

FACT SHEET AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION

For proposed Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR150000 to authorize the discharge storm water runoff from construction sites into surface water in the state.

Issuing Office: Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Prepared by: Wastewater Permitting Section
Water Quality Division
(512) 239-4671

Date: February 21, 2002

Permit Action: New General TPDES Permit for Construction Activities

I. Summary

The Texas Commission on Environmental Quality (TCEQ) is proposing to issue a general permit authorizing discharges from construction sites into surface water in the state. The general permit specifies which construction activities must obtain permit coverage, which are eligible for waivers, and which may be required to obtain individual permit coverage. The permit specifies that where discharges will reach Waters of the United States, a storm water pollution prevention plan must be developed and implemented. The permit would provide authorization for discharges from small construction sites, according to federal Phase II storm water regulations finalized in the Federal Register December 8, 1999. Additionally, the permit would provide continued authorization for discharges in Texas from new and existing large construction projects that are currently authorized under the federal National Pollutant Discharge Elimination System permit number TXR100000 issued July 6, 1998.

II. Executive Director's Recommendation

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

III. Permit Applicability and Coverage

- A. This general permit would authorize the discharge of storm water runoff associated with small and large construction sites to surface water in the state.
- B. This general permit would authorize the discharge of storm water associated with other industrial activities at construction sites as follows: Discharges of storm water runoff from concrete batch plants, asphalt batch plants, equipment staging areas, material storage yards, material borrow areas, and excavated material disposal areas that are located at, adjacent to, or in close proximity to the permitted construction site and directly supports the construction activity; and does not operate beyond the completion date of the construction activity.

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- C. The general permit would also authorize the following non-storm water discharges from sites authorized under this general permit:
- (1) discharges from fire fighting activities;
 - (2) fire hydrant flushings;
 - (3) vehicle, external building, and pavement wash water where detergents and soaps are not used and where spills or leaks of toxic or hazardous materials have not occurred (unless spilled materials have been removed; and if local state, or federal regulations are applicable, the materials are removed according to those regulations), and where the purpose is to remove mud, dirt, an dust;
 - (4) water used to control dust;
 - (5) potable water sources, including waterline flushings;
 - (6) air conditioning condensate;
 - (7) uncontaminated ground water or spring water, including foundation or footing drains where flows are not contaminated with industrial materials such as solvents.
- D. The following discharges are not eligible for coverage under the proposed general permit, and must be authorized under an individual permit or an alternative general permit, if one is available:
1. Discharges that would cause or contribute to a violation of water quality standards or that would fail to protect and maintain existing designated uses of receiving waters;
 2. New sources or new discharges of the constituents of concern to impaired waters, unless otherwise allowable under TCEQ rules, applicable state law, and any TMDL and TMDL implementation plan that exist for the applicable receiving water; and
 3. Discharges otherwise prohibited under existing state rules.
- E. The following discharges are not eligible for coverage under the proposed permit, and may require individual or alternative general permit coverage:
- Discharges that occur after construction activities have been completed, and after the construction site and any supporting activity site have undergone final stabilization.
- F. The following discharges are not required to obtain permit coverage under a general permit nor an individual permit, unless designated by the Executive Director:
1. Construction activities that would disturb less than one acre, including any greater

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common plan of development for the site; and

2. Small construction activities that begin construction (soil disturbing activities) prior to March 10, 2003 and that would meet the conditions stated in the permit for submittal of a notice of termination (NOT) prior to March 10, 2003.
- G. The following discharges are not under the authority of the TCEQ, are not eligible for coverage under the general permit, and may require authorization under a separate NPDES permit:
1. Storm water runoff from construction activities occurring on Indian Country lands.
 2. Storm water runoff from construction activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline.

IV. Permit Conditions

A. Notice of Intent and Site Notice

Large construction operators must submit a notice of intent (NOI) that indicates the operator will comply with the conditions of the general permit. A copy of the NOI must be posted in plain view at the site prior to the commencement of construction activities and maintained until either final stabilization occurs or control of the site is turned over to a separate operator. Additionally, a copy of the NOI must be supplied to the operator of any municipal separate storm sewer system (MS4) to which the applicant discharges, so that the MS4 can conduct its own inspection and enforcement activities according to its NPDES or TPDES permit, or local ordinances.

