

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

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 This response addresses all timely received public comments, whether or not withdrawn.

Timely public comments were received from the following entities: The Associated General Contractors of Texas (AGC), Baer Engineering and Consulting (Baer Engineering), Bayou City Waterkeeper (BCW), City of Cleburne (Cleburne), City of College Station (College Station), Compliance Resources, Inc. (CRI), Dallas Area Rapid Transit (DART), City of Fort Worth (Fort Worth), Patricia Luse (Ms. Luse), Texas Association of Builders (TAB), Tischler/Kocurek (T/K), and Zachry Construction.

PERMIT BACKGROUND

The CGP renewal with changes authorizes the discharge of stormwater runoff associated with regulated large and small construction sites and certain non-stormwater discharges into surface water in the state. Regulated large construction activities are those disturbing five acres or more. Regulated small construction activities are those disturbing at least one acre up to five acres. Construction activities are also grouped and their total land area disturbance used if they are part of a common plan of development.

This general permit identifies the sites that may be authorized under the permit. 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 the conditions when a construction activity must obtain individual permit coverage. The CGP also authorizes the discharge of stormwater associated with industrial activities at construction sites that directly support the construction activity and are located at, adjacent to, or in close proximity to the permitted construction site.

On September 14, 1998, TCEQ received delegation authority from the United States Environmental Protection Agency (EPA) to administer the National Pollutant Discharge Elimination System (NPDES) program under the TPDES program. As part of that delegation, TCEQ and EPA signed a Memorandum of Agreement (MOA) that authorizes the administration of the NPDES program by TCEQ as it applies to the State of Texas. The original TPDES CGP was issued on March 5, 2003, and was renewed with changes with an effective date of March 5, 2008, and subsequently renewed with an effective date of March 5, 2013. This renewal of the CGP will continue to authorize discharges from regulated construction activities in Texas for five years until March 5, 2023.

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

PROCEDURAL BACKGROUND

Notice of availability and an announcement of the public meeting for this permit was published in the *Abilene Reporter News*, the *Amarillo Globe-News*, the *Austin-American Statesman*, the *Corpus Christi Caller Times*, the *Dallas Morning News*, the *El Paso Times*, the *Houston Chronicle*, the *Lubbock Avalanche Journal*, the *McAllen Monitor*, the *Midland Reporter Telegram*, the *San Antonio Express News*, the *Tyler Morning Telegraph*, the *Waco Tribune Herald* and the *Texas Register* on August 18, 2017. A public meeting was held in Austin on September 18, 2017, and the comment period ended the same day.

COMMENTS AND RESPONSES

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

General Comments

1. **Comment:** T/K comments that it would be helpful if the permit clarified whether stormwater from demolition activities is considered “construction stormwater” if no actual new construction is involved. For example, if a process unit at an industrial facility is being removed via demolition and no new construction is taking place. T/K also asks in the hypothetical situation presented whether vehicular traffic in the demolition area constitute soil disturbance or does it need to be more substantial, such as excavation of the foundations.

Response: The definition of “Construction Activity” is “soil disturbance activities, including clearing, grading, excavating, construction-related activity (e.g., stockpiling of fill material, demolition), and construction support activity”. Construction support activity would be in direct support of a specific construction project. Discharges of stormwater from demolition have the potential to be regulated under the CGP, if the demolition has one acre or more of soil disturbance

or is part of a construction project that has (or will have) one acre or more of soil disturbance. The determination whether demolition activities are covered under this general permit are made on a case-by-case basis depending on the specific circumstances. For example, vehicular traffic related to demolition in the demolition area that causes soil disturbance of one acre or more (or less than one acre if it is within a larger common plan of development) would be sufficient to trigger the need for coverage under the CGP.

2. **Comment:** AGC comments that their primary concern is their member's participation in design-bid-build projects with the Texas Department of Transportation (TXDOT). In these projects, TXDOT has adopted a procedure where they provide certain information for completing the NOI. AGC is concerned that they are certifying that the information supplied by TXDOT for their NOI is correct and suggests modifications to the certification language in the NOI to address this issue.

Cleburne cautions TCEQ to be careful about making the changes suggested by AGC. Cleburne notes that a contractor should be familiar enough with the requirements and the construction location to ensure that any information provided by the customer/primary operator is correct and valid before they sign a certification. If they are unsure of the accuracy of the information provided, they should discuss with the customer/primary operator prior to completing an NOI or construction site notice. Additionally, Cleburne comments that if contractors cannot be held responsible if the information they provide/certify is not accurate then this potentially limits the enforcement capability of TCEQ and the municipal separate storm sewer system (MS4) receiving the discharge.

Response: The CGP requires that all persons or entities that are considered primary operators must certify that a stormwater pollution prevention plan (SWP3) was developed, will be implemented prior to construction, and compliant with any applicable local sediment and erosion controls plans. An operator (contractor) that is required to have on-site operational control and is authorized to direct workers in order to comply with the SWP3, is considered a primary operator under the CGP. If there is uncertainty about the information provided from one operator to another, differences should be resolved prior to signing the NOI.

TCEQ rules require the exact certification language included in the CGP NOI and all other TCEQ issued general permit NOIs. 30 TAC, §205.4(f) requires that NOIs be signed in accordance with 30 TAC, §305.44. The applicable language in §305.44(b) states that a person signing an application shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

TCEQ recommends that AGC coordinate with TXDOT to resolve any issues that occur with data supplied by TXDOT that is needed for the NOI.

- Comment:** AGC comments that under the current NOI, development that occurs in the Edwards Aquifer requires contractors to certify that a TCEQ approved plan required by the Edwards Aquifer Rule (30 TAC Chapter 213) is included or referenced in the SWP3. AGC is concerned since a contractor bidding TxDOT work cannot certify that a plan was developed due to the fact that they themselves did not develop it, but are relying on TxDOT to provide the plan. AGC states that instead, a contractor could certify that a plan will be implemented when included in contract requirements and would like this change reflected in the NOI.

Response: TCEQ understands the unique situation between the TxDOT and its contractors associated with their development projects. TCEQ agrees with the suggested change and will revise the NOI as follows:

For Operators that work under TCEQ-approved documents provided by others:

I certify that the copy of the TCEQ-approved Plan required by the Edwards Aquifer Rule (30 TAC Chapter 213) that is included or referenced in the Stormwater Pollution Prevention Plan will be implemented

- Comment:** AGC requests that the two separate certifications that they provided in their comments and in other communications with TCEQ be included in the NOI to address the issue of contractors having to certify information in the SWP3 provided by a third party. AGC is concerned that their member contractors are certifying information supplied by a third party for their NOI and are concerned whether or not this information is correct. To address this issue, AGC suggests modifying the NOI certification by adding additional language to state that the SWP3 was provided by another operator and that they were not involved in its development.

