

**Fact Sheet and Executive Director's Preliminary Decision  
Stormwater Discharges from Construction Activities - TXR150000**

For proposed Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR150000 to authorize the discharge of stormwater runoff and certain non-stormwater discharges from construction sites into surface water in the state.

Issuing Office: Texas Commission on Environmental Quality

P.O. Box 13087

Austin, Texas 78711-3087

Prepared by: Wastewater Permitting Section

Water Quality Division

(512) 239-4671

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Permit Action: Reissuance of a General Stormwater Permit for Construction Activities

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## **Fact Sheet and Executive Director's Preliminary Decision Stormwater Discharges from Construction Activities - TXR150000**

### **I. Summary**

The Texas Commission on Environmental Quality (TCEQ) is proposing a renewal with amendments of TPDES Construction General Permit (CGP), Permit No. TXR150000, issued on February 19, 2013 and effective on March 5, 2013, which authorizes discharges from construction sites into surface water in the state. The general permit specifies which construction activities must obtain permit coverage, which are eligible for waivers, and which may be required to obtain individual permit coverage. The general permit specifies that where discharges will reach Waters of the United States, a stormwater pollution prevention plan (SWP3) must be developed and implemented unless certain conditions are met. The general permit provides authorization for discharges from small construction sites, according to federal Phase II stormwater regulations finalized in the *Federal Register* of December 8, 1999.

The principal changes to the existing CGP include:

- A.** Added requirements of the EPA's Final NPDES Electronic Reporting Rule, published on October 22, 2015 and effective on December 21, 2015, which requires that all Notices of Intent (NOI), Notices of Termination (NOT), and Low Rainfall Erosivity Waivers (LREW) must be filed electronically. Compliance with this rule is required to take place by no later than December 24, 2020. The TCEQ will require electronic submittal of all NOIs, NOTs, and LREWs as of September 1, 2018 (permit Part II, Sections E.3; F.1; and G.1. & 3; Part VIII, Section D).
- B.** Revised Part III, Section G (1.) and (2.) to include the amended 2014 and 2015 federal Effluent Limitation Guidelines (ELGs) at located in 40 Code of Federal Regulations (CFR) §§ 450.11 and 450.21.
- C.** Revisiedthe benchmark monitoring level for Total Suspended Solids (TSS) from 100 milligrams per Liter (mg/L) to 50 mg/L in discharges of stormwater from concrete batch-mixing plants covered under the permit. This change is consistent with the benchmark monitoring level for TSS that is required for concrete manufacturers and ready-mix concrete plants in the 2016 Multi-Sector General Permit (MSGP) TXR050000 (permit Part IV, Section A.1.).
- D.** Revised requirement language in Part II, Section C.4. [Impaired Receiving Waters and Total Maximum Daily Load (TMDL) Requirements] to include reference to the Texas Integrated Report of Surface Water Quality for CWA Sections 305(b) and 303(d).

### **II. Executive Director's Recommendation**

The executive director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. It is proposed that the permit be issued to expire five years from the effective date, following the requirements of 30 TAC §205.5(a).

### **III. Permit Applicability and Coverage**

- A.** This general permit would authorize the discharge of stormwater and certain allowable non-stormwater associated with regulated small and large construction activities into or adjacent to surface water in the state. This general permit would specify which sites may be authorized under this general permit, which are eligible for waivers, and which must be authorized by individual permit.
- B.** This general permit would authorize the discharge of stormwater associated with other industrial activities at construction sites as follows: Discharges of stormwater runoff from supporting activities, including concrete batch plants, asphalt batch plants, equipment staging areas, material storage yards, material borrow areas, and excavated

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material disposal areas that are located at, adjacent to, or in close proximity to the permitted construction site and directly support the construction activity; and do not operate beyond the completion date of the construction activity.

- C. The general permit would not authorize the discharge of process wastewater. In addition, the general permit would not authorize other non-stormwater discharges, except for the following:
1. discharges from fire-fighting activities (fire-fighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);
  2. uncontaminated fire hydrant flushings (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life), which include flushings from systems that utilize potable water, surface water, or groundwater that does not contain additional pollutants (uncontaminated fire hydrant flushings do not include systems utilizing reclaimed wastewater as a source water);
  3. water from the routine washing of vehicles, the external portion of buildings or structures, and pavement where detergents and soaps are not used and where spills or leaks of toxic or hazardous materials have not occurred (unless spilled materials have been removed; and if local, state, or federal regulations are applicable, the materials are removed according to those regulations), where pressure washing is not conducted, and where the purpose is to remove mud, dirt, or dust;
  4. uncontaminated water used to control dust;
  5. potable water sources, including waterline flushings (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);
  6. uncontaminated air conditioning condensate;
  7. uncontaminated ground water or spring water, including foundation or footing drains where flows are not contaminated with industrial materials such as solvents; and
  8. lawn watering and similar irrigation drainage.

The purpose of providing this list in the general permit is to clarify that certain non-stormwater discharges that may occur during normal activities at a construction site do not require additional permit coverage. The intention of including the above list of non-stormwater discharges in the general permit is not meant to prohibit these discharges in non-regulated construction activity. The non-stormwater discharges listed above are not authorized in small construction activities with automatic authorization under the general permit, where there is a low potential for erosion.

- D. The on-site disposal of water resulting from the wash out of concrete trucks may be conducted at regulated construction sites, provided that certain requirements of the general permit are met. Operators may also find recommendations for addressing concrete wash out from the EPA at the following web site:  
<http://cfpub.epa.gov/npdes/stormwater/swppp.cfm> This web page also includes general guidance on developing a construction site SWP3.
- E. The following discharges are not eligible for coverage under the proposed general permit, and must be authorized under an individual permit or an alternative general permit, if one is available:
1. Discharges that would cause or contribute to a violation of water quality standards or that would fail to protect and maintain existing designated uses of receiving waters;

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2. New sources or new discharges of the constituents of concern to impaired waters, unless otherwise allowable under commission rules, applicable state law, and any TMDL that exists for the applicable receiving water;
  3. Discharges otherwise prohibited under existing state rules.
- F.** The following stormwater discharges are not eligible for coverage under the proposed permit and may require individual or alternative general permit coverage:
- Discharges that occur after construction activities have been completed and after the construction site and any supporting activity site have undergone final stabilization.
- G.** Construction activities that would disturb less than one acre, and not part of a larger common plan of development, are not required to obtain permit coverage under the general permit nor an individual permit unless required by the executive director.
- H.** Primary and secondary operators of small construction activities receive automatic authorization when they have complied with the requirements for the applicable type of small construction in Part II.E.1 & 2 of the permit.
- I.** Primary operators for small construction activities that are not part of a larger common plan of development for large construction are not required to submit an NOI and therefore do not receive a permit authorization number.
- J.** The requirements for the transfer of day-to-day operational control, as described in Part II.F.4 applies to operators with automatic authorization for small construction activities described in Part II.E.1 and E.2 and operators with authorization for large construction activities described in Part II.E.3 of the general permit.
- K.** The following stormwater discharges are not under the authority of the commission, are not eligible for coverage under the general permit, and may require authorization from the EPA under a separate NPDES permit:
1. Stormwater runoff from construction activities occurring on Indian Country lands. (Information on the location and contact information for Indian Country Lands in Texas may be accessed at the following EPA web site: <http://www.epa.gov/region6/6dra/oejta/tribalaffairs/index.html>. Additionally, information on the contact information for federally recognized tribes may be found at: <http://www.indians.org/Resource/FedTribes99/fedtribes99.html>.)
  2. Stormwater runoff from construction activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including transportation of crude oil or natural gas by pipeline.

**IV. Permit Conditions**

**A. Notice of Intent and Site Notice**

Primary operators of large construction sites must submit a notice of intent (NOI) that indicates the operator will comply with the conditions of the general permit, including development of an SWP3. An NOI is not required for secondary operators.

All primary and secondary operators must post a site notice in plain view at the construction site entrance prior to the commencement of construction activities and maintain the notice until either final stabilization occurs or control of the site is turned over to a separate operator. A copy of the NOI must also be supplied to the operator of any municipal separate storm sewer system (MS4) to which the operator discharges, so that the MS4 operator can conduct its own inspection and enforcement activities according to its NPDES or TPDES permit or local ordinances.

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The general permit includes notification to secondary operators of large construction activities that they are regulated under the general permit and are not required to submit an NOI. This statement is consistent with federal rules at 40 CFR §122.28(b)(2)(vi) and as adopted by reference in 30 TAC Chapter 281, which states that the director may notify a discharger that it is covered by a general permit, even if the discharger has not submitted an NOI for coverage.

