

Fact Sheet and Executive Director's Preliminary Decision

For proposed Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXRo40000 for discharges from small (Phase II) municipal separate storm sewer systems (MS4s) into surface water in the state.

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Permit Action: Amendment and Reissuance of a Stormwater General Permit for Small (Phase II) Municipal Separate Storm Sewer Systems (MS4s)

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

Table of Contents

I.	Summary.....	3
II.	Executive Director's Recommendation	7
III.	Permit Applicability and Coverage	7
	A. NPDES Small MS4 General Permit Remand Rule	8
	B. Regulated Small MS4s Subject to Permitting.....	9
	C. Designated Small MS4s Subject to Permitting.....	9
	D. Permit Waivers	10
	E. Ineligible Discharges.....	11
	F. Allowable Non-stormwater Discharges	11
	G. Discharges from Small MS4 Construction Activities.....	12
IV.	Permit Conditions and Effluent Limitations	14
	A. Notice of Intent (NOI)	14
	B. Stormwater Management Program (SWMP)	14
	C. SWMP Implementation	22
	D. Reporting Requirements	22
V.	Changes from Existing General Permit	23
VI.	Addresses	27
VII.	Legal Basis	28
VIII.	Regulatory Background	28
IX.	Permit Coverage.....	29
X.	Technology-Based Requirements	31
XI.	Water Quality-Based Requirements	32
XII.	Monitoring	33
XIII.	Procedures for Final Decision.....	33
XIV.	Administrative Record.....	34

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

I. Summary

The Texas Commission on Environmental Quality (TCEQ) is proposing to amend and renew the statewide Texas Pollutant Discharge Elimination System (TPDES) general permit for small (Phase II) municipal separate storm sewer systems (MS4s), TXRo40000. This general permit was first issued and effective on August 13, 2007, and authorizes discharges from small MS4s into surface water in the state. This general permit specifies which small MS4s must obtain permit coverage, which are eligible for waivers, and which must obtain individual permit coverage. This general permit also specifies that where discharges will reach Waters of the U.S., a stormwater management program (SWMP) must be developed and implemented, and includes the minimum requirements for the SWMP.

The principal changes to the existing general permit include the following:

1. Federal Phase II MS4 General Permit Remand Rule

The general permit language was updated to comply with the federal *National Pollutant Discharge Elimination System (NPDES) MS4 General Permit Remand Rule* that became effective on January 9, 2017, and requires permit language that is “clear, specific, and measurable”. (See *Federal Register*, Vol. 81, No. 237, December 9, 2016.)

TCEQ selected to move the permitting approach for this general permit to the “Comprehensive General Permit” option under the NPDES rule. This is different from the option TCEQ currently uses (“Two-Step General Permit” or “Procedural” approach). See Part III.A. below for explanation.

More specific requirements for the best management practices (BMPs) and measurable goals that must be implemented in SWMPs are added to the general permit to comply with the Comprehensive General Permit approach. These changes are further described below in Part I.4., Part I.5., Part I.6., and Part V of this fact sheet.

This “Comprehensive General Permit” approach:

- a. simplifies the permitting process for applicants by removing requirements for small MS4s to submit the SWMP to TCEQ with applications for review and approval,
- b. removes the public notice requirements for Notices of Intent (NOIs), including SWMPs, and certain Notices of Change (NOCs),
- c. clarifies all the terms and conditions required to meet the MS4 permit standard under the federal rule, including the specific controls required to be followed by each permittee, and
- d. provides public notice of the defined terms and conditions that will determine compliance for each permittee during the statewide master general permit public notice process.

2. Federal Electronic Reporting Rule

The general permit language was updated to comply with the federal *NPDES Electronic Reporting Rule* that became effective on December 21, 2015, and the *NPDES Electronic Reporting Rule – Phase II Extension* that became effective on

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

January 4, 2021. (See *Federal Register*, Vol. 80, No. 204, October 22, 2015, and Vol. 85, No. 212, November 2, 2020.) This permit was also revised for consistency with the federal *NPDES eRule Data Elements To Reflect MS4 General Permit Remand Rule* which EPA issued to update the data elements in the original eRule to be consistent with the current MS4 regulations that were revised as a result of the *NPDES MS4 General Permit Remand Rule* (see *Federal Register*, Vol. 85, No. 73, April 15, 2020). The general permit requires that small MS4s submit applications and annual reports electronically using the United States Environmental Protection Agency's (EPA's) NPDES electronic permitting and reporting system for the MS4 program, NeT-MS4 for compliance with federal *NPDES Electronic Reporting Rule*.

3. Federal Small MS4 Urbanized Area Clarification Rule

The general permit language was updated for consistency with the federal *NPDES Small MS4 Urbanized Area Clarification Rule* that became effective on July 12, 2023, and replaces the term "Urbanized Area" in the Phase II Stormwater regulations with the phrase "urban areas with a population of at least 50,000", which is the U.S. Census Bureau's longstanding definition of the term Urbanized Area. (See *Federal Register*, Vol. 88, No. 112, June 12, 2023.)

References to Urbanized Areas were removed from the permit and replaced with the phrase "urban areas with a population of at least 50,000". The term Urbanized Area was discontinued in the 2020 Decennial Census by the U.S. Census Bureau. This general permit identifies regulated small MS4s located within or partially within the urban areas with a population of at least 50,000 people as determined by the 2000, 2010, or 2020 Decennial Censuses.

4. Application for Coverage

- a. The general permit expands the description of regulated operators of small (Phase II) MS4s to include existing and newly regulated small MS4s that are fully or partly located within an urban area with a population of at least 50,000 people, as determined by the 2000, 2010, or 2020 Decennial Censuses. These small MS4 operators must obtain authorization for the discharge of stormwater runoff, and are eligible for coverage under this general permit unless otherwise specified. (Permit Part II.A.1 and Part II.F.2)
- b. The general permit continues categorizing small MS4s into four levels with different permit requirements applied to each level for some of the program elements. The general permit clarifies that the level of a small MS4 for this general permit is based on the 2020 Decennial Census information for the population served by the small MS4 within the 2020 urban area with a population of at least 50,000 people. A new Decennial Census during a permit term, will not affect the level of a small MS4, until the permit is renewed. Non-traditional MS4s such as transportation entities, will continue to be categorized as Level 2 MS4s, but a distinction between traditional and non-traditional MS4s is shown as Levels 2a and 2b, respectively. (Permit Part II.B) The small MS4 levels are as follows:
 - (1) Level 1: Operators of traditional small MS4s that serve a population of less than 10,000 within an "urban area with a population of at least 50,000 people".

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

- (2) Level 2a: Operators of traditional small MS4s that serve a population of at least 10,000 but less than 40,000 within an "urban area with a population of at least 50,000 people".
 - (3) Level 2b: Operators of all non-traditional small MS4s such as counties, drainage districts, transportation entities, military bases, universities, colleges, correctional institutions, municipal utility districts and other special districts regardless of population served within the "urban area with a population of at least 50,000 people", unless the non-traditional MS4 can demonstrate that it meets the criteria for a waiver from permit coverage based on the population served.
 - (4) Level 3: Operators of traditional small MS4s that serve a population of at least 40,000 but less than 100,000 within an "urban area with a population of at least 50,000 people".
 - (5) Level 4: Operators of traditional small MS4s that serve a population of 100,000 or more within an "urban area with a population of at least 50,000 people".
5. Impaired Water Bodies and Total Maximum Daily Load (TMDL)
- a. Added language describing when permittees must update their SWMP and NOI to address when TCEQ has modified a TMDL waste load allocation (WLA) during the general permit term. (Permit Part III)
 - b. Clarified that permittees discharging to water quality impaired water bodies with a TMDL for bacteria must either refer to the approved TMDL Implementation Plan for BMPs, or implement proposed and approved alternative equivalent BMPs. (Permit Part III)
 - c. Added more specific BMPs and measurable goals for bacteria impaired water bodies with an approved TMDL to specify the clear, specific, and measurable: activities, goals, and deadlines that must be implemented, as appropriate, by permittees discharging to these water bodies. This is represented in the permit in a table. (Permit Part III)
6. Obtaining Authorization
- a. Revised general permit language throughout the permit to remove reference to SWMP submittal to TCEQ with NOIs or applications for review and approval. Although a SWMP must be developed and implemented, with a Comprehensive General Permit option, permittees are only required to submit an NOI.
 - b. Removed requirements for permittees to implement public notice requirements for NOIs, including SWMPs, and NOCs. With a Comprehensive General Permit option, permittees are not required to provide public notice for changes to the SWMP since the master general permit provides the required public notice of the defined terms and conditions for each small MS4 by specifying the required controls and schedules.

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

7. Stormwater Management Program (SWMP)
 - a. Revised the list of minimum control measures (MCMs) in the general permit to separate *MCM 1 - Public Education, Outreach, and Involvement* to match the federal rules: *MCM 1 - Public Education and Outreach* and *MCM 2- Public Involvement/Participation* (see 40 Code of Federal Regulations (CFR) § 122.34(b)(1)-(6)). The remaining MCMs were renumbered as MCMs 3-8. (Permit Part IV.D)
 - b. Added a requirement for permittees to address specific target audiences and pollutants and sources for their MCM 1- Public Education and Outreach program based on their MS4 level and provided a list of target audiences and pollutants and sources for the MS4s to select and address. (Permit Part IV.D.1-2)
 - c. Added more specific BMPs and measurable goals for each MCM to specify the clear, specific, and measurable: activities, goals, and deadlines that must be implemented by permittees based on their MS4 level to comply with the Comprehensive General Permit approach. These are represented throughout the permit in the form of tables. (Permit Part IV.D.1-7)
8. MS4-Operated Construction Sites (Optional 8th MCM)
 - a. Added requirement for permittees to conduct observation and evaluation of dewatering controls on the days where dewatering discharges occur to be consistent with the TPDES Construction General Permit (CGP, TXR150000), issued on March 5, 2023. (Permit Part VII.E.11)
 - b. Clarified that inspections conducted within 24 hours of the end of a storm event of 0.5 inches must occur on the first and last day of a storm for multiday storm events and when the 24-hour inspection time frame occurs entirely outside of normal working hours, operators must conduct the inspection by the end of the next business day consistent with the 2022 EPA NPDES CGP and 2023 TPDES CGP. (Permit Part VII.F.10)
 - c. Added a requirement that inspections may be temporarily suspended for adverse conditions for consistency with other water quality general permits. Documentation of adverse conditions must be included in the Stormwater Pollution Prevention Plan (SWP3). (Permit Part VII.F.10)
 - d. Added requirement for permittees to submit Delegation of Signatory forms electronically using TCEQ's online State of Texas Environmental Electronic Reporting System (STEERS). (Permit Part VII.K.) This is required for compliance with the federal NPDES Electronic Reporting Rule.
9. Miscellaneous and Editorial Changes

Made changes throughout the permit to remove redundant information, improve readability, correct references and typographical errors, and consolidate similar information into similar sections where appropriate.

