EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT ON GENERAL PERMIT NO. TXR040000

The executive director of the Texas Commission on Environmental Quality (commission or TCEQ) files this Response to Public Comment (Response) on Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR040000. As required by Texas Water Code (TWC), §26.040(d) and 30 Title Texas Administrative Code (30 TAC) Section §205.3(c), before a general permit is issued, the executive director must prepare a response to all timely, relevant and material, or significant comments. The response must be made available to the public and filed with the Office of the Chief Clerk at least ten days before the commission considers the approval of the general permit. This response addresses all timely received public comments, whether or not withdrawn. Timely public comments were received from the following persons or entities:

Allan Boone Humphries Robinson LLP (Allan Boone), Brazoria County Stormwater Quality Coalition, including the City of Lake Jackson, City of Angleton, City of Alvin, City of Freeport, City of Clute, City of Richwood, Brazoria County, Brazoria Drainage District No. 4, Brazoria County Conservation and Reclamation District No. 3, Velasco Drainage District, and Angleton Drainage District (BCC), Dallas Area Rapid Transit (DART), City of Farmers Branch (Farmers Branch), Fort Bend County Stormwater Quality Coalition, including Fort Bend County Drainage District and Fort Bend County (FBCC), Geosyntec Consultants, Inc. (GCI), Hardin County Stormwater Quality Coalition, including the City of Lumberton and Hardin County (HCC), Jefferson County Stormwater Quality Coalition, including the City of Nederland, City of Groves, City of Port Neches, City of Port Arthur, Jefferson County Drainage District No. 7, and Jefferson County (JCC), City of Lewisville (Lewisville), LRGV Stormwater Task Force, comprised of the City of Brownsville, Cameron County, San Benito, La Feria, Primera, Palm Valley, City of Harlingen, Cameron County Drainage District #1, Weslaco, Donna, Alamo, San Juan, Mission, La Joya, Alton and the City of Edinburg (STF), City of Mansfield (Mansfield), City of McKinney (McKinney), Montgomery County Stormwater Quality Coalition, including the City of Conroe, The Woodlands Joint Powers Agency, and Montgomery County (MCC), Orange County Stormwater Quality Coalition, including the City of Vidor, City of Bridge City, City of Orange, City of Pinehurst, City of West Orange, Orange County, and Orange County Drainage District (OCC), North Austin Stormwater Quality Coalition, including Wells Branch MUD, North Austin MUD, and Williamson County MUD No. 13 (NAC), City of Round Rock (Round Rock), City of Sugar Land (Sugar Land), City of Temple, Tarrant County, Texas Department of Transportation (TXDOT) and Travis County Transportation Natural Resources Department (TCTNR).

Background

This general permit would authorize discharges of stormwater and certain non-stormwater discharges from small municipal separate storm sewer systems (MS4s). Federal Phase II stormwater regulations adopted by TCEQ extend stormwater permitting requirements to small MS4s located in urbanized areas 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 proposed 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 Texas Pollutant Discharge Elimination System (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. TPDES 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 (C.F.R.) §§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 C.F.R. §122.33 and §122.34.

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

Notice of availability and an announcement of public meetings for this permit were published in the *Austin American Statesman*, *Corpus Christi Daily News*, *Dallas Morning News*, *El Paso Times*, *Houston Chronicle*, *The Monitor*, *San Antonio Express-News*, and the *Texas Register* on August 24, 2012. A public meeting was held in Austin on September 24, 2012 and the comment period ended on that day as well.

General Comments

Comment: McKinney asks why the acronyms section was removed.

Response: This section is not included in other stormwater general permits and the acronyms are defined where necessary throughout the permit.

Comment: GCI notes that the terms “Level” and “Tier” are both used in the draft permit. GCI suggests that the term "Tier" be omitted and the term "Level" be used consistently throughout the permit.

Response: In response to the comment, the term “Tier” was replace with “Level” throughout in the permit.

Comment: TXDOT notes the permit uses both SWPPP and SWP3 as interchangeable acronyms and recommends using one or the other throughout the permit.

Response: In response to the comment, the acronym was standardized throughout the permit to SWP3.

Comment: TXDOT recommends in numerous sections of the permit to add language to address the possible issuance of an alternative general permit.

Response: TCEQ declines to make the requested changes because it has no plans at this time to issue an alternative general permit for any small MS4s during the proposed permit term.

Cover Page

Comment: TXDOT suggests re-wording the first sentence of the cover page as follows: “…only according to requirements and conditions set forth in this general permit…” and re-wording the final phrase of that sentence to: “…other orders of the TCEQ.”

Response: In response to the comment, the first sentence of the cover page was changed as recommended to: “Small Municipal Separate Storm Sewer systems located in the state of Texas may discharge directly to surface water in the state only according to requirements and conditions set forth in this general permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ or Commission), the laws of the State of Texas, and other orders of the TCEQ.”

Part I. – Definitions

Comment: TXDOT recommends the following edits in part (a) of the definition of “Construction Site Operator” so that it reads: “…to meet the requirements and conditions of TPDES General Permit TXR150000 – Construction General Permit;…”

Response: TCEQ declines to make the requested change because “Construction Site Operators” as defined in the permit are already required to meet the requirements in the TXR040000 Construction General Permit.

Comment: TXDOT recommends the following edits in part (b) of the definition of “Construction Site Operator” so that it reads: “…”compliance with a Stormwater Pollution Prevention Plan (SWPPP or SWP3)…” and “…to carry out activities required by the SWPPP or comply with other permit conditions.”

Response: In response to the comment, part (b) of the definition of "Construction Site Operator" was changed to: "The entity or entities that have day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with a stormwater pollution prevention plan (SWP3) for the site or other permit conditions (for example they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions)."

Comment: McKinney recommends changing the definition of "Final Stabilization" from: "A construction site where either of the following…" to "A construction site where any of the following are met…"

Response: In response the comment, the definition of "Final Stabilization" was revised as recommended to "A construction site where any of the following are met…"

Comment: McKinney comments that the definition of "Illicit Discharge includes the phrase "…discharges pursuant to this general permit…" McKinney asks whether this is a reference to "allowable discharges" as listed in Part II.C.

Response: TCEQ affirms that the term "discharges pursuant to this general permit" in the definition of "Illicit Discharges" refers to "Allowable Discharges" listed in Part II.C of the permit.

Comment: In reference to the definition of "Non-traditional MS4," McKinney asks whether there are non-traditional MS4s that can pass ordinances and if so, are they really non-traditional.

Response: 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 II.A.

Comment: TXDOT recommends adding "this" to the heading for section A. so that it reads: "Section A. Small MS4s Eligible for Authorization by this General Permit."

Response: In response to the comment, the heading for Part II.A was changed to: "Small MS4s Eligible for Authorization under this General Permit."

Comment: McKinney comments that this section concerns criteria establishing which small MS4s must seek coverage (subsections 1-3). McKinney recommends that subsections 4 and 5 should be separated from subsections 1 to 3.

Response: TCEQ declines to make the requested change because subsections 4 and 5 describe which portions of the MS4s are regulated and their respective four levels of

small MS4s. These subjects are both related to which MS4s are eligible for authorization under this general permit.

Part II.A.4

Comment: TXDOT comments that the second paragraph should be re-worded to read as follows: "For the purpose of this permit, the transportation regulated portion of a small MS4 is the land owned by the transportation authority devoted to highway used by the traveling public and located within the UA. Non-Contiguous property that does not drain into the transportation stormwater drainage system and/or is not part of the existing developed roadway system is not subject to this general permit."

Response: TCEQ declines to make the requested change because the general permit language applies not only to transportation authorities that operate highways, but also to those that operate rail systems and buses.

Part II.A.5.

Comment: TXDOT recommends adding "military bases" to the list of non-traditional MS4s in 5(b) for consistency with the definition of non-traditional MS4.

Response: In response to the comment, "military bases" was added to the list of non-traditional MS4s in Part II.A.5.(b) in the permit and "military bases" was also added to the summary in I.1.c.(2) of the fact sheet.

Comment: Craig Maske and Temple comment that the initial sentence in this paragraph is confusing. Mr. Maske asks whether the MS4 level changes only if a community annexes or de-annexes property. Mr. Maske suggests adding language in this section or in the initial sentence clarifying when an MS4 level might go up or down. Temple comments that later in this section it states that the level is based on operators of traditional small MS4s that serve a population threshold within an urbanized area and that these statements appear contradictory.

Response: The level of an MS4 can change during the permit term only if a community acquires more regulated area by annexing additional land area or if regulated area is given up by de-annexing. The level will not change based on population fluctuation during this permit term because no U.S. Census delineating population changes is scheduled until 2020. No changes were made in response to the comment.

Comment: Sugar Land asks whether, in the event of a shared SWMP between a Level 2 and a Level 3 MS4, the Level 2 MS4 operator is required to meet any or all of the Level 3 requirements.

Response: If a Level 2 MS4 and a Level 3 MS4 share a SWMP, the Level 2 MS4 will not be required to meet Level 3 permit requirements. However, the roles and responsibilities of each MS4 should be clearly defined in the SWMP.

Comment: Craig Maske notes that this section states that the population served by an MS4 is based on either the 2000 or 2010 Census data, whichever is larger. Mr. Maske comments that the population served by the MS4 should be determined by the 2010 census. Mr. Maske recommends changing the permit language so that only the 2010 census data is used to determine the population served in order to determine the MS4's corresponding level.

Response: In response to the comment, the first sentence in Part II.A.5. was changed to " This permit defines MS4 operators by the following categories, or levels, based on the population served within the 2010 UA." and the last paragraph in Part II.A.5. was changed to "For the purpose of this section "serve a population" means the residential population within the regulated portion of the small MS4 based on the 2010 census, except for non-traditional small MS4s listed in (b) above." However, once a Small MS4 is regulated based on the most current census data, it will remain regulated regardless of fluctuation in population. If possible, the MS4 may apply for a waiver for permit coverage.

Comment: Craig Maske comments that the determination of population cutoffs for each of the levels of MS4s seems arbitrary. Mr. Maske notes that there are several components of the MCMs that will require significant budget and staff time where Level 3 and 4 MS4s are treated in the same manner (such as MCM 5). Mr. Maske suggests a 60,000 upper limit on the population served by a Level 2 MS4 would be more appropriate. Mr. Maske comments that this change would decrease the burden on the smaller MS4s. Mr. Maske also requests an explanation or justification on how the various thresholds were determined. GCI asks for the basis and rationale for the small MS4 categories and the population breakpoints.

Response: The determination of population cutoffs for the four levels of MS4s are arbitrary, but are based on discussions and input from stakeholders. Initially, TCEQ had suggested only three levels. Level 1: less than 10,000, Level 2: 10,000 to 100,000, and Level 3: greater than 100.000. However, stakeholders felt that Level 2 should be divided into two levels, because MS4s with a population of 10,000 would be very different from larger MS4s and would have fewer resources than MS4s with populations up to 100,000. No changes were made in response to the comment.

Comment: McKinney comments that by creating additional levels of MS4s, TCEQ is adding layers of bureaucracy requiring additional levels of SWMP, annual report review, and oversight. McKinney also comments that this reduces the ability of MS4s to act and cooperate at a regional or watershed level.

Response: Creating different levels of small MS4s should not add bureaucracy to the MS4 stormwater program. The intent of having different levels for varying populations of small MS4s is to exempt some of the small MS4s from having to comply with some of the additional permit requirements that were added to this version of the permit. For example, only Level 4 MS4s are required to implement MCM 6, Industrial Stormwater Sources. Furthermore, MS4s of various levels could still cooperate at a regional or watershed level as long as their responsibilities are clearly defined in their SWMPs.

Part II.B.

Comment: Sugar Land comments that TCEQ should consider adding a waiver for municipal utility districts (MUDs) that: 1) are established solely as development financing mechanism, 2) are located within the city limits and jurisdiction of a larger MS4, where the larger MS4's SWMP will meet permit requirements for the MUD, 3) do not own and operate drainage or stormwater facilities, or 4) do not own or operate maintenance or operating facilities.

Response: TCEQ declines to add additional waiver options to the permit. However, MUDs meeting the conditions described by the commenter, and that do not own or operate a conveyance or system of conveyances that is designed or used for collecting or conveying stormwater, would not be considered a MS4 operator for the purposes of this permit. Therefore, those MS4s would not be regulated and would neither need to submit a NOI or a waiver.