An NOI is not required for the authorization of certain discharges, as allowed by 40 CFR §122.28(b)(2)(v) and as adopted by reference in 30 TAC Chapter 281, where the executive director determines that an NOI is inappropriate. The proposed general permit incorporates this alternative as an option and automatically authorizes certain small construction activities if specific conditions are met. In making the determination that an NOI is inappropriate for small construction activities, the executive director considered the short-term nature of small construction activities, the number of construction sites that will be authorized, and the administrative burden on both the commission and the regulated community. The executive director also considered the nature and type of proposed discharges authorized under the general permit, the expected potential for toxic and conventional pollutants, and the expected volumes. The requirements and conditions of the general permit are appropriate to control the discharges from small construction sites authorized under the general permit and to protect water quality. The administrative burden on the permittee to submit an NOI and on the commission to respond to the NOI would be excessive and not directly necessary to control these discharges.

Operators of small construction sites are not required to submit an NOI, but must develop an SWP<sub>3</sub> (with the exception of those sites described in Part IV.D, below) and post a site notice containing information regarding the operator's authorization under the general permit. Operators of small construction sites may alternatively apply for a waiver from permit requirements if activities are shown to occur in certain regions and during certain seasons where the potential for erosion are below an established threshold or erosivity factor. Operators applying for these waivers are also required to provide a copy of the waiver form to the operator of any MS<sub>4</sub> that will receive the discharges from the construction site.

### **B. Stormwater Pollution Prevention Plan (SWP<sub>3</sub>)**

1. All large construction site activities as well as all small construction site activities not specifically described in Part IV.D. below, with discharges that reach Waters of the United States, must develop an SWP<sub>3</sub> according to the provisions of the proposed general permit prior to requesting authorization. Operators must implement that plan prior to commencing construction activities.

Waters of the United States are defined in the general permit. Waters of the United States do not include waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds, as defined in 40 CFR §423.11(m), that also meet the criteria of this definition). This exclusion applies only to manmade bodies of water that neither were originally created in Waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of Waters of the United States. Waters of the United States do not include previously converted cropland.

2. The required contents of the SWP<sub>3</sub> are based on federal Phase II rules (December 8, 1999 *Federal Register*) related to stormwater permitting, as well as the current TPDES general permit for large construction sites. The purpose of the SWP<sub>3</sub> is to identify and address potential sources of pollution that are reasonably expected to affect the quality of stormwater discharges from the construction site, including off-site material storage areas, overburden and stockpiles of dirt, and borrow areas. Separate SWP<sub>3</sub>s may be developed for each construction site operator where

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multiple operators exist. However, the proposed permit would also allow a shared SWP3 to promote a more efficient and coordinated effort between multiple operators at a single site. The SWP3 may provide that one operator is responsible for the preparation of a SWP3 in compliance with the CGP, and another operator is responsible for implementation of the SWP3 at the project site. Under this alternative, each individual operator would be required to submit an NOI for coverage, and each would be individually responsible for compliance with the terms of the permit in the areas of the site where the person is the responsible operator.

3. The specific requirements of the SWP3 include the following minimum provisions:
  - (a) A detailed project description, including a site map that indicates the site location, the construction site details, and information on receiving waters.
  - (b) A description of the structural and the non-structural controls (best management practices, or BMPs) that will be used to minimize pollution in runoff during construction, as well as stabilization practices during and at the completion of the activity.
  - (c) Demonstration of compliance with other state and local plans, such as the Edwards Aquifer Protection Program.
  - (d) A description of how BMPs will be maintained and how controls may be revised upon a finding that the control measures are either not working properly or adequately.
  - (e) A description of how inspections of BMPs will be conducted. Inspections are required at a minimum frequency of at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater during active construction activities. An alternative inspection schedule of once every seven (7) calendar days is also available. If this alternative schedule is developed, then the inspection must occur regardless of whether or not there has been a rainfall event since the previous inspection. Where sites have been temporarily stabilized, inspections must be conducted at least once every month. Special provisions allowing for representative inspections are provided for long, linear projects where access along the site is limited and travel along the site may damage stabilized areas or cause potential for erosion.
  - (f) Identification and description of the implementation of appropriate pollution prevention measures for all eligible non-stormwater components of the discharge.
4. TCEQ emphasizes that while the requirement to develop a SWP3, to keep it updated, and to include in it all of the required minimum contents consistent with Part III of the permit are enforceable permit requirements, the site-specific details of these SWP3s do not establish separately enforceable limits of the permit. The SWP3 is intended to serve as a road map for how the construction operator will comply with the effluent limits and other conditions of this permit and does not establish the effluent limits that apply to the construction site's discharges. These limits are established in Part III.G of the permit. The fact that the SWP3 is an external tool and not considered to include effluent limits enables the operator to be able to modify and retool its approach during the course of the permit term in order to continually improve how it complies with the permit.

**C. Terminating Coverage**

The general permit includes information on when and how an operator may terminate coverage under the general permit. Primary operators of large construction sites must submit a notice of termination (NOT) form. Operators of small construction sites and

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secondary operators of large construction sites must remove the applicable site notice. The specific requirements are included in the general permit.

An operator may terminate coverage when certain conditions are met. In establishing vegetation to achieve final stabilization, an operator is not required to utilize the same vegetation that was previously utilized at the site, provided that the stabilized area contains at least 70% coverage of the original percentage of coverage of land for the disturbed area, and provided that the operator utilizes vegetation appropriate for the area that provides acceptable coverage. The permit also allows construction operators located in arid, semi-arid, or drought-stricken areas the flexibility to implement non-vegetative erosion control measures if vegetative controls are not feasible.

### **D. Alternative Permit Requirements for Small Construction Activities Occurring During Conditions of Low Potential Erosion**

Stormwater runoff from certain small construction activities may be authorized under the general permit without being required to develop an SWP<sub>3</sub> if construction occurs when there is a low potential for erosion. This option is consistent with the existing general permit, and is not available for large construction sites, including smaller construction sites that are part of a larger common development that will disturb five (5) or more acres. This option is available for stormwater discharges, and would not include authorization for non-stormwater discharges that are otherwise required to be permitted. These mechanisms for alternative authorization are included to encourage construction to occur during times when the potential for erosion is limited. The alternative requirements apply to small construction sites where the rainfall erosivity factor, or R-factor, is less than five (5) for the duration of the activity. The R-factor is defined as the total annual erosive potential that is due to climatic effects, and is part of the Revised Universal Soil Loss Equation (RUSLE). An R-factor is calculated based on information available from the U.S. Department of Agriculture (USDA) and EPA. Annual R-factors are provided in the USDA Handbook No. 703. The following authorization options require determination of an R-factor for a portion of the year.

1. **Automatic Authorization Option:** A mechanism for automatic authorization is provided to include a very efficient authorization process for certain activities occurring during periods of low erosion potential. Appendix A of the proposed permit includes a list of time periods within certain counties when the potential for erosion is very low and where small construction activities may be automatically authorized. Not all counties in Texas are included in Appendix A, and those that are included only demonstrate an R-factor less than five (5) for the specific time period(s) shown.

Small site construction activities that commence on or after the start date for one of the listed time periods and conclude by the end date of the same listed time period are not required to submit an NOI nor to develop an SWP<sub>3</sub>. Instead, the general permit requires the operator of such a site to complete and post a specific site notice for the duration of the activity and to provide a copy of the site notice to the operator of any MS<sub>4</sub> that would receive a discharge from the site.

This automatic authorization permit option is based on construction site conditions that might otherwise qualify for a permit waiver using an R-factor calculation. Instead of requiring the construction site operator to calculate the R-factor for every possible discharge, the executive director calculated time periods within the year where the R-factor is known to be less than five (5). An application for a waiver requires the operator to calculate the R-factor, complete an LREW form, and submit the waiver request, which is described in the next section of this fact sheet.

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In developing Appendix A, the executive director used the most conservative assumptions for each county in the state. The annual R-factor values included in the USDA handbooks are annual factors, and the lowest annual R-factor in Texas is ten (10), which occurs only in El Paso County. While no county in Texas would automatically qualify for this automatic authorization option for the entire year, R factors for specific time periods within the year can be identified by multiplying the annual R-factor by the percentage of the total annual isoerodent factor that occurs during the period in question. In Texas, there are ten isoerodent zones that cross state lines, and those are listed in the table below. The map of zones is located in Chapter 2 of USDA Handbook 703: "Predicting Soil Erosion by Water," <http://www.epa.gov/npdes/pubs/ruslech2.pdf>, referenced in EPA Fact Sheet 3.1: "Stormwater Phase II Final Rule – Construction Rainfall Erosivity Waiver" (<http://www.epa.gov/npdes/pubs/fact3-1.pdf>), and is included as Appendix B of the permit.

To identify partial year R-factors less than five (5), the executive director first identified the potential start dates and end dates of construction projects, and then added the correlating total percentages for the time period. In the Erosivity Index (EI) Table developed in the USDA Handbook 703, the first period is always listed as zero (0), and with each period, a portion of the annual percentage is added until the final number for the last period equals or approaches 100 for each isoerodent zone. For the purposes of establishing Appendix A, the TCEQ did not add each period so that the values were larger for each time period; but rather included only the portion of the annual percentage that was attributable to the period in question. The end result was that each EI zone resulted in a value near 100 when all of the periods were added. Where the results were less than 100, the TCEQ included the difference for the first period beginning January 1. This resulted in an increase for several of the EI zones in the first period from zero (0), which results in a more conservative calculation.