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXR040000 for Small MS4s**

II. Executive Director's Recommendation

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

III. Permit Applicability and Coverage

There are two ways that a small MS4 would be required to obtain permit coverage. First, the federal NPDES Phase II stormwater rules at 40 CFR § 122.32(a)(1) require authorization for the discharge of stormwater from small MS4s located fully or partially within an urban area with a population of at least 50,000 people as defined by the U.S. Census Bureau. These small MS4s are often referred to as *regulated* small (or Phase II) MS4s. In addition, TCEQ can *designate* a small MS4 as requiring coverage (see federal Phase II stormwater rules at 40 CFR §§ 122.32(a)(2) and 123.35(b)). There are two groups that fall into this category. First, the rules require that TCEQ develop and apply designation criteria to small MS4s located outside of an urban area with a population of at least 50,000 people that serve a jurisdiction with 10,000 or more people, and that have an average density of 1,000 or more people/square mile (See 40 CFR § 123.35(a)(2)). This assessment was required by December 9, 2002, and the TCEQ after assessing those small MS4s that met these criteria did not designate any additional small MS4s requiring permit coverage. Secondly, the rules require TCEQ to designate any small MS4 as a regulated small MS4 where the small MS4 substantially contributes pollutants to a physically interconnected regulated MS4. Small MS4s meeting either of these criteria would be referred to as *designated* small MS4s. The rules also allow the TCEQ to designate additional small MS4s at any time. The portion of the small MS4 required to meet the conditions of the proposed general permit is that portion located within an urban area with a population of at least 50,000 people, as well as any portion that is individually designated by the TCEQ. Maps detailing urban areas are available at: <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html>.

The urban area maps were updated by the U.S. Census Bureau during 2023 based on the results of the 2020 Decennial Census.

In the preamble to the Phase II stormwater rules (See *Federal Register* (FR) 64, Number 235, page 68749), the EPA discusses instances where a municipal separate storm sewer may not be considered a system. The TCEQ agrees that certain complexes may have storm drainage structures that operate independently of each other (such as roof top drains flowing to the city street) rather than operating as a system. The TCEQ does not consider most elementary and secondary schools to operate a system, because each school building would normally drain to a city's MS4 rather than to a system of drains operated by a school district.

Similarly, a public office building complex may include roof and parking lot drains that flow to another entity's system. Universities, federal facilities, and many other public complexes do have a constructed drainage system, which would be defined as a small MS4, even if the drains eventually reach another MS4. In this general permit, the definition for small MS4 excludes storm drains associated with municipal (publicly owned) office and education complexes, where the complexes serve a nonresidential population, and where the buildings are not part of a larger MS4.

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

A. NPDES Small MS4 General Permit Remand Rule

On December 9, 2016, EPA issued the *NPDES MS4 General Permit Remand Rule*, with an effective date of January 9, 2017, to respond to a remand from the United States Court of Appeals for the Ninth Circuit in *Environmental Defense Center, et al. v. EPA*, 344 F. 3d 832 (9th Cir. 2003). Under the rule, EPA revised the small MS4 regulations to ensure that states review BMPs to be used by MS4s to ensure that the small MS4s reduce the pollutant in the discharge from their systems to the maximum extent practicable (MEP) and that states provide public notice and the opportunity to request a hearing.

The rule establishes two alternative approaches that states can use to issue small MS4 general permits. The first option is to issue a general permit that includes all permit terms and conditions to require the MS4 operator to reduce the discharge of pollutants from its MS4 to the MEP to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act (CWA) in one comprehensive general permit.

The second option allows states to establish the necessary terms and conditions in two steps. The first step is to issue a base general permit that contains terms and conditions for all MS4s. The second step requires that MS4s develop individual terms and conditions in their SWMPs that states will review. Public notice, comment period, and opportunity to request a public hearing is available for both steps in the second option.

The rule also requires that permit terms and conditions be written in a language that is “clear, specific, and measurable” to avoid uncertainties as to what specific actions the small MS4 is expected to take, and therefore make it easier to comply with and assess compliance. The preamble (*Fed. Reg.* Vol. 81, No. 237, December 9, 2016, p. 89335) explains that permit requirements that include “caveat” language such as: “if feasible”, “if practicable”, “to the maximum extent practicable”, “as necessary”, or “as appropriate” unless defined would generally not qualify as “clear”, “specific”, and “measurable”.

TCEQ selected the Comprehensive General Permit option to implement in this new permit term. Previously, TCEQ implemented the Two-Step General Permit option (procedural approach) since the state had managed its small MS4 program in that manner since the issuance of the first TPDES Small MS4 General Permit in 2007.

With implementation of the comprehensive permitting approach, the statewide master general permit is a comprehensive document detailing all the required terms and conditions for the small MS4 operators to implement in clear, specific, and measurable terms to meet the MS4 permit standard. The general permit includes the specific BMPs and measurable goals for each MS4 operator to implement. In some cases, the MS4 operator has the opportunity to choose the appropriate BMPs for their small MS4 from a menu of BMPs. This approach makes it clear for the public and permittees the specific controls and schedules required to be followed by each permittee and removes the public notice requirements for NOIs, including SWMPs, and NOCs.

TCEQ established terms and conditions under state rule 30 TAC Chapter 213 (Edwards Aquifer Rule), which is outside the NPDES program, are not considered part of the Remand Rule, therefore, general permit language related to the Edwards Aquifer Rule remains unchanged.

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

B. Regulated Small MS4s Subject to Permitting

The proposed general permit would continue to authorize the discharge of stormwater runoff and certain non-stormwater discharges from the following small MS4s:

1. Small MS4s located wholly or partially within an urban area with a population of at least 50,000 people as defined by the U.S. Census Bureau in the 2000, 2010, or 2020 Decennial Censuses, and
2. Small MS4s individually designated by the TCEQ as described in Section III.B of this fact sheet.

C. Designated Small MS4s Subject to Permitting

Certain small MS4s may be designated by the TCEQ as requiring permit coverage based on federal requirements at 40 CFR § 122.32(a)(2). The TCEQ has developed the following criteria, one or more of which may be considered in designating a small MS4:

1. Controls for discharges are determined to be necessary for source water protection of public drinking water resources based on the results of source water assessments by the TCEQ.
2. Controls for discharges are necessary to protect sea grass areas of Texas bays as delineated by the Texas Parks & Wildlife Department.
3. Controls for discharges are necessary to protect receiving waters designated as having an exceptional aquatic life use.
4. Controls are required for pollutants of concern expected to be present in discharges to a receiving water listed in the *Texas Integrated Report of Surface Water Quality for Clean Water Act (CWA) Sections 305(b) and 303(d)* which lists the category 4 and 5 water bodies.
5. Discharges from an adjacent small MS4 are determined by TCEQ to be significantly contributing pollutants to the regulated MS4. The TCEQ would make this determination after receiving a written request by a regulated adjacent MS4 operator.
6. Additional factors relative to the environmental sensitivity of receiving watersheds.

Specific thresholds are not established for each of the designation criteria. Instead, designation must occur following a case-by-case consideration and is based on a finding that controls are necessary to protect water quality. If designated, the small MS4 operator will be notified by the executive director and required to apply for authorization under either the proposed general permit or an individual TPDES stormwater permit. The application for either permit must be submitted within 180 days of the notice.

In 2002, the TCEQ applied these designation criteria to the small MS4s located outside of an urban area with a population of at least 50,000 which served a jurisdiction with 10,000 or more people, and which had an average density of 1,000 or more people per square mile. At that time, the TCEQ did not designate any small MS4 or portion of a small MS4 that was not located within an urban area with a population of at least 50,000. The TCEQ may evaluate small MS4s again that meet these criteria, as well as other small MS4s. Small MS4s that are not located within an

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXR040000 for Small MS4s**

urban area with a population of at least 50,000 may be designated by TCEQ at any time in the future, and will be required to develop and maintain a SWMP and submit an NOI within 180 days of being notified in writing by TCEQ of that designation. TCEQ may also designate small MS4s as a result of a petition received based on 40 CFR § 123.35(c). According to the regulations, a determination would need to be made within 180 days of receiving such a written petition.

D. Permit Waivers

Two possible waivers from permitting requirements are provided in the federal rules at 40 CFR § 122.32 and are continued in the proposed general permit.

1. Waiver Option 1 - A small MS4 may qualify for a waiver if it serves a total population of less than 1,000 within an urban area or areas with a population of at least 50,000 people, and:
 - a. The small MS4 is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the TPDES or NPDES stormwater program (40 CFR § 122.32(d)); and
 - b. If the small MS4 discharges any pollutant(s) that have been identified as a cause of impairment of any water body to which the small MS4 discharges, stormwater controls are not needed based on waste load allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern.

To meet this waiver, the small MS4 operator must submit a letter requesting the waiver including the certifying statement that the above-described criteria for Waiver Option 1 are met. This waiver request must be submitted on a form approved by the TCEQ.

