COMMISSIONERS RESPONSE TO PUBLIC COMMENT ON TCEQ's SMALL (PHASE II) MS4 GENERAL PERMIT NO. TXR040000

The Texas Commission on Environmental Quality (commission or TCEQ) adopts this Response to Public Comment (Response) on Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR040000, the Small (Phase II) Municipal Separate Storm Sewer System (MS4) General Permit for stormwater discharges. As required by Texas Water Code (TWC), (Section) §26.040(d) and Title 30 of the Texas Administrative Code (30 TAC), §205.3(e), before a general permit is issued, the Executive Director must prepare a response to all timely, relevant and material, or significant comments. The response must be made available to the public and filed with the Office of the Chief Clerk at least ten days before the commission considers the approval of the general permit. This response addresses all timely received public comments, whether or not withdrawn.

Timely public comments were received from the following entities: Dallas-Fort Worth Airport (DFW), City of Mansfield (Mansfield), North Central Texas Council of Governments (NCTCOG) (on behalf of three members), Quiddity Engineering LLC (Quiddity), City of Conroe (Conroe), Jefferson County Drainage District No. 7 (JCDD7), LJA Engineering (LJA), San Antonio River Authority (SARA), City of Kyle (Kyle), City of San Marcos (San Marcos), Montgomery County (Montgomery), City of Grapevine (Grapevine), City of Lewisville (Lewisville), City of Tyler (Tyler), and Chambers County (Chambers).

PERMIT BACKGROUND

This general permit authorizes discharges of stormwater and certain non-stormwater discharges from small MS4s. Federal Phase II stormwater regulations adopted by TCEQ extend stormwater permitting requirements to small MS4s located in urban areas with a population of at least 50,000 people and issuing this permit provides coverage options for regulated small MS4s. Each regulated small MS4 operator must develop a stormwater management program (SWMP) addressing the seven minimum control measures (MCMs) according to the provisions of the permit prior to submitting a Notice of Intent (NOI). Under the permit, small MS4 operators will be authorized to discharge following approval of the NOI.

The permit is issued under the statutory authority of: 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.

On September 14, 1998, TCEQ received authority from the United States Environmental Protection Agency (EPA) to administer the TPDES program. TCEQ and EPA have a Memorandum of Agreement (MOA) that authorizes the administration of the National Pollutant Discharge Elimination System (NPDES) program by TCEQ as it applies to the State of Texas.

The federal Phase II stormwater regulations were published on December 8, 1999, in the *Federal Register*, requiring regulated small MS4s to obtain permit coverage. The first TPDES MS4 General Permit No. TXR040000 was issued on August 13, 2007. The Phase II (small) MS4 regulations are in the federal rules at 40 Code of Federal Regulations (CFR) §§122.30 through 122.37, which were adopted by reference by TCEQ at 30 TAC §281.25(b). TCEQ did not adopt by reference the guidance in 40 CFR §122.33 and §122.34.

In 2016, EPA issued the Small MS4 Remand Rule, effective January 9, 2017 (Remand Rule), which is a procedural federal rule ensuring that states review best management practices (BMPs) selected by the MS4s and ensures the public are provided notice and the opportunity to request a public meeting (equivalent to a "public hearing" in EPA rules) on applications for MS4 permit coverage. The Phase II regulations were revised in 40 CFR §§122.33 and 122.34 and a new paragraph (d) was added to 40 CFR §122.28 requiring permitting authorities to select one of two general permit options.

Stormwater and certain non-stormwater discharges from medium and large MS4s, within cities with a population of 100,000 or more, are currently authorized under individual TPDES stormwater permits.

PROCEDURAL BACKGROUND

Notice of availability and an announcement of public meetings for this general permit were published in the *Houston Chronicle* and the *Texas Register* on August 18, 2023, and August 25, 2023, respectively. Notice was also provided on the TCEQ webpages. A hybrid virtual and in person public meeting was held in Austin on September 18, 2023, and the comment period ended on September 25, 2023.

COMMENTS AND RESPONSES

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

General/Overall Comments:

Comment 1: JCDD7, LJA, Conroe, Montgomery, and Chambers comment that they are opposed to moving to a Comprehensive General Permit. The commenters state that they have invested significant resources into the development of their existing SWMPs. The commenters comment that there is a lack of quantitative data and the move to a Comprehensive General Permit places the burden on the MS4 operators while reducing the responsibilities of the TCEQ. The commenters recommend that TCEQ should make improvements to their application review process to facilitate a timely technical review and continue forward with the Two-Step General Permit approach or provide a hybrid permit approach to allow the MS4 operators who prefer the Two-Step General Permit approach to continue under that permit option.

Response 1: TCEQ understands that the implementation of a Comprehensive General Permit option after several iterations of the two-step general permit option will impact small MS4 operators. Based on input from stakeholders during the renewal process, the impact is expected to be minimal for the majority of small MS4 operators as the BMPs and measurable goals included in the permit were based on the activities reported by Texas Small MS4s during the 2019 general permit cycle as well as other states across the country.

Changes have been made to several measurable goals in the general permit in response to other comments which reduces the impact to Phase II MS4 operator's resources. Changes have been made where appropriate to tie the measurable goals to more specific and focused areas to address high risk or impaired areas which allows for a more targeted use of resources.

The Comprehensive General Permit option will benefit Phase II MS4 operators in a number of ways, including but not limited to:

- Removal of the public notice requirement for individual Notices of Intent (NOIs) and SWMPs will result in a significant cost savings for many applicants, in some cases $3,000 - 5,000;
- Application approvals will be completed in a timely manner allowing for more efficient implementation of the SWMP and more clear annual reporting timeframes;
- Removal of the public notice requirement for significant notice of change which will allow for faster approvals and easier implementation;
- Removal of the requirement to respond and address formal public comments and public meeting requests on the individual NOIs and SWMPs;
- Clear expectations for the maximum extent practicable standard that the Phase II MS4 operators must meet through SWMP implementation. The comprehensive permit elements clearly define what is necessary in each SWMP and removes the ambiguity for what each MS4 operator should implement. This allows MS4 operators to more easily and quickly develop a SWMP; and
- Streamlined annual reporting process to ensure operators report on the specific BMPs and measurable goals being implemented and identified in the application submitted by the MS4 operator.

With the consideration of the increasing universe and the implementation of the mandated federal *NPDES Electronic Reporting Rule* requirements it is evident that the comprehensive permitting approach will be the most beneficial option for the regulated community and TCEQ. Based on the input of stakeholders throughout the permit renewal process and the benefits outlined above, TCEQ maintains the comprehensive permit options rather than a two-step or hybrid option.

Alternatively, small MS4 operators continue to have the option to apply for an individual TPDES stormwater permit. An updated small MS4 individual permit application will be available on the following webpage: https://www.tceq.texas.gov/permitting/stormwater/ms4/WQ_ms4_small_TXRO4.html. New and existing small MS4 operators will have the same deadline to submit an individual permit application as an application under the general permit, 180-days from general permit issuance.

Comment 2: Mansfield asks that a SWMP template be available for small MS4 operators on the TCEQ website.

Response 2: TCEQ is finalizing the SWMP template for MS4 operators and it will be available on the following TCEQ webpage as an official TCEQ Regulatory Guidance: https://www.tceq.texas.gov/assistance/water/stormwater/sw-ms4.html.

Comment 3: Mansfield comments that for ease of reference and use of the permit document, the final permit should include table title on same page as the first item in the table.

Response 3: TCEQ agrees with the commenter and the final permit has been revised as suggested.

Comment 4: Quiddity asks that TCEQ revise the header to add the 2024 date throughout the permit.

Response 4: TCEQ agrees with the commenter and the permit header has been revised as requested.

Comment 5: Quiddity recommends that TCEQ make readily available a comprehensive list of the 2019 and 2024 General Permit Small MS4 Phase II operators. Quiddity comments that new MS4 operators need time to develop their SWMP under the General Permit.