Each county is located within one or more EI zones and contains within it a range of annual isoerodent values. For the automatic R factor permitting option, the executive director determined isoerodent zones by identifying the highest isoerodent line that crosses through the county and assigning a value of the next highest isoerodent line, since some value greater than the highest line crossing through the county would be present within the county. Generally, the value of the line located outside of and east of the county was assigned as the value for the county, as the isoerodent values generally increase to the east. The EI zones may be found in the EPA Fact Sheet 3.1 (Figure 2) or in USDA Handbook 703 (Figure 2-1), and are also provided in Appendix B of the permit. The Isoerodent Map is provided at Appendix C of the permit, and is also included in the USDA Handbook 703 and referenced in the EPA Fact Sheet

The R factor for each time period was determined by calculating the percentage of the isoerodent value that is necessary to achieve an R factor of less than five (5). For a small construction activity to be authorized under this provision, construction must commence no earlier than the start date for a specific date range and county listed in Appendix A of the general permit, and final stabilization must occur no later than the end date of that same date range. If a construction project begins during one date range and ends past that same date range (even if it is within another date range for the same county), then the resulting R factor will be over 5, and the automatic authorization is not available. If construction activities last longer than expected so that final stabilization will occur outside of an approved date range, then the operator must either apply for and obtain a waiver, if appropriate, obtain authorization under Section II.E.2. of the general permit, related to all other small construction activities, be developing and implementing an SWP3 and posting the required site notice.

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Two example calculations are shown below:

Example No. 1: In El Paso County, the highest annual isoerodent value is ten (10), and El Paso County is located in EI Zone No. 92.

In order to determine the portion of the isoerodent value (referred to below as “x”) that would result in an R factor less than 5, the executive director divided the maximum allowable R-factor, five (5), by the annual isoerodent value. Then the result was multiplied by 100 to correct for percentage.

$$x < (5 / 10) * 100$$

$$x < 50$$

To achieve an R factor less than five (5) in El Paso County, the EI from Zone 92 (see table below) must be less than 50 when subtracting the value for the start date from the value for the end date, for any period of construction. This is possible for several ranges of dates in the county, and those date ranges are listed in Appendix A.

Example No. 2: In Dallas County, the highest annual isoerodent value for the county is 350, and Dallas County is located in zone 97.

$$x < (5 / 350) * 100$$

$$x < 1.43$$

To achieve an R factor less than five (5) in Dallas County, the EI from Zone 97 (see table below) must be less than 1.43 when subtracting the value for the start date from the value for the end date, for any period of construction. There are no ranges of dates in the county that meet these criteria, and therefore construction sites in Dallas County would not qualify for this automatic authorization.

**Table of Erosivity Indices (EI) for EI Zones in Texas:**

EI #	1/1	1/16	1/31	2/15	3/1	3/16	3/31	4/15	4/30	5/15	5/30	6/14	6/29	7/14	7/29	8/13	8/28	9/12	9/27	10/12	10/27	11/11	11/26	12/11	12/31
89	0	1	1	2	3	4	7	2	8	27	38	48	55	62	69	76	83	90	94	97	98	99	100	100	100
90	0	1	2	3	4	6	8	13	21	29	37	46	54	60	65	69	74	81	87	92	95	97	98	99	100
91	0	0	0	0	1	1	1	2	6	16	29	39	46	53	60	67	74	81	88	95	99	99	100	100	100
92	0	0	0	0	1	1	1	2	6	16	29	39	46	53	60	67	74	81	88	95	99	99	100	100	100
93	0	1	1	2	3	4	6	8	13	25	40	49	56	62	67	72	76	80	85	91	97	98	99	99	100
94	0	1	2	4	6	8	10	15	21	29	38	47	53	57	61	65	70	76	83	88	91	94	96	98	100
95	0	1	3	5	7	9	11	14	18	27	35	41	46	51	57	62	68	73	79	84	89	93	96	98	100
96	0	2	4	6	9	12	17	23	30	37	43	49	54	58	62	66	70	74	78	82	86	90	94	97	100
97	0	1	3	5	7	10	14	20	28	37	48	56	61	64	68	72	77	81	86	89	92	95	98	99	100
106	0	3	6	9	13	17	21	27	33	38	44	49	55	61	67	71	75	78	81	84	86	90	94	97	100

If an operator cannot meet the automatic authorization option, then a waiver calculation may be performed to determine if the site-specific R-factor is less than five (5) for a small construction site. The waiver option is described below.

2. Low Rainfall Erosivity Waiver (LREW) Option: A small construction site operator may calculate a site-specific R-factor and apply to the TCEQ for a permit waiver (LREW). The R-factor would be calculated using site-specific location information to determine the specific isoerodent line to be used in the calculation. The operator may utilize the table in the previous section of this fact sheet to calculate the isoerodent values for the specific zone where the site is located. Alternatively, the operator may reference EPA Fact Sheet 3.1 or USDA Handbook 703. The map of Isoerodent lines is also provided as Appendix C of the general permit. An operator

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can identify the specific isoerodent line that relates to the site's location, rather than utilizing the most conservative line that was used to develop Appendix A of the general permit.

This waiver may be an important option for shorter duration projects in counties that are located in high isoerodent areas, and may also be important for longer duration projects located in portions of counties that have a lower isoerodent value than the conservative protocol that was utilized to develop Appendix A of the general permit.

The operator may calculate a site-specific R-factor using the steps outlined in EPA Fact Sheet 3.1: "Stormwater Phase II Final Rule – Construction Rainfall Erosivity Waiver" (<http://www.epa.gov/npdes/pubs/fact3-1.pdf>), by using the online calculator developed by Texas A&M University: <http://ei.tamu.edu/index.html>, using an alternative mechanism that follows appropriate methodology, or by using the following steps:

- (a) Estimate the construction start date and the construction end date. The construction end date is the date that final stabilization will be achieved.
- (b) Find the EI zone from Appendix B of the general permit.
- (c) Find the EI percentage for the project period by subtracting the EI for the start date of the project from the EI of the end date using the table above. Alternatively, use the table provided in EPA Fact Sheet 2.1 or USDA Handbook 703 in a similar manner, by subtracting the start value from the end value on the table. If the project goes past January 1, add 100 to the end date EI to obtain the appropriate value.
- (d) Refer to the Isoerodent Map (Appendix C of the general permit) and interpolate the annual isoerodent value for the construction site location.
- (e) Multiply the percent value obtained in Step 3 by the annual isoerodent value obtained in Step 4. This is the R factor for the project. If the value is less than 5, then a waiver may be obtained.

Under the waiver option, the operator must submit to the executive director a waiver form approved by the executive director, and must provide a copy of the waiver form to the operator of any MS4 that receives the discharge. The operator is not required to develop an SWP3 nor to post the waiver certification form at the entrance to the small construction site. This waiver does not authorize discharges of non-stormwater that would otherwise be required to be permitted.

### **E. Qualifying Local Programs**

This general permit does not include by reference any qualifying local programs (see federal rules at 40 CFR § 122.44(s)); however, the permit may be amended in the future to include appropriate programs that are currently being implemented or that will be implemented in the future by regulated MS4s.

### **V. Changes from Existing General Permit**

- A.** Included requirements for the EPA Electronic Reporting rule, effective December 21, 2015 in Part II, Section E.3.(b) & (f), Section F.1, Section G.1. & 3, and Part VIII, Section D of the permit.

