

Texas Commission on Environmental Quality
WATER QUALITY ADVISORY WORK GROUP (WQAWG)
Meeting
October 20, 2020 @ 1:30 p.m.
Virtual Meeting via MS Teams Live Event
MEETING SUMMARY

Moderator:

Gregg Easley

Welcome and Introductions

General Permit (GP) Updates:

Multi-Sector General Permit (TXR050000) Renewal

Rebecca Villalba

- This general permit regulates stormwater discharges from industrial activities. The general permit expires on August 14, 2021, and we started the renewal process Sep. 2019.
- A stakeholder meeting was held on Friday October 18th, 2019. The webcast along with a handout of proposed changes is available on our stakeholder website:
https://www.tceq.texas.gov/permitting/stormwater/stormwater_stakeholders_group.html
- The draft permit was sent to EPA on May 15, 2020, for their 90-day review. EPA's approval was received on August 20, 2020; they had no objections.
- We are currently preparing for upper management briefings and are tentatively scheduled to publish notice in December 2020 in the Texas Register and newspapers in the state. We will hold a public meeting in January 2021.
- Major proposed changes include:
 - Adding NAICS codes to SIC code tables
 - Adding items to NOC and NOIs to comply with eReporting requirement. For example, will capture industrial activities subject to federal categorical guidelines.
 - Delegation of Signatories will be filed online through STEERS.
 - Clarified reporting requirements in Part III and Part V. Made it clearer which activities are subject to federal categorical guidelines. For example, in Sector O, it is only facilities having coal pile runoff that are subject to the requirements.
 - Sector J: Added some BMPs from the CGP. For example, off-site vehicle tracking of sediments, generation of dust, dewatering of trenches and excavation, and pumping or dewatering of standing water.
 - Sector L: Added definitions for Final Cover and Intermediate Cover. Replaced trenches with units.
 - Plastic Revisions:
 - Part III.A.4. Added pollution prevention measures and controls language for all facilities handling pre-production plastics (virgin and recycled plastic resin pellets, powders, flakes, powdered additives, regrind, scrap, waste, and recycling material) to eliminate plastics in stormwater, and
 - Part V. Sector Y. Added additional SWP3 requirements to include BMPs to prevent the discharge of plastic materials in stormwater.
 - Adjusted two benchmark values – based on data collected during the current permit term:
 - Sector T: Lowered BOD from 20 mg/L to 15 mg/L.
 - Sector U (SIC 2074-2079): Lowered TSS from 100 mg/L to 50 mg/L.
- Facilities with an existing active MSGP authorization will need to renew their authorization when the renewed MSGP is issued and effective in August 2021. Facilities will have up to 90 days after the issuance date of the general permit. Remember to terminate coverage, if it is no longer needed, prior to Sep. 1, 2021, to avoid the annual WQ fee for FY22.
- The MSGP renewal process is moving along smoothly and we do not foresee any issues that would delay the issuance by the expiration date of the current MSGP.

Aquaculture General Permit (TXG130000) Renewal

Laurie Fleet

- The TCEQ is proposing to renew and amend the Aquaculture General Permit TXG130000, which authorizes the discharge of wastewater from aquaculture facilities and other activities related to aquaculture into or adjacent to water in the state. The current permit expires on April 18, 2021. The draft permit is available for review and comment. The fact sheet contains additional information about the draft permit. The comment period will end on November 2, 2020.

Concrete Batch General Permit (TXG110000) Renewal

Laurie Fleet

- The TCEQ is proposing to renew and amend the Concrete Batch Plant General Permit (TXG110000) (HTML), which authorizes discharges from ready-mixed concrete plants, concrete products plants, and their associated facilities. The current permit expires in November 2021. The TCEQ is currently developing the draft permit.