Part II.C.

Comment: Sugar Land requests adding "sedimentation from water line repairs," to the list of allowable non-stormwater discharges in the general permit.

Response: It is possible that sedimentation from water line repairs could contain organic and inorganic pollutants, such as chemical oxygen demand, biological oxygen demand, fecal coliform bacteria, fecal streptococcus bacteria, total suspended solids, total dissolved solids, and metals. Those pollutants could violate the Texas Surface Water Quality Standards so this discharge was not added to the list of allowable non-stormwater discharges.

Comment: Sugar Land asks for clarification within the allowable non-stormwater discharges section of the meaning of the following phrase: "Dechlorinated swimming pool discharges that do not violate Texas Surface Water Quality Standards;…"

Response: Dechlorinated swimming pool discharges were allowable non-stormwater discharges in the 2007 version of the permit. The last part of the sentence "that do not violate Texas Surface Water Quality Standards" was added to the new permit to emphasize that swimming pool discharges are not allowable under this permit if the contents of the discharge would violate Texas Surface Water Quality Standards.

Part II.D

Comment: GCI asks for the statutory authority to require controls greater than the maximum extent practicable (MEP) standard and to issue a stormwater permit that includes requirements that exceed the MEP standard. GCI comments that the permit includes explicit references to achieving waste load allocations (WLAs) and controlling pollutants so that discharges under the permit don't cause or contribute to violations of in-stream water quality standards. GCI comments that these provisions appear to exceed both the Clean Water Act (CWA) and TWC statutory provisions, which only

authorize municipal stormwater permits to require permit holders to reduce the discharge of pollutants to the MEP.

Response: Requiring consistency with an approved TMDL or TMDL I-Plan does not necessarily exceed the MEP standard. TWC §26.040 authorizes TCEQ to issue general permits for the discharge of stormwater. The general permit rules in 30 TAC §205.4(a) state that a "qualified discharger may obtain authorization to operate under a general permit by complying with the general permit's conditions for gaining coverage." That regulatory language, does not limit the permit from having requirements that go beyond the CWA or other TWC provisions. However, the permit could not be less stringent than other applicable CWA or TWC requirements.

Part II.D.4.

Comment: GCI asks for an explanation why TCEQ chose to provide such a wide range of qualitative BMP descriptions in the permit and how can these terms assist MS4 permit holders select appropriate BMPs.

Response: TCEQ is unclear about what the commenter's concern is. MS4 operators are required to implement controls that specifically address the pollutant of concern that caused the impairments. The permit uses the term "targeted controls" to emphasize that such controls address the specific pollutant of concern. In response to the comment, the term "targeted" was used to describe controls and the term "focused" used to describe BMPs.

Comment: TXDOT comments that since the action plan to address an impairment is detailed in the TMDL I-Plan, the language should include the I-Plan and not just the TMDL. Therefore, TXDOT suggests modifying the first sentence of D.4 to read: "Discharges of the pollutant(s) of concern to impaired water bodies for which there is a TCEQ and EPA approved total maximum daily load (TMDL) are not eligible for this general permit unless they are consistent with the approved TMDL and associated Implementation Plan (I-Plan)."

Response: TCEQ declines to make the suggested change because not all TMDLs have an associated I-Plan and permittees are required to be consistent with the developed TMDLs. TMDLs are values that determine the amount of a particular pollutant a water body can receive and still attain and maintain its applicable water quality standard. A TMDL is commonly expressed as a load, with units of daily mass per unit of time, but may also be expressed in other ways. TMDLs also estimate how much the pollutant load needs to be reduced from current levels in order to achieve water quality.

Comment: TXDOT suggests replacing the word "success" with "progress" in the second paragraph of this section because "progress is the term used in Part II.D.4(a)(6) and the terms should be consistent.

Response: In response to the comment, the word "success" was replaced with the word "progress" in the second paragraph of D.4.

Comment: Allan Boone, Farmers Branch, Mansfield, Tarrant County, and STF comment that the incorporation of TTMDL requirements in MS4 permits will create economic hardships, especially on Level 1 and 2 MS4s, due to onerous new requirements. Farmers Branch notes that historically, TCEQ considered TMDL I-Plans as voluntary and they were not intended to be incorporated into MS4 permits as requirements. However, to satisfy EPA directives, the permit will allow TCEQ or EPA to enforce the "voluntary" requirements upon MS4s and not on other discharges (e.g., agricultural, oil & gas) in order to meet water quality standards on impaired waters. Farmers Branch states that if an impaired water does not meet water quality standards in the future, it is possible that costly, economically infeasible, requirements will be placed upon MS4s since it may be the only enforceable mechanism available to TCEQ or EPA for the many sources of stormwater discharges to an impaired water. Mansfield comments that a statement that "stormwater discharges into a water body with TMDL are not authorized through TXR040000 unless they are in compliance with the TMDL or I-Plan developed for that water body" is sufficient to meet the EPA guideline that permitted discharges meet water quality improvement goals. Mansfield also comments that they think EPA is using this permit process as a back door way to ultimately shift the TPDES MS4 permit from a non-point source permit type to a point source permit type. The language to require the MS4 to develop waste load allocations (WLAs) as a goal is simply an in stream point source measurement. In the opinion of Mansfield, this will ultimately lead to enforcement actions based on self-reported exceedences. Mansfield comments that all future TDMLs developed in the State of Texas by TCEQ, EPA, and stakeholder groups could require a disaggregated WLA for the MS4s discharging to the impaired water body. Mansfield notes that this will place additional workloads on State officials responsible for developing TMDLs, as well as additional work and funding expenditures for local communities, with little to no evidence that it will result in any water quality improvements. Mansfield is of the opinion that the changes being proposed in this section will not lead to improved water quality, but will lead to more stringent requirements that are more expensive to implement and the return on investment of achieving water quality goals will be diminished. McKinney comments that stormwater is a non-point source of pollution, but that the language in this section attempts to place point source requirements on stormwater. McKinney requests that the requirements be practical and attainable to the nature of stormwater and non-point source pollution. Tarrant County does not agree that the small MS4 permit is the appropriate vehicle to address TMDL requirements. Tarrant County's position is that this issue is appropriately addressed through the TMDL and TMDL I-Plan process. Tarrant County strongly objects to these requirements that go above and beyond what is required by the TMDL and I-Plan process. Tarrant County that this section include a statement that stormwater discharges into a water body with an approved TMDL are not authorized through this permit, unless they are in compliant with the TMDL or I-Plan developed for that water body.

Response: Stormwater discharge from MS4s are regulated as point-source discharges (*See* 40 CFR §122. 26) and discharges from all point-sources are required to be in compliance with water quality standards. If the receiving water bodies are impaired the MS4 operators need to implement measures to address both the impairment and the TMDLs. The TMDL I-Plans, if developed, offer additional suggestions on BMPs to

implement to make progress toward the TMDL goals. However, permittees may choose other targeted BMPs not included in the I-Plan, if they consider them more effective. TMDLs establish an aggregated 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. The I-Plans are reviewed and periodically revised to provide the means to continue the effort to eliminate the impairment and focus on the measures that are most effective in assisting with that goal. Some of these measures will most likely be used to comply with the MS4 permit and therefore, will also be included in the annual report. It is possible to calculate WLAs for the individual sources, but it can be very site specific in areas where sources are separate and distinct; and where the sources are adjacent or where they occur within each other.

Comment: Allan Boone comments that where a small MS4 discharges into an impaired water body without an approved TMDL, the burden is placed on the small MS4 not only to determine whether they may be a source of the pollutant(s) of concern, but also to ensure that the SWMP includes focused BMPs, along with corresponding measureable goals, that the small MS4 will implement, thereby creating its own TMDL I-Plan. Allen Boone comments that it is more logical to utilize the TMDL Program to detect possible concerns and to address those concerns through new or modified I-Plans, as necessary.

Response: TMDLs are conducted on impaired water bodies and because of the large number of water bodies on the Texas §303(d) list, it may take an extended period of time to conduct a TMDL project for a specific water body. The requirements in the permit identify an alternative approach in the absence of an approved TMDL. Once a TMDL and its corresponding I-Plan are under development, MS4 permittees and other stakeholders within the impaired watershed work closely to develop measures that will be implemented to improve water quality.

Comment: GCI comments that the permit appears to require small MS4 operators discharging to impaired waters with a TMDL that contains an aggregated WLA to either accept joint liability for pollutant load reductions (or progress towards load reductions) with the other points sources in the watershed or to jointly conduct the technical analysis necessary to disaggregate the WLA so that each permit holder can implement BMPs to achieve a single WLA. GCI comments that TCEQ and EPA should seek to develop TMDLs with disaggregated WLAs so that small MS4s are not put into the position of determining disaggregated WLAs for themselves and their neighbors.

Response: TMDLs establish an aggregate WLA for all stormwater sources, which includes all permitted municipal, construction, and industrial stormwater sources. The permit provides MS4 operators the option of using the aggregated WLA as their benchmark and then being jointly responsible for progress in meeting that benchmark with other MS4s in the watershed. Alternatively, MS4 operators can combine or share efforts to develop disaggregated WLAs and use that as a sub-benchmark. However, 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.

Comment: Farmers Branch comments that a thorough cost/benefit analysis of TMDL I-Plans on impaired waters is needed prior to placing such requirements as an enforceable requirement in MS4 permits. Farmers Branch notes that in other states this regulatory approach has contributed to catastrophic financial hardships for some local and county governments. The STF comments that this section amounts to a SWMP within a SWMP and comments that the STF members do not have the resources to accomplish the tasks outlined in the general permit and requests the removal of this section from the permit. Farmers Branch recommends adding a subsection (3)(d) to allow for cost/benefit analyses of any TMDL requirements. Farmers Branch comments that this additional section should make it the burden of TCEQ to prove that the requirements are cost beneficial and economically feasible.

Response: TCEQ declines to make the suggested change because there are no cost benefit analysis requirements for states when establishing non-numeric effluent limitations (BMPs). However, it should be noted as stakeholders develop TMDL I-Plans, they provide an estimate of financial assistance needed for every management measure and control action that is proposed. In addition, costs and benefits are recognized by the requirement that small MS4s establish BMPs to reduce the discharge of pollutants to the MEP. *See* 40 CFR §122.34.

Comment: GCI asks why bacteria impairments are explicitly mentioned in this section when there are numerous other types of impairments. GCI believes it would be more appropriate for permit holders to be responsible for identifying pollutants of concern and to use site specific knowledge and technical considerations to select appropriate BMPs to address them.

Response: Bacteria impairments are explicitly mentioned in the permit because bacteria impairments are the most common water quality impairment in Texas and throughout the country. The permit provides guidance on addressing bacteria impairments, which are commonly found in urbanized areas and many bacteria TMDLs have been developed or are under development in these areas in Texas. However, besides bacteria, there might be other pollutants of concern that may need to be addressed by the MS4 on a case-by-case basis.

Comment: Sugar Land asks that if a TMDL has been approved, but the TMDL I-Plan approval is still pending, when would the TMDL I-Plan BMPs be required to be included in the permittee's SWMP.

Response: The TMDL I-Plan BMPs may be included in the permittee's SWMP at any time. It is not necessary for the I-Plan to be approved for the MS4 to select targeted BMPs from it. Additionally, permittees may also incorporate other alternative BMPs not listed in the I-Plan into their SWMP.

Comment: The STF comments that since it seems that the language in this section is related to the work associated with watershed protection plans, EPA should consider allowing CWA Chapter 319 non-point source (NPS) grant funding to be used for implementation of this part of the MS4 permit. The STF thinks this would assist MS4s in meeting the requirements, in particular, in areas where bacteria is the pollutant of concern.

Response: CWA Section 319 funds may be used to fund any urban stormwater activities that are not specifically required by a draft or final NPDES/TPDES permit. Urban runoff management activities that could be eligible for Section 319(h) funding includes:

- Technical assistance to State and local stormwater programs;
- Monitoring needed to design and evaluate the effectiveness of implementation strategies;
- BMPs for pollution prevention and runoff control (except for BMPs required by a draft or final NPDES permit);
- Information and education programs,
- Technology transfer and training; and
- Development and implementation of regulations, policies, and local ordinances to address stormwater runoff.

Therefore, CWA Section 319 funds are not available to implement provisions specifically required by this Phase II MS4 general permit, but may be available to implement associated parts of the program that are not required by the permit.