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- B.** Included in Part III, Section G, the 2014 and 2015 amendments to the federal effluent limitation guidelines (ELGs) (40 CFR Part 450 - Construction and Development Point Source Category) as follows:
1. §450.11 (b) – Added definition of “infeasible.” (Not technologically possible or economically achievable in light of best industry practices.)
  2. §450.21 (a)(1) – Added requirement to minimize pollutants in discharges.
  3. §450.21 (a)(2) - Added requirement to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.
  4. §450.21 (a)(6) – Replaced the term “surface waters” with “Waters of the U.S.” (Water in the state was placed in the permit, rather than Waters of the U.S.); Added requirement to maximize stormwater infiltration to reduce pollutant discharges, unless infeasible.
  5. §450.21 (a)(7) – Added requirement which states that minimizing soil compaction not required where the intended function of a specific area dictates that it is compacted.
  6. §450.21 (a)(8) – Added requirement which states that a permittee must preserve topsoil, unless infeasible. The requirement also states that preserving topsoil is not required where the intended function of a specific area of a site dictates that the topsoil will be disturbed or removed.
  7. §450.21 (b) –Added requirement which states that stabilization (in arid, semi-arid, and drought-stricken areas) must be completed within a period of time as specified by the permitting authority. The requirement also states that in limited circumstances, stabilization may not be required if the intended function of a specific area of the site necessitates that it remain disturbed.
- C.** Revised the benchmark monitoring level for Total Suspended Solids (TSS) in the permit from 100 milligrams per Liter (mg/L) to 50 mg/L in discharges of stormwater from concrete batch-mixing plants covered under the permit. This change is consistent with the benchmark monitoring level for TSS that is required for concrete manufacturers and ready-mix concrete plants in the 2016 Multi-Sector General Permit (MSGP) TXR050000.
- D.** Revised the definition of Construction Activity in Part I, Section B of the permit to more clearly capture “other construction-related activities” (i.e., soil disturbance that can occur from stockpiling of fill material and demolition), construction support activity, and any soil disturbance activities which have occurred in conjunction with construction-related activity and construction support activity.
- E.** Added definitions for of Construction-Related Activity, Construction Support Activity, Low Rainfall Erosivity Waiver (LREW), and Thawing Conditions, to Part I.B of the permit, based on EPA comments.
- F.** Added contact information for TCEQ Water Program Manager (Edwards Aquifer Program).
- G.** Revised the definitions for Facility or Activity, Impaired Water, Notice of Termination, Permittee, Primary Operator, Secondary Operator, Receiving Water, Stormwater Associated with Construction activity, and Surface Water in the State in Part I.B of the permit to provide clarity to existing requirements.
- H.** Revised Part II. Section A.2 [Discharges of Stormwater Associated with Construction Support Activities] of the permit to reference the definition for Construction Support Activities, remove language that was included in the definition, and add clarifying language as to construction support activities that can or cannot be authorized under the permit. Clarified language is based on EPA comments.

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- I.** Clarified in Part I, Section B and in Part II, Section C.4 that impaired waters are those waterbodies that are listed in the *Texas Integrated Report of Surface Water Quality* as category 4 or 5 and waterbodies listed on the Clean Water Act §303(d) list.
- J.** Revised the permit to clarify the limitations for permit coverage of construction activities related to oil and gas production in Part II, Section C.9. to be consistent with the language in the 2016 Multi-Sector General Permit (MSGP, TXR050000) and to clarify when facilities qualify to obtain coverage under the TCEQ's CGP and when they are under EPA jurisdiction and revise the title of the paragraph. Additional information from the MOU was included based on EPA comments.
- K.** Revised Part II, Section E.1 to clarify requirements for operators of small construction activities with low potential for erosion.
- L.** Added clarifications to Part II, Sections E.1.(e) and E.2.(c) regarding redacted signatures for small construction site notices and to and Part II, Section E.3.(f) secondary operator site notices for large construction sites.
- M.** Revised Part II, Section E.2 of the permit to clarify requirements for automatic authorization for small construction activities.
- N.** Added clarification language in Part II, Section E.3 for the requirements of primary operators of large construction activities related to SWP3 development and implementation, NOI submittal, operational control, as well clarification language for secondary operator site notices.
- O.** Added clarification in Part II, Section E.5 regarding provisional and effective date of coverage.
- P.** Added clarification in Part II, Section E.6 regarding Notice of Change (NOC) requirements.
- Q.** Added clarification in Part II, Section F.1 and F.2 regarding NOT requirements based on EPA comments.
- R.** Added clarifications in Part II, Section F.3 of the permit regarding termination of coverage for small construction sites and secondary operators for large construction sites.
- S.** Added clarifications in Part II, Section F.4 of the permit about the requirements for operators of large and small construction projects, when changes in operational control occur.
- T.** Reorganized the requirements and provided clarification for discharging and disposing non-stormwater when under a LREW, located in Part II, Section G.1 of the permit.
- U.** Added clarifications in Part II, Section G.4(b) regarding construction activity extending beyond waiver period.
- V.** Revised requirement language in Part II, Section H.3 (Individual Permit Required) of the permit to clarify that an applicant who owns or operates a facility classified as an "unsatisfactory performer" is entitled to a hearing before the Commission prior to denial or suspension of authorization (pursuant to the October 23, 2013 Commissioner's Order on the Livestock Manure Composting General Permit, WQG200000, based on TWC §26.040(h)).
- W.** Revised requirement language in Part II, Section H (Alternative TPDES Permit Coverage) of the permit to be consistent with the 2016 MSGP.
- X.** Language was added to Part II, Section E.5.(d) of the permit that provides clarification about how all active authorizations for large construction have a 90-day

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grace period to be renewed when the current permit expires and is replaced by the newly issued permit. The language also clarifies the deadlines for coverage for both small and large construction activities.

- Y.** Revised the first paragraph of Part III to include anti-degradation language consistent with the federal rules located in 40 CFR §122.44(d)(1).
- Z.** Revised language in Part III, Section A regarding requirements for a shared SWP3.
- AA.** Added language in Part III, Sections B.1.(d) and B.2.(d) to clarify primary and secondary operator responsibilities when operational control changes.
- BB.** Revised requirement language in Part III, Sections D.2 to clarify requirements for site notices.
- CC.** Revised language in Part III, Sections E to clarify who can be authorized to perform inspections and investigations at a construction site.
- DD.** Revised the requirement language in Part III, Section F, first paragraph of the permit, to clarify that a SWP3 is required to be developed and implemented by primary operators of small and large activities.
- EE.** Revised language in Part III, Section F.1.(d) and F.1.(g)(v) to clarify what must be included in the SWP3.
- FF.** Revised language in Part III, Section F.1.(k) of the permit to indicate that both the written (printed) provisional and non-provisional authorizations for primary operators of large construction sites must be present in the SWP3.
- GG.** Revised the content of the requirement language in Part III, Sections F.1.(l) and (m) of the permit to include areas of where construction support activities would occur.
- HH.** Revised language in Part III, Section F.2.(b) of the permit to provide additional clarification of the following: that the requirement applies to large and small construction activities; the erosion and stabilization controls used by a permittee must comply with requirements in Part III.G of the permit; the description of the erosion controls and stabilization measures in the SWP3 must include a schedule of when the practices will be implemented; and that the SWP3 must ensure that existing vegetation at the construction site is preserved where it is possible.
- II.** Revised the content of the requirement language in Part III, Section F.2.(b)(iii)(A) of the permit to provide additional clarification about vegetative stabilization during frozen conditions.
- JJ.** Revised the content of the requirement language in Part III, Section F.2.(b)(iii)(B) of the permit to provide additional clarification for the following: arid and semi-arid areas, drought-stricken conditions, and erosion control and vegetative stabilization controls.
- KK.** Revised language in Part III, Section F.3. of the permit by adding (a) and (b) related to operator responsibilities for installation and maintenance measures.
- LL.** Revised language in Part III, Section F.4.(c) regarding the description of pollutant sources.
- MM.** Added requirements in Part III, Section F.4.(g) regarding waterbodies impaired for PCBs.
- NN.** Revised the language and formatting Part III, Section F.7.(a) regarding personnel requirements for performing inspections.
- OO.** Revised the language and formatting Part III, Section F.7.(b) for inspections of construction sites that are consistent with the 2017 EPA CGP.

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- PP.** Revised and clarified language and formatting Part III, Section F.7.(c) of the permit with requirements for inspection frequencies
- QQ.** Revised and clarified language and formatting Part III, Section F.7.(d) of the permit with requirements for inspections of linear construction sites.
- RR.** Revised and clarified language and formatting Part III, Section F.7.(f) of the permit with requirements for inspection reports and completion of reports within 24-hours following the inspection.
- SS.** Moved permit requirements for revisions to the SWP3 to Part III. Section F.7.(g) of the permit for sequential consistency.
- TT.** Added requirements to Part III, Section G.4 for minimizing the exposure of waste materials.
- UU.** Removed the term “trucks” and the phrase“(See Part V of the general permit)” from Part III, Section G.5.(a) of the permit.
- VV.** Added the prohibited discharge of “Toxic or hazardous substances from a spill or other release” to the list of prohibited discharges located in Part III, Section G.5.(e).
- WW.** Revised the first paragraph of Part IV of the permit to clarify authorized discharges of stormwater runoff from concrete batch plants at a construction site.
- XX.** Added a footnote to the benchmark monitoring table for concrete batch plants, located in Part IV, Section A, to clarify the need for laboratory requirements and the sufficiently sensitive methods for analysis.
- YY.** Revised the first paragraph of Part IV, Section B of the permit to clarify that applicable requirements for the SWP3 located in Part III.F.7. of the general permit are also required in conjunction with the requirements listed in Part IV, Section B.
- ZZ.** Revised Part IV, Section B.1 of the permit to clarify that the permittee must include BMPs in the SWP3 for non–stormwater discharges from concrete batch mixing plants, as applicable.
- AAA.** Revised the inspection frequency in Part IV, Section B.2.(c) of the permit to be consistent with the inspection frequencies and requirements for construction-related support activities at active and inactive facilities, located in Part III.F.7(c)(i).
- BBB.** Revised the first paragraph of Part V, Section B of the permit to clarify that land disposal of washout from concrete trucks is authorized under the general permit and discharge to water in the state is prohibited.
- CCC.** Revised Part V, Section A thru D of the permit to clarify that surface waters are surface water in the state.
- DDD.** Revised Part VI, Retention of Records, to also reference Part II, Section F.1.
- EEE.** Part VII, Sections A and B were revised to properly indicate references to the following: federal Clean Water Act and the Texas Water Code; the Texas Administrative code; and the Code of Federal Regulations for modifying suspending reissuing, terminating, or suspending authorization under the permit.
- FFF.** Part VII, Section J was revised to indicate that the permittee is also required to comply with the monitoring requirements in 40 CFR §122.41(j).
- GGG.** Part VII, Section K was added to include a requirement for the permittee to perform analysis in a manner that complies with the rules located in 40 CFR §136.1(c) and 40 CFR §122.44(i)(1)(iv).

