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 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 This response addresses all timely received public comments, whether or not withdrawn.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: Allen Boone Humphries Robinson, LLP (Allen Boone), Anonymous, City of Cleburne (Cleburne), Dallas Area Rapid Transit (DART), Dallas-Fort Worth Airport (DFW), City of Grand Prairie (Grand Prairie), Jones|Carter (JC), City of Mansfield (Mansfield), City of McKinney (McKinney), North Central Texas Council of Governments (NCTCOG), and the Texas Association of Builders (TAB).

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 urbanized areas (UAs) and issuing this permit provides coverage for regulated small MS4s. Under the permit, small MS4s will only be authorized to discharge following the development and implementation of a comprehensive stormwater management program (SWMP). Each regulated small MS4 operator must develop the six minimum control measures (MCMs) according to the provisions of the permit.

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, the 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 the 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 *Abilene Reporter News, Amarillo Globe News, Austin American Statesman*, *Beaumont Enterprise, Corpus Christi Caller Times, Dallas Morning News, El Paso Times, Houston Chronicle, Laredo Morning Times, McAllen Monitor, Odessa American, San Angelo Standard Times, San Antonio Express-News, Tyler Morning Telegraph,* and the *Texas Register* on August 24, 2018. A public meeting was held in Austin on September 24, 2018, and the comment period ended on that day.

COMMENTS AND RESPONSES

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

General Comments:

Comment 1: JC comments that it would helpful if the associated forms (notice of intent (NOI), notice of termination (NOT), notice of change (NOC), and the waiver form be included for public comment because it would improve consistency with the general permit.

Response 1: The contents of the NOI, NOC, NOT, and waiver forms associated with the Phase II MS4 General Permit are based on state and federal rules and request additional information deemed necessary by the Executive Director. These forms will be updated as necessary from their current versions after the general permit is issued. TCEQ reviews and provides instructions on the applicable forms and documents to ensure consistency with the corresponding general permit. TCEQ welcomes any suggested revisions to these forms at any time.

Comment 2: TAB requests that TCEQ host a website where all MS4 NOIs are posted, so the public can more easily identify and provide comments on NOIs from MS4s where they live and work.

Response 2: Once an MS4 operator applies for permit coverage and the application is reviewed and declared technically complete, the NOI and the SWMP are made available for public viewing and comment for 30 days at a public location within the MS4 area. Often those locations are offices within the MS4's city hall, public library, or other similar central office thus providing the public with easy access to these documents in the MS4's local community. During the same 30 days, the NOI and the SWMP are also available for public viewing at the TCEQ's Office of the Chief Clerk in Austin.

In addition, a new requirement in this general permit is for MS4s to post the SWMP on their website (or by TCEQ on TCEQ's website, if the MS4 does not have one) which provides another method for the public to easily access these documents. As part of the individual MS4's renewal application process, the link to the MS4's or TCEQ's website will be included in the MS4's public notice that will be published in a local newspaper in the area served by the MS4.

Part I.

Comment 3: JC asks for a definition of "decorative ponds" as the term is used in Part II of the general permit.

Response 3: Decorative ponds are 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. No changes were made to the general permit based on this comment.

Comment 4: JC states that it would be helpful to include a definition for "Implementation Plans (I-Plan)" because permittees must include target controls in their respective storm water management programs (SWMPs) to ensure compliance with the stormwater Total Maximum Daily Load (TMDL).

Response 4: In response to the comment, a definition of the term "Implementation Plan" was added to Part I of the permit: *"Implementation plan (I-Plan): Is a detailed plan of action that describes the measures or activities necessary to achieve the pollutant reductions identified in the TMDL."*

Comment 5: JC asks that the permit include a definition for "storm water pollution prevention plans (SWP3) as it pertains to construction activities."

Response 5: TCEQ declines to make the requested change to add the definition of a SWP3 as it pertains to construction activities to the general permit. The MS4 general permit already includes applicable descriptions of a SWP3 and the associated requirements. See the TPDES Construction General Permit (CGP) TXR150000 for more specific details.

Part II.

Comment 6: JC asks for clarification regarding how non-traditional MS4s applying for waiver option 1 or 2 should estimate their population within the UA. JC asks whether their current population should be based on the date of the waiver request or the 2010 U.S. Census.

Response 6: Populations for all small MS4s (traditional and non-traditional) are based on the most recent Decennial Census, which for this general permit would be the 2010 U.S. Census.

