The following stormwater discharges are not eligible for coverage under the proposed permit and may require individual or alternative general permit coverage:

Discharges that occur after construction activities have been completed and after the construction site and any supporting activity site have undergone final stabilization.

G. Construction activities that would disturb less than one acre, including any greater common plan of development for the site, are not required to obtain permit coverage under the general permit nor an individual permit unless required by the executive director.

H. The following stormwater discharges are not under the authority of the commission, are not eligible for coverage under the general permit, and may require authorization from the EPA under a separate NPDES permit:

1. Stormwater runoff from construction activities occurring on Indian Country lands. (Information on the location and contact information for Indian Country Lands in Texas may be accessed at the following EPA web site: http://www.epa.gov/region6/6dra/oejta/tribalaffairs/index.html. Additionally, information on the contact information for federally recognized tribes may be found at: http://www.indians.org/Resource/FedTribes99/fedtribes99.html.)

2. Stormwater runoff from construction activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including transportation of crude oil or natural gas by pipeline.

IV. Permit Conditions

A. Notice of Intent and Site Notice

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

All primary and secondary operators must post a site notice in plain view at the construction site entrance prior to the commencement of construction activities and maintain the notice until either final stabilization occurs or control of the site is turned over to a separate operator. A copy of the NOI must also be supplied to the operator of any municipal separate storm sewer system (MS4) to which the operator discharges, so that the MS4 operator can conduct its own inspection and enforcement activities according to its NPDES or TPDES permit or local ordinances.

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

An NOI is not required for the authorization of certain discharges, as allowed by 40 CFR §122.28(b)(2)(v) and as adopted by reference in 30 TAC Chapter 281, where the executive director determines that an NOI is inappropriate. The proposed general permit incorporates this alternative as an option and automatically authorizes certain small construction activities if specific conditions are met. In making the determination that an NOI is inappropriate for small construction activities, the executive director considered the short-term nature of small construction activities, the number of construction sites that will be authorized, and the administrative burden on both the commission and the regulated community. The executive director also considered the nature and type of proposed discharges authorized under the general permit, the expected potential for toxic and conventional pollutants, and the expected volumes. The requirements and conditions of the general permit are appropriate to control the discharges from small construction sites authorized under the general permit and to protect water quality. The administrative burden on the permittee to submit an NOI and on the commission to respond to the NOI would be excessive and not directly necessary to control these discharges.

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

B. Stormwater Pollution Prevention Plan (SWP3)

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

   Waters of the United States are defined in the general permit. Waters of the United States do not include waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds, as defined in 40 CFR §423.11(m), that also meet the criteria of this definition). This exclusion applies only to manmade bodies of water that neither were originally created in Waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of Waters of the United States. Waters of the United States do not include previously converted cropland.

2. The required contents of the SWP3 are based on federal Phase II rules (December 8, *1999 Federal Register*) related to stormwater permitting, as well as the current TPDES general permit for large construction sites. The purpose of the SWP3 is to identify and address potential sources of pollution that are reasonably expected to affect the quality of stormwater discharges from the construction site, including off-site material storage areas, overburden and stockpiles of dirt, and borrow areas. Separate SWP3s may be developed for each construction site operator where multiple operators exist. However, the proposed permit would also allow a shared SWP3 to promote a more efficient and coordinated effort between multiple operators at a single site. The SWP3 may provide that one operator is responsible for the preparation of a SWP3 in compliance with the CGP, and another operator is

responsible for implementation of the SWP3 at the project site. Under this alternative, each individual operator would be required to submit an NOI for coverage, and each would be individually responsible for compliance with the terms of the permit in the areas of the site where the person is the responsible operator.

3. The specific requirements of the SWP3 include the following minimum provisions:

   a. A detailed project description, including a site map that indicates the site location, the construction site details, and information on receiving waters.

   b. A description of the structural and the non-structural controls (best management practices, or BMPs) that will be used to minimize pollution in runoff during construction, as well as stabilization practices during and at the completion of the activity.

   c. Demonstration of compliance with other state and local plans, such as the Edwards Aquifer Protection Program.

   d. A description of how BMPs will be maintained and how controls may be revised upon a finding that the control measures are either not working properly or adequately.

   e. A description of how inspections of BMPs will be conducted. Inspections are required at a minimum frequency of at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater during active construction activities. An alternative inspection schedule of once every seven (7) calendar days is also available. If this alternative schedule is developed, then the inspection must occur regardless of whether or not there has been a rainfall event since the previous inspection. Where sites have been temporarily stabilized, inspections must be conducted at least once every month. Special provisions allowing for representative inspections are provided for long, linear projects where access along the site is limited and travel along the site may damage stabilized areas or cause potential for erosion.

   f. Identification and description of the implementation of appropriate pollution prevention measures for all eligible non-stormwater components of the discharge.

C. Terminating Coverage

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

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

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

Stormwater runoff from certain small construction activities may be authorized under the general permit without being required to develop an SWP3 if construction occurs when there is a low potential for erosion. This option is consistent with the existing general permit, and is not available for large construction sites, including smaller construction sites that are part of a larger common development that will disturb five (5) or more acres. This option is available for stormwater discharges, and would not include authorization for non-stormwater discharges that are otherwise required to be permitted. These mechanisms for alternative authorization are included to encourage construction to occur during times when the potential for erosion is limited. The alternative requirements apply to small construction sites where the rainfall erosivity factor, or R-factor, is less than five (5) for the duration of the activity. The R-factor is defined as the total annual erosive potential that is due to climatic effects, and is part of the Revised Universal Soil Loss Equation (RUSLE). An R-factor is calculated based on information available from the U.S. Department of Agriculture (USDA) and EPA. Annual R-factors are provided in the U.S. Department of Agriculture's (USDA) Handbook No. 703. The following authorization options require determination of an R-factor for a portion of the year.