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**VI. Addresses**

Questions concerning this general permit may be sent to:

TCEQ, Stormwater & Pretreatment Team Leader  
Wastewater Permitting Section (MC 148)  
P.O. Box 13087  
Austin, Texas 78711-3087  
(512) 239-4671  
[swgp@tceq.texas.gov](mailto:swgp@tceq.texas.gov)

**Comments regarding the proposed general permit during the public comment period must be submitted either by mail to the following address, by facsimile (fax) followed by mail, or electronically as described below (please refer to the public notice for official instructions):**

By Mail:

TCEQ, Chief Clerk's Office (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

By Fax: (512) 239-3311\*

\*Fax must be followed by hard copy in mail to CCO at address above within three days of fax date.

Electronically: [www10.tceq.texas.gov/epic/ecmnts/](http://www10.tceq.texas.gov/epic/ecmnts/)

**Questions regarding public comments should be directed to CCO: (512) 239-3300**

Supplementary information on this Fact Sheet is organized as follows:

- VII. Legal Basis
- VIII. Regulatory Background
- IX. Permit Coverage
- X. Technology-Based Requirements
- XI. Water Quality-Based Requirements
- XII. Monitoring
- XIII. Procedures for Final Decision
- XIV. Administrative Record

**VII. Legal Basis**

Texas Water Code (TWC) §26.121 makes it unlawful to discharge pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order. TWC §26.027 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. TWC §26.040 provides the commission with authority to amend rules adopted under TWC §26.040 prior to amendment of the statute by House Bill (H.B.) 1542 in the 75<sup>th</sup> Legislature, 1997, and to authorize waste discharges by general permit. On September 14, 1998, the TCEQ received authority from the U.S. Environmental Protection Agency (EPA) to administer the TPDES program. The commission and the EPA have signed a Memorandum of Agreement (MOA) that authorizes the administration of the TPDES program by the commission as it applies to the State of Texas.

Clean Water Act (CWA), Parts 301, 304, and 401 and 33 United States Code (USC), Parts 1331, 1314, and 1341 include provisions that state that NPDES permits must include effluent

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limitations requiring authorized discharges to: meet standards reflecting levels of technological capability; comply with EPA-approved state water quality standards; and comply with other state requirements adopted under authority retained by states under CWA Part 510, and 33 USC Part 1370.

### **VIII. Regulatory Background**

In 1990, EPA promulgated rules establishing Phase I of the NPDES stormwater program. Among other discharges, Phase I addresses discharges from large construction activities disturbing five acres or more of land. The Phase I NPDES stormwater rule identifies eleven (11) categories of industrial activity in the definition of "stormwater discharges associated with industrial activity" that must obtain an NPDES permit. Category (x) of this definition is construction activity, commonly referred to as "large" construction activity. Under category (x), the Phase I rule requires all operators of construction activities disturbing five acres or greater of land to apply for an NPDES stormwater permit before beginning construction. Operators of sites disturbing less than five acres are also required to obtain a permit if their activity is part of a "larger common plan of development or sale" with a planned disturbance of five acres or greater. "Disturbance" refers to exposed soil resulting from activities such as clearing, grading, and excavating. Construction activities can include road building, construction of residential houses, office buildings, industrial sites, or demolition.

In 1992, the US Court of Appeals for the Ninth Circuit remanded portions of the existing Phase I stormwater regulation to the EPA. The remanded portions related to the category (x) of stormwater discharges associated with industrial activity, specifically, discharges from large construction activity (NRDC v. EPA, 966 F.2d at 1292). EPA responded to the Court's decision by designating stormwater discharges from construction activity disturbing less than five acres as sources that should be regulated to protect water quality. The Phase II Rule designated those sources as "stormwater discharges associated with *small construction* activity," rather than as another category under "stormwater associated with *industrial* activity." Phase II of the NPDES stormwater program requires authorization for small site construction activities disturbing between one and five acres. Phase II rules were final on December 8, 1999 and required authorizations be issued by March 10, 2003.

The Stormwater Phase II Rule automatically designated, as small construction activity under the NPDES stormwater permitting program, all operators of construction site activities that result in a land disturbance of equal to or greater than one and less than five acres. Site activities disturbing less than one acre are also regulated as small construction activity if they are part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and less than five acres, or if they are designated by the NPDES permitting authority.

On September 14, 1998, the TCEQ received authority to administer the NPDES permit program in Texas (the TPDES program), for those discharges under the regulatory authority of the commission. Under the MOA between the two agencies, EPA agreed to continue to administer the construction stormwater general permit until the July 7, 2003 expiration date. The original TPDES CGP was issued on March 5, 2003 and expired on March 5, 2008. The current CGP was issued on February 19, 2013, effective on March 5, 2013, and will expire on March 5, 2018. This proposed general permit would continue authorization for regulated construction activities in Texas for five years from the effective date of the renewed permit. The commission expects to reissue this general permit prior to the expiration date of the current permit, in which case the renewed permit would supersede and replace the existing permit.

On December 1, 2009, the EPA published ELGs and new source performance standards (NSPS) in 40 CFR Part 450, to control the discharge of pollutants from construction sites. All construction sites required to obtain permit coverage were required to implement a range of erosion and sediment controls and pollution prevention measures. The ELGs included a

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numeric effluent limitation for turbidity of 280 nephelometric turbidity units (NTU). Subsequently the EPA withdrew the limit to correct a calculation error that was identified in petitions filed by the Small Business Administration and the National Association of Homebuilders. On January 4, 2011, the EPA stayed indefinitely the turbidity effluent limit of 280 NTU in order to seek additional treatment performance data from construction and development sites before proposing a revised numeric turbidity limit. On February 16, 2012, the EPA issued their 2012 CGP which includes the new Construction and Development ELGs. The EPA CGP does not include the numeric effluent limitation for turbidity. The EPA amended the federal Construction and Development ELGs located in 40 CFR §§ 450.11, 450.21, and 450.22 and posted in the Federal Register, Volume 79, Number 44, on Thursday, March 6, 2014 and to 40 CFR § 450.22, which was posted in the *Federal Register*, Volume 80, Number 85, on Monday May 4, 2015. The amendments add the definition of "infeasible" in 40 CFR § 450.11; revise the narrative limitations in paragraphs (a)(1), (a)(2), (a)(6), (a)(7), (b), and (d)(2) of 40 CFR § 450.21; add narrative limitations in paragraph (a)(8) to 40 CFR § 450.21; and make amendments to lift the indefinite stay on paragraphs (a) and (b) and remove and reserve paragraphs (a) and (b) of 40 CFR § 450.22.

### **IX. Permit Coverage**

- A. The proposed general permit would apply to discharges of stormwater runoff associated with construction activities, stormwater runoff associated with certain other supporting industrial activities, and certain non-stormwater discharges, into Waters of the United States. The general permit specifies which facilities are eligible for authorization by the general permit, which must be authorized by an alternative individual or general permit, and the specific conditions that must be met in order to be excluded from the requirement to develop an SWP3 and from the requirement to submit a notice of intent. The guidelines for small site construction activities were published in the *Federal Register* on December 8, 1999 (64 FR 68722).

The general permit defines large and small construction activities, and includes requirements for both. The general permit specifies that a smaller project is regulated if it is part of a larger common plan of development or sale that will disturb one or more acres. A common plan of development or sale is defined in the permit as a construction activity that is completed in separate stages, separate phases, or in combination with other construction activities, that is identified by the documentation for the construction project that identifies the scope of the project. A common plan of development does not necessarily include all construction projects within the jurisdiction of a public entity (e.g., a city or university). Construction of roads or buildings in different parts of the jurisdiction would be considered separate "common plans," with only the interconnected parts of a project being considered part of a "common plan" (e.g., a building and its associated parking lot and driveways, airport runway and associated taxiways, a building complex, etc.). Where discrete construction projects occur within a larger common plan of development or sale but are located ¼ mile or more apart, and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale, provided that any interconnecting road, pipeline or utility project that is part of the same "common plan" is not included in the area to be disturbed.

