

# 2018 Renewal of TPDES Small Municipal Separate Storm Sewer System (MS4) General Permit TXR040000

## *Preliminary Proposed Changes*

### **Changes for consistency with other TPDES General Permits**

1. Part I - Add a definition for *Infeasible*

Infeasible: Not technologically possible or not economically practicable and achievable in light of best industry practices.

2. Part I - Add stockpiling of fill material and demolition to the definition of *construction activity*.

Construction Activity: Includes soil disturbance activities, including clearing, grading, excavation, and other construction-related activities (e.g. stockpiling of fill material and demolition, and does...

3. Part I – Remove “Cooling ponds” from the definition of Waters of U.S. because cooling ponds are no longer defined in 40 CFR 423.11.

“Waste treatment systems, including ponds or lagoons designed to meet the requirements of CWA ~~“other than cooling ponds as defined in 40 CFR § 423.11(m) which also meet the criteria of this definition”~~ are not waters of the U.S.”

4. Part I - Add reference to both the CWA 303(d) list and the latest Texas Integrated Report of Surface Water Quality for CWA Sections 305(b) and 303(d) when identifying an impaired waterbody.

Impaired Water: A surface water body that is identified as impaired on the latest approved CWA §303(d) list, or waters with an EPA approved or established total maximum daily load (TMDL) that are found on the latest EPA approved Texas Integrated Report of Surface Water Quality for CWA Sections 305(b) and 303(d) as not meeting applicable state water quality standards.

5. Part II.D.4 – In the first paragraph, add reference to both the latest Texas Integrated Report of Surface Water Quality for CWA Sections 305(b) and 303(d) and the CWA 303(d) list when identifying an impaired waterbody.

6. Part VI. - Minimum Control Measure (MCM) 7 - Lower the benchmark value for total suspended solids (TSS) to 50 mg/L from 100 mg/L and add that analysis of benchmark samples must be obtained from a National Environmental Laboratory Accreditation Program (NELAP) certified laboratory.

### **Changes Required due to Federal Rules**

1. **NPDES Electronic Reporting Rule** – Add language to include the new eReporting Rule requirements effective on December 21, 2015. EPA will modify existing reporting system and develop tools to accept applications and reports from small MS4s electronically by December 21, 2020.
2. **Phase II MS4 Remand Rule** – Revise the general permit language for consistency with the Remand Rule requirements effective on January 9, 2017. The rule requires that small MS4 general permits need to be “clear, specific, and measurable.” The general permit needs to use “mandatory” terms. States cannot include terms such as “as

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practicable”, “as necessary”, “should”, “permittee is encouraged to,” etc. EPA also states that the term “if feasible” cannot be used, unless it is defined.

The permit language is required to be worded in a manner that will help assess compliance and track whether measurable goals have been met by the MS4.

### **Preliminary Proposed Changes for all MS4s**

#### 1. Part II.A.5, Categories of Regulated Small MS4s – first paragraph

The level of a small MS4 may change during the permit term based on the MS4 acquiring or giving up regulated area, such as by annexing land or if land is annexed away. If an MS4 annexes land that is in the UA where the MS4 is located, the MS4 must update the SWMP within 90 days to include new BMPs as applicable and must start implementing its SWMP in the new annexed areas within nine (9) months.

#### 2. Part II.D.4, Impaired water bodies and TMDL Requirements

- Where appropriate, replace the term “Benchmark” with the term “Benchmark value.”
- Add a few clarifications to the list of BMPs in Part III.D.4.(5)e such as:
  - Maintenance and operation of decorative ponds.
  - Proper disposal of pet waste.

#### 3. Add a new requirement that once per year, MS4 will check whether an impaired waterbody within its permitted area has been added to the latest 305(b)/303(d) list. Newly listed waterbodies must be addressed in the SWMP which must be updated accordingly.

#### 4. Part II.E.(3), Stormwater Management Program

- Add a new requirement that once per year, MS4s will review the SWMP in conjunction with the completion of the annual report.
- Add a new requirement that adding or subtracting land such as by annexing or de-annexing land will require a Notice of Change.

