

TPDES Permitting: Municipal Separate Storm Sewer Systems (MS4s) Updates

Lower Rio Grande Valley
19th Water Quality Management Planning Conference
May 24 - 26, 2017

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Municipal Separate Storm Sewer Systems (MS4)



An MS4 is a publicly owned or operated stormwater drainage system designed to collect and convey stormwater



Which MS4s are Regulated?

- Medium and Large MS4s (“Phase I”)
 - Individual TPDES Permits
- Small MS4s in Urbanized Areas (Phase II”)
 - TCEQ Small MS4 General Permit – TXR040000
- Combined Phase I and Phase II MS4s
 - Individual MS4 Permit for Texas Department of Transportation – WQ0005011000



Phase II MS4 General Permit, TXR04000

- Regulates stormwater discharges from publicly owned or operated “Small” MS4s located in urbanized areas (UAs)
- Population based on the 2000 and 2010 U.S.Censuses
- Renewed December 13, 2013 – 5 year permit term

	General Permit 2007 Authorizations Issued	General Permit 2013 Applications Received
NOIs	406	539
Waivers	66	78
Total	472	617

**12 have not renewed yet*



Phase II MS4 General Permit

- Tiered Permitting Approach - based on population in the UA
 - Level 1 - Up to 10,000
 - Level 2 - 10,000 to 40,000
 - includes non-traditional MS4s
 - Level 3 - 40,000 to 100,000
 - Level 4 - More than 100,000

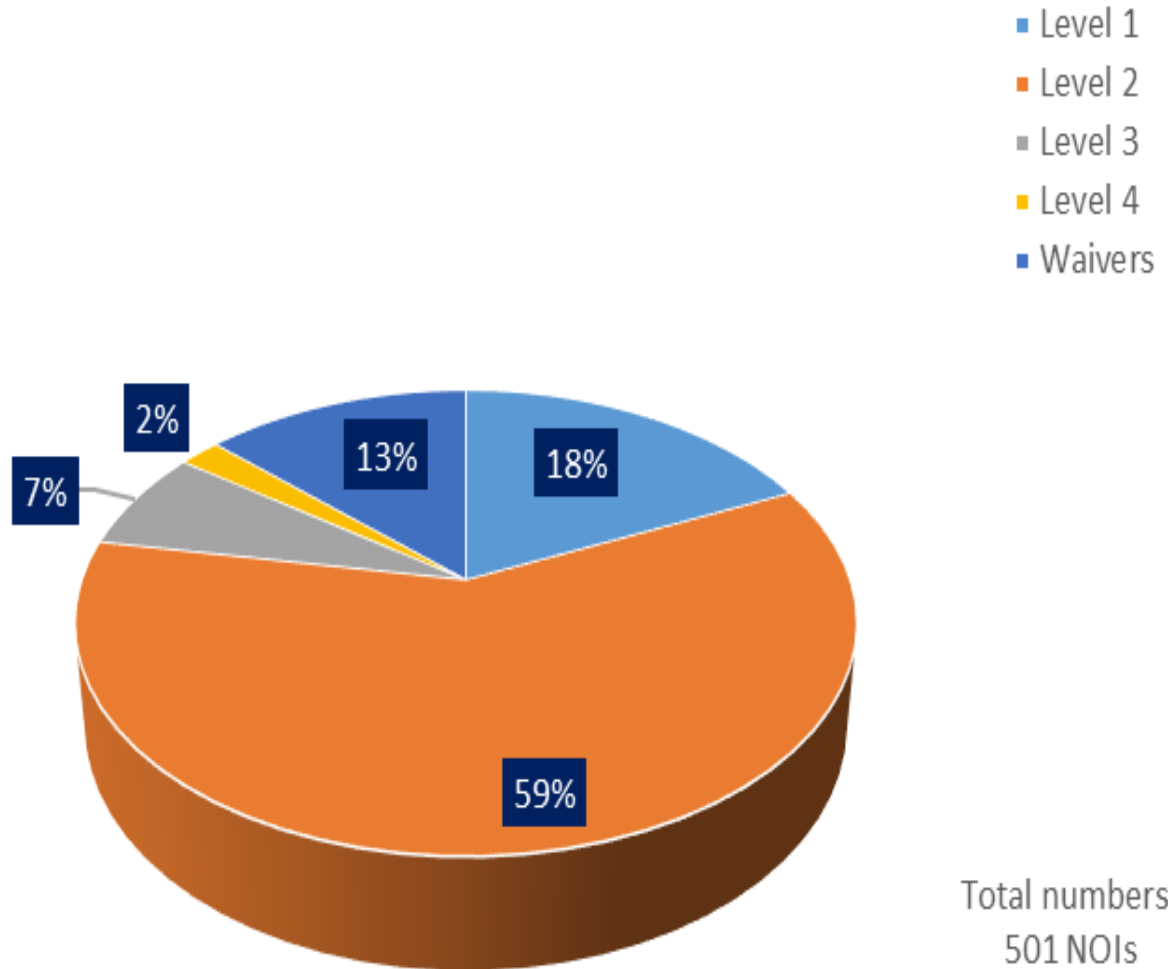
- Waiver option for population less than 1,000