Response: TCEQ declines to make the suggested change. As stated previously, any person or entity that is considered a primary operator, must certify that the SWP3 was developed and will be implemented at the site. A primary operator is responsible for being knowledgeable of the contents of the NOI and SWP3, regardless of the source.

- Comment:** TAB would like to assist TCEQ in exploring possible compliance assistance training regarding the upcoming electronic reporting rule requirements before the new CGP is effective. In particular, TAB comments that it is unclear whether specific electronic signature software is needed for each operator filing an NOI.

Response: All permittees seeking authorization under the CGP must submit NOIs through TCEQ's electronic permitting system by September 1, 2018, due to the federal electronic reporting rule (e-Reporting Rule). The ePermits system available on the TCEQ website already meets EPA's Cross-Media Electronic Reporting Rule (CROMERR) authentication and encryption standards. TCEQ has conducted annual outreach to the regulated community on how to use the ePermits system and will continue this practice. Currently, most CGP NOIs are submitted through the e-Permits system and TCEQ expects that the transfer from the submittal of paper applications to the submittal of electronic applications should be fairly effortless. TCEQ would welcome any assistance TAB can provide related to compliance training with e-Reporting requirements.

- Comment:** TAB believes that builders disturbing less than one acre within a subdivision that disturbs a total over five acres or more should receive automatic

authorization under the CGP. TAB comments that single-family builders present a small environmental risk, and requests that they be treated the same as small construction activity operators under the CGP.

Response: TCEQ declines to make the requested change. 40 CFR §122.26.(b)(14)(x) defines large construction activity (including clearing, grading and excavation) to include any soil disturbance of an area that is less than five acres if part of a “larger common plan of development” that cumulatively disturbs five or more acres. 40 CFR §122.25(b)(15) only designates small construction activities as being eligible for automatic authorization under a NPDES permit (disturbing at least one acre and less than five acres). If operators are conducting construction activities that disturb less than 1 acre, but are a part of a larger common plan of development that is 5 acres or more, they are considered (part of) a large construction activity. Therefore, they do not qualify for automatic authorization available to small construction activities. The CGP requires all operators who are conducting large construction activities to submit an NOI to obtain authorization under the permit.

7. **Comment:** TAB respectfully requests that TCEQ include "right to cure" language in the general permit allowing operators a certain number of days to correct an enforcement violation before being liable for a fine. TAB also asks that TCEQ consider serving notices of unsatisfactory performance at the construction site itself, rather than by mail.

Response: TCEQ declines to make the requested change that includes the “right to cure” and allowing additional time to correct a violation to avoid an enforcement action. Enforcement actions taken by TCEQ and any corrective action taken by a permittee are reviewed on a case-by-case basis and any determination of violation and “right to cure” are made by TCEQ’s Office of Compliance and Enforcement.

TCEQ also declines the request to serve notices of violation or unsatisfactory performance at the construction site itself, rather than by mail. TCEQ investigators conduct exit interviews with construction site operators who have violations and they are provided a copy of TCEQ’s exit interview form, which (depending on the violation) will be followed with a mailed notice of violation from TCEQ’s Enforcement Division. Also, TCEQ allows an operator up to 14 days to “cure” minor violations that are then re-categorized as areas of concern, rather than violations of the permit.

8. **Comment:** CRI asks whether the NOI form will be revised to ask if the receiving water is impaired on both the CWA, §303(d) list and the CWA, §305(b) list.

Response: TCEQ agrees that the contents of the NOI form will be updated to match the renewed CGP once it is approved for issuance. TCEQ plans to modify the NOI to include information that will direct operators to the *Texas Integrated Report for Surface Water Quality* for the inventory of impaired surface waters of Texas. This report describes the status of the state’s waters, as required by CWA, §§305(b) and 303(d).

9. **Comment:** Ms. Luse comments that EPA’s CGP includes an entire section on the use of polymers, flocculants, and coagulants including appropriate usage, discharge

risk, proper training, and separate authorization for use of cationic chemical. TCEQ's CGP does not contain any requirements or language addressing this issue.

Response: TCEQ was delegated authority by the EPA to administer the National Pollution Discharge Elimination System (NPDES) program (as the TPDES program in Texas) and part of that delegation is to issue stormwater general permits. TPDES permits are not bound to the exact requirements in EPA general permits (in this case the 2017 EPA CGP), unless those requirements are specifically required by rule. Furthermore, EPA received TCEQ's CGP and provided approval to issue the permit on June 13, 2017. TCEQ strives to avoid including requirements for BMPs in the CGP that are too prescriptive, to allow flexibility for permittees. For example, TCEQ does not include specific requirements for which best management practices (BMPs) to use or how those BMPs are to be used. However, if a permittee chooses to use certain BMPs, such as chemicals for flocculation and coagulation to reduce the amount of suspended solids discharged into the water in the state. The general permit requires the permittee to use them in a manner that does not cause negative impacts to water quality or aquatic life.

10. **Comment:** Ms. Luse comments EPA's CGP requires inspections once every 14 days and within 24 hours of the occurrence of a storm event of 0.25 inches or better. TCEQ's CGP inspection requirement is at least once every 14 days and within 24 hours of the end of a storm event of 0.5 inches or greater.

Response: As stated previously, states that are delegated authority by EPA to administer the NPDES program and issue stormwater general permits are not bound to the exact requirements in the EPA's 2017 CGP, unless those requirements are specifically required by rule. The requirements in TCEQ's CGP meet state and federal rules and while the requirements for when to perform inspections after a storm event are not exactly identical to the EPA CGP, TCEQ's inspection requirement is sufficiently timely to protect surface water quality. In its 2012 CGP renewal, EPA revised the amount of rain that would trigger an inspection after a storm event from 0.5 inches to 0.25 inches. Since 2003, TCEQ's CGP has used a 0.5 inch threshold and its use has generated no known significant environmental impacts or other concerns. Therefore, TCEQ declines to make the suggested change.

11. **Comment:** Ms. Luse comments that EPA's CGP corrective action deadline, if the correction does not require a new or replacement control or significant repair, is the close of the next business day. If significant or new, replacement should be completed within seven calendar days of discovery. TCEQ's CGP requires all necessary repair and replacement occur prior to the next rain event, if feasible.

Response: The requirements in TCEQ's CGP meet state and federal rules and while the requirement for repair and replacement of BMPs are not exactly the same as they are in the EPA CGP, requiring any necessary repair and replacement to occur prior to the next rain event are directly related to protection of surface water quality. As stated previously, states with NPDES delegation are only required to follow the exact requirements in EPA's CGP where those requirements are required by rule.