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

   Small site construction activities that commence on or after the start date for one of the listed time periods and conclude by the end date of the same listed time period are not required to submit an NOI nor to develop an SWP3. Instead, the general permit requires the operator of such a site to complete and post a specific site notice for the duration of the activity and to provide a copy of the site notice to the operator of any MS4 that would receive a discharge from the site.

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

   In developing Appendix A, the executive director used the most conservative assumptions for each county in the state. The annual R-factor values included in the USDA handbooks are annual factors, and the lowest annual R-factor in Texas is ten (10), which occurs only in El Paso County. While no county in Texas would automatically qualify for this automatic authorization option for the entire year, R factors for specific time periods within the year can be identified by multiplying the annual R-factor by the percentage of the total annual isoerodent factor that occurs during the period in question. In Texas, there are ten isoerodent zones that cross state lines, and those are listed in the table below. The map of zones is located in Chapter 2 of USDA Handbook 703: "Predicting Soil Erosion by Water,"

http://www.epa.gov/npdes/pubs/ruslech2.pdf , referenced in EPA Fact Sheet 3.1: "Stormwater Phase II Final Rule – Construction Rainfall Erosivity Waiver" (http://www.epa.gov/npdes/pubs/fact3-1.pdf), and is included as Appendix B of the permit.

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

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

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

Two example calculations are shown below:

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

In order to determine the portion of the isoerodent value (referred to below as "x") that would result in an R factor less than 5, the executive director divided the

maximum allowable R-factor, five (5), by the annual isoerodent value.Then the result was multiplied by 100 to correct for percentage.

$x < (5 / 10) * 100$

$x < 50$

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

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

$x < (5 / 350) * 100$

$x < 1.43$

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

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

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

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

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

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

The operator may calculate a site-specific R-factor using the steps outlined in EPA Fact Sheet 3.1: "Stormwater Phase II Final Rule – Construction Rainfall Erosivity Waiver" (http://www.epa.gov/npdes/pubs/fact3-1.pdf), by using the online calculator developed by Texas A&M University: http://ei.tamu.edu/index.html, using an alternative mechanism that follows appropriate methodology, or by using the following steps:

1) Estimate the construction start date and the construction end date. The construction end date is the date that final stabilization will be achieved.

2) Find the EI zone from Appendix B of the general permit.

3) Find the EI percentage for the project period by subtracting the EI for the start date of the project from the EI of the end date using the table above. Alternatively, use the table provided in EPA Fact Sheet 2.1 or USDA Handbook 703 in a similar manner, by subtracting the start value from the end value on the table. If the project goes past January 1, add 100 to the end date EI to obtain the appropriate value.

4) Refer to the Isoerodent Map (Appendix C of the general permit) and interprolate the annual isoerodent value for the construction site location.

5) Multiply the percent value obtained in Step 3 by the annual isoerodent value obtained in Step 4. This is the R factor for the project. If the value is less than 5, then a waiver may be obtained.

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

E. Qualifying Local Programs

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

V. Changes from Existing General Permit

A. Expanded the language in the Impaired Receiving Waters and Total Maximum Daily Load (TMDL) Requirements section. Construction sites discharging to a water quality impaired water body, where the impairment is caused by a pollutant of concern present in stormwater, must be consistent with any condition, goal, or requirement in the TMDL or Implementation Plan (I-Plan). (Part II.C.4 of the general permit).

B. Added narrative effluent limitations guidelines for regulated construction sites based on the federal Effluent Limitation Guidelines (ELGs) at 40 CFR §§ 450.21, 450.23, and 450.24, consisting of a series of Best Management Practices (permit Part III.G).

C. Clarified existing permit requirements using language from EPA's 2012 CGP, as appropriate.

D. Revised the definition of secondary operator to clarify the conditions under which an individual would be considered a secondary operator.

E. Revised the permit to allow regulated operators located in drought-stricken areas to reduce the frequency of inspection of sediment and erosion controls to once per month rather than once per two weeks, and kept the requirement to inspect controls within 24 hours of a storm event of 0.5 inches or greater.

F. Revised the permit to allow construction operators located in arid, semi-arid, or drought-stricken areas the flexibility to implement non-vegetative erosion control measures if vegetative controls are not feasible.

G. Revised the definition of Final Stabilization to include the requirement for the homebuilder to retain documentation of site stabilization in the SWP3.

H. Clarified in Parts II.B. and V. that on-site disposal of wash out water from concrete trucks may be authorized under this permit, provided that certain requirements are met and the wastewater is properly contained on site and there is no discharge to surface waters. In the existing permit, this authorization is limited to wash out from concrete trucks associated with off-site concrete production facilities. This change is consistent with the 2012 EPA CGP and provides greater flexibility for regulated operators.

I. Removed the requirement for the primary operator to post a copy of the signed NOI at the construction site, because the permit already requires that a site notice be posted.

J. Revised the small construction site waiver effective date so that coverage begins seven (7) days after the date a completed waiver form is postmarked for delivery to TCEQ, or immediately upon receipt of confirmation of approval of an electronic submittal.

K. Removed the paper copies of the construction site notices from the appendix of the general permit, so that changes to the forms may be made without amending the CGP. Permittees will be able to access these notices from the TCEQ web site.

L. Removed the requirement for construction operators located in the Edwards Aquifer recharge zone or the Edwards Aquifer contributing zone to submit a copy of the NOI or site notice to the TCEQ regional office.