**Based on the 2000 and 2010 U.S.Censuses*



Phase II MS4s Active Authorizations

Level	Active Authorizations
1	107
2	340
3	43
4	11



Total numbers:
501 NOIs
77 Waivers

Requirements of Phase II MS4s

- Develop and Implement a Stormwater Management Program (SWMP)
 - Develop an implementation schedule
 - Implement in yearly intervals over the five year permit term
 - Must be fully implemented at the end of the five year permit term
- Coalitions
 - Develop, implement, and share same SWMP
 - Usually share a boundary or watershed
 - Each MS4 is responsible for its own compliance
 - Agreements with clear delineation of responsibilities



Requirements of Phase II MS4s

- Minimum Control Measures (MCMs)
 1. Public Education, Outreach, and Involvement
 2. Illicit Discharge Detection and Elimination
 3. Construction Site Stormwater Runoff Control
 4. Post-Construction Stormwater Management in New Development and Redevelopment
 5. Pollution Prevention and Good Housekeeping for Municipal Operations
 6. Industrial Stormwater Sources (*Level 4 only*)
 7. *Optional* MCM for Construction done by the Permittee (MS4)

- Additional requirements for discharges into impaired waterbodies



Impaired Water Bodies

➤ Additional Permit Requirements

- Category 5 - CWA 303(d) for stream segment, no TMDL
- Category 4 - Not on CWA 303(d), *with* watershed TMDL

Texas Integrated Report Index of Water Quality Impairments

2012 Texas Integrated Report Index of Water Quality Impairments

SegID: 0806A Fosdic Lake (unclassified water body)
From Fosdic Lake Dam to the reservoir headwaters in Oakland Lake Park in Tarrant County

<u>Parameter(s)</u>	<u>Category</u>	<u>Carryforward</u>
PCBs in edible tissue		
0806A_01 Entire lake	4a	Yes

SegID: 0806B Echo Lake (unclassified water body)
From Echo Lake Dam to the reservoirs headwaters in Tarrant County

<u>Parameter(s)</u>	<u>Category</u>	<u>Carryforward</u>
PCBs in edible tissue		
0806B_01 Entire lake	4a	Yes

SegID: 0806E Sycamore Creek (unclassified water body)
Five mile stretch of Sycamore Creek running upstream from confluence with the W. Fork of Trinity River to confluence with Echo Lake Tributary in Fort Worth.

<u>Parameter(s)</u>	<u>Category</u>	<u>Carryforward</u>
bacteria		
0806E_01 Five mile stretch of Sycamore Creek running upstream from confluence with the W. Fork of Trinity River to confluence with Echo Lake Tributary in Fort Worth	5b	No



Requirements of Phase II MS4s

➤ Annual Report

- Due 90 days after *reporting* year
- Flexibility selecting reporting year
 - Fiscal year, calendar year, or permit year
- Reporting year can not change during the permit term
- Use Annual Report Template (Form 20561)



Annual Reports – Helpful Hints



- Always send certifications with original signatures, not scanned or copied
- Always indicate which reporting year option you have chosen with exact dates of the period
- Please respond to e-mails requesting information in a timely manner
- **This is the time to report your accomplishments and show progress!**