12. **Comment:** Ms. Luse comments that EPA's CGP requires identifying a stormwater team and requires that an entity ensure that certain listed personnel on the team understand the requirements of the CGP and their specific responsibilities. Ms. Luse notes that TCEQ's CGP only has training requirements relating to concrete batch plants.

Response: The identification and implementation of a stormwater team for a construction site is not required by state or federal rules. TCEQ's CGP requires each permittee conducting construction activity covered under the permit to be responsible for meeting the requirements of the permit. TCEQ agrees that there is a difference in the requirements for what is required for construction site operators and the requirements for operators of concrete batch plants operated as a construction support activity. However, the difference in the requirements are reflective of the differences in the types of activities and pollutants that can be discharged. As stated previously, states with NPDES delegation are only required to follow the exact requirements in EPA's CGP where those requirements are required by rule.

13. **Comment:** BCW comments that the permit excessively relies on allowing the permittee to determine the appropriate BMPs, monitoring, and recordkeeping based on practicality. BCW comments that the permit uses the terms "minimize" and "to the extent feasible" instead of terms such as "prevent" or "eliminate." BCW states that the latitude of the terms used is one of the major causes of construction stormwater impacts to property and surface water.

Response: The volume of stormwater runoff from construction sites is by nature unpredictable; and the quantities and types of pollutants in discharges from construction sites can vary. Because of the uncertainty of pollutants and volume of stormwater runoff at construction sites, operators with authorization under the CGP are required to choose BMPs that are effective at minimizing or eliminating the discharges of pollutants in stormwater runoff into surface water in the state to the maximum extent practicable. This requirement is also consistent with the 2017 EPA CGP.

14. **Comment:** Fort Worth comments that it would be beneficial if transfers of operational control notifications were required to be submitted to the MS4 receiving the discharge from the construction site. Fort Worth comments that many cities have local permitting requirements for construction sites prior to the commencement of construction activities, but this could assist with the identification of potential permitting gaps for projects already in existence.

Response: There is currently language in the CGP that requires the permittee to notify the MS4 regarding changes to operational control at a site, as follows:

Part II.F.4.(a)ii. requires the original operator with operation control over construction activities at a site to submit a copy of the NOT from the primary operator terminating its coverage under the permit and its operational control of the construction site and submit a copy of the NOI from the new primary operator to the operator of any MS4 receiving the discharge in accordance with Part II.F.1 above.

In addition, local MS4 operators may require an operator of a construction site to submit transfers of operational control notifications to the MS4 through ordinances or other legal mechanism.

Part I.B

15. **Comment:** TAB requests that TCEQ keep the definition of "construction activities" tied to the term "earth disturbance." TAB comments that not all stockpiles will lead to the transfer of pollutants into navigable waters (i.e. landscaping stone, bricks, and wood piles) and requiring secondary containment goes beyond the federal stormwater rules.

Response: The definition of "construction activities" was revised in the permit to include construction related and construction support activities to clarify that when those activities are conducted prior to and in conjunction with the actual soil disturbing activities related to the construction, they can trigger the obligation to obtain coverage under the CGP. Any BMPs placed around or near construction-related and construction support activities to control pollutants in stormwater discharges (which could include secondary containment if that is what the operator chooses to use) are required to be implemented by operators, which is consistent with the EPA's 2017 CGP.

16. **Comment:** AGC comments that the definition of "Final Stabilization" does not agree with the termination of coverage language in the Fact Sheet. AGC comments that the language in the Fact Sheet is much more practical and recommends incorporating the second paragraph of Part IV.C. of the Fact Sheet into the definition in the permit.

Response: The information presented in Part IV.C of the Fact Sheet is a broader summation of the requirements for terminating CGP coverage and establishing final stabilization and TCEQ declines to revise the definition of "Final Stabilization" in the general permit. The information contained in the definition of "Final Stabilization" in the general permit provides more detailed information as to the requirements for how to achieve final stabilization. The Fact Sheet provides guidance to operators.

17. **Comment:** Fort Worth comments that the definition of "Notice of Termination" should be revised to say "authorized under this general permit..."

Response: TCEQ agrees with the comment and changed the last part of the definition of "Notice of Termination" from "...under a general permit" to "...this general permit."

18. **Comment:** Fort Worth requests changing the wording in the "Operator" and "Primary Operator" definitions from "person or persons" to "person or entity."

Response: TCEQ declines to make this change, because the term "Operator" can apply to any person or persons seeking authorization under the CGP, which can also apply to an "entity."

19. **Comment:** Fort Worth suggests adding the following phrase to the last sentence of the "Secondary Operator" definition: "...prior to the termination of the primary

operators permit or prior to the commencement of construction activities, whichever is applicable."

Response: TCEQ declines to make the suggested changes. Requirements related to the transfer of operational control are already addressed in the permit under Part II Section F.4 "Transfer of Operational Control."

20. **Comment:** Fort Worth suggests that for clarity the definition of "Small Construction Activity," the word "larger" should be removed from "larger common plan of development" to prevent confusion with a "large site."

Response: TCEQ declines to make the suggested changes since the definition of "Small Construction Activity" is consistent with the federal rules located in 40 CFR §122.26(a)(9)(i)(B) and (b)(15).

Part II.A.

21. **Comment:** In regards to the phrase "doesn't serve other unrelated construction activities" in Part II, Ms. Luse asks the following questions: 1) How is an area where there is a permanent storage and management of construction materials, which is located on the same property area where construction is being conducted, be addressed in the requirements for construction support activities? 2) Is it allowable for a primary operator that is responsible for a materials management area that is a construction support activity to allow other operators to deposit waste materials (soils or concrete rubble) in the material management area? 3) Can the owner of the property only be responsible for the material management area under their CGP authorization and allow other operators from related or unrelated construction projects to deposit waste materials (soils or concrete rubble) in their material management area?

Response: The CGP defines "Construction Support Activity" as:

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

If the activity meets the definition of construction support activity then it is subject to the requirements of the CGP. If an operator is responsible for a construction support activity, that operator is responsible for all materials present at the portion of the site where the support activity takes place. If other operators place materials in that area, then the operator holding authorization under the CGP would assume responsibility for the materials deposited by other operators.

Part II. C.

22. **Comment:** BCW comments that in Part II.C.4, impaired waters should not be receiving waters for construction stormwater discharges. BCW comments that even

if the discharge is not specifically of a pollutant of concern the CGP does not consider the potential synergistic effects of increased loading of other pollutants.