Part II.C

Comment 7: Cleburne comments that Part II.C., items 2 and 3 could be revised to include reclaimed water as another water source. For example, Cleburne suggests the following language changes:

> 2. Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or reclaimed water that meets the requirements of 30 TAC Chapter 210, or surface water sources;…
>
> 3. Discharges from potable water sources and/or reclaimed water sources that do not violate Texas Surface Water Quality Standards;…

Cleburne and McKinney suggest if these changes are made, then a definition of "reclaimed water" should be added to Part I of the permit.

Response 7: TCEQ declines to make the requested changes. Under 30 TAC Chapter 210, the discharge of reclaimed water from irrigation sites is specifically prohibited. *See* 30 TAC §210.24. Therefore, the discharge of reclaimed water from these types of irrigated sites is not appropriate for this general permit.

Part II.D.9

Comment 8: Anonymous requested the sentence in this section that states, "[F]ederal requirements related to endangered species apply to all TPDES permitted discharges, and site–specific controls may be required to ensure that protection of endangered or threatened species is achieved" should be changed to state these requirements "are" required. Anonymous comments that this will provide clarity that local ordinances and habitat conservation plans apply to private, state, and federal entities that contribute runoff to rivers and watersheds having endangered species.

Response 8: TCEQ declines to make this requested change because not all TPDES permitted discharges will affect endangered or threatened species. In areas where those discharges would occur that would potentially affect endangered or threatened species, TCEQ refers the permittee to the Texas Parks and Wildlife Department for information on what pollutants in its discharges need to be controlled with site-specific controls and/or BMPs in order to prevent adverse effects on endangered or threatened species.

Part II.E

Comment 9: Mansfield comments that on Page 24 – Part II Section E. 3 – generally an acronym is preceded by "An" instead of "A".

Response 9: TCEQ uses the term "a SWMP" throughout the permit. No changes were made in response to the comment.

Comment 10: Allen Boone comments that Part II.E. and Part VI.B.2 contain a requirement that by December 21, 2020, permittees must submit applications and annual reports online using the electronic reporting system available through the TCEQ website, unless the permittee requests and obtains an electronic filing waiver. Allen Boone wants to make sure MS4s receive a response acknowledging submission confirmation for those forms submitted electronically.

Response 10: When the electronic reporting requirement becomes operative, application forms will be submitted via the TCEQ ePermits system. The ePermits system sends the applicant multiple emails regarding the status of any applications, including a final email confirming submission and receipt of the application. Additionally, users can view the copy of their record and the acknowledgement certificate for all applications previously submitted via the ePermits system. For the electronic submission of annual reports by MS4s, TCEQ will use EPA's electronic reporting tool (NeT), which also sends the applicants an email after they sign and submit their document through NeT. EPA is still in the process of developing the small MS4 annual report module and tools. TCEQ is participating in the technical workgroup for the development of the small MS4 annual report module to ensure that the needs of the Texas MS4s are addressed.

Comment 11: DFW comments that Part II.E.4 requires a review of the SWMP in conjunction with the preparation of the annual report, with the results of the review incorporated into the annual report. DFW requests that TCEQ either provide a more specific description of additional details they expect the MS4 to identify or provide a certification box to confirm that the permittee completed an annual review. Mansfield asks how this will be accomplished. Grand Prairie comments that the requirement to review the results and to document the findings should be done as part of the measurement of the effectiveness of the BMPs, not as a separate and repetitive review process.

Response 11: The intent of reviewing the SWMP in conjunction with preparing the annual report is to ensure that the SWMP document is kept up-to-date and accurately reflects current conditions. During the preparation of the annual reports, most MS4s are already reviewing their accomplishments and evaluating what BMPs or controls worked, and which ones did not. TCEQ is still determining how to document completion of the SWMP review.

Comment 12: Allen Boone comments that Part II.E.6 requires MS4s to submit an NOC if they replace a BMP specifically identified in the SWMP with an alternative BMP. Allen Boone states that the time and cost burden associated with the change requiring an

NOC may dissuade some MS4s from improving their BMPs. Allen Boone suggests allowing MS4s to replace a BMP with an equivalent BMP without an NOC.

