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

The executive director of the Texas Commission on Environmental Quality (commission or TCEQ) files this Response to Public Comment (Response) on Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR150000, the Construction General Permit for Storm Water Discharges (CGP). As required by Texas Water Code (TWC), §26.040(d) and 30 Texas Administrative Code (TAC) §205.3(c), 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 This response addresses all timely received public comments, whether or not withdrawn.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 persons:

American Electric Power (AEP), Associated General Contractors of Texas (AGC), Capitol Environmental, Centex Homes, represented by Thompson & Knight (Centex Homes), City of Dallas (Dallas), City of Mesquite (Mesquite), Compliance Resources Inc. (CRI), Harris County Public Infrastructure Department (Harris County), Greg Mast, Oncor Electric Delivery (Oncor), San Antonio Water System (SAWS), Save Our Springs Alliance (SOS), South Central International Erosion Control Association (SCIECA), Storm Water Solutions, LP - Houston, TX (SWS-Houston), Storm Water Solutions, LP - Royce City, TX (SWS-Royce), Stormwater Environmental Compliance Alliance, LLC (SECA), Tarrant County, represented by Robert Berndt (Tarrant County), Texas Association of Builders (TAB), Texas Department of Transportation (TxDOT), Travis County Transportation and Natural Resources (Travis County), Turner, Collie, & Braden, Inc., represented by Mary Purzer (TCB), United States Department of the Army - US Army Installation Management Command HQ, US Army Garrison, Fort Hood (Fort Hood), and Zachry Construction Corporation (Zachry).

BACKGROUND

The CGP renewal authorizes the discharge of storm water runoff associated with small and large construction sites and certain non-storm water discharges into surface water in the state. This general permit identifies the sites that may be authorized under the permit. Additionally, it identifies construction activities that may obtain waivers and that may be eligible for coverage without submitting a notice of intent (NOI). The CGP also identifies under what circumstances a construction activity must obtain individual permit coverage. The CGP also authorizes the discharge of storm water 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. Federal storm water regulations adopted by TCEQ extend storm water permitting requirements to certain construction activities, and the CGP will provide a mechanism for regulated construction activities to continue to obtain permit coverage.

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 expires on March 5, 2008. The renewed CGP will continue to authorize discharges from construction activities in Texas for five years from the effective date of the permit.

The CGP specifies that where discharges will reach Waters of the United States, a storm water pollution prevention plan (SWP3) must be developed and implemented unless certain conditions are met. Each SWP3 must be developed according to the minimum measures defined in the permit, and must also be tailored to the specific operations and activities being conducted at the construction site. Applicants must develop SWP3s that identify and address potential sources of pollution that are reasonably expected to affect the quality of storm water discharges from the construction site. The specific requirements of the SWP3 include the following minimum provisions: a detailed project description; a description of the structural and the non-structural controls (best management practices (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; demonstration of compliance with other state and local plans; a description of how BMPs will be maintained and how controls may be revised; a description of how inspections of BMPs will be conducted; and identification and description of the implementation of appropriate pollution prevention measures for eligible non-storm water discharges.

The CGP is issued under the statutory authority of the TWC as follows: 1) TWC, §26.121, which makes it unlawful to discharge pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission, 2) TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state, and 3) TWC, §26.040, which provides the commission with authority to amend rules to authorize waste discharges by general permit.

The federal storm water regulations for discharges from large construction activities are in the federal rules at 40 Code of Federal Regulations (CFR) §122.26, which were adopted by reference as amended by TCEQ at 30 TAC §281.25(a). The federal Phase II storm water regulations were published on December 8, 1999 in the *Federal Register*, requiring regulated small construction activities to obtain permit coverage by March 10, 2003. The small construction site regulations are in the federal rules at 40 CFR §122.26(a)(9)(i)(B) and (c), which were adopted by reference as amended by TCEQ at 30 TAC §281.25(a)(4).

Notice of availability and an announcement of the public meeting for this permit were published in the *Houston Chronicle*, the *Amarillo Globe-News*, the *McAllen Monitor*, the *El Paso Times*, the *San Antonio Express News*, the *Beaumont Enterprise*, the *Austin American Statesman*, the *Stephenville Empire Tribune*, and the *Tyler Morning Telegraph* on August 27, 2007. The notice was also published in the *Dallas Morning News* on September 14, 2007 and in the *Texas Register* on August 31, 2007. A public meeting was held in Austin on October 3, 2007, and the comment period ended at the close of the public meeting.

An additional 30-day public comment period was established for the fee portion of the draft permit, and that comment period ended on October 26, 2007. Notice of the additional fee comment period was published in the *Houston Chronicle*, the *Dallas Morning News*, the

Amarillo Globe-News, the *McAllen Monitor*, the *El Paso Times*, the *San Antonio Express News*, the *Beaumont Enterprise*, the *Austin American Statesman*, the *Tyler Morning Telegraph*, and the *Stephenville Empire Tribune* on September 26, 2007. Notice of the additional fee comment period was published in the *Texas Register* on September 28, 2007. The additional public comment period on the changes to the fee schedule ended on October 26, 2007.

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

Section I.A. – Flow Chart

Comment: TAB comments that the flow chart in Section I.A. does not address common plan projects that may be less than one acre in size. TAB comments that the flow chart would be more clear if the oval icon for less than one acre were expanded and the phrase "that is not part of a larger plan of development" were added to its contents. TAB notes that the first box in the flow chart refers to page 3 of the permit, but that the requirements being referenced are actually on pages 5 and 7 of the permit. SWS-Houston comments that the flow chart references a definition on page 3 of the permit and the definition is actually on page 4. TCB comments that the flow chart references page 3 and TCB believes that is the wrong page number. Capitol Environmental requests that the flow chart be rearranged to provide more clarification for the regulated community regarding the "larger common plan of development."

Response: TCEQ intended to show on the chart that the size thresholds were based on the size of the larger common plan of development by including specific text in the box at the top of the page. However, to clarify the intent the box was revised to include a notation for a footnote explaining the "common plan of development or sale" and the oval icons that included the acreage were revised to reference the footnote. The following language was included in the footnote:

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

Comment: Capitol Environmental states that the language in the flow chart regarding the size of projects appears to be incorrect, because the chart indicates that a construction project disturbing exactly five acres would be subject to the requirements for both large and small construction sites.

Response: In response to the comment, TCEQ changed the flow chart to indicate the differences between permitting requirements for construction projects disturbing at least one, but less than

five acres, and those disturbing five or more acres (including the larger common plan of development).

Comment: TAB comments that the flow chart is not clear in referring to the types of operational control over a site and requests clarification on the different types of "operator" in order to make the flow chart as useful as is intended. Fort Hood comments that the flow chart in Section I.A. appears to have duplicate entries for the operator over plans and specifications for large construction activities and asks for clarification. In the alternative, Fort Hood asks that a correction be made to the flowchart. Mesquite comments that the clarification regarding who is an operator is more confusing, particularly for large construction sites and suggests using the language used by EPA's CGP. Harris County comments that it has a number of questions concerning the thoroughness of the flow chart on page 3 of the CGP and recommends that the flow chart be removed from the permit and incorporated into applicable TCEQ guidance documents. Fort Hood and SCIECA comment that on the flow chart provided at Section I.A., the first question related to large ($\geq$ 5 acres) construction activities does not match the first question for small construction activities ($\geq$ 1 acre but $\leq$ 5 acres) nor does the question match the definition of operator over plans and specifications in the "Definitions" section of the permit.

Response: The CGP includes specific information about when an operator must submit an NOI. To clarify what was intended in the draft CGP, the definition of "operator" was revised to include the terms "primary operator" and "secondary operator." (see discussion in later responses relating to comments received on the definition of "operator"). The flow chart was revised to incorporate the new definitions.

Comment: SCIECA comments that if you answer "No" on the flow chart to the first path question related to projects $\geq$ 5 acres, and "Yes" to the second path question, then the chart requires the preparation and implementation of an SWP3. However, SCIECA comments that it would seem that the requirement for the SWP3 would then require the operator to reassess responsibility as the person(s) that have operational control over construction plans and specifications, to the extent necessary to meet the requirements and conditions of the CGP and require the operator to file an NOI.

Response: Each operator regulated under the CGP must either develop and implement its own SWP3 or participate in a shared SWP3. For a secondary operator (see new definition of "operator"), the responsibility would be limited to items related to the construction plans and specifications, including the ability to make changes. This may include managing the hiring of contractors for the project and approving or disapproving requests to pay for additional controls.

Comment: Capitol Environmental comments that the flow chart indicates that the "owner" of a property is only subject to permit coverage for sites that disturb five or more acres.

Response: TCEQ believes that the changes to the flow chart discussed above will address the concern, and notes that all "operators" of large and small construction activities must obtain coverage under the CGP, unless they meet the requirements for obtaining a waiver.

Section I.B. - Definitions:

Comment: SAWS recommends changing the definition of "commencement of construction" because there are times where undeveloped sites will import soils to raise elevation, and the "fill" material may be brought to the site over a period of months or years. The site will remain unstabilized during this time, which allows erosion to take place. Since the site is engaged in the importation of soils and is not considered a construction site, it is not required to obtain permit coverage. To address this issue, SAWS recommends that the definition be revised as follows: "All land disturbance activities causing un-stabilized soil exposure, such as clearing, grading, excavating or importation of soils."

Response: TCEQ considers infilling of pits and similar activities to constitute construction, since the activity does result in an exposure of soils. Therefore, the SWP3 would need to include those areas in order to insure that appropriate controls are in place. Importation of soils is a construction supporting activity that also needs to be addressed in the SWP3, to insure that off-site migration of soils is minimized as required in the general permit. In order to provide additional clarification, TCEQ revised the definition of "commencement of construction" to be consistent with the existing NPDES CGP and to also include demolition in the list of examples. The new definition states:

the initial disturbance of soils associated with clearing, grading, or excavation activities, as well as other construction-related activities (e.g., stockpiling of fill material, demolition)

Comment: Dallas requests that TCEQ expand the definition of "common plan of development" to address a question related to a situation regarding commercial development. Specifically, Dallas asks whether a construction site operator would require permit coverage to build a fast food restaurant or a gas station on a small (e.g., less than one acre) area, if the proposed site was located on an existing 15-acre shopping center that is just being completed. The proposed new project would be located within the original 15-acre site, but it was not part of the original master plan of the shopping center. The shopping center was completed in phases and all operators have either terminated coverage or are about to terminate coverage. Fort Hood asks for clarification regarding the phrase "completed in separate stages, separate phases" in the context of the definition for "common plan of development." Fort Hood asks whether there is a minimum amount of time that must pass before subsequent construction activity in the same area or in close proximity (within 1/4 mile) would not fall under this definition.

Response: Part I of the CGP defines a "common plan of development" as a construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. Although a new project may not have been part of the original master plan for the shopping center, it would be considered part of the "larger common plan" due to the fact that the activity is proposed to occur in combination with other construction activities. In addition, TCEQ followed EPA Region 6 guidance regarding what constitutes a "common plan of development or sale" (see http://www.epa.gov/earth1r6/6en/w/sw/hottopcommon.htm). EPA uses a two part question to determine if an activity is no longer a common plan of development or sale. 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 answer a second question regarding whether there was a clearly identifiable period of time where there is 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.

In the shopping center example, it appears that there is no clearly identifiable period of time where there was no construction activity occurring. If there is still soil disturbing activity being conducted in any of the 15-acre area outside of the new project, then that acreage would need to be added to the new project. However, if the new project was initiated after all of the soil disturbing activities at the original site were completed and there were no other retail establishments to be added, then the site would not be regulated because it comprises less than one acre.

In response to the question regarding the amount of time that must pass before a project would be considered a separate plan of development, TCEQ has not established a specific time frame, but reiterates that it must be "clearly identifiable." Therefore, if the original common plan was completed and met the conditions of final stabilization, then any new construction would be a separate common plan of development or sale.

Comment: Fort Hood asks how the definition of "common plan of development" would apply to a large land area with a single owner, such as a university, military installation, or commercial development. Fort Hood asks whether multiple projects awarded in the same general location would be considered a "common plan of development" if they were developed and awarded as separate projects, but together would total one or more acres or even five or more acres. In addition, Fort Hoods asks whether the decision would be affected by whether the individual projects were awarded to the same contractor.

Response: TCEQ attempted to provide some clarification regarding a common plan of development at an area that was under the operational control of a single entity by stating that construction projects that occurred within 1/4 mile of each other must be considered part of a larger common plan of development. This new language was included in Section II.A.2., related to construction support activities, but it is more appropriately included in the definition of "Common Plan of Development or Sale." Therefore, in response to the comment, the last paragraph of Section II.A.2. was removed and the definition of "common plan of development" was revised as follows:

Common Plan of Development - A construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. A common plan of development (also known as a "common plan of development or sale") is identified by the documentation for the construction project that identifies the scope of the project, and may include plats, blueprints, marketing plans, contracts, building permits, a public notice or hearing, zoning requests, or other similar documentation and activities. A common plan of development does not necessarily include all construction projects within the jurisdiction of a public entity (e.g., a city or university). Construction of roads or buildings in different parts of the jurisdiction would be considered separate "common plans," with only the interconnected parts of a project

being considered part of a "common plan" (e.g., a building and its associated parking lot and driveways, airport runway and associated taxiways, a building complex, etc.). Where discrete construction projects occur within a larger common plan of development or sale but are located 1/4 mile or more apart, and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale, provided that any interconnecting road, pipeline or utility project that is part of the same "common plan" is not concurrently being disturbed.

Comment: Centex Homes supports TCEQ adding a definition for "discharge" in Part I, Section B, to clarify that the permit only regulates discharges to surface waters and does not include discharges to groundwater or percolation of storm water through soils. TCB comments that the definition of "discharge" seems to include things that might be considered as spills or releases of hazardous waste and does not seem to be specific to storm water. SCIECA requests clarification considering the definition of "discharge" and the definition of "outfall," and asks what specific point is considered to be the discharge location with respect to storm water exiting the site and entering a storm drainage system (i.e., is it the point where the storm water runoff enters the drainage system or the point where the storm water runoff reaches waters of the state?).

Response: For purposes of the CGP, the term "discharge" refers to the point where regulated storm water runoff reaches surface water in the state. However, the term "discharge" is not intended to be specific to storm water, as the CGP also authorizes certain non-storm water discharges. In response to the comment, the definition of "discharge" was revised as follows, consistent with EPA's existing NPDES CGP, to include additional clarification related to storm water:

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

Comment: Harris County requests that a definition be added for the following term: "Discharges of Storm Water Associated with Construction Support Activities."

Response: TCEQ declines to add a definition and believes that Part II.A.2. of the CGP contains an adequate description of construction support activities.

Comment: SAWS recommends adding a definition for "drought" and notes that the permit discusses this term in Section III.F.2.(b)(iii)(C), but identifies no time period and does not offer an explanation for the term. For purposes of site stabilization, SAWS comments that the definition should focus on a region's water supply status as a measure of water available for plant growth, which would allow a region to make a determination regarding what drought means in their jurisdiction. SAWS suggests the following definition: "A drought is an extended period of months or years when a region notes a deficiency in its water supply."

Response: TCEQ declines to add a definition for drought, and notes that the term may vary based on factors such as location, rainfall amounts, or water supply.

Comment: Fort Hood asks whether the definition of "facility or activity" means that a single contract, including construction activities at noncontiguous sites would be considered separate activities that would be evaluated individually to determine permit applicability. Fort Hood asks whether the addition of the word "contiguous" in the definition of "facility or activity" changes the application of the common plan of development condition for multiple construction activities awarded under one contract that are not contiguous. In addition, Fort Hood asks how the condition would apply to a military installation, where there is one land owner for many thousands of acres, with dozens of simultaneous construction projects in progress, covering hundreds of acres, which may not be contiguous to each other, but are still occurring "on property" with a single land owner.

Response: The definition of "facility or activity" included in the CGP is based on TCEQ rules at 30 TAC Chapter 305, Subchapter A and for the purposes of this permit refers to a construction site that is regulated under the CGP. The term "contiguous" refers to the relationship between structures and the land (e.g., storm water ponds, construction material piles, buildings, etc.) rather than adjacent property lines. Therefore, sites that are not adjacent to each other could still be considered a single "facility or activity" if they were part of a larger common plan of development or sale. The definition of "facility" was included to clarify that a facility as it relates to storm water, includes structures, buildings, and fixtures associated with a construction activity. The term is not meant to include land, except as it is contiguous to structures, buildings, or areas used for construction activities. For example, a "facility" would include a stockpile of fill material, but not the land underneath. If a settling pond was built at the site, then the "facility" would include the pond as well as the land, since the pond would have been built contiguous with the land. In response to the comment, the definition was revised to incorporate language from NPDES rules at 40 CFR §122.2 and EPA's CGP. The revised definition reads as follows:

Facility or Activity - for the purpose of this permit, a construction site or construction support activity that is regulated under this general permit, including all contiguous land and fixtures (e.g., ponds and materials stockpiles), structures, or appurtenances used at a construction site or industrial site described by this general permit.

Comment: TxDOT comments that in areas experiencing drought, water use restrictions may preclude vegetative watering and that establishment of vegetation in arid and semi-arid climates is often necessarily a long-term prospect. TxDOT also comments that it may be several years after completion of construction before vegetation is established sufficiently for a Notice of Termination (NOT) to be filed. Additionally, TxDOT states that the current EPA Region 6 CGP allows the installation of temporary erosion control measures (e.g. degradable rolled erosion control products) to meet the definition of "final stabilization" in such cases. TxDOT requests that the definition include an exception or special provision for arid and semi-arid areas, and areas experiencing drought, to be consistent with the current EPA Region 6 CGP and to provide a reasonable and achievable goal in such cases.

Response: TCEQ agrees that the CGP does not provide an alternative to final stabilization for arid areas and drought-stricken areas. To address this concern, the following was added to the definition of "final stabilization." The change is consistent with the existing definition in the EPA's NPDES CGP, except that drought conditions were included as well:

(d) In arid, semi-arid, and drought-stricken areas only, all soil disturbing activities at the site have been completed and both of the following criteria have been met:

(1) Temporary erosion control measures (e.g., degradable rolled erosion control product) are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years without active maintenance by the operator, and

(2) The temporary erosion control measures are selected, designed, and installed to achieve 70% vegetative coverage within three years.

Comment: Harris County states that the terms "native" and "background" in the definition of "final stabilization" are themselves undefined and can be interpreted in various ways. Native (historically distributed) vegetation is often neither the best vegetative alternative for stabilization nor generally desired as the final vegetative cover. Harris County requests that the term "native" be replaced with the term "generally-accepted vegetation," or an equivalent term referring to vegetation that is widely accepted and used in practice.

Response: TCEQ recognizes that the terms may be somewhat confusing; therefore, the Fact Sheet was revised to add a new Section IV.C. regarding the requirements for terminating coverage under the CGP. No changes were made to the CGP, as the language is consistent with the existing permit and with EPA's CGP. Section IV.C. of the Fact Sheet and Executive Director's Preliminary Decision reads as follows:

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 for terminating coverage are included in the draft 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.

Comment: Centex Homes, CRI, Mesquite, and SCIECA comment that the change in the "operator" definition in the CGP is not clear and requests TCEQ clarify the changes. Centex requests examples of when an operator is required to submit an NOI. TAB requests that the TCEQ change the definition of "operator" so that the legal responsibilities of the new CGP are

not broadened beyond the minimum requirements as stated in the EPA and current state CGP. Harris County requests that the definition of operator be amended so that a property owner (who has no control over the plans and specifications) could avoid being considered an operator and not have to submit an NOI, while the contractor or a third party (who is in charge of the plans and specifications) would be required to submit the NOI. SCIECA asks whether it is the intention of the TCEQ to allow an operator to have coverage under the CGP, but contract away his obligations under the CGP and retain no responsibilities for the SWP3 nor be held accountable for violations on their site. SCIECA suggests changing the term "operator" to "permittee" and suggested an alternative definition. SCIECA also suggests changes to subsection (b) of the operator definition by modifying it as follows:

(b) the person or persons have day-to-day operational control of specific activities in their area of construction on a site which are necessary to ensure compliance with an SWP3 for the site or other permit conditions.

Response: The change in the operator definition from the 2003 CGP in the permit was motivated by discussions between TCEQ and EPA regarding who should obtain permit coverage under the CGP. EPA's CGP defines an operator of a construction site as an entity that retains control over the construction plans and specifications, including the ability to determine how contractors are paid for construction activities. TCEQ's 2003 CGP limited the definition of operator to the person or persons who had control of the construction activities such that they could meet the requirements and conditions of the CGP. TCEQ allowed an owner or person with overall construction authority to delegate to a contractor the responsibility for all requirements under the CGP. EPA's CGP did not. To resolve this issue with EPA, the proposed TCEQ CGP that was published for comment included a revised definition for "operator" that was equivalent to the definition of "operator" in EPA's CGP. In addition, the proposed TCEQ CGP included requirements regarding when an operator of a large construction activity would not have to submit an NOI. The intent of the change was to be consistent with the definition of "operator" in EPA's CGP, while requiring an NOI to be submitted only from those entities who were required to submit an NOI under the current TCEQ CGP.

To accomplish this goal, TCEQ revised the definition of "operator" to include two subsets of regulated persons: "primary operators" and "secondary operators." The definition for "primary operator" is the same as the definition for "operator" in EPA's CGP and a "secondary operator" is one who only retains very limited operational authority with respect to the construction project. The CGP still allows an entity to delegate their responsibilities under the CGP. However, the new CGP requires an entity that retains the authority to make hiring decisions regarding project contractors or to approve/disapprove changes to the plans and specifications (a secondary operator) to obtain authorization under the CGP. A secondary operator is required to post a site notice and submit a copy of the site notice to any MS4 receiving the discharge. The secondary operator must be named in the SWP3, but is not required to submit an NOI for a large construction activity. This change also makes the secondary operator subject to TCEQ enforcement for violations of the CGP. The CGP require both types of operators of small construction activities to obtain coverage, unless specifically waived under the general permit, and does not require either type of operator to submit an NOI, but both types of operators of small construction activities must post a site notice.