Response: The CGP is designed to protect water quality and contains requirements for operators authorized under the general permit, with a site that will discharge to impaired waters that are listed on the EPA approved CWA §303(d) List or to an impaired water body with a TMDL, to develop a SWP3 and implement appropriate BMPs. The BMPs implemented by an operator must prevent the discharge of a pollutant of concern to a §303(d) listed water body to the maximum extent practicable. Discharges of pollutants of concern to impaired water bodies where there is a TMDL are not eligible for coverage under the CGP unless they are consistent with the approved TMDL or TMDL Implementation Plan (I-Plan). The requirements in the CGP for addressing impaired waters is consistent with requirements in the 2017 EPA CGP.

23. **Comment:** AGC comments that Part II.C.5 requires construction site operators located in the Edwards Aquifer recharge or contributing zone to submit copies of NOIs to the appropriate TCEQ regional office for discharges located “within 10 miles upstream of the Edwards Aquifer recharge zone.” AGC does not see justification for this requirement and asks that it be removed.

Response: TCEQ declines to make the requested change. The requirement to submit a copy of the NOI to the appropriate regional office, if the site is located “within 10 miles upstream of the Edwards Aquifer Recharge Zone” was present in the CGP that was issued in 2008 and is consistent with both the Multi Sector General Permit (MSGP) TXR050000 and the Small MS4 General Permit (TXR040000), and is not a significant burden to an operator seeking authorization under the CGP. The requirement ensures that the regional office is notified of new stormwater discharges in the Edwards Aquifer Recharge Zone and in most of the Edwards Aquifer Contributing Zone.

24. **Comment:** TAB comments that the Endangered Species Act (ESA) language in Part II.C.11 inappropriately limits coverage for operators based on regulations within a separate federal program. TAB notes that TCEQ is not liable by default for issuing a permit for a private activity that may result in a “take.” Also, TAB comments that withholding coverage for adverse or threatened effects to endangered species is unworkable because there is no mechanism or procedures for operators seeking CGP coverage to either determine their potential effects on endangered species or report that requirements of the ESA have been satisfied. TAB requests that this language be deleted or in the alternative, modified as follows:

Permittees must ensure that their discharges comply with the federal endangered Species Act (ESA). ESA requirements may apply to the construction activity discharges permitted by this permit and to the construction activity itself. Discharges not in compliance with the ESA are not authorized. Federal requirements may compel the permittee to install site-specific controls to ensure that protection of endangered or threatened species is achieved. If a permittee has concerns over potential impacts to listed species, the permittee may contact TCEQ or the U.S. Fish and Wildlife Service for additional information.

BCW comments that permittees should be required to contact U.S. Fish & Wildlife (USFW) to determine if there are specific concerns relating to listed species in the receiving waters.

Response: TCEQ declines to make the requested change. Federal requirements related to endangered species apply to all TPDES permitted discharges and site-specific controls may be required to ensure that protection of endangered or threatened species is achieved. The CGP requires that “If a permittee has concerns over potential impacts to listed species, the permittee may contact TCEQ for additional information.” TCEQ will either provide information directly or refer the permittee to the Texas Parks and Wildlife Department (TPWD) for additional information.

While TCEQ agrees with BCW that an operator can contact USFW to determine if there are specific concerns relating to listed species in the receiving waters, TCEQ provides this information to operators seeking authorization under the CGP and will refer a permittee to TPWD (who also works with USFW on endangered species), as appropriate, for additional information.

Part II.E.

25. **Comment:** AGC comments that it is not clear if both “TXDOT and contractor need to submit” the NOI to the applicable MS4 operator.

Response: Part II.E.3.(d).i. of the CGP requires that all primary operators of large construction activities must provide a copy of the signed NOI to the operator of any MS4 receiving the discharge from the construction site. If both TxDOT and another operator contractor each submit a NOI to TCEQ, then both TxDOT and the other operator must submit a signed copy of the NOI to the operator of the applicable MS4 that will receive discharges from the construction project.

26. **Comment:** AGC recommends that TCEQ automate the NOI system so that notifications are submitted automatically to the applicable MS4 that will receive the stormwater discharge. College Station and Fort Worth ask if there is a way for those NOIs that are submitted electronically to be automatically submitted to the respective MS4 receiving the discharge, and if not, they ask if that is something in TCEQ’s long term plans.

Response: TCEQ currently does not have the capability in its ePermits system to connect individual permittees to various MS4 operators. Therefore, automatic submittals by TCEQ to the appropriate MS4 is not feasible at this time. However, TCEQ has notified the Water Quality Information Technology (WQIT) team of the recommendation to explore the addition of automatic notification of the MS4 entity (or entities) to the ePermits system to determine if this could be a function that could be developed in the future since it would not only benefit the entities regulated by this general permit, but also other stormwater general permits.

27. **Comment:** TAB requests that TCEQ add clarification regarding how the site notice for small construction activities and large construction secondary operators must be posted. TAB comments that EPA’s CGP also requires an additional sign asking the public to contact EPA enforcement “if you observe indicators of stormwater pollutants in the discharge or in the receiving

waterbody.” TAB believes that such a signage requirement will lead to the regulatory authority being bombarded with uninformed calls by laypersons to investigate "unclear water," etc. TAB also asks whether such an additional signage requirement violates builder's first amendment rights under the U.S. Constitution.

Response: Site notices provided by TCEQ for operators with authorization under the CGP do not contain (nor is the TCEQ planning to add) specific language or additional signage requirements to the CGP’s site notice requirements that would incorporate contacting TCEQ or EPA regarding potential water quality violations. Operators with authorization under the TCEQ CGP must use site notices that have been developed by the TCEQ in a manner that meets the requirements of the CGP.

TCEQ declines to provide more specific posting instructions in the CGP since there are significant variations in construction sites in the state. Part II.E.2(b) explains that the site notice must be posted in a location where it is “safely and readily available for viewing by the general public, local, state, and federal authorities.” Also, as stated previously, states with NPDES delegation are only required to follow the exact requirements as EPA’s CGP where those requirements are required by rule.

28. **Comment:** CRI notes that in Part II.E. NOIs that are submitted electronically are automatically approved, but that the CGP requires NOIs and construction site notices to be submitted to an MS4 that will receive any discharges from the site at least two days prior to commencing construction activities. CRI asks for information regarding the purpose of the two-day requirement.

Response: There are several conditions in the general permit that require notification two days prior to commencement of construction activities. These include submittal of a low potential for erosion certificate and site notices or NOIs for construction activities. This advanced notice gives time for the MS4 operator to begin their oversight process for construction activities that take place within their jurisdiction, as required by Phase I MS4 individual permits and the Phase II MS4 general permit. This may include adding the construction site in the MS4’s master list of construction sites, assigning the site to an investigator or inspector, and to allow for pre-construction site visits.