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

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Small construction site operators are not required to submit an NOI, but are required to develop a pollution prevention plan (with the exception of those sites described in Part IV.C., below) and to post a site notice containing information regarding the operators authorization under the general permit. Small construction site operators may alternatively apply for a waiver from permit requirements if activities are shown to occur in certain regions and during certain seasons where the potential for erosion are below an established threshold, or erosivity factor. Operators applying for these waivers are also required to provide a copy of the waiver form to the operator of any MS4 that will receive the discharges from the construction site.

B. Storm Water Pollution Prevention Plan

1. Large construction activities and all small construction activities not specifically described in Part IV.C. below, with discharges that reach Waters of the United States, must develop a storm water pollution prevention plan (SWP3) according to the provisions of the proposed general permit. Operators must implement that plan prior to commencing construction activities.

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

2. The required contents of the SWP3 are based on federal Phase II rules (December 8, 1999 *Federal Register*) related to storm water permitting, as well as the current NPDES general permit for large construction sites. The purpose of the SWP3 is to identify and address potential sources of pollution that are reasonably expected to affect the quality of storm water discharges from the construction site, including off-site material storage areas, overburden and stockpiles of dirt, borrow areas. Separate SWP3s may be developed for each construction site operator where multiple operators exist. However, the proposed permit would also allow a shared SWP3 to promote a more efficient and coordinated effort between multiple permittees at a single site. Under this alternative, individual operators would still be required to submit an NOI for coverage, and each would be individually responsible for compliance with the terms of the permit in the areas of the site where they are the responsible operator.
3. The specific requirements of the SWP3 include the following minimum provisions:
 - a. A detailed project description, a map indicating the site location, a site map depicting construction site details, and information on receiving waters must be included.
 - b. A description of the structural and the non-structural controls (best management practices, or BMPs) that will be used to minimize pollution in runoff during construction, as well as stabilization practices during and at the completion of the activity must be included.

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- c. A description of how BMPs will be maintained and how controls may be revised upon a finding that the control measures are either not working properly or adequately must be included.
- d. A description of how site inspections will be conducted, must be included. Inspections are required at a minimum frequency of at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater during active construction activities. Where sites have been temporarily stabilized, inspections must be conducted at least once every month. Special provisions allowing for representative inspections are provided for long, linear projects where access along the site is limited and travel along the site may damage stabilized areas or cause greater potential for erosion.
- e. Identification and a description of the implementation of appropriate pollution prevention measures for all eligible non-storm water components of the discharge.

C. Alternative Permit Requirements for Small Construction Activities Occurring During Conditions of Low Potential Erosion

Certain small construction activities may be authorized under this general permit without being required to submit a NOI or develop a SWP3 if construction occurs in certain geographic areas and during time periods when there is a low potential for erosion.

- 1. The proposed permit includes a list of time periods in certain counties (Appendix A) when the potential for erosion is low. Small construction activities that commence after the start date for one of the listed time periods, and that concludes prior to the end date of that listed time period, need not submit an NOI or develop a SWP3. Instead, the permit would require the operator to complete and post a site notice for the duration of the activity, and to provide a copy of the site notice to the operator of any MS4 that would receive a discharge from the site.

This permit option is based on construction site conditions that might otherwise qualify for a permit waiver using the federally allowed erosivity factor, or "R-factor" calculation. The R factor is defined as the total annual erosive potential that is due to climatic effects, and is part of the Revised Universal Soil Loss Equation (RUSLE). This alternative authorization was included to: 1) promote construction to occur during times where the potential for erosion was limited; and 2) to provide a more efficient authorization process than the application for a permit waiver. An application for a waiver requires the applicant to calculate the R-factor, complete a waiver form, and to submit the waiver request to the TCEQ.