Comment: GCI recommends refining the use of the terms "Benchmark," "Benchmark Goal," "Sub-Benchmark Goal," and "Measureable Goal." GCI notes that the permit uses multiple terms to describe some form of pollutant reduction target that is consistent with the underlying TMDL WLA, but does not impose a strict effluent limit. GCI agrees with this approach, but believe the permit language and terminology used can be improved to provide additional clarity. GCI suggests using the term "Action Level" instead. GCI recommends deleting the terms "Benchmark Goal" and "Sub-Benchmark Goal." GCI comments that "Benchmark Goals" should be reserved for the industrial stormwater permit and the term "Sub-Benchmark Goal" should be omitted, since it appears to refer to a disaggregated WLA used as an "Action Level," which is a more descriptive term. GCI recommends retaining the term "Measureable Goal," but only to describe permitted defined goals related to the implementation of programmatic or administrative BMPs, such as number of sites inspected or the timely adoption of a new ordinance.

Response: TCEQ agrees partly with the comment and substituted the terms “Benchmark Goal” and “Sub-Benchmark Goal” with the terms “Benchmark” and “Sub-Benchmark” respectively, but declines to use the term “Action Level.” To further explain the intent of such terms, TCEQ added paragraph (a)(3) which states: “Benchmarks are designed to assist in determining if the BMPs established are effective in addressing the pollutant(s) of concern in stormwater discharge(s) from the MS4 to the maximum extent practicable (MEP). The BMPs addressing the pollutant of concern must be re-evaluated on an annual basis for progress towards the benchmarks and modified as necessary within an adaptive management framework. These benchmarks are not numeric effluent limitations or permit conditions but intended to be guidelines for evaluating progress towards reducing pollutant discharges consistent with the benchmarks. The exceedance of a benchmark is not a permit violation and does not in itself indicate a violation of instream water quality standards.”

In addition, TCEQ removed the paragraph (3)(c) that stated: “If the small MS4 is subject to an individual WLA specifically assigned to that MS4, the benchmark goal must be the assigned WLA. Where the WLAs have been individually assigned, or where the small MS4 is the only regulated MS4 within the urbanized area that is discharging into the impaired watershed with an approved TMDL, the permittee is only responsible for progress in meeting its WLA benchmark goal.” TCEQ agrees that the term “Measurable Goal” is appropriate when related to the implementation of each of the BMPs.

Part II.D.4(a)

Comment: TXDOT comments that the word “directly” should be added to the heading of (a) so that it is consistent with D.4.(b). The revised heading would read: “Discharges Directly to Water Quality Impaired Water Bodies with an Approved TMDL.”

Response: TCEQ declines to make the suggested change. TMDLs for impaired water bodies can impact the entire watershed, so discharges anywhere in the watershed may need to comply with the TMDL or TMDL I-Plan.

Comment: TXDOT requests modifying the language in the first paragraph under (a) to read: “If the small MS4 discharges directly to an impaired water body with an approved TMDL, where stormwater has the potential to cause or contribute to the impairment, the permittee shall include in the SWMP controls targeting the pollutant(s) of concern along with any additional or modified controls (hereafter referred to as “focused controls”) required in the approved TMDL or the I-Plan and this section.” TXDOT notes there is a reference to “focused controls” in the next paragraph, but with no definition provided and the impairment controls are in the TMDL I-Plan, so it should be referenced with the TMDL.

Response: The word “directly” was not inserted because TMDLs for impaired water bodies can impact the entire watershed as described in a comment above. The term “focused controls” was changed to “targeted controls” throughout the section and “targeted BMPs” were changed to “focused BMPs” throughout the section.

Comment: Mansfield notes that the language in the first sentence of 4(a) that the permittee is required to include in their SWMP controls if "stormwater has the potential to cause or contribute to the impairment,..." Mansfield comments that stormwater nearly always has the "potential" to contribute to water quality impairments. Therefore, Mansfield recommends changing the language to "where stormwater discharges from the MS4 have been determined to contribute to the impairment." Tarrant County requests the word "directly" to be added after the word "discharges" in (a). Also, Tarrant County requests that the word "directly" to be added after the word "MS4" in the first sentence of the first paragraph. Tarrant County believes that change would make the use of the word "directly" consistent with the same use in Part II.D.4(b).

Response: TCEQ declines to make the suggested change. TPDES permits are required to meet conditions set forth in 40 CFR §122.44(d)(1)(i), which states that limitations in permits must control all pollutants that are or may "be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality." TCEQ declines to add the word "directly" to section 4(a) as explained in a previous response.

Comment: Farmers Branch recommends adding subsection 3(e) to account for impairments from bacteria from anthropogenic (naturally occurring) sources (ducks and other wildlife) that contribute bacteria to impaired water bodies with or without an approved TMDL. Farmers Branch comments that it would be anticipated that the bacteria contributions from anthropogenic sources would vary amongst MS4s, depending on the amount of wildlife habitat (e.g., ponds, lakes, bird sanctuaries, wildlife areas, etc.) and they are uncertain whether TCEQ accounts for these sources in determining aggregate or specific waste load allocations for an MS4. Allan Boone comments that with respect to impairment for bacteria, many small MS4s have minimal capacity and resources to address animal sources.

Response: TMDLs acknowledge all known potential sources of bacteria, but do not provide a specific allocation for wildlife sources. Wildlife source loading is included in the WLA for stormwater to account for wildlife sources within the MS4 or is included in the general load allocation (LA) for unregulated sources, depending on the nature of the area involved in the TMDL. Currently, there are no reliable techniques to differentiate the different types of bacteria that make up the loads conveyed to receiving waters. Bacteria source tracking techniques are difficult to interpret and there are no reliable techniques to relate the bacteria source tracking analyses to input loads in a watershed. Managing stormwater loads for the different sources would require MS4 operators to measure the different bacteria loads in runoff. This would be very difficult and resource intensive. Also, to discount the wildlife bacteria, an epidemiological study would need to be conducted. These types of studies have not been successfully conducted because of the extreme difficulty.

Part II.D.4(a)(3)

Comment: Mansfield comments that it understands the intent of this (a)(3) is to allow MS4s the ability to break down an aggregate WLA to an individual WLA. However,

Mansfield comments that the way it is written, it seems the only way to accomplish this is if all affected MS4s decide together to develop individual WLAs. Additionally, Mansfield states that the statement that an MS4 who develops an individual WLA must justify how achieving compliance with the sub-benchmark will lead to compliance with the aggregate WLA is not applicable, provided the methods for determining the sub-benchmark were appropriate (which TCEQ will be able to determine through the review of the SWMP). Mansfield states that if sub-benchmarks are developed, an MS4 discharge that meets that benchmark is by nature supporting the aggregate WLA. McKinney comments that identification of benchmark goals as written is impractical and burdensome. McKinney states that many small MS4s will not have staff trained to determine a WLA, let alone ensure its accuracy. McKinney requests eliminating the requirement and associated references for a benchmark goal and maintain the requirement for a measurable goal, which is included in (a)(2). McKinney comments that the only exception should be in the case where a stormwater WLA has been determined for the associated small MS4 thorough a TMDL or TMDL I-Plan. TxDOT requests that TCEQ delete the WLA requirement and replace the WLA with the BMPs or allowing the use of the TMDL I-Plan or provide a guideline of how to disaggregate the aggregate WLA.

Response: It is not the intent of TCEQ to develop individual WLAs for individual MS4s. The intent of (3)a. is to provide flexibility to the MS4 operator in establishing a benchmark. The MS4 operator can choose to use the aggregate WLA as a benchmark. In that case, then all MS4s in the watershed are jointly responsible for meeting that benchmark. Alternatively, they can share efforts to disaggregate the WLA by MS4 and then each would be responsible for meeting their disaggregated WLA /individual sub-benchmark.

Comment: McKinney asks that since there is no requirement for sampling and that we can assess progress in other ways, why is identifying a benchmark goal necessary.

Response: The benchmark concept is introduced to allow MS4 operators that chose to perform instream monitoring to compare their results to the WLAs developed in TMDLs.

Part II D.4(a)(5)

Comment: Mansfield and Tarrant County strongly disagree with the insertion of additional requirements beyond what would be included in a TMDL or TMDL I-Plan. If the TCEQ or EPA wish to be able to enforce lack of implementation of an I-Plan then it is sufficient to require that MS4s, where an I-Plan has been developed, include those measures in its SWMP. Mansfield and Tarrant County state that there is already a requirement written to provide justification for not implementing a BMP recommended in the I-Plan. McKinney comments that this requirement places an undue cost burden on small MS4s and without effective BMPs this requirement will likely not result in water quality benefits.

Response: If the MS4 discharges into a water body that is impaired for bacteria the MS4 operator is required to locate potential sources of bacteria and implement BMPs to address those sources. The permit provides guidance to the areas the MS4 operator may need to address such as: 1) sanitary sewer systems; 2) onsite sewage facilities; 3) illicit discharges and dumping; 4) animal sources; and 5) residential education. The MS4 would only select the categories that apply. For instance, if the MS4 does not have animal sources, such as a zoo, then BMPs that target zoos would not be applicable for that MS4. If the water body has a TMDL and an I-Plan with specific recommendations, then those BMPs most likely would have been implemented already and if not, their implementation would further strengthen the efforts that the stakeholders are already conducting under the I-Plan to improve water quality. In other words, when an I-Plan is available, the MS4 is encouraged, but not required, to use the BMPs in the I-Plan to satisfy the requirements in the permit. If the MS4 desires to implement alternative BMPs the permit allows for such flexibility. In the absence of an I-Plan, the MS4 can develop site specific BMPs for the areas of concern that apply to that MS4.

Comment: GCI comments that the permit requires permittees discharging to waters with bacteria impairments implement BMPs that shall "make improvements to sanitary sewers," "improve reporting of violations," and "strengthen controls." GCI suggests clarifying these terms by editing them to read as follows: "make improvements to sanitary sewers to reduce overflows," "improve reporting of overflows," and "strengthen sanitary sewer use requirements to reduce blockages from fats, oils, and grease."

Response: In response to the comment, the paragraph in (a)(5)a. was modified as suggested.

Comment: Mansfield asks, regarding (a)(iii) which violations of a sanitary sewer system does TCEQ anticipate will occur.

Response: Examples of violations are sanitary sewer overflows, leakage from sanitary sewers due to rupture, and blockage of sewer lines.

Comment: Tarrant County requests a concise definition for the term "Decorative Pond" used in this section.

Response: 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.

Comment: TCTNR comments that this section talks about addressing bacteria impairments should have a similar qualifier as 4.(a)(2)(b) that states: “Onsite sewage facilities for entities with appropriate jurisdiction;…” TCTNR comments that Travis County does not manage sanitary sewer systems and that TCEQ’s intent is probably not to have them addressing a sanitary system that does not belong to them.

Response: MS4s are only required to address sanitary systems that are under their jurisdiction. However, if MS4s observe discharge of any sanitary sewers into their

stormwater system, the MS4 operator should contact the owner of the system to correct the problem.

Part II.D.4(a)(6)

Comment: GCI comments that this section should be revised to refer to "Action Levels," as discussed in a previous comment. GCI also comments that paragraph (6)(a)(i) should be modified to more clearly state the difference between assessing progress towards achievement of measurable goals for BMPs selected to implement the six MCMs using program implementation indicators. GCI recommends modifying paragraph (6)(a)(ii) to acknowledge that monitoring of ambient water quality conditions to assess use attainment is fundamentally different than stormwater discharge monitoring. Stormwater outfall discharge monitoring results, even if they exceed water quality criteria, do not necessarily mean that the receiving water body is impaired or that MS4 programs are not effective. GCI urges TCEQ to provide technical guidance on how to assess progress using monitoring approaches that more holistically integrate urban runoff impacts on receiving water systems than simply end of pipe or instream water column measurements of pollutant concentrations. This guidance should refer to the methods outlined in the "Stormwater Effects Handbook: A Toolbox for Watershed Managers, Scientists, and Engineers."

Response: TCEQ declines to change the term "Benchmark Goal" to "Action Levels" but changed "Benchmark Goal" to "Benchmark" as described in a previous response. TCEQ wants to allow flexibility for MS4 operators to assess progress either via qualitative approaches by using program implementation indicators or via quantitative approaches such as monitoring or using existing data. Monitoring could involve either instream or outfall monitoring. TCEQ's intent is to provide flexibility for the MS4 operators to evaluate progress in a manner that is appropriate for their unique conditions and complexities. A detailed technical guidance is not included in the permit, since it is not the intent of TCEQ to require a specific method to assess progress.