29. **Comment:** Fort Worth comments that Part II.E.2(c) in the section regarding small construction activities, states that operators should maintain site notices until final stabilization is achieved and a NOT submitted. Fort Worth notes that no NOI or NOT is required for small construction activities and recommends changing this language.

Response: In response to the comment, the phrase “and a notice of termination has been submitted to the TCEQ” was removed from Part II.E.2(c).

30. **Comment:** CRI asks what TCEQ means by the term “implemented” in Part II.E.3.(a) in the context of the following sentence: “The SWP3 must be developed and

implemented prior to obtaining coverage and prior to commencing construction activities.”

Response: Implementation of the SWP3 prior to obtaining coverage and prior to commencing construction activities may include, but is not limited to, designating and describing the types and locations of structural and non-structural BMPs and outfalls in the SWP3; installing BMPs that do not cause soil disturbance prior to obtaining authorization under the permit; and developing inspection sheets.

31. **Comment:** College Station asks if a developer has a common plan of development whether each contractor building a single home needs to submit an NOI and post both the NOI and site notice in front of each home.

Response: Additional information is needed to give a complete response since the answer varies based on entities meeting certain criteria. For example, the answer would be yes, if each contractor building a single home meets the definition of a primary operator, and if the amount of soil disturbance is part of a larger common plan of development that equals or is greater than five (5) acres.

Construction activities that result in land disturbance of five (5) acres of land are classified as large construction sites. This includes any construction activity that disturbs less than five (5) acres of total area but is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb five (5) or more acres. All operators of large construction activities that qualify for coverage under the CGP are required to develop a SWP3, submit an NOI, and post a large construction site notice. Operators of large construction activities are required to post a large construction site notice, but not a copy of the NOI.

Part III.D.2 of the CGP states that “Operators with authorization for construction activity under this general permit must post a TCEQ site notice at the construction site at a place readily available for viewing by the general public, and local, state, and federal authorities.” Most developers have an entrance to the construction site or a site trailer (or office) near the entrance where site notices can be posted. An operator should post their site notice at an entrance in a manner that meets the requirement in Part III.D.2 of the CGP and be able to show the following in their SWP3: Each site where they are working within the development; the NOI with information that would confirm the site(s) where they are working that they had proposed in the NOI; and any notices of change filed with the TCEQ that show the additional sites within the development (same larger common plan) that were added for coverage under their authorization under the CGP.

Part III.

32. **Comment:** BCW comments that in the case where there are multiple SWP3s for common plans of development, the lack of a single party with responsibility for implementation results in poor and uneven application of BMPs. BCW would prefer to see a single plan developed by the primary operator of a site and for that party to be the sole responsible party for the SWP3.

Response: TCEQ declines to make the suggested change. Permittees have the flexibility to either develop their own SWP3 or become part of a shared SWP3. Whether each operator has its own SWP3 or is part of a shared SWP3, each permitted operator is responsible for meeting the requirements of the permit at the site or sites where they are conducting construction activities within a common plan of development.

33. **Comment:** CRI asks that in Part III, paragraph two regarding the phrase “provided reference is made to the other operators at the site,” what other operator information needs to be referenced in the SWP3.

Response: The requirement referenced by the commenter is related to when multiple operators are working on the same construction site. The SWP3 should at a minimum, document other operator name(s), location of their activities and BMPs, controls at the site, and any coordination or correspondence between the operators related to compliance with CGP requirements or conditions.

34. **Comment:** TAB comments there is often confusion in the field over whether minute details in an operator's SWP3 are individually enforceable. TAB requests that TCEQ include language from EPA's 2017 CGP and associated Fact Sheet that helps clarify this issue and will help ensure enforcement consistency on the ground.

Response: TCEQ agrees with the comment and made the following changes to the permit and Fact Sheet: The following language was added as the third paragraph of the introductory section of Part III:

The SWP3 is intended to serve as a road map for how the construction operator will comply with the effluent limits and other conditions of this permit and does not establish the effluent limits that apply to the construction site’s discharges. These limits are established in Part III.G of the permit.

The following was added as Part IV. B.4 of the Fact Sheet:

TCEQ emphasizes that while the requirement to develop a SWP3, to keep it updated, and to include in it all of the required minimum contents consistent with Part III of the permit are enforceable permit requirements, the site-specific details of these SWP3s do not establish separately enforceable limits of the permit. The SWP3 is intended to serve as a road map for how the construction operator will comply with the effluent limits and other conditions of this permit and does not establish the effluent limits that apply to the construction site’s discharges. These limits are established in Part III.G of the permit. The fact that the SWP3 is an external tool and not considered to include effluent limits enables the operator to be able to modify and retool its approach during the course of the permit term in order to continually improve how it complies with the permit.

Also, note that the CGP contains content requirements for the SWP3 and the responsibilities of operators authorized under the permit. A violation of the permit can occur if the contents of the SWP3 do not meet the requirements in the permit for developing and updating a SWP3.

Part III.D.

35. **Comment:** BCW comments that while they generally agree with the provisions for notice given to local officials and MS4s receiving the discharge, they do not believe the public notice provisions go far enough. BCW comments that notice should be provided to adjacent landowners of construction activities so that they are fully informed about what the operators should be doing to control stormwater. BCW also comments that when SWP3s are modified that the operator should be required to provide information on any changes to adjacent landowners.

Response: TCEQ declines to make the suggested change. Public notice requirements for general permits are described in 30 TAC, §205.3 and requires TCEQ to publish notice about the general permit in the *Texas Register* and in at least one newspaper of statewide or regional circulation. There are no publication requirements for individual authorizations under the CGP or requirements to notify adjacent landowners. However, operators of construction sites are required by the CGP to send a copy of the site notice to the MS4 receiving the discharge, thereby informing local authorities about ongoing construction activities within their jurisdiction.

Part III.E.

36. **Comment:** TAB suggests including a specific amount of time for modifying SWP3s when it becomes necessary. TAB comments allowing five business days or seven days as an appropriate amount of time and would be in line with EPA's CGP.

Response: In response to the comment, the first sentence in Part III.E was revised to read as follows: "The permittee must revise or update the SWP3 within seven days of when any of the following occurs;..."

Part III.F.

37. **Comment:** BCW comments that the site map required by Part III.F.1(g)(vi) should include the surface waters receiving the discharge even if such waters are not adjacent or in close proximity to the construction site.