Response 12: The language in Part II.E.6 of the general permit was developed during discussions between EPA and TCEQ to comply with the Remand Rule that requires states to review BMPs selected by the MS4 and that certain modifications to permit conditions allow for public participation. SWMP changes during the permit term are required to follow the permit modification regulations at 40 CFR §122.62 (for changes that will change permit terms and conditions and require a public notice) or 40 CFR §122.63 (for minor modifications such as those described in Part II.E.6(a)). Therefore, only changes listed in Part II.E.6(a) of the general permit can be made without submitting an NOC.

Comment 13: JC asks for clarification in Part II.E.6(a) regarding how an MS4 with an approved NOI and SWMP should modify these documents to incorporate non-substantial changes that do not require an NOC and if the MS4 needs to provide formal correspondence to TCEQ outlining any changes to the NOI or SWMP.

Response 13: Non-substantial modifications that are listed in Part II.E.6(a) of the general permit can be made to the SWMP without notifying TCEQ (*i.e*, an NOC is not required). The SWMP document needs to be kept up-to-date, therefore the MS4 needs to ensure that the SWMP document includes the modifications made and the date the modifications were made.

Comment 14: JC asks that for all changes requiring an NOC and public notice in Part II.E.6(c) how the MS4 should demonstrate to TCEQ that all requirements were met and posted on a public website. JC comments that an affidavit is required with the newspaper publication, but no instructions are given in the general permit on website publication.

Response 14: The MS4s are required to publish the notice on the MS4's website within 30 days after the updates to the SWMP are declared technically complete by the TCEQ in order to start the 30-day public comment period. TCEQ will draft the public notice and send it to the MS4 with instructions on how to comply with the website publication process. TCEQ still is finalizing the details for this new public notice process for NOCs for MS4s and will include instructions on TCEQ's website.

Part III

Part III.A.

Comment 15: DFW comments that Part III.A.3 requires traditional MS4s to adopt or revise current ordinances or other regulatory mechanisms to control pollutants discharging into the small MS4. DFW notes that Subsection (b) describes the enforcement actions to be adopted by those non-traditional small MS4s that lack the authority to develop ordinances or implement enforcement action. DFW recommends that additional language be included in either subsection (a) or (b) describing the expectations for non-traditional MS4s, which do hold enforcement authority and have developed ordinances or other similar regulatory mechanisms. DFW asks whether

TCEQ expects a review and revision of current ordinances or regulatory mechanisms within the first two years for the non-traditional MS4s with active ordinances or similar regulations.

Response 15: The requirements in Part III.A.3.b of the general permit were continued from the existing permit without changes. TCEQ is not aware of all the potential permutations of regulatory authority by MS4s across the state. That is why the definition for non-traditional MS4s in the permit states that it includes small MS4s "that often cannot pass ordinances" and intentionally does not exclude the possibility that a non-traditional MS4, as defined by the permit, could pass ordinances.

Part III.A.6

Comment 16: DART requests the following underlined language be added to Part III.A.6:

> When the permittee does not have enforcement authority over the violator, and the violations continue after violator has been notified by the permittee, or the source of illicit discharge is outside the permittee's boundary, the permittee shall notify either the adjacent MS4 operator with enforcement authority or the appropriate TCEQ Regional Office.

DART notes that this change would address a common discharge onto rail transportation corridors that occurs from an adjacent property under the jurisdiction of another MS4.

Response 16: TCEQ agrees with the comment and the phrase was revised as suggested by the commenter except the term "MS4" was used instead of "permittee."

Comment 17: Allen Boone comments that Part III.B.1 requires the permittee to post its SWMP and annual report on its website if the MS4 has a website. Allen Boone comments that many MS4s contract with third-party consultants that post the SWMPs on websites devoted solely to stormwater management educational matters. Allen Boone requests that MS4s be able to satisfy this requirement by posting SWMPs and annual reports on third-party consultant websites. Allen Boone comments that this will ensure public access to the information while simplifying the Districts' electronic posting obligations.

Response 17: TCEQ agrees that posting on third-party websites can satisfy this requirement if the proposed process provides sufficient notice to the public where to find the MS4's SWMP and annual report documents. In the example cited where the MS4 has a website and wants to provide a link to the SWMP and annual report on a third-party website, then it would be acceptable if the link is clearly identified on the MS4's website and goes directly to the SWMP or annual report on the third-party website, *i.e.*, for the SWMP, clicking on the link on the MS4's website opens the SWMP on the third-party website without requiring navigation of the third-party website to locate. Other scenarios for acceptable publication on third-party websites can be considered by TCEQ on a case-by-case basis.