Response 5: Existing permittees regulated under the 2019 General Permit can be located using TCEQ's publicly accessible database, the Water Quality General Permits Search on the following webpage, https://www2.tceq.texas.gov/wq_dpa/index.cfm. A list of regulated entities can be queried using the advanced search feature. Newly regulated permittees under the 2024 Phase II MS4 General Permit are currently being identified and will be notified of the requirement to obtain coverage via mail with sufficient time to plan and prepare to implement a stormwater management program.

Comment 6: Tyler comments that a definition for "dechlorinated" should be included in the general permit and the term should be defined with numerical limits or explained clearly. Tyler also comments that pool filter backwash should also be differentiated or included in the list of allowable non-stormwater discharges.

Response 6: To avoid adverse impacts to receiving waters and/or aquatic-dependent species, the discharge of dechlorinated swimming pool water is recognized by state and federal regulatory authorities as the absence of any detectable levels of chlorine. A definition is not included in the permit since the common understanding of the term "dechlorinated" to mean without chlorine is understood. Pool filter backwash is not included in the list of allowable non-stormwater discharge because this list is from 40 CFR §122.26(d)(2)(iv)(B)(1) and the federal rule does not include this discharge type.

Comment 7: Quiddity asks if a Core Data Form (CDF) will be required with the Notice of Intent (NOI). Quiddity also asks if the CDF can be submitted electronically using the NeT-MS4 online system or through a different process.

Response 7: The CDF is required as part of the application submittal process to ensure collection of the agency's core data. The NeT-MS4 system will allow applicants to upload and attach a copy of the CDF as part of the NOI and waiver application submission.

Comment 8: Quiddity asks if TCEQ will issue NOI approvals for all members of the SWMP "coalition" concurrently once all NOIs have been submitted.

Response 8: Where applicants indicate in their application that they are working in a coalition with other small MS4 operators, TCEQ intends to review and approve the applications for all coalition members concurrently.

Comment 9: Quiddity asks, for coalition members, how the responsible party for each MCM and the components of the shared-SWMP will be tracked in the electronic NeT-MS4 annual reporting system.

Response 9: The annual report in the NeT-MS4 system will include a field for the applicants to specify the name of the responsible party for each BMP.

Comment 10: Quiddity asks if and how small MS4 operators will be notified if the NeT-MS4 online annual reporting system is offline, when the system becomes available, and if the system is delayed. Quiddity has concerns and asks if when MS4 Operators are having technical difficulties with the system, a "help desk" support will be available, especially during the submittal deadlines.

Response 10: TCEQ will keep stakeholders apprised of the status and availability of the NeT-MS4 system for application and annual reporting. Information will be posted on TCEQ webpages and through additional outreach such as *The Advocate* Newsletter. Additionally, EPA will provide notices on the NeT-MS4 webpages alerting customers of any issues. EPA has assured TCEQ that the universe of TPDES Phase II MS4 operators will not overwhelm the NeT-MS4 reporting and application system. EPA has experienced similar or larger numbers of users

accessing the EPA NPDES electronic reporting tools at the same time and therefore does not believe there will be an issue with the Texas small MS4 universe accessing the NeT-MS4 system. EPA will have "help-desk" like support for NeT-MS4 users. Users may seek additional assistance with the NeT-MS4 system as follows:

- Submit an Ask a Question form at the following link: https://usepa.servicenowservices.com/oeca_icis?id=oeca_csm_get_help_1&sys_id=dcf6a9b51b0378104614ddb6bc4bcb34
- Send an email to NPDESeReporting@epa.gov.
- Or Call 877-227-8965.

Comment 11: Quiddity asks if TCEQ will notify MS4 Operators when the NeT-MS4 application system is online and live for TPDES MS4 Operators prior to the 2024 General Permit effective date so they may create an account and become familiar with the system.

Response 11: The Texas NeT-MS4 system is expected be available during the renewal period. TCEQ will provide notice to MS4 operators when the system is available. Notice will be provided on TCEQ webpages, in the TCEQ Advocate Newsletter, through GovDelivery emails, and other similar methods. TCEQ encourages MS4 operators to visit the following webpage to sign up to receive alerts by text or email regarding "Stormwater Permits and Rules" and *The Advocate* Newsletter: https://www.tceq.texas.gov/assistance/resources/the-advocate-1/the-advocate-1/e-advocate.html.

Comment 12: Quiddity asks if TCEQ plans to provide any guidance or training on how to use the electronic NeT-MS4 system.

Response 12: TCEQ plans to hold both a virtual and in person workshop to provide guidance on the renewal permit and electronic Texas NeT-MS4 application process. TCEQ plans to record the virtual workshop and make it available on the TCEQ YouTube channel so that MS4 operators may refer to it for guidance at their convenience while preparing their applications. TCEQ is also exploring the possibility of holding a future separate webinar for guidance on annual reporting in the NeT-MS4 system.

Comment 13: Conroe comments that much of the language of the draft permit implies that the measures currently being implemented are deficient or ineffective. Conroe comments that for example, the language in Part III.A.1 assumes that all these things need to be expanded or modified and the language gives no indication of what might be "enough" and that the language in Part III.A.6 "Monitoring or Assessment of Progress" implies that an MS4 can never do "enough."

In addition, Conroe comments that "enough" in this general permit appears to be complete elimination of all MS4 pollution which is unrealistic as there are likely other sources beyond the control of regulated entities contributing to the impairment. Conroe comments that "enough" needs to be defined as some combination of education, monitoring, and illicit discharge regulation that is sufficient, not a continually moving or increasing target.

Response 13: The federal rules specify that the ''compliance target'' for the design and implementation of municipal storm water control programs is, ''…to reduce pollutants to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act.'' Reductions to the MEP are realized through implementation of the MCMs. EPA specified in the Phase II Stormwater Regulation rulemaking that, "…application of the MEP standard as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards. Successive iterations of the mix of BMPs and measurable goals will be driven by the objective of assuring maintenance of water quality standards. If, after implementing the six minimum control measures there is still water quality impairment associated with discharges from the

MS4, after successive permit terms the permittee will need to expand or better tailor its BMPs within the scope of the six minimum control measures for each subsequent permit." Based on this, the permit language has been crafted to ensure that small MS4 operators are regularly evaluating their BMPs for effectiveness, particularly if their receiving water bodies become impaired. As a Comprehensive General Permit, the combination of BMPs under each MCM has been established to define the MEP but each MS4 operator must evaluate the effectiveness of their chosen BMPs, where applicable, and make changes as necessary.

Comment 14: Conroe comments that the BMPs pertaining to sanitary sewer are double regulation as they are already overseen by TCEQ, and reporting is already required.

Response 14: Small MS4 operators are required to address illicit discharges such as discharges from sanitary sewer systems under the federal Phase II MS4 regulations (40 CFR §122.34(b)(3)). Inflows from aging sanitary sewer collection systems are one of the most serious illicit discharge-related problems. Sanitary sewer systems frequently develop leaks and cracks, resulting in discharges of pollutants to receiving waters through MS4s. These pollutants include sanitary waste and materials from sewer main construction (e.g., asbestos cement, brick, cast iron, vitrified clay). Small MS4 operators are encouraged to coordinate within and between their departments to track their existing work on the sanitary sewer system and account for that work in the annual report when it overlaps with the Phase II MS4 permit requirements.

Comment 15: Kyle comments that the general permit should provide more BMPs to choose from for all MCMs. Kyle comments that for example, having to choose 5 options out of a total of 9 in MCM 1 is limiting and provides as an example additional BMP for the menu "having a stormwater hotline or utilizing an online complaint submission form".

Response 15: TCEQ understands the concern that there are not numerous BMPs to choose from for some MCMs. However, certain required elements of some MCMs inherently do not offer optionality. Where optionality could be incorporated, TCEQ structured the measurable goals to allow maximum flexibility for the small MS4s. TCEQ also notes that maintaining and promoting the use of a reporting hotline or similar mechanism to the target audience(s) is required under MCMs 3 and 4, and may also be addressed in the education materials developed for MCM 1.