M. Updated the data in Appendix D based upon revisions to EPA Fact Sheet 3.1: "Stormwater Phase II Final Rule – Construction Rainfall Erosivity Waiver."

N. Added the limitation that discharges that would adversely affect a listed endangered or threatened aquatic or aquatic-dependent species or its critical habitat are not authorized by the general permit, and site-specific controls may be required to ensure that protection of endangered or threatened species is achieved. This change is consistent with other water quality general permits.

O. Based on comments from stakeholders, added definitions of Construction Activity, Dewatering, Drought-Stricken Area, Effluent Limitations Guideline, Impaired Water, Minimize, Receiving Water, Steep Slopes, TMDL, Linear Project, and Turbidity.

P. Minor revisions to the permit were made based on EPA's interim objection letter dated August, 13, 2012. The revisions are outlined in TCEQ's response letter dated August 30, 2012, and included as Attachment A of this fact sheet.

VI. Addresses

Questions concerning this general permit may be sent to:

TCEQ, Stormwater & Pretreatment 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, Chief Clerk's Office (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 CCO at address above within three days of fax date.

Electronically: www10.tceq.texas.gov/epic/ecmnts/

Questions regarding public comments should be directed to CCO: (512) 239-3300

Supplementary information on this Fact Sheet is organized as follows:

VII. Legal Basis

Texas Water Code (TWC) §26.121 makes it unlawful to discharge pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order. 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 (H.B.) 1542 in the 75th Legislature, 1997, and to authorize waste discharges by general permit. On September 14, 1998, the TCEQ received authority from the U.S. Environmental Protection Agency (EPA) to administer the Texas Pollutant Discharge Elimination System (TPDES) program. The commission and the EPA have signed a Memorandum of Agreement (MOA) that authorizes the administration of the TPDES program by the commission as it applies to the State of Texas.

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

VIII. Regulatory Background

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

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

The Stormwater Phase II Rule automatically designated, as small construction activity under the NPDES stormwater permitting program, all operators of construction site activities that result in a land disturbance of equal to or greater than one and less than five acres. Site activities disturbing less than one acre are also regulated as small construction activity if they are part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and less than five acres, or if they are designated by the NPDES permitting authority.

On September 14, 1998, the TCEQ received authority to administer the NPDES permit program in Texas (the TPDES program), for those discharges under the regulatory authority of the commission. Under the MOA between the two agencies, EPA agreed to continue to administer the construction stormwater general permit until the July 7, 2003 expiration date. The original TPDES CGP was issued on March 5, 2003 and expired on March 5, 2008. The current CGP was issued on February 15, 2008, effective on March 5, 2008, and will expire on March 5, 2013. This proposed general permit would continue authorization for regulated construction activities in Texas for five years from the effective date of the renewed permit. The commission expects to reissue this general permit prior to the expiration date of the current permit, in which case the renewed permit would supersede and replace the existing permit.

On December 1, 2009, the EPA published ELGs and new source performance standards (NSPS) in 40 CFR Part 450, to control the discharge of pollutants from construction sites. All construction sites required to obtain permit coverage were required to implement a range of erosion and sediment controls and pollution prevention measures. The ELGs included a numeric effluent limititation for turbidity of 280 nephelometric turbidity units (NTU). Subsequently the EPA withdrew the limit to correct a calculation error that was identified in petitions filed by the Small Business Administration and the National Association of Homebuilders. On January 4, 2011, the EPA stayed indefinitely the turbidity effluent limit of 280 NTU in order to seek additional treatment performance data from construction and development sites before proposing a revised numeric turbidity limit. On February 16, 2012, the EPA issued their 2012 CGP which includes the new Construction and Development ELGs. The EPA CGP does not include the numeric effluent limitation for turbidity.

IX. Permit Coverage

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

The general permit defines large and small construction activities, and includes requirements for both. The general permit specifies that a smaller project is regulated if it is part of a larger common plan of development or sale that will disturb one or more acres. A common plan of development or sale is defined in the permit as a construction activity that is completed in separate stages, separate phases, or in combination with other construction activities, that is identified by the documentation for the construction project that identifies the scope of the project. A common plan of development does not necessarily include all construction projects within the jurisdiction of a public entity (e.g., a city or university). Construction of roads or buildings in different parts of the jurisdiction would be considered separate "common plans," with only the interconnected parts of a project being considered part of a "common plan" (e.g., a building and its associated parking lot and driveways, airport runway and associated taxiways, a building complex, etc.). Where discrete construction projects occur within a larger common plan of development or sale but are located ¼ mile or more apart, and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale, provided that any interconnecting road, pipeline or utility project that is part of the same "common plan" is not included in the area to be disturbed.

An example of a smaller construction project that is regulated under the general permit would include the building of single houses on lots of a quarter-acre each within a larger residential development of 5 or more acres. Any primary operator constructing single homes within that development would be regulated as an operator of a large construction activity, and required to develop an SWP3 and submit an NOI. If the development was generally completed, then a builder may be able to look at the size of the remaining area to be disturbed in determining the size of the larger common plan of development or sale by answering a two part question. First, was the original plan, including modifications, ever substantially completed with less than one acre of the original "common plan of development or sale" remaining (e.g., <1 acre of the "common plan" was not built out at the time)? If so, then was there a clearly identifiable period of

time with no on-going construction, including meeting the criteria for final stabilization? If the answer to both of the questions is "yes," then it would be appropriate to consider the new project of less than one acre as a new common plan of development. Another example of a "new" common plan of development or sale would be the addition of a swimming pool, fence, or similar addition to a lot by a homeowner after having purchased the lot. Even if the rest of the homes have not been built, the additional construction by the homeowner would be its own common plan unless it was specifically delineated in the plans for the overall development.