As evidenced by the number of comments on this issue, TCEQ did not clearly articulate the intent of its changes in the proposed CGP. Therefore, in response to the comments, a number of changes were made to the CGP to identify the responsibilities of the secondary operator under the CGP. Changes were also made to clarify that this entity is not required to submit an NOI for a large construction activity, but is required to post a site notice for both small and large construction activities and to submit a copy of the notice to any MS4 that receives the discharge from the site. Several changes for clarification of the responsibilities of operators, including primary and secondary operator responsibilities, were made in the following sections of the CGP: II.D.1. and 2.; II.D.3.; II.F.1., 3., and 4. (new); III.B.1. and 2.; and III.D.2, The definition of "operator" in the CGP was changed as follows:

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

Primary Operator - the person or persons associated with a large or small construction activity that meets either of the following two criteria:

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

(b) the person or persons have day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with a storm water pollution prevention plan (SWP3) for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions)/

Secondary Operator - The person whose operational control is limited to the employment of other operators or to the ability to approve or disapprove changes to plans and specifications. A secondary operator is also defined as a primary operator and must comply with the permit requirements for primary operators if there are no other operators at the construction site.

Comment: Dallas requests clarification for the difference between the term "operational control over construction plans and specifications to the extent necessary to meet the requirements and conditions of the general permit" and the term "operational control over construction plans and specifications." Dallas also requests clarification of "operator" with regard to municipalities.

Response: In the previous response, TCEQ described a change to the definition that should help to clarify the difference for the commentor. In the revised definition, the term "secondary operator" was used to clarify those operators with controls over construction plans and specifications could be authorized under the CGP without submitting an NOI. Specifically, the definition carves out a subset of operators with control over construction plans and specifications as secondary operators, and Part II of the CGP states when an operator must file an NOI.

Comment: AGC comments that, with regard to projects performed for TxDOT by a contractor that the contractor does not meet either part (a) or (b) of the definition of "operator." Therefore, the contractor is not responsible for acquiring permit coverage for TxDOT projects. AGC notes that TxDOT maintains operational control over the plans and specifications and directs the

contractor regarding all work to be performed on a project. TxDOT projects are also routinely inspected by TxDOT inspectors, who can suspend work at any time. TxDOT engineers have the sole authority to make or approve changes in the work. TxDOT also maintains the day-to-day operational control of all activities, on the state-owned right-of-way that are necessary to ensure compliance with the SWP3 and TxDOT's inspectors direct the contractor on the project to carry out those activities to comply with permit requirements. The standard specifications and language in individual contracts for TxDOT projects is such that it clearly indicates that TxDOT would be the party responsible to obtain permit coverage, under the definition of "operator" in the general permit. AGC understands that in most other cases, the contractor on a given project is responsible to obtain permit coverage, but comments that TxDOT projects are unique among almost all other public and private construction projects. AGC comments that it interprets that TxDOT would be the sole operator for a TxDOT project.

Response: The identity of the operators in a TxDOT project would be determined based on the terms of the contracts and the SWP3 for each project. TCEQ recognizes that there may be cases where TxDOT (or another entity) would meet both subsection (a) and (b) of the definition of "primary operator" and would be the only entity that is required to obtain coverage under the CGP. However, if the contractor has obligations under the SWP3, then that contractor would also meet subsection (b) of the "primary operator" portion of the "operator" definition.

Comment: SCIECA notes that cities in the past have bid out the SWP3 and associated activities and asks if this exempts them from coverage under the CGP. If so, SCIECA asks whether a private developer would be allowed to do the same thing and also asks if TCEQ intends to hold the cities to a different standard than the private operators.

Response: TCEQ intends to hold both public and private entities to the same standard. The CGP does not place any restrictions on an entity's ability to contract out most of their CGP responsibilities, but the new CGP includes requirements for secondary operators who were not regulated under the current CGP. If an entity (a landowner, for example) has delegated complete control to an operator to construct for a fixed sum, without the ability to come back to the entity to request change orders or to increase or decrease the cost of the project, then the entity (the landowner in our example) would not be considered either a primary or secondary operator under the CGP.

Comment: SCIECA comments that if the purpose of not requiring a city to file an NOI is so that the city does not have to pay the NOI filing fee, they suggest stating that municipalities or all operator of capitol improvement projects (owner or contractor) are exempt from fees, but must file an NOI if they meet the definition of operator. Cities are currently allowed exemptions for vehicle registrations and an exemption for NOI fees would seem less confusing than what is in the current draft permit.

Response: Exempting cities from paying an NOI filing fee is not the intent of the changes to the operator requirements under the CGP. Neither private nor public entities will be required to submit an NOI or to pay the associated fee where they meet the definition of "secondary operator." In adding requirements for secondary operators, the TCEQ intends to hold the

secondary operator liable for coverage and compliance under the CGP, but not require submittal of an NOI.

Comment: SCIECA asks if there is a minimum number of hours that an operator needs to be on-site to meet the day-to-day control requirement.

Response: There is no minimum or maximum number of hours that establish day-to-day operational control. If operators share the day-to-day control at the construction site "to the extent necessary to meet the requirements and conditions of this general permit," then all operators who share this responsibility meet the definition of "primary operator" and must separately meet the requirements under the CGP, including submission of an NOI, if required.

Comment: SCIECA comments that the way the permit defines day-to-day operator makes it appear that all persons on the site are required to be permitted and have some part with compliance on the site. In the past, TCEQ explained that a subcontractor with an on-site representative that is under the day-to-day control of another company is not required to obtain permit coverage. However, if a subcontractor contracts with a company that is not on-site, then the subcontractor has day-to-day control because no one from another company is there to control the day-to-day activities. SCIECA asks if this interpretation is correct.

Response: The emphasis in subsection (b) of the "primary operator" portion of the definition is whether the operator has day-to-day control "to ensure compliance with" the SWP3. If a subcontractor has no duties under the SWP3, then the subcontractor has no obligation to obtain authorization under the CGP, whether the subcontractor is supervised on-site or not.

Comment: SCIECA asks whether a third-party fee developer or construction management firm would be considered an operator, as they can direct contractors on the site, but rarely have control over plans and specifications, not usually on-site and do not seem to meet the requirements of day-to-day control.

Response: A third-party fee developer or construction management firm would meet subsection (b) of the "primary operator" portion of the revised definition if they can direct contractors at the site, such that they relate to compliance with the SWP3. Whether these entities "rarely" have control over plans and specifications are immaterial to the operator definition in the CGP. The question is, if they have the authority to do so and, if they do, they will meet the definition of operator and are regulated under the CGP.

Comment: SCIECA asks in the case of a third-party fee developer or construction management firm whether it would make a difference, regarding whether authorization under the CGP was required, if they did not handle any of the financial or contractor payments, but only acted to lend their expertise as a facilitator between the owner/developer and the contractors. SCIECA also asks in what scenario would a third-party fee developer or construction management firm be required to seek CGP coverage and participate in the SWP3. Finally, SCIECA asks if one of these entities is involved and is required to seek coverage under the CGP, would the owner/developer still have to seek CGP coverage.

Response: Assuming under the first scenario that the entities in question do not have authority to alter the plans and specifications at the construction site and are only acting as a consultant/facilitator, they would have no permit obligations under the CGP. However, if they have responsibilities under the SWP3, then they may meet the definition of primary operator. Additionally, if they have authority to approve or disapprove changes to the plans and specifications or to hire or fire other operators, even if they have no SWP3 responsibilities, then they are a secondary operator and must obtain authorization under the CGP.

Finally, regardless of whether the third-party fee developer or construction management firm is required to obtain authorization under the CGP, the owner/developer, in the example provided, by virtue of control over plans and specifications will, at minimum, meet the definition of secondary operator in the revised CGP. An entity who meets the definition of secondary operator in the CGP would be regulated under the permit and required to post a construction site notice, be named in the SWP3, and submit a copy of their construction site notice to a MS4 receiving the discharge, if any.

Comment: SCIECA comments that there are some municipalities that require only the erosion and sediment control contractors and owner/developers to send in NOIs, but not the primary or general contractors, and asks whether this is a new procedure. SCIECA asks why an erosion control contractor would be required to seek CGP coverage and participate in the SWP3 when they create very little disturbance when they install the initial controls.

Response: Municipalities may enact through local ordinances additional requirements for those construction site activities that take place within their boundaries. However, a municipality may not alter the requirements of the CGP. Therefore, should TCEQ or EPA inspect a large construction site; and if there is a primary or general contractor who meets the definition of operator and has not submitted an NOI to TCEQ for authorization under the CGP, the contractor would be subject to TCEQ enforcement action, regardless of whether a municipal inspector would have considered this a violation of the CGP.

Comment: SCIECA asks if there is a scenario where the erosion and sediment control contractors are required by TCEQ to get permit coverage and participate in the SWP3 if they do not have control over project plans and specifications or day-to-day site activities.

Response: The purpose of the CGP is to control pollutants in construction site storm water runoff from leaving construction sites. To meet that goal, erosion and sediment controls are part of the SWP3. Whether an installer would require permit coverage would depend on whether there is another day-to-day operator at the site because the person installing the erosion controls may be working at the direction of the operator.

Comment: SCIECA comments that the CGP should include a clear definition of who is the overall permittee. The volume and turnover of trade base will make the process for permitting overly burdensome. SCIECA suggest using Occupational Safety and Health Administration (OSHA) as an example because OSHA requires individuals or individual contractors to comply with safety standards, but they are not required to obtain a permit.

Response: TCEQ declines to include a definition of who is considered the overall permittee at the construction site. Whoever is involved in the construction activity who meets the definition of operator has responsibilities under the CGP. When those entities change, the applicable permit requirements apply.

Comment: SWS comments that the new definition of operator can include any party who may deliver to or do business with the construction project; any party that may be contractually obligated to comply with the SWP3; or anyone who is paid to step foot on the construction site. Tracking down a signatory authority for all of those people could be excessively burdensome to manage a shared or group SWP3.

Response: As discussed in previous responses, the intent of subsection (b) of "primary operator" in the revised "operator" definition is unchanged from the current CGP. There is no intent for the operator definition to include everyone who sets foot on the construction site. Subsection (b) is intended to require on-site operators who have responsibilities defined in the SWP3 to submit an NOI. The revised definition for "operator" is not intended to bring in every person who may have some minor impact on project plans and specification. For example, an engineer or a consultant may recommend changing plans and specifications, but the operator in that case is the person or persons who have the actual authority to approve or make the recommended changes.

Comment: SAWS requests that the term "final stabilization" be changed to "permanent stabilization" throughout the permit. SAWS states that the term "final stabilization" is not consistent with the language used in Section III.F.2.(b) of the permit. In addition, SAWS states that in the construction industry, the term "final stabilization" implies that an area requiring permanent stabilization should be done at the end of the project. Permanent stabilization is intended to be completed when all work is completed on the disturbed soil area.

Response: TCEQ declines to revise the definition. However, it does appear that the term "permanent stabilization" is more appropriately used in the following parts of the permit: Part I.B., related to the definition of "temporary stabilization;" the first occurrence in Section II.D.1.(c); and Section III.F.2.(c)(1)(A). Therefore, the CGP was revised to replace the term "final stabilization" with "permanent stabilization" in those sections.

Comment: Fort Hood states that the definition for "final stabilization" does not cover situations such as dirt roads or large open areas where the final desired surface consists of compacted dirt or base material; and suggests including an example in this definition so that operators involved in that type of construction activity would not be in violation of the CGP even when their project is complete.

Response: If the purpose of the construction activity is to create a dirt road or parking lot, then a NOT could be submitted once the road or open area was completed, and the remaining areas of the site were appropriately vegetated. No changes were made to the permit based on the comment.

Comment: Mesquite requests that TCEQ add a definition for "hyperchlorinated water" in order to better clarify what is and is not an allowable discharge.

Response: TCEQ recognizes that discharges containing chlorine, particularly at levels over 4.0 milligrams per liter (mg/l), may cause water quality problems. Completely dechlorinated water is generally considered to contain less than 0.1 mg/l of chlorine. No specific discharge limits were established in the CGP. However, in response to the comment, the following definition for the term "hyperchlorination of waterlines," was added and is consistent with the TPDES MSGP.

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

Comment: Dallas requests that TCEQ add a definition of "inlet."

Response: The term occurs in two locations in the CGP: the definition of "structural control (or practice)" and in the definition of "surface water in the state." The term has a different meaning at each occurrence. For the purposes of describing an inlet as a structural control, an inlet refers to an opening for intake, such as to a storm drain. For the purpose of describing "surface water in the state," an inlet refers to a bay or recess in the shore of a sea, lake, or river; or to a narrow water passage between peninsulas or through a barrier island leading to a bay or lagoon. TCEQ declines to add a definition for "inlet" to the CGP.

Comment: SAWS recommends adding a definition for "inspector qualified person," and states that construction site inspectors should have a basic knowledge of the CGP and various components of the SWP3, acquired through some means of formal technical training. SAWS requests the following definition of "inspector qualified person" be added:

A person conducting TPDES inspections at a construction site on behalf of the permitted operator, with a working knowledge of the TPDES General Permit for construction, understands the dynamics of a Storm Water Pollution Prevention Plan, and has attended at least one documented storm water inspector training program.

Response: TCEQ declines to add a training requirement for person conducting inspections at regulated construction sites in the CGP. However, TCEQ recognizes that several training courses exist that could aid personnel in learning useful information related to the CGP. The CGP requires that the person(s) conducting the required inspection have knowledge of the SWP3 and that the SWP3 includes the name and qualifications of the person(s) conducting the inspections. In addition, local authorities may enact ordinances or establish other controls that they believe are necessary to control pollutant discharges into their storm sewer system. In response to the comment, the CGP was revised to also require the person(s) conducting the inspections to be familiar with the CGP and with the construction site in general. The first paragraph of Section III.F.7.(a) was revised to replace the first sentence with the following two sentences:

Personnel provided by the permittee must inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, discharge locations, and structural controls for evidence of, or the potential for,

pollutants entering the drainage system. Personnel conducting these inspections must be knowledgeable of this general permit, familiar with the construction site, and knowledgeable of the SWP3 for the site.

Comment: TxDOT requests that the definitions for "large construction activity" and "small construction activity" be revised by replacing the following phrase: "…and original purposes of a ditch, channel, or other similar storm conveyance" with the following new phrase "or original purpose of the site." TxDOT states that this change would be consistent with the current EPA Region 6 CGP and would address the fact that routine maintenance is not limited to work in storm conveyances. Harris County asks for clarification in the definitions of "large construction activity" and "small construction activity" regarding whether reconstruction of an existing roadway (such as milling up asphalt and sub-grade/base to reconstruct original footprint) is considered a maintenance activity or is subject to TPDES coverage. Harris County also requests that TCEQ revise the definitions of "large construction activity" and "small construction activity" to include a specific list of the types of activities that are considered maintenance. Harris County also comments that it has conducted many previous such activities that were interpreted to be maintenance and not subject to TPDES permitting.

Response: TCEQ agrees with the comment made by TxDOT related to the NPDES CGP and revised the existing definition to more closely match the NPDES CGP, while retaining the examples in the TPDES CGP. With this change, TCEQ believes that additional examples will not be required in the definition. The final two sentences of the definition for "large construction activity" were replaced with the following sentence:

Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (e.g., the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities.

In addition, the final two sentences of the definition of "small construction activity" were replaced with the following sentence:

Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (e.g., the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities).

Comment: TxDOT requests that the definitions for "large construction activity" and "small construction activity" be revised to exclude emergency activities that are required to be performed to protect public health or safety. Alternatively, TxDOT suggests that the permit delineate a streamlined permitting procedure for emergency situations that would allow for the implementation of BMPs when possible, but not require the time-consuming development of a complete SWP3 or implementation of BMPs that are inappropriate to the situation.

Response: TCEQ recognizes that emergency situations may occur that necessitate construction activities be conducted very quickly, such as following a fire, flood, or hurricane. However,

TCEQ declines to add an emergency provision addressing these activities. Operators of construction activities may utilize the "force majeure" provision as described in Part II.B.11. to address enforcement concerns. In addition, operators such as TxDOT that may need to commence emergency construction activities quickly may choose to develop some SWP3 templates that could be used for common emergency procedures.

Comment: SWS-Houston notes that in the definition for "notice of termination" the term "permittee" with replaced with "discharger," and requests that it be changed back to "permittee." Harris County suggests replacing the word "a" in the definition of "notice of termination" with the word "this."

Response: TCEQ declines to make the change in the existing definition for "notice of termination" because it is consistent with TCEQ rules related to general permits in 30 TAC Chapter 205.

Comment: SWS-Houston and TxDOT recommend removal of the definition for "owner" as the term cannot be found in the body of the permit; and Fort Hood asks why this term was in Section I, when it is not used or referred to anywhere else in the permit.

Response: In response to the comment, the definition of "owner" was removed from the CGP.

Comment: Dallas and SAWS request that the word "sediment" be added to the definition of "pollutant."

Response: The definition included in the proposed CGP was based on the Texas Water Code definition of "pollutant." However, it is appropriate to note that sediment is of particular concern for regulated construction sites. Based on this information, the definition of "pollutant" was revised to include the following sentence at the end of the existing language: "For the purpose of this permit, the term "pollutant" includes sediment."

Comment: SWS-Houston recommends removal of the definition for "runoff coefficient" as the term cannot be found in the body of the permit.
Response: In response to the comment, the definition was removed because the term is not used in the body of the CGP.

Comment: TCB comments that the definition of "storm water and storm water runoff" seems to consider both terms as storm water.

Response: The definition in the new version of the CGP was revised from the existing CGP to remove the term "storm water" from the definition of "storm water," in an attempt to provide additional clarification. However, in response to the comment, the term was changed from "storm water and storm water runoff" to "storm water (or storm water runoff)."

Comment: SCIECA and Fort Hood note that perimeter controls were added to the definition of "temporary stabilization." Fort Hood comments that the definition is more confusing and contradictory. SCIECA comments that while perimeter controls do not stabilize the exposed soil

and should not be defined as temporary stabilization, they can control sediment from leaving the site if designed correctly. SCIECA states that other structural controls may work better than perimeter controls and should be considered appropriate for use in place of temporary stabilization. SCIECA proposes that TCEQ change "perimeter controls" to "structural controls" and that if perimeter controls are allowed as temporary stabilization then there should be a 60 or 90 day time frame should be allowed before a more advanced form of stabilization is required. Fort Hood suggests that TCEQ either replace the word "erosion" in the second sentence with the term "the migration of pollutants" or delete the term "perimeter controls" from the list of example controls and replace the phrase "to prevent the migration of pollutants" with the phrase "to reduce or eliminate erosion." Fort Hood also comments that there is no mention of practices like phasing or temporary vegetation in the definition of "structural control (or practice)" and recommends including examples of practices and changing the term "device" to "device or practice" in the definition. Fort Hood also recommends adding erosion control compost to the list of example controls.

Response: TCEQ intends to allow certain perimeter controls to be used in place of temporary stabilization measures where those temporary stabilization measures are not feasible. To address the comments while also providing an allowance for the use of perimeter controls, two changes were made to the CGP. First, the definition of "temporary stabilization" was revised to remove the term "perimeter controls" and a second sentence was added to Section (b)(2) of the definition for "final stabilization" as follows:

(b) For individual lots in a residential construction site by either:

(1) the homebuilder completing final stabilization as specified in condition (a) above; or

(2) the homebuilder establishing temporary stabilization for an individual lot prior to the time of transfer of the ownership of the home to the buyer and after informing the homeowner of the need for, and benefits of, final stabilization. If temporary stabilization is not feasible, then the homebuilder may fulfill this requirement by retaining perimeter controls or other best management practices, and informing the homeowner of the need for removal of temporary controls and the establishment of final stabilization.

In addition, Section III.F.2. of the CGP was revised in response to a comment specific to that section to allow the use of perimeter controls and other structural controls where temporary stabilization is not feasible.

Comment: Fort Hood states that including the term "temporary seeding" in the definition of "temporary stabilization" is a source of controversy. As written, it appears TCEQ is endorsing the application of seed only as a temporary stabilization method, though it will do nothing to prevent erosion without a protective cover, until the seed germinates and becomes established. Fort Hood recommends replacing the term "temporary seeding" with the term "the establishment of temporary vegetation" and adding a statement that the application of seed can not occur without the use of additional structural controls.

Response: TCEQ declines to revise the definition of "temporary stabilization" and notes that the first part of the definition indicates that temporary stabilization exists where exposed soils or

disturbed areas are provided a protective cover or other structural control to prevent the migration of pollutants. If temporary seeding does not result in a protective cover over exposed soils, then it would not meet the requirement of "temporary stabilization" at the construction site.

Part II

Comment: Fort Hood asks whether construction support activities addressed in Part II.A.2. that are located more than one (1) mile from the permitted construction site could be covered by the same SWP3 or would need to be authorized separately as either a small or large construction activity.

Response: Construction support activities that are located more than one mile from an authorized construction site can not be covered under the construction site's SWP3 and would require their own coverage under an appropriate permit based on the activity being conducted. For example, storm water runoff from a borrow pit may be considered a mining activity and required to be authorized under TXR050000, the multi-sector industrial general permit for storm water (MSGP).

Comment: Fort Hood recommends changing the word "industrial" in Section II.A.2.(b) to "construction" since not all of the listed examples of construction support activities would fall into the category of an industrial activity. Additionally, Fort Hood asks whether depositing excess soils in one area would be considered a construction activity if it is not associated with an actual construction project.

Response: In response to the comment, the term "supporting industrial activity site" was changed to "construction support activities" in Section II.A.2.(b). Construction activity includes the stockpiling of fill material, as noted in the revised definition of "commencement of construction," discussed in an earlier response.