Comment 16: Kyle comments that having the majority of all listed BMPs achieve a 100% goal is not feasible. San Marcos comments that the percentages should be lower so that they can have the option to exceed the goal. Kyle and San Marcos comment that things beyond the control of a small MS4 operator may prevent them from meeting 100%.

Response 16: TCEQ appreciates the feedback and has updated many of the measurable goals under MCMs 5, 6, and 7, and the goals in Table 1 with quantifiers of 100% to make them more attainable, clarify intent, or to maximize the potential to prevent pollution in stormwater discharges.

Comment 17: NCTCOG recommends that procedures listed in Table 6, Table 8, and Table 9, Table 13, and Table 14 only be required to be updated once per permit term because most MS4s will make changes as needed and having this included in the annual report would end up looking like "Reviewed, no changes needed".

Response 17: TCEQ believes it is essential for procedures to be reviewed for necessary updates each year. Although TCEQ understands that updates may not be necessary every year during the permit term, having a measurable goal for annual reviews ensures that necessary updates to the procedures are not overlooked. Including, "reviewed, no changes needed", in the annual reports is acceptable and demonstrates that the small MS4 operator has completed the annual review to determine if updates to the procedures are necessary.

Comment 18: NCTCOG recommends that training for all field staff in Table 6, Table 9, and Table 13 be completed twice in a permit term because this is more manageable for cities with fewer staff. Additionally, LJA, Chambers, and Conroe comment that establishing annual training

goals for 100% of your staff is unreasonable and having 100% of staff available at any given time for a designated training session is not likely due to vacations, sick time/illness, maternity/paternity leave, etc. LJA, Chambers, and Conroe recommend establishing all training goals throughout the permit at a maximum of 80% of the applicable staff to be conducted at a minimum of twice during the permit term.

Response 18: TCEQ believes it is essential that all field staff are trained at least annually because every day, small MS4 operator employees engage in a variety of activities that influence water quality. This is supported by U.S. EPA's guidance manuals and fact sheets. TCEQ understands that all field staff may not be available on the same day to receive a formal classroom training; however, the staff training BMPs included in the general permit provide flexibility for training to be conducted in a variety of methods, including methods other than in-person trainings. If small MS4 operators host in-person trainings, self-paced materials may be used to address those staff unavailable on the "training day." For example, if there are staff out sick during the "training day", they may be provided a recording of the in-person training or a video module to complete the training on their own at another time during the year. Training materials may be created by the small MS4 operator or small MS4 operators may use training materials developed by TCEQ, EPA, or another entity to fulfill this BMP. The following EPA fact sheet provides more information on Municipal Employee Training and Education, including where to find some free or for-purchase training materials: https://www.epa.gov/system/files/documents/2021-11/bmp-municipal-employee-training-and-education.pdf.

Part II

Comment 19: Conroe comments that language in the general permit appears to indicate the individual permit option is only available to a small MS4 operator if TCEQ requires it. Conroe asks if small MS4 operators can opt for an individual permit regardless if TCEQ requires it. Kyle also asks for more information on the procedures for obtaining an individual permit.

Response 19: TCEQ offers all small MS4 operators the option to apply for an individual permit (30 TAC Chapter 305) instead of applying under the general permit. The general permit language describes the applicability of the general permit rather than describing all permitting options for small MS4 operators.

Individual permit applications are available on the following TCEQ webpage: https://www.tceq.texas.gov/permitting/stormwater/ms4/WQ_ms4_small_TXRO4.html. Applicants must submit one original and two copies of the application along with an application fee of $2,000 for new, renewal, and major amendment permit applications. The individual application process also requires the applicant to publish two public notices in English and in some cases additional alternative languages. The public has the opportunity to provide comments and request a public meeting or hearing on the application. Small MS4 operators interested in obtaining an individual permit may contact the TCEQ Stormwater Team to set up a pre-application meeting.

Comment 20: Kyle requests that the requirement to include the months and years in which the permittee will undertake required actions in the SWMP be revised to require only the years actions are undertaken as that is the most important.

Response 20: TCEQ continues the requirement to include the month when actions are undertaken in the SWMP to ensure the goals are clear, specific, and measurable. Including the month in the SWMP makes it clear for the small MS4 staff implementing the SWMP and for TCEQ when interim milestones are due as well as when the overall annual goals need to be met. Small MS4 operators may include an overall statement in the SWMP to describe when annual goals are to take place such as, "all annual goals have a deadline of December 31, annually", rather than including the same month with every annual BMP in the SWMP.

Comment 21: Quiddity recommends that Part II.F.12 be revised to include how the application fee will be paid. Quiddity asks if the fee will be paid electronically through TCEQ, or EPA's NeT-MS4 system.

Response 21: Application fees can be paid electronically using the TCEQ ePay system or by check submitted through the mail. The application instructions will detail the methods for submitting payment with the NOI. The language in Part II.F.12. is consistent with other water quality general permits and allows flexibility in case payment options change during the permit cycle.

Comment 22: Quiddity recommends clarifying in Part II.G.1. that each coalition member must submit a fee with their individual NOIs.

Response 22: Clarification regarding application fees was added to Part II.F.1 discussing NOI submittal rather than in Part II.G.1(a) discussing coalition participants, to reduce repetitive language throughout the general permit and to keep similar information together.

Comment 23: Quiddity recommends revising Part II.G.1.(a) as follows, "The SWMP must clearly list the name and permit authorization number (if previously approved) for each MS4 operator."

Response 23: Part II.G.1.(a) was revised to specify "permit authorization number" rather than "permit number". For small MS4 operators participating in a shared SWMP with an existing (previously approved) authorization number, the number must be included in the shared SWMP. For small MS4 operators without an existing permit authorization number, the number must be included in the shared SWMP as soon as it is available.

Part III.

Comment 24: Kyle requests that TCEQ explain what the permit language in Part III.A.5. means in relation to a total maximum daily load (TMDL).

Response 24: Part III. A.5 of the general permit is applicable to small MS4s which discharge stormwater into a waterbody in a watershed with an approved TMDL for bacteria. Small MS4 operators must reference the most recently published and EPA approved *Texas Integrated Report of Surface Water Quality for CWA Sections 305(b) and 303(d)* which lists the category 4 and 5 water bodies to determine whether any waterbodies receiving discharge from the small MS4 meet this criterion.

Comment 25: LJA, Chambers, and Conroe comment that additional language should be added to the permit to clarify that Table 1 is only applicable if the approved TMDL Implementation Plan (I-Plan) does not include targeted BMPs/guidance for MS4 operators. LJA, Chambers, and Conroe comment that the development of a TMDL/I- Plan is an extensive process with consideration and focus on all potential pollutant sources to establish targeted BMPs in the I-Plan, therefore there is no reason to identify additional BMPs/measurable goals in the Phase II MS4 general permit.

Response 25: TCEQ agrees with the commenters that in most cases, if a small MS4 operator is implementing the BMPs from the applicable TMDL I-Plan, there is no need to implement Table 1. Language was added to Part III.A.5. to clarify that Table 1 includes the alternative equivalent BMPs for small MS4 operators to use in lieu of the TMDL I-Plan BMPs or when a TMDL I-Plan is not available. TCEQ also clarified that Table 1 will be used by small MS4 operators implementing the TMDL I-Plan when the TMDL I-Plan has not addressed one of the items included in Part III.A.5.(a)-(e) or where the BMP(s) in the TMDL I-Plan for one or more of these items has been completed.

Comment 26: LJA, Chambers, and Conroe comment that the measurable goal to conduct weekly lift station inspections at 100% of the MS4 owned and operated lift stations each year is unreasonable for some Phase II entities that operate an extensive number of lift stations and recommends changing the goal to address documenting 100% of lift station inspections. LJA,

Chambers, and Conroe comment that for a community that operates 50 lift stations to meet the proposed goal would be conducting 2,600 inspections annually and 13,000 inspections during the 5-year permit term.