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

   Applicants can locate information regarding the classified segment(s) receiving the discharges from the construction site in the "Atlas of Texas Surface Waters" or the TCEQ's Surface Water Quality Viewer, at the following TCEQ web addresses. These documents include identification numbers, descriptions, and maps:

   Atlas of Texas Surface Waters:

   http://www.tceq.texas.gov/publications/gi/gi-316/index.html

   Surface Water Quality Viewer:

   http://www.tceq.texas.gov/waterquality/monitoring/viewer.html

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

   http://www.tceq.texas.gov/waterquality/assessment/305_303.html

C. Submission of an NOI or signing of the required site notice is an acknowledgment that the conditions of the general permit are applicable to the proposed discharges and that the applicant agrees to comply with the conditions of the general permit. Provisional authorization to discharge under the terms and conditions of the general permit begins seven (7) days after a completed NOI is postmarked for delivery to the TCEQ, or immediately upon receipt of confirmation by TCEQ of an administratively complete NOI submitted electronically, unless otherwise specified in the general permit. If submitting a paper copy of the NOI, the NOI must be mailed to the address indicated on the NOI form. Following review of the NOI, the executive director will either confirm coverage by providing a notification and an authorization number to the applicant or notify the applicant that coverage under this general permit is denied. Operators of existing sites that are required to submit an NOI for coverage must do so within the timeframe specified in the general permit in order to maintain authorization for the construction activity. Small construction sites must post the required site notice as required in the general permit.

D. Coverage under the general permit is not transferable. If the primary operator of a large construction activity changes, then the original operator must submit a Notice of Termination (NOT) within 10 days prior to the date that responsibility for operations terminates and the new operator must submit a NOI at least ten (10) days before assuming operational control. A change in operator includes changes to the structure of a company, such as changing from a partnership to a corporation, or changing corporation types that changes the filing (or charter) number with the Texas Secretary of State. Operators of small construction activities and secondary operators of large construction activities must remove the original site notice for the original operator, and the new operator must post the required site notice prior to assuming operational control for the site.

E. A primary operator of a large construction activity must submit current information to the executive director by submitting a Notice of Change (NOC) not later than 14 days before a change in information previously provided to the executive director in a NOI occurs (examples of changes may include changes to the operator's mailing address, a change to the project name, or an increase in the size of the project). If an NOC form is available, the operator must use the TCEQ-approved form. However, if an NOC form is not available, the operator may submit a letter requesting the change. NOC forms and letters must be signed by a person authorized to sign permit applications. An operator of a small construction activity and a secondary operator of a large construction activity may revise the information in the required site notice.

F. A primary operator of a large construction activity may terminate coverage under the general permit when all construction activity has ceased by providing a Notice of Termination (NOT) on a form approved by the executive director. Authorization to discharge terminates at midnight on the day that an NOT is postmarked for delivery to the TCEQ. If TCEQ provides for electronic submission of NOTs during the term of this permit, authorization to discharge terminates immediately following confirmation of receipt of the electronic NOT form by the TCEQ, unless otherwise specified in the general permit. An operator of a small construction activity and a secondary operator of a large construction activity may terminate coverage under the general permit by removing the required site notice after final stabilization has been met.

X. Technology-Based Requirements

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

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

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

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

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

1. *Erosion and sediment controls.* Design, install, and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed, and maintained to:
   (a) Control stormwater volume and velocity within the site to minimize soil erosion;
   (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;
   (c) Minimize the amount of soil exposed during construction activity;
   (d) Minimize the disturbance of steep slopes;
   (e) Minimize sediment discharges from the site. The design, installation, and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
   (f) If earth disturbance activities are located in close proximity to a surface water, provide and maintain appropriate natural buffers or equivalent sediment controls if feasible and as necessary, around surface waters, depending on site-specific topography, sensitivity, and proximity to water bodies. Direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration. If providing buffers is infeasible, the permittee shall document the reason that natural buffers are not feasible, and shall implement additional erosion and sediment controls to reduce sediment load;
   (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;
   (i) TCEQ does not consider stormwater control features (e.g., stormwater conveyance channels, storm drain inlets, sediment basins) to constitute "surface waters" for the purposes of triggering the buffer requirement in Part III.G.(f) above.
2. *Soil stabilization.* Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. In 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. Temporary stabilization must be completed no more than 14 calendar days after initiation of soil stabilization measures, and final stabilization must be achieved prior to termination

of permit coverage. In arid, semi-arid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative non-vegetative stabilization measures must be employed as soon as practicable. Refer to Part III.F.2.(b) of the permit for complete erosion control and stabilization practice requirements.

3. *Dewatering*. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited, unless managed by appropriate controls.
4. *Pollution prevention measures.* Design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
   (a) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
   (b) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
   (c) Minimize the discharge of pollutants from spills and leaks, and implement chemical spill and leak prevention and response procedures.
5. *Prohibited discharges*. The following discharges are prohibited.
   (a) Wastewater from wash out of concrete trucks, unless managed by an appropriate control (see Part V of the general permit);
   (b) Wastewater from wash out and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
   (c) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
   (d) Soaps or solvents used in vehicle and equipment washing.
6. *Surface Outlets*. When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible.

B. Stormwater Pollution Prevention Plan (SWP3)

The general permit continues the requirement to develop and implement an SWP3 to control discharges of stormwater associated with construction activities, in accordance with the NPDES program. Conditions of the proposed general permit have been developed to comply with the technology-based standards of the Clean Water Act.