An example of a smaller construction project that is regulated under the general permit would include the building of single houses on lots of a quarter-acre each within a larger residential development of 5 or more acres. Any primary operator constructing single homes within that development would be regulated as an operator of a large construction activity, and required to develop an SWP3 and submit an NOI. If the development was generally completed, then a builder may be able to look at the size of the remaining area to be disturbed in determining the size of the larger common plan of development or sale by answering a two part question. First, was the original plan, including modifications, ever substantially completed with less than one acre of the original "common plan of

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development or sale" remaining (e.g., <1 acre of the "common plan" was not built out at the time)? If so, then was there a clearly identifiable period of time with no on-going construction, including meeting the criteria for final stabilization? If the answer to both of the questions is "yes," then it would be appropriate to consider the new project of less than one acre as a new common plan of development. Another example of a "new" common plan of development or sale would be the addition of a swimming pool, fence, or similar addition to a lot by a homeowner after having purchased the lot. Even if the rest of the homes have not been built, the additional construction by the homeowner would be its own common plan unless it was specifically delineated in the plans for the overall development.

- B.** A primary operator seeking authorization to discharge stormwater runoff from a large construction site under this general permit must submit a completed NOI on a form approved by the executive director, and must also complete the required site notice and post the notice at the construction site. The NOI shall include, at a minimum, the legal name and address of the construction site operator, the facility name and address, a specific description of the site location, (including the street address, if applicable, and county), the type of construction occurring, the name of the receiving water, and any other information requested by the executive director. A secondary operator of a large construction site and an operator of a small construction site seeking authorization under this permit must complete the applicable site notice and post the notice at the construction site.

Applicants can locate information regarding the classified segment(s) receiving the discharges from the construction site in the "Atlas of Texas Surface Waters" or the TCEQ's Surface Water Quality Viewer, at the following TCEQ web addresses. These documents include identification numbers, descriptions, and maps:

Atlas of Texas Surface Waters:

<http://www.tceq.texas.gov/publications/gi/gi-316/index.html>

Surface Water Quality Viewer:

<http://www.tceq.texas.gov/waterquality/monitoring/viewer.html>

Applicants can find the latest EPA-approved list of impaired water bodies (the Texas 303(d) List) at the following TCEQ web address:

[http://www.tceq.texas.gov/waterquality/assessment/305\\_303.html](http://www.tceq.texas.gov/waterquality/assessment/305_303.html)

- C.** Submission of an NOI or signing of the required site notice is an acknowledgment that the conditions of the general permit are applicable to the proposed discharges and that the applicant agrees to comply with the conditions of the general permit. Provisional authorization to discharge under the terms and conditions of the general permit begins seven (7) days after a completed paper NOI is postmarked for delivery to the TCEQ, or immediately upon receipt of confirmation by TCEQ of an administratively complete NOI submitted electronically, unless otherwise specified in the general permit. If submitting a paper copy of the NOI, the NOI must be mailed to the address indicated on the NOI form. Effective September 1, 2018, all NOIs will be required to be submitted to the TCEQ electronically. Following review of the NOI, the executive director will either confirm coverage by providing a notification and an authorization number to the applicant or notify the applicant that coverage under this general permit is denied. Operators of existing sites that are required to submit an NOI for coverage must do so within the timeframe specified in the general permit in order to maintain authorization for the construction activity. Small construction sites must post the required site notice as required in the general permit.
- D.** Coverage under the general permit is not transferable. If the primary operator of a large construction activity changes, then the original operator must submit a paper NOT

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within 10 days prior to the date that responsibility for operations terminates and the new operator must submit a paper NOI at least ten (10) days before assuming operational control. Authorization for a termination of authorization is immediate, upon receipt of confirmation of an NOT form submitted electronically. Provisional authorization to discharge under the terms and conditions of the general permit begins seven (7) days after a completed paper NOI is postmarked for delivery to the TCEQ, or immediately upon receipt of confirmation by TCEQ of an administratively complete NOI submitted electronically, prior to the new operator assuming operational control. A change in operator includes changes to the structure of a company, such as changing from a partnership to a corporation, or changing corporation types that changes the filing (or charter) number with the Texas Secretary of State. Operators of small construction activities and secondary operators of large construction activities must remove the original site notice for the original operator, and the new operator must post the required site notice prior to assuming operational control for the site.

- E.** A primary operator of a large construction activity must submit current information to the executive director by submitting a Notice of Change (NOC) not later than 14 days before a change in information previously provided to the executive director in a NOI occurs (examples of changes may include changes to the operator's mailing address, a change to the project name, or an increase in the size of the project). If an NOC form is available, the operator must use the TCEQ-approved form. However, if an NOC form is not available, the operator may submit a letter requesting the change. NOC forms and letters must be signed by a person authorized to sign permit applications. An operator of a small construction activity and a secondary operator of a large construction activity may revise the information in the required site notice.
- F.** A primary operator of a large construction activity may terminate coverage under the general permit when all construction activity has ceased by providing a NOT on a form approved by the executive director. Authorization to discharge terminates at midnight on the day that a paper NOT is postmarked for delivery to the TCEQ. If TCEQ provides for electronic submission of NOTs during the term of this permit, authorization to discharge terminates immediately following confirmation of receipt of the electronic NOT form by the TCEQ, unless otherwise specified in the general permit. Effective September 1, 2018 all NOTs will be required to be submitted to the TCEQ electronically. An operator of a small construction activity and a secondary operator of a large construction activity may terminate coverage under the general permit by removing the required site notice after final stabilization has been met.

### **X. Technology-Based Requirements**

- A.** Construction and Development Effluent Limitations Guidelines (ELGs), 40 CFR §§ 450.11, 450.21, 450.22, 450.23, and 450.24

Technology-based effluent limitations must be included in the proposed general permit. With regard to conventional pollutants, CWA Part 301 (b)(2)(E) requires effluent limitations based on "best conventional pollution control technology" (BCT). The BCT effluent limitations may never be less stringent than corresponding effluent limitations based on best practicable control technology (BPT), a standard applicable to similar discharges before March 31, 1989 under CWA Part 301(b)(1)(A).

The general permit includes a requirement for construction operators to comply with the federal Construction and Development ELGs outlined in 40 CFR §§ 450.11, 450.21, 450.23, and 450.24. TCEQ adopted these guidelines by reference in 30 TAC §305.541.

The general definitions (40 CFR §450.11) include the following:

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1. *New source.* New source means any source, whose discharges are defined in 40 CFR 122.26(b)(14)(x) and (b)(15), that commences construction activity after the effective date of this rule.
2. *Infeasible.* Infeasible means not technologically possible, or not economically practicable and achievable in light of best industry practices.

The BPT effluent limitations (40 CFR §450.21) and BCT effluent limitations (40 CFR §450.23) are narrative in nature and are achieved through the implementation of BMPs.

Except as provided in 40 CFR §§125.30-125.32, any discharge regulated under this general permit, with the exception of sites that obtained waivers based on low rainfall erosivity, must achieve, at a minimum, the following effluent limitations representing the degree of effluent reduction attainable by application of the BPT currently available.

1. *Erosion and sediment controls.* Design, install, and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed, and maintained to:
  - (a) Control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges;
  - (b) Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points;
  - (c) Minimize the amount of soil exposed during construction activity;
  - (d) Minimize the disturbance of steep slopes;
  - (e) Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
  - (f) Provide and maintain natural buffers around waters of the United States, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible;
  - (g) Minimize soil compaction. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted; and
  - (h) Unless infeasible, preserve topsoil. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.
  - (i) TCEQ does not consider stormwater control features (e.g., stormwater conveyance channels, storm drain inlets, sediment basins) to constitute "surface waters" for the purposes of triggering the buffer requirement in Part X.A.1.(f) above.
2. *Soil stabilization.* Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the permitting authority. Stabilization must be completed within a period of time determined by the permitting authority. In limited

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circumstances, stabilization may not be required if the intended function of a specific area of the site necessitates that it remain disturbed. Refer to Part III.F.2.(b) of the permit for complete erosion control and stabilization practice requirements.

3. *Dewatering.* Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited, unless managed by appropriate controls.
4. *Pollution prevention measures.* Design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
  - (a) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
  - (b) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater. Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use); and
  - (c) Minimize the discharge of pollutants from spills and leaks, and implement chemical spill and leak prevention and response procedures.
5. *Prohibited discharges.* The following discharges are prohibited.
  - (a) Wastewater from wash out of concrete, unless managed by an appropriate control;
  - (b) Wastewater from wash out and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
  - (c) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
  - (d) Soaps or solvents used in vehicle and equipment washing; and
  - (e) Toxic or hazardous substances from a spill or other release.
6. *Surface Outlets.* When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible.

**B. Stormwater Pollution Prevention Plan (SWP3)**

The general permit continues the requirement to develop and implement an SWP3 to control discharges of stormwater associated with construction activities, in accordance with the NPDES program. Conditions of the proposed general permit have been developed to comply with the technology-based standards of the Clean Water Act.