Evaporation Pond General Permit (WQG100000) Renewal

Laurie Fleet

- On September 15, 2020, the commission issued the renewal and amendment of the Evaporation Pond General Permit WQG100000, which authorizes wastewater generated by industrial or water treatment facilities to be disposed of by evaporation from surface impoundments adjacent to water in the state. **Permittees that are currently authorized under this general permit must submit a Notice of Intent form by December 14, 2020 to continue their authorization.**

Hydrostatic Test General Permit (TXG670000) Renewal

Laurie Fleet

- The TCEQ is proposing to amend the Hydrostatic Test Water General Permit TXG670000, which authorizes the discharge of hydrostatic test water from new vessels; vessels which contained raw water, potable water, or elemental gases; or vessels which contained petroleum substances or waste related to petroleum substances. The primary purpose of the amendment is to allow discharges of hydrostatic test water from new and existing vessels into water in the state from crude oil and natural gas exploration, development, and production operations to be eligible for authorization under this general permit upon the TCEQ receiving approval from the U.S. Environmental Protection Agency (EPA) to regulate these activities. The comment period ended on August 17, 2020. The commission is expected to take action on the draft permit on October 21, 2020.

New Water Treatment Plant General Permit (TXG640000)

Laurie Fleet

- On October 12, 2020, the commission issued a new general permit that authorizes the discharge of wastewater generated as a result of conventional water treatment at water treatment facilities into or adjacent to water in the state. Facilities that qualify for the general permit and discharge into water in the state, may obtain authorization under this general permit by submitting a Notice of Intent form. Facilities that qualify for the general permit and discharge adjacent to water in the state (such as land application), are not required to submit a Notice of Intent form.

Pesticide General Permit (TXG870000) Renewal

Laurie Fleet

- The TCEQ is proposing to renew and amend the Pesticides General Permit (PGP) TXG870000 (HTML), which authorizes the discharge of pesticides for the control of mosquitoes and other insects, vegetation and algae, animal pests, area-wide pests, and forest-canopy pests. The current permit expires in November 2021. The TCEQ is currently developing the draft permit.

Rule Updates:

Chapter 281 Rule Revisions (Applications Processing)

Laurie Fleet

- On October 7, 2020, the commission adopted revisions to 30 TAC Chapter 281, which provide an option for deficiency notices to be sent to the applicant via electronic mail for a more expedited application process. Applications will not be returned unless at least one certified letter is sent to the applicant.

Chapter 319 Rule Revisions (2017 Federal Analytical Method Update Rule)

Sarah Johnson

- The TCEQ initiated rulemaking to amend 30 TAC Chapter 319, General Regulations Incorporated into Permits, to clarify the alternate test procedure (ATP) process in accordance with the EPA's 2017 Clean Water Act Methods Update Rule. The rulemaking would clarify the ATP procedure to align with federal rules in 40 CFR Part 136 for discharge permits and would establish the state ATP procedure for TLAPs. Additional staff-recommended changes included the removal of an obsolete section identified in the last rules review, removal of inconsistencies, improved rule structure, use of consistent terminology, and improved readability.
- The proposed rulemaking was published in the June 5, 2020 issue of the Texas Register. The public hearing was cancelled due to COVID restrictions. The comment period closed on July 6, 2020 and no public comments were received. The rulemaking was adopted by the Commissioners on October 21, 2020, with an effective date of November 26, 2020.

Sand Mining Rule Petitions/Rulemaking in the San Jacinto River Watershed

Rebecca Villalba

- The Texas Aggregates and Concrete Association (TACA) and the Lake Houston Area Grassroots Flood Prevention Initiative (FPI) filed separate petitions for rulemaking with TCEQ on June 15, 2020, and June 23, 2020, respectively. Both organizations recommended the TCEQ adopt a new rule that would establish best management practices for commercial sand mining and other lawful purposes within the San Jacinto Watershed. The rulemaking would define specific areas within the watershed that would be regulated and would add a new chapter within the 30 TAC Chapter 311 Watershed Protection Rules.
 - On August 12, 2020, the commission approved the two petitions to initiate rulemaking with stakeholder involvement.
 - A Virtual Stakeholder meeting is scheduled for November 10, 2020 at 9:30 AM.
 - For more information about the stakeholder meeting or rulemaking petitions visit the following webpage: <https://www.tceq.texas.gov/permitting/stormwater/sand-mining-rulemaking>