Comment: Fort Hood requests clarification and definitions for "related to" and "primary construction area" found in the last paragraph of Section II.A.2. Fort Hood also asks for more guidance on the common plan of development rule relating to projects that may be awarded as separate contracts to the same or different contractors that involve land disturbing activities within the 1/4 mile distance limit. Fort Hood asks why the definition of "common plan of development" does not include a requirement that activities be located within 1/4 mile, as mentioned in Section II.A.2. Fort Hood also asks whether the distance refers to 1/4 mile from any part of a construction site or from areas where land disturbance occurs. Finally, Fort Hood asks how this would apply to three or more construction sites that were almost 1/4 mile apart from adjacent sites, but lined up in a row so that the third and all farther sites were more than 1/4 mile from the first site. SCIECA comments that the word "must" in the second paragraph of Part II.A.2 limits an operator's ability to select the permit coverage of their choice and suggests an option that might work is that the activity must be authorized by a permit. SCIECA asks whether a concrete company would become part of their site's larger common plan of development if they were to purchase concrete from a concrete company that is located within 1/4 mile of their construction site. SWS-Houston requests that the distances and measuring points noted for

related construction activity and support activities be made consistent with each other because of their interchangeability.

SWS-Houston comments that the permit outlines new requirements to include construction activity 1/4 mile away from the primary construction area in the common plan of development. SWS-Houston notes that other support activities may also be authorized under the CGP if they are included in the SWP3 and are no further than one mile from the boundary of the permitted construction site. SWS-Houston requests that the distances and measuring points, for related construction activity and support activities, be consistent with each other. TAB believes that the addition of construction support activities within 1/4 mile from primary construction area as part of the common plan of development is confusing and could potentially increase the number of small sites required to obtain permit coverage. Due to their being mobile and temporary in nature, TAB feels this calculation could be difficult and they urge removal of this section and retention of the language in the existing permit, which does not include construction support activities as part of the common plan of development. TxDOT suggests separating Part II.A.2 into two sections, "Authorization of Industrial Activities at Supporting Sites" and "Authorization of Other Earth Disturbance at Supporting Sites" as that would clarify the requirements and eliminate the confusion regarding whether the 1/4 mile or one mile distance applies.

Response: As stated in an earlier response, the last paragraph of Section II.A.2., which related to construction activities within 1/4 mile of each other, was deleted. TCEQ believes that the issues raised by the commentors above are addressed in the revised definition of "common plan of development or sale."

Comment: Zachry comments that the CGP seems to focus on residential and commercial property development and does not reflect conditions related to industrial construction. Zachry states that it would like see the distance increased from the primary construction site to construction support activities from the proposed (1/4) mile to two miles, in order facilitate consolidation of permit requirements. Accordingly, Zachry proposes changes to the last paragraph of Section II.A.2 so that it reads as follows (changes in italics):

Discharges of storm water runoff from earth disturbing activities, including construction support activities, that are related to the primary construction area and located *on non-contiguous property* within one fourth (1/4) mile from the primary construction area, are a part of the common plan of development and must be authorized under this general permit if the common plan of development is greater than or equal to one acre. *Earth disturbing activities on contiguous or non-contiguous properties within two (2) miles of the primary construction area, which are included in the scope of work of a single contract for construction of interrelated industrial facilities may be considered part of a common plan of development for permit coverage purposes.*

Response: TCEQ added the last paragraph to Section II.A.2. to clarify that in some cases, multiple related construction activities would not need to be considered as part of a larger common plan of development; while those within 1/4 mile of each other would need to be considered together. This is consistent with guidance provided by EPA and that TCEQ used in evaluating projects for municipalities and similar entities conducting similar land disturbance

activities throughout their jurisdiction. It is apparent that Section II.A.2., related to construction support activities, was not the most appropriate location for this language. Therefore, the definition of "Common Plan of Development" was revised as indicated in an earlier response to include additional language related to the 1/4 mile distance for related projects. This change also removes the reference to the "primary" site. Therefore, it would apply to any sites that are part of the same project that are less than 1/4 mile from each other based on the boundaries of the disturbed areas.

Comment: Harris County suggests capitalizing "storm" in the title to Section II.A.3. so it will read "Non-Storm Water Discharges."

Response: This change was made as requested.

Comment: Fort Hood recommends adding the following parenthetical to the description of fire fighting activities in Section II.A.3.(a) in order to match the language in TPDES Permit No. TXR040000: "(fire fighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities)."

Response: This change was made as requested, as it provides clarification of the expectation that the item only refers to emergency fire fighting discharges.

Comment: SCIECA asks if there is a benchmark or limit used to determine the difference between chlorinated and hyperchlorinated water as described in the list of non-storm water discharges in Sections II.A.3.(b) and (e) of the CGP. Fort Hood asks TCEQ for a numerical standard or other explanation that can be used to determine whether or not previously hyperchlorinated water has been adequately dechlorinated with respect to the general permit, and asks if it would be reasonable to assume that if previously hyperchlorinated water met the "normal" potable water standard of <4 mg/L total chlorine residual, that would meet the requirement in this section. Harris County states that the term "hyperchlorinated water" is undefined and therefore unenforceable, and requests that TCEQ establish a limit of no greater than 5 mg/L chlorine residual for discharges to surface water in the state.

Response: TCEQ recognizes that discharges containing chlorine, particularly at levels over 4.0 mg/l, may cause a water quality problem. However, no specific discharges limits were established. No discharge under this permit may cause or contribute to a violation of water quality standards and this provision is not meant to authorize the involuntary discharge of chlorinated water, e.g., from a broken potable or drinking water line. A regulated municipal separate storm sewer system (MS4) operator may need to establish controls to address the discharge of potentially elevated levels of chlorine from these water sources. In addition, while the CGP allows non-storm water discharges from water line and fire hydrant flushing, it does not authorize the discharge of hyperchlorinated water, unless the water is first dechlorinated. Completely dechlorinated water is generally considered to contain less than 0.1 mg/l of chlorine.

Comment: SCIECA comments that it understands Section II.A.3.(c) to mean that water used to wash mud, dirt, or dust off of pavement is an allowable discharge, and requests verification of that understanding from TCEQ. SCIECA also asks whether the proposed permit allows the

discharge of non-storm water produced from pressure washing driveways of newly constructed homes prior to sale, as long as BMPs are utilized to handle the water. SCIECA also asks whether the CGP is stating that wash water is allowed to leave the site without being treated if the water meets all the criteria above (Section II.A.3.a-h); and if not, SCIECA asks whether controls must be used. Fort Hood asks the purpose of prohibiting the use of pressure washers and asks how TCEQ would propose removing large amounts of mud from construction vehicles and equipment without them. Harris County contends that discharges from pressure washing of a building are no different from washing without pressure washing and suggests TCEQ delete the phrase "where pressure washing is not conducted," and recommends adding emphasis on BMPs to treat wash water runoff from areas where any washing is conducted at a site.

Response: In response to the comments, the phrase "where pressure washing is not conducted" was removed from the CGP. In addition, in order to clarify that BMPs must be utilized for storm water runoff, as well as for the list of authorized non-storm water flows, the first sentence of the first paragraph of Part III was revised to read: "Storm water pollution prevention plans must be prepared to address discharges authorized under Section II.E.2. and II.E.3…."

In addition, the final sentence of the first paragraph was revised as follows:

The SWP3 must describe and ensure the implementation of practices that will be used to reduce the pollutants in storm water discharges associated with construction activity and non-storm water discharges described in Part II.A.3. and assure compliance with the terms and conditions of this permit.

Comment: Zachry comments that well water used for industrial site construction, which meets potable water quality standards, but is not yet certified or used as such, should be allowed as a potable water discharge and requests that TCEQ revise Section II.A.3.(e) to state "potable quality water." As an alternative, Zachry suggests adding the following definition of "potable water" to Section I.B. of the draft permit as follows: "Potable Water - Water from sources that meet standards for drinking water use."

Response: TCEQ believes that untreated well water would generally be considered allowable under Section II.A.3.(g), related to uncontaminated ground water. If well water is treated in a similar manner to potable water, then it may also be considered allowable under this provision. No changes were made based on this comment.

Comment: Fort Hood asks TCEQ's position or policy on the washing out of concrete trucks at unregulated construction sites, or sites that do not require coverage under this permit.

Response: Concrete truck washout may occur at any regulated construction site, provided that there is no discharge to surface water, and that the requirements of the general permit are met. Concrete truck washout at unregulated construction sites would need to be authorized under an alternative permit, such as TPDES General Permit Number TXG110000, related to Concrete Production Facilities. In response to the comment, this provision was removed from Section II.A.4. and replaced with a new Section II.B. as follows, and subsequent sections were renumbered accordingly.

Section B. Concrete Truck Wash Out

The washout of concrete trucks associated with off site production facilities may be conducted at regulated construction sites in accordance with the requirements of Part V of this general permit.

Comment: SCIECA comments that some enforcement inspectors at the MS4 level have interpreted the language in Section II.B.2. to mean that only storm water that is completely free of sediment or pollutants, can be legally discharged, and asks whether it is TCEQ's intent (as shown in Section II.A.5.) to disallow the discharge of storm water from an industrial site storm water that is commingled with wastewater and requests verification on this understanding or a revision of the requirement in order to eliminate confusion.

Response: In response to the comment, the beginning of the first sentence of Section II.B.2. (renumbered as Section II.C.2) was revised as follows: "Except as otherwise provided in Part II.A. of this general permit…"

TCEQ believes that additional changes are not required and that the existing permit language adequately states that storm water runoff from construction activities regulated under the CGP may be discharged provided that it is discharged in accordance with the conditions of the permit (e.g., in accordance with a SWP3 and other conditions).

Comment: TAB comments that TCEQ should provide the necessary information in Section II.B.4. regarding impaired waters and those segments that have total maximum daily loads (TMDLs). TAB suggests that this can be done on a website or as an appendix to the permit so that permittees can easily find the information.

Response: In response to the comment, Section IX.B. of the Fact Sheet was revised to add the following language after the existing paragraph describing information that is included in the NOI:

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.state.tx.us/comm_exec/forms_pubs/pubs/gi/gi-316/index.html

Surface Water Quality Viewer:
http://www.tceq.state.tx.us/compliance/monitoring/water/quality/data/wqm/viewer/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.state.tx.us/compliance/monitoring/water/quality/data/wqm/305_303.html

In addition, TCEQ revised the second paragraph of Section II.C.4. to remove references to TMDL implementation plans.

Comment: SOS requests that language be added in Section II.B.5. in order to clarify that the term "commencement of construction" in the CGP includes not only initial site clearing, but also demolition, grading, and excavating. SOS believes that this change would dovetail with the definition provided in Section I.B.

Response: In response to the comment, the bolded language in the second sentence of the first paragraph of Section II.B.5. (renumbered as Section II.C.5.) was revised as follows:

In addition, commencement of construction (i.e., the initial disturbance of soils associated with clearing, grading, or excavating activities, as well as other construction-related activities such as stockpiling of fill material and demolition) at a site regulated under 30 TAC Chapter 213, may not begin until the appropriate Edwards Aquifer Protection Plan has been approved by the TCEQ's Edwards Aquifer Protection Program.

Comment: SCIECA asks why the language referring to "act of God" in Section II.B.11., was included when it will allow violating operators to claim *force majeure* after any major rain event, thus making enforcement more difficult, if not impossible. SCIECA also asks at what level should a storm event be considered catastrophic or vice-versa.

Response: This provision does not exempt a permittee from meeting the requirements of the CGP. The referenced rule (30 TAC §70.7) states that permittees may utilize a *force majeure* defense related to enforcement, but that the operator of the affected facility has the burden of proof to demonstrate that any pollution or discharge is not a violation. The rule is in effect regardless of whether it is included in the CGP. However, TCEQ elected to include it in the CGP to notify permittees of the existence of the rule.

Comment: SCIECA asks whether erosion and sediment controls should be designed for a 2-year/24-hour storm event like the detention ponds or for a smaller storm event. SCIECA believes that it would be clearer what is acceptable to TCEQ if a minimum design limit was required in the permit.

Response: TCEQ declines to require treatment to a particular size storm event at this time, but recognizes that it may be useful in many cases to consider a 2-year/24-hour storm event when choosing BMPs that will effectively remove pollutants from storm water runoff at regulated construction sites.

Comment: Zachry comments that many industrial plants (e.g., refineries, chemical plants, electric power generating facilities, and cement plants) are designed with storm water and process water containment and collection for the entire site, such that all storm water is collected and routed to a pond or ponds with individually permitted outfalls. Zachry believes that it is effectively duplicate permitting to require coverage under the CGP for these facilities, and also comments that this permit seems to focus on residential and commercial construction rather than

industrial construction. Zachry requests that TCEQ add the following language as a new Section II.B.11., and renumber the existing II.B.11. as II.B.12.:

11. Construction Storm Water Discharges within an Individual Permitted Facility

Storm water discharges within an individually permitted facility where all storm water is collected and discharged through an existing permitted outfall(s) are not subject to TPDES storm water permit requirements. The Owner of the facility is responsible for directing and controlling discharges from construction activities into the collection system to meet existing permit requirements.

Response: Construction site storm water runoff that would otherwise be required to be authorized under the CGP may be covered under an individual TPDES permit only if that permit specifically includes construction site storm water in the list of authorized discharges. There are specific rules related to the need for a permit for construction site storm water runoff, and individual wastewater and storm water TPDES permits are written with effluent limits and conditions that take into account the list of waste streams submitted in the original application. TCEQ declines to add the requested language and notes that those industrial facilities who wish to authorize discharges from their construction activities in an individual permit may request to amend their individual TPDES permit.

Comment: Mesquite asks if a new fee will be required with the new NOI for on-going large construction activities applying for permit coverage per Section II.C.1.(b) that had coverage under the existing CGP. TAB suggests that TCEQ allow current permit holders authorization under their existing permits until they expire to prevent the TCEQ from becoming overwhelmed at application renewal time. Centex Homes seeks clarification regarding what category of operator is required to submit an NOI under this provision for ongoing coverage. Centex Homes asks whether the exclusion from the notice requirement set forth in Section II, Section D.3.(f) applies to those seeking continuing coverage under Section II.C.1.(b). TxDOT asks if an NOI was filed under the previous CGP to authorize an on-going construction activity, must an NOT be filed prior to submitting an NOI under the new CGP. Harris County requests a "grandfathering" period for sites where construction activities have ended, but final site stabilization has not yet been achieved, so that for sites that are simply "waiting for the grass to grow" will not be subject to the additional fees under the renewed permit.

Response: Primary operators at large construction sites must submit an NOI for continued coverage, unless the CGP allows for authorization without submittal of an NOI (such as for small construction sites meeting federal conditions in 40 CFR §122.28(b)(2)(v) and as adopted by reference in 30 TAC Chapter 281, related to being authorized without submitting an NOI). The operator responsible for submitting an NOI under the renewed CGP is the same entity that was responsible for submitting an NOI under the existing CGP. Therefore, the requirement to submit an NOI within 90 days would apply to all operators that are covered under the existing CGP. The provision to renew coverage does not apply to those operators not required to submit an NOI per Section II.D.3.(f) of the general permit. Operators required to submit an NOI within 90 days of the effective date of the renewed CGP will not be required to submit a NOT under the previous permit if the conditions for terminating coverage are met within the 90 day period.

Those sites seeking renewed coverage must submit the required fee for the application to be considered complete. TCEQ declines to revise the permit in response to the comments.

Comment: TxDOT recommends that the term "issuance date" be replaced with "effective date" in Section II.C.1.(b), and comments that with almost 2,500 active, on-going construction projects that will need to be brought into compliance with the new permit, a known and certain effective date would greatly assist us in making this transition.

Response: In response to the comment, page 1 of the CGP was revised to establish an effective date of March 5, 2008. Changes were also made to Sections II.D.1. and 2., and to Section II.E.8. of the CGP and to Parts II and VIII of the Fact Sheet to reflect this change.

Comment: Mesquite asks whether new construction site notices will be required for small ongoing construction sites described in Section II.C.2.(b).

Response: Yes, ongoing construction activities will be required to utilize the forms developed for this general permit, including posting new site notices.

Comment: Fort Hood recommends deleting the following phrase from the end of the first sentence of the final paragraph of Section II.D.2. because it is redundant, unnecessary, and uses poor grammar: "…are considered to be large construction activities."

Response: In response to the comment, the final paragraph of Section II.D.2. (renumbered as Section II.E.2.) was revised as follows:

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

Comment: SWS-Houston believes that the new provision in Section II.D.3(b) requiring NOI submittal ten days prior to commencing construction will unreasonably delay large construction activities and suggests that a more reasonable deadline would be five days prior to commencement of construction. SCIECA also believes that the ten day waiting period for a paper NOI submittal is excessive and suggests that the standard mailing time within the state of two to five days is more appropriate. AEP contends that very little benefit will be gained by extending the waiting period from two to ten days, considering the potential to disrupt schedules and delay construction. Harris County, Oncor, Capital Environmental, and AEP request that TCEQ retain the current two day waiting period for provisional authorization of coverage under the CGP. TAB expresses concern that the proposed ten day waiting period will adversely affect its members and that TCEQ should reconsider and allow provisional coverage to begin once a paper NOI is postmarked. Capitol Environmental believes that operators should not be penalized or held to more stringent requirements for using a paper NOI. Harris County asks whether "ten days" means business days or calendar days and asks that TCEQ clarify whether "ten days prior to commencing construction activities" means ten days from the date the NOI is postmarked or

the date received by TCEQ. Tarrant County comments that the ten day waiting period is unacceptable and respectfully requests TCEQ re-evaluate it.

Response: In response to the comments, the number of days before a large construction activity receives provisional authorization for a paper NOI submittal was revised from ten to seven days. This time period should allow time for TCEQ to receive NOIs and insure that NOIs are available at the Storm Water NOI Processing Center when actual construction activities begin. This will assist TCEQ in providing information to concerned persons requesting information on particular NOIs regarding large construction activities. TCEQ disagrees that this new provision will delay construction activities to a great extent. Persons seeking coverage under the CGP also have the option of submitting an NOI electronically, which does not have a seven day waiting period for provisional authorization. For the case of a change in operator, no changes were made to the requirement for the new operator to submit notification 10 days before a transfer of ownership. This is consistent with TCEQ general permit rules in 30 TAC §205.4(h).

Comment: Harris County comments that it agrees with the intent of Section II.D.3.(b), but states that the signatory requirements of the NOI will not allow the NOI to be submitted electronically.

Response: The NOI requirements for a paper NOI and an electronic submittal are identical, although a State of Texas Environmental Electronic Reporting System (STEERS) Participation Agreement (SPA) is currently required to utilize the STEERS system for electronic submittal. The authorized signatory for the operator may submit a SPA and other personnel may also submit a SPA to complete the NOI to the point that it is ready for signature. TCEQ expects that electronic NOI submittal should still be easier than requiring an ink signature on every NOI that is submitted.

Comment: SCIECA asks what is gained by requiring in Section II.D.3.(c) for the NOI to be posted and expresses concern that sensitive company information is included on the NOI and therefore should not have to be posted for public viewing. SCIECA further comments that all relevant information that might be needed by an inspector or the general public is found on the Construction Site Notice. In light of protecting company information from possible fraudulent use, SCIECA asks whether there is not another way for TCEQ to have the required information posted at the site without requiring the permittee to post all of the company's information.

Response: TCEQ declines to remove the requirement to post a site notice for large construction sites that are required to submit an NOI. Posting the NOI provides the public and inspectors who drive past the site some assurance that the construction site does have permit coverage, provides information on who to contact if there is a problem, may facilitate reporting by the public, and is consistent with the requirements of the EPA's CGP. TCEQ also notes that all information on the NOI is available to the public, and can not be claimed as confidential.

Comment: TxDOT suggests omitting the language requiring the notice to be maintained in one location. TxDOT comments that its projects are usually located adjacent to active roadways and are therefore potentially dangerous and believes that it is inappropriate for them to post a notice in a location that could be hazardous for someone to approach. TxDOT requests that TCEQ consider inserting "safely and" before the phrase "readily available" in both paragraphs of

Section II.D.3.(c) in order to clearly allow applicants to take safety into consideration when determining a posting location. SWS-Houston comments that the location requirements of posting the NOI and site notices in Section II.D.3.(c) and the site notice in Section III.D.2. differ and requests that they be revised to be consistent.

Response: In response to the comment, Section II.D.3.(c) (renumbered as Section II.E.3.(c)) was revised to insure that the site notice is posted in a location where it is safely and readily available. In addition, the requirement to maintain the notice in that location this language was revised to account for linear construction projects. In addition, the location for posting the site notice was changed in Section II.D.2.(b) (renumbered as Section II.E.2.(b)) to be consistent with the requirement in Section II.D.3. for linear construction sites. The following revised language replaced the existing Section II.D.3.(d) (renumbered as Section II.E.3.(d)):

all operators of large construction activities must post a site notice in accordance with Section III.D.2. of this permit. The site notice must be located where it is safely and readily available for viewing by the general public, local, state, and federal authorities prior to commencing construction, and must be maintained in that location until completion of the construction activity (for linear construction activities, e.g. pipeline or highway, the site notice must be placed in a publicly accessible location near where construction is actively underway; notice for these linear sites may be relocated, as necessary, along the length of the project, and the notice must be safely and readily available for viewing by the general public; local, state, and federal authorities); and…

Comment: SWS-Houston requests that operators described in Section II.D.3.(f) be exempted from signatory and reporting requirements outlined in Sections II.D.3.d, II.E.3, III.A, III.D.2, III.E.2, III.F.1.(k) and any other section of the CGP requiring action from 'all operators' or from "those operators of large construction sites not required to submit an NOI." SWS-Houston also comments that they believe that the proposed, broader definition of operator will increase the number of operators involved, thus complicating the development and management of the SWP3. SWS-Houston also comments that the increased burden of obtaining timely signatures on certifications, reports, and other information from these additional operators will unreasonably complicate the development and management of shared SWP3s, thus negating the best opportunity to coordinate compliance efforts on large construction sites.

Response: TCEQ declines to make the requested changes. Operators not required to submit an NOI are still regulated under the CGP. Therefore, it is necessary that they be required to certify that they are in compliance with the CGP by posting a site notice. Where operational control of a construction activity is transferred, TCEQ believes that it is necessary for the original operator to attempt to notify the new operator of their responsibilities under the CGP.