The general permit is based on a series of BMPs, in the form of a required SWP3, rather than numeric limitations, to prevent or minimize pollutants in stormwater discharges. BMPs may include erosion controls, sediment controls, stabilization practices, and nonstructural controls. Erosion controls provide the first line of defense in preventing off-site sedimentation and are designed to prevent erosion through protection and preservation of soil. Sediment controls are designed to remove sediment from runoff before the runoff is discharged from the site. Sediment and erosion controls can be further divided into two major classes of controls: stabilization practices and structural

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practices. Part IV.B. of this fact sheet describes the elements of the required SWP3. The SWP3 must comply with the new construction and development effluent guidelines in Part III, Section G of the general permit.

Small construction sites that obtain automatic authorization based on the precalculated R factor, or that receive a waiver from coverage based on a calculated R factor, are not required to prepare an SWP3.

**C. Benchmark Monitoring Requirements**

The 1998 NPDES Construction General Permit for EPA Region 6 for large construction activities included numeric effluent limitations for stormwater discharges from concrete batch plants in Texas. The original TPDES construction general permit continued these limits and applied them to all regulated construction activities. The TCEQ's original recommendation on the NPDES CGP was based on the requirements for wastewater and contact stormwater found in TCEQ's authorization by rule for concrete production facilities, 30 TAC §321.155. The proposed general permit continues the benchmark sampling requirements, BMPs, and SWP3 requirements for the stormwater-only discharges from concrete batch plants that are found in the 2013 TCEQ CGP. This is consistent with TCEQ's MSGP for discharges of stormwater runoff associated with industrial activity and with TCEQ's Wastewater General Permit for Concrete Production Facilities, TXG110000. The following proposed benchmark monitoring requirements are applicable to all discharges from concrete batch plants, and are not applicable to other discharges described in the general permit:

<b>Benchmark Parameter</b>	<b>Benchmark Value</b>
Oil and Grease	15 mg/L
Total Suspended Solids	50 mg/L
pH	6.0 - 9.0 Standard Units
Total Iron	1.3 mg/L

Sampling for the above parameters is required to be conducted at each outfall that includes stormwater runoff from a concrete batch plant. Sampling is required at each regulated construction site that utilizes a concrete batch plant authorized under this permit. A concrete batch plant may alternatively be authorized under another TPDES individual or applicable general permit.

Sampling is required at a frequency of once per quarter when discharge occurs. Sampling shall be conducted during the following periods: First quarter - January through March; second quarter - April through June; third quarter - July through September; and fourth quarter - October through December. Applicants shall begin sampling in the first full quarter following submission of the NOI. For projects lasting less than one full quarter, a minimum of one sample shall be collected, provided that a discharge occurred at least once following submission of the NOI or automatic authorization.

**XI. Water Quality-Based Requirements**

The Texas Surface Water Quality Standards (TSWQS) are located at 30 TAC Chapter 307, and state that “surface waters will not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with skin, or to terrestrial or aquatic life.” The methodology outlined in the *Procedures to Implement the Texas Surface Water Quality Standards*, RG-194 (January 2003) is designed to ensure compliance with 30 TAC Chapter

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307. Specifically, the methodology is designed to ensure that no source will be allowed to discharge any wastewater which: (1) results in instream aquatic toxicity; (2) causes a violation of an applicable narrative or numerical state water quality standard; (3) results in the endangerment of a drinking water supply; or (4) results in aquatic bioaccumulation which threatens human health.

TPDES permits contain technology-based effluent limits reflecting the best controls available. Where these technology-based permit limits do not protect water quality or the designated uses of the receiving stream, additional conditions are included in the TPDES permits, which may include discharge limitations. State narrative and numerical water quality standards are used in conjunction with EPA criteria and other toxicity data bases to determine the adequacy of technology-based permit limits and the need for additional water-quality based controls.

TPDES stormwater permits generally do not contain water-quality-based effluent limits (WQBELs). As stated in 30 TAC §307.8(e), controls on the quality of permitted stormwater discharges are largely based on implementing BMPs or technology-based limits in combination with instream monitoring to assess standards attainment and to determine whether additional controls on stormwater are needed. Typically, a combination of stabilization practices, structural practices, and non structural BMPs are necessary throughout a construction site to provide adequate water quality protection. It has been preliminarily determined that if permit requirements are properly implemented, no significant degradation is expected and existing uses will be maintained and protected.

**XII. Monitoring**

No discharge monitoring is proposed for this general permit beyond those described in Part X.B. of this fact sheet, related to benchmark sampling applicable to stormwater runoff associated with concrete batch plants. This approach is continued from the existing general permit.

**XIII. Procedures for Final Decision**

The MOA between the EPA and TCEQ provides that EPA has up to 90 days to comment, object, or make recommendations to the general permit before it is published in the *Texas Register*. 30 TAC Chapter 205 requires that when the general permit is proposed, the executive director must publish notice, in at least one newspaper of statewide or regional circulation. The TCEQ may also publish notice in additional newspapers of statewide or regional circulation. Mailed notice must also be provided to the following:

- A. the county judge of the county or counties in which the discharges under the general permit could be located;
- B. if applicable, state and federal agencies for which notice is required in 40 CFR §124.10(c);
- C. persons on a relevant mailing list kept under 30 TAC §39.407, relating to Mailing Lists; and
- D. any other person the executive director or chief clerk may elect to include.

After notice of the initial permit (IDP) is published in the *Texas Register* and the newspaper, the public will have at least 30 days to provide public comment on the IDP. A public meeting will be held at the end of the public comment period. A public comment hearing is intended for the taking of public comment, and is not a contested case proceeding under the Administrative Procedure Act. The public will be given notice of the date, time, and place of the meeting, as required by commission rules. The executive director will respond to all significant public comments raised during the public comment period and

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make the response available to the public. The proposed general permit will then be filed with the commission to consider final approval of the permit. The executive director's response to public comment will be made available to the public at least ten days before the commission acts on the proposed general permit.

**XIV. Administrative Record**

The following section is a list of the fact sheet citations to applicable statutory or regulatory provisions and appropriate supporting references.

**A. Code of Federal Regulations (CFR) and Federal Register (FR) Citations**

40 CFR Parts 122, 124, 450.21, 450.23, and 450.24

Federal Register dated February 29, 2012 (Volume 77, No. 40, Pages 12286-12293), Resissuance of NPDES General Permits for Stormwater Discharges From Construction Activities in Region 6; Notice.

Federal Register dated November 5, 2010 (75 FR 68217)

Federal Register dated March 8, 2010 (75 FR 10439)

Federal Register dated December 1, 2009 (74 FR 63057)

Federal Register dated December 8, 1999 (64 FR 68722)

**B. Letters/Memoranda/Records of Communication**

Interoffice Memorandum dated November 16, 2016 from the TCEQ Water Quality Standards Team.

Public comments received during the initial stakeholder meeting.

Public comments received during the public notice period for the permit.

**C. Miscellaneous**

TPDES Construction General Permit (CGP) TXR150000, issued on February 19, 2013, and effective on March 5, 2013.

U.S. Environmental Protection Agency's Fact Sheet No. 3.1, *Stormwater Phase II Final Rule - Construction Rainfall Erosivity Waiver*, January 2001 (EPA 833-F-00-014), revised March 2012.

Agriculture Handbook No. 282, *Predicting Rainfall-Erosion Losses from Cropland East of the Rocky Mountains, Guide for Selection of Practices for Soil and Water Conservation*, U.S. Department of Agriculture, Agricultural Research Service, in Cooperation with Purdue Agricultural Experiment Station.

Agriculture Handbook No. 703, *Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE)*, U.S. Department of Agriculture, Agricultural Research Service.

Quality Criteria for Water (1986), EPA 440/5-86-001, 5/1/86.

The State of Texas Water Quality Inventory, 13th Edition, Publication No. SFR-50, Texas Natural Resource Conservation Commission, December 1996.

Texas Surface Water Quality Standards, 30 TAC §§307.1 - 307.10, effective August 17, 2000.

*Procedures to Implement the Texas Surface Water Quality Standards*, Texas Commission on Environmental Quality, Publication RG-194, January 2003.

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*TNRCC Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits*, TNRCC Document No. 98-001.000-OWR-WQ, May 1998.

TCEQ Rules, including: 30 TAC Chapters 39, 205, 213, 281, 305, 307, 309, 311, 313, 319, 321, and 331.

TPDES General Permit No. TXR050000, the Multi Sector General Permit (MSGP), issued on July 22, 2011 and effective on August 14, 2011.

TPDES General Permit No. TXG110000, issued on November 4, 2011, and effective on November 7, 2011.

EPA NPDES Construction General Permit (CGP), issued February 16, 2012.

Proposed Draft Renewal of the EPA NPDES Construction General Permit (CGP), expected to be issued in 2017.