In developing Appendix A, the TCEQ used the most conservative assumptions for each county to develop this list of qualifying time periods. The R values included in the U.S. Department of Agriculture (USDA) handbooks are annual factors, and the lowest annual R factor in Texas is 10, which occurs only in El Paso County. While no county in Texas would automatically qualify for this option for the entire year, a procedure for determining R factors for specific time periods within the year is possible by multiplying the annual R factor by the percentage of the total annual isoerodent factor that occurs during the period

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in question. In Texas, there are ten (10) isoerodent zones that cross state lines, and those are listed in the table below. The map of zones can be found in the backup documentation listed at the end of this fact sheet.

The procedure to calculate partial year R factors involves identifying the start date and end date of the project, and then subtracting the correlating total percentages for the time period. In this process, Period 1 (beginning January 1 and lasting 2 weeks), is listed as zero (0), with each month adding percentages until the last period (beginning December 15) equals or approaches 100. For the purposes of the proposed permit, the TCEQ included some non-zero values for January by subtracting the total value from the last calendar year period from 100, which is the maximum value possible. This resulted in a change for several of the erosivity indices (EI) zones in the first period from zero (0), and is more conservative since a higher percentage of EI values would now occur in January as opposed to the original calculations. Additionally, rather than subtract the additive EI values of the beginning period of construction from the additive value from the ending period, the TCEQ listed the change in EI value from each month, so that the partial year determination could be calculated simply by adding the numbers from each period.

Table of Erosivity Indices (EI) for Two-Week Periods:

<i>Period Beginning:</i>																									
EI No.	01/01	01/15	02/01	02/15	03/01	03/15	04/01	04/15	05/01	05/15	06/01	06/15	07/01	07/15	08/01	08/15	09/01	09/15	10/01	10/15	11/01	11/15	12/01	12/15	Total
89	0	0	1	0	1	1	1	3	5	6	9	11	10	7	7	7	7	7	7	4	3	1	1	1	100
90	2	0	1	1	1	2	2	5	8	8	8	9	8	6	5	4	5	7	6	5	3	2	1	1	100
91	0	0	0	0	1	0	0	1	4	10	13	10	7	7	7	7	7	7	7	7	4	0	1	0	100
92	0	0	0	0	1	0	0	1	4	10	13	10	7	7	7	7	7	7	7	7	4	0	1	0	100
93	1	1	0	1	1	1	2	2	5	12	15	9	7	6	5	5	4	4	5	6	6	1	1	0	100
94	2	1	1	2	2	2	2	5	6	8	9	9	6	4	4	4	5	6	7	5	3	3	2	2	100
95	2	1	2	2	2	2	2	3	4	9	8	6	5	5	6	5	6	5	6	5	5	4	3	2	100
96	3	2	2	2	3	3	5	6	7	7	6	6	5	4	4	4	4	4	4	4	4	4	4	3	100
97	1	1	2	2	2	3	4	6	8	9	11	8	5	3	4	4	5	4	5	3	3	3	3	1	100
106	2	3	3	3	4	4	4	6	7	5	6	5	6	6	6	4	4	3	3	3	2	4	4	3	100

Each county is located in one or more EI zones, and contains within it a range of annual isoerodent values. For the automatic R factor permitting option, the TCEQ determined isoerodent zones by determining which is the highest isoerodent line that crosses through the county, and then assigning a value of the next highest isoerodent line, since some value greater than the highest line crossing through the county would be present in the county. Generally, the value of the line located outside of and east of the county was assigned as the value for the county, as the isoerodent values generally increase to the east.

The R factor was determined by calculating what percentage of the isoerodent value is necessary to achieve an R factor of less than five (5):

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

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To determine the portion of the isoerodent value (called "x") that would result in an R factor less than 5, divide the maximum R value (which is 5 for this permit condition) by the annual isoerodent value (and multiply by 100 to correct for percentage):

$$x < 5 / 10 * 100$$
$$x < 50$$

Therefore, to achieve an R factor less than 5 in El Paso, the additive isoerodent values from Zone 92 (see table on previous page) must be less than 50 when all periods of construction from beginning to end are added together. This is possible for several ranges of dates in the county, and those date ranges are listed in the proposed permit.