Response: TCEQ declines to make the suggested change. Waterbodies that are not adjacent or in close proximity to the construction site will not be directly affected by stormwater discharges from the site, unless they are part of a TMDL. The CGP requires the permittee to include only information about surface waters (including wetlands) that will receive discharges from the site (either at, adjacent, or in close proximity) and whether those waters are impaired or have an approved TMDL, and the location(s) where stormwater discharges from the site enter a MS4.

38. **Comment:** BCW comments that the use of the phrase “to the extent practicable” is inappropriate in Part III.F.2.(a)(i) and (iii). BCW comments that BMPs need to be designed to keep any sediment, litter, construction debris, and construction materials from leaving the site.

Response: Part III.F.2 requires a description of the BMPs that are used to “minimize” runoff that carries potential pollutants. The term “to the extent practicable” is used throughout the permit and is necessary to allow flexibility in the BMPs and controls used at construction sites.

39. **Comment:** BCW comments that in Part III.F.2(b)(ii) specifying the records that operators need to keep attached to or referenced in the SWP3 should include the records of inspections of the BMPs.

Response: TCEQ declines to make the requested change. The CGP already contains requirements for permittees to keep records of inspections of BMPs, which are described in Part III.F.7(f)(i) and for the operator to retain records of those inspections in Part VI.B. of the permit.

40. **Comment:** BCW comments that in Part III.F.2(c)(1)(A)(1) and (2) relating to sedimentation basins, that the standards for size are inadequate to prevent off-site migration of sediment except during relatively routine rainfalls. BCW comments that the 2-year, 24-hour standard should be replaced with the 10-year design storm. Additionally, BCW comments that the 3,600 cubic feet per acre of disturbed area is not adequate and equates to less than one inch of rainfall. This allows too many rainfall events to cause run-off that could be prevented with higher standards.

Response: TCEQ declines to make the suggested change. The requirements in the CGP for sizing a sedimentation basin for a 2-year, 24-hour storm event are for sites of ten acres or greater. For sites that have less than ten acres of soil disturbance, sizing a sedimentation basin for a 2-year, 24-hour storm event is also adequate for protection of water quality. These requirements are consistent with requirements for sedimentation basins in EPA’s 2017 CGP.

41. **Comment:** DART comments that the CGP states in Part III.F.2(c)(4) and F.6: “When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface, unless unfeasible.” Also, that Part III.F.5 states: “The following discharges are prohibited: (c) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance.” DART asks for clarification whether it is acceptable to use structures that withdraw water from near the surface of an impoundment to simultaneously promote the removal of suspended sediment in the water and contain the discharge of pollutants less dense than water.

Response: TCEQ agrees with DART that near-surface withdrawal structures may be an allowable alternative to surface withdrawal structures, where petroleum or other floatable pollutants are present. As stated in Part III.F.2.(c)(4) of the permit, “Unless infeasible, when discharging from sedimentation basins and impoundments, the permittee shall utilize outlet structures that withdraw water from the surface.” The

CGP allows enough flexibility for the use of near-surface withdrawal structures to prevent the discharge of petroleum or other pollutants floating at the surface. The operator should document reasons for the location of the withdrawal structure in their SWP3.

42. **Comment:** TAB comments that it is inappropriate to regulate dust control under the CGP because it is not directly related to a discharge of pollutants. As such, TAB requests TCEQ delete the phrase “and the generation of dust” from Part III.F.4(a).

Response: TCEQ declines to make the suggested change. Dust is a contributor to off-site vehicle tracking of sediments from construction sites and can get into local storm sewer systems. In addition, dust creates nuisance conditions and dust suspended in water results in the discharge of total suspended solids, which is a pollutant regulated under the CWA.

43. **Comment:** CRI asks in Part III.F.4(g) regarding demolition of structures whether there are any specific controls that should be implemented for PCBs. TAB requests that TCEQ eliminate this language. TAB comments that if this language is included that there should be a date threshold attached (i.e., this provision only applies to demolition of structures built before January 1, 1980). TAB does not believe there is enough scientific evidence to support such provisions to control PCBs, or to reliably identify the primary sources of PCBs on a given construction site. Ms. Luse asks if a building meets the age limit, can it be tested for PCBs prior to demolition to waive the requirement if PCBs are not detected.

Response: TCEQ declines to make the requested changes. The requirement in Part III.F.4(g) was added to minimize the discharge of PCBs to PCB impaired waters. Controls that could be implemented for PCBs include, but are not limited to, minimizing the exposure of PCB containing building materials to precipitation and stormwater. Part III.F.4.(g) states that the criteria for the need to meet the requirement is when an operator is performing demolition of any structure with at least 10,000 square feet of floor space that was built or renovated before January 1, 1980 and the receiving waterbody is impaired for polychlorinated biphenyls (PCBs). This requirement is consistent with the same requirement in EPA’s 2017 CGP.

The requirement to implement controls to minimize the exposure of PCBs when performing demolition at a site that would discharge to a waterbody with an impairment for PCBs, does not allow for a waiver from the requirement by virtue of testing and not finding materials containing PCBs. The requirement was placed in the CGP to address any potential sources and prevent any subsequent releases of PCBs due to exposure of stormwater to PCB impaired waters. Implementation of BMPs to meet the requirement in Part III.F.4.(g) of the CGP, would need to be acceptable to meet any associated TMDL I-Plan or be acceptable as a BMP for controlling pollutants of concern in CWA §303(d) listed waterbodies where there are impairments for PCBs.

44. **Comment:** BCW suggests BMPs should be inspected daily once they are in place and additional inspections within 24 hours of a storm event of 0.5 inches or greater since BMPs are frequently damaged by construction equipment in addition to being

overwhelmed by storms. BCW also comments that inspections of linear construction projects should be done daily and representative inspections should never be allowed.

Response: TCEQ declines to make the suggested changes. Part III.F.6(a) of the permit requires the operator, if it is discovered that BMPs are damaged or otherwise not in effective operating condition, to repair, replace, or modify the BMPs as soon as possible and prior to the next rainfall event. If it was not feasible to do so, the operator is required to document the reasons in the SWP3.

45. **Comment:** College Station asks whether inspection reports need to be submitted to TCEQ or just made available with the other SWP3 documents.

Response: The CGP does not require permittees to submit inspection reports to TCEQ. Part III.F.7.(f) requires the permittee to complete inspection reports within 24 hours following an inspection and retain them with the SWP3.

46. **Comment:** Ms. Luse notes that according to Part III.F.7(a)(2), personnel conducting SWP3 inspections are not required to have signatory authority for inspection reports under 30 TAC §305.128. Ms. Luse asks that TCEQ clarify whether there is a requirement to document written authorization of stormwater inspectors in the SWP3 or if that information should be sent to TCEQ.

