

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT ON TCEQ GENERAL PERMIT NO. TXG500000

The executive director of the Texas Commission on Environmental Quality (TCEQ) files this Response to Public Comment (Response) on Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXG500000 for quarries located greater than one mile from a water body within a water quality protection area in the John Graves Scenic Riverway. As required by Texas Water Code (TWC), §26.040(d) and 30 Title Texas Administrative Code (30 TAC) Section §205.3(e), before a general permit is issued, the executive director must prepare a response to all timely, relevant and material, or significant comments. The response must be made available to the public and filed with the Office of the Chief Clerk at least ten days before the TCEQ 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 This response addresses all timely received public comments, whether or not withdrawn.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 Texas Aggregates & Concrete Association (TACA) and the Friends of the Brazos River.

BACKGROUND:

This general permit is based on Texas Water Code (TWC), Chapter 26, Subchapter M; 30 Texas Administrative Code (TAC) Chapter 311, Subchapter H; and 30 TAC Chapter 37, Subchapter W resulting from passage of Senate Bill 1354, 79th Legislature, 2005. Specifically, TWC, §26.553(b) requires quarries greater than one mile from a water body within a water quality protection area in the John Graves Scenic Riverway to obtain a general permit.

This general permit regulates discharges of process wastewater, mine dewatering, stormwater associated with industrial activity, construction stormwater, and certain non-stormwater discharges from quarries located greater than one mile from a water body within a water quality protection area in the John Graves Scenic Riverway. This protected area is that portion of the Brazos River Basin and its contributing watershed, located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County and extending to the county line between Parker and Hood Counties.

Notices of availability for this general permit were published in the *Dallas Morning News* in Dallas County on November 15, 2013; in the *Minerals Wells Index* in Palo Pinto County on November 15, 2013; in the *Weatherford Democrat* in Parker County on November 15, 2013; in the *Fort Worth Star Telegram* in Tarrant County on November 15, 2013; and in the *Texas Register* on November 15, 2013. The comment period ended December 16, 2013.

COMMENTS AND RESPONSES

COMMENT 1: TACA requests clarification concerning continuous coverage for existing permitted quarries. TACA notes that the general permit requires existing quarries to submit a Notice of Intent (NOI) to renew authorization within 90 days of the effective date of the general permit, but that the general permit expired on December 14, 2013. TACA requests that the TCEQ clarify that existing quarries retain coverage under their existing authorizations pending the implementation of a new general permit.

RESPONSE 1: The public notice published by the TCEQ in the *Texas Register* (38 TexReg 5566) on August 23, 2013, provides written clarification that the existing general permit issued on December 15, 2008, will remain in effect to administratively continue permit coverage for dischargers authorized under the existing general permit until the date the TCEQ takes final action on the new general permit. The new general permit requires that existing quarries submit an NOI to obtain authorization within 90 days of the effective date of this general permit.

COMMENT 2: The Friends of the Brazos River urges the TCEQ to maintain the strictest protection possible for the John Graves Scenic Riverway when considering this permit renewal.

RESPONSE 2: The general permit is consistent with TWC Chapter 26 which implements Senate Bill 1354, 79th Legislature, 2005, and is consistent with TCEQ rules that implement this statute, which are found at 30 TAC Chapter 311, Subchapter H and 30 TAC Chapter 37, Subchapter W. The general permit requirements are more stringent than other requirements applied to other aggregate/mining operations in the state that are eligible for coverage under the Multi-Sector General Permit for industrial stormwater discharges, TPDES Permit No. TXR050000. The following are some of the general permit requirements that are unique to certain quarries located greater than one mile from a water body within a water quality protection area in the John Graves Scenic Riverway and that ensure protection of this portion of the Brazos River:

- Applicants are required to submit a Restoration Plan that must include a proposed plan of action for how the applicant will restore the receiving waters to background conditions in the event of an unauthorized discharge that affects those receiving waters.
- Applicants are required to submit proof of financial assurance for restoration to establish and maintain financial assurance in accordance with 30 TAC Chapter 37, Subchapter W (relating to Financial Assurance for Quarries). The amount of financial assurance required must be in an amount no less than the cost estimate in the Restoration Plan, as required in the permit and as approved by the executive director.
- Upon closure of the quarry, the permittee is required to stabilize the quarry area. The stabilization report must be signed and certified by a Texas licensed professional engineer or a Texas licensed professional geoscientist. The permittee must submit the final stabilization report to TCEQ. The TCEQ will review the final stabilization report and either approve the report or require the permittee to complete additional action before the quarry can be closed.
- The effluent limits in the general permit are based upon the most stringent of several TCEQ rules including 30 TAC §319.22 (relating to Quality Levels - Inland Waters) and rules in 30 TAC Chapter 307 (relating to Texas Surface Water Quality Standards).

COMMENT 3: TACA requests clarification of the definition of an “unsatisfactory performer” in regard to the general permit that would deny or suspend a facility’s general permit if such facility was deemed to be an “unsatisfactory performer.” TACA notes that, in many situations, aggregate operations may be sold or transferred to new

operators and refers to the recent Senate Bill (SB) SB1300 (79th Leg.). TACA comments that, in the interest of fairness, the term “unsatisfactory performer” needs further definition and clarity, especially in light of SB1300, which changed the TCEQ self-audit law to provide incentive to new owners when they buy a site or facility with a suspect compliance history.

RESPONSE 3: Part III, Section F.2 of the general permit states that the executive director shall deny or suspend a facility’s authorization for disposal under this general permit based on a rating of “unsatisfactory performer” according to TCEQ rules in 30 TAC §60.3 (relating to Use of Compliance History). An applicant who owns or operates a facility classified as an “unsatisfactory performer” is entitled to a hearing before the TCEQ prior to having its coverage denied or suspended, in accordance with TWC §26.040(h). Denial of authorization to discharge under this general permit or suspension of a permittee’s authorization under this general permit must be done according to TCEQ rules in 30 TAC Chapter 205 (relating to General Permits for Waste Discharges).

The compliance history rules were revised to comply with SB1300, and 30 TAC Chapter 60 (relating to Compliance History) explains the fundamentals of compliance history, specifically how a compliance history becomes a rating, how a rating becomes a classification, and how compliance history is used by the TCEQ when making decisions regarding the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit. An “unsatisfactory performer” classification means that, at the site, the current owner or operator failed to comply with a significant portion of the relevant environmental regulations and therefore performed below the minimum acceptable performance standards established by the TCEQ. A calculated rating greater than 55 points is classified as an “unsatisfactory performer.” 30 TAC §60.3 specifically requires that the executive director deny or suspend an authorization under a general permit, after opportunity for a hearing, if the permittee or applicant has an “unsatisfactory performer” compliance history classification.

Part II, Section D.2 of the general permit states that authorization under this general permit is not transferable. In cases where an NOI is required to be submitted by a general permit and ownership of the facility changes or is transferred, the present owner must submit a Notice of Termination and the new owner must submit a new NOI. If the new owner has an “unsatisfactory performer” classification, the TCEQ would deny the authorization under the general permit, after a hearing, if requested. However, a permittee or applicant whose authorization or NOI under a general permit is denied or suspended may apply for an individual permit.