Part III.B.2

Comment 18: DART requests adding the following underlined language to Part III.B.2(a)(2):

> For non-traditional small MS4s, if illicit connections or illicit discharges are observed related to another operator's MS4, the permittee shall notify the other MS4 operator within 48 hours of discovery. If notification to the other MS4 operator is not practicable, then the permittee shall notify the appropriate TCEQ Regional Office of the possible illicit connection or illicit discharge.

DART comments that adding "or illicit discharge" provides consistent language within the section and with the enforcement measures in Part III.A.6.

Response 18: TCEQ agrees with the comment and the phrase was revised as suggested by the commenter by adding the underlined language.

Comment 19: Grand Prairie comments that Part III.B.2(a)(1) h) regarding the procedures to reduce the discharge of floatables is unnecessary as the BMPs already address how the reduction of floatables will occur.

Response 19: Part III.B.2(a)(1) of the general permit provides an overview of the procedures required for MCM 2: Illicit Discharge Detection and Elimination and item h) requires the MS4 to develop procedures to reduce the discharge of floatables in the MS4. Therefore, the MS4 needs to reference the procedure in its SWMP to acknowledge that it has a procedure, but the procedure itself does not need to be detailed in the SWMP document. Part III.B.2.(e)(3) provides a general description of the minimum requirements for meeting the reduction of floatables requirement.

Comment 20: Grand Prairie comments that in Part III.B.2(e)(3) the second paragraph states that the permittee shall maintain two locations where floatable material can be removed before the stormwater is discharged to or from the MS4. Grand Prairie requests clarification for Level 4 MS4s to determine if physical "structural" controls are necessary and asks for a definition of "structural controls" be included in the permit.

Response 20: The second paragraph of Part III.B.2(e)(3) of the general permit states that the permittee is required to maintain two locations where floatable material can be removed before stormwater is discharged. Floatable material needs to be collected at the frequency necessary for maintenance of the removal devices, but not less than twice per year. The amount of floatable material collected needs to be estimated by weight, volume, or by other practical means and this estimated amount of collected material must be included in the annual report. The term "removal devices" is a "physical structural control." The definition of "Structural Control" for purposes of this permit is already included in Part I. No changes were made to the permit as a result of this comment.

Comment 21: Grand Prairie comments that Part III.B.2(c)(6) regarding the development of procedures for inspections is unnecessary because MS4s are already required to conduct investigations for illicit discharges.

Response 21: Part III.B.2(c)(6) requires the MS4 to document their procedure for responding to complaints and for conducting follow-up inspections to ensure

corrective measures are implemented. The requirement "to document their procedures" was added to replace the term "as determined appropriate" for consistency with the Remand Rule that requires the permit language to be clear, specific, and measurable.

Part III.B.3

Comment 22: Grand Prairie comments that Part III.B.3(b)(2)(b) regarding written procedure required for soil stabilization is repetitive as the requirement requires initiation immediately and within 14 days of completion.

Response 22: TCEQ disagrees with the comment. The first part of the requirement states that the permittee is required to immediately initiate soil stabilization activities on any portion of the site where clearing, grading, excavating, or other earth disturbing activities have either permanently ceased or temporarily ceased not to resume for a period of more than 14 days. The second part requires that when the permittee initiates stabilization, they must complete the process within 14 days or as soon as practicable.

Comment 23: McKinney states that the reduction of floatables language in Part III.B.3(e)(3) is a new requirement for Phase II MS4s and request clarification on what constitutes a "removal device." McKinney asks if a trash receptacle would suffice as a "removal device." If not, McKinney requests adding a definition of this term to the permit.

Response 23: A trash receptacle, as suggested by the commenter, would not suffice as a removal device. A removal device is a pollution prevention control such as floating booms, screens, trash racks, etc., designed to capture or prevent pollution (such as floatables) in stormwater runoff. Accordingly, a removal devise is a structural control. The term "Structural Control" is defined in Part I of the permit.

Part III.B.5

Comment 24: NCTCOG asks whether the following statement in Part III.B.3(b)(2)(b) is asking for the processes that ensure compliance:

> The permittee shall develop written procedures that describes initiating and completing stabilization measures for construction sites.

Response 24: The statement means that MS4 operators will need to have a written procedure for when to initiate and when to complete stabilization of construction sites and reference that procedure in the SWMP document.

Comment 25: Grand Prairie comments that Part III.B.5(b)(5)(d) requires developing written procedures that describe the frequency and methodology of inspections, but that the frequency of inspections should already be noted in the BMP as it is measured. Grand Prairie comments that the inspection form itself is documentation that the BMP was performed and outlines the methodology.

Response 25: The intent of this requirement is to ensure there are written procedures explaining the frequency of inspections and how they are performed or conducted. The inspection forms should also include the date when the inspection was completed.

Comment 26: McKinney notes that the word "must" was added to following sentence in Part III.B.5(d)(1)(a):

> Maintenance activities for the turf landscaped portions of these areas must include mowing, fertilization, pesticide application, and irrigation. Typical pollutants include sediment, nutrients, hydrocarbons, pesticides, herbicides, and organic debris.

McKinney asks whether this means that Level 4 MS4s are now required to perform all the listed activities to stay in compliance with the permit.

Response 26: In response to the comment, TCEQ replaced the word "must" with "may" in the noted sentence.

Comment 27: McKinney comments that in Part III.B.5(d)(2), evaluation of flood control projects text was added that establishes the requirement for "assessing the impacts of the receiving water(s) for all flood control projects." McKinney asks for guidance regarding what projects would meet this requirement and whether establishing new flood control projects that address pollutant removal would be required to fulfill this requirement. Also, McKinney asks for guidance regarding the phrase "retrofitting of existing flood control devices to provide additional pollutant removal." McKinney asks whether this phrase is intended to be a low impact development (LID) requirement. Mansfield comments that this requirement will have a negative effect on flood control projects by significantly increasing costs and recommend deleting it or making it voluntary where these projects can be readily maintained. Grand Prairie comments that a flood control project on-channel would technically be out of the MS4 and not subject to the MS4 permit jurisdiction. If this provision is going to be included, Grand Prairie and NCTCOG request adding a definition of "flood control project" to the permit. NCTCOG comments that the permit does not include a definition of "flood control project."

Response 27: This requirement addresses the assessment of new and existing flood control projects and structures owned by the MS4 on receiving waters. The purpose of the phrase "retrofitting of existing flood control devices to provide additional pollutant removal" is not to meet an LID requirement, but to prevent pollutants from entering receiving waterbodies. Existing flood control projects should be evaluated for their feasibility for retrofitting to the maximum extent practicable. Flood control projects are projects designed and implemented to protect areas near a waterway from flooding due to excessive runoff from potential storms, hurricanes or water surges. TCEQ declines to delete the requirement or make it voluntary because this requirement is appropriate for Level 4 Phase II MS4 entities. The permit does not require new flood control projects to be developed, however, if they are developed, then permit conditions apply.

Comment 28: Mansfield comments that in Part III.B.7(e) that the phrase "under this optimal MCM" should read "under this optional MCM."

Response 28: TCEQ agrees with the comment and the phrase was corrected to read "under this optional MCM.".

Part IV

Comment 29: In regards to Parts II.E.1 and IV.B, JC asks whether TCEQ will notify MS4 Operators when the e-permitting system is online and available through the TCEQ website. Additionally, JC asks whether TCEQ will notify MS4 Operators if there is a delay in use of this system and if it is not ready to use by December 21, 2020.

Response 29: If the electronic reporting system is not ready by December 21, 2020, TCEQ will send notifications to the MS4 operators. Updates regarding how and when to submit applications and annual reports will also be posted on the TCEQ website.

Comment 30: JC asks whether an annual report template will be developed by TCEQ and available for use before the first reporting period is concluded and if so, when will it be available.

Response 30: The MS4 annual report template, as referenced in Part IV.B.2, will be updated to include all the requirements in the general permit, and the updated template will be available on TCEQ's website prior to the summer of 2019.

Comment 31: JC asks for additional clarity in this sentence in Part IV.B.2:

> ...if the permittee elects to report based on its fiscal year, the first reporting year will last until the end of the fiscal year following the end of the first permit year.

JC asks if there a minimum or maximum timeframe on the Reporting Year if the fiscal year does not coincide with the general permit. If so, JC asks how an MS4 determines the length of their first reporting year. Additionally, JC asks whether TCEQ will provide additional guidance on how to include efforts from the previous permit period into the first annual report in this permit term.