Comment: SCIECA asks for clarification on the issue of who needs to file an NOI under Section II.D.3.(b) and states that TCEQ has confused the matter. Centex Homes believes that, although the agency was attempting to clarify the category of operators required to submit an NOI under Section II.D.3.(b), the proposed language is too vague to provide proper guidance to the regulated community. Centex Homes suggests that the TCEQ provide clear, specific, objective, and measurable criteria to determine whether an operator is required to submit an NOI. Centex

Homes suggests that TCEQ provide examples of factual scenarios when operators do not have to submit an NOI. Centex Homes provides the following example and requests TCEQ to comment on it specifically regarding whether submitting an NOI is necessary:

Would an operator be required to file an NOI if he has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications, but delegates, via contract, complete responsibility for compliance with the requirements and conditions of the general permit to a third party?

Response: In response to the comments and as noted in previous responses regarding the definition of "operator," the definition was revised to define two subsections of the term; "primary operators" and "secondary operators." Section II.D.3.(b) (renumbered as Section II.E.3.(b)) was revised as follows for consistency with the revised definition of "operator."

primary operators must submit a Notice of Intent (NOI), using a form provided by the executive director, at least seven days prior to commencing construction activities, or if utilizing electronic submittal, prior to commencing construction activities. If an additional primary operator is added after the initial NOI is submitted, the new primary operator must submit an NOI at least seven days before assuming operational control, or if utilizing electronic NOI submittal, prior to assuming operational control. If the primary operator changes after the initial NOI is submitted, the new primary operator must submit a paper NOI or an electronic NOI at least ten days before assuming operational control; …

Comment: CRI asks whether the site notice required in Section II.D.3.(d) must be in TCEQ's format. Tarrant County comments that it is important for the regulated community to see that it is a new requirement to have this site notice posted even if it is not necessary to submit an NOI. Therefore, Tarrant County suggests that it be emphasized and also clearly stated in the Fact Sheet under Section V. - Changes From Existing Permit. Tarrant County states that this requirement is new and is not clearly presented in the CGP, the Fact Sheet, or anywhere else, and believes that the information is important for the regulated community to see and understand. Tarrant County requests that this requirement needs to be put in bold, and discussed more, as well as being made very clear in Part V. of the Fact Sheet.

Response: All site notices posted under the CGP are required to be in an approved TCEQ format. TCEQ declines to make additional changes to the permit to outline the new requirement regarding use of the TCEQ site notice. However, Section V.B. of the Fact Sheet was revised as follows:

TCEQ revised the definition of "operator" to be consistent with the definition in EPA’s current Construction General Permit. The definition for "operator" includes a definition for "primary operator" and "secondary operator," and the draft permit contains specific requirements for secondary operators of large construction activities. Secondary operators of large construction activities would be regulated under the general permit but would not be required to submit an NOI. Also, a requirement was added that all operators and secondary operators must post a TCEQ site notice for large construction activities.

Comment: SCIECA comments that it does not fully understand the requirement in Section II.D.3.(e) to send a copy of the NOI to the operator that has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications. SCIECA states that it appears that if the owners have control of the plans and specifications, then they would most likely have control over the contractor and the project, and thus would already know when work on the project was to start. SCIECA asks TCEQ to provide an example of a project that the operator in charge of plans and specifications would not know that the other operators were going to commence operations, and further asks that TCEQ explain what is gained by this requirement. Harris County understands this requirement to mean that as owner and operator, it would be required to submit a copy of its NOI to its contractors, and they object to this requirement and request it be deleted from the permit. Oncor comments that the copies of the NOIs do not need to be included in the SWP3 because the SWP3s already contain too much information, and requests that TCEQ revise the language in Section II.D.3.(e) read: "at least two days prior to commencing construction activities, list in the SWP3 the names and addresses of all MS4 operators receiving a copy."

Response: In response to the comments, Section II.D.3.(e) (renumbered as Section II.E.3.(e)) was revised as follows, and Part VI was also changed to clarify that records of submittal must be retained (see response in Part VI). The requirement to notify the secondary operator was retained. TCEQ believes that this is necessary to insure that the secondary operator is aware that other regulated operators are meeting their obligations under the CGP.

(e) all primary operators must provide a copy of the signed NOI to the operator of any municipal separate storm sewer system (MS4) receiving the discharge and to any secondary operator, at least seven days prior to commencing construction activities, and must list in the SWP3 the names and addresses of all MS4 operators receiving a copy.

Comment: Oncor comments that it appreciates TCEQ's desire to document proof of notice to an affected MS4, but believes it is unnecessary to retain such proof in the SWP3s because they already contain such a large amount of information. Oncor believes that the NOI, NOC, and NOT submittals to affected MS4 operators are just three of several records that should be retained as supporting documentation to show compliance with the general permit, but does not believe the documents need to be included in the SWP3. Oncor expresses concern that TCEQ is beginning to lose sight that the SWP3 is intended to be a working document developed for use in the field by construction personnel. Oncor recommends that TCEQ add proof-of-submittal documentation to Part VI. as a specific requirement and recommends that TCEQ revise the following sections of the draft permit as follows:

In Section II.E.6., revise language to read:

…receiving the discharge, and list in the SWP3 the names and addresses of all MS4 operators receiving a copy.

In Section II.F.1., revise language to read:

…any MS4 receiving the discharge (list in the SWP3 the names and addresses of all MS4 operators receiving a copy)…

Response: TCEQ agrees to make the requested changes and also revised Part VI. to add the following Section VI.4.:

4. All records of submittal of forms submitted to the operator of any regulated MS4 receiving the discharge and to the secondary operator of the regulated construction site, if applicable.

Comment: Centex Homes asks what an excluded operator should do if he discovers that another operator has not filed an NOI. To minimize the administrative burden on all parties involved, Centex Homes urges TCEQ to not require the excluded operators to file an NOI, whether or not anyone else has filed an NOI, since the excluded operator would have the authority to require that the appropriate operator file the NOI. Centex Homes comments that the exclusion from the NOI requirement under Section II.E.3.(f) is inconsistent with the reasoning for the exclusion and will undermine its usefulness. Centex Homes also notes that TCEQ already has adequate enforcement options without requiring an excluded operator to file an NOI.

Response: If a secondary operator finds that a regulated operator has not filed an NOI, then it is the responsibility of that secondary operator to notify the regulated operator of the need for coverage. TCEQ agrees that the availability of an exclusion from submitting an NOI should not be limited on the requirement for other operator(s) to have filed NOIs, but it is contingent on the presence of other regulated operators. In response to the comment, the end of the first sentence of Section II.E.3.(f) was revised to replace "…but are not required to submit an NOI, provided another operator(s) at the site has submitted an NOI…" with the following language:

…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 coverage (with records of notification available upon request)…

In addition, TCEQ has removed Section II.E.8.(c), related to including on the NOI the names of other operators.

Comment: SWS-Royce seeks clarification on who is responsible for filing NOIs under Section II.D.3.(f), and TCB believes that the explanation of which operators must file an NOI and which do not is confusing and should be revised to describe those operators that must submit an NOI. Fort Hood recommends deleting or significantly editing the language in Section II.D.3.(f) because it is extremely confusing and does not make sense. Due to the confusing and repetitive nature of the criteria, TxDOT recommends that Sections II.D.3.(f) be replaced with:

All persons meeting the definition of "operator" in Part I of this permit, but which are not required to submit an NOI by Part II.D.3.(b) of this permit, are hereby notified that they are regulated under this general permit, but are not required to submit an NOI, provided another operator(s) at the site has submitted an NOI.

Any operator notified under this provision may alternatively seek coverage under an alternative TPDES individual permit or general permit if available.

Response: In response to the comments, the following language was used to replace the existing language in II.D.3.(f) (renumbered as II.E.3.(f)), to incorporate the revision to the definition for "operator" and to notify secondary operators that they are not prohibited from submitting an NOI under this general permit:

All persons meeting the definition of "secondary operator" in Part I of this permit are hereby notified that they are regulated under this general permit, but are not required to submit an NOI, provided that another operator(s) at the site has submitted an NOI, or is required to submit and NOI and the secondary operator has provided notification to the operator(s) of the need to obtain coverage (with records of notification available upon request). Any secondary operator notified under this provision may alternatively submit an NOI under this general permit, may seek coverage under an alternative TPDES individual permit, or may seek coverage under an alternative TPDES general permit if available.

Comment: TxDOT asks what elements of compliance an operator described under Section II.D.3.(f) would be responsible for if that operator controls neither plans/specifications to the extent necessary to ensure compliance with the CGP, nor day-to-day activities at the site. TxDOT further asks what that operator's SWP3 should include. Fort Hood and SCIECA ask that TCEQ give examples of situations where an NOI would not be required despite being a large construction activity operator regulated under the CGP.

Response: A secondary operator that is regulated under the CGP, but not required to submit an NOI would have limited responsibilities under the SWP3, as other operators would be responsible for the majority of the technical requirements of the permit. Example of elements that a secondary operator would have responsibility for may include the decision to hire or fire a contractor on a construction project or the approval or denial of funds to revise the BMPs used at the site for storm water control. However, a secondary operator's responsibilities would be expanded in the event that there was not another operator at the site or if another operator vacated the site, because the new definition of "secondary operator" states that a secondary operator becomes a primary operator if there are not other operators at the site.

Comment: Harris County restates its objections to having a 10-day waiting period for those operators unable to submit notices electronically (See Section II.D.5.(b)). Harris County requests that the TCEQ revise the signatory requirements of 30 TAC §305.44(3) separately from the CGP, to allow a principal executive officer or ranking elected official to designate his authority, thereby allowing governmental agencies to submit forms electronically. Harris County also believes that TPDES requirements should be consistent with Federal signatory requirements which allow for the delegation of signatory authority from an "executive officer."

Response: As stated in an earlier response, TCEQ revised the proposed ten day period for provisional authorization to seven days in response to comments. Additionally, TCEQ believes that the signatory requirements in 30 TAC §305.44 are equivalent to the requirements set out in federal rules at 40 CFR §122.22(a). The ability to delegate authority based on corporate

procedures (as described in 40 CFR §122.22(a)(1)(ii)) is equivalent to the requirement in 30 TAC §305.44(a)(1).

Comment: SCIECA asks if the TCEQ could change the requirement to submit an NOC within 14 days of knowledge of the change rather than 14 days before the change, since there will be times when changes will not be foreseen that far in advance. SWS-Houston asks that it be 14 days after the change occurs, matching the current deadline for correcting incomplete or incorrect information. SWS-Royse seeks clarification on submitting the NOC 14 days prior to change. Centex Homes thinks that the timeframes for submitting the NOC and the NOI should be consistent and requests that TCEQ adopt the NOI 10-day timeframe for both. TxDOT suggests that the requirement to provide notice within 14 days of discovery, as stated in the current permit, should be retained in the CGP to account for the reporting of unplanned changes. Harris County finds that changes can occur frequently and suddenly due to unforeseen circumstances, and believes that 14 days advance notice is unrealistic; and therefore, requests that the requirement be removed.

Response: 30 TAC §205.4(h) states that general permits must require permittees to submit up-to-date information to the executive director in an NOC within a specified period of time prior to a change in previous information provided to the agency or any other change with respect to the nature or operations of the facility or the characteristics of the discharge. Where the permittee is aware of the change, TCEQ believes it is appropriate to retain the 14-day requirement. However, where a change occurs that the permittee became aware of following the change, it is appropriate to require an NOC within 14 days of being aware of the change. Therefore, the first two sentences of Section II.D.6.(b) (renumbered as II.E.6.) were revised as follows:

If relevant information provided in the NOI changes, an NOC must be submitted at least 14 days before the change occurs, if possible. Where 14-day advance notice is not possible, the operator must submit an NOC within 14 days of discovery of the change. If the operator becomes aware that it failed to submit any relevant facts or submitted incorrect information in an NOI, the correct information must be provided to the executive director in an NOC within 14 days after discovery . . ..

Comment: TxDOT suggests that Section II.D.6. be revised to replace the phrase "decrease in the site acreage" with "decrease in the acreage of disturbed earth." TxDOT also requests that TCEQ take this opportunity to delineate what level of additional earth disturbance, beyond that predicted and reported in the NOI, will require a NOC, and suggests that a 20% or greater increase in the originally reported acreage would be reasonable.

Response: TCEQ agrees with the first portion of the comment and revised the first sentence of the third paragraph of Section II.D.6. (renumbered as Section II.E.6.) for consistency with the language regarding an increase in acreage: "An NOC is not required for notifying TCEQ of a decrease in number of acres disturbed . . .."

With respect to notification of an increase in the number of acres disturbed, an NOC would not be required where the number of acres disturbed increased by less than one acre. However, an NOC would be required for any increases over one acre. This is required because an increase in

the acreage could be considered a substantial change to the information submitted, and 30 TAC §205.4(h) states that general permits must require applicants to submit an NOC for any change with respect to the nature or operations of the facility or the characteristics of the discharge. TCEQ believes that an increase in one or more acres of disturbed land would necessitate an NOC. Therefore, the first sentence of the second paragraph of Section II.E.6. was revised as follows:

Information that may be included on an NOC includes, but is not limited to, the following: the description of the construction project, an increase in the number of acres disturbed (for increases of one or more acres), or the operator name.

Comment: SWS-Houston requests that changes to phone numbers, addresses, and other incidental contact information listed on an NOI be allowed to be changed without the need of a NOC signed by the operator, as currently required in Section II.D.7. of the draft permit.

Response: 30 TAC §205.4(h) states that general permits must require permittees to submit up-to-date information in a notice of change (NOC) within a specified period of time prior to a change in previous information provided to the agency. Because this information is required in the NOI, any change would necessitate an NOC.

Comment: TxDOT requests that TCEQ clarify whether Section II.D.8.(a), related to including the TPDES authorization number for facilities regulated under the TPDES CGP, is intended to apply to other authorizations at the current site or to all of the applicant's authorizations. TxDOT comments that it would not be feasible to require all the applicant's other authorization numbers, because an applicant may have thousands of authorizations throughout the state.

Response: This item refers to the authorization number for the applicant's existing authorization number for the construction activity at the same site. This requirement only applies to operators resubmitting an NOI for an ongoing construction activity, i.e., a "renewal" authorization. To clarify the intent, the Section II.D.8.(a) (renumbered as II.E.8.(a)) was revised as follows:

(a) the TPDES CGP authorization number for existing authorizations under this general permit, where the operator submits an NOI to renew coverage within 90 days of the effective date of this general permit; . . ..

Comment: Harris County questions the value in Section II.D.8.(h) of having the applicant include the stream segment number on the NOI, particularly because this information is self-reported. Harris County requests that this requirement be deleted from the NOI. If TCEQ elects to keep this information request on its NOI form, then Harris County asks that this information be added to the list under "Contents of NOI" and clarification regarding the segment numbering convention that should be used. Harris County also recommends that TCEQ provide a GIS-based scalable map on its website that any operator could quickly access to determine stream segment number.

Response: In response to the comment, and for consistency with other TCEQ general permits, Section II.E.8.(h) was revised to require the name of the receiving water(s) on the NOI, Section

II.E.8.(h) was revised to require the classified segment number, and Section II.D.8.(i) (renumbered as II.E.8.(i)) was added to require the name(s) of any surface water(s) receiving the discharge that are on the latest EPA – approved list of impaired waters. The revised language is as follows.

(g) name of the receiving water(s);

(h) the classified segment number for each classified segment that receives discharges from the regulated construction activity (if the discharge is not directly to a classified segment, then the classified segment number of the first classified segment that those discharges reach; and

(i) the name of all surface waters receiving discharges from the regulated construction activity that are on the latest EPA-approved Clean Water Act §303(d) list of impaired waters.

In a previous response TCEQ revised Section IX.B. of the Fact Sheet to include two TCEQ website map references for obtaining information on segment numbers.

Comment: Mesquite comments that the removal of all silt fence and other temporary erosion controls need to be required prior to submitting an NOT for large construction sites and prior to removing the site notices for small construction sites. Mesquite also states that the proposed language does not place this requirement on the operator as it should (see renumbered Section II.F.1.(a)). Greg Mast comments that currently the permit requires temporary controls to be removed prior to an NOT being submitted, but makes no reference to the status of permanent controls when the NOT is submitted.

Response: TCEQ believes that the definition of "final stabilization" provides an adequate description of the requirements for terminating coverage at sites where construction has been completed. This definition states that in order to be considered finally stabilized, all soil disturbing activities at the site must have been completed and a uniform perennial vegetative cover must have been established or equivalent permanent stabilization measures employed. The installation and removal of silt fence and other temporary erosion controls would still be considered as a soil disturbing activity and should be completed prior to considering the site finally stabilized.

Comment: Dallas asks whether an NOT would be required for termination if a site was required to submit an NOI, but never did. If not, then Dallas asks what the operator should do in this case. Dallas also asks whether an MS4 operator is still required to conduct inspections if the construction site operator vacates a stabilized site without filing an NOT. SWS-Royse asks why an operator may not file a NOT, unless the new operator has applied for coverage.

Response: An NOT is required to terminate coverage that was obtained with an NOI. If an operator of a regulated construction site did not submit an NOI, and the site meets the conditions for final stabilization, then the operator may not file an NOT because TCEQ has no record of the construction activity because an NOI was not filed. However, Section II.D.5.(c) of the permit states that an operator is not prohibited from filing a late NOI. Therefore, if construction

activities are still ongoing, an NOI may be submitted. An NOT may then be filed upon meeting the conditions for terminating coverage.

Comment: SCIECA and SWS-Royse ask that TCEQ clarify what would be acceptable as the record of notification (or attempt at notification) by an operator transferring coverage in Section II.E.1.(b). SCIECA specifically asks about certified mail, a hand-written note, and e-mail confirmation. SWS-Houston asks whether a signed copy of the NOT sent to the new operator will suffice as official notification. SECA supports the requirement that the terminating operator attempt to notify the new operator in writing of the requirement to obtain permit coverage.

Response: Records of notification may include proof of mailing the notification (i.e., certified mail or overnight mail), a facsimile (FAX) record, a date-stamp for a hand-delivery of notification, or record of electronic mail to the new operator. Provided that the original operator attempts to notify the new operator of the need to obtain coverage, the original operator may file its NOT even if the new operator does not file an NOI.

Comment: SCIECA asks that TCEQ add a requirement to Section II.E.3. for the operator to notify the MS4 operator and remove the site notice upon termination of coverage. SCIECA states that without this requirement, the MS4 operator will not know when work was completed if the only requirement is for the construction site operator to terminate is to remove their site notice. Harris County appreciates the inclusion of Section II.E., requiring operators to submit NOTs to the applicable site operator. SAWS believes that all sites should submit an NOT and that small construction activities should, at a minimum, submit an NOT to the MS4 operator. SAWS recommends adding new Sections II.E.1.(d) and 3.(d) as follows:

(d) All regulated construction sites working under the authorization of this General Permit must meet one or more of the conditions of termination described in this Section, prior to terminating responsibilities at the construction site.

Response: TCEQ declines to add an NOT requirement for operators not required to submit an NOI. However, TCEQ recognizes that regulated construction operators should be required to document the date that termination of coverage was obtained, and should, at a minimum, notify the MS4 operator of termination of coverage for sites not requiring an NOI. Therefore, in response to the comments, the first full paragraph of Section II.E.3. (renumbered II.F.3.) was revised to require notification of termination of coverage to the MS4 operator by submitting the completed site notice with information on the date that the site notice was removed or by otherwise notifying the MS4 operator. In addition, the site notices were revised to include a place for the operator to include the date the site notice was removed.

Each operator that has obtained automatic authorization and has not been required to submit an NOI must remove the site notice upon meeting any of the conditions listed below, complete the applicable portion of the site notice related to removal of the site notice, and submit a copy of the completed site notice to the operator of any MS4 receiving the discharge (or provide alternative notification as allowed by the MS4 operator, with documentation of such notification included in the SWP3), within 30 days of meeting any of the following conditions: . . ..

Comment: SAWS recommends adding the following sentence to Section II.E., so that a permittee will explicitly understand that enforcement actions may be taken by the MS4 Operator or TCEQ if the site does not meet termination requirements. SAWS believes that this change will keep operators from filing an NOT without stabilizing the site, transferring ownership, or leaving temporary controls in place: "Enforcement actions may be taken if a permittee terminates Permit coverage without meeting one or more of the conditions of termination described in this Section."

Response: TCEQ declines to add the requested language and believes that the existing language is sufficient to indicate what the permit requires. For example, Section II.E. (renumbered II.F.) states in several locations that an NOT must be submitted when certain conditions are met. In addition, Section VII.1. of the CGP states that failing to comply with any permit condition is a violation and is grounds for enforcement action.

Comment: Centex Homes requests that TCEQ add language from the Fact Sheet in Section II.F.1 to the permit for clarification on transfer of operational control. In addition, Centex Homes requests that TCEQ add the following language to Section II.F.2., in order to clarify developer/homebuilder responsibilities after the transfer of finished lots. If revised, the current Sections II.F. through II.H. in the draft permit would be re-numbered as Sections II.G. through II.I.:

Section F. Transfer of Operational Control

1. No Transfer of Coverage: Coverage under this general permit is not transferable. If the operator of the 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 an NOI at least 10 days before assuming operational control, or 24 hours before assuming operational control if submitting an NOI electronically. 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.

2. Homebuilders: The steps in Section F.1 above also apply to a homebuilder who purchases one or more lots from an owner/developer who obtained coverage under this general permit for a common plan of development or sale. The homebuilder is considered a new owner/operator and shall comply with the requirements listed above, including the development of a SWP3 if necessary, for its lot(s). Under these circumstances, the homebuilder is only responsible for compliance with the general permit requirements as they apply to its lots. The developer remains responsible for common controls or discharges and must submit an NOT for the lots purchased by the homebuilder.