**TCEQ Responses to EPA Interim Objection Letter**

**1. Draft Permit Part I.A.2, (p.12) – Discharges of Stormwater Associated with Construction Activities**

**EPA Objection:**

Lack of definitions for construction support activities makes it unclear whether the CGP improperly authorizes long term stand-alone industrial activities serving multiple construction projects that would require coverage under an industrial stormwater permit rather than the CGP as a support activity. Language in Part II.A.(c) appears to authorize construction support activities to continuously remain active to support one permitted CGP activity to the next, and conflicts with Part II.A.2. As explained during discussions with TCEQ, lack of clarity and interchanging “construction activity” with “construction,” “construction site,” and “site” further confuses this issue and impacts numerous requirements throughout the draft permit. EPA recommends clarifying what earth disturbing activities, including off-site support activities, must be in calculating total area of disturbance for a construction project. [40 CFR §122.26 (a)(1), (a)(9), (b)(14), and (b)(15)]

**TCEQ Response:**

TCEQ added a definition for “Construction Support Activity” to Part I.B of the draft permit to clarify construction support activities including their roles in only directly supporting the construction activity at a permitted construction site. The definition is based on the definition for “Construction Support Activity” in the 2017 EPA Construction General Permit (CGP). The definition of “Construction Activity” was also revised to include the term “Construction Support Activity.”

Part II.A.2 of the draft permit was revised to include the conditions and requirements for construction support activities based on the 2017 EPA CGP and to provide limitations for how and when a construction support activity can be operated under authorization of the TXR150000 CGP. TCEQ requires permittees to determine the total amount of soil acreage to be disturbed at the construction site which also must include the areas for construction support activities. Part III.F.1.(d) of the draft permit was revised to clarify that the areas of soil disturbance for construction support activities need to be included in the total number of acres where construction activities will occur and that this needs to be documented in the Stormwater Pollution Prevention Plan (SWP3). This clarification was also added to the flowchart in Part I.A of the draft permit.

**2. Draft Permit Parts II.E.5, (p.19) and II.I, (p.25) – Effective date of Coverage and Permit Expiration**

**EPA Objection:**

Language at Part II.E.5.(b) is unclear whether the effective date of coverage for primary operators of large construction activities begins when the authorization number has been received. Language at Part II.I.1 states that all active authorizations expire on the date provided on page 1 of the draft permit. This section neglects to address the 90-day extended period provided at Part II.D.1.(b) and Part II.D.2.(b) for ongoing construction activities. [40 CFR §122.28 (b)(2)]

**TCEQ’s Response to EPA’s Interim Objection dated May 24, 2017, on the Draft Construction General Permit TXR150000**

**TCEQ Response:**

The effective date of coverage under the CGP is immediately following electronic submittal of a Notice of Intent (NOI) using TCEQ’s ePermits system. For paper NOI submittals, provisional coverage is provided within seven days after the postmark date for mail delivery to TCEQ. Following the CGP expiration date, all existing operators have a 90-day extended grace period to submit their applications to renew CGP coverage. During the 90-day

### **TCEQ Response to EPA Interim Objection Letter**

extended grace period, existing operators still have CGP coverage unless a Notice of Termination (NOT) is submitted. However, if an existing operator does not submit an application to renew their CGP coverage, then the CGP authorization expires on the date the master TXR150000 CGP expires. To clarify this, Part II.E.5.(b) was revised and additional information was added to Part II.E.5 as subsection (d) that addresses the 90-day grace period. Also, Part II.F.1 was revised to clarify the 90-day grace period.

#### **3. Draft Permit Part III.F.3, (p.32) – Description of Permanent Stormwater Controls**

##### **EPA Objection:**

It is unclear whether the permit considers compliance obligations continue until coverage is terminated. Language at Part III.F.3 indicates permittees are only responsible for installation and maintenance of stormwater management measures prior to final stabilization or prior to submission of a Notice of Termination (NOT). For example, permittees would be required to maintain final stabilization practices until permit termination. To ensure consistency with terminating coverage requirements at Part II.F of this draft permit, language at Part III.F.3 needs to be modified to ensure operators are responsible for stormwater management measures until permit authorization is terminated per Part II.F requirements. [40 CFR §122.41(a)]

##### **TCEQ Response:**

In response to the comment, Part III.F.3 of the draft permit was revised by adding items (a) and (b) requiring the installation and maintenance of stormwater control measures prior to final stabilization for operators of small construction sites, and the installation and maintenance of stormwater control measures prior to final stabilization and prior to submission of an NOT for operators of large construction sites. These changes make Part II.F.3 consistent with the requirements for termination of CGP coverage in other sections of Part II.F of the draft general permit.

#### **4. Draft Permit Part III.F.2.(b), (p. 30) and Part III.G.5, (p.37) – Erosion Control and Stabilization and Prohibited Discharges**

##### **EPA Objection:**

It is unclear if the permit correctly applies the concrete washout prohibition and initiation of stabilization measure requirements in the Construction and Development Effluent Limitation Guidelines (C&D ELGs). The C&D ELGs at 40 CFR §450.21 prohibits “wastewater from washout of concrete, unless managed by appropriate control” and does not limit this prohibition to washout of concrete trucks. Language at Part III.F.2.(b).iii(A) exempts immediate initiation of stabilization measures when precluded by “snow cover or frozen ground conditions.” However, 40 CFR §450.21(b) requires initiation of stabilization immediately and only provides an exemption for semi-arid and drought-stricken areas. Language at Part III.G.5.(a) and Part V need to be modified to ensure that wastewater discharges from all concrete washout areas are prohibited unless managed by appropriate controls.

##### **TCEQ Response:**

The language in Part III.F.2.(b).iii.(A) of the draft permit was revised to include the terms “thawing conditions” and “frozen conditions” to correspond with the terms used in the 2017 EPA CGP to clarify that only vegetative stabilization measures can be precluded by frozen conditions. During frozen conditions, non-vegetative controls must be implemented until thawing conditions are present and vegetative controls can be initiated. In addition, a definition for “Thawing Conditions”, based on the 2017 EPA CGP, was added to Part I.B of the draft general permit. Part III.G.5.(a) (Prohibited discharges) of the draft permit was revised by editing the sentence “Wastewater from wash out of concrete trucks,…” to remove

## **TCEQ Response to EPA Interim Objection Letter**

the term *trucks*. The provision now states “Wastewater from wash out of concrete...” to be consistent with the C&D ELGs in 40 CFR §450.21. Language at Part IV.C and Part V was also revised to clarify that wastewater discharges from all concrete washout areas are prohibited; the CGP only authorizes the land disposal of washout from concrete trucks at a regulated construction site provided the conditions in Part V.A-E are met.

### **5. Draft Permit Part VII, (pp.43-44) – Standard Permit Conditions**

#### **EPA Objection:**

Language at Part VII does not appear to include language for compliance with 40 CFR 122.44(g) regarding 24-hour reporting requirements and 40 CFR 122.44(i)(1)(iv) regarding the new sufficiently sensitive test procedure requirements.

#### **TCEQ Response:**

The provision in Part VII.J of the draft permit was revised to add 40 CFR §122.41 (j) for compliance with the 24-hour reporting requirements listed in 40 CFR §122.44(g). Language regarding sufficiently sensitive test procedures requirements for sample analysis was added to Part IV.A.1 –Table 1, Footnote (\*1) and to Part VII.K of the draft permit, to meet the requirements of the rules for sufficiently sensitive test procedures located in 40 CFR §136.1(c) and 40 CFR §122.44(i)(1)(iv).

### **TCEQ Responses to Other EPA Comments**

TCEQ and EPA conducted three telephone conferences calls (May 9, 11, and 19, 2017) to answer questions and discuss numerous comments EPA had concerning the language and content of the draft CGP (TXR150000). EPA stated that the requested revisions would provide clarification and enforceability to the requirements of the draft permit. As a result of these conference calls, TCEQ made revisions to the draft permit.

In addition to TCEQ’s responses to EPA’s interim objections Nos. 1 - 5 above, TCEQ agreed to make changes to the draft permit as follows:

- Clarify existing definitions for the following terms: “Construction Activity”; “Facility or Activity”; “Permittee”; and “Receiving Water;”
- Revise language in the permit to maintain consistent use of “Construction Activity” throughout the permit;
- Clarify the requirements for “Construction Support Activity;”
- Add regulatory citations from state and federal rules throughout the draft permit and revised language in certain provisions for consistency with these rules;
- Add additional clarification to the requirements for oil and gas production;
- Clarify the requirements of operators for large and small construction activities regarding obtaining authorization to discharge, NOI submittal, and SWP3 implementation;
- Clarify language in the permit regarding how authorization is not transferable;
- Clarify language in the permit regarding NOCs, terminating coverage, and transferring operational control;
- Clarify language in the permit regarding permit expiration;
- Clarify the language in the permit for the requirements for SWP3s and shared SWP3s;
- Clarify language in the permit for erosion and sediment controls for frozen, arid, semi-arid, drought-stricken areas, stabilization, and inspections of controls; and

Attachment A

**TCEQ Response to EPA Interim Objection Letter**

- Separate and enumerate requirements in some sections of the permit, to provide the level of clarity requested by EPA.