#### 5. Part III.A.(2), Content of the SWMP

- Add a new requirement that the measurable goals selected by the MS4 must be *clear, specific and measurable*.

#### 6. Part III.B.1, MCM 1 – Public Education, Outreach, and Involvement

- Add a new requirement that if an MS4 has a public website, the MS4 will publish the SWMP and annual reports on the MS4’s website.

### **Preliminary Proposed Changes for Level 4 MS4s only**

#### 1. Part III.B.2, MCM 2 - Illicit Discharge Detection and Elimination

- Clarify requirements for Level 4 MS4 programs - Identification of Priority Areas: “...MS4s shall identify priority areas likely to have illicit discharges and shall document...”

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- Add a new requirement that Level 4 MS4s must control the discharge of floatables into the MS4 – similar to the requirements in the Phase I MS4 individual permits.
2. Part III. B.5, MCM 5. Pollution Prevention and Good Housekeeping for Municipal Operations
- Add a new requirement that Level 4 MS4s must evaluate new and existing flood management project(s) to determine their impact on water quality – similar to the requirements in the Phase I MS4 individual permits.
3. Part III.B.6, MCM 6. Industrial Stormwater Sources
- Add a new requirement to the existing Level 4 Industrial Stormwater Sources MCM that the program must include priorities and procedures for inspections and establishing and implementing control measures for industrial discharges – similar to the requirements in the Phase I MS4 individual permits.

### **Examples of clear, specific, and measurable permit language**

#### Part III. Section B.1(b)

- (1) If feasible, ~~consider using~~ use public input (for example, the opportunity for public comment, or public meetings) in the implementation of the program;
- (2) If feasible, create opportunities for citizens to participate in the implementation of control measures, such as stream clean-ups, storm drain stenciling, volunteer monitoring, volunteer “Adopt-A-Highway” programs, and educational activities;

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

- (3) To the extent feasible, all permittees shall publicize and facilitate public reporting of illicit discharges or water quality impacts associated with discharges into or from the small MS4. The permittee shall provide a central contact point to receive reports; for example by including a telephone number for complaints and spill reporting.

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

- (6) Inspections –The permittee shall conduct inspections, ~~as determined appropriate~~, in response to complaints, and shall conduct follow-up inspections ~~as needed~~ to ensure that corrective measures have been implemented by the responsible party.
- (7) The permittee shall develop written procedures describing the basis for conducting inspections in response to complaints and conducting follow-up inspections.

#### Part III. Section B.2.(e)(2)

By the end of the permit term, permittees who operate level 4 small MS4s shall develop and implement a written dry weather field screening program to assist in detecting and eliminating illicit discharges to the small MS4. Dry weather field screening must consist of (1) field observations; and (2) ~~as needed~~, field screening according to item (2)(c) below.

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Part III. Section B.3.(b)

(5) Construction Site Inspections and Enforcement

- a. ~~Inspections must occur at a frequency determined by~~ The permittee must perform inspections, based on the evaluation of factors that are a threat to water quality, such as: soil erosion potential; site slope; project size and type; sensitivity of receiving waterbodies; proximity to receiving waterbodies; non-stormwater discharges; and past record of non-compliance by the operators of the construction site.
- b. Inspections must occur during the active construction phase.
  - (i) All permittees shall develop and implement, ~~and revise as necessary,~~ updated written procedures outlining the inspection and enforcement requirements. These procedures must be maintained on site or in the SWMP and be made available to TCEQ.

Part III. Section B.5.(b)

- (1) All permittees shall develop and maintain an inventory of facilities and stormwater controls that it owns and operates within the regulated area of the small MS4. ~~If feasible,~~ ~~†The inventory may~~ must include all applicable permit numbers, registration numbers, and authorizations for each facility or controls. The inventory must be available for review by TCEQ and must include, but is not limited, to the following, as applicable: