

## EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT ON TCEQ GENERAL PERMIT NO. TXR050000

The Texas Commission on Environmental Quality (commission or TCEQ) adopts this Response to Public Comment (Response) on Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR050000, the Multi Sector General Permit (MSGP) for stormwater discharges. As required by Texas Water Code (TWC), (Section) §26.040(d) and Title 30 Texas Administrative Code (30 TAC), §205.3(e), before a general permit is issued, the Executive Director (ED) must prepare a response to all timely, relevant and material, or significant comments. The response must be made available to the public and filed with the Office of the Chief Clerk at least ten days before the commission considers the approval of the general permit. This response addresses all timely received public comments, whether or not withdrawn.

Timely public comments were received from the following entities: the Association of American Railroads (**AAR**), American Electric Power (**AEP**), Associated General Contractors of Texas (**AGC**), the City of Corpus Christi (**Corpus Christi**), Dallas-Fort Worth International Airport (**DFW**), Harris County Pollution Control (**HCPC**), Hensley Industries, Inc. (**HENSLEY**), Koch Industries (**KOCH**), the Lower Colorado River Authority (**LCRA**), Merit Professional Services (**MPS**), Power Engineers, Inc. (**PEI**), Raba-Kistner Consultants, Inc. (**RKCI**), the Texas Aggregates and Concrete Association (**TACA**), the Texas Association of Clean Water Agencies (**TACWA**), the Texas Chemical Council (**TCC**), the Texas Industry Project (**TIP**), Texas Molecular Holdings LLC (**TMH**), Vanguard Environmental, Inc. (**VEI**), the WCM Group (**WCM**), the Water Environment Association of Texas (**WEAT**), and Westward Environmental, Inc. (**WESTWARD**). Timely individual comments were also received from **Alexis Ackel**, **Kortney DesCamp**, and **Warren Vantreese**.

### Background

The Multi Sector General Permit, TXR050000, authorizes discharges of stormwater associated with industrial activity and certain non-stormwater discharges from industrial facilities into surface water in the state. Federal stormwater regulations adopted by TCEQ extend stormwater permitting requirements to industrial activities and this general permit provides a mechanism for industrial facilities to continue to obtain permit coverage.

On September 14, 1998, TCEQ received delegation authority from the United States Environmental Protection Agency (EPA) to administer the National Pollutant Discharge Elimination System (NPDES) program under the TPDES program. As part of that delegation, TCEQ and EPA signed a Memorandum of Agreement (MOA) that authorizes the administration of the NPDES program by TCEQ as it applies to the State of Texas. The previous version of the TPDES general permit was issued on August 14, 2016, and expires on August 14, 2021. The amended and renewed general permit will continue to authorize industrial facilities in Texas for five years from the date it is issued.

Under the general permit, industrial facilities are authorized to discharge following the development and implementation of a stormwater pollution prevention plan (SWP3). Each SWP3 must be developed according to the minimum measures defined in the permit and must also be tailored to the specific operations and activities conducted at the industrial facility. Applicants must develop SWP3s that establish effective pollution prevention measures and best management practices (BMPs) to reduce pollution in their own stormwater discharges. Such measures and practices include limiting or prohibiting exposure of stormwater to materials, wastes, and industrial activities; good housekeeping procedures; maintenance of stormwater controls; periodic inspections; and reports to assess compliance with permit requirements and to identify necessary revisions to the SWP3.

The permit is issued under the statutory authority of: 1) TWC, §26.121, which makes it unlawful to discharge pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission, 2) TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state, and 3) TWC, §26.040, which provides the commission with authority to amend rules to authorize waste discharges by general permit. The federal stormwater regulations for discharges from industrial activities are in the federal rules at Title 40 Code of Federal Regulations (CFR) §122.26, which were adopted by reference as amended by TCEQ at 30 TAC §281.25(a).

## **Procedural Background**

The TCEQ published notice of the draft general permit to solicit public comment in the *San Antonio Express News*, *Tyler Morning Telegraph*, *Austin American Statesman*, *Amarillo Globe News*, *Odessa American*, *Fort Worth Star Telegram*, and *Texas Register* on December 11, 2020, and in the *El Paso Times* on December 15, 2020. A public meeting was held in Austin on January 11, 2021, and the comment period ended on January 14, 2021.

## **Comments and Responses**

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

### **COMMENTS:**

**Comment 1:** AGC commented that General Permits (GPs) provide a valuable and efficient alternative to individual permits while still protecting human health and the environment, while TIP commented that the MSGP is an important, effective, and efficient tool for water quality protection.

**Response 1:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback.

**Comment 2:** AGC commented in support of renewing the MSGP for five years and the clarifying changes made throughout the permit.

**Response 2:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback.

**Comment 3:** AGC commented in support of the proposed requirements to implement BMPs for off-site vehicle tracking of sediments, generation of dust, dewatering trenches and excavations, pumping or dewatering of standing water. The additional SWP3 BMP requirements in Sector J provide additional protections for the environment. We look forward to working with TCEQ to ensure compliance with these requirements.

**Response 3:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback.

**Comment 4:** AGC commented in support of the current provisions relating to Termination of Permit Coverage, and while TCEQ did not propose any changes to Part V, Sector J, Section 11, AGC would like to affirm its support of the current requirements for final stabilization. The provisions provide an appropriate and sufficient framework to ensure water quality protection and site' return to a beneficial post-mining use.

**Response 4:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback.

**Comment 5:** AAR commented that it appreciates and supports TCEQ's clarifying changes throughout the 2021 MSGP. In particular, AAR appreciates the addition to the Exceptions to Monitoring Requirements providing that when there is a lack of a qualifying storm event, monitoring is temporarily suspended as included in the new "Lack of Qualifying Storm Event" subsection (c) in Part III, Section D(4).

**Response 5:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback.

**Comment 6:** AAR commented in support of adding the definition of "Minimize" and incorporation of the all-important concepts that control measures should be technologically available, economically practicable, and achievable considering best industry practices.

**Response 6:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback.

**Comment 7: Alexis Ackel and Warren Vantreese commented** that they appreciated the presentation by the ED's staff and that it was a great presentation.

**Response 7:** TCEQ thanks the commenters, acknowledges the comments, and appreciates the feedback.

**Comment 8: TMH commented** that it generally supports most of the proposed amendments.

**Response 8:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback.

**Comment 9: HCPC commented,** in relation to Employee Training/Education Programs, that its investigations frequently document violations of housekeeping requirements that have a dramatic impact on effluent discharges. **HCPC recommended** that facilities be required to train employees in housekeeping every six-months.

**Response 9:** TCEQ will continue the MSGP provision to require facility operators to train employees in good housekeeping measures at a minimum once every year. This frequency has been a requirement in the Texas MSGP in multiple permit terms. TCEQ encourages permittees to do trainings more frequently by letting permittees make their own training schedule based on various considerations such as potential for pollutant discharges, employee turnover rate, and other factors determined by the permittee.

**Comment 10: Jennifer Murphy commented** that the MSGP requires an on-site rain gauge to be monitored weekly and then daily during storm events to show if there was a qualifying storm event. However, the rain gauges collect stormwater 24/7 and most facilities only operate Monday through Friday and do not operate 24-hours per day. This weekly/daily requirement has been overburdensome for permittees and doesn't seem to prove there was an actual qualifying storm event, as almost no facilities operate 24/7. **Jennifer Murphy recommended** this requirement be removed or reviewed to be less time/resource consuming for permittees.

**Response 10:** TCEQ declined to remove the requirement to monitor for qualifying rain events. However, based on comments, TCEQ now allows more flexibility on how to comply with this requirement by providing the following three options for monitoring rain events: an on-site rain gauge, a weather station that is representative of the site's location, or an alternative means of compliance approved by TCEQ. Please see Response 126 for updates to the permit language.

**Comment 11: KOCH commented,** in relation to additions to the TCEQ's Enforcement Initiation Criteria (EIC), that the point of compliance should be the final outfall for the zero-discharge provision.

**Response 11:** TCEQ responds that the TCEQ's EIC is outside the scope of this permitting action.

**Comment 12: KOCH recommended** that discharges occurring on property owned or controlled by the facility should not be subject to enforcement so long as the facility corrects the discharge within a reasonable amount of time as determined by the ED, and undertakes appropriate measures to avoid a recurrence due to the same cause in the future.

**Response 12:** TCEQ responds that to the extent this comment addresses the TCEQ's EIC, the EIC is outside the scope of this permitting action.

**Comment 13: KOCH recommended** that discharges deemed "*sudden and unavoidable*" by the ED should be subject to an affirmative defense to all claims in enforcement actions brought for these discharges, other than claims for administrative technical orders and actions for injunctive relief. The framework for an affirmative defense is laid out in the air regulations under 30 Tex. Admin. Code §101.222(b).

**Response 13:** TCEQ responds that to the extent this comment addresses the TCEQ's EIC, the EIC is outside the scope of this permitting action.

**Comment 14: KOCH recommended** the EIC be revised to include a provision stating that plastics discharges determined to be *historical* by the ED (i.e., occurring before the renewal and amendment date of the 2021 MSGP or the respective individual TPDES permit) are subject to administrative technical orders for the purposes of remediation, and are not subject to administrative penalty.

**Response 14:** TCEQ responds that to the extent this comment addresses the TCEQ's EIC, the EIC is outside the scope of this permitting action.

## **STEERS**

**Comment 15:** The City of **Corpus Christi commented** that City Managers, Mayors, and other elected officials will not get a State of Texas Environmental Electronic Reporting System (STEERS) account because they don't have time to do such things, and normally will delegate to the City's environmental director or manager. Additionally, most electronic media allows for upload or links to files.

**Response 15:** All general permit applications, including general permit Notice of Intents (NOIs), Notice of Terminations (NOTs), Notice of Changes (NOCs), and No-Exclusion Certifications (NECs), must be signed according to 30 TAC §305.44 and 40 CFR §122.22. As stated in Part II.C.8 of the MSGP, signatory authority for general permit applications "may not be delegated to a person who does not meet the requirements listed in the referenced rule." The authorized representative who meets the definition is required to sign the general permit applications either electronically using TCEQ's electronic permitting system (ePermits) or by paper if a waiver from electronic reporting is submitted and approved. The ePermits system can be accessed via STEERS and requires a STEERS account. The requirements to submit applications electronically, if the permittee is not eligible for an electronic reporting waiver, is

consistent with the NPDES Electronic Reporting Rule listed in 40 CFR Part 127 and with other general permits issued by TCEQ.

**Comment 16:** The City of **Corpus Christi recommended** that TCEQ consider, that the individuals who have to file electronically, that if they have a paper document saying that the authority has been delegated, or that the signatory has been to them, that they be able to upload the signed paper document and link it to the application submitted.

**Response 16:** If signatory authority for reports is delegated by the authorized representative to an individual that meets the requirements to make such delegation as set forth in 30 TAC §305.44, then a Delegation of Signatory form must be submitted to the TCEQ as required by 30 TAC §305.128 using STEERS, unless the permittee requested and obtained an electronic reporting waiver. Once the TCEQ has received the Delegation of Signatory form signed by the authorized representative, then all reports and other information requested by the ED, except applications as applications, may be submitted by the delegated person (known as the duly authorized representative of that person). However, simply uploading a signed paper document will not be accepted because TCEQ collects the information and enters it into a database that is required to be searchable and easily accessible.