The general permit is based on a series of BMPs, in the form of a required SWP3, rather than numeric limitations, to prevent or minimize pollutants in stormwater discharges. BMPs may include erosion controls, sediment controls, stabilization practices, and nonstructural controls. Erosion controls provide the first line of defense in preventing off-site sedimentation and are designed to prevent erosion through protection and preservation of soil. Sediment controls are designed to remove sediment from runoff before the runoff is discharged from the site. Sediment and erosion controls can be further divided into two major classes of controls: stabilization practices and structural practices. Part IV.B. of this fact sheet describes the elements of the required SWP3. The

SWP3 must comply with the new construction and development effluent guidelines in Part III, Section G of the general permit.

Small construction sites that obtain automatic authorization based on the precalculated R factor, or that receive a waiver from coverage based on a calculated R factor, are not required to prepare an SWP3.

C. Benchmark Monitoring Requirements

The 1998 NPDES Construction General Permit for EPA Region 6 for large construction activities included numeric effluent limitations for stormwater discharges from concrete batch plants in Texas. The original TPDES construction general permit continued these limits and applied them to all regulated construction activities. The TCEQ's original recommendation on the NPDES CGP was based on the requirements for wastewater and contact stormwater found in TCEQ's authorization by rule for concrete production facilities, 30 TAC §321.155. The proposed general permit continues the benchmark sampling requirements, BMPs, and SWP3 requirements for the stormwater-only discharges from concrete batch plants that are found in the 2008 TCEQ CGP. This is consistent with TCEQ's Multi Sector General Permit (MSGP) for discharges of stormwater runoff associated with industrial activity and with TCEQ's Wastewater General Permit for Concrete Production Facilities, TXG110000. The following proposed benchmark monitoring requirements are applicable to all discharges from concrete batch plants, and are not applicable to other discharges described in the general permit:

Benchmark Parameter	**Benchmark Value**
Oil and Grease	15 mg/L
Total Suspended Solids	100 mg/L
pH	6.0 - 9.0 Standard Units
Total Iron	1.3 mg/L

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

Sampling is required at a frequency of once per quarter when discharge occurs. Sampling shall be conducted during the following periods: First quarter - January through March; second quarter - April through June; third quarter - July through September; and fourth quarter - October through December. Applicants shall begin sampling in the first full quarter following submission of the NOI. For projects lasting less than one full quarter, a minimum of one sample shall be collected, provided that a discharge occurred at least once following submission of the NOI or automatic authorization.

XI. Water Quality-Based Requirements

The Texas Surface Water Quality Standards (TSWQS) are located at 30 TAC Chapter 307, and state that "surface waters will not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with skin, or to terrestrial or aquatic life."

The methodology outlined in the *Procedures to Implement the Texas Surface Water Quality Standards*, RG-194 (January 2003) is designed to ensure compliance with 30 TAC Chapter 307. Specifically, the methodology is designed to ensure that no source will be allowed to discharge any wastewater which: (1) results in instream aquatic toxicity; (2) causes a violation of an applicable narrative or numerical state water quality standard; (3) results in the endangerment of a drinking water supply; or (4) results in aquatic bioaccumulation which threatens human health.

TPDES permits contain technology-based effluent limits reflecting the best controls available. Where these technology-based permit limits do not protect water quality or the designated uses of the receiving stream, additional conditions are included in the TPDES permits, which may include discharge limitations. State narrative and numerical water quality standards are used in conjunction with EPA criteria and other toxicity data bases to determine the adequacy of technology-based permit limits and the need for additional water-quality based controls.

TPDES stormwater permits generally do not contain 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 or technology-based limits in combination with instream monitoring to assess standards attainment and to determine whether additional controls on stormwater are needed. Typically, a combination of stabilization practices, structural practices, and non structural BMPs are necessary throughout a construction site to provide adequate water quality protection. It has been preliminarily determined that if permit requirements are properly implemented, no significant degradation is expected and existing uses will be maintained and protected.

XII. Monitoring

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

XIII. Procedures for Final Decision

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

A. The county judge of the county or counties in which the discharges under the general permit could be located;

B. if applicable, state and federal agencies for which notice is required in 40 CFR §124.10(c);

C. persons on a relevant mailing list kept under 30 TAC §39.407, relating to Mailing Lists; and

D. any other person the executive director or chief clerk may elect to include.

After notice of the initial draft permit (IDP) is published in the *Texas Register* and the newspaper, the public will have at least 30 days to provide public comment on the IDP. A public meeting will be held at the end of the public comment period. A public comment hearing is intended for the taking of public comment, and is not a contested case proceeding under the Administrative Procedure Act. The public will be given notice of the date, time, and place of the meeting, as required by commission rules. The executive director will respond to all significant public comments raised during the public comment period and make the response available to the public. The proposed general permit will then be filed with the commission to consider final approval of the permit. The executive director's response to public comment will be made available to the public at least ten days before the commission acts on the proposed general permit.

XIV. Administrative Record

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

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

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

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

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

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

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

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

B. Letters/Memoranda/Records of Communication

Interoffice Memorandum from the TCEQ Water Quality Standards Team.

Public comments received during the initial stakeholder meeting.

Public comments received during the public notice period for the draft permit.

EPA Interim Objection Letter from Hosch (EPA) to Linendoll (TCEQ) dated August 13, 2012.

TCEQ Response Letter from Linendoll (TCEQ) to Hosch (EPA) dated August 30, 2012.

C. Miscellaneous

TPDES Construction General Permit (CGP) TXR150000, issued on February 15, 2008 and effective on March 5, 2008.