2. Waiver Option 2 – A small MS4 may qualify for a waiver if it serves a total population of less than 10,000 within an urban area or areas with a population of at least 50,000 people and meets all the following criteria:
 - a. The TCEQ has evaluated all Waters of the U.S., including small streams, tributaries, lakes, and ponds, which receive a discharge from the small MS4;
 - b. For all such waters, the TCEQ has determined that stormwater controls are not needed based on waste load allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern; and
 - c. The TCEQ has determined that future discharges from the small MS4 do not have the potential to exceed Texas Surface Water Quality Standards (TSWQS, 30 TAC Chapter 307), including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

The receiving waters evaluation for Waiver Option 2 is a TMDL-equivalent evaluation that may be performed by the small MS4 using TCEQ protocol with appropriate guidance from the TCEQ. The evaluation would need to include the pollutants of concern, including at a minimum: biochemical oxygen demand (BOD, 5-day); sediment (or a parameter that addresses sediment such as total suspended solids (TSS), turbidity, or siltation); pathogens; oil and grease; and any other pollutant that has been identified as a cause of impairment of any receiving water body. The small MS4 must coordinate with TCEQ Wastewater Permitting staff and Water Quality Assessment staff prior to initiating such a study.

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

Because of the comprehensive nature of the required receiving water evaluation, and the necessary finding that future discharges from the small MS4 could not potentially exceed water quality standards, Waiver Option 2 will be difficult to obtain. However, this option is allowed by federal rules and is therefore included in the proposed general permit and made available to certain small MS4s. The small MS4 would need to first coordinate with the TCEQ to determine if a waiver is attainable under this option and must complete a TCEQ waiver form after completing all the necessary studies.

E. Ineligible Discharges

The following discharges are not eligible for permit coverage under the proposed general permit and must obtain coverage under either an individual or an alternative general TPDES permit:

1. Discharges from Phase I (medium and large) MS4s (Phase I MS4s are those that are located in a city or county with a residential population of 100,000 or more based on the 1990 Decennial Census);
2. Discharges from small MS4s 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;
3. New sources or new discharges of the pollutant(s) of concern to impaired waters, unless otherwise allowable under TCEQ rules, applicable state law, and any TMDL and TMDL Implementation Plan (I-Plan) that exists for the applicable receiving water;
4. Stormwater discharges that combine with sources of non-stormwater, unless the non-stormwater source is an allowable non-stormwater discharge described in the proposed general permit, or the non-stormwater source is authorized under a separate TPDES permit;
5. Discharges otherwise prohibited under existing state rules; and
6. Discharges that would adversely affect a listed endangered or threatened species or its critical habitat are not authorized by this general permit. Federal requirements related to endangered species apply to all TPDES permitted activities, and site-specific controls may be required to ensure that protection of endangered or threatened species is achieved.

F. Allowable Non-stormwater Discharges

The following non-stormwater sources may be discharged from the small MS4 and are not required to be addressed in the small MS4's Illicit Discharge and Detection measure, or other MCMs, provided that they have not been determined by the MS4 operator or the TCEQ to be substantial sources of pollutants to the small MS4:

1. Water line flushing (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated, and discharges are not expected to adversely affect aquatic life);
2. Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;
3. Discharges from potable water sources that do not violate TSWQS;
4. Diverted stream flows;
5. Rising ground waters and springs;

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

6. Uncontaminated ground water infiltration;
7. Uncontaminated pumped ground water;
8. Foundation and footing drains;
9. Air-conditioning condensation;
10. Water from crawl space pumps;
11. Individual residential vehicle washing;
12. Flows from wetlands and riparian habitats;
13. Dechlorinated swimming pool discharges that do not violate TSWQS;
14. Street wash water excluding street sweeper wastewater;
15. Discharges or flows from emergency firefighting activities (firefighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);
16. Other allowable non-stormwater discharges listed in 40 CFR § 122.26 (d)(2)(iv)(B)(1);
17. Non-stormwater discharges that are specifically listed in the TPDES Multi-Sector General Permit (MSGP) TXRo50000 or the TPDES CGP, TXR150000;
18. Discharges that are authorized by a TPDES or NPDES permit or that are not required to be permitted; and
19. Other similar occasional incidental non-stormwater discharges, such as spray park water, unless the TCEQ develops permits or regulations addressing these discharges.

Discharge of the waters listed above may contain pollutants that would need to be addressed by the small MS4. For example, discharges from water line flushing could contain levels of chlorine that could have an impact on aquatic life, in which case the small MS4 may need to require that controls be put on the discharge of chlorinated water line flushing.

G. Discharges from Small MS4 Construction Activities

The proposed general permit provides small MS4 operators an option to discharge stormwater runoff, and certain non-stormwater runoff, from construction sites under the authority of the small MS4 general permit, where the small MS4 is the operator of the construction activity.

For the MS4 operator to cover these activities under this general permit, an optional stormwater MCM must be developed and implemented to address these activities. The MCM must describe the general procedures the MS4 operator will develop to implement a stormwater pollution prevention plan (SWP3), with consideration for local weather and soil conditions, and the steps to be taken to meet and maintain the status as operator at small MS4 construction sites. The MS4 operator must also describe in the MCM the area within which construction related discharges will be authorized under this general permit. The permittee may choose to cover activities exclusively within the boundary of the urban area with a population of at least 50,000, within corporate limits or extra territorial jurisdiction (ETJ), within special districts, or within other similar jurisdictional boundaries of the permittee. However, discharges from construction activities outside of the regulated area, such as outside of the urban area with a population of at least 50,000 or outside of the area(s) designated by TCEQ, are only eligible for authorization under this general permit for

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXR040000 for Small MS4s**

those areas where the MS4 operator meets the requirements of Parts III.D.1. through III.D.7 of the general permit, related to MCMs. The NOI will require the permittee to provide information or a description on the boundary of coverage.

A separate detailed SWP3 must be developed and implemented for each regulated construction site. Contractors at a construction site where the small MS4 is the sole operator are not required to obtain separate authorization for stormwater discharges, provided the MS4 operator can meet and maintain the status of sole operator for the site, where the contractor does not meet the definition of operator for the site, and where the SWP3 is developed to address the activities of the contractor. If the contractor meets the definition of construction site operator, then the contractor would need to obtain authorization under the TPDES CGP or an individual permit.

40 CFR § 122.28(b)(2)(i), as adopted by reference in 30 TAC § 205.7, requires the submittal of an NOI to authorize certain discharges under a general permit. While 40 CFR § 122.28(b)(2)(v) allows some exceptions to this requirement, it does not exclude the permittee from the requirement to submit an NOI for authorization of discharges of stormwater runoff associated with industrial activity. Because federal rules at 40 CFR § 122.26(b)(14)(x) includes large construction sites in its definition of industrial activity, discharges of construction activity of five or more acres (including activities which are part of a larger common plan of development) are required to submit an NOI. Therefore, if a small MS4 operator seeks to obtain coverage for these discharges under the proposed general permit, then the small MS4 operator must include information on the construction activities on its NOI required under this general permit. The applicant must develop a SWP3 and include site-specific information on how construction activities will be conducted to control pollution. This information must be formalized as an MCM and incorporated as a part of the small MS4 operator's SWMP.

The NOI and SWMP must include this optional 8th MCM in order for the permittee's construction activities to be eligible for authorization under this general permit. The NOI will include a certification statement that the small MS4 must sign, where the MS4 operator agrees to comply with the conditions and requirements of this general permit for its construction activities. This certification on the NOI will satisfy the previously cited regulatory requirement regarding the NOI. Separate NOIs for each construction activity are not required, provided that the appropriate information is included in the optional control measure. The MS4 operator must subsequently develop a separate SWP3 for each large and small construction activity, and must post a construction site notice that includes a signed certification that a SWP3 was developed and is implemented according to the conditions and requirements of this general permit. The site notice would be considered a "report" for the purposes of this general permit, and therefore may be signed by a person properly authorized by the MS4 operator under 30 TAC § 305.128, regarding delegation of signatory authority for reports.

If the small MS4 operator determines that it does not wish to implement the optional 8th MCM at the time of original application under this general permit, and at a later date does choose to utilize this option, then an NOC will be equivalent to the NOI required under the rules.

If this optional 8th MCM is not developed by the small MS4 operator, then discharges of stormwater runoff from large and small construction activities must be authorized under the TPDES CGP or a TPDES individual permit. Additionally, if the MS4 operator either cannot or chooses not to meet and maintain the status as the sole

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

operator for any specific construction activity, then authorization under a separate TPDES permit must be obtained for the additional operators during construction activities at that specific site. Finally, if the small MS4 operator chooses not to utilize this optional 8th MCM for one or more construction activities, then the small MS4 operator must obtain separate authorization for the site(s) under the TPDES CGP or a TPDES individual permit.

IV. Permit Conditions and Effluent Limitations

A. Notice of Intent (NOI)

The proposed general permit would require small MS4s to submit to the TCEQ an NOI to comply with the conditions of the general permit, along with a certification that a SWMP has been prepared according to the comprehensive general permit requirements.

B. Stormwater Management Program (SWMP)

The proposed SWMP requirements were developed based on:

1. The existing Phase II MS4 General Permit TXRo40000 issued on January 24, 2019;
2. Input from the Stormwater Stakeholder Work Group;
3. Federal Phase II stormwater rules of 40 CFR §§ 122.28 and 122.32 - 122.35;
4. *EPA MS4 Permit Improvement Guide* (EPA, April 2010);
5. *EPA Compendium of MS4 Permitting Approaches* (EPA, 2016);
6. *Federal NPDES MS4 General Permit Remand Rule*, January 9, 2017;
7. *Federal NPDES Electronic Reporting Rule* of 40 CFR Part 127, December 21, 2015, and January 4, 2021 (Phase 2);
8. *Federal NPDES Small MS4 Urbanized Area Clarification Rule*, July 12, 2023; and
9. EPA approval letter on Small MS4 draft permit (June 9, 2023).

The proposed general permit allows small MS4s to share resources in meeting the responsibilities of the SWMP with other regulated MS4s that are either physically interconnected or that are located in the same watershed. This allowance will help to foster a more coordinated approach to resolving local water quality issues and to provide a more efficient use of local MS4 resources. MS4s may combine or share efforts necessary to meet the SWMP requirements of the general permit, but each MS4 must be separately authorized (individual NOIs are required). Additionally, individual SWMPs must be developed and maintained by each of the MS4s participating in the coalition. Each operator is separately responsible for compliance with the conditions of the general permit and the SWMP, even if efforts are combined or shared between or among the MS4s.

Small MS4s must develop a SWMP, according to the provisions of this general permit, to the extent allowable under state and local law, to address the portions of the small MS4 that are either located within the urban area with a population of at least 50,000 people or that are designated by the TCEQ, with discharges that reach Waters of the U.S. as defined in 40 CFR § 122.2.