**Comment 17:** **MPS commented** that when obtaining information about the DMR for filing electronically or on paper, many times the TCEQ website seems contradictory.

**Response 17:** TCEQ's webpages for the Stormwater program are found at <https://www.tceq.texas.gov/permitting/stormwater/industrial/index> and they include an explanation that the deadline for submitting discharge monitoring reports (DMRs) by paper expires on August 14, 2021. Initially, the NPDES eReporting rule required electronic submittal of DMRs by December 21, 2016, however, TCEQ, with EPA's approval, extended the deadline to August 14, 2021. The Stormwater program's website also explains that electronic submittal of data required by the general permit will need to be completed through the online Network Discharge Monitoring Report System (NetDMR) available at this webpage: <https://www.tceq.texas.gov/permitting/netdmr>. Please also see Responses 59, 61 and 62 for discussions of the NetDMR reporting system.

**Comment 18:** **MPS recommended** that TCEQ clarify the submission process, specifically, the waiver of monitoring in certain years of the MSGP's term and whether it has to be in paper or electronic form.

**Response 18:** If a permittee qualifies for a waiver from monitoring hazardous metals as described in Part III.C.1 of the MSGP, the permittee will need to submit an NOC indicating the facility is claiming a waiver from hazardous metals monitoring. This waiver can be claimed at any time during the permit term. The criteria under which the waiver from monitoring hazardous metals is claimed must be identified and retained in the SWP3. If a permittee claims a waiver for benchmark monitoring as described in Part IV.B.1.(c) of the MSGP, the permittee will also need to submit an NOC. The periods

for benchmark monitoring are discussed in Response 103. The NOC needs to be submitted electronically through STEERS/ePermits.

**Comment 19: DFW commented** that the page header on page 114 (Part III, Section B), incorrectly references Part III, Section D but should reference Part III, Section B.

**Response 19:** TCEQ responds that as a result of public comment, the recommended change was made.

**Comment 20: DFW commented** that the page header on page 120 (Part III, Section B), incorrectly references Part III, Section D but should reference Part III, Section B

**Response 20:** TCEQ responds that as a result of public comment, the recommended change was made.

**Comment 21: DFW commented** that the page header on page 121 (Part III, Section C) incorrectly references Part III, Section D but should reference Part III, Section C.

**Response 21:** TCEQ responds that as a result of public comment, the recommended change was made.

**Comment 22: DFW commented** that Section C.1 on page 121 (Part III, Section C, 1, Numeric Limitations of Hazardous Metals) incorrectly correlates section (d) as the section applicable to qualifying for a hazardous metals waiver. The sentence should read: *All permittees are required to monitor for hazardous metals, unless they qualify for a waiver as described in item (c) below.*

**Response 22:** TCEQ responds that as a result of public comment, the recommended changes were made.

## WOTUS

**Comment 23: AAR commented** that the proposed MSGP References an Outdated Definition of Waters of the United States (“WOTUS”) in 40 C.F.R. § 122.2. However, the WOTUS definition was revised as of June 22, 2020, and is now contained in 40 CFR § 120.2, and is substantially different from the definition provided in the proposed MSGP and although TCEQ has removed references to cooling ponds in its WOTUS definition, that change alone is not enough to cover the breadth of changes in EPA’s new definition, as groundwater, ephemeral features, and ditches have been expressly excluded from the federal WOTUS definition.

**Response 23:** TCEQ responds that as a result of public comment, the MSGP was updated to include, by reference, the WOTUS definition provided in 40 CFR §122.2.

**Comment 24: AAR recommended** that TCEQ simply cite to or state that it follows the federal definition provided in 40 CFR § 120.2 and not duplicate the federal regulatory

language so as to avoid conflicts between the 2021 MSGP and the federal definition or WOTUS if it's is revised in the future.

**Response 24:** Please see Response 23.

## **PART II.A. DISCHARGES ELIGIBLE FOR AUTHORIZATION**

**Comment 25: HCPC commented**, asking that with co-located industrial activities, if the TCEQ could change the wording of the provision to say that the facility must adhere to the strictest requirements for all activity areas?

**Response 25:** Part II.A.3. of the MSGP requires permittees of facilities with co-located activities to comply with the sector specific requirements for each co-located activity at the facility. Sector specific requirements apply only to the portion of the facility where that sector specific activity occurs, except where runoff from different activities combines before leaving the property. In cases where these discharges combine, the monitoring requirements and effluent limitations from each sector that contributes runoff to the discharge must be met. TCEQ declines to revise the permit language to include requirements for facilities to comply with the strictest sector specific requirements for all activity areas. The permit provision, as written, is appropriate because the requirements in Part V of the MSGP are specific to each industrial activity and may not be appropriate when applied to another co-located activity. Requiring an operator to comply with the sector specific requirements only in portions of the facility where the sector specific activity occurs adequately addresses these stormwater discharges.

### **PART II.A.1.b Industrial Activities Covered**

**Comment 26: TMH commented** that it supports the use of the North American Industry Classification System (NAICS) codes to identify the industrial activities covered by the MSGP.

**Response 26:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback.

**Comment 27: TMH commented** that many waste handling facilities are included under the MSGP such as landfills and other land disposers; domestic wastewater treatment; hazardous waste treatment, storage and disposal, and trucking of solid and hazardous wastes. However, other facilities under the Standard Industrial Classification (SIC) 4953 are not included, most notably non-hazardous industrial waste facilities. These facilities handle materials that are excluded under Resource Conservation and Recovery Act (RCRA) regulations but may contain contaminants that are of concern under the MSGP like copper, manganese, and zinc. Other contaminants may be in the waste received by these facilities but at levels below those to trigger regulation under RCRA. Additionally, industrial waste facilities are likely to store hazardous materials that may be used to maintain facility grounds and equipment or to further treat the wastes they receive.

**Response 27:** TCEQ acknowledges that certain activities not regulated under the MSGP have the potential to contribute pollutants to stormwater. However, the suggested SIC code 4953 is not regulated under the federal definition of “storm water associated with industrial activity,” in 40 CFR §122.26(b)(14), and adopted by reference at 30 TAC §281.25. Therefore, those facilities do not fall into one of the SIC codes regulated in Sectors A–AC of the MSGP. When a non-regulated facility may cause contamination of surface water, the TCEQ may require the facility operator to obtain an individual TPDES permit, or to apply under Sector AD of the MSGP (as appropriate) upon a site investigation by the local TCEQ regional office.

**Comment 28:** **TMH recommended** that the SIC codes should be removed from the MSGP because they have been replaced by NAICS codes.

**Response 28:** The federal regulations in 40 CFR §122.26 include the list of the SIC codes to describe which industrial activities are required to be regulated by the stormwater permitting program under NPDES and therefore the SIC codes are necessary to be included in the MSGP. The EPA’s MSGP also includes both SIC and NAICS codes.

### **PART II.C.3.d - POSTING PROOF OF PERMIT COVERAGE**

**Comment 29:** **AAR, KOCH, TACA, TIP, TCC, TMH, and WESTWARD**, all commented that the public already has an easy way to determine if a site is using the MSGP because the information proposed to be on the sign is available to the public through TCEQ’s public websites. Additionally, posting a sign will not give any useful information to a potential passerby that hasn’t already been made publicly available by the TCEQ on the same website identified on the proposed signage. Additionally, **TIP commented** that the trend in public notice is to move to online resources and **WESTWARD commented** that the general public should continue to contact TCEQ if they have an issue regarding a permittee’s site, as the TCEQ and other governing agencies already have access to the information proposed to be provided within these signs, as well as the authority to inquire about and inspect these facilities

**Response 29:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. In response to this comment and other similar comments, on April 27, 2021, the TCEQ sent the proposed MSGP to EPA for re-review related to removing Part II.C.3.(d) (requirements for posting proof of permit coverage) from the proposed MSGP. On May 27, 2021, EPA responded by letter without objecting to the removal of the signage requirement from the proposed MSGP. Therefore, the TCEQ removed the signage requirement from the proposed MSGP.

The public may continue to obtain information about a site’s stormwater permit authorization using the following resources currently available on TCEQ’s website:

- 1) Water Quality General Permit Search at [https://www2.tceq.texas.gov/wq\\_dpa/index.cfm](https://www2.tceq.texas.gov/wq_dpa/index.cfm), or

2) Central Registry Query at <https://www15.tceq.texas.gov/crpub/>.

In addition, the public may contact the TCEQ by telephone or e-mail as follows:

- 1) Stormwater program by telephone at (512) 239-4671 or (512) 239-3700 or by email at [SWPermit@tceq.texas.gov](mailto:SWPermit@tceq.texas.gov) or [SWGPA@tceq.texas.gov](mailto:SWGPA@tceq.texas.gov),
- 2) Small Business and Local Government Business (SBLGA) by telephone at (800) 447-2828 or by e-mail at [EnviroHelp@tceq.texas.gov](mailto:EnviroHelp@tceq.texas.gov),
- 3) your local TCEQ Regional Office (contact information available in the directory located at <https://www.tceq.gov/agency/directory/region/reglist.html>,
- 4) Central File Room at [CFRReq@tceq.texas.gov](mailto:CFRReq@tceq.texas.gov) to request a file, or
- 5) Public Information Officer at [openrecs@tceq.texas.gov](mailto:openrecs@tceq.texas.gov) to submit an open records request.

Environmental complaints about a site may currently be submitted to TCEQ using the following webpage <https://www.tceq.texas.gov/compliance/complaints> or call toll-free at (888) 777-3186.

Finally, the local municipality or pollution control agency may have additional information for a site and/or their stormwater permit authorization.

**Comment 30: AAR commented** that this proposed signage provision creates significant safety and security concerns.

**Response 30:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 31: AAR recommended** signage relating to permit coverage, including information regarding how to obtain a copy of the SWP3 and how to contact TCEQ if a violation is suspected, be included as a guideline rather than a permit requirement for the following reasons.

- A requirement for such signage at industrial facilities is not necessary. Industrial facilities, including railyards, are ongoing operations and typically have established signage that identifies the company name and contact information.
- The information proposed to be on the sign is available to the public through TCEQ and its public websites.

- For industrial facilities like railyards, this requirement creates potential safety and security issues. Many industrial facilities may not have a location that is “safe or readily available for viewing by the general public” or a location that would be conducive to this type of posting.<sup>3</sup> Railyards in particular are generally not accessible without trespassing on private property and typically have frequent heavy truck and equipment traffic. As such, posting signs at or near railyards or other industrial facilities may create unintended consequences of safety and security concerns, which are inherent in rail and most industrial facilities.

**Response 31:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 32: AAR recommended** TCEQ clarify the following provision: “[t]he location must be in close proximity to the facility and at potentially impacted public access areas” because it is ambiguous. Public access areas may be located at some distance from the facility itself such that the sign would either not be located “in close proximity to the facility” or multiple signs would be required.

**Response 32:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 33: AAR recommended** TCEQ clarify the extent that SWP3s are to be provided to the public and the extent of the allowed redactions to protect sensitive or confidential information in any versions of SWP3s made available to the public. AAR commented there is currently no requirement in the current or proposed MSGP that TCEQ or the individual facilities make SWP3s publicly available and there are no guidelines or provisions regarding how the SWP3 would be made publicly available and no procedures for how facilities could protect confidential/sensitive information in the SWP3 if a facility was required to provide copies to the general public.

**Response 33:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 34: AAR recommended** that any report or complaint from the public be independently verified by TCEQ prior to any enforcement action as the proposed requirement for the public to report “indicators of stormwater pollutants in the discharge or in the receiving waterbody” should not be included in the final permit or, in the alternative, must be clarified. AAR commented that the 2021 MSGP does not explain how public reporting of “indicators of stormwater pollutants” would be investigated and what standards would be used to determine whether there was a violation. It is also not clear whether a public report would be deemed a violation, if such would be independently verified by TCEQ, or if a report could be refuted by the facility.

**Response 34:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 35:** AEP commented that the signage provisions are unclear as to whether signage must be posted at least five days *prior to* or *after* obtaining coverage. AEP requested that the language be updated to better clarify TCEQ's intention.

**Response 35:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 36:** AEP recommended TCEQ provide a pre-prepared form to be completed and posted like the *Construction Site Notice* provided in the CGP. Not only will this standardize postings, it will also minimize any issues that may arise due to discrepancies in what is considered a "font large enough to be readily viewed from a public right-of-way."

**Response 36:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 37:** DFW commented that while this requirement may be practical in many facilities with well-defined entry points or one primary building, this requirement may not be effective in the case of large facilities with multiple buildings and permittees. Facilities, such as airport and seaports, may have multiple entry points and permitted facilities located in areas with limited public access (i.e. air- fields).

**Response 37:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 38:** DFW recommended that the TCEQ incorporate language to provide an option for large facilities to provide contact information, permit information, and TCEQ contact information on the permitted facilities company website instead of posting signage on property grounds in order to make messaging more visible and accessible.

**Response 38:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 39:** KOCH TCC, and TIP commented questioning the value of posting a sign at a facility because many facilities are large with multiple outfalls, and outfalls may be at remote locations and posting a sign will be impractical given the distance of some facilities from the nearest public-right-of-way. Signage would provide little or no public value given the distances at issue.

**Response 39:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 40: LCRA commented** that this proposed provision is not well defined, and will not provide the desired outcome because:

- Many industrial facilities are located such that stormwater drains to inaccessible areas, private land, or other areas not readily available to the public. Therefore, finding a location to post a sign that is both in close proximity to the facility and at potentially impacted public access may not be possible.
- Similarly, many industrial facilities, including LCRA's electric generating units, discharge stormwater into areas of lakes that are not easily accessible to the public. Some discharge areas are not accessible except by boat. In other discharge areas, boat access is prohibited. The requirement to post a sign along a lake may present the same access issues or could require a sign to have a font unreasonably large to be visible from public access points. Moreover, the presence of a sign may cause boaters to move closer to the facility, which creates safety as well as physical security concerns.

**Response 40:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 41: LCRA recommended** that to be consistent with the TCEQ's CGP, it proposes the following language:

- The permittee shall post a notice of permit coverage that includes the words 'Industrial Stormwater Site Notice,' the permittee's TPDES authorization number, and a contact name and phone number. The notice must be posted at the industrial site in a location where it is safely and readily available for viewing by the general public, local, state, and federal authorities, and maintain the notice until the facility has terminated permit coverage or the permit has expired.

**Response 41:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 42: TACA commented** that it is concerned that the proposed signage provisions place a burden on permittees and sees no additional benefit from this requirement.

**Response 42:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 43:** TCC, TIP, and **Kourtney DesCamp commented** that the signage requirement creates a new precedent of requiring signage to be posted for the life of the permit, whereas other TCEQ permits only require posted signage during the permit application period. Construction sites post similar notice under the CGP, it is inherently a temporary condition associated with activities that differ from long-term operations. The burden of maintaining signage in perpetuity is more substantial and that burden should be weighed against what benefit it really provides.

**Response 43:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 44:** TCC and TIP **recommended** that this requirement for permanent posting be removed from the draft permit.

**Response 44:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 45:** TCC and TIP **recommended** if the provision remains in the permit the following language be added:

- The sign or other notice must be posted or maintained at the facility until the facility has terminated permit coverage or the permit has expired, whichever is first.
- If the sign or other notice location in close proximity to the facility is not viewable by the general public, (3) above is not required to be included.

**Response 45:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 46:** **Kourtney DesCamp commented** questioning what caused the changes in the MSGP's signage provisions, and whether the ongoing sign posting requirement will appear in other TCEQ general permits?

**Response 46:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 47:** **TMH commented** that most of the industry have onsite structures to house their many permits, registrations and associated applications and plans. Further, the requirements for entities operating under the CGP are vastly different and far less stringent than those using the MSGP. TMH is frequently inspected by various local, state and federal regulators as well as audited by our customers and has permit information readily available. In addition, TMH facilities are required by their Industrial

& Hazardous Waste permits to have specific signage along their fence lines. TMH feels that adding additional signage may distract from the message in the existing signs.

**Response 47:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 48: WEAT and TACWA commented** that for wastewater treatment plants that discharge into creeks, lakes, rivers, etc., placing this sign “at potentially impacted public access areas” may be difficult under the MSGP-scenario if it means that the permittee must post along the bank or the water body. **WEAT and TACWA recommended** clarification be given specifically with reference to the location of the signage in areas of discharge that do not have public access or cannot be accessed safely.

**Response 48:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 49: WCM Group commented** that the 15 water quality GPs, only the CGP and MS4 require sign posting: The requirements in the above permits are specific to the posting of approved site notices that have either been signed or signed and certified by TCEQ for construction activities. TCEQ does not provide signed or signed and certified site notices to facilities covered under the MSGP. The requirement to post proof of permit coverage is not consistent with other available general permits that do not allow the discharge of stormwater from construction activities. **WCM recommended** that the requirement to post proof of permit coverage be removed from the MSGP prior to issuance.

**Response 49:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 50: WESTWARD commented** that the addition of the sign posting requirement to give the public the opportunity to gather more information on the site and permit holder, puts an additional unnecessary burden on the regulated community and provides no benefit to the regulated community or the governing agencies.

**Response 50:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 51: WESTWARD commented** that the current MSGP does not authorize the general public to personally question or enquire with a regulated entity regarding their compliance history or status with TCEQ.

**Response 51:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 52: WESTWARD commented** that the current MSGP already requires a regulated entity to have a copy of the NOI, acknowledgement letter and permit certificate located onsite.

**Response 52:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

**Comment 53: WESTWARD and TACA recommended** the inclusion of the proposed language below if the provision remains in the permit.

*The permittee shall post a sign or other notice of permit coverage in a location where it is safely and readily available for viewing by the general public, local, state, and federal authorities, at least five days -from obtaining permit coverage.*

- This should be changed to give clarification: Does the TCEQ intend for this to say five calendar days or five business days before or after obtaining permit coverage.

*Contact name and phone number for obtaining additional facility information including the SWP3.*

- The public should not have the ability to contact the regulated entity directly, especially to ask for the SWP3.

*If you observe indicators of stormwater pollutants in the discharge or in the receiving waterbody, contact the TCEQ through the TCEQ website.*

- This statement may be misinterpreted by the general public to mean that they have the right to come onto private property and make observations regarding stormwater quality.

**Response 53:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. The requirement for permittees to post proof of permit coverage in Part II.C.3.(d) was removed from the permit. Please see Response 29.

#### **PART II.C.6.e - EXAMPLES OF INFORMATION SUBMITTED ON AN NOC**

**Comment 54: DFW commented** that the proposed MSGP requires an NOC for removal, addition, change in location for all industrial outfalls. DFW has over 130 stormwater outfalls within the boundaries of the airport; some of these outfalls are not associated

with “airport” activities and may be specific tenant activities contributing to industrial stormwater. Furthermore, new outfalls are constantly constructed and/or modified in support of commercial development.

**Response 54:** TCEQ responds that an NOC is required for changes in location of all permitted outfalls covered under the MSGP. However, an NOC is not required for changes to outfalls that are not permitted or covered under the MSGP. Industrial facilities regulated under the MSGP must identify all outfalls where regulated industrial activities may discharge, this information is required to be included in the NOI and in the SWP3 under Drainage Area Site Map, as described in Part II.C.5 and Part III.A.3 of the MSGP, respectively. Because outfall locations are included in the NOI application, changes to the original NOI need to be submitted on an NOC.

**Comment 55: DFW recommended** that because it also operates as a non-traditional municipality, an additional clarification statement be added to 6(e) indicating that the Operator is only required to identify on an NOI or NOC those industrial outfalls in which the Operator is specifically contributing to the discharge of industrial stormwater; or for large facilities, such as airports, the permittee is only required to identify outfalls associated with Sector S or airport activities.

**Response 55:** TCEQ responds that it agrees with part of the comment and revised Part II.C.6.e.(4) of the MSGP as follows: “*Addition, removal, or change in the location of a permitted outfall.*” The language in the MSGP is sufficient regarding large facilities as the definition of outfall provided in Part I of the MSGP already specifies that an outfall is “a point source at the point where stormwater runoff associated with industrial activity, and certain non-stormwater discharges listed in this permit, exits the facility and discharge(s) to surface water in the state or a municipal or private separate storm sewer system.” Industrial activity in this context refers to activities covered by the MSGP.

#### **PART II.C.6.e.6 - CHANGES TO INFORMATION SUBMITTED**

**Comment 56: AEP commented** that its operators, Southwestern Power Pool will give less than 24 hours’ notice of whether a peaking facility will operate. It is common for that to remain active for only two or three days. Given that an NOC requires signature per 30 TAC §305.44, it’s infeasible for AEP to submit an NOC within a timely manner for each activation/inactivation.

**Response 56:** TCEQ responds that a facility can change its status from “active” to “inactive”, if it is both inactive *and* unstaffed, and when it no longer has industrial activities or materials exposed to stormwater. As described in Part III.D.4.(b) of the MSGP, this option allows inactive facilities to waive permit requirements to sample, inspect, examine, or otherwise monitor stormwater discharges while being inactive. Additionally, TCEQ realizes some facilities plan to recommence industrial activity in the future and therefore may wish to keep active permit coverage. Inactive and unstaffed status requires the submittal of an NOC and keeping a written statement in the SWP3 that the site is inactive and unstaffed, and that there are no industrial

materials or activities exposed to stormwater. Facilities having temporary inactivity such as for routine maintenance, emergency situations, or other short-term situations do not need to notify about being inactive. When a facility becomes active *and* staffed again, the SWP3 must be updated with information about the new status and TCEQ must be notified by submitting an NOC. The notification must be submitted at least 48 hours before commencing industrial activities and transferring to active status again. In situations described by the comment, in which a site will provide less than 24 hours' notice and only operates for two to three days, the operator might consider maintaining active permit coverage. The requirement to notify TCEQ 48 hours prior to commencement of industrial activity has been a consistent requirement through multiple renewals of the MSGP.

**Comment 57: AEP recommended** that a mechanism be provided to submit a notice of facility status change electronically without 30 TAC §305.44 approval, and that if it's not possible to remove a facility status change from the list of items triggering an NOC, **AEP recommended** it be allowed to input the time of activation, and upon expiration of given period, the facility would automatically return to inactive status.

**Response 57:** All applications submitted to TCEQ are required to be signed in accordance with 30 TAC §305.44, whether they are submitted electronically or on paper if the applicant requests and obtains an electronic reporting waiver. An NOC is considered an application because the information provided in the NOC is amending the information included in the original application (NOI or NEC) submitted for the facility. Additionally, as described in Response 56, a facility may choose to maintain active permit coverage during short-term periods of inactivity. For more information about the original NOI, please see Response 15.

#### **PART ILC.6.f - DELEGATION OF SIGNATORY AUTHORITY**

**Comment 58: LCRA recommended** that the TCEQ clarify which reports require a Delegation of Signatory Authority form to be submitted on STEERS. Without clarification, there is not enough information in the proposed permit condition for the regulated community to provide meaningful comments.

**Response 58:** TCEQ responds that signatory authority may not be delegated to sign permit applications, including general permit NOI, NOT, NOC, and NEC forms, which must be signed according to 30 TAC §305.44 and 40 CFR §122.22. Reports and other information requested by the ED may be signed by a delegated signatory (known as the duly authorized representative), as described under 30 TAC §305.128 and 40 CFR §122.22. Notification of delegated signatory is submitted either electronically through STEERS, or with an electronic reporting waiver by paper. Part III.E.6 of the MSGP includes a list of the various reports and states that all reports and certifications required by the permit or otherwise requested by the ED must be signed in the manner required by 30 TAC §305.128. Reports include monitoring reports or reports of compliance or non-compliance. Please also see Responses 15 and 16.

**Comment 59: LCRA commented** that the current Delegation of Authority form allows an individual's name or a title of a position and often, permittees list several titles or names in order to allow flexibility and to ensure compliance. If each delegated person is required to get a STEERS account, this places an undue burden on permittees to maintain numerous individuals in the STEERS system. **LCRA recommended** this Delegation of Signatory Authority requirement be removed in its entirety from the proposed MSGP.

**Response 59:** If signatory authority is delegated by an authorized representative, formal notification must be submitted to TCEQ. The authorized representative is required to have a STEERS account to submit the notification of delegated signatory authority, unless a waiver from electronic reporting is submitted and approved. A delegated person is not required to have a STEERS account, as the system is used for submitting applications. A delegated person cannot be authorized to sign or submit applications (NOIs, NECs, NOCs and NOTs), as explained in Response 58. If a delegated person intends to submit DMRs on the NetDMR system, the person will need to set up a Central Date Exchange (CDX) account to use the NetDMR system. Additionally, as required by 30 TAC §305.128 and 40 CFR §122.22, all reports required by the MSGP "shall be signed by a person described in [30 TAC] §305.44(a)...or by a duly authorized representative of that person." The authorization must be made in writing and submitted to TCEQ. As the Delegation of Signatory requirement is based on federal and state rules, it may not be omitted from the permit.

**Comment 60: LCRA recommended** that if TCEQ elects to keep this requirement, then STEERS should be modified to allow permittees to upload a scanned copy of a signed Delegation of Authority form.

**Response 60:** The submittal of the Delegation of Signatory cannot be accomplished by uploading a signed paper document because this method will not allow the information in the TCEQ database to reflect the delegation. TCEQ collects the information in a database and data needs to include the updated information that can be searchable and easily accessible. Also see Response 16.

**Comment 61: LCRA recommended** that the MSGP specify that reports submitted on NetDMR do not require a separate Delegation of Authority form.

**Response 61:** Signing and submission of analytical result within the NetDMR system, which is accessed via CDX, requires a NetDMR Subscriber Agreement. The NetDMR Subscriber Agreement allows a person with authority under 40 CFR §122.22 to delegate NetDMR signing to a duly authorized representative. This NetDMR Subscriber Agreement delegation is part of the national NetDMR system, and it is separate from the formal delegation notification to TCEQ. The language included in the MSGP is appropriate to describe permittee requirements for formal notification to TCEQ submitted electronically through STEERS. Additional guidance on the NetDMR system is available through TCEQ's website at <https://www.tceq.texas.gov/permitting/netdmr/netdmr>. Please see Response 59.

**Comment 62: LCRA commented** that many changes have occurred in recent years regarding electronic submittals and related requirements and keeping up with the changes can be confusing.

**Response 62:** TCEQ responds that as a result of the NPDES Electronic Reporting rule (40 CFR Part 127), effective on December 21, 2016, and again on January 4, 2021, language regarding electronic reporting requirements was added to the MSGP. The language in the 2016 MSGP included requirements for submission of analytical results to NetDMR by December 21, 2016. The NetDMR system was not previously able to accept analytical results obtained for determining compliance with the TPDES MSGP, and TCEQ therefore issued three temporary waivers for electronic reporting of MSGP DMRs. The third waiver was issued on February 28, 2019, and will expire on August 14, 2021. After August 14, 2021, all analytical results obtained for determining compliance with the MSGP must be submitted electronically using the NetDMR system unless the permittee requests and obtains an electronic reporting waiver.

**Comment 63: LCRA commented** that the proposed requirement does not provide enough information for the regulated community to comment meaningfully.

**Response 63:** TCEQ responds that it disagrees with the comment. Most requirements related to the NPDES Electronic Reporting rule (eReporting rule) were included in the 2016 MSGP. Only the requirement to submit the Delegation of Signatory Authority electronically through STEERS is a new permit requirement.

**Comment 64: LCRA recommended** that any updates to the management of Delegation of Signature Authority forms be delayed until the next MSGP permit renewal.

**Response 64:** Requiring electronic submittal of Delegation of Signatory Authority is consistent with requiring electronic submittals of applications and DMRs because the intent of the eReporting rule is to replace paper based NPDES reporting requirements with electronic reporting and share that information and data electronically with EPA.

**Comment 65: TIP commented** if a STEERS account is not accessed on a frequent basis, the account is subject to cancellation by TCEQ, and requiring a corporate officer to create and maintain a STEERS account is a burden. **TIP commented** that that the responsible corporate officer often does not have a STEERS account and creating and maintaining such an account for the infrequent occurrence of delegation documentation carries the risk that their account will not be active, especially if a corporate officer only accesses their STEERS account to submit a revised delegation of authority, which could be as infrequently as once every five years. Further, this potential repeat burden is made heavier when the responsible corporate officer is not a resident of Texas and/or does not have a Texas driver's license, when the additional effort to secure a STEERS Participation Agreement would come into play. Many companies are not based in Texas and operate in numerous states with some corporate officers who are not always based in Texas. While the proposed change may sound easy on paper, it will be problematic, cumbersome, and unduly onerous for permittees.

**Response 65:** TCEQ responds that it disagrees that maintaining a STEERS account is a burden. TCEQ notes that inactive STEERS accounts are archived every two years. Prior to archiving, an email is sent to the account holder notifying them of the upcoming archiving process. The corporate officer may notify the TCEQ STEERS program if the account should not be archived by responding to the notification sent from STEERS. STEERS is the mechanism TCEQ will use to accept notification of delegation of signatory authority, and using STEERS requires a STEERS account. A STEERS account can be obtained by a person who is not a Texas resident or does not have a Texas driver's license. A STEERS participation agreement (SPA) must be filled out for all customers, including those without a Texas driver's license every two years. TCEQ disagrees that this requirement is unduly onerous for permittees. Although the requirement for a corporate officer to maintain a STEERS account will involve signing and submitting a SPA every two years, it will reduce the overall number of signed and mailed paper delegation of signatory forms over the course of the five year permit term. TCEQ believes that overall, the burden on corporate officers is greatly reduced.

### **PART II.C.9 - ADDITIONAL NOTIFICATION**

**Comment 66:** TACA and WESTWARD recommended that to simplify the process for providing completed NOCs, NOTs, NOI or NEC to the MS4's operator, TCEQ maintain updated contact information for MS4s that can be accessed by permittees who contribute stormwater discharges to an MS4.

**Response 66:** The requirement to provide a copy of all NOIs, NOCs, and NOTs is not a new requirement and has been in the MSGP for multiple permit terms. TCEQ does not maintain a list with all Municipal Separate Storm Sewer System (MS4) contacts and therefore, is unable to provide that information. Please see Response 67.

**Comment 67:** TACA and WESTWARD recommended that because TCEQ has all the relevant information for active MS4s including cities, counties, universities, and military bases, and due to the difficulty of determining whether an area has an associated MS4 and finding its contact information, to simplify the process for providing information to MS4s, TCEQ should maintain updated contact information for MS4s to be accessed by permittees to properly notify the MS4 associated with a regulated entity gaining or renewing coverage under the MSGP.

**Response 67:** Not all MS4s in Texas are regulated, and for those that are not, TCEQ does not have any information. TCEQ has information about regulated MS4s, but it will be difficult to identify if an MSGP entity is located within an MS4's area with only the contact information, which is subject to change. Entities therefore need to contact the nearest city, county, drainage district, etc. to identify the MS4. Entities are required to provide a copy of the NOI, NOT, and NOC to the MS4 operator that receives the discharge.

**Comment 68:** WESTWARD recommended that the database should also have a disclaimer indicating that the TCEQ list is not all encompassing, and that additional research may be needed.

**Response 68:** Please see Response 67.

#### **PART III.A.4.c PLASTIC MATERIALS REQUIREMENTS**

**Comment 69:** WEAT/ TACWA recommended the following edits to provide clarity and consistency with TCEQ's proposed 2021 revisions to the *Procedures to Implement Texas Surface Water Quality Standards* (RG-194) concerning the control of plastics.

Facilities that handle pre-production plastic must develop and include in the SWP3 activities and structures that will be implemented and constructed to ensure that areas of the facility that can contribute plastic pollutants to stormwater discharges (e.g. areas around containers holding plastic materials, plastic storage areas, loading docks where plastics are present, and outdoor areas where plastic materials may be present) are maintained in a clean and orderly manner and that barriers and removal techniques are designed and built to prevent any fallen plastics from entering the stormwater system and being discharged. Good housekeeping measures must include measures to prevent exposure of plastics and other plastic pre-production materials to precipitation or runoff prior to their use in further processing or disposal. Structures to prevent plastics from entering stormwater include proper closure mechanisms when plastics are loaded, collection containers underneath loading areas for spilled plastics, barriers like curbs to stop rainwater from carrying spilled plastics into stormwater system, and other physical structures to ensure that plastics do not co-mingle with stormwater that will eventually be discharged.

Plastic materials required to be addressed as stormwater pollutants at a minimum include the following: virgin and recycled plastic resin pellets, powders, flakes, powdered additives, regrind, scrap, waste, and recycling material with the potential to discharge or migrate off-site. Facilities that handle pre-production plastic must implement BMPs to eliminate discharges of plastic in stormwater through the implementation of control measures such as the following, where determined feasible (list not exclusive): minimizing spills, cleaning up spills promptly and thoroughly, sweeping and vacuuming thoroughly, and plastic (including pellet, powders, and flakes) capturing.

**Response 69:** TCEQ responds that it declines to make the requested changes in the first paragraph because the existing permit provisions are adequate. However, in response to the comment in the second paragraph, TCEQ added "...*and/or vacuuming...*" to Parts III.A.4.c and V.Y.2.(b)(2) of the MSGP.

**Comment 70:** WEAT/ TACWA recommended that TCEQ clarify the enforcement of the implementation of BMP's for pre-production plastic facilities: "*Facilities that handle pre-production plastic must develop and include in the Stormwater Pollution Prevention Plan (SWP3) activities that will be implemented to ensure that areas of the facility that can contribute plastic pollutants to stormwater discharges are maintained in a clean and orderly manner.*"

**Response 70:** TCEQ responds that enforcement of these provisions will be no different than enforcement of other provisions in the general permit or other permits. Compliance with the permit provisions will require implementation and documentation of the control measures selected by the permittee.

**Comment 71: AAR commented** that Sector P facilities may transport plastic materials, but do not manipulate or process them, and extending the scope of Sector P activities subject to the MSGP requirements has the potential to bring unrelated activity into the scope of the MSGP. Burdening railroads to assess and implement stormwater pollution prevention measures and controls for plastic materials extends beyond the scope of Sector P regulated activities and requirements, and does not generally fall into the scope of vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or equipment cleaning activities to which the MSGP applies. **AAR recommended** that TCEQ should not require all sectors to implement these measures and instead limit the measures to facilities that are involved in the processing or production of plastic materials, or otherwise limit the application of these measures so that it is not overbroad.

**Response 71:** TCEQ responds that all facilities handling pre-production plastic materials are required to implement BMPs to control plastics in stormwater runoff. This is to clarify rules and to ensure water quality protection. Permittees under Sector P are responsible for implementing the control measures at sites, where they handle pre-production plastic materials for example during storage, loading and unloading activities.

**Comment 72: TIP commented** that TCEQ is proposing to incorporate overbroad and confusing EPA language, which could require facilities to address “plastic materials” described by EPA as “virgin and recycled plastic resin pellets, powders, flakes, powdered additives, regrind, scrap, waste, and recycling material with the potential to discharge or migrate off-site.”

**Response 72:** TCEQ developed the provisions for control of plastics to clarify rules and to ensure water quality protection.

**Comment 73: TIP recommended** that TCEQ instead focus on *visible* pre-production plastics *in the form of pellets*. Focusing on pellets would be consistent with what has been discussed and commented on in TCEQ’s stakeholder process and is appropriate given issues with implementation.

**Response 73:** Please see Response 72.

**Comment 74: TIP recommended** TCEQ, at a minimum should clarify that references to waste, scrap, and recycling material relate directly to the handling of pre-production plastics, and not unassociated wastes like the residual described above.

**Response 74:** TCEQ responds that the references to waste, scrap, and recycling material relates to facilities that handle pre-production plastic.

**Comment 75: TIP commented** TCEQ can and should use terminology and provisions in its MSGP that provide clarity and that TCEQ is not bound to directly mirror EPA’s MSGP language.

**Response 75:** TCEQ responds that provisions of the MSGP are based on state and federal rules along with policies set by EPA as required by the MOA between EPA and the TCEQ (June 12, 2020). In addition, please see Responses 72, 73, and 74.

**Comment 76: TIP recommended** TCEQ provide clarity on the applicability of the plastic provisions by referring to relevant sectors.

**Response 76:** *All permittees* are required to implement control measures *if their facilities handle pre-production plastics* as described in Part III.A.4.c. In addition, Sector Y: Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Facilities are required to implement additional control measures as described in Part V.Y.2 of the MSGP.

**Comment 77: TIP commented** that a complete prohibition does not fit the regulatory framework and should be viewed as inconsistent with EPA’s MSGP, as the regulation of stormwater is structured to minimize, not to completely, and without qualification, eliminate the discharge of pollutants in stormwater. As a technology-based requirement, BMPs “are used to reduce the pollutants in stormwater.” For example, in the very next provisions of the Proposed MSGP following the plastic materials provision, TCEQ explains how erosion and sediment control measures should “reduce soil erosion and sedimentation,” and structural controls should be used to “reduce pollutants in stormwater.”

**Response 77:** TCEQ responds that it developed the provisions for control of plastics to clarify rules and to ensure water quality protection.

**Comment 78: TIP recommended** TCEQ take technological achievability and cost into consideration to the extent Part III.A.4.c. is intended as a technology-based standard, which can be done by either using the term “minimize” or by inserting “to the extent achievable.”

**Response 78:** The provisions are consistent with TCEQ’s policies for wastewater permits and EPA’s 2021 MSGP. Please see Response 72.

**Comment 79: TIP commented** that the current TSWQS contain an applicable standard that addresses the discharges of floatable and settleable materials, such as plastic, and which supports the TPDES permit condition prohibiting visible solids in more than trace amounts. A requirement for total elimination, without qualification, goes beyond the TSWQS without a reasoned basis as numeric criteria for even the most toxic chemicals do not impose a zero-discharge standard.

**Response 79:** Please see Response 72.

**Comment 80: TIP commented** that when read in context, EPA’s use of the term “eliminate” necessarily carries the qualifier of requiring elimination only to the extent achievable using control measures (including BMPs) that are technologically available and economically practicable and achievable in light of best industry practice. EPA adopted this provision as a general requirement for SWP3s while it also adopted a specific provision for Sector Y, calling for “minimization” of plastic discharges. EPA defines minimization as follows in the MSGP:

In the technology-based limits included in Parts 2.1 and 8, the term “minimize” means reduce and/or *eliminate to the extent achievable* using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.

**Response 80:** TCEQ responds that the MSGP uses the term “*implement BMPs to eliminate discharges of plastic in stormwater*” to be consistent with policies for TCEQ’s wastewater permits and EPA’s 2021 MSGP.

**Comment 81: TIP commented** that Sector Y requirements logically would not be *less* stringent than the general provision adopted at the very same time. Further, EPA made this inherently qualified usage of the term “eliminate” clear in its cost impact analysis for its 2015 MSGP in which the agency assumed no additional cost for implementation of this provision because it was “simply elaborating on good housekeeping practices for the plastics industry that [were] already being implemented” by Sector Y. EPA’s 2015 MSGP requires Sector Y plastic products manufacturing facilities to “[*m*]inimize the discharge of plastic resin *pellets*” in stormwater.

**Response 81:** TCEQ responds that the provision in Sector Y of the MSGP expands requirements for good housekeeping measures and lists some required control measures such as minimizing and cleaning up spills, sweeping, and/or vacuuming, capturing pellets, implementing a containment system, employee training and education. The provisions in Sector Y support the general provisions in Part III.A.4.(c) and are not less stringent than those provisions.

**Comment 82: TIP recommended** that TCEQ replace the terms “eliminate” with “minimize” to ensure that the regulated community has clarity regarding these requirements.

**Response 82:** Please see Response 80.

**Comment 83: TIP commented** it supports and adopts the comments submitted by the Texas Chemical Council related to these provisions and urges TCEQ to give those comments serious consideration.

**Response 83:** TCEQ acknowledges the comment as well as the comments from TCC.

**Comment 84: TCC commented** that it is supportive of measures to reduce the loss of plastic pellets to the environment, but that it has concerns involving the absolute and

inflexible standards being proposed, and the unintended confusion resulting from unclear and inconsistent enforcement practices.

**Response 84:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback.

**Comment 85:** **TCC recommended** that TCEQ establish a compliance period to allow pellet manufacturers and handlers of plastic pellets an opportunity to evaluate the availability of engineering controls, technologies, and resources necessary for compliance with the significantly stricter proposed standards. **TCC recommended** that the TCEQ recognize that additional time for implementation is necessary to ensure compliance, and to provide for a three-year implementation plan for MSGP permittees, and consideration for compliance extensions when justified.

**Response 85:** Many entities already have control measures in place such as good housekeeping, employee training, spill prevention and cleanup. However, the ED through the Office of Compliance and Enforcement is aware that there may be technology constraints and will take these into consideration as necessary on a case-by-case basis.

**Comment 86:** **TCC commented** that it is important that TCEQ understand that there are limitations to existing technologies needed to comply with the proposed standards, and most facilities will require significant modifications and capital improvements to meet the MSGP expectations for various control methods including: process equipment improvements, loading area modifications, reconfiguring drainage patterns, water treatment, etc. This is not an overnight process, involving several steps including issue analysis, engineering studies to evaluate available control options, selecting appropriate control options, obtaining capital funding, and finally, implementation of control technologies and processes to comply with the proposed standards. Administrative practices may be implemented in a shorter period, however, implementing a containment system to trap particles as prescribed in the proposed language will take considerable time.

**Response 86:** Please see Response 85.

**Comment 87:** **TCC recommended** the TCEQ adopt the following revisions to the MSGP language: “Good housekeeping measures must include measures to minimize prevent exposure of ~~plastics and other plastic~~ pre-production plastic materials to precipitation or runoff prior to their use in further processing or disposal. Pre-production plastic materials required to be addressed as stormwater pollutants ~~at a minimum include the following: virgin and recycled plastic resin pellets, powders, flakes, powdered additives, regrind, scrap, waste, and recycling material~~ are visible pellets (visible to the naked eye as able to be seen by an ordinary person under normal observation conditions without special equipment) with the potential to discharge or migrate off-site. Facilities that handle pre-production plastic must implement BMPs to minimize eliminate discharges of visible pre-production plastic in stormwater through the implementation of control measures such as the following, where determined feasible

(list not exclusive): minimizing spills, cleaning up spills promptly and thoroughly, sweeping thoroughly, and pellet containment to the maximum extent practicable.

**Response 87:** Please see Responses 72 and 73, where revised permit language is discussed.

**Comment 88: KOCH commented** that zero discharge of plastic, as currently defined by TCEQ, is an extremely difficult compliance challenge, especially for manufacturing processes that may have been installed before this proposed compliance requirement goes into effect. TCEQ's zero-discharge provision is also contrary to the traditional TPDES permitting structure which allows for technology-based permit limits.

**Response 88:** Please see Response 80.

**Comment 89: KOCH recommended** that the subjective term "visible plastic" should be revised to a numerical standard for determining whether a discharge has occurred. TCEQ should consider conducting the appropriate analysis to determine a safe numeric discharge limit.

**Response 89:** The provisions regarding plastics are developed to clarify rules and to ensure water quality protection.

**Comment 90: KOCH commented** that many plastics manufacturers have been producing pellets since the 1960s and there are undoubtedly plastic pellets in the environment (i.e., legacy pellets). Furthermore, some separately owned plastics manufacturing facilities are near each other and have been for many years. In most cases it is not possible to determine who an individual pellet belonged to. It's unclear how the agency proposes to address this uncertain issue.

**Response 90:** TCEQ responds that permittees are responsible for implementing required control measures on their own sites. If stormwater comes from adjacent industrial sites, the operator might consider moving outfalls to separate the stormwater flows. An operator may also need to have extra focus on control measures such as good housekeeping to keep out potential plastics from adjacent sites.

**Comment 91: KOCH commented** that industry is exploring methods to reduce and mitigate the discharge of "powder and flake". Technology for control mechanisms may not currently exist to ensure zero discharge of plastic flake and powder. **KOCH recommended** a staggered regulatory approach by addressing pellets initially and then over time, addressing powders and flakes, as necessary.

**Response 91:** As described in Response 72, the provisions are to clarify rules and to ensure water quality protection.

**Comment 92: KOCH commented** that in setting its standards for limiting the discharge of plastics (e.g., definitions, BMPs, inspections, spill reporting, compliance points, etc.), TCEQ should not rely on requirements set out in prior plastics discharge-

related enforcement settlements. Such enforcement settlements are unique to the facility and should be reserved for that facility. Enforcement settlements should not be used as a “one size fits all” approach to establish standards that will impact an entire industry.

**Response 92:** TCEQ, in setting standards for limiting the discharge of plastics, uses or follows state rules, federal regulations, and policies set by the EPA.

**Comment 93: KOCH recommended** replacing the term “eliminate” with defined term “minimize” from the permit as an acknowledgement that even if the best available containment/control technology is utilized, no system can guarantee complete elimination of plastics from stormwater discharges 100 % of the time.

**Response 93:** Please see Response 80.

**Comment 94: KOCH recommended** removing the subjective term “thoroughly” from the proposed condition, and the terms “powder” and “powdered additives” should be removed from the proposed condition because those terms are subjective and could lead to confusion. There are other materials in the environment (e.g., naturally occurring dust, pollen, etc.) that cannot be distinguished from “powder” or “powdered additives”. Powders and powdered additives could likely be covered by the terms “plastic-related materials, scrap and waste.”

**Response 94:** Please see Responses 72 and 73.

#### **PART III.A.3.d.1 - DRAINAGE AREA SITE MAP**

**Comment 95: DFW commented** that it has over 130 stormwater outfalls of which approximately 50 discharge stormwater associated with industrial activity from Airport Board and/or tenant operations and it will cause the map to become difficult to read if the map is required to include latitude and longitude for each outfall or sampling point covered by the MSGP in addition to the specific information already required to be incorporated in the map. **DFW recommended** that the TCEQ allow permittees the alternative of using a supplemental reference table to correlate permitted outfalls with appropriate latitude and longitude.

**Response 95:** TCEQ responds that permittees are only required to include permitted outfalls on their Drainage Area Site map. The MSGP does not prohibit a supplemental reference table to correlate permitted outfall with appropriate latitude and longitude. However, all permitted outfalls must be depicted on the map.

#### **PART III.C.1 NUMERIC EFFLUENT LIMITATIONS**

**Comment 96: HCPC commented and asked** if there was a way to change the numeric effluent limits to add additional metals and if it was possible to change the benchmarks to add items like [total petroleum hydrocarbons] TPH?

**Response 96:** TCEQ responds that numeric effluent limitations for hazardous metals are based on 30 TAC Chapter 319. The MSGP only contains numeric effluent limitations for stormwater where they were either delineated in the CFR or TAC. Although TPH may be present in stormwater discharges at specific sites, the application for authorization under the MSGP is not based on site-specific conditions. The permit contains many requirements to control pollution through a variety of pollution prevention measures and controls. In contrast, applications for individual TPDES permits provide a significant amount of site-specific information on industrial activities and proposed discharges, individual TPDES permits can then be drafted to contain more site-specific requirements, including chemical-specific numeric effluent limitations. At the current time, TCEQ has not determined a benchmark level for TPH to be used for compliance with the MSGP.

**Comment 97: HCPC commented** that it has conducted investigations at facilities with waivers from hazardous metals monitoring requirements, obtained by certification under Part III, Section C(1)(c). At some facilities, HCPC observed site conditions that contradict the waiver requirements and would most likely result in contaminated stormwater.

**Response 97:** TCEQ responds that if a regulated entity covered under the MSGP is not meeting the waiver conditions that it has certified; then the waiver is not valid, and the permittee would be in violation of the permit. As a result, the facility could be subject to enforcement by the MS4 operators, TCEQ regions, and EPA.

**Comment 98: HCPC recommended** that the MSGP require sampling when a permittee is requesting a waiver from monitoring requirements for hazardous metals and remove the following language below at Part III, Section C(1)(c):

- ~~(1) the permittee certifies that the regulated facility does not use a raw material, produce an intermediate product, or produce a final product that contains one (a) or more of the hazardous metals listed at Part III, Section C.1(a) of this permit; or~~
  
- ~~(2) The permittee certifies that any raw materials, intermediate products, or final products that contain one or more hazardous metal are never exposed to stormwater or runoff (final products are not considered to expose hazardous metals to runoff if the final product is designed for outdoor use, unless it is a product that could be transported by stormwater runoff or the final product will be used as a material or intermediate product); or~~

**Response 98:** The MSGP allows permittees to certify when a hazardous metal is not used, stored, and handled in the facility. Part III.E.1.(f)(1) states that the permittee is subject to administrative, civil and criminal penalties, as applicable, for ...knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under this permit. The MSGP does not prohibit local authorities from requesting a sample to verify that a waiver is justified.

**Comment 99: HCPC commented** that it has conducted investigations where facilities with aluminum and iron benchmarks consistently exceed benchmarks levels but are not making enough progress towards lowering discharges below the benchmark.

**Response 99:** TCEQ responds that when a benchmark value is consistently exceeded and a permittee is not adjusting its BMPs to achieve progress towards the benchmark value, the permittee may be subject to violation of the permit and might be subject to enforcement by regulatory agencies. As stated in Part IV.A.1 and 3 of the MSGP, analytical results that exceed a benchmark value are not a violation of the permit, as these values are not numeric effluent limitations. However, not conducting benchmark sampling, not submitting the benchmark monitoring sample results, or not submitting an explanation as to why the sampling failed to be conducted is a violation of the permit requirements. Exceedances of benchmark values must be investigated as they indicate that modifications to the SWP3 and current BMP(s) may be necessary.

**Comment 100: HCPC recommended** that aluminum and iron be added to the list of Numeric Effluent Limitations for hazardous metals. Aluminum and iron parameters are currently benchmarks. Adding these parameters to the effluent list will force facilities to reduce aluminum and iron discharges in a timelier manner or be subject to a violation.

**Response 100:** As discussed in Response 96, numeric effluent limitations in the permit are based on state rules under 30 TAC Chapter 319 and federal regulations listed in 40 CFR §122.26.

**Comment 101: HENSLEY commented** that the study by the National Academies of Sciences, Engineering, and Medicine evaluating the EPA MSGP (National Academies of Sciences, Engineering, and Medicine. 2019. *Improving the EPA Multi-Sector General Permit for Industrial Stormwater Discharges*. Washington, DC: The National Academies Press. doi: <https://doi.org/10.17226/25355>.) found that there was little evidence of adverse effects to aquatic organisms at common iron levels. **HENSLEY recommended** that the iron benchmarks should be suspended or removed.

**Response 101:** TCEQ responds that a benchmark parameter for iron has been included in the MSGP during several permit terms, and previous versions of the EPA MSGP included iron as a benchmark parameter as well. During each permit renewal cycle, TCEQ evaluates the need to adjust benchmark parameters. See Response 128 for more information on TCEQ's evaluation of benchmark parameters. TCEQ has determined that the benchmark parameter for iron should be continued.

**Comment 102: LCRA commented** that the proposed MSGP requires reporting federal numeric effluent limitations and benchmark monitoring using the NetDMR system. This system, which is within the EPA's CDX system, has a built in-method of delegation not using STEERS. Therefore, the proposed MSGP does not have the information necessary for permittees to determine how to ensure compliance with the proposed Delegation of Signatory requirement in the EPA's CDX system.

**Response 102:** Please see Response 61.

**Comment 103: RKCI commented** that there is a great deal of confusion with regards to the year three and year four waiving of sampling and then what happens in year five.

**Response 103:** TCEQ responds that Part IV.B.1 of the MSGP requires benchmark monitoring to be conducted once every six months during the two monitoring periods: January through June and July through December. The annual average result is submitted to TCEQ by March 31<sup>st</sup> each year. If all the annual average results during the first two calendar years (four monitoring periods) after obtaining authorization are below benchmark values in the permit, the permittee may waive out of benchmark monitoring the rest of the permit term.

If authorization was obtained at the same time as the general permit was issued, “the rest of the permit term” would be Years 3 and 4, as shown in the table below. No monitoring is required during the years of MSGP renewal because those years do not have two full six months monitoring periods. If authorization was obtained on Year 3 of the MSGP, then the permittee is not eligible for this waiver option as the first two monitoring years have passed. The NOIs that are submitted during the permit term start their Year 1 monitoring year on January 1<sup>st</sup> of their first coming calendar year, these permittees will not have four full monitoring years.

NOI submitted between August 14 and December 31, 2021	No sampling required during this four-month period.
Year 1 (January through December 2022)	Sampling required during January to June 2022, and July to December 2022.
Year 2 (January through December 2023)	Sampling required during January to June 2023, and July to December 2023.
Year 3 (January through December 2024)	Sampling required during January to June 2024, and July to December 2024, <i>unless</i> a benchmark waiver was obtained.
Year 4 (January through December 2025)	Sampling required during January to June 2025, and July to December 2025, <i>unless</i> a benchmark waiver was obtained.
Year 5- General Permit Renewal - August 2026	No sampling required during this eight-month period.

**Comment 104: RKCI recommended** that the waiver of sampling be explained better in the MSGP and if a new system is needed to submit benchmark results and DMR results, TCEQ should provide guidance to facilitate the use of the system.

**Response 104: Response 104:** TCEQ responds that obtaining waivers from monitoring is described in Part III.C.1.(c) and Part IV.B.1.(c) in the permit, waiving from benchmark monitoring is explained in Response 103, and submitting DMRs is described in Responses 58 through 65. The permit language was clarified in this renewal. The TCEQ has a webpage with guidance for permittees on how to submit data using the NetDMR system including videos and other resources. The “Submit Your Discharge Monitoring Reports Online” webpage can be accessed at <https://www.tceq.texas.gov/permitting/netdmr>

#### **PART IV.A BENCHMARK MONITORING REQUIREMENTS**

**Comment 105: PEI commented** that while benchmark analytical monitoring is not currently an enforceable standard, it’s an informational standard that allows registrants to sort of keep track of how they’re doing relative to industry standards. The EPA has stated it’s looking at applying tiered enforcement criteria to benchmark levels in the future.

**Response 105:** TCEQ responds that while it appreciates the comment, this permit renewal does not apply a tiered enforcement criteria approach to benchmark levels.

**Comment 106: PEI recommended** that TCEQ consider EPA’s possible tiered enforcement criteria because within the next five years, there may be benchmark levels as enforceable criteria and rather than continuing to ratchet down the benchmark levels, TCEQ should consider ways to inform industry without making it an enforceable criteria.

**Response 106:** EPA’s 2021 MSGP does not include a tiered enforcement criteria. TCEQ will consider changes to EPA’s MSGP in future permit terms, including their implementation of a tiered enforcement criteria.

#### **PART IV.A.1 MONITORING BENCHMARK PARAMETERS IN DISCHARGES**

**Comment 107: HCPC recommended** that the MSGP be amended to require facilities that exceed benchmark standards in excessive amounts be required to conduct benchmark sampling on a more frequent basis and for the more frequent monitoring to continue until the parameter is below the benchmark.

**Response 107:** When a benchmark value is exceeded, permittees are required to investigate the causes of the exceedance, adjust BMPs, and make appropriate revisions to the SWP3. Even though benchmark values are not numeric effluent limitations, local jurisdictions can apply more stringent requirements to facilities as part of their MS4 permits.

## **PART V. BENCHMARK MONITORING FOR INDUSTRIAL ACTIVITIES**

**Comment 108: HCPC commented** that its investigations at facilities regulated under Sector M, N, and R routinely observe conditions resulting in the presence of the requested parameters. For example, HCPC routinely observes used oil staining or other TPH sources at auto salvage yards, which would result in total petroleum hydrocarbons (TPH) contaminated stormwater. HCPC has site specific data to illustrate the presence of these pollutants that can be made available upon request. **HCPC recommended** that the MSGP be amended to include the listed benchmarks: Sector M and N: add TPH; Sector R: Add the same requirements as Sector Q and include copper.

**Response 108:** At this time TCEQ has not determined a benchmark level for TPH and copper to be used for compliance with the sectors proposed by the commenter. However, based on the 2019 National Academies of Sciences Study and EPA's 2021 MSGP, TCEQ will reevaluate benchmarks in future permit renewals.

**Comment 109: HCPC commented** that ship and boat building or repair yards activities include sand blasting, which results in contaminated used blast material that can contribute to the pollutant load.

**Response 109:** TCEQ responds that the additional SWP3 requirements contained in Part V.R.4 of the MSGP are adequate to address potential pollutant sources as a result of sand blasting. At this time TCEQ has not determined a benchmark level for blast material to be used for compliance with the industrial activities identified by the commenter. However, based on the National Academies of Sciences Study and EPA's 2021 MSGP, TCEQ will reevaluate benchmarks in future permit renewals.

**Comment 110: HCPC recommended** that Sector R, ship and boat building or repair yards, be required to conduct benchmark monitoring for Aluminum, Copper, Lead, TSS and Zinc.

**Response 110:** TCEQ responds that the additional SWP3 requirements contained in Part V.R.4 of the MSGP are adequate to address potential pollutant sources as a result of sand blasting.

## **PART III.D.2.b - REPRESENTATIVE DISCHARGE SAMPLES**

**Comment 111: WCM commented** that some authorized non-stormwater discharges do not typically occur during a rain event. For example: fire hydrant flushing, lawn watering, and water from routine washing of buildings / pavement, etc.

**Response 111:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback.

**Comment 112: WCM recommended** that TCEQ clarify the applicability of substantially similar outfalls.

Example of applicability of this clarification: For facilities with a significant number of stormwater outfalls / points of stormwater discharge, establishing substantially similar outfalls is essential to maintain compliance with monitoring and sampling required by the MSGP. In some instances, conducting monitoring and sampling at a significant number of outfalls may be physically impossible during the first thirty (30) minutes of discharge due to a facility's size and the location of the outfalls. For facilities that maintain a firefighting system to cover the entire facility via underground piping, water discharged from the system has the potential to enter all of the facility's stormwater outfalls. In such instances, and in accordance with TCEQs concurrence in June 2019, substantially similar outfalls may be established so long as the fire suppressant water is not being flushed and discharged during a rain event.

**Response 112:** TCEQ responds that substantially similar outfalls must have comparable characteristics of their drainage areas such as industrial activities and BMPs resulting in the discharges from those outfalls being substantially similar. Adding an allowable non-stormwater discharge to an outfall will generally alter the characteristics by changing the concentration of pollutants, resulting in an outfall that cannot be considered substantially similar in many cases.

**Comment 113: WCM recommended** that the MSGP be revised to allow outfalls to be established as substantially similar as long as non-stormwater discharges are not being discharged during a rain event (i.e., when sampling is required) in accordance with concurrence received from TCEQ in June 2019.

**Response 113:** TCEQ responds that it is not aware of the referred concurrence. Please see Response 112.

## **PART V.E.2:**

**Comment 114: WCM recommended** that TCEQ clarify if the prohibition on discharging any additional wastestreams and the requirement to seek authorization to discharge or land apply process wastewater under a separate TPDES or TCEQ wastewater permit, is specifically for the discharge of additional process wastestreams and if non-stormwater discharges, as identified in Part I, Section A.6, are authorized in the above named section.

**Response 114:** TCEQ responds that the MSGP authorizes the discharge of stormwater associated with industrial activity, as defined in 40 CFR §122.26(b)(14), and that does not cause or contribute to a violation of water quality standards. In addition, certain non-stormwater discharges may be authorized by the MSGP, as listed in Part II.A.6. Other discharges, including wastewater and process water, are not authorized under the MSGP. Furthermore, stormwater discharges associated with industrial activity that combine with sources of non-stormwater discharge, other than those listed in Part II.A.6. of the MSGP, are not authorized under the MSGP.

## **PART V.P.2.a & .d.1:**

**Comment 115: WCM commented that** Item 2(a) states that for facilities described by the SIC codes listed in Sector P, except for SIC codes 4221, 4222, and 4225, permit coverage is only required for stormwater discharges from areas where the following activities are performed: vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or equipment cleaning. Coverage for stormwater runoff from additional areas may be obtained as described in Part V, section P.2.(d).

**Response 115:** TCEQ agrees and acknowledges the comment.

**Comment 116: WCM commented that** section P.2.(d) of the MSGP states that the permittee may obtain authorization to discharge stormwater under this general permit from additional areas of Sector P facilities where materials, intermediates, or products are stored or handled, and where the discharge from these areas would otherwise require authorization under a TPDES individual permit or alternative general permit. This permit does not authorize the discharge of any process wastewater from material storage or handling areas, including contaminated stormwater.

**Response 116:** TCEQ responds that the requirements in Part V.P.2.(d) of the MSGP apply to stormwater discharges associated with industrial activities from Land Transportation and Warehousing facilities identified by all the SIC codes listed under Sector P.

**Comment 117: WCM questioned** whether coverage for stormwater runoff from materials storage or handling areas as described in 2.d is limited to Sector P facilities that perform vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or equipment cleaning.

**Response 117:** TCEQ responds that Part V.P.2.d of the MSGP is applicable to any facility regulated under Sector P that wants to obtain authorization to discharge stormwater from additional areas of a Sector P facility where materials, intermediates, or products are stored or handled, and where the discharge from these areas would otherwise require authorization under a TPDES individual permit or alternative general permit. The MSGP does not authorize the discharge of any process wastewater from material storage or handling areas, including contaminated stormwater.

**Comment 118: WCM questioned** if a facility is required to obtain authorization to discharge if the facility is not described by SIC codes 4221, 4222, or 4225 and does not conduct vehicle maintenance or equipment cleaning in an area exposed to stormwater.

**Response 118:** TCEQ responds that if a facility is not described by SIC codes 4221, 4222, or 4225 and does not conduct vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or equipment cleaning then the facility is not required to obtain coverage under the MSGP. (Note:

This exemption does not apply to SIC code 5171, Petroleum Bulk Stations and Terminals).

**Comment 119: WCM recommended** that TCEQ clarify if discharges are authorized under Sector P.

**Response 119:** TCEQ responds that Part V.P.2 clearly states that facilities regulated under Sector P are authorized to discharge under the terms and conditions of the MSGP, provided they seek and obtain authorization under the MSGP.

## **PART V.J. MINERAL MINING AND PROCESSING FACILITIES**

**Comment 120: HCPC commented** that HCPC investigations at sand mining APOs after dewatering activities and observed muddy water in off-site ditches, the result of dewatering without proper structural controls, and if a HCPC investigator had observed the discharge, it would have resulted in an effluent violation.

**Response 120:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback. Local jurisdiction can take appropriate enforcement actions as part of their MS4 permits.

**Comment 121: HCPC recommended** that Sector J require facilities to notify both the TCEQ and the local pollution control agency prior to dewatering. Notifying TCEQ and HCPC prior to discharge would allow TCEQ and local pollution control agencies to ensure structural controls are adequate prior to the discharge event.

**Response 121:** TCEQ responds that requiring Sector J facilities to contact TCEQ and the local pollution control agency prior to every dewatering would be an undue burden on the facility, therefore, TCEQ declines to add the recommendation to the MSGP.

**Comment 122: HCPC recommended** the underlined language below be added to Section J - 6. Numeric Effluent Limitations (c) Reporting Requirements.

(c) Reporting Requirements. Monitoring for compliance with numeric effluent limitations in this section is subject to the following requirements:

(4) Notification of the TCEQ and local pollution control agency is required prior to dewatering.

**Response 122:** Please see Response 121.

**Comment 123: TACA recommended** that to prevent possible damage to containment areas such as berms, weirs, or other stormwater control measures located at a mining operation, language should be added to Sector J that allows, or at least provides, the ED the discretion to allow certain discharges in advance of catastrophic and/or named rain events, as controlled releases in advance of these events are much more

advantageous and protective of the environment instead of reactively managing these events after the fact.

**Response 123:** TCEQ responds that the MSGP allows Sector J facilities to remove water that is impounded or that collects in the mine. The discharges must be stormwater, as defined by 40 CFR §122.26(b)(14), and certain non-stormwater discharges (listed in 40 CFR §122.26(d)(2)(iv)(B)(1)). However, if a mine is also used for treatment of process generated wastewater, discharges of commingled water from the facilities must be deemed discharges of process generated wastewater and could not be discharged under the MSGP.

**Comment 124:** TACA recommended that section 11(b)(2) of the MSGP should be further clarified as to the expectations for post mining use. Additional examples of post mining use, possible control measures needed to protect the integrity of post mining areas, acceptable wildlife habitat construction, and other possible uses of previously mined areas should be added to this section. In the alternative, TCEQ should develop detailed guidance on compliance with this section.

**Response 124:** TCEQ responds that including detailed information on post mining uses and possible control measures needed to protect the integrity of post mining areas is outside the objective of this permit. Permittees must develop a SWP3 that includes BMPs necessary to comply with the MSGP. The BMPs and control measures should be determined by the permittee based on their specific site characteristics.

**Comment 125:** TACA commented that it would be willing to meet with TCEQ to discuss industry experience and aid with adding language to this section or developing guidance.

**Response 125:** TCEQ thanks the commenter, acknowledges the comment, and appreciates the feedback.

#### **PART V.S – SECTOR S OF INDUSTRIAL ACTIVITY -AIR TRANSPORTATION FACILITIES**

**Comment 126:** DFW commented that it is in partnership with the Engineering Research Center for Collaborative Adaptive Sensing of the Atmosphere, which deploys a network of doppler radars that provides high resolution rainfall mapping capabilities and highly precise rainfall data. Therefore, DFW commented that a new section be added to Sector S (Air Transportation Facilities) to allow an alternative means of compliance, subject to TCEQ's approval, with the rain gauge provision of Part III. Section D, 1(c).

**Response 126:** TCEQ responds that it agrees using this described method for collecting rainfall data and to provide more flexibility on monitoring rain fall events. In response to the comment the terms “a rain gauge” or “a rain gauge on-site” was updated in Parts III.D of the MSGP. 1.(c), 4.(a) and 4.(c); and Parts V, Sections E.5.(b);

J.6.(b); and O.5.(b) to: “an on-site rain gauge, a representative weather station, or subject to TCEQ’s approval, an alternative means of compliance.”

### **PART V.T.2.b.2 – ADDITIONAL SWP3 REQUIREMENTS - PLASTICS MANUFACTURING REQUIREMENTS**

**Comment 127:** WEAT/ TACWA recommended the following edits to provide clarity and consistency with TCEQ’s proposed 2021 revisions to the *Procedures to Implement Texas Surface Water Quality Standards* concerning the control of plastics.

Plastics Manufacturing: The operator of a plastic products manufacturing facility shall prevent the possibility of discharging plastic materials, including at a minimum virgin and recycled plastic resin pellets, powders, flakes, powdered additives, regrind, scrap, waste, and recycling material, in stormwater discharges from the facility by implementing control measures (or their equivalents). The control measures must include: minimizing spills, cleaning up of spills promptly and thoroughly, sweeping and vacuuming thoroughly, capturing pellets, implementing a containment system, designed to trap particles retained, at each on-site storm drain discharge location down gradient of areas containing plastic materials, employee education and training, using filters to remove plastics in stormwater, visually inspecting stormwater channels and outfalls, as well as areas outside the facility discharge point for plastics at least once a week and reporting to TCEQ and cleaning up any discharged plastics, and using precautions for proper disposal. The operator shall also regularly inspect its treated wastewater to ensure the absence of plastics in the effluent.

**Response 127:** TCEQ responds that it agrees with part of the comment and updated Part V.Y.2.(b).(2) of the MSGP to include “..... sweeping thoroughly, and/or vacuuming, capturing pellets...” as described in Response 69. TCEQ developed the provisions for control of plastics to clarify rules and to ensure water quality protection.

### **Part V.T.5 - BENCHMARK REQUIREMENTS IN SUBSECTIONS IN SECTOR T – REVISING THE BOD5 BENCHMARK PARAMETER FOR BOD5 FROM 20 TO 15 MG/L FOR CERTAIN WASTEWATER TREATMENT PLANTS**

**Comment 128:** WEAT/ TACWA commented that while TCEQ has provided a statistical based rationale for the proposed change to the Sector T benchmark monitoring standard for Biochemical Oxygen Demand (BOD5) from 20 mg/L to 15 mg/L, a quantitative analysis such as sampling results or stream modeling has not been made available to the public to support the recommended change.

**Response 128:** TCEQ responds that changes to benchmark values in the TPDES MSGP are based on statistical analysis conducted on benchmark sampling results submitted by facilities during the previous permit term. All analytical data are compiled by TCEQ and are made available for review by the public upon request. An adjustment to a

benchmark value was done, when the geometric mean of the submitted analytical results varied more than 40 % from the benchmark value in the permit. This 40% deviation is consistent with the standard used to determine noncompliance in permit effluent limitation and this method has been used in several permit renewals. Stream modeling was not used to evaluate benchmark values.

**Comment 129: WEAT/ TACWA recommended** TCEQ consider further justifying the requirement based on modeling of the stream to include upstream and downstream sampling near Sector T facilities.

**Response 129:** As described in Response 128, stream modeling was not used in determining benchmark values, neither was stream sampling.

**Comment 130: WEAT/ TACWA recommended** that sample results be made available for transparency and support of the recommended change for BOD5.

**Response 130:** As described in Response 128, sample results are made available to the public upon request.

#### **PART V.Y.2.b.2. PLASTICS MANUFACTURING**

**Comment 131: TIP commented** that TCEQ's Fact Sheet states that this provision was added in order to be consistent with EPA's MSGP. But neither EPA's 2015 MSGP, nor its proposed 2020 MSGP, use this language.

**Response 131:** TCEQ responds that EPA's 2021 MSGP, Parts 1-7: General requirements that apply to all facilities, requires that facilities handling pre-production plastic implement controls to eliminate discharges of plastic in stormwater and provides examples, such as the installment of a containment system or other controls as appropriate control measures. TCEQ developed the provisions for control of plastics to clarify rules and to ensure water quality protection. Please see Responses 72 and 73.

**Comment 132: TIP recommended** that TCEQ require facilities to "minimize the discharge of plastic resin pellets" rather than "prevent the possibility" of discharging such plastic pellets in stormwater for Sector Y.

**Response 132:** TCEQ responds that it disagrees with the comment. TCEQ developed the provisions for control of plastics to clarify rules and to ensure water quality protection.

**Comment 133: TIP commented** that an Implementation Period is essential if TCEQ decides to proceed without addressing the feasibility of the proposed standards in Part III.A.4.c. and Part V.Y.2.b.2. through consideration of technological achievability and costs, then, at a bare minimum, it must recognize the need for implementation schedules.

**Response 133:** Many entities already have control measures in place such as good housekeeping, employee training, spill prevention and cleanup. However, the ED through the Office of Compliance and Enforcement is aware that there may be technology constraints and will take these into consideration as necessary on a case-by-case basis.

**Comment 134: TIP commented** that maximizing flexibility upstream of the final outfall furthers the overall objective, as flexible, less prescriptive language better supports the end objective of minimizing (eliminating to the extent technologically achievable and economically practicable) the discharge of visible plastics in stormwater.

**Response 134:** TCEQ responds that it agrees that implementing controls upstream of the final outfall is the preferred method to control plastics in stormwater. Part III.A.4.(c) of the permit provides flexibility by stating the following: *“Facilities that handle pre-production plastic must implement BMPs to eliminate discharges of plastic in stormwater through the implementation of control measures such as the following, where determined feasible (list not exclusive): minimizing spills, cleaning up spills promptly and thoroughly, sweeping and/or vacuuming thoroughly, and pellet capturing.”* As described in Response 69, TCEQ added *“and/or vacuuming”* to this section and to Part III.A.4.(c). Plastic products manufacturing facilities regulated under sector Y have the same flexibility to select controls, and the MSGP lists certain activities and pollutant sources that needs to be addressed. Plastic manufacturers are required to implement a containment system to trap particles at stormwater discharge locations down gradient of areas containing plastic materials.

**Comment 135: TIP recommended** that TCEQ should give facilities maximum flexibility to craft solutions everywhere upstream of the outfall without mandating specific control measures so that a variety of systems can be considered collectively to achieve the ultimate goal.

**Response 135:** TCEQ responds that as stated in Response 134, the permit provides flexibility on selecting controls.

**Comment 136: TIP commented** that while good housekeeping is important as a BMP, it should not be an isolated hook for enforcement, given associated ambiguity, when collective measures are being used to successfully address pre-production plastics and avoid discharge from outfalls.

**Response 136:** As stated in Response 134, the permit provides flexibility on selecting controls. Collective measures are needed for minimizing all types of stormwater pollutants such as inspections, employee training, monitoring, and sampling, maintaining an updated SWP3. Enforcement is focusing on all measures, not just good housekeeping.

**Comment 137: TIP recommended** that TCEQ allow for any inadequacies identified in BMPs to be remedied through prompt analysis and adjustment to or addition of BMPs.

**Response 137:** TCEQ responds that the MSGP allows for adjustment to or addition of BMPs, and in some instances it is even required. For example, if any non-compliances are observed during the routine facility inspections or during the annual comprehensive site compliance inspection, the permittee is required to document the non-compliance and to implement and document corrective actions needed. Please see Part III, Sections B and C, of the MSGP.

**Comment 138:** TCC recommended that TCEQ issue guidance providing examples of qualifying BMPs and clarify that it is the responsibility of each site to develop their own BMPs that are an effective and practicable means of preventing discharges.

**Response 138:** TCEQ responds that it does not intend to provide examples of qualifying BMPs, however the EPA's *Industrial Stormwater Fact Sheet Series for Technical Fact Sheet for Sector Y: Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries* from December 2006, provides some BMP examples. In addition, EPA's 2021 MSGP provides examples of appropriate control measures to address plastic in stormwater.

**Comment 139:** TCC commented it should be the responsibility of each site to develop BMPs that are determined to be an effective and practicable (including technological, economic, and institutional considerations) means of preventing discharges. BMPs must be unique to each individual facility, recognizing the unique operational factors specific to each site.

**Response 139:** TCEQ responds that as stated in Response 134, the MSGP provides flexibility to implement BMPs to target the discharge of plastics in stormwater.

**Comment 140:** TCC recommended the Commission develop and provide an enforcement plan and guidance document and ensure consistent and standardized enforcement across all TCEQ regions.

**Response 140:** TCEQ's compliance and enforcement staff use investigation checklists and the Enforcement Initiation Criteria to standardize investigations and enforcement actions across the state. These documents are out of scope for this permit action.

**Comment 141:** TCC commented that TCEQ is proposing to include language beyond what was included in the EPA 2015 or 2020 MSGP permit stating "...facility shall prevent the possibility of discharging plastic materials..." the usage of the words "shall prevent possibility" indicate an absolute prevention of plastic material discharge, which is in conflict with 30 TAC 307.4 § (b)(2) which states "...Surface water must be essentially free of floating debris and suspended solids..."

**Response 141:** TCEQ responds that it developed the provisions for control of plastics to clarify rules and to ensure water quality protection.

**Comment 142:** TCC commented that a facility should not be penalized for plastic pellet that has not yet had an offsite impact, as the language of "shall prevent the

possibility” could be interpreted to allow violations to be issued before a pellet has left a facility or made it to a point of compliance.

**Response 142:** TCEQ responds that the MSGP states that “*prevent the possibility of discharging plastic materials...*” because the permittee needs to implement controls to prevent discharges from occurring offsite. The TCEQ does not intend to cite a violation for the discharge of pre-production plastic pellets unless the plastics discharge from the site or the facility is not otherwise following its best management practices.

**Comment 143: TCC recommended** that the point of compliance should be after the final external outfall or off-site receiving water body, and that TCEQ revise this language to read as follows in order to be more consistent with 30 TAC Chapter 307.4(b)(2): “...facility shall minimize prevent the possibility of discharging visible plastic materials...”

**Response 143:** TCEQ responds that as stated in Response 131, TCEQ developed the provisions for control of plastics to clarify rules and to ensure water quality protection.

**Comment 144: KOCH commented** that the term “containment system” is redundant and could be overly burdensome. Each facility is unique and should know how and where to implement the best available control technologies to ensure compliance. For some facilities, the control measures provided in the proposed condition may be enough for minimizing the discharge of plastics without installing a “containment system” which could be overly burdensome, costly and could potentially impact discharge flows in an unintended manner.

**Response 144:** TCEQ responds that a containment system is a type of control measure mentioned as an appropriate control by the EPA in its 2021 MSGP. An installed containment system, such as storm drain screens, would capture plastic particles that had not been captured by other control measures such as good housekeeping or spill clean-ups. A containment system would be able to assist the permittee in being compliant with the requirement to eliminate discharges of plastic pellets in stormwater discharges from a facility.

**Comment 145: KOCH recommended** that the control measures listed should be described as examples and not mandatory or remove the specific listed control measures and simply require that systems be implemented to minimize (as defined by the permit) the discharge of plastics.

**Response 145:** TCEQ responds that Part V, Section Y.2.(b) of the MSGP, Good Housekeeping Measures, lists potential pollutant sources that must be addressed and need to have BMPs to control the discharge of pollutants from the industrial site. The sources are based on EPA’s *Industrial Stormwater Fact Sheet Series for Technical Fact Sheet for Sector Y: Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries* from December 2006. Part V, Section Y.2.(b)(2), Plastic Manufacturing, lists control measures but not the detailed requirements for which

specific BMPs need to be implemented. Most control measures are activities already implemented by permittees such as spill cleanups, good housekeeping, employee training, and proper disposal methods.