Response: The requirements for documenting the names and qualifications of personnel conducting inspections at the site are provided in Part III.F.7.(f)(iii) of the CGP. The requirements indicate that the names and qualifications of personnel conducting inspections at the construction site only need to be documented once in the SWP3, rather than on each inspection report.

47. **Comment:** CRI asks whether the reference in Part III.F.7(c)(v) should be to Part III.F.7(c)(i) rather than Part III.F.7(b)(i).

Response: TCEQ agrees and in response to the comment, the reference in Part III.F.7(c)(v) of the permit was revised to Part III.F.7(c)(i) from Part III.F.7(b)(i).

48. **Comment:** CRI asks regarding Part III.F.7(f)(i) whether post-rainfall inspection reports need to be completed within 24 hours. Baer Engineering asks that TCEQ clarify or correct the first sentence, which states that inspection reports "must be completed within 24-hours following the inspection." Baer Engineering states that this appears to be an error since there was not a 24-hour deadline for completing reports in the current CGP and they understood that the 24-hour requirement refers to monthly reports. Baer Engineering comments that the sentence under the general title "Inspection Reports", the sentence implies that all inspection reports, whether weekly, bi-weekly, post-rain, or monthly, must be completed within 24 hours. Baer Engineering recommends that TCEQ rewrite this section to specify that the 24-hour report completion is for monthly reports, only.

Response: In response to the comments, Part III.F.7(f)(i) was revised as follows:

A report summarizing the scope of any inspection, must be completed within 24-hours following the inspection.

TCEQ declines the request to rewrite the requirement for completing inspection reports to apply to only monthly reports. Completing reports within a 24-hour period should not present a significant burden on operators with authorization under the CGP and is consistent with the 2017 EPA CGP.

Part III.G.

49. **Comment:** TAB comments that when incorporating EPA's amendments to 40 CFR Part 450 (Construction and Development Effluent Limit Guidelines), TAB requests that TCEQ use language as close to that of the final rule as possible.

Response: TCEQ incorporated language relating to the revised effluent limitation guidelines in 40 CFR Part 450 in the existing version of the CGP. Therefore, Part III.G. language related to the effluent limitation guidelines was carried forward from the current version of the CGP. Part III.G. includes all the requirements found in EPA's CGP and additional language determined to be appropriate for the diverse soil conditions found in Texas.

50. **Comment:** TAB supports the soil stabilization timeline in Part III.G.(2), noting that 14 days is an appropriate time limit for establishing temporary soil stabilization.

Response: The TCEQ acknowledges TAB's comment in support of the soil stabilization timelines.

51. **Comment:** Ms. Luse comments that there is confusion regarding various sections of the CGP, such as Part III.G.2 that mentions stabilization of a "portion" of the site. Ms. Luse asks whether these two sentences should match, in particular in the use of the word "any." Also Ms. Luse asks in relation to site stabilization if a "portion" or "significant portion" can be defined or a descriptive example included in the CGP.

Response: The word "portion" used in Part III.G.2 of the CGP originates from the effluent limitation guidelines for construction and development located in 40 CFR Part 450 of the federal rules. This means that stabilization efforts must be initiated for any part or portion of a construction site where construction activity has temporarily or permanently ceased for 14 calendar-days or more. While the term "portion" is not defined in terms of size or amount in the rule, the rule is addressing any and all areas of a construction site subject to the requirements of the CGP.

52. **Comment:** TAB requests that TCEQ add the following language at the end of Part III.G.(4)(b):

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

Response: TCEQ declines to make the requested change. The language in Part III.G.(4)(b) originates from the federal rules located in 40 CFR, §450.21(d)(2) and refers to a requirement that allows exposure of final products and materials intended for outdoor use to stormwater.

53. **Comment:** TAB requests changing the phrase “when not in use” to “at the end of the work day” in Part III.G.(4)(c). TAB comments that requiring operators to close lids when not in use is too vague or impractical. Furthermore, TAB requests that TCEQ make it clear that the language stating the requirements to provide a cover on trash containers that do not have lids, only applies in cases where the container itself is not sufficiently secure to prevent the discharge of pollutants absent a cover. TAB notes that EPA made a change similar to the one requested in their CGP after receiving many comments regarding the vagueness of the phrase “when not in use.”

Response: TCEQ agrees to make the suggested change. To provide more clarity and for consistency with the 2017 EPA CGP, Part III.G.(4)(c) was edited by replacing the phrase “when not in use” with “at the end of the work day” in the first sentence of the paragraph and inserting the phrase “where the container itself is not sufficiently secure enough to prevent the discharge of pollutants absent a cover” in the second sentence. Part III.G.(4)(c) now reads:

Minimize the exposure of waste materials by closing waste container lids at the end of the work day. For waste containers that do not have lids, where the container itself is not sufficiently secure enough to prevent the discharge of pollutants absent a cover and could leak, the permittee must provide either a cover (e.g., a tarp, plastic sheeting, temporary roof) to minimize exposure of wastes to precipitation, or a similarly effective means designed to minimize the discharge of pollutants (e.g., secondary containment); and...

54. **Comment:** CRI ask how TCEQ defines the term “waste container” used in Part III.G.(4)(c).

Response: The term “waste container” as used in Part III.G.(4)(c) would include a receptacle (e.g., dumpster, trash receptacle) that is located at a construction site and is used by operators and other construction site personnel to accumulate and store waste materials or trash. To meet this requirement, waste containers need to have a lid or other cover that will prevent stormwater from coming in contact with the contents of the container and potentially create a waste stream that is not covered under the CGP. Waste containers vary in size and type according to the needs at the construction site or local restrictions.

55. **Comment:** Part III.G.4(c) contains the phrase: “Minimize the exposure of...” Ms. Luse comments that large projects with large volumes of concrete rubble, wood, or rebar, typically have large piles of these wastes segregated for disposal at a later date, or may use large volume lidless dumpsters without any covers. Ms. Luse asks is it the intent of this section to cause these large piles to be covered to prevent exposure to precipitation or to require large dumpsters to have covering for these same sorts of materials. Also, Ms. Luse asks if an earthen berm can serve as a secondary containment area for large piles or large lidless dumpsters in lieu of a cover.

Response: The CGP requires permittees to 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 stormwater runoff. TCEQ does not require

specific BMPs to minimize the discharge of pollutants from those type of materials, but allows the operator to evaluate the potential pollutant sources present and implement appropriate BMPs. In situations where the volume of trash and waste materials are too large for traditional waste containers and materials are stored in in piles or in large lidless dumpsters, the permittee would need to implement BMPs that would reduce or eliminate exposure of the large quantities of materials to stormwater and runoff.