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

$$x < 5 / 350 * 100$$
$$x < 1.43$$

Therefore, to achieve an R factor less than 5 in Dallas County, the additive isoerodent values from Zone 97 (see table on previous page) must be less than 1.43 when all periods of construction from beginning to end are added together. This means that the maximum value from the table when the values are added is one (1), since the table is provided in whole numbers. There are no ranges of dates in the county that meet these criteria, and therefore construction sites in Dallas County would not qualify for this permit condition (based on the minimum two-week time period for commencement and completion of a construction activity).

2. Any small construction operator may alternatively calculate its own R factor using site-specific information, TCEQ guidance, and/or the table on the previous page of this fact sheet, and apply for a permit waiver to the TCEQ. This may be an important option for shorter duration projects in counties that are located in high isoerodent areas, and may also be important for longer duration projects located in portions of counties that have a lower isoerodent value than the conservative protocol that was utilized to develop the values for each county in Appendix A of the permit.

Under this permitting option, the operator must to submit to the TCEQ and to the MS4 an R factor calculation on a waiver form approved by the executive director, and provide a copy to the operator of any MS4 that receives the discharge.

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V. Addresses

Questions concerning this proposed draft general permit should be sent to:

TCEQ
Water Quality Division
Storm Water & General Permits Team (MC 148)
P.O. Box 13087
Austin, TX 78711-3087
(512) 239-4433

Comments regarding the proposed draft general permit should be sent to:

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

Supplementary information on this Fact Sheet is organized as follows:

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

VI. Legal Basis

§ 26.121 of the Texas Water Code (TWC) 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, the TCEQ received authority from the United States Environmental Protection Agency (EPA) to administer the Texas Pollutant Discharge Elimination System (TPDES). The TCEQ and the EPA have signed a Memorandum of Agreement which authorizes the administration of the National Pollutant Discharge Elimination System (NPDES) program to the TCEQ as it applies to the State of Texas. [A provision of the agreement reached between the two agencies in the transfer of this authority requires the commission to either repeal or replace its authorizations by rule, or amend them, as necessary, to meet the requirements of the Clean Water Act, (CWA).]

CWA, §§ 301, 304, and 401 (33 United States Code (USC), §§1331, 1314, and 1341) include

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provisions which 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, 33 USC, §1370.

VII. Regulatory Background

The 1972 amendments to the Federal Water Pollution Control Act, later referred to as the Clean Water Act (CWA), prohibit the discharge of any pollutant to navigable waters of the United States from a point source unless the discharge is authorized by a National Pollutant Discharge Elimination System (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 storm water runoff from construction sites, are also significant contributors to water quality problems.

According to the EPA, sediment runoff rates from construction sites are typically 10 to 20 times greater than those from agricultural lands, and 1,000 to 2,000 times greater than those of forest lands. During a short period of time, construction activity can contribute more sediment to streams than can be deposited over several decades, causing physical and biological harm to surface waters.

In 1990, EPA promulgated rules establishing Phase I of the NPDES storm water program. Phase I addresses, among other discharges, discharges from large construction activities disturbing 5 acres or more of land. The Phase I NPDES storm water rule identifies eleven categories of industrial activity in the definition of “storm water discharges associated with industrial activity” that must obtain an NPDES permit. Category (x) of this definition is construction activity, commonly referred to as “large” construction activity. Under category (x), the Phase I rule requires all operators of construction activity disturbing 5 acres or greater of land to apply for an NPDES storm water permit. Operators of sites disturbing less than 5 acres are also required to obtain a permit if their activity is part of a “larger common plan of development or sale” with a planned disturbance of 5 acres or greater. “Disturbance” refers to exposed soil resulting from activities such as clearing, grading, and excavating. Construction activities can include road building, construction of residential houses, office buildings, industrial sites, or demolition.