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

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

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

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

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

Texas Surface Water Quality Standards, 30 TAC §§307.1 - 307.10, effective August 17, 2000.

Procedures to Implement the Texas Surface Water Quality Standards, Texas Commission on Environmental Quality, Publication RG-194, January 2003.

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

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

TPDES General Permit No. TXR050000, the Multi Sector General Permit (MSGP), issued on July 22, 2011 and effective on August 14, 2011.

TPDES General Permit No. TXG110000, issued on November 4, 2011, and effective on November 7, 2011.

EPA NPDES Construction General Permit (CGP), issued February 16, 2012.

TCEQ Response to EPA Interim Objection Letter

1. Draft Permit Cover Page

EPA Objection:
Cover page language states "Construction sites that discharge stormwater associated with construction activity located in the state of Texas may discharge directly to surface water in the state…" 40 CFR §122.1(b) states that "The NPDES program requires permits for the discharge of 'pollutants' from any 'point source' into 'waters of the United States.'" This regulation does not specify direct discharge to waters of the U.S., therefore the term "direct" shall be removed from the cover page language. For example, a discharge that first enters an unregulated municipal separate storm sewer and is then conveyed to a water of the U.S. could be construed as an indirect discharge, but is still regulated as a discharge of pollutants to a water of the U.S.

TCEQ Response:
The draft permit was modified as suggested. The term "directly" was removed from the permit cover page.

2. Draft Permit Part I.A.1, (p.5) - Flow Chart and Definitions

EPA Objection:
The flow chart indicates that construction activities less than one acre do not require permit coverage and direct operators to Part I.B, "Definitions," for an explanation of "larger common plan of development or sale" to determine the size of the construction project. To prevent confusion and ensure compliance with 40 CFR §122.26(b)(15)(i), the flow chart shall be modified to direct operators to obtain permit coverage for small construction activity disturbing less than one acre of land that is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than one acre (or add "unless part of a larger plan of development or sale" to the existing language).

TCEQ Response:
The flow chart was modified as suggested. The statement "Unless Part of a Larger Common Plan of Development or Sale" was added to the flow chart.

3. Draft Permit Part II.C.3, (p.13) - Compliance With Water Quality Standards

EPA Objection:
Language at II.C.3 states that "Discharges to surface water in the state that would cause or contribute to a violation of water quality standards…The executive director may require an application…to authorize discharges to surface waters in the state from any activity that is determined to cause a violation of water quality standards or is found to cause, or contribute to, the loss of a designated use." To ensure compliance with 40 CFR §122.44(d)(1)(i), language at II.C.3 shall be modified to "Discharges to surface water in the state that would cause, have the reasonable potential to cause, or contribute to a violation of water quality standards… The executive director may require an application…to authorize discharges to surface waters in the state if the executive director determines ~~from~~ that any activity ~~that is determined to~~ will cause, has the reasonable potential to cause, or contribute to, a violation of water quality standards or is found to cause, have the reasonable potential to cause, or contribute to, the ~~loss~~ impairment of a designated use."

TCEQ Response:
The draft permit was modified as suggested. Language regarding "reasonable potential to cause" was added as stated in 40 CFR §122.44(d)(1)(i).

TCEQ Response to EPA Interim Objection Letter

4. Draft Permit Part III.F, (pp. 26-29) – Contents of SWP3

EPA Objection:
Although language at III.F states that "The SWP3 must include…and comply with construction and development effluent limitation guidelines in Part III, Section G of the general permit.", all requirements of this section are not included in III.F. To ensure compliance with 40 CFR Part 450, you shall:

a) modify language at III.F.2(b) to clarify compliance requirements – "The SWP3 must include a description of temporary and permanent erosion control and stabilization practices for the site, compliant with the requirements of Part III.G.1 and G.2 of this general permit,…"
b) modify language at III.F.2(c) to include a requirement to comply with III.G.6.
c) include a SWP3 requirement to describe pollution prevention procedures that comply with III.G.4.
d) modify language at III.F.4 to include a requirement that other required controls and BMPs comply with all of the requirements of III.G.

TCEQ Response:
The draft permit was modified as suggested.

5. Draft Permit Part VII, (p.39-40) – Standard Permit Conditions

EPA Objection:
40 CFR §122.41 requires all conditions applicable to NPDES permits be incorporated into permits. The following permit conditions were either not incorporated into the draft permit or shall be modified to be consistent with 40 CFR 122.41:

a) to comply with§ 122.41(a)(1), language at VII.1 shall be modified to "Failure to comply with any permit condition…and is grounds for enforcement action, for terminating, revoking, or denying permit coverage under this general permit…"
b) to comply with §122.41(a)(2), language at VII.5 shall be modified to include knowingly violating section 303 of the Clean Water Act and placing another person in imminent danger of death or serious bodily injury to the penalties that a discharge may be subject to
c) to comply with §122.41(d), 122.41(e), and 122.41(l), you shall incorporate the duty to mitigate, proper operation and maintenance, and reporting requirements permit conditions.

TCEQ Response:
The draft permit was modified as suggested and the above-referenced permit conditions were incorporated into the draft permit.

ANTIBACKSLIDING CONCERNS

6. Draft Permit Part II.E.8(f), (p.19) – Contents of the NOI

EPA Comment:
Language in the March 5, 2008 permit requiring operators to confirm that a SWP3 had been developed, would be implemented prior to construction, and was compliant with any applicable local sediment and erosion control plans, was removed from the current draft permit. It is not clear how the anti-backsliding regulation at 40 CFR §122.44(l)(1) was satisfied.