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXR040000 for Small MS4s**

The SWMP is a comprehensive document that details the steps that the small MS4 will take to reduce or eliminate pollutants in stormwater discharges to the MEP. The phrase “to the extent allowable under local law”, as used in the paragraph above, means that small MS4s must develop any necessary ordinances, regulations, or other regulatory controls to meet the general permit requirements to the extent that their authority to make such ordinances is not prohibited by state or federal statutes or regulations.

Under the comprehensive general permitting approach, the small MS4 must implement, at a minimum, the BMPs and measurable goals identified in the general permit for each MCM. Operators may choose to implement more stringent measurable goals or additional BMPs to go beyond the minimum requirements of the general permit.

Operators of non-traditional small MS4s, such as counties, drainage districts, and transportation entities, may lack the authority to develop ordinances or to implement enforcement actions. For these MS4 operators, the general permit requires the permittee to enter into inter-local agreements with municipalities in which the small MS4 is located. These inter-local agreements must include procedures for enforcement and inspections to the extent necessary to meet the goals of the general permit. Where the permittee is unable to enter into an inter-local agreement, the permittee may report instances of non-compliance or possible illicit discharges to the appropriate TCEQ Regional Office for possible follow-up investigations or enforcements.

The general permit requires the small MS4 to ensure that it has adequate resources and funding necessary to meet all requirements of the permit.

The small MS4s must develop a SWMP to include the MCMs described below, which are based on federal rules at 40 CFR §§ 122.28, 122.34(b), and 122.26(d)(2)(iv). The MS4 must implement the required BMPs under each MCM along with the specified measurable goals that are used to determine the effectiveness of the SWMP. The general permit continues the tiered approach introduced in the Small MS4 General Permit issued on December 13, 2013, to meet the MCM requirements such that some categories, or Levels, of small MS4 operators are not required to implement all or all parts of the MCMs. The small MS4s continue to be categorized by the following four Levels:

- Level 1: Operators of small MS4s that serve a population less than 10,000 within an “urban area with a population of at least 50,000 people”;
- Level 2a: Operators of small MS4s that serve a population of at least 10,000 but less than 40,000 within an “urban area with a population of at least 50,000 people”;
- Level 2b: Operators of all non-traditional small MS4s such as counties, drainage districts, transportation entities, universities, colleges, correctional institutions, municipal utility districts and other special districts regardless of the population served within an “urban area or areas with a population of at least 50,000 people”;
- Level 3: Operators of small MS4s that serve a population of at least 40,000 but less than 100,000 within an “urban area with a population of at least 50,000 people”; and

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

- Level 4: Operators of small MS4s that serve a population of 100,000 or more within an “urban area with a population of at least 50,000 people”.

The eight MCMs are separately described below and include:

1. Public Education and Outreach

The federal Phase II rules require regulated small MS4 operators to implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff (see 40 CFR § 122.34(b)(1)).

The general permit requires small MS4s to educate the public about the impact of stormwater discharges on receiving water bodies and what steps they can take to reduce the contamination of stormwater. The small MS4s are encouraged to use existing public materials in their program, such as using examples from the EPA's Nonpoint Source Outreach Toolbox (www.epa.gov/nps/toolbox) or from other agencies and municipalities with similar public education goals.

2. Public Involvement/Participation

The federal Phase II stormwater rules require regulated small MS4 operators to implement a public involvement and participation program that complies with state and local public notice requirements (see 40 CFR § 122.34(b)(2)).

The SWMPs can be greatly improved by involving the community throughout the entire process of developing and implementing the program. Involving the community will benefit the permittee itself as well as the community. By listening to the public's concern and coming up with solutions together, the permittee will gain the support of the public and the community will become invested in the program. The permittee will likewise gain even more insight into the most effective ways to communicate its messages.

The general permit requires the permittee to involve the public (for example, hosting a public meeting on the program implementation to solicit public comment) in the development of the program. Public input and involvement can include many different activities such as meeting with local land planners and provide input on land use code or ordinance updates, stream clean-ups, storm drain marking, and volunteer monitoring.

As a continued requirement in this general permit, small MS4s having a public website are required to post their SWMP and the annual report on their website to share information with the public.

Permittees are encouraged to work together with other entities that have an impact on stormwater to implement this MCM.

3. Illicit Discharge Detection and Elimination (IDDE)

The Phase II regulations require regulated small MS4 operators to develop, implement, and enforce a program to detect and eliminate illicit discharges into the MS4 (See 40 CFR § 122.34(b)(3)). Through the IDDE MCM, the permittee is required to respond to complaints about illicit discharges, illegal dumping, or spills and to actively investigate illicit discharges and behaviors that could result in illicit

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

discharges such as illegal connection to the small MS4, improper disposal of wastes, or dumping of used motor oil or other chemicals.

The general permit requires the permittee to have an up to date MS4 map. Level 4 permittees are required to identify areas with a high-risk for illicit discharges and illegal dumping, and these areas must be prioritized for more frequent investigations. Priority areas could include: (1) Areas with older infrastructure that are more likely to have illicit discharges; (2) Industrial, commercial, or mixed use areas; (3) Areas with a history of illegal dumping; (4) Areas with a history of illegal discharges; (5) Areas with onsite sewage disposal systems; (6) Areas with older sewer lines or with a history of sanitary sewer overflows (SSOs) or cross-connections; (7) Areas that discharge to sensitive waterbodies; and (8) Areas within sensitive watersheds.

The CWA § 402(p)(3)(B)(ii), requires MS4 permits to “effectively prohibit non-stormwater discharges into the storm sewers”. The general permit implements this requirement, in part by requiring the development of procedures to investigate and eliminate illicit discharges and illegal dumping. Standard Operating Procedures (SOPs) with necessary forms provide guidance to investigators and ensure that consistent investigations occur of every illicit discharge incident.

The public must have a central contact point, such as a stormwater hotline, to report observed illicit incidents. An incident could be anything from an overturned gasoline tanker to sediment leaving a construction site or a sanitary sewer overflow entering the storm drain.

The general permit requires the permittee to implement a method for informing or training field staff, who may come into contact or observe illicit discharges or illegal dumping, on the identification and proper procedures for reporting illicit discharges or illegal dumping at least once per year. Field staff to be trained may include, but are not limited to, municipal maintenance staff, inspectors, and other staff whose job responsibilities regularly take them out of the office and into areas within the MS4 area. Permittee field staff is out in the community on a day-to-day basis and are in the best position to locate and report spills, illicit discharges, illegal dumping, and potentially polluting activities. With proper training and information on reporting illicit discharges easily accessible, these field staff can greatly expand the reach of the IDDE program.

The general permit requires small MS4s serving a population more than 100,000 (Level 4 small MS4s) to develop a dry weather screening program. The program consists of field observations and field screening monitoring. Visually screening outfalls during dry weather and conducting field tests, where flow is occurring, will assist permittees in determining the source of illicit discharges and illegal dumping. For example, the presence of surfactants is an indicator that sewage could be present in the discharge and the parameters specific conductivity, ammonia, surfactant, pH and other chemicals may similarly be indicative of industrial sources.

Under this general permit, Level 4 small MS4s are also required to develop a program to reduce the discharge of floatables (for example, litter and other human-generated solid refuse) in the MS4. The MS4 will be required to implement the BMPs described in Table 8 of the general permit such as maintain at least two locations where floatable material can be removed before the stormwater is discharged to or from the MS4. This program has been in place for similar size MS4s under the federal Phase I MS4 regulations that were issued in 1990 and defined Phase I MS4s as MS4s located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the 1990 Decennial Census. (40 CFR § 122.26(b)(7)(i)). It is

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

therefore appropriate to include these requirements for these similar size MS4s regulated under this general permit.

4. Construction Site Stormwater Runoff Control

The Phase II regulations require regulated small MS4s to develop, implement, and enforce a program to reduce pollutants in stormwater runoff to the MS4 from construction activities that result in a land disturbance of one acre or greater (*See* 40 CFR § 122.34(b)(4)). In this general permit, the definition for construction activity is clarified to also include construction related activities such as stockpiling of fill material and demolition.

The general permit requires the permittee to ensure that construction site operators use appropriate erosion and sediment controls to reduce or eliminate impacts on receiving water bodies.

The permittee is required to implement procedures to conduct inspections of large and small construction projects. Level 3 and 4 small MS4s are further required to maintain an inventory of construction sites in their area. This will help the permittee to effectively know where the construction activities are occurring. A construction site inventory could track information such as project size, disturbed area, distance to any water body or flow channel, when the erosion and sediment control or stormwater plan was approved by the permittee, and whether the project is covered by the TPDES CGP. Such information will help the permittee to track and target its inspection.

The permit requires the permittee to develop and implement site plan review procedures, which describes which plans will be reviewed as well as when an operator may begin construction. The permittee is required to develop SOPs to perform the site plan reviews to ensure that the review process is consistent. The site plan review also provides the permittees with a way to track construction sites.

The general permit requires the permittee to implement procedures for performing inspections of construction sites. Inspection frequencies must be based on the evaluation of factors that are a threat to water quality such as soil erosion potential, site slope, proximity to receiving waters, and water quality status of the receiving water. The sites must be inspected during the active construction phase, to ensure that stormwater controls are maintained.

For inspections to be successful the permittee is required to develop inspection and enforcement procedures. The permit language includes minimum requirements that construction site inspections must include. Also, the permittee must ensure MS4 staff is trained to perform the inspections.

5. Post-Construction Stormwater Management in New Development and Redevelopment

The Phase II stormwater regulation requires regulated small MS4s to develop, implement, and enforce a program to address stormwater discharges from new development and redevelopment sites that disturb one acre or more, and requires that the program ensure controls are in place that would prevent or minimize water quality impacts (*See* 40 CFR § 122.34(b)(5)).

Developed land changes the hydrology of sites, potentially leading to higher stormwater discharge volume and higher pollutant loads. Frequently, the volume,

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

duration, and velocity of stormwater discharges can cause degradation to aquatic systems.