In 1992, the Ninth Circuit court remanded for further proceedings portions of EPA’s existing Phase I storm water regulation related to the category (x) of storm water discharges associated with industrial activity, discharges from large construction activity (*NRDC v. EPA*, 966 F.2d at 1292). EPA responded to the court’s decision by designating under Phase II storm water discharges from construction activity disturbing less than 5 acres as sources that should be regulated to protect water quality. The Phase II Rule designated those sources as “storm water discharges associated with *small construction* activity,” rather than as another category under “storm water associated with *industrial* activity.” Phase II of the NPDES storm water program requires authorization for small construction activities disturbing between 1 and 5 acres. Phase II rules were final on December 8, 1999, requiring authorizations by March 10, 2003.

The Storm Water Phase II Rule automatically designated, as small construction activity under the

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NPDES storm water permitting program, all operators of construction site activities that result in a land disturbance of equal to or greater than 1 and less than 5 acres. Site activities disturbing less than 1 acre are also regulated as small construction activity if they are part of a larger common plan of development or sale with a planned disturbance of equal to or greater than 1 acre and less than 5 acres, or if they are designated by the NPDES permitting authority.

The TCEQ received authority to administer the NPDES permit program in Texas, for those discharges under the regulatory authority of the agency, on September 14, 1998. Under a memorandum of agreement (MOA) between the two agencies, EPA agreed to continue to administer the construction storm water general permit until the July 7, 2003 expiration date, or until such date that the TCEQ issued a general permit addressing construction sites over five acres. The MOA requires that the TCEQ adopt any new rules or permits to comply with Phase II storm water regulations by the deadlines mandated in federal rules; therefore the TCEQ must issue a permit to address construction sites over one acre.

VIII. Permit Coverage

- A. The proposed general permit would apply to discharges of storm water runoff associated with construction activities, storm water runoff associated with certain other supporting industrial activities, and certain non-storm water discharges, into Waters of the United States. The general permit specifies which particular facilities are eligible for authorization by the general permit, which must be authorized by separate permit, and the specific conditions that must be met in order to receive an exclusion from requirements to develop a SWP3 and to submit a notice of intent. The guidelines for small construction activities were published in the *Federal Register* on December 8, 1999 (64 FR 68722).
- B. Applicants seeking authorization to discharge storm water runoff from large construction sites under this general permit must submit a completed Notice of Intent (NOI) on a form approved by the executive director. The NOI shall include at a minimum the legal name and address of the owner and operator, the facility name and address, 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, and any other information requested by the TCEQ.
- C. Submission of a NOI is an acknowledgment 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. Provisional authorization to discharge under the terms and conditions of this general permit begins two days after a completed NOI is postmarked for delivery to the TCEQ unless restricted by Part I, Section C.3. The NOI must be submitted by certified mail, return receipt requested, to the address indicated on the NOI form. If TCEQ provides for electronic submittal of NOIs during the term of this permit, provisional authorization begins 24 hours following receipt of the electronic NOI form by the TCEQ unless restricted by Part I, Section C.3. Following review of the NOI, the executive director shall either confirm coverage by providing a notification and an authorization number to the applicant or notify the applicant that coverage under this general permit is denied.

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- D. Coverage under this general permit is not transferable. If the operator (as defined in the permit) of the construction activity changes, the present operator must submit a Notice of Termination (NOT) within 30 days from that date and the new operator must submit a NOI at least two days before assuming operational control.
- E. A permittee must submit current information to the executive director by submitting a Notice of Change (NOC) not later than 14 days before a change in information previously provided to the executive director within a NOI occurs.
- F. A discharger may terminate coverage under this general permit by providing a Notice of Termination (NOT) on a form approved by the executive director. Authorization to discharge terminates at midnight on the day that an NOT is postmarked for delivery to the TCEQ. If TCEQ provides for electronic submission of NOTs during the term of this permit, authorization to discharge terminates 24 hours following confirmation of receipt of the electronic NOT form by the TCEQ.