TCEQ Response to EPA Interim Objection Letter

TCEQ Response:
The draft permit was modified as suggested. The TCEQ added back "that it will be implemented prior to construction, and that it is compliant with any applicable local sediment and erosion control plans" to the end of Part II.E.8(f). The initial removal of the language in the draft permit was not an attempt by the TCEQ to make the permit less stringent, or to avoid any applicable local sediment and erosion control requirements for permittees; however, TCEQ does not agree with EPA's position that removal of this provision would constitute backsliding.

CLARIFICATION QUESTIONS

7. Draft Permit Part II.A.2(b), (p.12) – Discharges Eligible for Authorization

EPA Comment:
Language at II.A.2(b) states that "Discharges of stormwater runoff from construction support activities may be authorized under this general permit, provided that… an SWP3 is developed…" Is a separate authorization and/or SWP3 required for a support activity, or will coverage for a support activity be part of the permitted construction activity if the SWP3 includes the support activities?

TCEQ Response:
The draft permit was modified to clarify that construction support activities are authorized under the general permit as part of a permitted construction activity, and do not require a separate authorization and/or an SWP3 of their own.

8. Draft Permit Part II.E.3(e), (p.17) – Authorization for Large Construction Activities

EPA Comment:
Language at III.E.3(e) states "All persons meeting the definition of "secondary operator"… are regulated under this general permit but are not required to submit an NOI, provided that another operator(s) at the site has submitted an NOI, or is required to submit an NOI and the secondary operator has provided notification to the operator(s) of the need to obtain permit coverage. Is this secondary operator required to develop and maintain a SWP3? Is TCEQ suggesting that because secondary operator (SO) #1 has submitted an NOI and SO #2 has informed SO #1 of his need for permit coverage, SO #2 is covered under this general permit? Shouldn't a secondary operator only be able to obtain coverage without submitting an NOI if an Authorized Primary Operator includes the secondary operator in his SWP3?

TCEQ Response:
The draft permit was modified from the existing permit to clarify that a secondary operator is not required to submit an NOI, provided that a *primary* operator at the site has submitted an NOI, or is required to submit an NOI, and the secondary operator has provided notification to the operator(s) of the need to obtain coverage (with records of notification available upon request). Secondary operators must either prepare their own SWP3 that covers the areas of the construction site where they have control over the plans and specifications, or they must ensure that the shared SWP3 contains this information. The Secondary Operator Site Notice form includes a certification statement that must be signed to certify that an SWP3 has been developed and will be implemented prior to construction. All permitted operators at a regulated construction site must comply with the requirements in Part III.B of the general permit. Please refer to the definition of Secondary Operator on page 9 of the draft permit for clarification.

TCEQ Response to EPA Interim Objection Letter

9. Draft Permit Part III.B, (pp.24-25) – Responsibilities of Operators

EPA Comment:
Language at II.E.2(a) requires small construction activity operators to develop a SWP3. Additionally, language at II.E.3 does not exclude a large construction activity secondary operator from developing a SWP3. Why aren't all operators, who must develop a SWP3, required to comply with III.B.1 and III.B.2?

TCEQ Response:
See above response to Comment No. 8.

RECOMMENDATIONS

10. Draft Permit Part II.A, (pp.11-12) – Discharges Eligible for Authorization

EPA Comment:
Part II.A.2 does not specify that a support activity is not a commercial operation, nor does a support activity serve multiple unrelated construction projects.

TCEQ Response:
The draft permit was modified to specify that construction support activities authorized under the general permit are not commercial operations, and do not serve multiple unrelated construction projects.

11. Draft Permit Part II.C.4, paragraph 2, (p.13) – Impaired Receiving Waters and Total Maximum Daily Load (TMDL) Requirements

EPA Comment:
For discharges to a surface water that is impaired for (1) sediment or a sediment-related parameter *(e.g., total suspended solids (TSS) or turbidity)* and/or (2) nutrients *(e.g., nitrogen and/or phosphorus)*, including impaired waters for which a TMDL has been approved or established for the impairment, EPA strongly recommends you require operators to complete the stabilization activities specified in Part III.F.2(b)(iii) within 7 calendar days after the temporary or permanent cessation of earth-disturbing activities.

TCEQ Response:
The TCEQ declined to make the recommended change. The TCEQ believes that the existing stabilization requirements in Part III.F.2(b)(iii) of the draft permit are sufficiently protective of water quality for construction sites that discharge to sediment-impaired receiving waters, including those for which a TMDL has been approved or established for the impairment. Should the TMDL require such management practices, the permit requires compliance with such requirements.

12. Draft Permit Part II.E.3, (p.17) – Authorization for Large Construction Activities

EPA Comment:
a) Language at II.E.3(b) states "primary operators must submit an NOI…at least 7 days prior to commencing construction activities, or if using electronic submittal, prior to commencing construction activities. If an additional primary operator is added after the initial NOI is submitted…, or if utilizing electronic NOI submittal, prior to assuming operational control." To ensure primary and secondary operators do not expect discharge authorization to begin prior to confirmation of coverage through receipt of a

notification and authorization number, it is recommended you add language referencing II.E.5(b) to II.E.3.

TCEQ Response:
The TCEQ declined to make the recommended change. The TCEQ believes that the existing language in the draft permit is appropriate as is. Primary operators who submit their NOIs electronically are authorized immediately upon receipt of the NOI by the TCEQ, unless otherwise notified by the executive director. Primary operators, who submit their NOI by mail, are provisionally authorized seven (7) days from the date the NOI is postmarked. They are not required to wait until they receive an authorization certificate from the TCEQ before they can begin construction.