Federal Steam Electric Effluent Limitation Guidelines

Mike Lindner

- Revised Effluent Limitation Guidelines for Steam Electric Power Plants, in 40 CFR Part 423, were published in the Federal Register on Tuesday, Oct. 13th.
- Permittees subject to 40 CFR Part 423 who wish to have their permits changed in accordance with the revised regulations may avail themselves of 40 CFR 122.62(a)(3)(i) https://www.ecfr.gov/cgi-bin/text-idx?SID=e08491f1ea07978951bfdb1a5a73a25d&mc=true&node=se40.24.122_162&rgn=div8
- On a practical level, according to EPA, complying with 40 CFR 122.62(a)(3)(i)(c) would comprise a permittee sending a formal letter to the TCEQ by January 11, 2021, making the request to have their permit changed to be in accordance with the revised regulations. In other words, to comply with 40 CFR 122.62(a)(3)(i)(c), permittees do not have to submit applications to revise their permits by January 11, 2021. However, in order to actually get their permit changed, of course a permittee would have to submit an application at some point—the letter would not suffice to actually get the changes made.

Program Updates:

HB2771 Implementation Activities

Laurie Fleet

- TCEQ is pleased to announce that Governor Abbott signed the application on Friday, October 9, 2020, and it was officially submitted to EPA Region 6 on Monday, October 12, 2020. The application was submitted almost a year ahead of the legislatively mandated deadline of September 1, 2021.
- As noted by EPA at the last Oil & Gas Stakeholder meeting, EPA has 30 days to review the application to determine if it is complete and has 90 days to either approve or deny the request. During the 90 day period, EPA will publish notice of and take public comment on their decision and hold a public meeting during the comment period.
- We will continue to keep stakeholders informed of the application status as it undergoes EPA review.

Revisions to the Procedures to Implement the Texas Surface Water Quality Standards

Peter Schaefer

- We are revising our IPs in-step with revisions to the Texas Surface Water Quality Standards to address changes to the Standards, to incorporate procedures worked out with EPA to address past objections to IPs, to implement new federal rules, and provide additional updates where necessary to bring the document up to date.
- We've held two stakeholder meetings (March 9 and June 30) and received stakeholder input and public comments. Visit our web page for information regarding updated sections of the IPs. A search of the words "implementation procedures" in our TCEQ web page search bar will get you there.
- Here is the link to our IPs web page: https://www.tceq.texas.gov/waterquality/standards/WQ_stds
- The following are topics proposed to be addressed in the 2021 IP Revisions.
 - Plastics- this is pre-production plastic. We are still working on addressing Plastics.
 - pH screening procedures for certain entities that discharge directly to a classified segment.
 - Procedures for Reasonable Potential Analysis for whole effluent toxicity testing will be revised in the IPs. (TCEQ reached an agreement with EPA in 2015 to address objections to past WET procedures)
 - Updates to federally listed threatened and endangered species. (Appendix B)
 - Updates to critical low-flow (7Q2) and harmonic mean (HM) flow data for classified segments. (Appendix C)
 - Updates to classified segment ambient water quality values. (Appendix D) You may recall from our June 30th stakeholder meeting that we had not yet completed updating all the segment data for this appendix. That was completed just yesterday (10/19/2020), so after some QA/QC checks, we'll be putting that updated Appendix on our web page for your viewing, consideration and comment. So, look for that in the next week or so.
 - Updates to Minimum Analytical Levels (MALs). (Appendix E) You heard from Dr. Johnson on this earlier in this meeting. These updates are necessary to ensure our MALs are compliant with 40 CFR part 136.
 - Minor changes to TDS screening procedures for chloride and sulfate in unclassified waterbodies where Whole Effluent Toxicity testing show no Reasonable Potential for toxicity. When it comes to TDS, chloride, and sulfate, there are two things we need to ensure our permits are protective of water quality: WQ Standards criteria; and aquatic life. We have numeric screening procedures to ensure that numeric water quality criteria will be maintained and Whole Effluent Toxicity testing to ensure that aquatic life in the receiving water will not be impacted.
 - Toxic pollutants without criteria. Plan to remove human health criteria from the calculations consistent with current state and federal practice.
 - Considering incorporation of Bioequivalency Factors (BEFs) for dioxin and dibenzofurans. We received comments requesting the use of the Great Lakes Bioaccumulation equivalency factors (BEFs) for dioxin and dibenzofurans, similar to the way we'd use partitioning coefficients. If reasonable potential for toxicity is found, then use the Great Lakes BEFs to calculate water quality-based effluent limitations.