Response 26: TCEQ appreciates the feedback and has revised the measurable goal as a result of this comment. This measurable goal was revised as follows to require the small MS4 operator to conduct weekly lift station inspections at 100% of the MS4 owned and operated lift stations only in the MS4 area within the impairment watershed rather than the entire MS4 area.

> "Conduct a review of 100% of the sanitary sewer system in the MS4 area within the impairment watershed to identify areas for improvement within the first two years of the permit term. Initiate all feasible improvement projects by the end of the permit term.
>
> Conduct weekly lift station inspections at 100% of the MS4 owned and operated lift stations in the MS4 area within the impairment watershed each year."

Comment 27: LJA, Chambers, and Conroe comment that the draft permit language is unreasonable (logistically and financially) as it would require an inspection program that evaluates the operational status of 100% of the on-site sewage facilities (OSSFs) in the MS4 area which would require addressing thousands of OSSFs for counties. LJA, Chambers, and Conroe recommend that the measurable goals be revised to read "Maintain a current inventory of 100% of the identified OSSFs in your MS4 area on an annual basis. Investigate and address 100% of OSSF complaints identified through the public reporting mechanism implemented by the MS4 each year and track the number of complaint investigations conducted on an annual basis."

Conroe comments that although failing OSSFs might be contributing to stream impairments, BMPs addressing OSSFs should not be included in MS4 permits because jurisdiction of OSSFs frequently does not belong to the MS4s operator.

Response 27: TCEQ appreciates the feedback and has revised the measurable goals as a result of this comment. The measurable goals related to OSSFs in Table 1 have been revised to require small MS4 operators to develop and implement screening procedures in 20% of the MS4 area within an impairment watershed to identify failing OSSFs each year rather than to identify 100% of OSSFs in the MS4 area each year. Additionally, a companion goal was added for small MS4 operators to address 100% of failing OSSFs identified during screening each year by requiring the responsible party to perform corrective actions to eliminate the illicit discharge.

Comment 28: Conroe asks if the resident education BMP in Table 1 requires that in year one the small MS4 operator implement one, year two they upkeep the first and implement a second, year three they upkeep the first and second and implement the third, etc. until all are implemented. Conroe comments that if this is the intent it is an unreasonable requirement.

Response 28: The intent of this language in Table 1 is to require the small MS4 operator to implement only one additional BMP for residential education each year of the permit cycle not an increasing incrementally by one each year. The language in Table 1 was revised as follows to clarify the intent, "~~Each year,~~ Implement at least one additional BMP from MCM 1: Public Education and Outreach and Table 4 annually (e.g., a Level 1 small MS4 operator must implement at least four total BMPs under MCM 1 each year in the permit cycle instead of the three BMPs required by Part IV.D.1.(a)3.b)."

Comment 29: Quiddity asks that TCEQ define the term "decorative ponds," such as "decorative ponds are considered private water bodies, not owned, or maintained by the MS4 Operator."

Response 29: The term "decorative ponds" used in this permit is defined by the common understanding of the term: engineered water features that may contain aquatic plants and animals. The ponds are often located in residential subdivisions, parks, golf courses, office complexes, shopping centers, and new residential developments. The owner or operator of

these ponds is not considered in the definition. Residential education may be focused on the maintenance of privately owned decorative ponds.

Comment 30: Conroe comments that they question if BMPs implemented under a single MS4's control will make a measurable improvement in water quality that can be proven with water quality data from streams. Conroe asks how the MS4 or TCEQ determine there is no progress toward the benchmark if the majority of MS4s cannot use the option of "assessing improvements in water quality", especially with multiple sources contributing to a water body, to determine they have done enough.

Response 30: TMDLs establish an aggregated waste load allocation (WLA) for all stormwater sources that include all permitted municipal, construction, and industrial stormwater sources; and the permit requires MS4 operators to use that WLA as a benchmark so they can evaluate how successful their stormwater management program is in achieving reductions and to continuously improve it, as applicable. The aggregated WLA provides the MS4 operators and other stakeholders in a TMDL watershed with the flexibility of managing pollutant loads on a watershed- wide basis using available resources. This effort is continued through time until the water quality standards are met. Specific measures for BMPs and other approaches to improving water quality with respect to stormwater are identified in the TMDL I-Plans.

TCEQ provides flexibility for small MS4 operators to assess progress toward the benchmark either via qualitative approaches by using program implementation indicators or via quantitative approaches such as monitoring or using existing data. These options allow small MS4 operators to evaluate progress in a manner that is appropriate for their unique conditions and complexities.

Where a small MS4 operator believes that quantitative data will not be reliable for demonstrating progress toward the benchmark, they may evaluate and report progress towards the benchmark by describing the activities and BMPs implemented, by identifying the appropriateness of the identified BMPs, and by evaluating the success of implementing the measurable goals. For example, the small MS4 operator may report the increase in illegal dumping reporting, the number of educational opportunities conducted, or reductions in sanitary sewer overflows.

Comment 31: Quiddity asks if TCEQ can define what constitutes a sub-benchmark and how the sub-benchmark is determined.

Response 31: The permit provides small MS4 operators the option of using the TMDL established aggregated WLA as their benchmark value in which they are jointly responsible for progress in meeting that benchmark with other MS4s in the watershed. Alternatively, small MS4 operators can combine or share efforts to develop disaggregated WLAs and use that as a sub-benchmark value. Calculating allocations for the individual sources can be very site specific in areas where the individual sources are separate and distinct and where the sources are adjacent to each other, or they occur within each other. Based on this, the permit requirements are written in a way to allow maximum flexibility for MS4s within an impaired watershed to develop an approach that meets their specific needs and conditions. Small MS4 operators interested in developing sub-benchmarks may meet with TCEQ staff to discuss a proposed method for disaggregating sources if additional guidance is needed.

<u>Part IV, Sections A-C</u>

Comment 32: Conroe comments that the language in Part IV is problematic and asks how TCEQ can require the implementation and enforcement of the SWMP for stormwater discharges into creeks that did not go through a public right of way or easement.

Response 32: The federal rules require small MS4 operators to address all stormwater discharges from the small MS4 whether direct and indirect discharges. The small MS4 operator

is required to develop, implement, and enforce the SWMP for stormwater discharges from their small MS4 that reach Waters of the U.S., including indirect discharges to Waters of the U.S. that are conveyed by a separate neighboring small MS4's operator.

Comment 33: Conroe asks if the language in Part IV.C.3. means the city would have to take over jurisdiction from municipal utility districts (MUDs) that are in the city.

Response 33: The legal authority language in Part IV.C.3 is not intended to require a traditional small MS4, such as a city to take over jurisdiction from a non-traditional small MS4 like a MUD. This language provides the option for small MS4 operators to work together and develop inter-local agreements to meet the general permit requirements.

Comment 34: Kyle comments that 30 TAC, Chapter 319 is applicable to wastewater permits and not stormwater.

Response 34: 30 TAC Chapter 319, Subchapter B Hazardous Metals is applicable to any discharge into tidal or inland waters, not only wastewater discharges. All TPDES permits (also called waste discharge permits), including stormwater permits, have the requirements of this chapter incorporated.

Comment 35: Quiddity asks if the list of entities assisting with the development or implementation of the SWMP in Part IV.C.7.(b), can include only the title or position without including specific names or entities that might change numerous times during the permit cycle.

Response 35: TCEQ intends only for the organization(s) to be named, rather than position(s) or individual(s), assisting with the development or implementation of the program.

Comment 36: Quiddity asks if TCEQ can clarify what is considered an interim milestone in Part IV.C.7.(d) and if this is measured in the same manner as implementation of a regular BMP.