Comment: TXDOT notes that (a)(6)(a)(i) uses "success" in the first paragraph and "progress" in the second paragraph and recommends using "progress" in both places.

Response: TCEQ declines to make the suggested change because the words "success" and "progress" are used to describe different activities. The first paragraph, where the word "success" is used, describes that the MS4 operator can report progress towards the benchmark by evaluating, if there has been success in implementing the measurable goal for the selected BMPs. For example, did the permittee meet the measurable goal by 100% ? The second paragraph, where the word "progress" is used, describes how the MS4 operator can choose to assess progress towards the benchmark. For example, what activities have been completed in order to achieve the benchmark? Assessing progress towards the benchmark can be done by using program implementation indicators such as number of sources identified or eliminated, decrease in number of illegal dumping and so forth.

Comment: TXDOT recommends re-wording the last phrase of (a)(i) to read as follows: "…increase in illegal discharge detection through illicit discharge detection and elimination, etc.; or…" TXDOT notes that only Level 4 MS4s perform dry weather screening.

Response: TCEQ declines to make the suggested change because the permit provides guidance to the MS4 operators on how to monitor progress in meeting benchmarks and determine the effectiveness of BMPs.

Comment: TXDOT recommends re-wording (6)(b) to read as follows: "Monitoring or Assessment of progress towards achieving the benchmark goal shall be reported in the annual report. The annual report shall include the benchmark goal or the measurable goal and the year(s) during the permit term that the MS4 performed either the evaluating program implementation measures option or conducted the assessing improvements in water quality option." TXDOT comments that these changes re-iterate the previous language and provides two options for monitoring or assessment of the progress. TXDOT comments that annual report should include the option that the permittee selected.

Response: Section (6)(a) discusses which methods the permittee may use to evaluate progress towards the benchmark and (6)(b) describes that the progress towards achieving the benchmark needs to be documented in the annual report. From that language, it should be clear that the permittee should document in the annual report the methods chosen pursuant to (6)(a) to determine progress towards the benchmark. No changes were made in response to this comment.

Part II D.4(a)(7)

Comment: Mansfield and Tarrant County request removal of this requirement. Mansfield states that they already must report progress in implementing BMPs to address water quality impairments in previous sections. Mansfield, Tarrant County, TXDOT, and McKinney comment that a three year timeline is too short to see effectiveness of any controls. Tarrant County comments that they must report their progress in implementing BMPs to address water quality impairments in previous sections. Mansfield and Tarrant County also note while this section may be easy to comply with at this time through annual report updates to this permit, they will not necessarily remain so in future permit terms. TXDOT requests that the 3-year timeline be changed to five years. TXDOT comments that if an approved I-Plan has a timeframe to measure specific BMP progress, and asks how the permittee will report this in the third year if progress is measured in 5 or 10 year increments. TXDOT comments that language needs to be inserted in this section that is representative of I-Plan implementation periods for BMP effectiveness assessments. Finally, TXDOT notes that an approved I-Plan could place the permittee in non-compliance with this requirement if progress is measured at time intervals greater than 3 years.

Response: The MS4 operator is required to evaluate program compliance, the appropriateness of identified BMPs, and progress towards achieving identified

measurable goals (*See* 40 CFR § 122.34). This evaluation will help the MS4 operator continuously improve the stormwater management program by identifying ineffective BMPs and selecting more appropriate BMPs. The result of the evaluation will be reported to TCEQ in the annual report. The permit requires the MS4 operator, by the end of the third year, to determine whether there is progress toward meeting the benchmark and the permit provides options on how to make this determination. For example, progress can be evaluated by using program implementation indicators such as: 1) number of sources identified and eliminated; 2) decrease in number of illegal dumping; 3) increase in illegal dumping reporting; 4) number of educational opportunities conducted; 5) reduction in Sanitary Sewer Overflows (SSOs); and 6) increase in illegal discharge detection through dry screening. Alternatively, progress can be evaluated by showing improvement in water quality. If any of those activities/BMPs have not performed as anticipated, the MS4 operator would then replace those with alternative activities/BMPs that would help optimize the stormwater management program both in terms of costs and effectiveness. The three year timeline is to evaluate the progress, so that if no progress is achieved, there is time to identify alternative strategies. This timeline is not necessarily intended to implement all those new strategies. For instance, the MS4 could evaluate progress and determine that more time is needed for a given BMP at the three year mark.

Comment: GCI comments that this section requires permit holders to identify "alternative focused BMPs" if they "observe no progress towards the benchmark goal." GCI suggests that the permit require the MS4 operator to identify additional BMPs to increase effort to achieve progress towards the identified action level. GCI further suggests that the MS4 identify additional BMP's 180 days after the conclusion of the third year of the permit. Finally, GCI recommends that the MS4 operator be required to initiate implementation of the additional BMPs during the fourth year and report on the new BMPs in the annual report due after the completion of the fourth year of the permit.

Response: If the permittee, by the third year from the effective date of the permit, does not observe any progress toward the benchmark goal, the permittee is required to identify alternative BMPs to meet the benchmark goal. The three year deadline was developed in corporation with stakeholders and EPA. TCEQ declines to make the suggested changes because they would make the permit more stringent.

Part II.D.4(b)

Comment: BCC, JCC, OCC, HCC, FBCC, MCC, and NAC are requesting that the development and implementation of focused BMPs related to impaired waters be limited to the permittees that discharge directly to water bodies that have an approved TMDL. BCC, JCC, OCC, HCC, FBCC, MCC, and NAC comment that allowing the TMDL Program to first identify the sources of pollutants and develop an I-Plan, will reduce the risk of permittees spending time and money implementing focused BMPs to address pollutants that their MS4 may not be discharging.

Response: TCEQ declines to make the suggested change. TMDLs for impaired water bodies are based on a watershed approach, so discharges anywhere within the

watershed need to comply with the TMDL. There are numerous impaired water bodies in Texas and it may take an extended period of time before a TMDL project is conducted for a specific water body. The permit provides guidance to MS4 operators on how to develop measures that will improve water quality in impaired waterbodies even if a TMDL and I-Plan have not been developed.

Comment: Mansfield recommends changing the requirement in (b)(1) to within the first two years from one year, after the permit is issued. Mansfield states that the justification for this request is that the MS4 will not have guidance from TCEQ in a timely enough manner to make the determination by the one year deadline. If the deadline to submit an SWMP to TCEQ is 180 days, and the review period is similar to the first permit, then cities will not be informed if their determination procedures meet the maximum extent practicable (MEP) requirement until nearly the end of the first year. Mansfield comments that it is necessary to monitor discharges over an extended period (really more like 3-5 years) in order to make the determination valid. Tarrant County requests the full five year permit term to implement the process to find the information requested in (a), (b), and (c) of this section.

Response: TCEQ declines to make the suggested changes. TCEQ believes that determining whether the small MS4 may be a source of the pollutants(s) of concern by referring to the CWA §303(d) list and then determining if discharges from the MS4 would likely contain the pollutant(s) of concern at levels of concern can be accomplished within one year, regardless of whether TCEQ has provided feedback on the SWMP at that point or not. If the MS4 finds that it discharges the pollutant of concern at levels of concern, it has an additional year to choose and implement BMPs to reduce the discharge of the pollutant of concern to the impaired water body and an additional year to submit the NOC and amend the SWMP to reflect changes.

Part II.D.4(b)(1)

Comment: TXDOT comments that the word "significant" should be added to the phrase in (b)(1)(a) so that it reads: "…may be a source of significant source of pollutant(s)…" TXDOT recommends this change for consistency with the language in D.4(b)(2).

Response: TCEQ declines to make the suggested change. MS4s discharging into impaired water bodies without an approved TMDL need to identify potential sources of the pollutant of concern and then determine which of those sources are likely the most significant. This determination should be done within one year of the permit effective date. The MS4 would address the significant sources first (i.e.,the most relevant and important sources and where the MS4 would get the most benefit) by developing targeted BMPs for these significant sources within two years of the effective date of the permit.

Comment: TXDOT recommends adding the word "approved to the following phrase in (b)(1)(b) so that the phrase reads: "…to an impaired water body without an approved TMDL…" TXDOT also recommends adding "target controls" to the phrase in the same sentence so that it reads: "…along with corresponding target controls, and measurable

goals…" Finally, in the same sentence, TXDOT recommends adding the phrase "to the extent practicable" to a portion of the sentence so that it reads: "…to reduce to the extent practicable, the discharge of pollutants…"

Response: TCEQ partly aggress with the comment and in response (b)(1)b. was changed so that the phrase reads: "…to an impaired water body without an approved TMDL…" The term "target controls" was not added because "focused controls" and "target controls" have an equivalent meaning. TCEQ disagrees that the last change is necessary. The federal rules already require that the permit requires MS4s to "develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants" to the MEP standard. So, the MEP standard is already implicit in the language TXDOT references. *See* 40 CFR §122.34(a).

Part II.D.4(b)(2)

Comment: Mansfield and Tarrant County ask what if the MS4 is not able to identify potential "significant" sources. Mansfield comments that this language moves the TPDES MS4 permit program further from a non-point source permit and closer to a point source permit. McKinney comments that this requirement places an undue cost burden on small MS4s and without effective BMPs this requirement will likely not result in water quality benefits. Tarrant County comments that the language proposed in the permit moves the TMDL MS4 program further from a non-point source pollution permit to a point-source permit.

Response: There are many different sources of bacteria that contribute to impairment within urbanized areas. Most of those sources are well documented. These sources are known to include septic systems, sanitary sewer systems, livestock, animal handling facilities, illicit discharges, wastewater treatment plant discharges, regrowth and re-suspension of indicator organisms in receiving waters and storm drains, urban development, pet waste, wildlife, naturalized indicator organism populations, and other sources. MS4 operators must use their knowledge of the MS4 area along with readily available information to identify the main sources of the pollutant of concern (most likely bacteria). Stormwater discharges from MS4s are regulated as point sources. *See* the definition of "point source" in 40 CFR §122. 2 and generally, 40 CFR §122.26.

Comment: GCI comments that this section requires permit holders to "identify potential significant sources" of bacteria. GCI notes that TCEQ adopted bacteria TMDLs and TCEQ I-Plans have identified and documented potential significant sources of bacteria in most urban watersheds. GCI suggests that permittees should be able to use readily available information to identify sources and select BMPs to address those sources.

Response: TCEQ encourage MS4 operators to use current research literature, TCEQ adopted bacteria TMDLs, and TCEQ prepared I-Plans when identifying potential significant sources of bacteria in the MS4. Most potential sources of bacteria are well known as described in the comment above.

Part II.D.4(b)(3)

Comment: TXDOT recommends changing the word "sampling" to "monitoring" in (b)(3).

Response: TCEQ declines to make the suggested change because the two terms are not interchangeable.

Part II.D.5

Comment: Round Rock recommends deletion of the following sentence from the Edwards Aquifer requirements in this section: "Additional agency-approved WPAPs received after the SWMP submittal must be recorded in the annual report for each respective permit year." Round Rock states that TCEQ region offices issue Water Pollution Abatement Plans (WPAP's) and notify MS4s of approval. Round Rock comments that if TCEQ state offices need notification, they could be notified on the initial approval instead of placing an extra burden on the relevant MS4.

Response: MS4s are required to submit information about the number of construction activities that occurred in their areas within the annual reports. If construction activities occur in the Edwards Recharge Zone or in the Contributing Zone, construction activities are required to meet all applicable requirements listed in 30 TAC Chapter 213 (Edwards Aquifer Rule). The rule requires that construction site operators develop WPAPs which include post construction BMPs, such as water quality basins and vegetative filter strips, designed to remove total suspended solids (TSS) loading from stormwater prior to discharge into water in the state. The WPAP is reviewed and approved by TCEQ prior to commencing any construction activities. *See* 30 TAC § 213.4(h). TCEQ also provides copies of the WPAPs to affected incorporated cities, and counties in which the construction activity will be located and receive their input during application review. *See* 30 TAC § 213.4(a)(2).

Comment: TXDOT recommends adding the reference "relating to Edwards Aquifer Rule" after the phrase "…prohibited by 30 TAC Chapter 213" for consistency with other language in this section. TXDOT also recommends adding "relating to" before the second reference to 30 TAC Chapter 213 in that section.