Response: TCEQ agrees that additional clarification would be useful in explaining that a new NOI is required for a transfer of ownership for the operator and revised several portions of the CGP and Fact Sheet as described below. The changes are not exactly as requested by the commentor, but TCEQ believes that they adequately address the comments. Changes were made to clarify that when operational control transfers from one entity to another, the original operator

must submit an NOT and the new operator must submit an NOI at least 10 days prior to the transfer of control. This is required based on 30 TAC §205.4(h). For sites not required to submit an NOI, the 10-day provision is not mandatory. For operators who submitted electronic NOIs, the requirement based on 30 TAC §205.4(h) does not differentiate. Therefore, submittal of the NOT by the original operator and the NOI by the new operator is required at least 10 days prior to a transfer in coverage. In addition, clarifying language regarding homebuilders was added to the Fact Sheet and CGP, although the requested language was revised to clarify that an NOT is not required for the operator transferring individual lots to the homebuilder, so long as the SWP3 is amended to include the change in property boundaries. In Section II.D.3.(b) (renumbered II.E.3.(b)), the reference to 24 hours for electronic submittal of an NOI for a change in primary operator was removed. In addition, Sections II.F.1. through 3. were revised and Section II.F.4. was added to clarify the requirements for terminating coverage in the case of a change in operator:

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

(a) final stabilization has been achieved on all portions of the site that are the responsibility of the permittee; or

(b) a transfer of operational control has occurred (See Section II.F.4. below); or

(c) the operator has obtained alternative authorization under an individual TPDES permit or alternative general TPDES permit."

2. No changes.

3. Termination of Coverage for Small Construction Sites and for Secondary Operators of Large Construction Sites

Each operator that has obtained automatic authorization and has not been required to submit an NOI must remove the site notice upon meeting any of the conditions listed below, complete the applicable portion of the site notice related to removal of the site notice, and submit a copy of the completed site notice to the operator of any MS4 receiving the discharge (or provide alternative notification as allowed by the MS4 operator, with documentation of such notification included in the SWP3), within 30 days of meeting any of the following conditions:

(a) final stabilization has been achieved on all portions of the site that are the responsibility of the permittee;

(b) a transfer of operational control has occurred (See Section II.F.4. below); or

(c) the operator has obtained alternative authorization under an individual or general TPDES permit . . ..

4. Transfer of Operational Control

Coverage under this general permit is not transferable. A transfer of operational control includes changes to the structure of a company, such as changing from a partnership to a corporation, or changing to a different corporation type such that a different filing (or charter) number is established with the Texas Secretary of State.

When the primary operator of a large construction activity changes or operational control is transferred, the original operator must submit a Notice of Termination (NOT) within ten days prior to the date that responsibility for operations terminates, and the new operator must submit an NOI at least ten days prior to the transfer of operational control, in accordance with condition (a) or (b) below. A copy of the completed site notice must be provided to the operator of any MS4 receiving the discharge, in accordance with Section II.F.3.above.

Operators of regulated construction activities who are not required to submit an NOI must remove the original site notice for the original operator, and the new operator must post the required site notice prior to the transfer of operational control, in accordance with condition (a) or (b) below. A copy of the completed site notice must be provided to the operator of any MS4 receiving the discharge in accordance with Section II.F.3. above.

A transfer of operational control occurs when either of the following criteria is met:

(a) Another operator has assumed control over all areas of the site that have not been finally stabilized; and all silt fences and other temporary erosion controls have either been removed, scheduled for removal as defined in the SWP3, or transferred to a new operator, provided that the permitted operator has attempted to notify the new operator in writing of the requirement to obtain permit coverage. Record of this notification (or attempt at notification) shall be retained by the operator in accordance with Part VI of this permit. Erosion controls that are designed to remain in place for an indefinite period, such as mulches and fiber mats, are not required to be removed or scheduled for removal.

(b) A homebuilder has purchased one or more lots from an operator who obtained coverage under this general permit for a common plan of development or sale. The homebuilder is considered a new operator and shall comply with the requirements listed above, including the development of a SWP3 if necessary. Under these circumstances, the homebuilder is only responsible for compliance with the general permit requirements as they apply to lot(s) it has operational control over, and the original operator remains responsible for common controls or discharges, and must amend its SWP3 to remove the lot(s) transferred to the homebuilder.

Comment: Harris County states that "interpolate" is misspelled in Section II.F.2.(d). In addition, Harris County points out that the section entitled "Effective Date of Waiver" in Section II.F.2. should actually refer to Section II.F.3. and that the section entitled "Activities Extending Beyond the Waiver Period" should actually refer to Section II.F.4.

Response: These corrections were made as noted (See renumbered Sections II.G.2.-4.).

Comment: Harris County comments that Section II.G.2. related to the need to suspend work while preparing an individual permit application and submitting the application 330 days prior to resuming work would result in costly overruns and undue hardship. Therefore, Harris County requests a hearing process or similar administrative procedure to contest TCEQ's suspension of general permit coverage.

Response: TCEQ rules at 30 TAC §205.4(d)(1), related to Authorizations and Notice of Intent (NOI), requires a general permit to describe the procedures for suspension of an authorization or NOI. An operator that has an authorization suspended may file a motion to overturn and ask the TCEQ's Commissioners to set aside the executive director's decision. See 30 TAC §50.139, related to Motion to Overturn Executive Director's Decision.

Comment: Harris County asks for clarification on Section II.G.2.(a), regarding how the determination is made that a site is consistent with applicable TMDLs.

Response: If an operator authorized under the CGP discharges to a segment that is impaired for a pollutant of concern and a TMDL has been adopted, then the discharge must comply with the approved TMDL and any Implementation Plan. If the TMDL and Implementation Plan determines that general permit coverage for construction sites it not adequately protective and that construction sites need to be authorized under an individual permit, then the discharge could not be authorized under the CGP. Similarly, if the TMDL and Implementation Plan determine that construction activities discharging to the affected water(s) must enact additional controls (e.g., implement specific BMPs or conduct analytical monitoring of the discharge), then the discharge could only be authorized under the CGP if the SWP3 is revised to include the required elements from the TMDL. If TCEQ determines that the elements are not implemented by the operator, then the TCEQ could deny or suspend authorization under the CGP. The CGP was revised to remove the term "implementation plan" in the two occurrences within the first sentence of the second paragraph of Section II.C.4.

Comment: Harris County disagrees with the inclusion of Section II.G.2.(c) and states that it is unnecessarily severe that a violation from any of its many, wide-ranging programs may disqualify it from coverage under the CGP and requests a measure of leniency from TCEQ.

Response: The language was included based on 30 TAC §205.4(d)(1), which requires the general permit to "describe the procedures for suspension of authorization and NOIs under a general permit." The specific conditions listed in the general permit at Section II.G.2.(c) are consistent with TCEQ rules at 30 TAC §205.4(d)(5); therefore, no changes were made.

Part III

Comment: SOS expresses concerns about operators not having any qualifications for developing and managing the SWP3 and states that individuals need to be certified or registered professionals (as appropriate) and complete training courses on SWP3 development and some sort of basic training for those who oversee construction site operators.

Response: In response to this comment and a previous comment in the "Definitions" section of the CGP, TCEQ revised Section III.F.7.(a) to clarify who is considered to be qualified to conduct inspections. However, TCEQ declines to require inspectors to be certified. The current CGP, as well as EPA's CGP, does not require a similar certification.

Comment: Fort Hood requests that TCEQ be as clear and consistent as possible when describing the purpose of the SWP3 and notes that in the following sections of the permit, different terms are used, such as "prevent," "reduce," "eliminate," "minimize," "control," "regulate," and "to the extent:" Section I.B. (related to definition of BMPs), Section II.A.2.(b), Part III, Section III.F.2.(a), and Sections III.F.4.(b), (c), (d), and (e). In addition, Fort Hood states that the SWP3 document cannot "ensure the implementation of practices" nor "assure compliance," and recommends changing the last sentence of the first paragraph of Part III as follows:

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

Response: In response to the comments, Section III.F.2.(a)(iii) was revised to replace the term "limit" with "minimize." Sections III.F.4.(b), and III.F.4.(e) were revised to replace the term "reduce" with "minimize" and the final sentence of the first paragraph of Part III was revised to state:

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

Comment: TxDOT comments that the first paragraph under Part III. requires that the SWP3 address "off-site material storage areas, overburden and stockpiles of dirt, borrow areas, equipment staging areas, vehicle repair areas, fueling areas, etc., used solely by the permitted project." TxDOT states that this appears to be inconsistent with Section II.A.2. (Discharges Eligible for Authorization), which limits when such off-site activities must or may be authorized in conjunction with the primary construction activity. TxDOT suggests replacing the language quoted above with "areas authorized under Part II.A.2." in order to avoid confusion.

Response: As stated in an earlier response, the provision regarding construction activities located within 1/4 mile was moved to the definition of "common plan of development."

Comment: SWS-Houston requests that Section III.A.1. of the draft permit be revised to reflect that including copies of each operator's NOI is equivalent to signing a shared SWP3, because Response Number 143 of the Executive Director's Response to Comments (RTC) for the existing CGP states that certification is not necessary as long as each operator signs an NOI and includes it in the SWP3. SWS-Houston requests that the term "participant" in Section III.A.1. be changed to "operator" or to "permittee," and comments that the term "participant" is not necessarily equivalent to the term "operator." Mesquite comments that TCEQ enforcement personnel

currently interpret the requirement in Section III.A.1. to mean that the signed certifications on the NOIs or construction site notices, which are part of the SWP3, meet the signature requirement for a shared SWP3, and asks whether this is the intent in the draft permit. Mesquite further states that not allowing the NOI or construction site notice signatures to meet this requirement places a large burden on all cities that are preparing a SWP3 for a city project, as the city manager may not be readily accessible to sign multiple documents for all city projects of one acre or more.

Response: In the 2003 Response to Comments, Number 143, TCEQ clarified that a SWP3 does not have to be signed if it is for a single operator, because the certification on the NOI is sufficient to indicate that an SWP3 was implemented according to the CGP. However, the existing CGP does require shared SWP3s to be signed by each operator participating in the shared plan and this requirement is continued in the renewed version of the permit. The need to sign a shared plan is important to show that each operator is aware of and agrees to the specific items regarding who is responsible for what in the SWP3. If an operator chooses not to share a SWP3, then they may develop and implement their own without a separate signature requirement. TCEQ also notes that the signatory for any report required by the CGP, including the SWP3, can be delegated to a specific person or position per TCEQ rules at 30 TAC §305.128. This signatory authority designation letter can be submitted along with the NOI at any time thereafter.

TCEQ declines to remove the requirement for each operator in a shared SWP3 to sign the SWP3. However, the last sentence of Section III.A.1. was revised to address the comment regarding the term "participant" and now reads: "Each operator participating in the shared plan must also sign the SWP3."

Comment: TCB comments that the new requirement in Section III.B.2. related to operators with day-to-day control seems to require something of the operator that is not required to submit an NOI, and believes that it may be confusing. TCB requests that the requirement be revised to apply to operators that do have to submit an NOI and comments that it may be a correction that was not carried all the way through the draft permit.

Response: TCEQ intends for all operators (including primary and secondary operators as provided in the revised definition for "operator) regulated under the CGP to comply with the terms and conditions of the CGP. If operators share a SWP3, then each operator, including the secondary operator, can easily identify who is responsible for compliance with certain portions of the SWP3. If each operator elects to prepare its own SWP3, then each operator will have to specifically address each permit condition.

Comment: Travis County recommends that Section III.D. of the draft permit be revised to provide explicit authority for local governments to review and approve or disapprove the SWP3.

Response: The CGP can not provide entities with authority to conduct activities that they do not already have. If an entity seeks to regulate construction activities discharging into their drainage system, then they may do so to the extent allowable under state and local law.

Comment: Travis County requests that Section III.D. of the draft permit include a statement that local governments may require the SWP3 to be developed early in the planning phases of a construction project. Travis County comments that the draft permit does not require development and implementation of the SWP3 until construction is about to commence and for that reason, BMPs are often developed as an afterthought and are often ineffective due to lack of forethought. Travis County states that erosion and sediment controls must be a prime consideration early in the planning process and that early consideration will influence project phasing, limits of disturbance, and selection of techniques, and will also minimize the potential for a significant discharge of pollutant from a regulated site.

Response: TCEQ thinks that the requirements in Section III.D. to develop a SWP3 that "provides for compliance with the terms and conditions" of the CGP are sufficient. If a construction site operator violates any terms or conditions of the permit, such as by use of inappropriate or ineffective BMPs, then they may be subject to enforcement actions. In addition, local authorities can require additional controls to the extent that they have such authority.

Comment: SWS-Royse requests clarification regarding the term "readily available" in Section III.D.1. of the draft permit.

Response: The SWP3 is the document that outlines how an activity will be conducted in a manner to reduce or eliminate pollution in storm water runoff. Therefore, it is reasonable and necessary that the document must be readily accessible to operators with the responsibility of implementing the plan. If the document is maintained on-site, the operator should be able to produce the SWP3 the same day as the request, preferably within two hours. If the SWP3 is maintained off-site, then it should be made available as soon as is reasonably possible. In most instances, it is reasonable that the document should be made available within 24 hours of the request. Many site investigations performed by TCEQ will be arranged in advance and, therefore, the SWP3 would be expected to be available at the time of the inspection.

Comment: Centex Homes comments that section III.D.1. provides requirements regarding on-site maintenance of a copy of the SWP3, but notes that during land development, it is typical not to have a construction trailer on site. To address that situation, Centex Homes requests that TCEQ add the following sentence as the second sentence of Section III.D.1.: "The SWP3 may be kept in the vehicle of the construction manager/site foreman."

Response: TCEQ does not believe that a change is required in order to allow the SWP3 to be available in a vehicle if that location otherwise meets the existing permit requirements of being available "on site," or if no on-site location, then with a site notice indicating the location of the plan if off site. If the off site location is a vehicle, then it would be necessary to also include the contact information of the person holding the plan.

Comment: TxDOT suggests that TCEQ replace the word "notice" with "notices" in the third and fourth sentences of Section III.D.2. to clarify that the posting location descriptions apply to the NOI as well as to the site notice.

Response: In response to the comment, the requested changes were made.

Comment: SWS-Houston comments that the requirement list in Section III.D.2. to utilize Attachment 3 for large construction sites is inconsistent with the Fact Sheet language, which states that the operator is not required to use the notice provided in the permit. SWS requests that certification of the site notice be waived, as it duplicates the certification requirement on the NOI. Tarrant County comments that the references in Sections II.D.7. and III.D.2. of the general permit, and on Page 4, item 10 and page 11, item S of the fact sheet, regarding where a large construction site may need to post a construction site notice either in addition to the NOI as being the operator of this site and working on this site, or possibly without being required to submit an NOI. Tarrant County comments that the requirement is confusing because in one instance an operator needs a signatory requirement to the level of application signatory, but that there are other situations in the fact sheet where the site notice is said to only require information in addition to the NOI, which already has that signature requirement. Tarrant County suggests adding another attachment to clarify this situation.

Response: In response to the comments, the TCEQ revised the Fact Sheet language (Section IV.A. and V.S.) to clarify that all operators regulated under the CGP must post a specific site notice in TCEQ format. A new site notice was added as Attachment 4, for primary operators of large construction sites (those that are required to submit an NOI). Attachment 4 does not require a signatory certification because the NOI contains the appropriate signatures. Attachment 3 was revised to clarify that it applies only to secondary operators of large construction activities, and the signature requirement was retained, as it was also retained for the small construction site notices.

Comment: Harris County questions the language in Section III.D.2. related to an operator of a large construction activity that is not required to submit an NOI. Harris County asks if the operator required to post a site notice according to Section II.D.1., 2, or 3. of the permit refers to an owner of a property that does not have control over the plans and specifications or over the day-to-day activity for a project being constructed on the owner's property. Harris County comments that if that is the case, then earlier sections of the permit and the flowchart imply that the owner is not the "operator," and that Section II.D.2.(b) would not apply. Therefore, Harris County requests clarification throughout the permit regarding the responsibilities of the landowner.

Response: If a landowner meets the definition of "operator" as provided in the revised definition in the new CGP and as discussed in previous comments related to the definition for "operator," then the landowner would be required to comply with the CGP. In many cases, the landowner would be considered a "secondary operator" and would not be required to submit an NOI.

Comment: Mesquite comments that the language in Section III.D.2.(b) and on Attachment 3 (the Large Construction Site Notice) do not agree with each other. Mesquite states that Section III.D.2.(b) requires the "name and telephone number" of the operator, but the site notice requires the "contact" name and number. Mesquite states that most operators are companies and suggests requiring the company name, contact name, and contact phone number.

Response: In response to the comment, Section III.D.2.(b) of the CGP was revised to replace the requirement to include "the name and telephone number of the operator" with "the operator

name, contact name, and contact phone number. Accordingly, a new row of information was added to the site notices to include the "operator name."

Comment: SAWS requests that TCEQ remove the word "significant" in Section III.E.1. because the term allows operators to quantify a pollutant's effect on discharges and then leaves the term open to interpretation. SAWS comments that any effect to the discharge of a pollutant should be revised in the SWP3, regardless of quantity.

Response: This item was not revised, as the language is continued from the existing CGP and is also consistent with EPA's CGP.

Comment: Centex Homes comments that Section III.F.1.c., which requires the SWP3 to include a description of the intended schedule or sequence of soil disturbing activity is unclear regarding what level of detail the SWP3 narrative must include about this schedule. Centex Homes further notes that the schedule or sequence may change due to weather or third parties and requests that the draft permit be revised to clarify that it would be sufficient to include a narrative and reference to documents that generally describe the timing, as opposed to requiring specific dates. Centex Homes requests that this section be revised to read as follows: "(c)a general description of the intended schedule or anticipated sequence of activities that will disturb soils for major portions of the site; . . .."

Response: TCEQ disagrees that a change is needed to the existing language in order to allow an operator to provide a generalized schedule of planned activities.

Comment: TxDOT asks for clarification regarding what types of field changes warrant revising the SWP3 site map (see Section III.F.1.(g)), and suggests that TCEQ either provide guidance on this issue in the response to comments, or include the following sentence in Section III.E. of the CGP:

Normal maintenance activities and minor adjustments to control measures may be addressed in the SWP3 (e.g. inspection reports) and do not normally require an update to the site map.

Response: If any information listed in Section III.F.1.(g) changes, then the site map would need to be updated. This would include, but is not limited to, changes to the planned area of soil disturbance, changes in locations and types of structural controls, revisions to authorized construction support activities, and vehicle washing areas. This would not necessarily include changes such as the temporary relocation of trash bins or portable toilets that are part of normal activities. No changes were made to the permit language.

Comment: TxDOT comments that it supports limiting the information required under paragraph (v) to that under the applicant's authorization, but notes that paragraph (ix) appears to repeat paragraph (v) without that limitation. Therefore, TxDOT requests that TCEQ delete item III.F.1.(g)(ix). Fort Hood recommends combining items (v) and (ix) of Section III.F.1.(g), related to "construction support activities," and provides the following example of possible language that could be used:

locations of off-site construction support activities that are authorized under the permittee's NOI, including concrete or asphalt batch plants, or material, waste, borrow, fill, or equipment storage areas.

Response: In response to the comments, TCEQ deleted item (ix) and revised item (v) as follows to include both on-site and off-site support activities: "locations of construction support activities, including off-site activities, that are authorized under the permittee's NOI . . .."

Comment: Centex Homes requests that Section III.F.1.g.ii. be revised to include the additional parenthetical to simplify the designation process for sites where most or all of the area will be disturbed: "areas where soil disturbance will occur (a statement that "all areas in the map will be disturbed unless otherwise noted" is sufficient); . . ..

Response: TCEQ agrees that the operator may include a statement on the map noting that all land shown will be disturbed and that such a statement would meet this requirement. However, no changes were made to the language in this section.

Comment: SAWS requests that TCEQ add the word "maximum" before "extent practicable" in Section III.F.2.(a)(i), because the word "maximum" quantifies the level of design to retain sediment on site, limit the off-site transport of litter, construction debris, and construction materials.

Response: TCEQ declines to make the change, as the current language is consistent with the existing CGP and with EPA's CGP. The "maximum extent practicable" standard is a federal standard that is specific to discharges originating from regulated MS4s.

Comment: SAWS requests that TCEQ replace the term "interim" to "temporary" in the first sentence of Section III.F.2.(b), and further states that there should be a similar replacement of terms throughout the draft permit because there is no definition for "interim stabilization" in the permit. However; there is a definition for "temporary stabilization."

Response: TCEQ agrees with the comment, and has changed the word "interim" to "temporary" in Sections III.F.1.(g)(iv) and III.F.2.(b) of the CGP.

Comment: SCIECA requests that perimeter controls be added to Section III.F.2.b.(i), and states that as currently written it is in conflict with the definitions in Part I of the permit. SCIECA comments that to remove sediment from storm water, you need to either utilize filtration or detention.

Response: As stated in an earlier response, the definition of "temporary stabilization" was changed to remove perimeter controls from the list of examples and a provision was included in the definition of "final stabilization" to allow perimeter controls in certain situations where homebuilders transfer ownership of a home. In response to this comment, TCEQ added the following paragraph as a new Section III.F.2.(b)(iii)(D), in order to allow the use of perimeter controls and other structural controls as an alternative to temporary erosion control, where the

operator can show that temporary erosion controls are not feasible and that the chosen perimeter controls would provide equivalent on-site retention of sediment:

(D) In areas where temporary stabilization measures are infeasible, the operator may alternatively utilize temporary perimeter controls. The operator must document in the SWP3 the reason why stabilization measures are not feasible, and must demonstrate that the perimeter controls will retain sediment on site to the extent practicable. The operator must continue to inspect the BMPs at the frequency established in Section III.F.7.(a) for unstabilized sites.

Comment: Fort Hood notes that vegetative buffer strips are listed as an erosion control in Section III.F.2.b.(i), and that they are listed multiple times as a sediment control in this permit, as well as in U.S. EPA's Menu of Storm Water BMPs.

Response: In the existing CGP, vegetative buffer strips are listed as a type of stabilization practice and as a type of sediment control that may be used. EPA's National Menu of Storm Water BMPs (see http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm) describes vegetated buffers as areas of natural or established vegetation that are maintained to protect the water quality of neighboring areas. In addition, while buffer zones primarily act to slow storm water runoff, as well as to provide an area where runoff can permeate the soil, contribute to ground water recharge, and filter sediment, the action of slowing runoff also helps to prevent soil erosion and streambank collapse.

Comment: Fort Hood requests that TCEQ define the term "establishment" as it relates to temporary or permanent vegetation in Section III.F.2.b.(i), so that operators and inspectors will be able to determine whether grass that is growing within disturbed soil is appropriately dense, uniform, etc.