Response 36: An interim milestone is any goal created throughout the reporting year or permit term by a small MS4 operator to aid in achieving permit requirements. For example, if an MS4 operator was required to inspect 100% of permittee owned and operated facilities described by Part IV.D.7.(a). each year, they may choose to break this into smaller goals of 25% quarterly to ensure the goal is met. TCEQ will not require small MS4 operators to report on the status of interim goals for annual report purposes.

Comment 37: Quiddity asks if TCEQ can clarify what the rationale statement mentioned in Part IV.C.7.(f) encompasses. Quiddity asks if small MS4 operators should provide a rationale statement for each activity/BMP and measurable goal that was selected or if this is addressing the overall program.

Response 37: This rationale statement required by Part IV.C.7.(f) should encompass the entire program rather than a BMP-by-BMP basis. To clarify the original intent, the permit language was revised as follows: "A rationale statement that addresses the overall program, <u>including an overall statement describing</u> how the activities/BMPs and measurable goals were selected".

<u>Part IV.D.1 - 2, MCM 1 & 2</u>

Comment 38: Conroe asks if Public Education/Outreach has been demonstrated to actually function as a "control measure" and if there are data available demonstrating the effectiveness of this.

Response 38: The stormwater program was developed to include Public Education and Outreach and is required in the federal Stormwater Phase II rules for MS4s (40 CFR §122.35(b)(1)). In support of the Public Education and Outreach control measure, EPA stated the following in the *Federal Register* publication of the final NPDES Stormwater Phase II Rules, "as the public gains a greater understanding of the storm water program, the MS4 is likely to gain more support for the program (including funding initiatives). In addition, compliance with the

program will probably be greater if the public understands the personal responsibilities expected of them. Well informed citizens can act as formal or informal educators to further disseminate information and gather support for the program, thus easing the burden on the municipalities to perform all educational activities."

Comment 39: Conroe comments that the most cost-effective means of public education would likely be TV/billboard/social media outreach by TCEQ throughout the State. Conroe comments that if TCEQ did not do the outreach, TCEQ could create materials.

Response 39: While TCEQ staff does participate in some public education opportunities throughout the year, the agency believes that a collaborative State and local approach, in conjunction with EPA technical support, will best meet the goal of targeting and reaching, specific local audiences. TCEQ depends on public education efforts by the small MS4 operators to reach their anticipated target audience(s) and focus on localized issues (some examples include illegal dumping or proper disposal of pet waste). TCEQ does not have or create public education materials for the small MS4s currently. However, the EPA has materials available for public use and they can be found on the following webpage: https://www.epa.gov/npdes/stormwater-smart-outreach-tools.

Comment 40: Quiddity recommends including "residents" or "users" in the list of target audiences for MUDs. Quiddity comments that most MUDs and other special districts serve and are largely comprised of residential communities and do not have "staff" or employees.

Response 40: TCEQ appreciates the feedback and agrees with the commenter's suggestion. "Residents served" was included to the target audiences identified for MUDs in Part IV.D.1.(a).(1).b.

Comment 41: Mansfield comments that it would be more effective to cease inlet labeling when a target of 60% is reached and that this will allow cities to focus on high traffic areas.

Lewisville requests that TCEQ consider reducing the percentage of known stormwater inlets that must be marked each year and describes the cost for Lewisville to meet this goal is approximately $10,000 per year for vinyl markers and approximately $30,000 per year for metal markers creating burden on municipal budgets.

San Marcos also comments that using a number such as "mark 30 inlets each year" will result in cost savings and that the goal of marking 10% of known inlets is too high for the City of San Marcos.

Response 41: TCEQ appreciates the feedback and agrees with Mansfield regarding the need to focus the inlet marking activity to a high impact area which will reduce costs and staff time spent on this activity. The goal for this activity has been revised to require markings at "a minimum of 10% of all known stormwater inlets in either high-impact areas identified by the small MS4 operator or impairment watersheds within the MS4 area each year", and maintenance of already marked inlets "for a minimum of 15% of all known stormwater inlets in either high-impact areas identified by the small MS4 operator or impairment watersheds within the MS4 area each year." This will allow small MS4 operators to focus their efforts and budgets to mark inlets in targeted areas defined by the small MS4 operator, for example, areas with high pedestrian traffic, known illegal dumping, or where inlets contribute to an impaired waterbody. For this measurable goal, TCEQ maintains the percentage goal rather than a minimum number because this allows the goal to be tied to a proportion of the overall universe in the MS4 area and gives a clearer picture of the impact regardless of the size of the small MS4.

Comment 42: NCTCOG comments that it is not clear why the area that is cleaned is relevant for stream/lake or watershed clean-up events and notes that one person cleaning two acres could be considered an event but a group of 20 cleaning a smaller area would not count as an event. NCTCOG recommends that the BMP be reworked to require tracking of all cleanups that happen in the city throughout the year.

Response 42: The goal associated with stream/lake or watershed clean-up events is tied to the area cleaned because goals tied to the number of participants are difficult for small MS4 operators to achieve. Tracking cleanups that happen in the small MS4 area throughout the year is a measurable parameter rather than a measurable goal. Using a goal related to the area cleaned creates a connection between the BMP and the impact on reducing pollutants in discharges from the small MS4 area and therefore, TCEQ maintains the goal regarding the area cleaned.

Comment 43: Mansfield recommends that the measurable goal language for the volunteer water quality monitoring BMP in Table 5 be changed to, "Organize or support volunteer water quality monitoring or bioassay programs such as Texas Stream Teams, similar alternatives, or MS4 run programs."

Response 43: TCEQ agrees with the commenter and the volunteer water quality monitoring BMP was revised to include programs such as Texas Stream Teams.

Comment 44: NCTCOG comments that the BMPs for "Stormwater related speaker series and Educational display/booth at a school, public event, or similar event" is more like Public Education than Public Involvement.

Response 44: TCEQ understands that this BMP is similar to MCM 1, Public Education/Outreach but has included it as an option to address MCM 2, Public Participation/Involvement requirements to provide more flexibility to small MS4 operators for addressing involvement. EPA describes educators/speakers conducting workshops and encouraging public participation as a possible BMP to meet this goal which is similar to this BMP.

Comment 45: LJA, Chambers, and Conroe comment that most municipal clean-up events and other public involvement opportunities within small MS4s are conducted once per year and it would seem more reasonable to have that reflected in this measurable goal.

Response 45: TCEQ revised the measurable goals for hosting events under MCM 2 to require Level 1 and 2 small MS4 operators to host or support at least one event and for Level 3 and 4 operators to host or support at least two events annually.

Comment 46: Kyle and San Marcos comment that reaching 75% of all residents in an MS4, and proving it, is not feasible. San Marcos comments that the City of San Marcos contains a major university, so people leave for months at a time, decreasing their total audience.

LJA, Chambers, and Conroe comment that many of the proposed BMPs represent an increase in cost for communities compared to the existing plans that are being implemented. LJA, Chambers, and Conroe recommend that consideration should be given to incorporating BMPs that are geared towards making this information available on the MS4 permittee's website and/or social media pages. LJA, Chambers, and Conroe also comment that a more measurable goal would be to "make the information available through at least 2 forms of media for the intended audience", rather than trying to evaluate if the materials reached a specific percentage of the target audience. Conroe recommends revising the goal for Utility Bill Inserts to distribution to 50% of the intended audience.

Response 46: The measurable goals for "75% of the intended audience" are included to ensure that education and outreach information shared by the small MS4 operator is shared with the audience that the small MS4 operator intended. The *intended audience* is not always the same as the *target audience*. For example, a small MS4 operator may wish to implement the BMP for distributing utility bill inserts to address residents (the target audience*)*. The small MS4 operator must then establish the intended audience for the utility bill inserts BMP. The intended audience, for example, will be utility account holders (a subset of residents) and the small MS4 operator will ensure the bill inserts are sent to a minimum of 75% of utility account holders. TCEQ appreciates the feedback and to clarify this intent, the measurable goals referencing reaching 75% of an intended audience were revised to specify the items must be

sent to or shared with 75% of the intended audience, rather than continue a goal to reach the intended audience. Although there is not a specific goal for a percentage of the audience reached, TCEQ has included a requirement for the small MS4 operator to estimate the audience reached for each of these BMPs to assist the small MS4 operator in determining BMP effectiveness. TCEQ believes this will require largely the same resources as the goals currently implemented by the majority of small MS4 operators.