The general permit requires that MS4 operators have owners and developers install and maintain stormwater control measures appropriate for the community. In addition, permittees are required to maintain all long-term post-construction stormwater control measures. In many cases, controls will be located on private property, and it will be necessary to establish some provisions to assure the responsibility and accountability for the operation and maintenance of these controls.

Structural controls may include practices such as rainwater harvesting, rain gardens, permeable pavement, and vegetated swales, which are considered low impact development practices or green infrastructure BMPs.

The permittees are required to inspect post-construction controls to ensure that control measures are operating correctly and are being maintained. Without maintenance, stormwater controls will not be able to properly protect water quality.

For the purpose of this general permit "Redevelopment" does not include routine maintenance activities and linear utility installation. Examples of linear utility installation are construction activities that maintain the original line, grade, and hydraulic capacity of the surrounding areas, such as the installation of underground gas lines, fiber-optic cable, cable TV, electric, telephone, sewer mains, and water mains. Routine maintenance activities are construction activities that are performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility, including but not limited to: (1) Re-grading of gravel roads or parking lots; (2) Stream bank restoration projects (does not include the placement of spoil material); (3) Cleaning and shaping of existing roadside ditches and culverts that maintains the approximate original line and grade, and hydraulic capacity of the ditch; (4) Placement of aggregate shoulder backing that makes the transition between the road shoulder and the ditch or embankment; (5) Full depth milling and filling of exiting asphalt pavements, replacement of concrete pavements slabs, and similar work that does not expose soil or disturb the bottom six inches of subbase material; (6) Long-term use of equipment storage areas at or near highway maintenance facilities; (7) Removal of sediment from the edge of the highway to restore a previously existing sheet-flow drainage connection from the highway surface to the highway ditch or embankment; and (8) Replacement of curbs, gutters, sidewalk and guard rail posts.

6. Pollution Prevention and Good Housekeeping for Municipal Operations

The stormwater Phase II regulations require operators of regulated small MS4s to develop and implement an operation and maintenance program that includes a training component with the ultimate goal of preventing or reducing pollutant runoff from municipal operations (*See* 40 CFR § 122.34(b)(6)).

The general permit requires the small MS4 operator to maintain an inventory of municipal facilities and stormwater controls. Municipally owned facilities serve as hubs of activity for a variety of municipal staff from many different departments. Some municipalities will have one property where all activities take place (for example, the municipal maintenance yard), whereas others will have several specialized facilities. An inventory of facilities will assist staff responsible for stormwater compliance build a better awareness of their locations within the small MS4 service area and their potential contribution to stormwater pollution. The

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

facility inventory will also serve as a basis for setting up periodic facility assessments and developing, where necessary, facility stormwater pollution plans.

The general permit requires Level 3 and Level 4 permittees to perform, once per permit term, an assessment of its facilities to identify which of the facilities are most likely to contribute stormwater pollutants and that need stormwater controls. Those facilities with a high potential to generate stormwater pollutants must be described as *high priority* facilities and this category of facilities are required to have facility specific stormwater management SOPs. Developing and maintaining site-specific SOPs for each facility will help ensure that employees responsible for facility operation are aware of the stormwater controls required for the site.

The general permit requires Level 3 and Level 4 permittees to develop an inspection program to perform inspections of, at a minimum, high priority municipal facilities and to document the results of the inspections. Regular inspections will allow inspectors to observe different types of operations that occur at different times of the year (e.g., landscape maintenance crews are less active in the winter) and ensure that corrective action can be taken where necessary to improve stormwater controls.

The general permit includes requirements for MS4 operation and maintenance (O&M) activities, such as maintaining the storm sewer system, maintaining roads, and managing chemical applications. Level 3 and Level 4 small MS4s are required to develop an O&M program to reduce the collection of pollutants in catch basins and other surface drainage structures. Catch basins collect and trap stormwater pollutants such as sediments, metals, hydrocarbons, bacteria, pesticides, trash, and other pollutants. Since these basins collect solids, they need to be cleaned out on a regular basis to prevent pollutants from being discharged to water bodies. The materials removed from catch basins need to be treated and disposed of in a manner so that they do not reenter the small MS4.

The O&M of roads may, for Level 3 and Level 4 small MS4s, include a street sweeping program. Street sweeping removes both fine and large particles from streets and therefore has a positive effect on water quality. Some small MS4s have roads without curbs and gutters, and are therefore not suitable for street sweeping. In these cases, source controls or inlet protection measures, to minimize pollutant discharges to storm drains and creeks, can be used in place of sweeping.

The general permit includes requirements for Level 4 small MS4s for managing public spaces, such as addressing the application of pesticides, herbicides, and fertilizers. The general permit language encourages non-chemical solutions, such as using native plants that are adapted to local conditions and therefore requires fewer chemicals and to replace pesticide use with manual insect and weed removal thereby reducing chemical exposure to stormwater.

The Phase II regulations found at 40 CFR § 122.34(b)(6) specifically requires that small MS4s develop a "training component" that trains employees "to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance. The general permit requires the permittee to develop a training program to train all appropriate employees involved in implementing pollution prevention and good housekeeping practices at least once per year.

Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s

The general permit includes language for situations where small MS4s use third-party contractors to conduct municipal maintenance activities. Contractors must be held to the same standards as the permittee.

The general permit includes a requirement for Level 4 small MS4s to assess their flood control projects for their impacts on receiving waters and determine if existing structures could be retrofitted. New flood control projects must be designed, constructed, and maintained to provide erosion control and pollutant removal from stormwater. This program has been in place for similar size MS4s under the Phase I MS4 program since the federal Phase I stormwater regulations were issued in 1990, and it is therefore appropriate to add these requirements to these similar sized MS4s regulated under this general permit.

7. Industrial Stormwater Sources

The Phase I stormwater regulations, found at 40 CFR §§ 122.26(d)(2)(i)(B, C,E, and F), 122.26(d)(2)(iv), and 122.26(d)(2)(iv)(A), require permittees to develop and implement an inspection and oversight program to monitor and control pollutants in stormwater discharges from industrial facilities.

The general permit continues the Industrial Stormwater Sources MCM for small MS4s that serve a population of 100,000 or more within a UA. EPA's *MS4 Improvement Guide* recommends this MCM be included in Phase II permits, and TCEQ determined that it is appropriate to include it for those Phase II MS4s regulated under this general permit that have similar populations as the Phase I MS4s.

The general permit requires the permittee to identify and control pollutants in stormwater discharges to small MS4s from industrial or commercial sites that contributes a substantial pollutant loading to the small MS4. The general permit language under this MCM is similar to language in some Phase I MS4 individual permits.

8. Authorization for Construction Activities Where the MS4 is the Site Operator

The small MS4 operator may develop an optional 8th MCM for discharges from construction activities, and may obtain authorization under the general permit for discharges from construction activities where the MS4 is the operator. In order to qualify for this provision, MS4 operators must maintain control over the plans and specifications of the construction activity, or must maintain the status of the operator with day-to-day operational control over the construction site, to the extent necessary to meet the requirements of the SWP3 for that site.

Implementation of this optional 8th MCM allows the small MS4 to obtain the necessary authorization under the terms of this five-year term general permit and replaces the requirement to seek separate permit coverage for each construction activity that it conducts. Where the small MS4 is able to demonstrate it is the sole operator for these activities, by meeting both criteria listed in the definition of "construction site operator", contractors would not have to seek separate authorization. This provision is allowed for construction activities located in the regulated area, such as within an urban area with a population of at least 50,000 people or within an area designated by TCEQ.

Small MS4s are required to summarize in the annual report pertinent information related to the construction activities performed in the previous year. Small MS4s

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXR040000 for Small MS4s**

electing this provision must notify the TCEQ when submitting the NOI. Utilization of the optional 8th MCM does not preclude a small MS4 from obtaining coverage under the TPDES CGP, TXR150000, or under a TPDES individual permit.

C. SWMP Implementation

The SWMP will be implemented on a scheduled stepwise basis throughout the term of the general permit. Permittees must implement the elements following the clear, specific, and measurable goals described in the general permit or follow a more stringent schedule than the general permit describes.

Implementation must be initiated upon receipt of written approval of the NOI from the TCEQ. The general permit contains provisions that allow non-substantial revisions to the SWMP throughout the term of the general permit, without immediate notification to the TCEQ, so that SWMPs can be adjusted based on experiences and findings to become more effective and efficient. Schedules for SWMP implementation, the status of the implementation schedules, and modifications to the SWMP must be summarized in the annual report. These general permit provisions allow small MS4s to develop and implement SWMPs according to available funding, manpower, and ability, and allow for revisions where more efficient or effective BMPs are identified. Complete implementation of the SWMP is required within five years from the date of issuance of the general permit.

Existing permittees must implement the SWMP that was approved by TCEQ under the previous 2019 Small MS4 General Permit term, and will have five years to implement new portions of the SWMP.

Federal rules at 40 CFR § 123.35(g) require permitting authorities to issue a menu of BMPs to assist small MS4s in complying with the Phase II regulations. TCEQ has adopted the EPA menu of BMPs by including that menu as a resource to small MS4s through a link on the TCEQ stormwater webpage at:

<https://www.epa.gov/npdes/national-menu-best-management-practices-bmps-stormwater#edu>

The TCEQ may develop additional guidance during the term of this general permit and will make any guidance available on the TCEQ's webpage at:

<https://www.tceq.texas.gov/permitting/stormwater/ms4>

and

<https://www.tceq.texas.gov/assistance/water/stormwater/sw-ms4.html>

D. Reporting Requirements

1. The proposed general permit requires small MS4s to provide documentation on the development, implementation, and evaluation of the SWMP. The documentation must be included as a part of the SWMP and may be required to be submitted in the annual report. The preparation and review of the annual report by the small MS4 may ensure progressive improvement of stormwater controls and reduce pollutants to the maximum extent practicable. At a minimum, the documentation must include:

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXR040000 for Small MS4s**

- a. A list of all small MS4 operators contributing to the development and implementation of the SWMP, including a clear description of the role and responsibilities of each MS4 operator, if applicable;
 - b. A list of any public or private entities assisting with the development or implementation of the SWMP, including a clear description of the relationship, role, and responsibilities of each entity, if applicable;
 - c. A list of all activities/BMPs and measurable goals for each of the MCM;
 - d. A schedule for the implementation of all SWMP requirements;
 - e. A description of how each measurable goal will be evaluated; and
 - f. A rationale statement that addresses the overall program, including how the activities/BMPs and measurable goals were selected.
2. Additionally, the small MS4 must evaluate the following items and must include the information in an annual report:
- a. Program compliance;
 - b. The appropriateness of the chosen BMPs; and
 - c. Progress toward achieving identified measurable goals.
3. On December 21, 2015, EPA issued the NPDES Electronic Reporting Rule (40 CFR Part 127) requiring NPDES regulated entities to report electronically. On November 2, 2020, EPA issued the NPDES Electronic Reporting Rule – Phase II Extension extending the date for compliance with the rule. (See *Federal Register*, Vol. 80, No. 204, October 22, 2015, and Vol. 85, No. 212, November 2, 2020.) Therefore, TCEQ requires small MS4s to submit applications and annual reports electronically by using the EPA's NPDES electronic permitting and reporting system for the MS4 program, NeT-MS4.