Response: In response to the comment, the last part of the first sentence in Part II.D.5 was changed to "…(Edwards Aquifer Rule)."

Comment: TXDOT recommends deleting the third paragraph of D.5. and replacing it with the following two sentences: "Agency-approved WPAPs that are active for the entire general permit term should be referenced in the MS4 annual report. Copies of the NOIs can be used as references."

Response: TCEQ declines to make the suggested change because the intent of the paragraph is to make the permittee list any TCEQ approved WPAPs it has in their

SWMP. Subsequent WPAPs received after the SWMP is approved by TCEQ will then be reported in the annual report for each respective year.

Comment: TCTNR comments that the address in the draft permit for the Austin Region Office is no longer accurate.

Response: In response to the comment, the address of the Austin regional office was revised to “1200 Park 35 Circle, Bldg. A, Rm 179 Austin TX 78753.”

Part II.D.9

Comment: McKinney states that the second sentence beginning with: "Federal requirements related to endangered species apply to all TPDES permitted activities..." should be better refined.

Response: TCEQ declines to make any changes to the sentence in response to this comment. As stated in the noted sentence, the Endangered Species Act (ESA) applies to all TPDES permitted activities. The permit was written in accordance with 30 TAC Chapter 307, which states that surface waters cannot be made toxic to any aquatic or terrestrial organisms. As such, the permit contains safeguards to ensure that permitting activities authorized by TCEQ do not result in a "taking" of any ESA listed species.

Part II.E.

Comment: TXDOT recommends that if a small MS4 operator elects to apply for an individual permit that the application must be submitted within 180 days instead of 90 days following the effective date of this general permit.

Response: TCEQ declines to make the requested change because 40 CFR § 122.28(b)(4)(iii), adopted by reference in 30 TAC § 205.7, requires that an owner or operator that choses to apply for an individual permit rather than continue authorization under a general permit shall submit the application no later than 90 days after publication of the general permit.

Comment: GCI comments that since the U.S. Census published the urbanized area (UA) maps in March 2012, they suggest that compliance deadlines defined relative to the release of the new UA maps should be omitted. GCI asks why TCEQ includes language referencing a future publication and why TCEQ intends to publish its own maps, when the data is publicly available through the U.S. Census website.

Response: TCEQ intends to use the UA maps published by the U.S. Census in March 2012. Therefore, in response to the comment, references to the future release of the UA maps were deleted throughout the permit and in the fact sheet.

Part II.E.3

Comment: Mansfield comments that the first paragraph references notifying TCEQ of implementation schedules including "the months and years in which the permittee will undertake the required actions." Mansfield recommends removing "months" from the sentence and just showing the year on the implementation schedule. Mansfield comments that many BMPs are implemented based on weather or other seasonal variations, and may sometimes be cancelled and rescheduled. Mansfield asks that if the month and year are written into the SWMP that a BMP will be implemented and that changes, that would require the permittee to submit a notice of change (NOC). Mansfield thinks including the month of implementation adds additional, unnecessary complications to an already complicated issue.

Response: TCEQ declines to make the suggested change. The permit states that the SWMP must include, as appropriate, the months and year in which the permittee will undertake the required actions, including interim milestones and the frequency of the action throughout the permit term. Including months and years in the SWMP is consistent with language in 40 CFR §122.34. If a BMP is cancelled or rescheduled, the SWMP would need to be updated as necessary, and a NOC would need to be submitted according to Part II.E.3 of the permit.

Comment: CGI comments that the second paragraph of this section requires permittees to assess their SWMP then modify, select, and implement new elements, as necessary. CGI comments that this appears to duplicate the program evaluation that existing permit holders were required to undertake to support their annual reporting obligations. CGI asks what criteria TCEQ intends for permit holders to use for these assessments and whether this assessment is intended to duplicate the annual report evaluation.

Response: Permittees will need to assess existing program elements when they develop their SWMP for compliance with this permit. Based on the BMP assessment, permittees will be able to identify successful program elements that they may want to continue and less successful elements that they may want to discontinue. This assessment is only done one time when the permittee develops a new SWMP consistent with the newly issued permit that includes elements that the permittee has determined are effective. In addition, permittees will need to submit annual reports reflecting their annual evaluation of their program elements.

Comment: TCTNR comments that E.(3)(a)(3) is about things that can be implemented without submitting a NOC. Additionally, TCTNR notes that this section also talks about adding additional area based on land acquired. TCTNR recommends revising it to say "adding or subtracting area" or something similar. TCTNR comments that in the situation of a county annexation by municipalities within a county decreases the MS4 of the county.

Response: In response to the comment, Part II.E.3.(a)(3) was revised to “Adding or subtracting area(s) during the permit term, such as by annexing land or if land is de-annexed.”

Part II.E.4.(b)

Comment: Tarrant County requests deletion of the words "or indirectly" in the last sentence of section (b)(7). Tarrant County comments that this change is necessary to be consistent with previous wording in this permit and because the permittee should only be required to document direct discharges into classified segments of water.

Response: TCEQ declines to make the suggested change. The language is identical to the previous version of the permit issued in 2007.

Comment: Tarrant County requests adding the word "direct" before the word "discharges" in both (b)(8) and (9) of this section to be consistent with prior wording in this permit. TXDOT comments that “discharge” in (b)(8) needs to be more fully defined.

Response: TCEQ declines to make the suggested change. Discharges can be received from other MS4s, such as from an outfall owned by another MS4 or through an interconnection to another MS4.

Part II.E.6

Comment: TXDOT asks whether the ten days referred to in this section is ten calendar days or ten business days. TXDOT recommends increasing the ten days when an operator of a MS4 changes to allow the new operator time to develop the appropriate SWMP.

Response: Allowing ten days to make this change is consistent with the TXR050000 Multi-Sector Industrial Permit and TXR150000 Construction General Permits for stormwater discharges. Unless stated as “business days,” the days are calendar days. So, in this case the deadline is ten calendar days. In response to the comment, the second sentence in E.6 was changed to: “The NOT and NOI must be submitted concurrently not more than ten (10) calendar days after the change occurs”.

Part II.E.12

Comment: TXDOT recommends adding the phrase “as appropriate” at the end of (a)(1).

Response: In response to the comment, Part II.E.12 (a)(1) was revised to: “BMPs the applicant will implement for each of the six MCMs, as appropriate;…”

Part II.F.1

Comment: GCI comments that this section requires the SWMP to define "each minimum measure and the component(s) each entity agrees to implement." CGI comments that this terminology differs from the prior permit and from 40 CFR Part 122. CGI recommends that the permit clearly refer to the following hierarchy of program elements: MCMs, BMPs, measureable goals, schedules, and responsible parties. CGI comments that jointly implemented SWMPs should specify who will be responsible for all aspects of each MCM and its implementation elements.

Response: TCEQ acknowledges the hierarchy of SWMP components: MCMs, BMPs, measurable goals, schedules, and responsible parties. To clarify this in the permit, subsection (c) which discusses MCMs was moved up before subsection (a) in Part III.A.2.

Also, in response to the comment, second sentence in Part II.F.1.(b) was changed to: "Where a separate MS4 operator is contributing to implementation of the SWMP, the SWMP must clearly define each minimum control measure and the component(s) each entity agrees to implement, within….". The revised language is consistent with the requirements of 40 CFR§ 122.35.

Part III. Stormwater Management Program

Part III.A.2.

Comment: TXDOT recommends adding the phrase "allowed by state, federal, and local law" to (a) so that it reads: "A measurable goal that includes the development of ordinances or other regulatory mechanisms, allowed by the state, federal, and local law, providing the legal authority necessary to implement and enforce the requirements of this permit, including information on any limitations to the legal authority;…"

Response: In response to the comment, Part III.A.2(b), (a) in the draft permit, was revised to: "A measurable goal that includes the development of ordinances or other regulatory mechanisms, allowed by state, federal and local law, providing the legal authority necessary to implement and enforce the requirements of this permit, including information on any limitations to the legal authority."

Comment: Tarrant County believes subsection (b) should be deleted because all information requested in this section will be documented under subsection (c) making this duplication of information.

Response: TCEQ declines to make the requested change because the requirement in subsections (b) and (c) are not identical. Subsection (b) requires a summary of written procedures used to implement the SWMP and subsection (c) requires a description of each MCM with measurable goals, and a schedule and milestones for when the MS4 operator will undertake required actions for each MCM.

Comment: TXDOT recommends adding a section (d) that states: "A description of a program or a plan of compliance with the requirements in Section D.4. (relating to Impaired Water Bodies and Total Maximum Daily Load (TMDL) Requirements)"

Response: In response to the comment, TCEQ added a section (d) that states: "A description of a program or a plan of compliance with the requirements in Part II.D.4. (relating to Impaired Water Bodies and Total Maximum Daily Load (TMDL) Requirements)."

Part III.A.3.

Comment: GCI comments that section (g) requires that permittees have the "authority to respond to violations of the BMPs required by the small MS4." GCI comments that the phrase "BMPs required by the small MS4" appears to refer to such a large number of actions, systems, activities, and controls that a violation does not appear to be manageably defined. For example, the MS4 operator might, by ordinance, require a construction site operator to secure a grading permit prior to initiating construction. This ordinance requirement itself (to secure a grading permit) would not normally be considered a BMP in the context of a SMWP, so the terminology of the provision is unclear. Also, GCI notes that most local ordinances or regulations define violations and penalties explicitly. GCI asks what does TCEQ intend by this inclusion of this provision.

Response: In response to the comment section (a)(2)(g) was revised to: "Authority to respond to non-compliance with BMPs required by the small MS4 through ordinances or other regulatory mechanism(s)."

Part III.A.3(a)

Comment: TXDOT recommends adding the phrase "or other maintenance agreements" to (a)(2)(i) so that the provision reads: "Ability to enter into interagency or interlocal agreements or other maintenance agreements, as necessary."

Response: In response to the comment, TCEQ revised the sentence (a)(2)i. to: "Ability to enter into interagency or interlocal agreements or other maintenance agreements, as necessary."

Part III.A.3(b)

Comment: TXDOT suggests modifying (b) to read: "Non-traditional small MS4s, such as counties, drainage districts, transportation entities, municipal utility districts, military bases, prisons, and universities." TXDOT comments that the proposed revisions are consistent with the non-traditional MS4 definition in the permit.

Response: In response to the comment, subsection (b) was modified to: "Non-traditional small MS4s, such as counties, drainage districts, transportation entities, municipal utility districts, military bases, prisons, and universities."

Part III.A.4.

Comment: TXDOT recommends changing the language in this section so that it reads as follows: "It is the permittee's responsibility to ensure that it has adequate resources and funding, as state tax allocations allow in some cases, to implement the requirements of this permit." TXDOT comments that it cannot operate "without tax dollars being issued by the state legislature, and has no other available means to ensure resources or funding can be made available." TXDOT also notes that it does not have the ability to set up and charge environmental fees or set up a stormwater utility.

Response: TCEQ declines to make the requested change. TCEQ recognizes that different MS4 entities may encounter different challenges in complying with the general permit, so the current more flexible language is considered appropriate.

Part III.A.6.

Comment: DART notes that the draft permit requires that when a permittee does not have enforcement authority over the violator, and the violations continue after the violator is notified by the permittee, the permittee is required to notify either the adjacent MS4 operator with enforcement authority or TCEQ. DART comments that if a violator is causing a discharge to flow onto/into the permitted MS4 from the jurisdiction of an adjacent MS4 the initial action may be to notify the adjacent MS4. DART states that this is a common scenario where a violating entity's property is adjacent to a transportation corridor that receives stormwater from an adjacent MS4.

Response: TCEQ agrees that if a violator is causing a discharge to flow onto/into the permitted MS4 from the jurisdiction of an adjacent MS4, the initial action may be to notify the adjacent MS4 and then notify TCEQ subsequently, if the violation continues.

Part III.B.

Comment: TXDOT recommends adding the phrase "as applicable" to the end of the first sentence.

Response: In response to the comment, TCEQ added the phase "as applicable" at the end of the first sentence. The sentence now reads: "Operators of small MS4s seeking coverage under this general permit shall develop and implement a SWMP that includes the following six minimum control measures (MCMs), as applicable."

Comment: TXDOT comments that it does not have industrial sources located within its MS4s. Therefore, all six MCMs cannot apply to TXDOT.

Response: TCEQ declines to revise the language because in the second sentence it is clearly stated that particular program elements only are applicable for certain levels of small MS4s.

Comment: Lewisville comments that for each of the MCMs, there is a statement in the permit that: "existing permittees shall assess program elements that were described in the previous permit, modify as necessary ..." Lewisville asks whether this language still provides permittees with the ability to remove program elements that were listed in the previous permit term, but are not essential to meet minimum requirements. Lewisville comments that many MS4s inadvertently committed to program elements in excess of the minimum requirements during the first permit term. Considering the numerous additional requirements of this permit, and local funding for stormwater activities that has remained the same, Lewisville comments that MS4s need the ability to discontinue unnecessary, outdated, or inefficient program elements in order to be able to accomplish more with existing funds and personnel.

Response: MS4s are required to develop a new SWMP for this permit term that may include brand new program elements, as applicable. In essence, MS4s either may continue program elements from the previous permit term if those elements were successful or modify or discontinue program elements that were not successful. However, program elements described in the previous permit should be individually evaluated and modified or replaced, as necessary.

Part III.B.1(a)(1)

Comment: Mansfield comments that the following statement in (a)(1) does not flow well: "Existing permittees shall assess program elements that were described in the previous permit, modify as necessary, to continue reducing the discharge of pollutants from the MS4 to MEP." Mansfield recommends replacing this sentence with the following: "Existing permittees shall continue to implement BMPs effective at reducing the discharge of pollutants of concern from the MS4 to the MEP. Modifications to previous permit BMPs or implementation of new BMPs may be necessary to meet the requirements of this permit."

Response: TCEQ declines to make the suggested changes because this language was provided by the EPA during their review of the permit. The intent is that permittees need to evaluate their program elements (i.e. BMPs) used in the previous permit term to be able to identify successful elements they may want to continue, and if necessary modify, and to identify less successful element they may want to discontinue. This is also described in a previous comment in Part II.E.3.

Part III.B.1.(a)(2)

Comment: Tarrant County requests clarification of this item "target" for documentation in the annual report. Tarrant County asks whether each target group should be listed and the amount of materials given to each group or whether the total amount of public information and outreach performed by the permittee should be reported instead.

Response: The term "target" means groups that the MS4 identifies as needing information about the SWMP, such as residents, visitors, public service employees, businesses, commercial and industrial facilities, and construction site personnel. The

annual report should include documentation of the amount of resources used to address each target group.

Part III.B.1.(b)

Comment: TXDOT recommends adding "and" to the first sentence so that the applicable portion of the sentence reads as follows: "All permittees shall involve the public, and, at minimum, comply with any state and local public notice requirements in the planning and implementation…"

Response: In response to the comment TCEQ revised the first sentence in (b) to: "All permittees shall involve the public, and at a minimum comply with any state and local public notice requirements in the planning and implementation activities related to developing and implementing the SWMP, except that correctional facilities are not required to implement this portion of the MCM."

Part III.B.2.(a)(1)

Comment: McKinney asks why only Level 4 MS4s are required to perform field screening.

Response: Field screening is a new requirement of the permit and was discussed with stakeholders when TCEQ developed the permit. Based on stakeholder comments it was introduced to Level 4 MS4s to avoid additional burden on smaller MS4s. If MS4s from Level 1, 2, or 3 chose to perform field screening as part of their Illicit Discharge Elimination programs they may do so, but it is not required.

Comment: McKinney comments that this section requires Level 2, 3, and 4 MS4s to have procedures to prevent and correct any leaking on-site sewage disposal systems. McKinney states that it is Level 1 MS4s that are likely to have a higher number of on-site disposal systems per capita than any other level, but the requirement does not apply to Level 1 MS4s.

Response: Developing procedures to correct any leaking on-site sewage disposal systems is a new requirement of the permit and was discussed with stakeholders when TCEQ developed the permit. Based on stakeholder comments it was introduced to Level 2, 3, and 4 MS4s only to avoid additional burden on Level 1 MS4s.

Comment: GCI comments that this section appears to omit a requirement for all small MS4 permit holders to have a program intended to detect illicit discharges. GCI notes that the federal regulations at 40 CFR §122.34(b)(3) requires that permit holders must "develop, implement and enforce a program to detect and eliminate illicit discharges." GCI states that the proposed permit language appears to impose inconsistent requirements on the various small MS4 Levels. GCI comments that terminology referring to the detection of illicit discharges should be made consistent throughout the permit. GCI also suggests that the permit avoid prescriptive discussion of methods of illicit discharge detection. GCI believes that all levels of small MS4 should have some

program to detect discharges, but the program should be left to the small MS4 permit holder to define using the BMP-Measurable Goal context.

Response: MCM 2. Illicit Discharge Detection and Elimination requires that all permittees, at all levels "develop, implement and enforce a program to detect, investigate, and eliminate illicit discharges into the small MS4." All permittees are required to do the requirements listed in the previous permit and requirements listed in the federal regulations at 40 CFR §122.34(b)(3). In addition to those requirements, Level 3 and 4 small MS4s are required to conduct a follow-up investigation after being notified that the illicit discharge was eliminated. Additionally, Level 4 MS4s are also required to implement a dry weather screening program that will assist the MS4 in detecting illicit discharges. The additional requirements for the various levels of MS4s were developed with input from stakeholders and were introduce to minimize additional requirements in this version of the permit on Level 1 and 2 MS4s.

Part III.B.2.(a)(2)

Comment: TCTNR comments that the first sentence addresses illicit connections or illicit discharges related to other operators of small MS4s. TCTNR comments that in their case, they are adjacent to a large MS4 and several small MS4's. TCTNR thinks the intent of this provision is for small MS4s like TCTNR to address illicit connections or illicit discharges, regardless of whether it was an issue for the small or large MS4.

Response: In response to the comment, the first sentence in (2) was changed to: "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."

Comment: TXDOT questions whether the requirement to "notify the appropriate TCEQ regional office" should be a reference to "TCEQ's Field Operations Support Division."

Response: "TCEQ regional office" is the correct term.

Part III.B.2.(c)(1)

Comment: Tarrant County recommends (c)(1)(c) be deleted because priority areas are for Level 4 MS4's only. Also, Tarrant County notes that the section references Part III.B.2.(g)(1), which does not exist in the permit.

Response: In response to the comment, the sentence in (c)(1)c. was changed to: "Priority areas identified under Part III.B.2.(e)(1), if applicable."

Comment: TXDOT recommends revising the first sentence in (c)(1) to read as follows: "All permittees shall maintain un up-do-date MS4 map, which must be kept on site or at the MS4 Operator's office and available for review by the TCEQ."

Response: TCEQ declines to make the suggested change because “the MS4 Operator’s office” is also considered on site.

Part III.B.2(c)(2)

Comment: TXDOT comments that this requirement needs to be more specific and notes that most of their attendance lists are stored at TXDOT’s website accessible only to the training coordinator. TXDOT recommends revising this section so that it reads as follows: “All permittees shall implement a method for informing or training all identified field staff that may observe an illicit discharge or illicit connection to the small MS4 as part of their assigned job responsibilities. Training program materials and available attendance lists must be maintained on site or at the MS4 operator’s office and made available for review by the TCEQ.”

Response: TCEQ declines to make the suggested change. The current language was developed with input from stakeholders when the permit was developed. It allows the permittee to decide who should attend training, but at a minimum, the training should include field staff who could observe an illicit discharge while conducting their normal job responsibilities. Administrative staff that do not have responsibilities in the field and do not work in the stormwater management program would not be expected to attend training. Attendance lists from previous trainings can be kept electronically and the phrase: “or at the MS4 operator’s office” was not added because the documentation of the training should be available for review by TCEQ and located “on site.” The term “on site” includes the MS4s operator’s office.

Part III.B.2(c)(4)

Comment: TXDOT suggests revising this section so that it reads as follows: “All permittees shall develop and maintain on site or at the MS4 operator’s office procedures for responding to illicit discharges and spills.”

Response: TCEQ declines to make the suggested change because the term “on site” already includes the MS4 operator’s office.

Part III.B.2(c)(5)

Comment: McKinney comments that the sentence in (ii) that states: "All permittees shall report to TCEQ immediately upon …any illicit flows believed to be an immediate threat to human health or the environment" should be better defined or removed because it is extremely broad and vague.

Response: TCEQ declines to make a change to this section because general permits typically use broad terms such as “adversely affecting human health or the environment” or “endanger human health or safety, or the environment.” An example can be found in the standard conditions for waste discharge permits in the 30 TAC § 305.125(9) that states: “The permittee shall report any noncompliance to the executive director which may endanger human health or safety, or the environment.”

Comment: TXDOT suggests revising (c)(5)(c)(i) to read as follows: "If and when the source of the illicit discharge has been determined, all permittees shall immediately notify the responsible party of the problem, and shall require, through ordinance or other enforcement mechanism such as utilizing the TCEQ's Field Operations Support Division, the responsible party to perform all necessary corrective actions to eliminate the illicit discharge."

Response: TCEQ declines to make the suggested change because TCEQ believes the language is appropriate and furthermore, the language is based on discussions with stakeholders when TCEQ developed the permit.

Part III.B.2.(d)(1)

Comment: McKinney asks why the requirement to conduct a follow-up investigation is not required for Level 1 and 2 MS4s. McKinney notes that at that point, the hard work is completed.

Response: Conducting follow-up investigations is a new requirement of the permit. The language was developed with input from stakeholders when TCEQ developed this permit. Based on stakeholder comments this requirement was introduced to Level 3 and 4 MS4s only to avoid additional burden on Level 1 and 2 MS4s during this permit cycle.

Comment: Tarrant County requests deleting the second paragraph that begins with the word "Operator" in (d)(1). Tarrant County comments that non-traditional small MS4s are Level 2 small MS4's. Therefore, this paragraph should not be in the section that applies to Level 3 and 4 small MS4s.

Response: In response to the comment, the second paragraph that begins with the word "Operator" in (d)(1) was deleted.

Part III B.3(a)(1)

Comment: Mansfield comments that it would be helpful for MS4s if the phrase "but may choose to do so" was added to the last sentence of the 2nd paragraph.

Response: TCEQ declines to make the requested change. The permit requires full implementation of new elements by the end of the permit term and adding the phrase "but may choose to do so" makes full implementation of new elements optional during this permit term.

Comment: Tarrant County requests clarification of the final paragraph of this section. Tarrant County asks how an MS4 will know if TCEQ waives requirements for stormwater discharges associated from a small construction site. Tarrant County also asks whether this paragraph needs to be deleted.

Response: The paragraph is included because its content is similar to language under MCM 4. Construction Site Stormwater Runoff Control in the previous TPDES Phase II

(Small) MS4 General Permit TXR040000. The intent of the language is to explain that MS4 operators are not required to enforce a program to reduce pollutant discharges from small construction sites where the construction site operator has obtained a waiver from permit requirements under the construction general permit (CGP) TXR150000. The CGP does not require a construction site operator to submit the copy of a waiver for stormwater discharges from construction sites. However, the MS4 operator may require the construction site operator to submit a copy of the waiver.

Comment: TXDOT recommends modifying the first paragraph of (a)(1) so that it reads as follows: "All permittees shall develop, implement and enforce a program requiring other operators of small and large construction activities, as defined in Part I of this general permit, who will be performing construction activities on the MS4 regulated areas to select, install, implement, and maintain stormwater control measures that prevent illicit discharges to the MEP. The program must include the development and implementation of an ordinance or other regulatory mechanism, as well as sanctions, if applicable to ensure compliance to the extent allowable under state, federal, and local law, to require erosion and sediment control."

Response: TCEQ agrees in part with the comment, and in response, the last sentence in (a)(1) was revised to: "The program must include the development and implementation of an ordinance or other regulatory mechanism, as well as sanctions to ensure compliance to the extent allowable under state, federal, and local law, to require erosion and sediment control."

Part III.B.3(b)(1)

Comment: Mansfield comments that it is unclear why the MS4 would be required to identify in the annual report changes made to BMPs from a previous permit. Mansfield comments that a new SWMP would have been submitted and the annual report should only include information related to that SWMP implementation. Mansfield recommends removing the sentence requiring submission of changes made from previous permit BMPs in the annual report.