Comment 47: San Marcos comments that advertising in high visibility areas will increase their costs, for example one billboard in San Marcos for 3 months costs $3,000.

Response 47: This public education BMP is not only limited to using a billboard. The BMP allows small MS4 operators to implement any of the following: billboard, poster, bus shelter or bench ad, radio or television ad, movie theatre posters or ads, and kiosks. Many of these options are an affordable alternative to purchasing a billboard advertisement at the cost mentioned. This BMP allows flexibility for the small MS4 operator to determine which method of advertising will be best based on their budgets, target audience, and campaign information.

Comment 48: San Marcos comments that requiring a newspaper article defeats the initial cost savings that TCEQ advertised when stating that MS4's will save money by not having to do a public notice. San Marcos comments that they will still have to pay the same fee, if not more, for a pollution prevention article.

Response 48: This Public Education BMP is not limited to using a newspaper. The BMP also allows small MS4 operators to publish articles in newsletters either electronically or in print. The newsletter may be published and distributed by the small MS4 operator themselves or a third party.

Comment 49: Conroe requests that the language for "support given" in both the Public Education/Outreach and the Public Involvement Participation be clarified to explain if the MS4 must do all the things in the list for it to count, or if not, how many must the MS4 do for it to count. NCTCOG asks what "hosted by the city" means.

Response 49: TCEQ intends for small MS4 operators to implement at least one of the items and not every item included in the list in Part IV.D.1.(a)(3) and Part IV.D.2.(b). To clarify, language was added to Part IV.D.1.(a)(3)c. as follows, "Small MS4 operators shall create/host or support the public education and outreach BMP(s) in Part IV.D.1.(a)(3) and Table 4. To be considered support given to the coordinating groups, the small MS4 operator shall at minimum conduct at least one of the following or similar…" and to Part IV.D.2.(b) as follows: "Small MS4 operators shall create/host or support the public involvement/participation BMP(s) in Part IV.D.2.(a) and Table 5. To be considered support given to the coordinating groups the small MS4 operator shall at minimum conduct at least one of the following or similar…" Finally, TCEQ revised the majority of BMPs in Table 5 to indicate the small MS4 operator must support or host the events to clarify that the MS4 operator is not expected to be the sole organizer or contributor to events when fulfilling these BMPs.

Part IV.D.3, MCM 3

Comment 50: NCTCOG comments that the measurable goal to use anti-littering campaigns to address floatables is public education, and more related to MCM 1 and will be a duplication of information provided earlier in the permit.

Response 50: TCEQ understands that this BMP is related to MCM 1, Public Education/Outreach but has included it as an option to address MCM 3, Illicit Discharge Detection and Elimination requirements to provide more flexibility to small MS4 operators for addressing littering. Small MS4 operators may overlap this BMP with a BMP in MCM 1 and count the BMP efforts under both MCM 1 and MCM 3 in the annual report if desired.

Comment 51: NCTCOG requests clarification on the expectations for non-traditional MS4s under MCM 3 as they do not have enforcement authority.

Response 51: Where a non-traditional permittee lacks the authority to develop ordinances or to implement enforcement actions, the permittee shall exert enforcement authority as required by this general permit for its facilities, employees, contractors, and any other entity over which it has operational control within the portion of the urban area with a population of at least 50,000 people under the jurisdiction of the permittee. For discharges from third party actions, the permittee shall perform inspections and exert enforcement authority to the MEP. If the permittee does not have enforcement authority and is unable to meet the goals of this general permit through its own powers, then, unless otherwise stated in this general permit, the permittee shall perform the following actions in order to meet the goals of the general permit: Enter into interlocal agreements with municipalities where the MS4 is located, or, if the permittee is unable to enter into inter-local agreements, it may notify the appropriate TCEQ Regional Office as needed to report discharges or incidents when it does not have enforcement authority. These interlocal agreements must state the extent to which the municipality will be responsible for inspections and enforcement authority in order to meet the conditions of this permit.

Comment 52: NCTCOG asks if the requirement to "publicize the reporting mechanism…at least 75% of target audience," addresses the same target audiences from MCM 1.

Response 52: The goal under MCM 3 to "publicize the public reporting mechanism a minimum of two times annually in a method designed to reach at least 75% of the intended audience" is not necessarily meant to address the same target audiences from MCM 1. The small MS4 operator will determine their intended audience for this BMP, such as social media site visitors, and publicize the reporting mechanism on their social media site in an effort to reach social media site visitors. In addition, TCEQ has clarified language in the BMP that the method used must be designed to reach the majority of the intended audience rather than at least 75% and has added a requirement to estimate the audience reached to assist small MS4 operators in determining BMP effectiveness.

Part IV.D.4, MCM 4

Comment 53: LJA, Chambers, and Conroe comment that a measurable goal for conducting inspections at 80% of all active construction sites on an annual basis is not obtainable for MS4 operators with a significant amount of development/construction occurring. LJA and Chambers recommend that the goal incorporate an additional numeric option for reaching compliance with this specific such as, "Conduct inspections at 80% of active construction sites, or a minimum of 30 total inspections on an annual basis". LJA, Chambers, and Conroe comment that the current draft permit language regarding follow-up inspection frequencies is reasonable.

Conroe recommends that the goal be revised to require inspections at 50% of active sites or a minimum of 50 inspections annually.

Mansfield recommends the measurable goal be revised to qualify that "at least" 80% of active sites are inspected to allow MS4 operators to conduct inspections at a frequency they determine to be necessary for discharge compliance.

Response 53: TCEQ appreciates the feedback and agrees with Mansfield and has revised the language in Table 9 to clarify that 80% is a minimum goal and therefore provides the opportunity for small MS4 operators to address a larger universe if they wish.

The majority of small MS4 operators are implementing an inspection goal of 80% of active construction sites under existing programs. TCEQ continues the goal to inspect a minimum of 80% of active constructions sites each year. TCEQ also maintains the percentage goal rather than a minimum number because this allows the goal to be tied to a proportion of the overall

universe in the MS4 area and gives a clearer picture of the impact regardless of number of construction sites operating in the small MS4 area.

Comment 54: Mansfield comments that the construction site inventory BMP under MCM 4 should be required of Level 1 and 2 cities because it would be impractical to implement a reliable workflow without an inventory.

Response 54: During the 2013 general permit cycle, stakeholders indicated that the inclusion of an inventory requirement would be burdensome to Level 1 and 2 small MS4 operators. In particular, the inventory requirement is challenging for non-traditional small MS4 operators who often do not have staff. Additionally, construction site operators often overlook Level 1 and 2 small MS4 operators in their notifications. For these reasons, TCEQ continues the requirement for only Level 3 and 4 small MS4 operators. Level 1 and 2 small MS4 operators may voluntarily implement an inventory if they wish.

Part IV.D.5, MCM 5

Comment 55: Conroe comments that establishing a separate BMP for Post Construction Management for New Development and Redevelopment is problematic in creating a separate category of properties in the city which must be inventoried and inspected according to different rules than all other properties in the city.

Response 55: Post-construction stormwater management in new development and redevelopment is required to be implemented in the federal rules (40 CFR §122.34(b)(5)). For example, the management of stormwater runoff from new development and redevelopment is addressed by requiring operators at each site to implement in site plans a combination of structural and non-structural BMPs appropriate for the community and that protects water quality. Studies indicate that prior planning and designing for the minimization of pollutants in stormwater discharges is the most cost-effective approach to stormwater quality management. Reducing pollutant concentrations in stormwater after the discharge enters a storm sewer system is often more expensive and less efficient than preventing or reducing pollutants at the source. Increased human activity associated with development often results in increased pollutant loading from stormwater discharges. If potential adverse water quality impacts are considered from the beginning stages of a project, new development and redevelopment provides more opportunities for water quality protection.