V. Changes from Existing General Permit

The major changes to the general permit include the following:

1. Removed the regulatory language in the definition of Waters of the United States in Part I., and instead cited 40 CFR § 122.2 because the definition in the general permit was outdated.
2. Added a description of the small MS4 designation criteria from the federal and state rules. (Part II.A.2 in the permit)
3. Updated language throughout the general permit to comply with the *NPDES MS4 General Permit Remand Rule* issued on December 9, 2016, to make the language consistent with the Comprehensive General Permit option.
4. Updated language throughout the general permit to comply with the *NPDES Small MS4 Urbanized Area Clarification Rule* issued on June 12, 2023, to refer to the phrase “urban area with a population of at least 50,000” instead of “Urbanized Area (UA)”.

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

5. Updated language for the small MS4s eligible for coverage under the general permit to encompass newly regulated MS4s based on urban areas with a population of at least 50,000 people as determined by the 2020 Decennial Census by the U.S. Census Bureau. (Part II.A. in the permit)
6. Added that the levels of small MS4s for this general permit are based on the current population served within the 2020 urban area with a population of at least 50,000 people and is based on the most recent Decennial Census at the time of general permit issuance. (Part II.B. in the permit)
7. Updated the small MS4 levels to separate current Level 2 into Level 2a for traditional MS4s serving a population between 10,000 and 40,000 and Level 2b for all non-traditional MS4s and created new section for Categories of Regulated Small MS4s. (Part II.B. in the permit)
8. Clarified the description of “population served” for the purposes of obtaining a waiver from permit coverage. (Part II.C. in the permit)
9. Separated “application deadlines” from “application for coverage” to create a new item under Section F. (Obtaining Authorization). (Part II.F.2. in the permit)
10. Revised application deadlines to clarify requirements for newly regulated small MS4 operators. (Part II.F.2.(b) in the permit)
11. Revised to specify home-rule municipality as established in ‘Texas statute’ instead of the specific rule to ensure flexibility to accommodate future rule and citation changes. (Part II.E.6 in the permit)
12. Added additional items to the “Contents of the NOI” description to identify the additional information that must be provided with the Comprehensive General Permit option and electronic annual reporting and moved the section below “Application Deadlines” and “Late Submission of the NOI”. (Part II.F.4 in the permit)
13. Revised language throughout the general permit to specify that applications and annual reports must be submitted electronically through EPA’s NPDES electronic permitting and reporting system for the MS4 program known as NeT-MS4 unless the permittee obtains an electronic reporting waiver.
14. Added a section describing how operators may request and obtain an Electronic Reporting Waiver. (Part II.E.11 in the permit)
15. Removed references throughout the general permit to SWMP submittal and review in the application or change processes for this general permit consistent with the comprehensive permit option.
16. Clarified that applicants must pay a fee with the submittal of a complete NOI. (Part II.F.1. in the permit)
17. Consolidated information about application deadlines by moving all related information to Part II.F.2 (Application Deadlines). (Part II.F.2. in the permit)
18. Clarified that the SWMP must be developed prior to submitting an NOI. (Part II.F.5 in the permit)

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

19. Clarified that updating contacts included in the NOI requires an NOC. (Part II.F.6 in the permit)
20. Clarified that change in operational control of a small MS4 requires submittal of an NOC and updates to the SWMP. (Part II.F.8 in the permit)
21. Moved Impaired Water Bodies and Total Maximum Daily Load (TMDL) Requirements section from Part II. (Limitations on Permit Coverage) to new Part III. (Impaired Water Bodies and Total Maximum Daily Load (TMDL) Requirements). (Part III. in the permit)
22. Revised the required description of targeted controls for discharges to water quality impaired water bodies with an approved TMDL to further describe the minimum categories for these controls to address. (Part IIIA.1. in the permit)
23. Added language describing when permittees must update their SWMP to address when TCEQ has modified a WLA. (Part III.A.3.(a) in the permit)
24. Added a table with BMPs and measurable goals for bacteria impaired water bodies with an approved TMDL to specify the clear, specific, and measurable activities, goals, and deadlines that must be implemented by MS4s discharging to these water bodies, as appropriate. (Part III.A.5. in the permit)
25. Clarified that permittees discharging to water quality impaired water bodies with a TMDL for bacteria must either refer to the TMDL I-Plan for BMPs, or implement alternative equivalent BMPs identified in the permit. Permittees must use the table of BMPs and measurable goals identified in this section to implement alternative equivalent BMPs or when the TMDL I-Plan BMPs do not currently address all the items. (Part III.A.5. in the permit)
26. Clarified requirements for newly regulated small MS4s to develop and implement a SWMP. (Part IV.C.1 in the permit)
27. Consolidated information about developing and reviewing the SWMP by moving sections for "SWMP Review" and "SWMP Updates Required by TCEQ" under the SWMP section of the permit. (Part IV in the permit)
28. Moved "SWMP General Requirements" before "Minimum Control Measures." (Part IV.C.7. in the permit)
29. Moved information about transfer of ownership, operational authority, or responsibility to be under the SWMP section of the permit. (Part IV.C.1.(c) in the permit)
30. Clarified that existing MS4 operators must implement their previously approved SWMP until their renewal NOI is approved. (Part IV.C.1.(a) in the permit)
31. Clarified SWMP requirement to include a summary of written procedures describing how the permittee will implement the general permit by providing examples. (Part IV.C.2 in the permit)
32. Clarified that the SWMP requirement to include a rationale statement may be fulfilled with an overall statement rather than a statement for each BMP. (Part IV.C.7.(f) in the permit)

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

33. Revised the list of MCMs in the general permit to separate “Public Education and Outreach” from “Public Involvement/Participation”. The MCMs are renumbered as MCMs 1-8. (Part IV.D.1. and 2. in the permit)
34. Added that municipal utility districts and other special districts must address residents served in their target audience for MCM 1. (Part IV.D.1(a)(1)b.(iv) in the permit)
35. Added a requirement for permittees to address specific target audiences for their Public Education and Outreach program based on their small MS4 level and provided a list of target audiences for the small MS4s to select and address in their SWMP. (Part IV.D.1 in the permit)
36. Added a requirement for permittees to address specific pollutants and sources in their Public Education and Outreach program based on their small MS4 level and provided a list of pollutants and sources for the small MS4s to select and address in their SWMP. (Part IV.D.1 in the permit).
37. Added tables with activities/BMPs and measurable goals for each MCM to specify the clear, specific, and measurable: activities, goals, and deadlines that must be implemented by small MS4s based on their small MS4 level to comply with the Comprehensive General Permit approach. (Part IV.D.1-7 in the permit)
38. Clarified that illegal dumping must be addressed in the required items for Illicit Discharge Detection and Elimination. (Part IV.D.3. in the permit)
39. Clarified that permittees must include in their SWMP documentation for the role, responsibilities, and relationship between the permittee and other entities or other MS4 operators contributing to the development and implementation of the SWMP. (Part IV.C.7. in the permit)
40. Clarified that permittees may maintain a copy of the general permit in their SWMP either physically or electronically. (Part V.A in the permit)
41. Revised available annual reporting year options to only allow for one reporting year schedule as required by the EPA electronic reporting system, NeT-MS4. All permittees are required to report on the Calendar Year schedule. (Part V.B.2 in the permit)
42. Clarified that a summary of actions taken to address impaired water bodies in the annual report is only required for small MS4 operators discharging to impaired water bodies and should include sampling results if sampling was conducted. (Part V.B.2 in the permit)
43. Moved information about force majeure to the Standard Permit Conditions section of the permit. (Part VI.J. in the permit)
44. Clarified that small MS4 operators implementing MCM 8 may develop and implement a shared SWP3 with other operators. (Part VII.D. in the permit)
45. Moved Contents of the SWP3 to be directly after SWP3 Requirements in Authorization for Municipal Construction Activities – Applicable only if the Optional 8th MCM is selected. (Part VII.E. in the permit)
46. Clarified for permittees implementing optional MCM 8 that inspections conducted within 24 hours of the end of a storm event of 0.5 inches must occur

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

on the first and last day of a storm for multiday storm events and when the 24-hour inspection time frame occurs entirely outside of normal working hours, operators must conduct the inspection by the end of the next business day consistent with the 2022 EPA NPDES CGP and 2023 TPDES CGP. (Part VII.F.10 in the permit)

47. Added for permittees implementing Optional MCM 8 a requirement that inspections may be temporarily suspended for adverse conditions for consistency with other water quality general permits. Documentation of adverse conditions must be included in the SWP3. (Part VII.F.10 in the permit)
48. Added requirement for permittees implementing optional MCM 8 to conduct observation and evaluation of dewatering controls on the days where dewatering discharges occur consistent with the 2023 TPDES CGP. (Part VII.E.11 in the permit)
49. Added requirement for permittees implementing optional MCM 8 to submit Delegation of Signatory forms electronically in STEERS unless an electronic reporting waiver is obtained. (Part VII.K in the permit)
50. Made additional changes throughout the permit to remove redundant information, improve readability, and consolidate similar information into one section where appropriate.

VI. Addresses

Questions concerning this proposed general permit should be sent to:

TCEQ, Stormwater Team Leader
Wastewater Permitting Section (MC-148)
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-4671
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, Office of the Chief Clerk (OCC) (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 OCC at address above within three days of fax date.

Electronically:

<https://www14.tceq.texas.gov/epic/eComment/>

Questions Regarding Public Comments Should Be Directed to OCC: (512) 239-3300

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

VII. Legal Basis

Texas Water Code (TWC) Section (§) 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 issued by the commission. 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 (HB) 1542 in 1997, and to authorize waste discharges by general permit. On September 14, 1998, TCEQ and EPA executed a memorandum of agreement (MOA) delegating to TCEQ administration of the NPDES program, which is operated as the TPDES program in the state.

The CWA, §§ 301, 304, and 401 (33 United States Code (U.S.C.), §§ 1331, 1314, and 1341) include provisions that state that NPDES permits must include effluent limitations requiring authorized discharges to: (1) meet standards reflecting levels of technological capability; (2) comply with EPA-approved state water quality standards; and (3) comply with other state requirements adopted under authority retained by states under CWA, § 510 and 33 U.S.C., § 1370.

VIII. Regulatory Background

The 1972 amendments to the Federal Water Pollution Control Act, later referred to as the CWA, prohibit the discharge of any pollutant to navigable waters of the U.S. from a point source unless the discharge is authorized by an NPDES permit. Efforts to improve water quality under the NPDES program traditionally have focused on reducing pollutants in industrial process wastewater and municipal sewage treatment plant discharges. Over time, it has become evident that more diffuse sources of water pollution, such as stormwater runoff from small MS4s, are also significant contributors to water quality problems. EPA developed permit requirements for small MS4s that are intended to improve water quality by reducing the quantity of pollutants that stormwater discharges into storm sewer systems during storm events.

In 1990, EPA promulgated rules establishing Phase I of the NPDES stormwater program. Phase I addresses discharges from medium and large MS4s, which are those MS4s with a population of 100,000 people or more, based on the 1990 Decennial Census. Phase I MS4s were required by the EPA to obtain individual NPDES permits. No additional Phase I MS4s will be created by later census results.

The federal Phase II stormwater regulations extended permitting requirements to certain small MS4s, and required that a more general SWMP be developed than was required for medium and large MS4s under Phase I of the stormwater regulations. The Phase II stormwater regulations were published on December 8, 1999, in the *Federal Register*, requiring affected small MS4s to obtain permit coverage by March 10, 2003. The Phase II stormwater regulations are identified in federal rules at 40 CFR §§ 122.30 through 122.37, which were adopted by the TCEQ at 30 TAC § 281.25(b). This proposed TPDES general permit offers the necessary authorization for these small MS4 discharges.

In 2016, EPA issued the *NPDES MS4 General Permit Remand Rule*, which is a federal rule to promote greater public engagement through clear requirements on the opportunities for public participation in the permitting process for small MS4s. This rule was published in the *Federal Register* (Vol. 81, No. 237, December 9, 2016) with an effective date of January 9, 2017. The Phase II stormwater regulations were revised in 40 CFR §§ 122.33 and 122.34 and a new paragraph (d) was added to 40 CFR §

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

122.28 requiring permitting authorities to select a permitting approach from one of two general permit options. This proposed TPDES Comprehensive General Permit includes the terms and conditions to meet the clear, specific, and measurable requirements to regulate the discharges from small MS4.

In 2015, EPA issued the *NPDES Electronic Reporting Rule* (40 CFR Part 127) requiring NPDES regulated entities to report electronically. This rule was published in the *Federal Register* (Vol. 80, No. 204, October 22, 2015) with an effective date of December 21, 2015. In 2020, EPA issued the *Updates to NPDES eRule Data Elements to Reflect MS4 General Permit Remand Rule* to update the data elements in the original eRule to be consistent with the current MS4 regulations that were revised as a result of the *NPDES MS4 General Permit Remand Rule*. This rule was published in the *Federal Register* (Vol. 85, No. 73, April 15, 2020) with an effective date of May 15, 2020. Later in 2020, EPA issued the *NPDES Electronic Reporting Rule – Phase II Extension* extending the date for compliance with the rule to December 21, 2025. This extension was published in the *Federal Register* (Vol. 85, No. 212, November 2, 2020). Additionally, the general permit requires use of the EPA's NPDES electronic permitting and reporting system, NeT-MS4, to comply with the *NPDES Electronic Reporting Rule* deadline.

In 2023, EPA issued the *NPDES Small MS4 Urbanized Area Clarification Rule* to clarify the designation criteria for small MS4s following the U.S. Census Bureau's 2020 Decennial Census urban area mapping revisions. This rule was published in the *Federal Register* (Vol. 88, No. 112, June 12, 2023) with an effective date of July 12, 2023. The final rule clarifications were necessary due to the U.S. Census Bureau's March 24, 2022 publication of final program criteria in the *Federal Register* (Vol. 87, No. 57, March 24, 2022) that retired the term "urbanized area" and discontinued its practice of publishing the location of "urbanized areas" along with the 2020 Decennial Census and future censuses. The clarifications in the final *NPDES Small MS4 Urbanized Area Clarification Rule* replaced the term "urbanized area" in the Phase II stormwater regulations with the phrase "urban areas with a population of at least 50,000", which is the U.S. Census Bureau's longstanding definition of the term urbanized areas. This final rule retained the existing threshold for automatic designation of small MS4s for regulation under the Phase II stormwater regulations. The threshold for automatic designation was used following the 2000 and 2010 Decennial Censuses and is based on the MS4 being in an urbanized area of 50,000 or more people. This final rule maintains the threshold for automatic designations of small MS4s and ensures that the designation of new small MS4s will continue as originally required under the Phase II stormwater regulations.

IX. Permit Coverage

1. The proposed general permit would apply to discharges of stormwater runoff associated with small MS4s. The guidelines for small MS4s were published in the *Federal Register* on December 8, 1999 (64 FR 68722).
2. Applicants seeking authorization to discharge stormwater runoff from small MS4s under the conditions and requirements of the proposed general permit must submit a completed NOI by the deadlines specified in the permit. The NOI form will include at minimum, the legal name and address of the owner and operator, the facility name and address, a specific description of its location (including the street address, if applicable, and county), the type of facility and discharge, the name of the receiving water, information on impaired waters, the boundary of the area where construction activities are covered under the general permit (if the optional MCM is developed), and other information requested by

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

the TCEQ. The NOI must be signed according to TCEQ rules at 30 TAC § 305.44, which establishes requirements regarding who may sign an application for a permit, and requires that a legal certification be made regarding the permit application. The specific language in this rule can be found at:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=3&ti=30&pt=1](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=3&ti=30&pt=1)

by selecting Chapter 305, Subchapter C (related to Application for Permit).

Small MS4 operators can locate information regarding the classified segment(s) receiving the discharges from the MS4 in the Surface Water Quality Segment and Data Viewers found at the TCEQ web address at:

<https://www.tceq.texas.gov/waterquality/monitoring/index.html>

Small MS4 operators can find the latest EPA-approved list of impaired water bodies (the Texas 303(d) List) and the *Texas Integrated Report of Surface Water Quality for Clean Water Act (CWA) Sections 305(b) and 303(d)*, which lists the category 4 and 5 water bodies, at the following TCEQ web address:

<https://www.tceq.texas.gov/waterquality/assessment>

Small MS4 operators need to use the *Texas Integrated Report of Surface Water Quality for Clean Water Act (CWA) Sections 305(b) and 303(d)* which lists the category 4 and 5 water bodies to search for impaired water bodies with an approved TMDL, since those water bodies no longer are listed on the CWA 303(d) list.

If a waterbody with a TMDL eventually meets water quality standards, it is moved to category 1 and will be removed from the *Texas Integrated Report of Surface Water Quality for Clean Water Act (CWA) Sections 305(b) and 303(d)*. However, if the TMDL is still in place for the waterbody, MS4s must continue to follow the TMDL implementation plan for that waterbody to ensure that water quality standards are met.

3. Submission of an NOI is an acknowledgment by the regulated small MS4 that the conditions of this general permit are applicable to the proposed discharges and that the applicant agrees to comply with the conditions of the general permit. Discharge authorization begins when the applicant is notified by TCEQ that the NOI has been administratively and technically reviewed. The documents must be submitted electronically via the online NeT-MS4 e-permitting system, unless the permittee requested and obtained an electronic reporting waiver.

Following review of the NOI, the executive director may: 1) determine the submission is complete and confirm coverage by providing a notification and an authorization number; 2) determine that the NOI is incomplete, deny coverage, and require that a new complete NOI be submitted; or 3) determine that the NOI needs revisions, provide a written description of the required revisions along with any compliance schedule(s), and approve the NOI after revisions are complete; or 4) deny coverage under this general permit and provide a deadline by which the MS4 operator must submit an application for an individual permit.

Denial of coverage under the general permit is subject to the requirements of 30 TAC § 205.4(c). After receiving written approval from the TCEQ, the applicant must implement their updated SWMP in accordance with the terms and conditions of the general permit.

4. Applicants that fail to submit an NOI by the deadlines specified in the general permit will be subject to enforcement actions for any unpermitted discharges. All applicants which miss the application deadlines must submit an NOI

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

immediately, including newly regulated small MS4 operators based on the 2020 Decennial Census.

5. If the operational control of the small MS4 changes, the present operator must submit an NOT and the new operator must submit an NOI to obtain authorization under this general permit. The NOT and NOI must be submitted concurrently no greater than 10 days after the change occurs.
6. A permittee must submit current information to the executive director by submitting an NOC within 30-days from the time the permittee becomes aware of a change in information previously provided to the executive director within an NOI.

An NOC is also required for changes to the SWMP that are made after TCEQ has approved the NOI.

Updates to the SWMP during the general permit term may be made by submittal of an NOC unless the changes are non-substantial in which case no NOC is required. The general permit includes: 1) a list of changes that do not require an NOC; and 2) a list of changes that require an NOC.

An NOC must be signed according to TCEQ rules at 30 TAC § 305.44. The general permit also includes information regarding time frames for implementing changes requested in an NOC.