Phase II Annual Reports

- Submit the original report to the TCEQ Stormwater & Pretreatment Team (MC 148)
- Submit a copy of the report to the appropriate TCEQ regional office
 - Specify in the report cover letter that the TCEQ Regional Office has been sent a copy of the report
- Retain a copy of the report on site
- Annual Report template (Form 20561) available:
<http://www.tceq.texas.gov/assistance/water/sw-ms4.html>
- Always use the most recent template



Phase II Annual Reports

- Issues identified during reviews
 - Late submittals
 - Cover letter not dated
 - Not using the most recent annual report template
 - Impaired water bodies - not including a benchmark value when discharging to a TMDL watershed or indicating the pollutant of concern
 - Not quantifying activities conducted



Phase II MS4 Notice of Change

- Notice of change (NOC)
 - Changes to SWMP
 - Form: TCEQ – 20392
 - Submit separately from the Annual Report
- NOC is needed to:
 - Replace an infeasible BMP with an alternative BMP
 - All other changes specified in permit
- NOC is not needed for
 - Adding BMPs or replacing a BMP with a similar BMP
 - Non-substantive changes
 - De-annexing land



New NPDES Rules – Phase II MS4 Remand Rule

40 CFR §§122.33 and 122.34

- Phase II MS4 Remand Rule – Published in Fed. Reg. December 9, 2016 with an effective date of Jan. 9, 2017
- The regulations are revised to ensure that:
 - States determine the adequacy of BMPs and permit requirements
 - States provide public notice and opportunity for the public to request a public hearing



New NPDES Rules – Phase II MS4 Remand Rule

40 CFR §§122.33 and 122.34

- This is a procedural rule – no substantive changes are made to the Phase II MS4 requirements
- Includes two options for states to administer their Phase II MS4 programs
 - Option 1: Comprehensive general permit approach
 - The general permit needs to include all requirements necessary to meet the MS4 permit standard “to reduce pollutants to the maximum extent practicable” (MEP).
 - Option 2: Two-step General Permit
 - The general permit includes some requirements for all MS4s
 - The state established additional requirements and BMPs for individual MS4s (this is in the SWMPs).



New NPDES Rules – Phase II MS4 Remand Rule

40 CFR §§122.33 and 122.34

- All permits must be written with terms that are “clear, specific, and measurable”
- The general permits need to use “mandatory” terms and cannot use terms such as:
 - as practicable, should, encouraged, etc.
 - *if feasible*, cannot be used unless it is defined
- The permit language needs to be worded in a manner that will help assess compliance and track whether measurable goals have been met by the MS4.
- EPA published examples of provisions from general permits across the country

<https://www.epa.gov/npdes/stormwater-discharges-municipal-sources#resources>



New NPDES Rules – Phase II MS4 Remand Rule

40 CFR §§122.33 and 122.34

Clear

- Certainty in specific actions and requirements
- Avoid words such as “if practicable”, “as necessary”, “should”

Specific

- Provide level of detail in requirements that portray level of effort(s) needed from MS4 to comply

Measurable

- Requirement needs to be articulated in a manner to assess compliance in a straightforward way



New Federal Rules – Electronic Reporting Rule

40 CFR Part 127

- Electronic Reporting Rule – effective Dec. 21, 2015
 - Requires electronic submittal of applications and reports
 - Phase 1 of Rule: DMRs need to be submitted electronically by Dec. 21, 2016
 - Phase 2 of Rule: General permit applications (NOIs) and MS4 reports need to be submitted electronically by Dec. 21, 2020



New Federal Rules – Electronic Reporting Rule

40 CFR Part 127

- Electronic Reporting Rule – effective Dec. 21, 2015
 - Appendix A of 40 CFR 127 – includes list of elements that need to be reported electronically
 - Waiver option is available from eReporting (permanent and temporary)
 - Religious beliefs
 - No internet access
 - Training needed



Small MS4 General Permit, TXR04000 2018 Renewal

- Internal TCEQ input – Feb. 2017
- Stakeholder Meeting – March 21, 2017
 - Comment period ended – April 4, 2017
- Development of draft permit – April/June 2017
- EPA Review – Fall of 2017
- Public comment period – Spring of 2018



Proposed Changes to Existing Permit *Consistency with other TPDES General Permits*

➤ Part I – Definitions

- Define “Infeasible” - not technologically possible or not economically practicable and achievable in light of best industry practices
- Modify “Construction Activity” to include stockpiling of fill material and demolition
- Modify “Waters of U.S.” to remove “cooling ponds”

➤ Part I and Part II.D.4 – Impaired Water Bodies

- Add reference to Texas Integrated Report of Surface Water Quality for CWA Sections 305(b) and 303(d) when identifying an impaired water body.