- Incorporation of these factors adjusts for the fact that some of the congeners have a very low potential for bioaccumulation. Commenters request the incorporation of the bioaccumulation equivalency factors found in 40 CFR 143, Appendix F, Table 2 in TCEQ's Implementation Procedure revisions.
- Correcting general errors/omissions in current IPs.
- We hope to remain on schedule to get these revisions to our commissioners for proposal of adoption by April 2021.
- So, visit our web page, look at what we're updating and feel free to provide comments to IPCOMMNT@tceq.texas.gov

401 Water Quality Certification Rule Updates

Peter Schaefer

- This update is for anyone involved in dredge or fill activities requiring a federal 404 permit for which a 401 water quality certification is needed. There have been some changes to our 401 permitting process to address the Clean Water Act Section 401 Certification Rule which was finalized by EPA on June 1, 2020 and became effective as a rule on September 11, 2020. This rule is the result of Executive Order 13868 issued by President Trump on April 10, 2019, "Promoting Energy Infrastructure and Economic Growth".
- It is important to know that this rule now requires that applicants for 404 permits, that require 401 water quality certification request a "pre-filing" meeting with TCEQ at least 30 days prior to submitting a certification request to the U.S. Army Corps of Engineers (USACE).
- TCEQ is currently in discussions with the USACE to craft a process to implement this rule. Our goal is to maintain our current process where possible to ensure that projects that require state 401 water quality certification, will progress forward without unnecessary delays and to ensure consistent reviews between our two agencies. Before the finalization of the rule, the USACE issued a Joint TCEQ/USACE Public Notice with a Tiered approach. TCEQ would waive certification of projects with impacts below a certain size threshold if applicants were able to implement certain BMPs. That system allowed for efficient processing of smaller projects and provided incentive for applicants to reduce project impacts. It also ensures efficient and consistent noticing by having one notice for both agencies. It is uncertain whether the USACE will continue to honor this Tiered process. Regarding issuance of public notices, we do not currently have a process for issuing public notices. Issuing public notices would involve a significant effort and expenditure of resources in order to ensure proper noticing of the project, proper notification of adjacent landowners, public officials, state and federal agencies, and to ensure consistency between TCEQ and USACE permits.
- Pre-filing meeting Requests
 - For now, what we do know is that applicants for federal 404 permits that require 401 water quality certification will need to submit a pre-filing meeting request to TCEQ at least 30 days prior to submitting a certification request to the federal permitting authority (typically USACE).
 - A pre-meeting request will be granted at the discretion of the assigned TCEQ project reviewer. Documentation of the request is required by the federal permitting authority; however, it is not required that a pre-meeting actually take place. The TCEQ will accept pre-meeting requests through email.
 - Pre-meeting requests can be sent to 401Certs@tceq.texas.gov. A response email will be returned to confirm receipt of the pre-meeting request. Applicants will need to provide a copy of TCEQ's confirmation email to the federal permitting authority along with their certification request.
 - Once we work out a process with the USACE, we'll update our 401 certification web page with our new process and any new forms or documents needed to implement that process. Look here for updates: <https://www.tceq.texas.gov/permitting/401certification>
 - So please put the word out to consultants and applicants to let them know that a pre-filing meeting request is now required for all 401 water quality certifications.