Response: TCEQ disagrees with the comment because changes, such as changing BMPs, needs to be reflected in the annual report. The requirement was not changed from the previous permit term and is consistent with 40 CFR §122.34. Furthermore, explaining changes in BMPs from the previous permit term provide additional documentation that these BMPs were evaluated for inclusion or removal in the new permit term.

Comment: TXDOT suggests changing (b)(1) to read as follows: "All permittees shall review and update as necessary, the SWMP and MCM implementation procedures required by Part III.A.2. Any changes must be included in the annual report. Such written procedures must be maintained on site or at the MS4 operator's office or in the SWMP and made available for inspection by the TCEQ."

Response: TCEQ agrees in part with the comment and in response the second sentence in 3.(b)(1) was changed to: "Any changes must be included in the annual report."

Part III.B.3(b)(4)

Comment: McKinney comments that the language: "...all permittees shall maintain and implement....The site plan procedures must meet the following minimum requirements: ... and c. The permittee may accept a plan ..." are inconsistent. McKinney suggests adding c. as a standalone sentence, or adding the word "one" to the above sentence so that it states "...The site plan procedures must meet one of the following minimum requirements:"

Response: In response to the comment, the last sentence c. was changed to a standalone sentence that reads as follows: "The permittee may require and accept a plan, such as a SWP3, that has been developed pursuant to the CGP, TXR150000."

Comment: Tarrant County comments that the current stormwater construction general permit does not require TCEQ to review a SWP3 before construction begins. Therefore, Tarrant County asks why small MS4s are required to review construction plans in a SWP3 prior to construction. Tarrant County comments that traditional small MS4s have the power to require this type of review, whereas non-traditional MS4s do not have the staff or storage capacity to handle the materials.

Response: The permit requires the MS4 to maintain and implement site plan review procedures; the MS4 is not necessarily required to review all construction site plans. The permit requires the MS4 to conduct periodic construction site inspections and the review of the SWP3 is an important part of the inspection procedure. The MS4 is not required to review all of the SWP3s or to inspect all construction sites.

Comment: TXDOT recommends adding the word "federal" to the first sentence so that the first part reads as follows: "To the extent allowable by state, federal, and local law..."

Response: In response to the comment, the first sentence in (b)(4) was revised to: "To the extent allowable by state, federal, and local law..."

Comment: TXDOT recommends editing the last part of the second sentence so that it reads as follows: "...located in the permittee's regulated portion of small MS4."

Response: TCEQ declines to make the suggested change because the permit uses the phrase: "regulated area" instead of the phrase: "regulated portion" throughout the permit.

Part III.B.3(b)(5)

Comment: TXDOT recommends adding the word "federal" to the first sentence so that the first part reads as follows: "To the extent allowable by state, federal, and local law..."

Response: In response to the comment, the first sentence in (b)(5) was revised to: "To the extent allowable by state, federal, and local law..."

Comment: TXDOT suggests adding the phrase “or at the MS4 operator’s office” to the second sentence of (5)(b)(i) so that the sentence reads as follows: “These procedures must be maintained on site or at the MS4 operator’s office or in the SWMP and be made available to TCEQ.”

Response: TCEQ declines to make the suggested change because the term “on site” already includes “the MS4 operator’s office.”

Comment: In subsection (5)(b)(ii),Tarrant County requests removing the word "must" from the sentence "Inspections of construction sites must..." and replace with the word "may include." Tarrant County comments that inspections are site specific and the inspector should have the flexibility and discretion to determine the needs at that particular site, which could include a brief reconnaissance visit. TXDOT recommends editing (5)(b)(ii)(2) to read as follows: “If necessary, conduct a thorough site inspection to determine if control measures have been selected, installed, implemented, and maintained to meet the TPDES CGP TXR150000 requirements.”

Response: TCEQ agrees in part with the comment and in response the first sentence in (b)(ii)2. was revised to read: “Conduct a site inspection to determine if control measures have been selected, installed, implemented, and maintained according to the small MS4s requirements.” However, the remaining language is appropriate in order for the MS4 operator to conduct a proper site inspection according to 40 CFR §122.34(b)(4).

Comment: TXDOT suggests editing (5)(b)(ii)(4) to read as follows: “Record a written or electronic inspection or evaluation report.” TXDOT comments that it has an evaluation form for construction site inspections, but does not have a document titled an “inspection report.”

Response: TCEQ declines to make the suggested change because TXDOT can use its evaluation form as “inspection reports.” There are no requirements to the title of an inspection report as long as it includes, at a minimum, the requirements in subpart (b)(ii).

Part III.B.3.(b)(7)

Comment: TXDOT recommends deleting the word “stormwater” from the first sentence phrase “construction stormwater program.” TXDOT comments that it has a construction program separate from a stormwater program.

Response: TCEQ declines to make the suggested change because the intent of the language is to require MS4 operators to train staff whose job duties are related to stormwater discharges from construction sites. Therefore, the permit uses the term: “construction stormwater program.”

Part III.B.3.(c)

Comment: TXDOT recommends the first part of (3)(c)(1) so that it reads as follows: "Permittees who operate level 3 and 4 small MS4s shall maintain an inventory of all permitted active public and private construction sites. Notification to the small MS4 should be made by submittal of a copy of an NOI, or a small construction site notice, that result in a total land disturbance of one or more acres, or that result in a total land disturbance of less than one acre…"

Response: In response to the comment, the paragraph in 3(c) was changed to: "Permittees who operate level 3 and 4 small MS4s shall maintain an inventory of all permitted active public and private construction sites, that result in a total land disturbance of one or more acres or that result in a total land disturbance of less than one acre if part of a larger common plan or development or sale. Notification to the small MS4 should be made by submittal of a copy of an NOI or a small construction site notice. The permittee shall make this inventory available to the TCEQ upon request."

Part III.B.4.(a)(1)

Comment: TXDOT recommends adding "federal" to the first part of the first sentence so the applicable phrase reads as follows: "…allowable under state, federal, and local law…"

Response: In response to the comment, the first sentence in (a)(1) was changed to: "All permittees shall develop, implement and enforce a program, to the extent allowable under state, federal, and local law, to control stormwater discharges from new development and redeveloped sites that discharge into the small MS4 that disturb one acre or more, including projects that disturb less than one acre that are part of a larger common plan of development or sale."

Comment: TXDOT comments that it does not establish the stormwater program for private or public development. Therefore, TXDOT recommends editing the second sentence of this section so that it reads as follows: "The program must be established for private, public development sites, or permittees' own development sites, where applicable."

Response: TCEQ declines to make the change because the term: "public development sites" covers the suggested term: "permittees own development sites" since MS4s are public entities.

Part III.B.4.(a)(2)

Comment: Sugar Land asks whether MS4 permittees are required to enforce stormwater controls on all new development and redevelopment or is this optional based on project feasibility.

Response: MS4 operators are required to develop, implement, and enforce a program to assure the proper design, use, and maintenance of stormwater controls in new development and redeveloped sites that disturb one acre or more, including projects that disturb less than one acre, but are part of a common plan of development or sale. However, it is not always possible for an entity, such as a transportation authority, to safely install or operate BMPs. For example, BMPs that retain, detain, or slow down stormwater cannot always be installed, because in the event of a malfunction, the BMP could cause active lanes of traffic to flood and present an unacceptable risk to the traveling public. BMPs encouraging infiltration are not feasible where groundwater may migrate under the pavement section or near bridges and retaining walls. Clear zone requirements may prohibit the placement of trees (which might be planted to increase evapotranspiration), as well as the installation of structures or basins near active lanes of traffic. Additionally, the maintenance of BMPs within the right-of-way may present a safety hazard to personnel, particularly when lane closure or other traffic control is necessary.

Comment: TXDOT recommends re-wording the first sentence of this section so that it reads as follows: "All permittees shall use, to the extent allowable under state, federal, and local law, an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects within the permittees' jurisdictional areas."

Response: In response to the comment, the first sentence in (a)(2) was revised to: "All permittees shall use, to the extent allowable under state, federal, and local law and local development standards, an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects."

Comment: Mansfield recommends removing the phrase "and to" from the second sentence of this section and replacing it with "that" so that the phrase reads "that protect water quality" rather than "and to protect water quality." TXDOT suggests adding the phrase "or entity specific requirements" to the second sentence. TXDOT comments that it does not facilitate community endeavors, but has specific requirements for safe operation of vehicles on roadways.

Response: In response to the comment, the second sentence in (a)(2) was changed to: "The permittees shall establish, implement, and enforce a requirement, that owners or operators of new development and redeveloped sites design, install, implement, and maintain a combination of structural and non-structural BMPs appropriate for the community and that protects water quality." The phrase "or entity specific requirements" was not added because 40 CFR §122.34(b)(5) requires that the permittee use a combination of structural and non-structural BMPs appropriate for the community.

Part III.B.4.(b)(1)

Comment: TXDOT suggests the word “reflected” in the second sentence of this section be changed to “included” so that the applicable section reads as follows: “Any changes must be included in the annual report.”

Response: In response to the comment, the second sentence in (b)(1) was changed to: “Any changes must be included in the annual report.”

Part III.B.4.(b)(3)

Comment: McKinney notes the following language in this section: “Maintenance performed by the owner or operator of a new development…The permittee shall require operation and maintenance performed is documented and… made available for review by the small MS4" and asks through what means shall this be required and to what degree is considered acceptable operation and maintenance.

Response: The MS4 operators must require, to the extent allowable under state, federal, and local law, that owners of stormwater controls operate and maintain those controls. In many cases the controls may be located on private property and it will be necessary for the MS4 operator to establish some requirements to assure accountability and responsibility for the operation and maintenance of these controls.

Comment: Tarrant County believes this section belongs to Level 3 and 4 small MS4s and that non-traditional MS4s cannot perform these functions under current state and local law.

Response: TCEQ declines to make any changes to this section in response to the comment because it appropriately limits the requirement “to the extent allowable” under state and local law.

Comment: TXDOT suggests adding “federal” to the first sentence of this section so that the phrase now reads as follows: “to the extent allowable under state, federal, and local law.”

Response: In response to the comment, the initial phrase of the first sentence in section (b)(3) was changed to: “All permittees shall, to the extent allowable under state, federal, and local law….”

Part III.B.4.(c)

Comment: McKinney comments that this section is overly prescriptive. Additionally, McKinney comments that this subsection is redundant if the permittee is required to ensure the owner or operator is performing acceptable operation and maintenance as described in Part III, Section B. 4.(b)(2).

Response: Inspections of post-construction control measures will help MS4 operators determine if controls are properly functioning and when maintenance is required. The results of inspections will provide a status of control measures and will assist MS4s in prioritizing funding.

Part III.B.5(b)(2).

Comment: Round Rock comments that larger small MS4s may be more apt to keep electronic training records and to train large departments or departments with different work schedules, such as police or fire remotely. The current language in this section significantly limits the options for these entities. Therefore, Round Rock recommends deleting "signature" in the following sentence in the training and education section so that it reads as follows: "All permittees shall maintain a training list for inspection by TCEQ when requested." TXDOT also recommends deleting the word "signature" and replacing it with "attendance" so their proposed revised sentence reads as follows: "All permittees shall maintain a training attendance list for inspection by TCEQ when requested."

Response: In response to the comment, the first sentence of (b)(2) was changed to: "All permittees shall maintain a training attendance list for inspection by TCEQ when requested."

Part III.B.5(b)(5)

Comment: Tarrant County requests removal of the word "operations" and replaced with the word "facilities" in section (b)(5)(d). Tarrant County also requests deleting the last sentence of the section because it would cause undue financial hardship and staffing availability for Level 1 and 2 small MS4s. Tarrant County comments that nowhere else within the permit is a log of inspections required under the Pollution Prevention and Good Housekeeping for Municipal Operations section.

Response: TCEQ agrees in part with the comment and in response, section (5)(d) was changed to: "Inspection of pollution prevention measures - All pollution prevention measures implemented at permittee-owned facilities must be visually inspected at a frequency determined by the permittee to ensure they are working properly."

Comment: BCC, JCC, OCC, HCC, FBCC, MCC, and NAC request removal of the terms "pothole repair" and "saw cutting" from the list of activities identified as a permittee operation/maintenance activity that would represent a significant pollutant source. BCC, JCC, OCC, HCC, FBCC, MCC, and NAC comment that the requirements under this section should be reserved for major roadway maintenance activities, such as an overlay or grinding. BCC, JCC, OCC, HCC, FBCC, MCC, and NAC comment that requiring permittees to address pothole repair and saw cutting with pollution prevention measures could result in unnecessary delays of minor municipal repairs, which are not a major contributor to stormwater pollution.