7. A discharger may terminate coverage under the general permit by submitting a Notice of Termination (NOT) form to the executive director electronically via the online NeT-MS4 e-permitting system available through the TCEQ website. The NOT must be signed according to TCEQ rules at 30 TAC § 305.44. Authorization to discharge terminates 24 hours following confirmation of receipt of the electronic NOT by TCEQ.

For paper NOTs submitted with an approved Electronic Reporting Waiver, authorization to discharge terminates at midnight on the day that an NOT is postmarked for delivery to the TCEQ.

X. Technology-Based Requirements

The conditions established by the general permit are based on CWA § 402(p)(3)(B) that mandates that a permit for discharges from MS4s must:

1. Effectively prohibit the discharge of non-stormwater to the MS4; and
2. Require controls to reduce pollutants in discharges from the MS4 to the MEP including BMPs, control techniques, and system, design and engineering methods, and such other appropriate provisions.

The conditions of the proposed general permit were developed to comply with the technology-based standards of the CWA. The draft general permit includes a SWMP requirement that includes MCMs utilizing a series of BMPs, rather than numeric effluent limitations, to address the minimization of pollutants in stormwater discharges to Waters of the U.S. The Federal Phase II regulations define a small MS4 SWMP as a program comprising of at least seven MCMs that collectively are expected to result in significant reductions of pollutants discharged into receiving water bodies. Implementation of the MEP standard will require the development and implementation of the BMPs listed in the general permit and the achievement of measurable goals specified for each BMP in the general permit to satisfy each of the seven MCMs. TCEQ considers that the clear, specific, and measurable requirements

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXR040000 for Small MS4s**

of this general permit, if properly implemented, will meet the MEP standard required in the federal rules at 40 CFR § 122.34.

A statement is continued in the permit that indicates that the BMPs included in this general permit, which are required to be included in the small MS4's SWMP, constitute effluent limitations for the purposes of compliance with 30 TAC Chapter 319, Subchapter B.

The general permit provides for development of an optional 8th MCM that would authorize a small MS4 to discharge stormwater runoff from construction activities disturbing one or more acres where it is the operator. This provision allows the small MS4 the option of separate coverage for these construction activities under TPDES Small MS4 General Permit, TXR040000, rather than the TPDES CGP, TXR150000. Discharges for stormwater runoff from construction support activities including concrete batch plant, asphalt batch plants, equipment staging areas, material storage yards, material borrow areas, and excavated material disposal areas may be authorized under the general permit. The following proposed limitations and monitoring frequencies are applicable to stormwater discharges from concrete batch plants authorized as a support activity at regulated construction sites:

Table 1: Benchmark Monitoring for Concrete Batch plants

Benchmark Parameters	Benchmark Value	Sampling Frequency	Sample Type
Oil and Grease	15 mg/L	1/Quarter	Grab
Total Suspended Solids	50 mg/L	1/Quarter	Grab
pH	6.0-9.0 S.U. ¹	1/Quarter	Grab
Total Iron	1.3 mg/L	1/Quarter	Grab

¹ Standard Units

XI. Water Quality-Based Requirements

The Texas Surface Water Quality Standards (TSWQS) found at 30 TAC Chapter 307 state that "surface waters will not be toxic to man, or to terrestrial or aquatic life." The methodology outlined in the *"Procedures to Implement the Texas Surface Water Quality Standards"* is designed to ensure compliance with 30 TAC Chapter 307. Specifically, the methodology is designed to ensure that no source will be allowed to discharge any waste 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 that 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, additional conditions are included in TPDES permits, which may include discharge limitations. State narrative and numerical water quality standards are used in conjunction with EPA criteria and other toxicity databases to determine the adequacy of technology-based permit limits and the need for additional water-quality-based controls.

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

As previously stated, TPDES stormwater permits do not typically 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 and/or technology-based limits in combination with instream monitoring to assess standards attainment and to determine whether additional controls on stormwater are needed. Also, according to EPA rules at 40 CFR § 122.34(a), narrative effluent limitations requiring implementation of BMPs are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the MEP) and to protect water quality for small MS4s. It was preliminarily determined that where permit requirements are properly implemented no significant degradation is expected and existing uses will be maintained and protected.

XII. Monitoring

If the small MS4 discharges stormwater from a construction project authorized under this general permit that includes a supporting concrete batch plant, compliance monitoring is required. Discharges from the concrete batch plant must be sampled at a minimum frequency of once per quarter (1/quarter).

The small MS4 operator may additionally sample discharges from the small MS4 in order to assess the effectiveness of stormwater MCMs, measure the effectiveness of BMPs, to detect illicit discharges to the small MS4, or for other similar reasons.

The permittee may also be required to identify sources of pollutant(s) of concern where the small MS4 discharges directly to a water body that is impaired for a pollutant present in the discharge. Examples of pollutants of concern that may be present in stormwater discharges are bacteria and sediment.

XIII. Procedures for Final Decision

The MOA between EPA and TCEQ provides that EPA has no more than 90 days to comment, object, or make recommendations to the draft general permit before it is proposed for consideration by the Commissioners of the TCEQ. According to 30 TAC Chapter 205, when the initial draft general permit is submitted for public comment prior to being proposed to the Commission of the TCEQ, notice must be published, at a minimum, in at least one newspaper of statewide or regional circulation and the *Texas Register*. The commission may also publish notice in additional newspapers of statewide or regional circulation. Mailed notice must also be provided to the following:

1. The county judge of the county or counties where the discharges under the general permit are located;
2. If applicable, state and federal agencies whose notice is required in 40 CFR, § 124.10(c);
3. Persons on a relevant mailing list kept under 30 TAC § 39.407, relating to Mailing Lists; and
4. Any other person the executive director or chief clerk may elect to include.

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXR040000 for Small MS4s**

After notice of the general permit is published in the *Texas Register* and a newspaper in statewide or regional circulation, there will be a 30-day public comment period to allow the public to provide comment on the proposed general permit.

Any person, agency, or association may request a public meeting on the proposed general permit before the end of the public comment period. A public meeting will be held if the executive director determines, on the basis of requests that a significant degree of public interest in the draft general permit exists. A public meeting is for the purpose of receiving public comment and is not a contested case proceeding under the Administrative Procedure Act.

If the executive director decides to hold a public meeting, notice of the date, time, and place of the meeting will be published in the *Texas Register* a minimum of 30 days prior to the meeting, as required by commission rules. The public notice for the draft general permit and for the public meeting(s) may be combined. The public comment is automatically extended until the conclusion of all public meetings on the draft general permit. The executive director will prepare a response to all significant public comments on the draft general permit raised during the public comment period. The proposed general permit will then be filed with the commission to consider issuance of the general permit. The executive director's response to public comment will be made available to the public and filed with the chief clerk at least ten days before the commission acts on the proposed general permit, per commission rules.

TCEQs commissioners will consider issuance of the general permit at a regularly scheduled Commission Agenda. If issued, notice of the re-issued general permit will be published in the *Texas Register*. For additional information about this general permit, contact the Stormwater Team at (512) 239-4671.

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 Part 122

Federal Register dated February 17, 1998 (Volume 63, No. 31, Pages 7858-2906)

Federal Register dated December 8, 1999 (Volume 64, No. 235, Pages 68722-68851)

Federal Register dated October 22, 2015 (Volume 80, No. 204, Pages 64064-64158)

Federal Register dated December 9, 2016 (Volume 81, No. 237, Pages 89320-89352)

40 CFR Part 127

Federal Register dated April 15, 2020 (Volume 85, No. 73, Pages 20873-20885)

Federal Register dated November 2, 2020 (Volume 85, No. 212, Pages 69189 - 69206)

Federal Register dated March 24, 2022 (Volume 87, No. 57, Pages 16706-16715)

**Fact Sheet and Executive Director's Preliminary Decision
TPDES General Permit Number TXRo40000 for Small MS4s**

Federal Register dated June 12, 2023 (Volume 88, No. 112, Pages 37994 - 38000)

B. Letters/Memoranda/Records of Communication:

Memorandum from the U.S. EPA (Hanlon) dated April 16, 2004, from, "Implementing the Partial Remand of the Stormwater Phase II Regulations Regarding Notices of Intent & NPDES General Permitting for Phase II MS4s".

Stakeholder comments provided to the TCEQ in September 2022.

Memo from the Water Quality Standards Team of the Water Quality Assessment Section of the TCEQ dated November 22, 2022.

EPA approval letter on June 9, 2023.

Conference calls and emails between EPA and TCEQ on September 8, 2022; September 13, 2022; September 14, 2022; October 3, 2023; and October 13, 2023.

C. Miscellaneous:

MS4 Permit Improvement Guide, U.S. EPA, Office of Water. Office of Wastewater Management, Water Permits Division, April 2010 (EPA 833-R-10-001).

Compendium of MS4 Permitting Approaches, U.S. EPA, Office of Wastewater Management, Water Permits Division, November 2016.

NPDES Municipal Separate Storm Sewer System General Permit Remand Rule, 81 *Fed. Reg.* 237 [89320-89352], December 2016.

NPDES Electronic Reporting Rule, 80 *Fed. Reg.* 204 [64064-64158], October 22, 2015, and 85 *Fed. Reg.* 212 [69189-69206], November 2, 2020.

NPDES Small MS4 Urbanized Area Clarification Rule, 88 *Fed. Reg.* 112 [37994-38000], June 12, 2023.

U.S. Environmental Protection Agency's Fact Sheet No. 2.0, "Stormwater Phase II Final Rule - Small MS4 Stormwater Program Overview", January 2000 (EPA 833-F-00-002).

U.S. Environmental Protection Agency's Fact Sheet No. 2.1, "Stormwater Phase II Final Rule – Who's Covered? Designation and Waivers of Regulated Small MS4s", January 2000 (EPA 833-F-00-003).

U.S. Environmental Protection Agency's Fact Sheet No. 2.2, "Stormwater Phase II Final Rule - Urbanized Area - Definition and Description", December 1999 (EPA 833-F-00-004).

The Clean Water Act, 33 U.S.C. Chapter 26.

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

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 Sections 307.1-307.10 (47 *TexReg* 6216, effective September 29, 2022).

Procedures to Implement the Texas Surface Water Quality Standards, Texas Commission on Environmental Quality, June 10, 2010.

30 TAC Chapters 39, 205, 213, 281, 311, 305, 307, 309, 319, 321, and 331.