EPA Comment:
b) Language at II.E.3(c) no longer requires primary operators to post a copy of the signed NOI at the construction site and maintain the NOI in that location until completion of the construction activity. Site notices often provide the only way for interested parties to determine who is doing the construction and if they are actually permitted. The construction permit enforcement program is particularly reliant on citizen complaints to target limited enforcement resources. It is recommended the site notice posted reference the NOI authorization number. (Same recommendation for Part III.D.2)

TCEQ Response:
TCEQ declined to make the recommended change because both the existing primary and secondary site notices for large construction activities have a section for the operator to write in the site-specific TPDES authorization number.

EPA Comment:
c) Language at II.E.3(e) does not clearly indicate that large construction activity secondary operators must develop a SWP3. To ensure these operators understand they are required to develop a SWP3, it is recommend you add language to II.E.3(e) clarifying this requirement.

TCEQ Response:
The TCEQ declined to make the recommended change. The TCEQ believes that the existing language in the draft permit is appropriate as is. See response to Comment No. 8.

13. Draft Permit Part III, (p.23) – Stormwater Pollution Prevention Plans (SWP3)

EPA Comment:
The first sentence of this section states "All regulated construction site operators shall prepare a SWP3 to address discharges authorized…" To ensure operators understand that the SWP3 shall be developed prior to submittal of the NOI, it is recommended you modify language to "All regulated construction site operators shall prepare a SWP3, prior to submittal of an NOI, to address discharges authorized…"

TCEQ Response:
The draft permit was modified as suggested.

14. Draft Permit Part III.F, (p.26) – Contents of SWP3

EPA Comment:
a) It is recommended you add "including estimated start dates and duration of activity" immediately following the language at F.1(c).

TCEQ Response to EPA Interim Objection Letter

TCEQ Response:
The draft permit was modified as suggested.

EPA Comment:
b) It is recommended you include the site topography as a required detail of the site map at F.1(g).

TCEQ Response:
The TCEQ declined to make the recommended change because Part III.F.1(g)(i) of the draft permit already contains a requirement that the site map must indicate anticipated drainage patterns and slopes, which are essentially equivalent to "topography."

EPA Comment:
c) It is recommended you modify the language at F.1(g)(i) to "drainage patterns, ~~and~~ approximate slopes anticipated before and after major grading activities, and authorized non-stormwater flow onto, over and from the site property;"

TCEQ Response:
The draft permit was modified as suggested with the exception of the language referencing the non-stormwater flow. The TCEQ declined to include this language to prevent unnecessary confusion caused by the word "authorized." If an allowable non-stormwater flow was present at the construction site, it should discharge through one of the permitted outfalls.

EPA Comment:
d) It is recommended you modify the language at F.1(g)(iii) to "locations of all ~~major erosion and sediment~~ controls and ~~natural~~ buffers, either planned or in place;

TCEQ Response:
The draft permit was modified as suggested.

EPA Comment:
e) It is recommended you modify the language at F.1(g)(v) to "…including material, waste, borrow, fill, or equipment or chemical storage areas;"

TCEQ Response:
The draft permit was modified as suggested.

EPA Comment:
f) It is recommended you add "indicating impaired or sensitive waters" immediately following the language at F.1(g)(vi).

TCEQ Response:
The draft permit was modified as suggested; however, the TCEQ declined to add the word "sensitive" to the permit language, as this term is undefined.

EPA Comment:
g) It is recommended you add "and designated sites where vehicles will exit onto paved roads" immediately following the language at F.1(g)(viii).

TCEQ Response:
The draft permit was modified as suggested.

TCEQ Response to EPA Interim Objection Letter

EPA Comment:

h) It is recommended you require the following information to be included in the site or project description at F.1:
   i. stormwater and allowable non-stormwater discharge locations, including storm drain inlets on the site and in the immediate vicinity of the site
   ii. locations of all pollutant-generating activities, such as paving operations; concrete, paint and stucco washout and water disposal; solid waste storage and disposal; and dewatering operations

TCEQ Response:
The draft permit was modified as suggested.

EPA Comment:

i) It is recommended you modify the language at F.7(a) to include a requirement to record total rainfall measured and the beginning and ending dates of a winter and drought conditions resulting in monthly frequency of inspections.

TCEQ Response:
The draft permit was modified as suggested.

EPA Comment:

j) It is recommended you modify the language at F.7(d) to "…If existing BMPs are modified or if additional BMPs are necessary, an implementation schedule of the corrective action must be described in the SWP3 and…"

TCEQ Response:
The TCEQ declined to make the change because updating BMPs is not a corrective action. The TCEQ believes that an implementation schedule for the revised BMPs as currently worded is sufficient.

TYPOGRAPHICAL OR GRAMMATICAL COMMENTS

EPA Comment:
Draft Permit Part I.A.1, (p.5) – Flow Chart and Definitions – Footnote (*1) refers readers to Part I.B, "Definitions," for an explanation of "larger common plan of development or sale" rather than to the definition of "Common Plan of Development" provided at I.B.

TCEQ Response:
The draft permit was modified as suggested.

EPA Comment:
Draft Permit Part II.E.2, paragraph 5, (p.16) – Automatic Authorization For All Other Small Construction Activities – reference of Part I should be Part I.B for clarity.

TCEQ Response:
The draft permit was modified as suggested.

EPA Comment:
Draft Permit Part III.F.7(b), paragraph 1, (p.31) – Inspections of Controls – reference Part III.F.8(a) in the first sentence and second to last sentence of the paragraph rather than Part III.F.7(a).

TCEQ Response:
The draft permit was modified as suggested.