Comment 56: Conroe comments that language in the draft permit is vague regarding what stormwater control measures must be implemented and maintained, and asks who decides what is appropriate for the community and what protects water quality.

Response 56: The intent of this language is to provide flexibility to the small MS4 operator in establishing requirements under this MCM. It is up to each small MS4 operator to determine which requirements are most appropriate for their community based on their unique conditions and community members. Small MS4 operators should consider space limitations, health and safety concerns, cost effectiveness, highway construction codes, local climate, community concerns, and other similar factors.

Comment 57: San Marcos comments that the city has implemented a triennial inspection program for all privately and publicly owned structural controls which is no longer on the Level 3 goal list.

Response 57: TCEQ notes that an inspection program as described has not been required for Level 3 small MS4 operators before and thanks San Marcos for implementing the program despite this. TCEQ encourages the city to continue implementing this program to address privately owned structural controls.

Comment 58: NCTCOG recommends that the goal in Table 11 to "Maintain 100% of stormwater control measures each year", be completed every permit term because this would mean 20% are checked each year and would be more manageable for cities with fewer staff.

Response 58: Language was added to the maintenance goal in Table 11 to clarify that small MS4 operators must address their maintenance requirements each year according to procedures and schedules developed by the small MS4 operator which may not require a maintenance action for every structure each year. The small MS4's maintenance plan may indicate that 20% of control measures are checked each year. The language was revised as follows: "Each year, implement a maintenance plan and schedule established by the small MS4 operator, addressing 100% of stormwater control measures where the small MS4 operator is responsible for maintenance."

Comment 59: NCTCOG comments that the goal in Table 11 to "Require the site owner or operators to maintain documentation onsite for 100% of the maintenance performed…" does not seem feasible for areas such as commercial shopping centers, where the units are rented by tenants and the property owner is responsible for maintenance. NCTCOG comments that it is infeasible for areas with controls like a vegetated swale that requires mowing every few weeks as maintenance and it would be difficult to provide and store documentation for mowing.

Response 59: The permit language specifies that the site owner or operator must be required to document maintenance. Therefore, in the example of a commercial shopping center, the small MS4 operator could require the owner rather than the tenants to document maintenance. TCEQ has revised the permit language to clarify that documentation of maintenance may be a tracking log of maintenance conducted and is not required to be more formal documentation. Small MS4 operators may accept a log of maintenance being completed, such as the dates when mowing occurs every few weeks as documentation. Many owners or operators will have documentation of mowing where the mowing is conducted by a third party which the owner or operator has hired. If the owner or operator is completing the maintenance themselves, they may track or log the activities as they complete them to keep documentation.

Comment 60: NCTCOG comments that in Table 12 it appears that the performance level is 100% and recommends the performance level be "to the maximum extent practicable under the prevailing conditions."

Response 60: The language in Table 12 has been revised to clarify that the small MS4 operator is not expected to inspect all control measures in the small MS4 area each year. The small MS4 operator must implement an inspection program consistent with their applicable maintenance plan each year to, at a minimum, involve inspecting 20% of stormwater controls in the small MS4 area each year.

Comment 61: DFW asks if it is correct that "field staff" in Part IV.D.3(c)(2) is intended to refer to those employees directly responsible for conducting IDDE inspections or investigations as part of normal job responsibilities and not any employee who may perform work in exterior environments.

Response 61: This training requirement is meant to apply to any staff whose main job scope is performed outside of the office setting and who may come into contact with or otherwise observe an illicit discharge, illegal dumping, or illicit connection to the small MS4 as part of their normal job responsibilities.

Comment 62: Mansfield asks that Part IV.D.5 (a) or (b) include language identifying a target pollutant of concern and a target treatment threshold, such as 80% total suspended solids removal, and include a reference to an independently verified agency for particular devices or practices.

Response 63: TCEQ believes that requiring small MS4 operators to meet a specific treatment threshold in the general permit would be a burden to small MS4 operators. The permit language provides flexibility for small MS4 operators to determine the appropriate controls for their unique MS4 conditions.

Comment 64: Mansfield requests that TCEQ provide guidance on how performance claims of manufactured treatment devices and practices are verified, such as the use of Technology Assessment Protocol - Ecology (TAPE), Technology Acceptance and Reciprocity Partnership (TARP), or American Society for Testing and Materials (ASTM), and recommends that the permit language in Part IV.D.5(a) or (b) be worded to permit new guidance to be utilized as it is developed (i.e. National Municipal Stormwater Alliance Stormwater Testing and Evaluation for Products and Practices (STEPP) program).

Response 64: The permit language provides small MS4 operators with the flexibility to determine which treatment devices and practices are appropriate for their specific and unique conditions. TCEQ believes that specifying or recommending the use of a third-party BMP verification program is overly prescriptive and reduces flexibility for small MS4 operators.

Part IV.D.6, MCM 6

Comment 65: Kyle and San Marcos comment that the requirements for contractor oversight is unattainable as it is written. Kyle comments that this requirement should be removed.

Response 65: TCEQ appreciates the feedback and has updated the measurable goals in Table 13 to clarify the intent of contractor oversight requirements. The intent of this requirement is to ensure the small MS4 operator has a process to implement oversight such as ensuring contractors follow guidelines, implement procedures properly, etc. rather than requiring small MS4 operators to watch every action performed by contractors. TCEQ maintains the requirement with revisions to specify the small MS4 operator must maintain oversight procedures for 100% of contracts. This revision to the measurable goals more closely aligns with the required elements of Part IV.D.6.(b).(4).

Comment 66: NCTCOG requests clarification on the language in Table 13 requiring permittees to "evaluate" operation and maintenance activities for their potential to discharge pollutants and asks if this is referring to having a Standard Operating Procedure or that the activity should be evaluated each time it is performed. NCTCOG recommends that the pollutants of concern list only be required to be updated once per permit term.

Response 66: The term "evaluate" in the permit language in Table 13 is meant to encompass either reviews of procedures when available, or reviewing the activities as they are performed. The small MS4 operator may determine the appropriate method of evaluation to accurately determine the potential to discharge pollutants. The permit language was revised as follows to clarify the option to review procedures as a form of evaluation: "Evaluate 100% of O&M activities, in conjunction with procedure reviews if appropriate, for their potential to discharge pollutants in stormwater annually". As small MS4 operators are required to review procedures at least annually, TCEQ maintains the requirement for small MS4 operators to review and update the list of pollutants of concern at least annually to reflect any necessary updates based on the procedure reviews or activities conducted during the year.

Comment 67: NCTCOG comments that the requirement to "inspect and clean at least 25% of the small MS4 owned and operated drainage system each year" is not practicable with current technology. NCTCOG comments that because much of the drainage system is underground, CCTV is currently the most effective means to inspect and that the cost is approximately $52,800 per mile and for a 488-mile system in one Level 4 city the cost for the entire system is over $25 million.

Response 67: TCEQ appreciates the feedback and has revised the measurable goals within Table 14 as a result of this comment. The measurable goal quantifier relating to the inspection and cleaning of the small MS4 has been modified to require 20% of the system to be completed each year, which still ensures that 100% will be achieved by the end of the permit term. Additionally, the measurable goal has been modified to clarify the intent that the inspections and cleaning BMP is directed toward the surface drainage system in problem areas identified by the small MS4 operator, rather than system-wide and including underground portions.

Comment 68: LJA, Conroe, and Chambers comment that the estimated number of inlets for one known Level 3 small MS4 is approximately 6,000; which based on the current proposed language would require them to conduct documented inspections of 1,500 inlets per year. LJA, Conroe, and Chambers comment that this is an unrealistic goal and recommend that all percentages associated with the options included for this BMP be reduced to 10% per year.