Part IV

56. **Comment:** BCW comments that concrete batch plants or asphalt plants should not be included in the CGP. BCW comments that these facilities should be permitted separately and not considered construction support activities. If these facilities are going to be included, the sampling frequency should be weekly for non-storm water discharges associated with these facilities.

Response: TCEQ declines to make the suggested change. Stormwater discharges from construction support activities, which may include concrete batch plants or asphalt plants, are regulated under the CGP. This is consistent with EPA's 2017 CGP.

Any allowable non-stormwater discharges covered under the CGP are only authorized if there are no pollutants that would adversely affect water quality. The CGP requires a permittee operating an asphalt or concrete batch mixing plant to maintain BMPs and controls to prevent pollutants from co-mingling with stormwater and non-stormwater discharges. Concrete batch plant sampling under the CGP is to monitor benchmark levels of specific pollutants, which are designed to provide analytical data to ensure that the BMPs and controls that a permittee has in place are working. The CGP does not contain any benchmark monitoring requirements for asphalt batch mixing plants.

TCEQ declines to make a change to the sampling frequencies for discharges from asphalt and concrete batch mixing plants. The requirements and frequencies of inspections in the CGP applicable to both asphalt and concrete batch mixing plants and the frequencies given in the CGP for benchmark monitoring for concrete batch mixing plants are adequate for maintaining water quality in discharges made from these types of construction support activities.

Part IV. A

57. **Comment:** AGC has several comments regarding the benchmark parameters for concrete batch plants:

1) The monitoring frequency in the permit is quarterly, while the monitoring frequency in the MSGP is semi-annually and suggests that two samples a year for the CGP should be sufficient.

2) The CGP requirement for concrete batch plants also includes benchmark monitoring for oil and grease and total iron. AGC questions why these parameters are included.

3) The benchmark values do not consider background or upstream values, which can sometimes exceed the benchmarks and suggests a reasonable increase to account for those background levels.

Response: 1) TCEQ declines to make the suggested changes. The benchmark monitoring requirements were developed by considering discharges of stormwater covered under the Concrete Batch Plant general permit (TXG110000) and stormwater and allowable non-stormwater covered under the MSGP (Sector E). Even though the benchmark monitoring frequencies are more frequent than in the MSGP, it is appropriate that operators evaluate the effectiveness of their BMPs more frequently during (what may turn out to be) a fairly short amount of time that a concrete batch mixing plant would be present at a construction site.

2) TCEQ includes benchmark monitoring requirements for oil and grease and total iron for discharges from concrete batch plants. These requirements are consistent with the TXG110000 general permit, which also regulates discharges from concrete production facilities. In addition, it is also consistent with the MSGP, which requires concrete production facilities under Sector E - Glass, Clay, Cement Concrete, and Gypsum Product Manufacturing Facilities, to conduct benchmark monitoring for total suspended solids, iron, and pH.

3) Part IV.A.2 of the CGP addresses potential exceedances of benchmark values for concrete batch plants and how to address those exceedances if they are attributable to background concentrations. Part IV.A.2 also states that if the operator is able to relate the cause of the exceedance to background concentrations, then subsequent exceedances of benchmark values for that pollutant may be resolved by referencing earlier findings in the SWP3. Additionally, Part IV.A.2 of the CGP states that background concentrations may be identified by laboratory analyses of samples of stormwater run-on to the permitted facility, by laboratory analyses of samples of stormwater run-off from adjacent non-industrial areas, or by identifying the pollutant is a naturally occurring material in soil at the site.

58. **Comment:** Zachry Construction asks that for concrete batch plants TCEQ clarify that stormwater coming into contact with aggregate or sand stockpiles and subsequently discharging off-site are allowable discharges under the CGP.

Response: Stormwater coming into contact with aggregate or sand stockpiles and subsequently discharging off-site are permitted discharges under the CGP. However, the discharges would be subject to the benchmark monitoring levels for concrete batch mixing plants.

Part V.

59. **Comment:** BCW comments that in Part V.C. washout of concrete trucks during rainfall events should be prohibited rather than minimized. Additionally, concrete truck washout should not be conducted on construction sites, except for locations where an actual washout facility is constructed for use.

Response: TCEQ declines to make the suggested change. Any operator conducting concrete truck washout at a construction site regulated by the CGP is required to ensure that its BMPs are sufficient to prevent the discharge of concrete truck washout as the result of rainfall.

60. **Comment:** CRI asks why in Part V.D. there is not a requirement for poly-liner for concrete washout pits. Ms. Luse comments that various sections in Part IV and Part III.G.5(a) are confusing regarding the washout of concrete. Ms. Luse asks whether it is justifiable to allow any untreated high pH concrete washout water to discharge from a container to the ground absent requiring a liner or leak proof non-permeable container. Ms. Luse asks that TCEQ clarify whether it thinks that concrete washout water contamination is not likely to occur under normal soil conditions where an un-lined pit or berm is being used or if the SWP3 needs to support the use of an open or un-lined soil pit for containment.

Response: TCEQ is not prescriptive regarding what BMPs to use to meet the requirements of the CGP. It is the operator's responsibility to evaluate the potential pollutant sources at their particular construction site that is present in concrete truck washout. The operator should consider such factors as the characteristics of the soil in the area proposed for retaining the washout, the depth to groundwater, and other applicable information when making the determination that groundwater will not be impacted by an un-lined concrete truck washout pit.

TCEQ recognizes that some circumstances may necessitate the use of a liner to address concrete truck washout where groundwater contamination could occur. An example where this may be necessary is where the site soils are very permeable and the groundwater table is very shallow.

61. **Comment:** College Station comments that the EPA's CGP requires liners for concrete washouts, but that TCEQ's CGP does not and asks which requirement their contractors need to follow.

Response: See response to comment above. Construction activities regulated by TCEQ are required to follow the requirements in TCEQ's CGP not EPA's CGP. If the construction activity is related to oil and gas activities regulated by the Texas Railroad Commission, then TCEQ's CGP does not apply and to the extent CGP coverage is required, then EPA's CGP would be the applicable general permit for regulated construction activities.

62. **Comment:** BCW comments that concrete truck washout should not be a permissible discharge under the CGP and should be done at a designated facility, specifically designed for that purpose.

Response: TCEQ declines to make the suggested change. Part V. of the CGP provides specific requirements for when and how concrete truck washout is allowed at construction sites and the discharge of concrete production waste water (including concrete truck washout) into surface water in the state must be authorized under a separate TCEQ general permit or individual permit.