➤ Part VI. – MCM 7

- Lower benchmark value for TSS to 50 mg/L from 100 mg/L
- Analysis must be done by NELAP certified laboratories



Proposed Changes to Existing Permit *Consistency with Federal Rules*

➤ Electronic Reporting Rule

- Add permit language to include eReporting rule – process is starting, details forthcoming
- EPA will develop tools to accept applications and reports from small MS4s

➤ Phase II MS4 Remand Rule

- Modify permit language to be clear, specific and measurable
- Avoid words: if practicable, as necessary, should, encouraged to
- Use mandatory words: must and shall



Proposed Changes to Existing Permit

Examples of clear, specific, and measurable

- MCM 1. Public Education, Outreach, and Involvement
~~If feasible, consider using~~ Use public input (for example, the opportunity for public comment, or public meetings) in the implementation of the program
- MCM 2. IDDE
Inspections – The permittee shall conduct inspections ~~as determined appropriate,~~ in response to complaints, and shall conduct follow-up inspections ~~as needed~~ to ensure that corrective measures have been implemented by the responsible party.

The permittee shall develop written procedures describing the basis for conducting inspections in response to complaints



Proposed Changes to Existing Permit *For all MS4s*

- Part II.A.5 Categories of Regulated MS4s
 - Annexation of land resulting in a level change:
 - Clarification of requirement to submit an Notice of Change
 - Within 90 days have a plan for implementing the SWMP in new areas
 - Implement program in new areas as expeditiously as practicable but no less than three years

- Part II.D.4 Impaired water bodies and TMDL Requirements
 - Clarify terms – benchmarks, decorative ponds, pet waste
 - Clarified requirement to check if a water body within the MS4s permitted area has been added to the latest 305(b)/303(d) list.
 - Newly impaired waterbodies must be addressed in the SWMP



Proposed Changes to Existing Permit *For all MS4s*

- Part II.E.3 Stormwater Management Program
 - New requirement to review the SMWP once a year in conjunction with completion of the annual report.
 - Clarification that annexing or de-annexing land that results in a level change will require an NOC

- Part III.A. (2) Content of the SWMP
 - New requirement that measurable goals selected must be “clear, specific and measurable”

- Part III.B. MCM 1
 - Publish SWMP and annual report on MS4s public website – if MS4 has one



Proposed Changes to Existing Permit *For Level 4 MS4s only*

- Part III. B. 2 MCM 2. Illicit Discharge Detection and Elimination
 - Clarify that MS4s identify priority areas likely to have illicit discharges
 - Add a program to control the discharge of floatables into the MS4
- Part III.B. 5. MCM 5. Pollution Prevention and Good Housekeeping for Municipal Operations
 - Add a program to evaluate new and existing flood management projects for their water quality impact
- Part III.B.6. MCM 6. Industrial Stormwater Sources
 - Clarification of language to include priorities and procedures for inspections to existing program



TPDES Stormwater Program Contacts

- Water Quality Division
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 - Lindsay Garza, Work Leader
 - Hanne Lehman Nielsen
 - Dan Siebeneicher
 - Gordon Cooper
 - Kent Trede
 - Jessica Alcoser
 - Austin Office: (512) 239-4671



Contact Information

- Small Business and Local Government Assistance (SBLGA)
(800) 447-2827
TexasenviroHelp@tceq.texas.gov
<http://www.tceq.texas.gov/assistance>
- Permitting Information (Technical)
(512) 239-4671
swgp@tceq.texas.gov
<https://www.tceq.texas.gov/permitting/stormwater>

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