Response 31: Each fiscal year's annual report will report a period of 12 months. Reports that coincide with an MS4's fiscal year need to be submitted 90 days after the end of the MS4's fiscal year, including on the years when a general permit is renewed. During years of the MS4 general permit renewals, the first annual report will consist of the months from the end of the fiscal year to the date of issuance of the new general permit and the months from the effective date of the new general permit until the end of the MS4's fiscal year.

In response to the comment, the sentence in Part IV.B.2 of the general permit was revised as follows*: " ...if the permittee elects to report based on its fiscal year, the first reporting year will last until the end of the fiscal year immediately following the issuance date of this permit."*

Part VI.

Comment 32: Mansfield comments that the way Part VI.D.4 is currently written implies that MS4s must be willing to assume day-to-day operational control of SWP3 activities to comply, which contradicts Part III.B.7(c). Mansfield recommends changing the language to:

> Ensure all contractors are aware of the SWP3 requirements, are aware of party responsible for day-to-day operations of the SWP3, and who to contact concerning SWP3 requirements; and…

NCTCOG comments that few MS4s apply for the 7th MCM and notes that the majority of MS4s do not have specialized personnel who have the training and experience to properly install and maintain the types of control measures associated with a construction site and SWP3. NCTCOG comments that in most cases, there is money budgeted to pay the general contractor to provide those services under the contract, but not for the creation of a new internal position or program. NCTCOG comments that the 7th MCM would be a viable option for many more MS4s if it required that:

1) the MS4 ensures that a SWP3 is developed for the project, and lists who to contact concerning SWP3 requirements;
2) the MS4 ensures the SWP3 identifies another permitted operator who is responsible for the day-to-day operations of the SWP3 (MS4 assumes responsibility if there is no other permitted operator); and
3) the MS4 ensures the SWP3 identifies the personnel responsible for implementation of the control measures described in the plan.

Response 32: TCEQ declines to make the suggested change because it does not effectively modify the current permit language. Part III.B.7(c) describes that MS4s need to supervise contractor activities to ensure that the requirements of the SWP3 are implemented at the MS4's construction site; or the MS4 needs to ensure that the contractors have their own separate authorization under the Construction General Permit (CGP) TXR150000.

To provide some clarity about the implementation of the 7th MCM, a useful analogy would be that the MS4 would be similar to a primary operator, as defined in the CGP, with contractors working for it that are not operating as primary operators, but as contractors working for the MS4. Part VI.D.4 requires the MS4 to make the contractors aware of the requirements of the SWP3. Because the MS4 operator is acting as *the* primary operator, the contractors hired by the MS4 are not responsible for the day-to-day operational control of the activities necessary to ensure compliance with the SWP3, but the MS4 can direct contractors to carry out activities required by the SWP3. The MS4 would be ultimately responsible for meeting the requirements for final stabilization.

If an MS4 hires contractors for a construction project and it has not selected the 7th MCM, the MS4 would be required to ensure that the contractors have their own authorization (as applicable) under the CGP. If the MS4 no longer employs a primary operator for the site and the site does not meet the definition of final stabilization, the

MS4 would be required (under the TXR150000) to become a primary operator and bring the site to final stabilization.

Part VI.D.4, is a requirement for the MS4 to ensure that the contractors the MS4 has hired to perform construction through the MS4's authorization under the 7th MCM in its authorization are:

a. aware of the requirements of the SWP3 that the MS4 has developed;

b. are aware that the municipal personnel are responsible for the day-to-day operations of the SWP3; and

c. who they are required to contact concerning the requirements of the SWP3.

Part VI.D.4 is one of five SWP3 requirements the MS4 needs to implement for its authorization for construction under the 7th MCM. This requirement also reinforces the requirement in the first part of Part III.B.7.c, where the MS4 will supervise contractor activities to ensure that requirements of the SWP3 (developed by the MS4) are properly implemented.

Comment 33: Mansfield suggests changing the language in Part VI.D.5 to the following: "Ensure that the SWP3 identifies the municipal personnel responsible for oversight of the control measures described in the plan."

Response 33: TCEQ declines to make the suggested change since Part VI.D.5 of the general permit requires the SWP3 to identify the MS4s personnel responsible for the implementation of the control measures. This MS4 personnel might not be the same person who has the daily oversight of the control measures to ensure they are operating and being maintained.