Response: In response to the comment, section (b)(5)(i) was revised to clarify that addressing pollution prevention measures when performing pothole repair and saw cutting were options the MS4 could pursue. The statement in section (b)(5)(i) was revised to read: "Road and parking lot maintenance may include such areas as pothole repair, pavement marking, sealing, and re-paving; and section (b)5(ii) was revised to read: "Bridge maintenance may include such areas as re-chipping, grinding, and saw cutting."

Part III.B.5(c)(1)

Comment: TXDOT recommends removal of the word "or" just before "reduce" in (c)(1)(a) so that the revised phrase reads as follows: "…develop and implement an O&M program to reduce, to the maximum extent practicable…"

Response: In response to the comment, the phrase in (1)(a) was changed to: "Permittees who operate level 3 or 4 small MS4s shall develop and implement an O&M program to reduce to the maximum extent practicable…"

Part III.B.5(c)(2)

Comment: TXDOT suggests replacing the acronym "SOP" at the end of (c)(2)(a) with "O&M program."

Response: In response to the comment (2)a. was changed to: "….. in accordance with a frequency and schedule determined in the permittee's O&M program."

Part III.B.5(c)(3)

Comment: TXDOT asks whether the phrase "facilities and stormwater controls" used in this section include inlets.

Response: The term "stormwater controls" includes structural controls on the facility such as detention facilities and infiltration facilities. There is no requirement to include the location of inlets on the MS4's map.

Part III.B.5(c)(5)

Comment: Craig Maske comments that this section refers to high priority facilities, but refers to Part III.B.5.(c)(2)b., which refers to street sweeping. Mr. Maske believes the proper reference should be to Part III.B.5.(c)(4)b.

Response: In response to the comment, the reference in (5)(a) was changed to: "Part III.(c)(4)b".

Part III.B.5(c)(6)

Comment: Sugar Land asks for a definition of the term “high priority facility” used in this section.

Response: High priority facilities are facilities with a high potential to generate stormwater pollutants. These facilities must include, at a minimum, the MS4 operator’s maintenance yards, hazardous waste facilities, fuel storage locations, and other facilities where chemicals or other materials have a high potential to be discharged in stormwater. Among the factors that must be considered when giving a facility a high priority ranking are: the amount of urban pollutants stored at the site, the identification of improperly stored materials, activities that must not be performed outside (for example, changing automotive fluids, vehicle washing), proximity to waterbodies, proximity to sensitive aquifer recharge features, poor housekeeping practices, and discharge of pollutant(s) of concern to impaired water(s).

The definition of high priority facilities was added to Part I of the permit, and is based on the EPA’s “ MS4 Improvement Guide” from April 2010. The definition is as follows: “High priority facilities are facilities with a high potential to generate stormwater pollutants. These facilities must include, at a minimum, the MS4 operator’s maintenance yards, hazardous waste facilities, fuel storage locations, and other facilities where chemicals or other materials have a high potential to be discharged in stormwater. Among the factors that must be considered when giving a facility a high priority ranking are: the amount of urban pollutants stored at the site, the identification of improperly stored materials, activities that must not be performed outside (for example, changing automotive fluids, vehicle washing), proximity to waterbodies, proximity to sensitive aquifer recharge features, poor housekeeping practices, and discharge of pollutant(s) of concern to impaired water(s).”

Part III.B.5(c)(7)

Comment: BCC, JCC, OCC, HCC, FBCC, MCC, and NAC note that this section addresses inspections and requires permittees who operate a Level 3 or 4 small MS4 to implement an inspection program for high-priority permittee-owned facilities. BCC, JCC, OCC, HCC, FBCC, MCC, and NAC are requesting that this requirement be removed from the permit. They comment that municipally owned facilities that would be considered "high priority" (municipal transit facilities, municipal airports, landfills, and wastewater treatment facilities) are already regulated under the Multi-Sector General Permit (MSGP) No. TXR050000. The MSGP requires these facilities to develop a stormwater pollution prevention plan, implement BMPs, conduct employee training, develop an annual comprehensive site evaluation, and conduct routine facility inspections or discharge visual monitoring on a quarterly basis. BCC, JCC, OCC, HCC, FBCC, MCC, and NAC comment that requiring these facilities to conduct additional periodic inspections under the Phase II MS4 permit is duplicative and not cost effective.

Response: High priority facilities will typically include facilities permitted under the MSGP. However, there are other types of high priority facilities, such as maintenance

yards and chemical storage facilities that are not necessarily permitted under the MSGP. As a result, TCEQ considers it appropriate to maintain the requirement to inspect high-priority permittee-owned facilities. However, MS4 operators may combine inspections of facilities subject to the MSGP and those subject to this permit, as appropriate.

Part III.B.7

Comment: Mansfield comments that the second paragraph should read "...projects where the MS4 is a construction site operator..." rather than "...projects where the MS4 operator is a construction site operator..."

Response: In response to the comment, the second paragraph in B.7 was changed to: "This MCM is only available for projects where the small MS4 is a construction site operator or owner, and the MCM does not provide any authorization for other construction site operators at a municipal project."

Comment: Mansfield comments that the second paragraph seems to indicate that when the MS4 is the owner, and another operator has day-to-day control, the MS4 must still submit an individual NOI instead of being covered under MCM 7. Mansfield asks for clarification regarding whether MCM 7 applies only when the MS4 is both the day-to-day operator and the owner.

Response: The optional MCM 7 may authorize only the construction activities performed by the MS4 operator and those performed by contractors for the small MS4, where the small MS4 operator continues to meet the definition of construction site operator.

Comment: TXDOT comments that the phrase "...unless less stringent than the requirements of Part III.B.7" in the third sentence of this section should be more fully developed or better specified.

Response: In response to the comment, TCEQ removed the phrase "unless less stringent than the requirements of Part B.7", so the sentence now reads as follows: "When developing this measure, permittees are required to meet all requirements of, and be consistent with, applicable effluent limitation guidelines for the Construction and Development industry (40 CFR Part 450), TPDES CGP TXR150000, and Part III.B.3 of this permit."

Part III.C.6

Comment: Tarrant County requests deletion of the phrase: "A rationale statement that addresses the overall program, including how the BMPs and measurable goals were selected..." because the general information required from this statement can be found under section (c)(1)-(5).

Response: TCEQ disagrees and declines to make the suggested change. Sections (c)(1)-(5) requires a list of entities assisting with the development of the SWMP, a list of MS4

operators contributing to the development of the SWMP, a list of BMPs and measurable goals for each MCM, a schedule for the implementation of the SWMP requirements and a description of how each measurable goal will be evaluated. Section (c)(6) requires the permittee to provide a rationale statement that addresses the overall SWMP and includes an explanation of how the BMPs and measurable goals were selected.

Part IV.B.2.(i)

Comment: TXDOT comments that this section should be re-worded as follows: "The number of construction activities, greater than one (1) acre of disturbed area, that occurred within the jurisdictional area of the small MS4 (as noticed to the permittee by the construction operator), and that were not authorized under the 7th MCM."

Response: TCEQ declines to make the suggested change because only construction sites greater than 5 acres, unless they are part of a common plan of development, are required to send a site notice to the MS4 operator receiving the stormwater discharge from the construction activity.

Part VI.D.2.

Comment: TXDOT asks whether the requirement to post a construction site notice for regulated construction activities is still a requirement.

Response: It is still a requirement under this permit to post a construction site notice for regulated construction activities under MCM 7.

Additional Miscellaneous TXDOT Comments

Comment: TXDOT made a number of editorial suggestions to the draft permit without any explanation regarding why they thought the changes were appropriate. The other silent changes are listed below followed by a single response.

TXDOT recommends re-wording section (e) of the definition of "Small MS4" to read as follows: "Which was not previously identified under a National Pollutant Discharge Elimination System (NPDES) or a Texas Pollutant Discharge Elimination System (TPDES) as requiring an individual permit by meeting the definition of a medium or large municipal separate storm sewer system, as defined in 40 CFR §§122.26(b)(4) and (b)(7),unless the subject individual permit has been rescinded by TCEQ."
TXDOT recommends adding the following phrase at the end of the last sentence in the last paragraph before Part II.B.1.: "that conduct ordinary living, recreational, or industrial activities."

TXDOT recommends adding "/alternative focused BMPs" after "sub-benchmark goals" where it occurs in Part II.D.4(a)(7).

TXDOT recommends adding the phrase "separate MS4 operator" in second sentence in Part II.F.1(b) after the initial reference to the term at the beginning of the sentence so

that it reads as follows: "Where a separate MS4 operator is contributing to implementation of the SWMP, the SWMP must clearly define each minimum measure and the component(s) each separate MS4 operator agrees to implement, within which MS4 area(s) each separate MS4 operator agrees to implement, and clearly identify the separate MS4 operator."

TXDOT recommends adding the phrase "or other maintenance agreements (e.g. Municipal Maintenance Agreement)" to Part III.A.3.(b)(2)(a.) so that the first sentence reads: "Enter into interlocal agreements or other maintenance agreements (e.g., Municipal Maintenance Agreement) with municipalities where the small MS4 is located. TXDOT also recommends deleting the word "interlocal" from the second sentence.

TXDOT recommends editing the second sentence of Part III.A.3.(b)(2)(b.) to read: "In determining feasibility for entering into any agreements, the permittee shall consider all factors, including, but are not limited to, financial considerations, the willingness of the municipalities in which the small MS4 is located, and the total number of agreements needed where the small MS4 is located." TXDOT all recommends replacing the word "interlocal" with "any" in the first sentence.

TXDOT recommends adding "or obtain" and "as applicable" to the first sentence in Part III.B.1(a)(1) so that it reads: "All permittees shall develop or obtain, implement, and maintain a comprehensive stormwater education and outreach program to educate public employees, businesses, and the general public, as applicable, of hazards associated with the illegal discharges…"

TXDOT recommends revising Part III.B.2(c)(6) to read as follows: "The permittee shall conduct inspections, as determined appropriate and under their jurisdiction, in response to complaints, and shall conduct follow-up inspections as needed and appropriate to ensure that corrective measures have been implemented by the responsible party."

TXDOT recommends modifying the first sentence of Part III.B.3(b)(2) so that it reads as follows: "All permittees shall require that construction site operators implement appropriate erosion and sediment control BMPs to the extent allowable under state, federal, and local law."

TXDOT recommends editing the first sentence of Part III.B.3(b)(2)(d) to read as follows: "As an alternative to (a) through (c) above, all permittees shall ensure to the extent allowable under state, federal, and local law that all small and large construction activities on the permittees's MS4 and discharging to the small MS4 have developed and implemented a stormwater pollution prevention plan (SWP3) in accordance with the TPDES CGP TXR150000."

TXDOT recommends editing the last part of the second sentence in Part III.B.3(b)(5) so that it reads as follows: "…located within the permittee's regulated portion of small MS4."

TXDOT recommends adding the phrase "if applicable" at the end of Part III.B.3.(5)(b)(ii)(3).

TXDOT recommends adding "or evaluation" to the first sentence of Part III.B.3.(5)(c) so that it reads as follows: "Based on site inspection or evaluation findings, all permittees shall take all necessary follow-up actions…"

TXDOT recommends adding the phrase "to the extent allowable under state, federal and local law" to the end of the first sentence of the second paragraph in Part III.B.4.(a)(1)

TXDOT recommends adding the phrase "if any" to the second sentence of the second paragraph in Part III.B.4.(a)(1) so that it reads as follows: "New elements, if any, must be fully implemented…"

TXDOT recommends adding the phrase "or at the MS4 operator's office" to the third sentence in Part III.B.4.(b)(1) so that the sentence reads as follows: "Such written procedures must be maintained either on site or at the MS4 operator's office or in the SWMP and made available for inspection by TCEQ."

TXDOT recommends removing the word "assessment" in the first sentence of Part III.B.5(c)(4)(b).

Response: TCEQ declines to make any of the suggested changes because, in our opinion, they do not improve the understanding, readability, or clarity of the permit language. However, where TXDOT provided a comment with editorial suggestions or where TCEQ made changes in response to TXDOT's editorial suggestions, those comments can be found in the main body of the response to comment under the appropriate section.