- Background: On April 10, 2019, President Trump issued Executive Order 13868, “Promoting Energy Infrastructure and Economic Growth,” which directed the EPA to review Clean Water Act (CWA) Section 401 and EPA’s related regulations and guidance to determine whether the Agency’s policies should be updated or clarified. On June 1, 2020, to address Executive Order 13868, the EPA finalized the “Clean Water Act Section 401 Certification Rule” to implement the water quality certification process consistent with the text and structure of the CWA. The rule became effective September 11, 2020. The final rule addresses some key areas of the CWA Section 401 certification process, including:
 1. Timelines for Review and Action
 2. Initiating Certification
 3. Scope of Certification Review
 4. Technical Assistance
 5. Early Engagement –Promotes early engagement and coordination among project proponents, certifying authorities (the regulating entity responsibility for acting on a CWA Section 401 certification), and federal licensing and permitting agencies.

Questions & Answers

Question 1: It is my understanding that open EPA NPDES enforcement matters be transferred to TCEQ upon delegation. If that is the case, what can we expect for that process/timeline for administrative and agreed orders?

Answer: The transfer of pending enforcement actions is described in the NPDES application which will be available to the public during the Federal Register notice.

Question 2: I heard Laurie briefly mention the Concrete Batch Plant GP, is there any additional information about the updates and changes to this permit?

Answer: TCEQ is still developing the draft permit.

Question 3: On the sand mining rule, would best management practices be enforceable provisions or is that to be determined?

Answer: The requirement that BMPs be included within a permittee’s stormwater pollution prevention plan (SWP3) is an enforceable permit provision. The petitions recommend that TCEQ adopt a new rule that requires best management practices (BMPs) specific for sand mining. The specifics of the rule requirements will be developed with stakeholder involvement.

Question 4: On effluent limitation change for steam electric, would the change to permit have to be noticed to public or is it considered a minor amendment?

Answer: This would depend on the change requested. Any change requested would be ascertained to be a minor or major amendment using the same rules we have normally used to do that and noticed accordingly.

Question 5: Could Lindner explain the changes in CFR 423?

Answer: In 2015, EPA issued a final rule that set the first federal limits on the levels of toxic metals in wastewater that can be discharged from power plants.

- That rule was subject to legal challenge and the agency received two petitions for administrative reconsideration.
- In response, EPA agreed to reconsider the ELGs for two waste streams.
- The final, adopted version of the revised rule was published in the Federal Register on October 13, 2020.
- The TCEQ is still becoming familiar with the details of the final rule.

In general, the final rule does the following:

- Changes the technology basis for treatment of flue-gas desulfurization (FGD) wastewater and bottom-ash transport water.
- Revises the voluntary incentives program for FGD wastewater.

- Adds subcategories for high-flow units, low utilization units, and those that will transition away from coal combustion by 2028.
- Finalizes requirements that are tailored to facilities in these subcategories.
- Establishes new compliance dates, which are later than those in the former rule.

Question 6: Are pre-meeting requests public information? When does the public get notice about 401 certification using this process?

Answer: Yes, pre-certification meeting requests are public information. Currently, the U.S. Army Corps of Engineers (USACE) has continued to release joint public notices (TCEQ and USACE) in all but one instance. It is currently unclear if that practice will continue, but TCEQ is currently in discussions with the Corps to determine noticing procedures among other things. It's possible that each agency (TCEQ and USACE) will release their own notice, but that remains to be determined.

Question 7: Is there a summary of changes to the Aquaculture GP?