Response 68: TCEQ understands the concerns of logistical challenges raised by the commenters and has revised the measurable goals relating to inlet inspections in Table 14 to require inspections of 20% of stormwater inlets in problem areas identified by the small MS4 operator (for example, areas with recurrent illegal dumping) each year. This revision allows the small MS4 operator to focus on a more targeted area and lowers the overall number of inspections required each year.

Comment 69: DFW requests clarification if the requirement in Part IV.D.6(b)(3) is referring to waste generated by the MS4 operator or any waste physically removed from the MS4 conveyance system.

Response 69: The language in this section is referring to waste physically removed from the MS4 conveyance system. TCEQ also notes that although this language and measurable goal is specifically referring to wastes removed from the conveyance system, wastes generated by the MS4 are also expected to be disposed of in accordance with all applicable solid waste rules.

Comment 70: NCTCOG comments that the BMP to "collect and dispose of or recycle used oil…" relates more to MCM 2 for Public Involvement and asks what qualifies as an event. NCTCOG comments that some MS4s offer year-round collection service and asks if that would qualify for this BMP. Additionally, Grapevine comments that some cities participate with other entities which limit household hazardous waste (HHW) collection events to once per year. Grapevine comments that some cities are moving to curbside HHW pick-up for disposal by their waste-hauler and asks how these cities will be able to meet these criteria.

Response 70: TCEQ understands that this BMP is similar to MCM 2, Public Involvement but has included it as an option to address MCM 6, Pollution Prevention and Good Housekeeping requirements to provide more flexibility to small MS4 operators for addressing pollutants in the small MS4. TCEQ has revised the permit language for this BMP and measurable goal to clarify that an event is any day in which the public has an opportunity to dispose of or recycle HHW either through collection (such as curbside pick-up) or drop off. Where small MS4 operators offer year-round collection or drop off services they are fulfilling this measurable goal. In addition, if the small MS4 partners with adjacent small MS4 operators to offer these events, they are fulfilling this goal.

Comment 71: NCTCOG comments that sweeping streets with ditches is not a BMP and recommends changing the requirement to 100% of the curb and gutter streets. NCTCOG also asks for clarification of what is entailed in an inlet protection program.

Response 71: TCEQ appreciates the feedback and agrees that sweeping streets with ditches is not technically feasible as described in Part IV.D.6.(c)(2) and has clarified this by revising the permit language in Table 14 to require street sweeping to address 75% of the MS4 where street sweeping is technically feasible annually. This measurable goal has also been clarified to more clearly align with the permit requirements in Part IV.D.6.(c)(2) by specifying that either an inlet

protection program must be utilized in areas where street sweeping is technically infeasible or the small MS4 operator must implement a newly added BMP and measurable goal to ensure trash capturing devices are maintained in all areas where street sweeping is technically infeasible.

Comment 72: NCTCOG recommends that the map in Table 14 only be required to be updated once per permit term.

Response 72: TCEQ believes it is essential for the facilities map to be reviewed for necessary updates each year. Although TCEQ understands that updates may not be necessary every year during the permit term, having a measurable goal for annual reviews ensures that necessary updates to the map are not overlooked.

Comment 73: NCTCOG comments that as facilities are reviewed for their potential to discharge, the MS4 operator will determine if they should be designated as high-priority facilities and it makes sense to update them on the same schedule, once per permit term.

Response 73: The goal for facilities to be reviewed for their potential discharge pollutants is set to once per permit term but TCEQ anticipates that small MS4 operators will set interim milestones to review a portion of these facilities every year, for example review 20% of facilities each year. Because some of the facilities will likely be reviewed each year, it is necessary for the small MS4 operator to review and update the list of high-priority facilities to address any changes or additions to the list based on the facility reviews that were conducted that year.

Comment 74: NCTCOG asks for clarification on what is meant by "material" in Table 14 and recommends defining it. Additionally, NCTCOG recommends the requirement to "shelter 100%" be changed to "Shelter to the maximum extent practicable."

Response 74: The term material is meant to refer to common chemicals such as fertilizers, solvents, paints, cleaners, and automotive products. To clarify this, the measurable goal language was revised to include examples of materials. TCEQ maintains the requirement to shelter 100% of these materials because keeping materials of this nature indoors or under a storm-resistant shelter is readily achievable for Level 3 and 4 small MS4s.

Comment 75: NCTCOG comments that all fuel facilities are automatically designated as high priority and recommends rewording the "Stormwater Controls for High Priority Facilities, Fueling and vehicle maintenance as described by Part IV.D.6.(c)(6)c," language in Table 14.

Response 75: The general permit language in Part IV.D.6.(c)(6)c establishes more clear requirements for Level 3 and 4 small MS4 operators to implement standard operating procedures (SOPs) that address spill prevention and control at permittee-owned and operated vehicle fueling, vehicle maintenance, and bulk fuel delivery facilities. This BMP and measurable goal in Table 14 is written to tie back to the permit language which describes the specific subset of high priority facilities rather than repeating the description.

Comment 76: NCTCOG comments that row 13 in Table 14 seems to be a duplicate of information included earlier in the general permit.

Response 76: The BMP and measurable goal included in row 13 of Table 14 is unique to inspections described in Part IV.D.6.(c)(7) and is not repeated elsewhere in the general permit.

Comment 77: NCTCOG recommends adding "of" to the measurable goal for clippings and leaves and recommends rewording the goal to include blowing leaves back onto grassy areas.

Response 77: Language in this measurable goal was revised to include the missing word "of". The goal for this BMP is meant to physically remove leaves from the MS4 area and prevent them from reaching the small MS4. This language provides flexibility for small MS4 operators to implement a combination of "mulching, composting, or landfilling" and "blowing leaves back onto grassy areas".

Comment 78: NCTCOG comments that the term "flood control structure" should be defined and asks if this includes every inlet. NCTCOG recommends rewording this measurable goal to retrofit flood control devices as needed or on a schedule basis because some small MS4s have fewer than ten structural flood control devices it is not feasible to retrofit 20% annually.

Response 78: TCEQ intends for the term "flood control structure" to mean the common definition of the term, "permanent structures that are specifically designed and used for reducing flood impact in local areas." Examples include detention ponds, floodwalls, and levees. Stormwater inlets are not intended to be encompassed in the definition of flood control structures. The general permit language provides the option for small MS4 operators to document when retrofitting 20% of structures is not feasible.

Comment 79: SARA comments that the permit should prioritize retrofitting of the 20% of existing flood control devices to include pollutant removal based on any local watershed protection plan (WPP) and/or existing water quality masterplans within the MS4 operator's watershed.

Response 79: The language in the general permit provides flexibility for each small MS4 operator to determine the schedule and location of flood control device retrofitting to address devices as appropriate for their unique conditions. In some cases, a small MS4 operator may not have a local WPP or water quality masterplan to refer to. The permit language flexibility provides the option for small MS4 operators to use these tools to prioritize their retrofitting, as appropriate.

Comment 80: SARA comments that where appropriate the permit should implement nature-based solutions to address water quality and erosion for flood control structures.

Response 80: The language in the general permit provides flexibility for each small MS4 operator to determine the appropriate design and maintenance to address erosion from flood control structures. TCEQ believes that prescribing specific designs or maintenance for flood control structures will be burdensome for small MS4 operators. Small MS4 operators may choose to implement nature-based solutions if appropriate for their unique conditions.

Part IV.D.8, MCM 8

Comment 81: Lewisville comments that when the City of Lewisville conducts regulated capital improvement projects (CIP) construction projects, the contract requires the general contractor to develop and implement a stormwater pollution prevention plan (SWPPP or SWP3) that is shared with the City. Lewisville requests that TCEQ clarify if cities are able to utilize this optional method of authorization in this scenario or if a city is required to develop and implement its own SWPPP even where the general contractor is already obligated to provide one.

Response 81: TCEQ confirms that MS4 operators implementing the optional MCM 8 can participate in a shared SWP3 and meet the requirements of the general permit. Part VII.D.(a) has been updated with a statement to clarify this intent.