Response: TCEQ declines to revise this section, which is consistent with the existing CGP and EPA's CGP. EPA menu of BMPs includes detailed information and resources regarding the establishment of temporary or permanent vegetation from seeding. In the definition for "final stabilization," the CGP clarifies that in order to terminate permit authorization, there must be a uniform perennial vegetative cover that has a density of at least 70% of the density of the vegetation that was present prior to commencing construction.

Comment: Harris County comments that the requirement to list the dates of various construction activity in Section III.F.2.b.(ii) is unreasonable due to the dynamic nature of construction affecting the timeline (e.g., financing, weather, building permitting) and believes that the current requirement to describe the intended schedule or sequence of major activities is sufficient for effective Harris County enforcement. With the current language, Harris County comments that it would have to issue notices of violation to permittees for having incorrect dates listed in their SWP3s and would rather focus its limited resources on enforcing activities that it believes pose a greater risk to the environment.

Response: TCEQ declines to revise the permit, as the language is continued from the existing CGP and is also consistent with EPA's current CGP. Permittees may update their SWP3 to reflect changes to schedules.

Comment: Fort Hood asks in regards to Section III.F.2.b.(ii)(C) whether it would also be appropriate to note the dates when temporary stabilization measures are initiated, in order to evaluate compliance with the CGP.

Response: In response to the comment, TCEQ revised Section III.F.2.(b)(ii)(C) to remove the term "permanent." This change is consistent with the existing TPDES CGP and with EPA's current CGP. This also allows the operator to show that the requirements of Section III.F.2.(b)(iii) related to the timing of temporary stabilization measures have been met.

Comment: Fort Hood asks that TCEQ define the term "initiated" as used in Section III.F.2.b.(iii) or provide further guidance or examples as to how it would apply for some typical controls. Specifically, Fort Hood asks whether the term "initiated" includes the spreading of seed, even if the vegetation will not grow for several weeks. In addition, Fort Hood asks whether it is acceptable to apply rolled erosion control products (RECP) to exposed soils 13 days after completion of construction activities in the area, when it may take three more weeks to complete the installation.

Response: The permit requires that temporary stabilization measures be initiated within 14 days. If the seeding or the RECP is applied throughout the disturbed area within the 14 day timeframe, then the requirement has been met. The operator must maintain the BMPs to insure that they are successfully established and function as intended for erosion control over the disturbed area.

Comment: In Sections III.F.2.(b)(iii)(A), (B), and (C), SAWS requests that TCEQ replace the term "construction activity," with "legitimate construction activity," and to add a definition for the new tem. To support this request, SAWS states that operators define "construction activity" as any activity on the site in order to constitute that they have exercised "construction activity on the site within 21 days" to avoid installing temporary stabilization measures. For example, SAWS states that a contractor may send a front end loader out to a site and back-drag existing graded soil, thereby increasing the likelihood of sediment discharge from the site due to exposed, unprotected soils. SAWS states that by adding the word "legitimate" to "construction activity", the permit would ensure that an operator's activity would not be a useless activity performed simply to avoid providing temporary stabilization. SAWS included the following proposed definition:

Legitimate Construction Activity: a construction activity performed by an operator, contractor or builder which results in a substantive, tangible product that has an economic value to the development.

Response: The CGP requires that temporary stabilization be initiated within 14 days for any portion of a construction site where land disturbance has temporarily or permanently ceased. If the operator will recommence construction within 21 days, then the temporary stabilization is not required in those areas. No changes were made to the permit, because TCEQ believes that the existing language allows an inspector to issue a violation related to the SWP3 if the activities at the site do not meet the requirement of Part III of the CGP related to ensuring the

implementation of practices to reduce the pollutants in discharges associated with the construction site.

Comment: Centex Homes requests that TCEQ clarify Section III.F.2.b.(iii) with respect to what constitutes cessation of construction activities. Centex Homes notes that the issue of stabilization is problematic where the site is part of a larger common plan of development such as a house within a residential development. Centex Homes asks whether a home that has been completed must be stabilized if the lot is awaiting fencing and installation of a sprinkler system, but that it is known that activity on the lot will cease for 40 days.

Response: In the example provided, temporary stabilization would be required of the operator for the individual lot. If temporary stabilization were not feasible, then the operator could establish perimeter controls or other structural controls that are determined to be as effective as erosion control would be (see the new Section III.F.2.(b)(iii)(D) related to temporary stabilization, and the revised definition of "final stabilization").

Comment: Centex Homes requests that TCEQ clarify Section III.F.2.b.(iii) with respect to whether it is necessary to undertake stabilization even if source control BMPs or sediment control BMPs remain in place to control sediment from leaving an area where construction activities have ceased.

Response: Stabilization measures are required for disturbed areas where construction has temporarily ceased. Where stabilization is not feasible, an operator may utilize structural controls to handle sediment, where those controls are found to be able to handle the same amount of sediment that a stabilization measure would have prevented from being transported in the first place (see the new Section III.F.2.(b)(iii)(D) of the general permit).

Comment: SCIECA states that Section III.F.2.b.(iii)(C) seems to indicate that if a site is experiencing drought, then stabilization is not required and asks whether this applies to both final stabilization as well as temporary stabilization. SCIECA states that without temporary stabilization in place, sediment will be washed off site if it rains and notes that many of the types of temporary stabilization do not require water and could be accomplished during dry periods. SCIECA states in regards to Section III.F.2.b.(iii)(C), methods of temporary stabilization could be added as more information becomes available. Finally, SCIECA asks how many storm events would need to occur before the area is considered to be out of drought conditions and stabilization installed.

Response: Temporary stabilization in arid or semi-arid areas, or in areas experiencing drought is required as soon as practicable. It may be necessary to utilize non-vegetative stabilization if vegetative controls are not practicable. In response to the comment, the following sentence was added to the end of Section III.F.2.(b)(iii)(C):

Where vegetative controls are not feasible due to arid conditions, the operator shall install non-vegetative erosion controls. If non-vegetative controls are not feasible, the operator shall install temporary sediment controls as required in Paragraph (D) below.

Comment: SCIECA asks who determines drought status as described in Section III.F.2.b.(iii)(C), and asks whether TCEQ will post a list of counties that it considers to be in drought condition.

Response: The CGP does not include specific definition of "drought." Information on droughts, including links to other government agency resources, is available on TCEQ's web site at: http://www.tceq.state.tx.us/nav/util_water/drought.html

Comment: SCIECA suggests that the following language be added as a new item under (D) of Section III.F.2.(b)(iii), and stated that TCEQ may want to only allow this for a limited time frame, such as 90 to 180 days:

If the sediment control (sic) included in the storm water pollution prevention plan (SWP3) are developed using a design methodology which take into account the water volume and/or peak flow load based on a 2 year 24 hour storm, the sediment load based on Modified Universal Soil Loss Equation (MUSLE) and the calculation are include (sic) in the plan the site would be consider (sic) to have temporary stabilization by means of the existing structural erosion and sediment controls.

Response: TCEQ declines to make the requested change, but in response to an earlier comment, a new Paragraph (D) was added to Section III.F.2.(b)(iii) related to the use of perimeter controls where temporary erosion controls are infeasible.

Comment: SAWS requests a new item (D) in Section III.F.2.(b)(iii). SAWS states that an operator will often obtain permit coverage for an entire development and will then grade the entire development and install primary infrastructure (roads, utilities and drainage). Only then will the operator focus construction activity (such as home building) on a small, specific section of the development. SAWS states that this practice leaves large areas of exposed soils with minimal BMPs and a higher probability for runoff. Specifically, SAWS requests the following language be added at item (D):

stabilization measures shall be initiated in all inactive areas of the development by the 14th day after construction activities have temporarily or permanently ceased and where those inactive areas will not engage in legitimate construction activity for an indefinite period of time (exceeding 21 days).

Response: TCEQ believes that Section III.F.2.(b)(iii), which requires stabilization measures in "portions of the site where construction activities have temporarily or permanently ceased. . . " adequately addresses this concern. Therefore, no additional changes were made.

Comment: Fort Hood states that Section III.F.2.(c) only includes design parameters for the sediment basins. Fort Hood believes that the holding time or hydraulic detention time of the water in the basin is just as important to the ultimate success or failure of the basin as a sediment control device. Fort Hood recommends that TCEQ provide a minimum hydraulic detention time to assist in the proper design and inspection of this type of control.

Response: TCEQ believes that the existing requirements for the sediment basins are adequately protective and no additional changes are proposed.

Comment: TxDOT comments that work involving placement of dredge or fill material in Waters of the United States is regulated under §404 of the Clean Water Act (CWA) by the United States Corps of Engineers and requests clarification in the CGP for work occurring in waters of the United States. that is authorized under a §404 permit. As an example, TxDOT notes that Section III.F.2.(c)(1)(D) requires sediment controls at all down slope boundaries, which would require placing a control at a downstream point in the creek if work was actually being performed in a creek, and this would typically be a violation of the CWA, §404 permit. TxDOT requests clarification regarding appropriate CGP permit requirements when compliance with the CGP may result in a violation of another permit (e.g. for work that is authorized by a CWA, §404 permit).

Response: The CGP can not provide authority for an operator to use property or conveyances that are owned or operated by another entity, including water in the state. If construction occurs immediately adjacent to water in the state, then there may be situations in which perimeter controls are not feasible, and the operator should focus on source control to minimize the discharge of pollutants from the site into surface waters. According to the Texas Parks and Wildlife Department (TPWD) Code, the TPWD has authority over all activities that occur on the "beds and bottoms" of public rivers, as well as the products of the beds and bottoms of the public rivers (including the mining of sand, gravel, mud, and shell). If construction is occurring completely within water of the state under a CWA, §404 permit, then the TCEQ does not have jurisdiction over the activity and the operator would need to comply with the requirements of CWA, §404 authorization and with TPWD requirements. However, if the construction activity is occurring both within a water in the state, such that a CWA, §404 permit is required, and on land that does not require §404 authorization, then the portion of the construction activity not covered under the §404 authorization would require CGP coverage if the area disturbed exceeded one acre.

Comment: SWS-Houston comments that calculations required in Section III.F.2.(c) regarding basin capacity can not always be performed prior to implementing the SWP3. SWS-Houston notes that operators with day-to-day operational control may not be able to construct sediment basins due to contractual limitations and that it may be impractical to measure the capacity of basins that were designed in the field. Therefore, SWS-Houston requests that the new documentation requirement related to basin calculations and feasibility be limited to those operators with controls over the plans and specifications that are required to submit an NOI, rather than the day-to-day operators. SWS-Houston also requests that the TCEQ add language to the CGP to ensure that the construction of sedimentation basins or equivalent measures is started as early in the project as needed to effectively manage sediment runoff.

Response: Section III.B.1.(a) requires primary operators with control over construction plans and specification and secondary operators to ensure that project specifications allow for adequate BMPs and the responsibility for appropriately sizing the ponds may be included in their SWP3 or portion of SWP3. However, some day-to-day operators may also have the ability to make

decisions on the sizing of ponds and this would be addressed under Section III.B.2.(a). No additional changes were made to the CGP.

Comment: Harris County requests removal of the requirement in Section III.F.2.(c)(1)(A) to construct a sedimentation basin, and states that while a sedimentation basin is effective at improving storm water quality, they are often not feasible, particularly in areas with flat terrain such as the Gulf Coast or for linear projects. Harris County adds that requiring sedimentation basins may conflict with building requirements from other local jurisdictions.

Response: TCEQ declines to remove this provision. Sedimentation basins are useful to capture sediment from a construction site by allowing it to settle out from pooled water prior to the water being discharged. Where a sedimentation basin is not feasible due to acreage or geographical restrictions, safety concerns, or other reasons, then it is appropriate to utilize alternative BMPs, as long as the operator states the reason(s) that the sedimentation basin is infeasible as required in Section III.F.2.(c)(1)(C).

Comment: Harris County comments that Sections III.F.2.c.(1) and (2) should be changed to (i) and (ii) to be consistent with the rest of the section.

Response: The noted correction was made to the draft permit.

Comment: SCIECA comments that the engineering community would have difficulty in complying with Section III.F.2.(c)(1)(C) because it is an open-ended requirement. TCB comments that it is somewhat onerous to require documentation of why a sedimentation basin was not feasible. SCIECA further states that an engineer may determine that it is not feasible to construct a detention pond based on the criteria listed in the draft permit, but that the engineer and the company may be subject to fines, lawsuits, and enforcement if an inspector determines that the pond was feasible. In addition, SCIECA states that the provision does not state what in particular would be an appropriate substitute for a pond that was deemed infeasible. SCIECA requests that the permit contain specific design standards rather than use subjective requirements. SCIECA also comments that the Section III.F.2.(c)(1)(D), already requires perimeter controls. TCB comments that it does not believe that EPA required such documentation in its CGP. Harris County requests removal of the requirement in Section III.F.2.(c)(1)(C) to document the reason that an operator may deem sedimentation basins as infeasible, because there are no guidelines describing the reasoning process and local authorities would not be able to enforce this provision.

Response: TCEQ believes that it is necessary for an operator to document why this particular provision cannot be met and does not believe that the requirement to document the reason is overly burdensome. The existing CGP includes a requirement to construct a sedimentation pond, and also includes a requirement to use equivalent control measures if "sediment basins are not feasible." The only difference between the existing CGP and the draft permit is that the operator must now document the reason that the basin is not feasible. TCEQ believes that the additional requirement does not affect the responsibility of the operator to be able to demonstrate to an inspector why the sedimentation basin was not constructed. Also, TCEQ does not want an

operator to simply choose not to construct a sedimentation pond for purposes of convenience rather than feasibility. No changes were made to the draft permit.

Comment: Fort Hood asks whether "equivalent control measures" in Section III.F.2.(c)(1)(C) are mandatory or whether they are optional if the operator can justify that they are not attainable. In addition, Fort Hood asks whether the same criteria should be used to determine "attainability" as "feasibility" in this section.

Response: Equivalent control measures are required if a sedimentation basin is infeasible. In response to the comment, the term "where attainable" was removed. This change is consistent with the existing CGP language.

Comment: SCIECA asks whether the perimeter controls required in Section III.F.2.(c)(1)(D) are supposed to be equivalent to a detention pond (in the case where a detention pond is determined to be infeasible), or the equivalent to a silt fence or vegetative strip. Further, SCIECA asks how one is to determine whether controls are equivalent. SCIEA also asks that TCEQ clarify its requirements regarding the limit to how much sediment must be retained on site and states that city inspectors will sometimes require multiple rows of silt fences to account for the controls being knocked down during a storm event. SCIECA notes that often the site engineer will determine that one thing is appropriate, but it may conflict with the inspector's view. In addition, SCIECA requests that TCEQ replace the requirement to construct a detention pond with a specific goal or limit. SCIECA believes that the requirement is too restrictive, and though it comes from the federal permit, it only provides one clear option to the problem. SCIECA states that if the operator determines that the sedimentation pond is not feasible, then the operator does not have clear guidance on how to choose alternative BMPs. SCIECA comments that this change would make it easier for the regulated community to understand and implement and that it will be easier for TCEQ to enforce, while still meeting the goals of reducing sediment from construction sites. In addition, SCIECA requests that TCEQ address other areas in the permit that are left to individual judgment and instead provide clear criteria that can be met.

Response: Perimeter controls are required in addition to the required sediment basin. As stated in previous responses, the TCEQ declines to add a specific design requirement for BMPs or to include prescriptive guidance on selecting BMPs in lieu of a sediment basin. There are several resources available to help choose BMPs, including EPA’s Menu of Storm Water BMPs discussed in previous responses. In response to this comment, and in order to clarify the requirements for sites with drainage areas of ten or more acres, Section III.F.2.(c)(1) was reorganized as follows:

(1) Sites With Drainage Areas of Ten or More Acres

(A) Sedimentation Basin(s)

(i) A sedimentation basin is required, where feasible, for a common drainage location that serves an area with ten or more acres disturbed at one time. A sedimentation basin may be temporary or permanent, and must provide sufficient storage to contain a calculated volume of runoff from a 2-year, 24-hour storm from each disturbed acre drained. When calculating the volume of runoff

from a 2-year, 24-hour storm event, it is not required to include the flows from offsite areas and flow from onsite areas that are either undisturbed or have already undergone permanent stabilization, if these flows are diverted around both the disturbed areas of the site and the sediment basin. Capacity calculations shall be included in the SWP3.

(ii) Where rainfall data is not available or a calculation cannot be performed, the sedimentation basin must provide at least 3,600 cubic feet of storage per acre drained until final stabilization of the site.

(iii) If a sedimentation basin is not feasible, then the permittee shall provide equivalent control measures, until final stabilization of the site. In determining whether installing a sediment basin is feasible, the permittee may consider factors such as site soils, slope, available area, public safety, precipitation patterns, site geometry, site vegetation, infiltration capacity, geotechnical factors, depth to groundwater, and other similar considerations. The permittee shall document the reason that the sediment basins are not feasible, and shall utilize equivalent control measures, which may include a series of smaller sediment basins.

(B) Perimeter Controls: At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries of the construction area, and for those side slope boundaries deemed appropriate as dictated by individual site conditions.

Comment: SCIECA comments that a company that is hired to install the erosion and sediment controls (see Sections III.F.2.(c)(1)(D) and III.F.2.(c)(2)(B)) that have been approved by the design engineer will often know that the planned controls will not work; but they are not allowed to make changes to the plan because they are not engineers and the landowner does not want to spend more money. In addition, the city will be upset because sediment has left the site, but the city can't tell the owner what to do before it rains, since the city would then be taking control over the plans and specifications and can only require changes to the plans when they see a violation. SCIECA asks whether TCEQ can require the engineers to prepare better plans.

Response: Section III.E.3. of the CGP requires updates to the SWP3 to address ineffective BMPs. Section III.7.(a) requires that controls be periodically inspected for effectiveness and Section III.6.(b) requires that an ineffective BMP be replaced or modified. In the example previously provided, the landowner appears to have operational control over the construction plan or specification that is needed to comply with a permit condition and would be considered an operator. If an operator did not utilize effective BMPs to minimize the discharge of pollutants associated with construction activity (see Section III.F.2.), then the operator would be in violation of the CGP and may be subject to violations and enforcement action. In the case of the city in the example previously provide, if the city is the landowner, but did not have any authority to direct operators at the site to implement different BMPs, then the city would not be a primary operator and may not be a secondary operator. If the city is not the landowner, but inspects the site as part of its construction runoff program, then the city could enforce local ordinances related to construction site storm water runoff without being considered an operator.

Comment: Fort Hood asks whether the use of the word "alternatively" in Section III.F.2.(c)(2)(C) related to sedimentation basins for sites with drainage areas less than ten acres

means that "silt fences, vegetative buffer strips, or equivalent sediment controls" would not be required, if a properly sized sediment basin were used on site with drainage areas of less than ten (10) acres.

Response: If a sedimentation basin is constructed to retain the amount of runoff resulting from a 2-year, 24-hour storm event or to retain a minimum of 3,600 cubit feet of storage per acre drained, then the perimeter controls would not be required. In order to better clarify the provision, Section III.F.2.(c)(2) was reorganized as follows:

(i) Controls for Sites With Drainage Areas Less than Ten Acres:

(1) Sediment traps and sediment basins may be used to control solids in storm water runoff for drainage locations serving less than ten (10) acres. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries of the construction area, and for those side slope boundaries deemed appropriate as dictated by individual site conditions.

(2) Alternatively, a sediment basin that provides storage for a calculated volume of runoff from a 2-year, 24-hour storm from each disturbed acre drained may be utilized. Where rainfall data is not available or a calculation cannot be performed, a temporary or permanent sediment basin providing 3,600 cubic feet of storage per acre drained may be provided. If a calculation is performed, then the calculation shall be included in the SWP3.

Comment: Centex Homes comments that there has been inconsistent enforcement throughout the country related to off-site vehicle tracking of sediments, and asks for clarification regarding how much sediment may leave the site before triggering a violation of Section III.F.4.(a). Fort Hood asks how much "off-site vehicle tracking of sediments and generation of dust" is acceptable.

Response: TCEQ declines to include a specific criterion with respect to the amount of sediment that would be considered a violation of this permit, but notes that the requirement is to minimize those wastes. The revised language in the renewed CGP is consistent with the existing CGP, but TCEQ revised this item to include the "extent practicable" requirement that is present in EPA's CGP.

Dust and dirt-tracking can be minimized by measures such as providing gravel or paving at construction entrances and exits, parking areas and unpaved transit ways on the site carrying significant amounts of traffic (for example, more than 25 vehicles per day); providing entrance wash racks or stations for trucks; and performing street sweeping. The first sentence of Section III.F.4.(a) was revised as follows: "Permittees shall minimize, to the extent practicable, the off-site vehicle tracking of sediments and the generation of dust . . .."

Comment: Harris County requests that Sections III.F.4.(d) and III.F.4.(e) be revised to add the following sentence regarding receiving water quality, to ensure that velocity dissipation devices function properly and to address pollutants associated with dewatering activities: "Such

discharges shall not cause or contribute to degradation in quality or condition of the receiving water course.

Response: TCEQ declines to add the requested language, because the current language is consistent with the existing CGP. TCEQ notes that Section II.B.3. of the CGP, related to Compliance with Water Quality Standards, prohibits any discharges that would cause or contribute to a violation of water quality standards from obtaining coverage under the CGP.

Comment: Harris County requests that TCEQ add a definition for "outfall channel." In addition, Harris County comments that Section III.F.4.(d) is unclear regarding whether the phrase "…along the length of any outfall channel…" is meant as internal site drainage upstream of an outfall or if it also includes the receiving water course (i.e., downstream of the outfall). Harris County states that if the intention is to include the receiving water course, then the site operator would need to coordinate the installation of velocity dissipation devices with the owner of the receiving water course, since they are often different entities. Finally, Harris County comments that velocity dissipation devices should not be required along the length of an outfall channel except where they are needed and noted that a plastic-lined or concrete-line ditch may not require velocity dissipation devices, while an earthen channel may. Harris County requests that the phrase "as needed" be added to Section III.F.4.(d) as follows: "Permittees shall place velocity dissipation devices at discharge locations and along the length of any outfall channel as needed to provide . . .."

Response: TCEQ declines to add the phrase "as needed" because the existing language is consistent with the current CGP and with EPA's CGP. In response to the comment, Section III.F.4.(d) was revised as follows to include clarification that an outfall channel includes the storm water conveyance upstream of the outfall:

(d) Permittees shall place velocity dissipation devices at discharge locations and along the length of any outfall channel (i.e., runoff conveyance) to provide a non-erosive flow velocity from the structure to a water course, so that the natural physical and biological characteristics and functions are maintained and protected.

Comment: Harris County requests that the word "appropriate" be added to Section III.F.4.(e) so that the beginning of the requirement reads as follows: "Permittees shall design and utilize appropriate controls . . .."

Response: TCEQ revised the language as requested.

Comment: Travis County recommends that Section III.F.5. be revised to clarify that local governments may specify requirements for the SWP3 in their local development ordinances and MS4 plans and that the local governments may require the SWP3 to be submitted early in the planning process.

Response: TCEQ believes that Section III.F.5.(a) provides sufficient information regarding the ability for local governments to require additional information in their required site plans.

Comment: Regarding Section III.F.6.(a), SCIECA asks what would be considered impracticable with respect to maintenance of BMPs prior to the next rain event. For example, would it be appropriate to say that it was too muddy or that a person could not be hired in time to conduct the maintenance prior to the next rain event? SCIECA further asks whether it is acceptable to perform the maintenance within seven days of the inspection and states that this has been accepted in the past.

Response: While site conditions such as mud could preclude immediate maintenance activities, it would generally not be appropriate to state that maintenance was infeasible due to the inability to hire maintenance personnel. The operator certifies on the NOI or the site notice that the SWP3 for the project meets the requirements of the permit, and it is up to the operator to insure that appropriate personnel are available to conduct required maintenance. Maintenance of BMPs within seven days may be appropriate to maintain the continued effectiveness of the BMP, if it can not be conducted prior to the next rain event. However, TCEQ notes that the last part of this section as well as the next section requires controls to be replaced or corrected immediately in some cases and as soon as practicable in others.

Comment: Centex Homes comments that Section III.F.6.(a) of the draft permit is unclear as to when a violation occurs regarding maintenance of BMPs and requests that the draft permit be revised to clarify that a violation does not occur simply because a BMP is in need of repair, but only after the damage has been discovered and the permittee fails to address the problem within the framework established in the permit. Centex Homes requests that Section III.F.6.(b) be revised to add the following language at the end of the existing sentence:

A violation occurs if the permittee: 1) fails to inspect controls in accordance with the permit requirements, 2) fails to identify damage to a control during an inspection, or 3) fails to conduct a repair within a reasonable time after the need for the repair is discovered during an inspection.

Response: TCEQ disagrees that additional language is needed to indicate when a violation of this section occurs.

Comment: Centex Homes comments that the draft permit does not address when trapped sediment must be removed from a sediment fence, and requests that the following sentence be added to the end of the existing sentence in Section III.F.6.(c): "For a sediment fence, the trapped sediment must be removed before it reaches 50% of the above-ground fence height."

Response: TCEQ agrees that clarifying the silt fence language would be helpful and added the following sentence to the end of Section III.F.6.(c):

For perimeter controls such as silt fences, berms, etc., the trapped sediment must be removed before it reaches 50% of the above-ground height.

Comment: Harris County comments that the proposed requirement (see Section III.F.6.(d)) to remove sediment accumulations from a receiving water does not take into account the fact that the construction site operator does not own or maintain the receiving waters and that it appears to authorize a permittee to perform work in a receiving water course. Harris County urges TCEQ

to revise the language to address the authority of other governmental entities and to require permittees to work with the governmental entity charged with the maintenance obligations of a receiving water course to come up with a plan to clean up off-site sediment impacts. Harris County also notes that in some cases, it may be preferable to leave the sediment in place, if the removal process would cause more harm than good.

Response: Page 1 of the CGP includes language regarding the inability of this permit to allow anyone to use private or public property to convey storm water and that the operator must acquire any needed property rights to use the discharge route. If removing sediment would cause more harm, then the operator would need to show that removal would not minimize off site impacts. TCEQ agrees that additional clarification in this section would be helpful and revised Section III.F.6.(d) as follows to address the comment:

(d) If sediment escapes the site, accumulations must be removed at a frequency that minimizes off-site impacts, and prior to the next rain event, if feasible. If the permittee does not own or operate the off-site conveyance, then the permittee must to work with the owner or operator of the property to remove the sediment.

Comment: Centex Homes and SOS requests that TCEQ provide inspection report forms for the inspections required in Section III.F.7. Centex Homes states that uniform reporting forms will help the regulated community be consistent in conducting inspections and SOS states that such forms would help to standardize inspections.

Response: Currently TCEQ's Small Business & Local Government Assistance Program has developed report forms as part of its draft SWP3 template (see http://www.tceq.state.tx.us/assistance/sblga/sw.html#cons). These forms meet the requirements of the CGP. However, TCEQ declines to require a specific format for the report.

Comment: Greg Mast comments that when there are very frequent rainfall events, getting your site inspected and any damaged controls repaired prior to the next rain event is often problematic. SOS states that Section III.F.7.(a) of the draft permit only provides for inspections once every 14 days or after the end of a storm event of one-half inch or greater and that the permit provides an alternative of once per week. SOS states that the greatest sediment discharge from construction sites occurs during rainfall events and requests that TCEQ include the following inspection requirements, which it states is from a draft requirement in California's proposed CGP:

The discharger shall perform inspections and observations weekly, and at least once each 24-hour period during extended storm events to identify BMPs that need maintenance or failed to operate as intended.

Response: TCEQ declines to revise this requirement, which is continued from the existing CGP and that is consistent with EPA's CGP. The purpose of the inspection is to determine how the SWP3 is functioning and to make timely improvements and repairs; and the TCEQ believes that the existing frequency is sufficient to address these issues.

Comment: TxDOT comments that the term "seasonal arid period," which is used in Section III.F.7.(a)) is not defined in the draft permit while the terms "arid" and "semi-arid" areas are defined. TxDOT comments that "seasonal arid period" implies a period of consecutive months that receive less rainfall than others. TxDOT requests guidance on how the "seasonal arid period" should be determined if the intention is to allow monthly inspections only for a portion of the year in arid and semi-arid areas. Further, if the intention is to allow monthly inspections throughout the year in arid and semi-arid areas, TxDOT requests that TCEQ delete the phrase "seasonal arid period."

Response: The requirement regarding "seasonal arid periods" was meant to allow reduced inspections of controls for arid areas and semi-arid areas during periods when no rainfall occurs. To address this question, the second paragraph of Section III.F.7.(a) was revised as follows:

Where sites have been finally or temporarily stabilized or where runoff is unlikely due to winter conditions (e.g. site covered with snow, ice, or frozen ground exists), inspections must be conducted at least once every month. In arid or semi-arid areas, inspections must be conducted at least once every month and within 24 hours after the end of a storm event of 0.5 inches or greater.

Comment: Mesquite comments that the last sentence of Section III.F.7.(a) appears to allow the operator to change the inspection frequency at will rather than committing to set a schedule for the entire project and requests that the inspection frequency language be revised to read as it does in the current CGP.

Response: It was intended that the new CGP allow an operator to revise the inspection schedule during the period of construction. To clarify this intent while limiting the number of times that the operator may change the schedule, the last sentence of Section III.F.7.(a) was replaced with the following sentence. In addition, this same sentence was also added to the end of Section III.F.7.(b) related to linear construction:

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

Comment: SCIECA asks whether Section III.F.7.(a) requires inspections to be conducted at the outfall of the conveyances or at the point where the runoff enters the conveyance (the inlet located inside the project). SCIECA notes that the point where the runoff enters the conveyance is sometimes miles downstream from the project, commingling with the storm water from other projects.

Response: The construction site operator must inspect points of discharge from the regulated site. Since one regulated site may be located within another regulated site, it would mean that

the discharge point for the smaller site is where the storm water exits the smaller site and reaches the larger construction site.

Comment: SWS-Houston requests that representative inspections be allowed on all sites where inspections could compromise stabilization efforts, similar to the allowance for linear sites provided in Section III.F.7.(b).

Response: Section III.F.7.(b) allows operators of linear construction sites to inspect a length of 0.25 miles on each side of an access point, since linear construction activities may include many miles of disturbed area. Other construction sites will typically not include long distances between access points. Therefore, it is appropriate to require inspections along the entire boundary. Personnel would not necessarily need to physically walk the entire boundary if they are able to visually observe the controls for a certain distance.

Comment: SCIECA asks why Section III.F.8. requires the operator to provide appropriate controls for non-storm water discharges, since these discharges are considered eligible. SCIECA also asks what would be considered an appropriate control for irrigation water or non-hyperchlorinated water.

Response: Non-storm water discharges could include pollutants that are also present in storm water and may contain other pollutants of concern. Therefore, it is appropriate to address these discharges in the SWP3. Where a site may be automatically authorized under the CGP without submitting an NOI, the authorization would not include non-storm water discharges. Section II.D.1. (re-numbered as Section II.E.1) was revised to add the language below as a new item (h) and to move the existing item (h) as a new paragraph after the list of items (a) through (h). TCEQ notes that non-storm water must be included in a SWP3 for it to be authorized under the CGP. Also, several of the discharges on the list may be allowable if the operator can demonstrate that they are not wastewaters: "(h) any non-storm water discharges are either authorized under a separate permit or authorization, or are not considered to be a wastewater." In addition, the following sentences were added to the end of the first paragraph of renumbered Section II.G.l., related to Waivers from Coverage:

. . .This waiver from coverage does not apply to non-storm water discharges. The operator must insure that any non-storm water discharges are either authorized under a separate permit or authorization, or are not considered to be a wastewater.

Part IV

Comment: TxDOT suggests replacing the phrase "the areas authorized" in the first sentence of Part IV with the phrase "concrete batch plant(s) authorized" to clarify that requirements of this section, particularly with regard to BMPs, SWP3s, inspections, and employee qualifications apply only to the batch plant and not other areas of the construction site also authorized under this permit.

Response: In response to the comment, the first sentence of Part IV was revised as requested.

Comment: Dallas comments that Part IV of the permit does not address mortar mixers, which have the same potential pollutant issues as batch plants in regards to pH and total suspended solids (TSS).

Response: TCEQ included specific conditions for concrete batch plants in this portion of the general permit. Storm water discharges from other construction support activities may be authorized under the general permit provided that they are conducted in accordance with Section II.A.2. of the CGP.

Comment: Dallas requests that TCEQ consider adding a sentence to the introductory paragraph of Part IV of the permit to indicate that all batch plants are required to be covered under this permit or an alternative permit.

Response: In response to the comment, the second sentence of the introductory paragraph of Part IV was revised as follows:

If discharges of storm water runoff from concrete batch plants are not covered under this general permit, then discharges must be authorized under an alternative general permit or individual permit.

Comment: Harris County states that the proposed permit, as well as the current CGP, has failed to clearly delineate when construction support operations should apply for separate TPDES coverage or when they can be covered under an activity's SWP3. Harris County suggests the following addendum to Part IV of the permit:

If a concrete batch plant is solely designated for a regulated construction site, discharges of storm water runoff may be authorized under the SWPPP for that construction site. A concrete batching plant which serves more than one regulated construction site cannot obtain TPDES authorization for its storm water discharges under this permit.

Response: Storm water runoff from a concrete batch plant may be authorized under the CGP, so long as it is included in the SWP3 for a construction site that it supports and provided that it is located within one mile of the regulated construction site, as required in Section II.A.2. of the permit. If an operator of a regulated construction activity does not wish to include storm water runoff from a supporting concrete batch plant in its SWP3, then the operator of the batch plant must obtain separate authorization under TXG110000, the general permit specific to concrete batch plants.

Comment: SECA states that it strongly approves and supports the requirements in Parts IV and V of the permit; and SOS states that it supports the additional restrictions on concrete batch plants in the permit.

Response: TCEQ acknowledges and appreciates the comments.

Comment: SCIECA comments that Part IV should clearly state that only storm water discharges can be authorized by the permit and that wastewater must be authorized by a separate permit or

contained and hauled off site for disposal. SCIECA additionally suggests removing the concrete batch plant section of the general permit and adding a statement requiring all batch plants to obtain coverage for their wastewater and storm water discharges under the TXG110000 general permit. SCIECA states that the draft permit in its present form will mislead batch plant operators into permitting only their storm water discharges.

Response: TCEQ partially agrees with the comment and added the following two sentences to the end of the first paragraph of Part IV. However, TCEQ does not agree with requiring storm water runoff from all concrete batch plants to be authorized under TXG110000.

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

Comment: TAB states that Section IV.A.1. of the draft CGP is not specific enough in regards to the storm water location in relation to the concrete batch plant.

Response: In response to the comment, the introductory sentence in Section IV.A.1. was revised as follows to be more consistent with the language in the MSGP:

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

Comment: TAB comments that an increase in sampling frequency outlined in Section IV.A.1. is unnecessary and also comments that the draft CGP does not clearly state that sampling is not required if there is not a discharge. TAB also states that the sampling requirements in Section IV.A.1. are not clear and could lead to confusion. Dallas asks whether there is an exemption to benchmark monitoring requirement of Section IV.A.2., if there is not a storm event of 0.1 inches of measured precipitation during a quarter. SCIECA states that concrete batch plants that are in operation for less than one quarter will be unable to sample according to the permit requirements since there cannot be a discharge following the first full quarter following submission of the NOI. TXDOT states that the requirement to require sampling based on the NOI submittal date may mean that sampling would be necessary after an operator has submitted an NOT, and suggests revising Section IV.A.2. to read:

a minimum of one sample shall be collected, provided that a discharge occurs at least once following submission of the NOI and prior to submission of the NOT for the activity or final stabilization of the site.

Response: Section IV.A.2. requires benchmark sampling at a frequency of once per quarter, which is consistent with the requirements for storm water-only discharges listed in the TPDES general permit for concrete production facilities, TXG110000. In addition, TCEQ believes that it is appropriate to replace the annual sampling requirements related to the existing numeric effluent limits with a requirement to develop BMPs and to conduct benchmark sampling on a

more frequent basis than once per year. The MSGP requires benchmark sampling at a frequency of once every six months, and TXG110000 requires benchmark sampling at a frequency of once per quarter. Sections IV.A.1.- 3. were combined and Section IV.A.4. was renumbered as Section IV.A.2 to clarify the intent of these sections. These changes include clarification that sampling is not required if the first discharge following NOI submittal occurred after an NOT was submitted:

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

Figure:

Benchmark Parameter	Benchmark Value	Sampling Frequency	Sample Type
Oil and Grease	15 mg/L	1/quarter (*1)(*2)	Grab (*3)
Total Suspended Solids	100 mg/L	1/quarter (*1)(*2)	Grab (*3)
pH	6.0 - 9.0 Standard Units	1/quarter (*1)(*2)	Grab (*3)
Total Iron	1.3 mg/L	1/quarter(*1)(*2)	Grab (*3)

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

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

January through March
April through June
July through September
October through December

For projects lasting less than one full quarter, a minimum of one sample shall be collected, provided that a storm water discharge occurred at least once following submission of the NOI or following the date that automatic authorization was obtained under Part II.D.1., and prior to terminating coverage.

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

Comment: TAB comments that the benchmarks for the parameters (Oil and Grease, Total Suspended Solids, pH, and Total Iron) listed in Section IV.A.1. are unreasonable for construction sites. TAB states that both the parameters chosen and the concentration levels proposed in the draft CGP were derived from general permits that are neither analogous to, nor compatible with, runoff from a construction site.

Response: The purpose of this section is to regulate storm water runoff from concrete batch plants, which are regulated in the current CGP. The benchmark parameters that were chosen are consistent with pollutants regulated for similar facilities in two other TPDES general permits: TXR050000 for discharges of storm water from industrial facilities, and TXG110000 for discharges from concrete production facilities. The existing CGP includes numeric effluent limits for TSS of 65 milligrams per liter (mg/l), Oil and Grease of 15 mg/L, and pH of at least 6.0 but not more than 9.0 standard unites. The benchmark levels that are proposed for Oil and Grease and for pH are equivalent to the previous effluent limits; therefore, the draft permit is no more restrictive than the current CGP. In addition, a benchmark level of 100 mg/L is greater than the existing effluent limits of 65 mg/L. Total iron is a parameter that is required in TXR050000 and in TXG110000, but was not required in the original CGP. However, TCEQ believes that it is appropriate in order to insure that all TPDES general permits for storm water discharges from concrete batch plants are consistent. The benchmark level was revised to 1.3 mg/L to be consistent with TXR050000, as shown in the previously revised language. Because the effluent limits have been removed, additional BMPs were added in order to address EPA's anti-backsliding regulations listed in 40 CFR §122.44(l). TCEQ believes that it is appropriate, where feasible, to replace numeric effluent limits for storm water discharges with a requirement to develop BMPs to address discharges. An operator may alternatively seek authorization for storm water runoff from a concrete batch plant under an individual TPDES permit.

Comment: Dallas recommends that remedial actions related to spills and leaks be documented and maintained.

Response: TCEQ believes that the requirements in Sections IV.B.1.(c) and IV.B.2.(b) to list the spills and to document procedures to address spills is adequate to address the concerns expressed by the commenter and no additional changes were made to the permit language.

Comment: TxDOT suggests revising the terms "qualified facility personnel" and "qualified personnel" in Sections IV.B.2.(c) and IV.B.3., respectively, to provide a single term for consistency. TxDOT also recommends that the permit define the minimum training necessary to meet the "qualified" person requirement and suggests that as a minimum standard a person

should complete employee training as described in Section IV.B.2.(d) of the permit. Dallas requests additional guidance on inspector qualifications listed in Section IV.B.2.(c) of the permit.

Response: In response to the comment, the first sentence of Section IV.B.2.(c) was revised as follows to be more consistent with Section III.F.7.(a) of the general permit.

(c) Inspections - Qualified facility personnel (i.e., a person or persons with knowledge of this general permit, the concrete batch plant, and the SWP3 related to the concrete batch plant(s) for the site) must be identified to inspect designated equipment and areas of the facility specified in the SWP3.

In addition, the first sentence of Section IV.B.3. was revised as follows:

3. Comprehensive Compliance Evaluation - At least once per year, one or more qualified personnel (i.e., a person or persons with knowledge of this general permit, the concrete batch plant, and the SWP3 related to the concrete batch plant(s) for the site) shall conduct a compliance evaluation of the plant.

Comment: SCIECA requests that the employee training requirements in Section IV.B.2.(d) be made a requirement of the general permit for the entire site and not just for concrete batch plants.

Response: TCEQ declines to add a requirement for training of construction site personnel because the requirement is not included in the existing CGP or in EPA's CGP. However, for clarification purposes, the last sentence of Section IV.B.2.(d) was revised as follows to state that a minimum of one training session must be documented prior to the initiation of construction.

The frequency of training must be documented in the SWP3, and at a minimum, must consist of one training prior to the initiation of operation of the concrete batch plant.

Comment: Fort Hood states that the references in Section IV.B.3(b) and (d) to other sections in Part IV are incorrect and should be changed.

Response: In response to the comment, Section IV.B.3.(d) was corrected to reference the inspections in Section IV.B.2.(c), and Section IV.B.3.(b) was revised to change the references to the Description of Potential Pollutant Sources to Section IV.B.1. and the Measures and Controls to Section IV.B.2.

Part V

Comment: SCIECA states that the washing out of concrete trucks by land application as allowed in Part V of the draft permit is in conflict with Section IV.C. because TXG110000 defines concrete truck washout water as wastewater, which is not authorized under the draft permit. If concrete truck washout is defined as wastewater, then Part V of the CGP should be revised or removed.

Response: As discussed in an earlier response, concrete truck washout was removed from the list of authorized discharges in Section II.A.4., and it was replaced with a new Section II.B. stating that concrete truck washout may be conducted in certain circumstances. These changes clarify that the CGP would not allow a direct discharge of concrete truck washout to surface waters.

Comment: Centex Homes supports the clarifications in Part II and in Section V.A. that washout water from concrete trucks may be authorized provided that permit requirements are met and the wastewater is properly contained on site. SCIECA contends that concrete truck washout water and concrete batch plant wash water are virtually the same and requests clarification on why these waters are treated differently under the draft permit.

Response: TCEQ added a provision allowing land disposal of concrete truck washout in order to address those trucks that transport concrete from an off site location. TCEQ did not intend for the CGP to provide for authorization of concrete truck washout from on-site concrete batch plants and believes that any discharge or disposal of wastewater associated with an on-site concrete batch plant should be authorized under TXG110000, related to concrete production facilities, or under an individual permit. Therefore, the first paragraph of Part V was revised as follows to make it clear that the permit does not authorize wastewater discharges from on-site concrete production facilities:

This general permit authorizes the wash out of concrete trucks at construction sites regulated under Sections II.E.2., 3., and II.E.4. of this general permit, provided the following requirements are met. Authorization is limited to the land disposal of wash out water from concrete trucks that are associated with off-site production facilities. Wash out water associated with on-site concrete production facilities must be authorized under a separate TCEQ general permit or individual permit.

Comment: Fort Hood states that in Section V.2., the word "measure" in the last sentence should be plural ("measures").

Response: The noted correction was made in the permit.

Comment: SWS-Houston, Harris County and TxDOT request that Section V.3. be revised to allow concrete wash out to occur during rain events as long as wash out water is confined to structural controls designed to prevent discharge.

Response: In response to the comments, Section V.3. was revised as follows:

Wash out of concrete trucks during rainfall events shall be minimized. The direct discharge of concrete truck wash out water is prohibited at all times, and the operator shall insure that its BMPs are sufficient to prevent the discharge of concrete truck washout as the result of rain.

Comment: Fort Hood requests clarification on whether on not concrete truck wash out water is allowed to infiltrate into the ground under the CGP and if so, how an operator can ensure that the wash water does not cause or contribute to groundwater contamination in accordance with

Section V.4. Harris County contends that the proposed requirements are not consistent because Section V.2. seems to encourage infiltration, while Section V.4. prohibits groundwater contamination. Harris County recommends removing concrete truck wash out requirement in Section V.4. and instead adopting guidance similar to EPA guidance on the subject, which dissuades infiltration and provides examples of complete capture systems, as well as minimum wash out distances from storm water inlets, ditches, and other water bodies.

Response: Section V.2. states that concrete truck wash out water may infiltrate into the ground. However, an operator must evaluate the potential pollutant sources present in the discharge, the characteristics of the soil in the area proposed for retaining the washout, groundwater quality, and other information in making the determination that groundwater will not be impacted. TCEQ declines to change the permit language, but recognizes that some circumstances may necessitate the use of alternative BMPs 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, thereby minimizing the level of treatment that the infiltration is meant to provide.

Comment: TxDOT believes that having to update the site map required in Section V.5. every time portable concrete washout containers are moved is an unnecessary burden, and may also be a deterrent to moving them even when it is appropriate to do so. TxDOT suggests replacing the language in Section V.5. with the following language: "If a SWP3 is required to be implemented, the SWP3 shall include a description of appropriate controls for concrete wash out."

Response: TCEQ disagrees that a change is needed. Concrete truck washout may contain significant levels of pollutants and it is reasonable to include their locations on the site map. The site map when originally prepared could show multiple potential locations for the handling of concrete truck washout, thereby minimizing the number of changes that would be required in the SWP3.

Part VI

Comment: SCIECA comments that the requirement in the second sentence in the first paragraph of Part VI, related to the retention of records for sites not required to submit an NOT, is in conflict with the requirement for the NOT. SCIECA comments that the three-year time period in this provision begins when another permitted operator assumes control. However, the NOT requirement states that if the current operator notifies the new operator and the new operator does not file an NOI, then the current operator has met the NOT requirement even though no permitted operator has assumed control of all of the areas of the site that have not been finally stabilized. If no other permitted operator has assumed control of the areas of the site that have not been finally stabilized, then the three-year record retention period would not begin.

Response: In response to the comment, the second sentence of the introductory paragraph to Part VI was revised as follows:

For activities in which an NOT is not required, records shall be retained for a minimum period of three (3) years from the date that the operator terminates coverage under Section II.F.3. of this permit.

Part VII

Comment: Centex Homes comments that Section VII.6., which requires reports and other information requested by the TCEQ to be signed in accordance with 30 TAC §305.128, is unclear regarding whether the SWP3 is included. Centex Homes asks TCEQ to clarify what, if any, signature/certification requirements apply to the SWP3.

Response: The SWP3 is a report required by the CGP and would be subject to the signatory requirement. The original SWP3 is not required to be signed, as the NOI signature certification provides sufficient certification that the SWP3 has been developed and implemented. However, shared SWP3s must be signed in accordance with Section III.A.1. of the CGP.

Part VIII - Fees

Comment: Compliance Resources comments that the $250.00 fee is an incentive for larger projects, but asks what the incentive is for the operator of a construction activity of less than 10 acres that will not be covered under the CGP for more than one year.

Response: The new CGP does not charge anyone the annual water quality fee, so the incentive for submitting an electronic NOI is a $100 savings over submitting a paper NOI. The cost is the same regardless of the length of the project. If the comment relates to charging based on the number of acres disturbed, TCEQ declines to establish a graduated fee structure based upon project size, but could reconsider this option in future renewals of the permit.

Comment: SWS asks if construction projects active on September 1, 2007 will be billed the $100 annual Water Quality Fee.

Response: All construction projects with active authorizations under the CGP as of September 1, 2007 were billed the $100 annual water quality fee.

Comment: SWS asks if operators of existing construction projects will be required to pay the full NOI fee upon renewal.

Response: Operators who were covered under the current version of the CGP who are required to submit an NOI for coverage under the new version of the CGP are required to pay the full fee when applying for authorization.

Comment: SOS states that permit fees should be able to support the cost of rigorous inspection, enforcement and thorough clean-up/mitigation of unauthorized discharges. Also, SOS states that TCEQ should examine the costs associated with these activities when making changes to the fee

structure. SOS also requests that TCEQ present data detailing whether current fees are meeting the needs of inspection and enforcement for construction sites.

Response: TCEQ supports the storm water program, including permitting, inspection, enforcement, administrative, and other costs, with permit fees, federal, and state monies. The proposed combined fee structure is anticipated to generate approximately the same amount of revenue that would have been generated with the current fee structure.

Comment: SOS suggests establishing a fee structure based upon the total acreage disturbed. SOS states that this prevents small construction projects from subsidizing larger construction projects and addresses the issue that larger construction sites require greater inspection and enforcement resources and have a higher potential to cause environmental impacts.

Response: Size of the construction project represents only one of many factors that impact inspection/enforcement resources and potential to cause environmental impacts. Factors, such as operator expertise/diligence and site specific conditions (soils, proximity to receiving waters, topography), may also impact resources and increase the potential to cause environmental impact. As a result, The TCEQ declines to establish a fee structure graduated based upon project size at this time.

Comment: Harris County states that the fee incentive for applying electronically penalizes governmental agencies that are unable to submit electronic NOIs.

Response: Electronically submitted NOIs require fewer human and fiscal resources for processing. These reduced processing costs are reflected in the fee for electronic NOI submittal. TCEQ's intention is not to penalize those who choose to submit paper NOIs, but reflect the difference in processing costs within the fees.

Comment: Harris County supports the proposed one-time, up-front combined fee.

Response: TCEQ acknowledges HCPIC support of the combined fee.

Comment: Dallas and Mesquite state that the annual water quality fee served as an incentive for construction sites to file NOTs and helped the TCEQ and MS4 maintain clean records. Mesquite is concerned that without the incentive of the annual Water Quality Fee, operators will not submit NOTs, which will lead to unnecessary inspections.

Response: TCEQ considered these factors in examining the fee structure for the CGP. Ultimately, TCEQ decided that the costs for processing annual billing, both to the TCEQ and its customers outweighed the potential costs associated with an operator's failure to submit an NOT.

Attachments

Comment: Harris County comments that the site notices are included in the proposed permit, but that the NOI and NOT forms are not. Harris County agrees with the TCEQ to have NOIs and NOTs separate from the permit to allow for easy revision and recommends that the site notices

also be separate from the permit, so that these forms can be easily updated without having to amend the permit.

Response: TCEQ declines to remove the site notices from the CGP, and believes that having the documents as part of the permit will help operators obtain the required documents.

Comment: TxDOT requests that TCEQ consider requiring the certification and signature on the site notices only when an NOI is not required, since the NOI already contains a certification and signature. TxDOT states that this will reduce the initial administrative burden and allow more timely replacement of notices that are lost, destroyed, stolen, or vandalized at a site. CRI asks whether an operator may use signage that contains the same information as the TCEQ Construction Site Notice, rather than using the site notice provided in the permit. SWS-Houston comments that the Section III.D.2. of the draft permit requires the use of Attachment 3 (Large Construction Site Notice), but that Part IV of the Fact Sheet states that the operator is not required to use the notice provided in the permit. SWS-Houston requests that TCEQ reconsider the requirement for the operator to complete the certification and signature, because it duplicates information already on the NOI and because conditions for larger construction sites may frequently change (i.e. location of the SWP3, estimated project dates, and contact information). Capitol Environmental requests removal of the requirement for operators at large construction sites to post a site notice. Capitol Environmental states that the only information in the site notice that is not required on the NOI is the location of the SWP3, and requests that the NOI include a section for the operator to add the location of the SWP3 either prior to or following NOI submittal.

Response: In response to the comments, TCEQ revised the attachments to add a new site notice for secondary operators. This site notice for secondary operators will include a signature certification, since an NOI is not required to be submitted. A separate site notice is being required for primary operators and for large construction activities that will not include a signature certification since an NOI will be signed and submitted to TCEQ. TCEQ declines to remove the requirement for operators of large construction site to post a site notice. It would not be appropriate for the NOI to include information that can be changed following submittal, and including information on the SWP3 location may result in the requirement for the operator to submit an NOC each time the SWP3 location changes.

Comment: Mesquite asks whether new construction site notices will be required for small, ongoing construction sites.

Response: New NOIs and site notices will be required for all regulated construction activities to insure that operators are aware of the new permit conditions and are prepared to comply with the new CGP.

General Comments:

Comment: SWS states that many operators create partnerships, holding companies, or other site-specific entities for the sole purpose of developing a specific construction site. SWS comments that one person with signatory authority may be able to sign for as many different entities as

there are active construction sites and that one person submits a specific participation agreement (SPA) for every new construction site developed. SWS believes that most land developers in the Houston area will not take advantage of electronic filing through the State of Texas Environmental Electronic Reporting System (STEERS) because they are required to submit customer SPAs for every entity created.

Response: A SPA is required for an individual person, as opposed to an entity or company, to obtain a TCEQ STEERS account. CGP NOIs must be signed by the person meeting the signatory requirements specified in TCEQ rules at 30 TAC §305.44(a). The SPA that is submitted for the person who signs and submits the NOI must be the person meeting the signatory requirements. This individual person may update their SPA as necessary, to reflect their position as the signatory authority for additional entities. This is best illustrated by the following example:

Example:

SPA 123 (the individual with Consulting Company 123) logs onto STEERS and completes all portions of the NOI for Entity ABC, except for the signature and submittal.

SPA ABC (the signatory authority for Entity ABC) logs onto STEERS and signs and submits the NOI for Entity ABC.

SPA 456 (an individual with Consulting Company 456) logs onto STEERS and completes all portions of the NOI for Entity EFG except for the signature.

SPA ABC (the signatory authority for Entity ABC, who is now also the signatory authority for Entity EFG) logs onto STEERS and updates the SPA to reflect that they are associated with Entity EFG. SPA ABC then signs and submits the NOI for Entity EFG.

As Entities HIJ, KLM, etc. are created; SPA ABC can go in and update STEERS to reflect the association with entities HIJ, KLM, etc., in order to sign and submit the NOIs for those additional entities for which they are the signatory authority.

Please note, this example also illustrates the capability within STEERS for one individual to log into STEERS, complete portions of the NOI, and then allowing a different individual to log into STEERS (using their own SPA) and complete other portions of the NOI.

Comment: Fort Hood asks if TCEQ can identify a way for federal agencies to pay by credit card so that they can use STEERS to submit NOIs and NOTs. If not, Fort Hood asks if TCEQ can provide an exception for federal agencies and allow the submittal of a paper check by mail following NOI submittal through STEERS.

Response: The TCEQ ePermitting system was developed to provide an electronic process without any manual intervention so that processing costs are reduced. The ePermitting system allows for methods of payment by Visa, Master Card, American Express, and check.

Many governmental entities have adapted by implementing the use of a procurement credit card to allow staff to make electronic payments.

Comment: TAB requests that TCEQ add a provision regarding a Qualifying Local Program (QLP) and comments that it will streamline the state storm water programs and simplify the requirements for Texas home builders. TAB believes that there is a duplication of permitting by the state and the regulated construction programs of regulated MS4s, and that the duplication has proved to be burdensome and confusing rather than more protective. TAB notes that the EPA has incorporated a provision in its regulations related to QLPs that impose equivalent controls on construction activities by allowing the QLP to be the sole permitting authority, thereby relieving the burden on the construction site operators. TAB also comments that EPA issued a memorandum encouraging permitting authorities to adopt QLP provisions when general permits are reauthorized.

Response: 30 TAC §305.531 adopted by reference 40 CFR §122.44. 40 CFR §122.44(s) establishes for incorporation of qualifying State, Tribal or local erosion and sediment control program requirements by reference into the NPDES permit authorizing storm water discharges from construction sites. For regulated construction activities in Texas, this would mean that the TPDES CGP would need to incorporate by reference a qualifying local program (e.g., an MS4 operator's construction permitting program) that includes certain program elements and the CGP would need to require sites under the jurisdiction of a QLP to follow the requirements of that QLP rather than following the CGP. If a program does not include all the elements in this rule, then the CGP would need to specify the missing elements in order to incorporate the program by reference.

At this time, TCEQ has not reviewed the construction programs for any small MS4s, because small MS4s that are regulated under the CGP provides operators with an implementation deadline of August 13, 2012 for all program elements. During the next permit term, TCEQ may have sufficient information to review these programs and determine whether or not they could be considered under this provision. For existing Phase I MS4s, TCEQ has not conducted a review specific to this rule and is not prepared to incorporate by reference any construction regulatory programs that are currently in place. However, in the future, it is possible that programs could be considered under this provision. In response to the comment, TCEQ revised Part IV of the Fact Sheet to add the following Section IV.E.:

E. Qualifying Local Programs

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

Comment: SOS comments that the CGP should require phasing or clearing limits, and states that the draft CGP does not appear to require any buffer from surface waters or recharge features. SOS states that the practice of clearing wide areas of land in a relatively short amount of time increases the chance that large amounts of sediment will be washed into creeks and that BMPs

will fail during rain events. SOS provides the following language, excerpted from the Ohio CGP as an example that could be included in the general permit:

Non-Structural Preservation Methods. The SWP3 must make use of practices which preserve the existing natural condition as much as feasible. Such practices may include: preserving riparian areas adjacent to surface waters of the state, preserving existing vegetation and vegetative buffer strips, phasing of construction operations in order to minimize the amount of disturbed land at any one time and designation of tree preservation areas or other protective clearing or grubbing practices.

In addition, SOS recommends requiring stream buffers for all surface waters, including extended buffers for sensitive creeks and watersheds and recommends setbacks of 100 to 400 feet, depending on the drainage area.

Response: TCEQ believes that the requirements in the CGP regarding the establishment of appropriate erosion and sediment controls adequately insure that water quality is protected at this time. The CGP requires operators of construction activities to properly maintain BMPs and meet the other requirements of the general permit in order to be considered in compliance with the permit. The requirements of the CGP that may be related to this issue include, but are not necessarily limited to, minimizing to the extent practicable the discharge of pollutants in storm water associated with construction activity at the construction site, establishing a SWP3, using appropriate and effective BMPs, proper maintenance of BMPs, and removal of off site accumulations of sediment at a frequency that minimizes off-site impacts.

Comment: SOS states that the CGP relies on informational, observational, and scheduling aspects of BMP implementation and that there does not appear to be any oversight to ensure that BMPs are correctly installed.

Response: A construction site operator regulated under the CGP would be subject to possible enforcement action by TCEQ or by EPA based on noncompliance with the permit. Noncompliance with the permit could include, but is not limited to, a lack of BMPs, installing inadequate BMPs, or insufficient maintenance of BMPs. In addition, many construction sites discharging into MS4s are subject to local requirements that may be enforced by the municipality who operates the MS4.

Comment: SOS comments that the CGP should be revised to include additional enforcement provisions in order to prevent construction site pollution and to prevent the shifting of the costs that downstream landowners and taxpayers have when public land is affected. SOS suggests that the CGP require applicants to post a bond during construction and states that this would build the correct incentive into the permit by putting the applicant's money on the line and would allow for recovery of remediation costs if local governments have to clean up any pollution. SOS states that the concern regarding the cost of this requirement should be considered in relation to the cost that would otherwise be transferred to local governments and the environment if and when BMPs fail.

Response: TCEQ declines to require a bond for construction activities authorized under this general permit. This requirement is not included in the existing TPDES CGP and is not required in EPA's CGP. If a discharger fails to meet the requirements of the general permit, then enforcement may be initiated, which could result in penalties up to $10,000 per day per violation.

Comment: SOS states that it is incorporating by reference (without including the actual comments) the comments that it made in 2002 on the current version of the CGP regarding the negative impacts to the endangered Barton Springs salamander because very few additional endangered species protections have been added since that permit was issued. SOS states that absent greater protection of water quality during construction phases, the proposed re-issued CGP will continue to violate both the Clean Water Act and the Endangered Species Act.

Response: TCEQ addressed the comments made by SOS in 2002 regarding the negative impacts on the Barton Springs salamander in the Response to Comments to the original CGP. Absent actual comments or copies of the comments SOS is referring to, TCEQ refers SOS to our 2003 responses regarding this issue; (See 28 TexReg 2770 (2003)). TCEQ believes that the permit conditions in the proposed renewal continue to be consistent with EPA and TCEQ surface water quality standards. Storm water discharges from construction activities are intermittent and highly flow-variable and do not occur during instream low flow conditions. BMPs and technology-based controls are required to regulate the quality of storm water discharges, an approach that is consistent with EPA's Interim Permitting Approach and with the Texas Surface Water Quality Standards found at 30 TAC §307.8(e). Additional discussion on the water quality aspects of this permit is included in Part XI of the Fact Sheet and Executive Director's Preliminary Decision.

Comment: SOS states that sediment and several associated toxic and oxygen demanding materials (either within or attached to sediment) are among the pollutants impairing water quality and states that the draft permit does not address how CWA, §303(d) listed waters will be protected from additional pollutant loadings.

Response: Section II.B.4. of the CGP, related to Discharge to Water Quality-Impaired Receiving Waters, continues language from the existing TPDES CGP regarding discharges of the constituents of concern to impaired waters and to waters where there is a TMDL. The requirement states that these discharges are not eligible for coverage under the CGP, unless they are consistent with the requirements of an approved TMDL or unless they are otherwise allowable under 30 TAC Chapter 305.

Fact Sheet

Comment: SCIECA comments that Section IV.A. of the Fact Sheet states that an operator may elect to create their own site notice if it contains the required information, but notes that there is no reference in the draft permit for the option of a self-created site notice. SCIECA requests that the TCEQ add that option to the permit or remove this information from the Fact Sheet.

Response: In response to the comment, the Fact Sheet language was corrected to be consistent with the CGP requirements to post the site notice that is included as an attachment to the general permit.

Comment: Onocr comments that the language in Sections I.F., V.V., IX.C., and IX.D. of the Fact Sheet (as well as Sections II.D.3.(b) and II.D.5.(b) of the draft permit), as noted in earlier comments regarding the change in provisional authorization from two to ten days does not make clear the goals TCEQ hopes to achieve by increasing the provisional authorization waiting period. Oncor states that it believes receiving the paper NOI before the provisional coverage is of no real value when it is unlikely that the TCEQ can review the NOI for completeness and notify operators of deficiencies or denial of coverage, within the proposed time frame or before construction starts.

Response: In an earlier response related to Section II.D.3. of the CGP, TCEQ changed the provisional authorization date when an NOI is submitted by mail from the proposed ten days to seven calendar days. TCEQ believes that an increase from the current version of the CGP is warranted to allow ample time for the NOI to be received by TCEQ and would also insure that the NOI is available in the Storm Water NOI Processing Center. This will aid in providing information to concerned persons requested information on particular NOIs, and will also help to encourage electronic submittal. TCEQ disagrees that this new provision will delay construction activities to a great extent. Additionally, the CGP offers electronic submission of NOIs that offers provisional authorization upon submission. In response to the comment and for consistency with other sections of the CGP, Section V.U. of the Fact Sheet was revised as follows to provide for provisional coverage seven days after a paper NOI is postmarked for delivery:

U. The current CGP provides provisional authorization 48 hours after postmark when a paper NOI is submitted, and the permit was revised to provide for provisional authorization seven (7) days following the postmark on a paper NOI. The purpose of this change is to allow sufficient time to insure that all paper NOIs are received by the TCEQ and available to personnel processing the NOI forms, to aid in providing information to concerned persons requested information on particular NOIs and to help encourage electronic submittal of storm water applications.

Comment: Centex Homes comments that Sections I.B., IV.A., V.B., and V.D. of the Fact Sheet state that by revising the definition of "operator" in the permit and adding additional language to Section II.D.3.(f), TCEQ hopes to clarify the category of operators required to submit an NOI. Centex Homes believes that the proposed revisions and added language are too vague to provide adequate guidance to determine the operator(s) who are required to submit an NOI and recommends that TCEQ provide clear, specific, objective, and measurable criteria to help the regulated community to be able to make that determination more effectively.

Response: In responding to several comments related to the definition of "operator," the TCEQ made several revisions to the permit to better explain who is regulated under the CGP; and these changes have been addressed in the relevant portions of the Fact Sheet as well.

Comment: Centex Homes requests that the Fact Sheet provide clear guidance as to how a homebuilder should obtain coverage when having purchased one or more lots from a developer who already has coverage for the area where those purchased lots are located.

Response: In response to the comment, the following language was added to the end of Section IX.A. of the Fact Sheet:

The general permit defines large and small construction activities, and includes requirements for both. The general permit specifies that a smaller project that is part of a larger common plan of development or sale that will disturb one or more acres is regulated. 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 1/4 mile or more apart, and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale, provided that any interconnecting road, pipeline or utility project that is part of the same "common plan" is not included in the area to be disturbed.

An example of a smaller construction project that is regulated under the general permit would include the building of single houses on lots of a quarter-acre each within a larger residential development of five of more acres. Any operator constructing single homes within that development would be regulated as an operator of a large construction activity, and required to develop and 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, was there was 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.

Comment: TAB comments that the Fact Sheet states that the definition of operator has changed but does not appear to be any different from the old definition and requests that the TCEQ change and clarify the definition to be commensurate with TCEQ’s intentions.

Response: In response to this and to several comments regarding the definition of "operator" in Section I.B. of the CGP, the definition was revised to be consistent with the existing definition in EPA's CGP and to specify that persons meeting the definition are considered "primary operators"

and "secondary operators." In addition, the relevant portions of the Fact Sheet were revised to explain the changes that were made. For additional information on the definition, refer to the earlier responses that addressed with the definition of "operator."

Comment: Tarrant County comments that the Fact Sheet should provide details regarding the requirement to post the Large Construction Site Notice and states that this appears to be a new requirement in the draft permit that is not adequately clarified in the Fact Sheet.

Response: TCEQ agrees and revised the following portions of the Fact Sheet to clarify that the operator and the secondary operator of a large construction activity must post the appropriate site notice for large construction activities that is included in the CGP. The last sentence of the second full paragraph was removed, and the new final sentence (previously the next to last sentence) was revised as follows: "Operators and secondary operators must post a site notice that is included as an attachment to the general permit." Section V.S. of the Fact Sheet, related to changes from the existing permit, was revised to include language regarding site notices for large construction activities:

Added two site notices as attachments to the draft permit, which will be required for large construction sites: one is not required to be signed and must be posted by operators of large construction sites, and the other must be signed and posted by secondary operators of large construction sites, where the secondary operator is different from the operator. Operators and secondary operators of small construction sites must post either Attachment 1 or 2, whichever is appropriate.