Answer: A summary of changes is included in the Fact Sheet, which is available on the following webpage: <https://www.tceq.texas.gov/permitting/wastewater/general/index.html>

Question 8: I would like to verify that the current MSGP set to expire in August 2021 will be issued in August of 2021, or do you see any potential delays at this time?

Answer: The 2021 MSGP renewal process is on track to be issued by August 14, 2021. We are tentatively scheduled to present the proposed 2021 MSGP to the Commissioners at their Agenda meeting in mid-July. At this time, we do not foresee any potential delays.

Question 9: Is there any further development on the thermal evaluation procedures of power plant thermal discharges?

Answer: EPA recently approved TCEQ Water Quality Division's request to use our draft thermal discharge evaluation procedures in a SOP-type context as we evaluate permit actions involving discharges with a thermal component. As TCEQ uses these procedures, they will coordinate with permittees as needed on a case-by-case basis.

Question 10: Can Laurie please go over the general updates to the HT General Permit?

Answer: The primary purpose of the amendment is to allow discharges of hydrostatic test water from new and existing vessels into water in the state from crude oil and natural gas exploration, development, and production operations to be eligible for authorization under this general permit upon the TCEQ receiving approval from the U.S. Environmental Protection Agency (EPA) to regulate these activities. A summary of changes is included in the Fact Sheet, which is available on the following webpage: <https://www.tceq.texas.gov/permitting/wastewater/general/index.html>

Question 11: *(This is a follow-up question to Question 6)* No, I mean for the public, when would they know that an applicant had requested a new permit using the faster executive process?

Answer: All permit applications received after September 11, 2020 are required to follow this new 401 Water Quality Certification Rule. The USACE has been providing information in their Public Notices informing readers whether the permit application was received after September 11, 2020, and therefore subject to the rule.

Question 12: For the HB2771 regarding the timeframe for EPA approving application for delegation: After the EPA holds the public meeting and addresses any public comments, how long until EPA approves the application? When the application is approved by EPA, what is the timeframe for TCEQ being the regulator for these types of facilities? Immediate or is there a transition period?

Answer: As noted by EPA at the last Oil & Gas Stakeholder meeting, EPA has 30 days to review the application to determine if it is complete and has 90 days to either approve or deny the request. If EPA approves the request, transfer of regulatory authority begins immediately. However, the revised Memorandum of Agreement, which is included in TCEQ's application for regulatory authority, outlines certain situations where permitting and enforcement actions will be retained by EPA and the trigger for transferring authority for them.

Question 13: Could you please point me to where I can get a copy of the EPA approved procedures?

Answer: TCEQ's draft thermal evaluation procedures can be found at the following link:
<https://www.tceq.texas.gov/assets/public/permitting/waterquality/standards/october/draft-evaluating-temp2017.pdf>

Question 14: Will current signatory authority delegation letters be "imported" to the STEERS, or will we need to enter those ourselves? If so, when?

Answer: You will need to answer the questions in STEERS that will look like the current form that is currently available. It will not be an upload, you will have to answer questions and sign and certify statements.

Announcements

The next WQAWG Meeting will be held on Tuesday, January 19, 2021, @ 1:30 p.m.

The next HB2771 stakeholder meeting will be held on December 10, 2020, @ 1:30 p.m. To be added to the HB2771 stakeholder list for future meetings and correspondence, please email your request to HB2771@tceq.texas.gov.

Adjournment

WQAWG website: https://www.tceq.texas.gov/permitting/wastewater/WQ_advisory_group.html

All WQAWG meetings are available by webcast by going to

<https://www.tceq.texas.gov/agency/decisions/agendas/webcasts.html> or at

<https://www.youtube.com/user/TCEQNews>

Meeting attendees

Please submit an email to Outreach@tceq.texas.gov with "WQAWG" in the subject line and include your title/contact information (business affiliation, address, and phone number) to be registered on the attendance roster. You may submit this information in advance.

Thank you