IX. Technology-Based Requirements

The conditions of the proposed general permit have been developed to comply with the technology-based standards of the Clean Water Act. The draft permit is based on a series of Best Management Practices (BMPs), in the form of a required storm water pollution prevention plan, rather than numeric limitations, to prevent or minimize pollutants in storm water discharges. The NPDES general permit for large construction activities included numeric effluent limitations for storm water discharges from concrete batch plants. The proposed general permit would continue these requirements, and extend the requirements to small construction activities that include a concrete batch plant at the site. This provision allows for an option from obtaining separate coverage for these activities under TPDES general permit TXR050000 for storm water discharges associated with industrial activities. The following proposed limitations are applicable to all discharges from concrete batch plants:

<u>Parameter</u>	<u>Limitations</u> <u>Daily Maximum</u>	<u>Monitoring</u> <u>Frequency</u>
Total Suspended Solids	65 mg/l	1/Year
Oil and Grease	15 mg/l	1/Year
pH	between 6 and 9 standard units	1/Year

X. Water Quality-Based Requirements

The Texas Surface Water Quality Standards 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 “Implementation of the Texas Natural Resource Conservation Commission Standards via Permitting” 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 wastewater which: (1) results in instream aquatic toxicity; (2) causes a violation of an applicable narrative or numerical state water quality standard; (3) results in the endangerment of a drinking water supply; or (4) results in aquatic bioaccumulation which threatens human health.

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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 the TPDES permits, which may include discharge limitations. State narrative and numerical water quality standards are used in conjunction with EPA criteria and other toxicity data bases to determine the adequacy of technology-based permit limits and the need for additional water-quality based controls.

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

XI. Monitoring

No discharge monitoring is proposed for this general permit beyond those described in Part IX of this fact sheet.

XII. Procedures for Final Decision

The memorandum of agreement between the 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. The commission may also publish notice in additional newspapers of statewide or regional circulation. Mailed notice must also be provided to the following:

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

After notice of the initial draft permit (IDP) is published in the *Texas Register* and the newspaper, the public will have 30 days to provide public comment on the IDP.

Any person, agency, or association may make a request for a public comment meeting on the proposed general permit to the executive director of the TCEQ before the end of the public comment period. A

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public comment meeting will be granted when the executive director or commission determines, on the basis of requests, that a significant degree of public interest in the draft general permit exists. A public comment meeting is intended for the taking of public comment, and is not a contested case proceeding under the Administrative Procedure Act. The executive director may call and conduct public meetings in response to public comment.

If the executive director calls a public meeting, the commission will give a minimum of 30 days public notice in the *Texas Register* of the date, time, and place of the meeting, as required by commission rules. The public comment is automatically extended until the conclusion of all public meetings on the draft general permit. The executive director shall prepare a response to all significant public comments on the draft general permit raised during the public comment period. The executive director shall make the response available to the public. The proposed general permit will then be filed with the commission to consider final authorization of the permit. The executive director's response to public comment shall 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.

XIII. 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 §122.26

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

Federal Register dated July 6, 1998 (Volume 63, No. 128, Page 36498-36519), "Resissuance of NPDES General Permits for Storm Water Discharges From Construction Activities in Region 6; Notice."

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

B. Letters/Memoranda/Records of Communication

Stakeholder comments provided to the TCEQ based upon a stakeholders meeting held on the proposed draft general permit on June 21, 2001.

Memo from the Water Quality Standards Team of the Water Quality Assessment Section of the TCEQ.

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

C. Miscellaneous

FACT SHEET AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION
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U.S. Environmental Protection Agency's Model Permit, "National Pollutant Discharge Elimination System General Permit for Discharges from Large and Small Construction Activities," draft dated September 7, 2001.

U.S. Environmental Protection Agency's Fact Sheet No. 3.1, "Storm Water Phase II Final Rule - Construction Rainfall Erosivity Waiver," January 2001 (EPA 833-F-00-014).

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

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

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

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

Texas Surface Water Quality Standards, 30 TAC Sections 307.1 - 307.10 (21 TexReg 9765, 4/30/97).

"Implementation of the Texas Natural Resource Conservation Commission Standards via Permitting", Texas Natural Resource Conservation Commission, August 1995.

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

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