

**PART II: DISCHARGES AUTHORIZED BY THIS PERMIT, PERMITTEE RESPONSIBILITIES, - IMPAIRED WATER BODIES, AND TOTAL MAXIMUM DAILY LOAD (TMDL) REQUIREMENTS**

**A. Authorized Discharges.**

1. This permit authorizes existing or new stormwater point source discharges to surface water in the state from those portions of the Municipal Separate Storm Sewer System (MS4) owned or operated by the permittees.
2. The following discharges, whether discharged separately or commingled with municipal stormwater, are not authorized by this permit:
  - a. discharges of non-stormwater;
  - b. stormwater discharges associated with industrial activity;
  - c. stormwater discharges that must be authorized by a Texas Pollutant Discharge Elimination System (TPDES) permit; and
  - d. discharges of materials resulting from a spill, except when necessary to prevent loss of life, personal injury, or severe property damage.
3. This permit does not negate any person's ability to assert the *force majeure* (Act of God, war, strike, riot, or other catastrophe) defenses found in 30 Texas Administrative Code (TAC) § 70.7.
4. This permit does not transfer liability for discharging without, or in violation of, a National Pollutant Discharge Elimination System (NPDES) or TPDES permit from the responsible party of the discharge to the permittees.
5. The requirements in this permit must provide substantial compliance with the Texas Surface Water Quality Standards (TSWQS) as specified in 30 TAC §§ 307.1-307.10.

**B. Responsibilities of the permittees.**

1. The permittees are individually responsible for:
  - a. compliance with permit conditions;
  - b. implementation of the Stormwater Management Program (SWMP);
  - c. compliance with annual reporting requirements;
  - d. collection of monitoring data, according to such agreements established between permittees; and
  - e. a plan of action to assume responsibility for implementation of the stormwater management and monitoring programs on its portions of the MS4 should inter-jurisdictional agreements allocating responsibility between permittees be dissolved or in default.

2. The permittees are jointly responsible for permit compliance on portions of the MS4 where operational or SWMP implementation authority over portions of the MS4 is shared or has been transferred from one permittee to another in accordance with legally binding agreements.

**C. Impaired Water Bodies and Total Maximum Daily Load (TMDL) Requirements**

1. Discharges of the pollutant(s) of concern to impaired water bodies where there is a TCEQ and EPA-approved total maximum daily load (TMDL) are not eligible for this permit unless they are consistent with the approved TMDL. A water body is impaired for purposes of the permit if it has been identified, pursuant to the latest TCEQ and EPA-approved Texas Integrated Report Index of Water Quality Impairment, as not meeting Texas Surface Water Quality Standards.
2. The permittees shall control the discharges of pollutant(s) of concern to impaired waters and waters with approved TMDLs as provided in section(s) a below and shall assess the progress in controlling those pollutants.

a. Discharges to Water Quality-Impaired Water Bodies with an Approved TMDL

For any portion of the MS4 that discharges to a portion of a watershed with an approved TMDL, and because stormwater has the potential to cause or contribute to the impairment, the permittees shall include in the SWMP controls targeting the pollutant(s) of concern along with any additional or modified controls required in the TMDL and this section.

The SWMP and required annual reports must include information on implementing any targeted controls required to reduce the pollutant(s) of concern as described below:

1. Targeted Controls

The SWMP must include a detailed description of all targeted controls to be implemented, such as identifying areas of focused effort or implementing additional Best Management Practices (BMPs) to reduce the pollutant(s) of concern in the impaired waters.

ii. Measurable Goals

For each targeted control, the SWMP must include a measurable goal and an implementation schedule describing BMPs to be implemented during each year of the permit term.

iii. Identification of Benchmarks

The SWMP must identify a benchmark for the pollutant(s) of concern. Benchmarks are designed to assist in determining if the BMPs established are effective in addressing the pollutant(s) of concern in stormwater discharge(s) from the MS4 to the maximum extent practicable (MEP). The BMPs addressing the pollutant of concern must be re-evaluated on an annual basis for progress towards the

benchmarks and modified as necessary within an adaptive management framework. These benchmarks are not numeric effluent limitations or permit conditions but are intended to be guidelines for evaluating progress towards reducing pollutant discharges consistent with the benchmarks. The exceedance of a benchmark is not a permit violation and does not by itself indicate a violation of instream water quality standards.

The benchmark must be determined based on one of the following options:

- A) If the MS4, or a portion thereof, is subject to a TMDL that identifies a Waste Load Allocation(s) (WLA) for permitted MS4 stormwater sources, then the SWMP may identify it as the benchmark. Where an aggregate allocation is used as a benchmark, all affected MS4 operators are jointly responsible for progress in meeting the benchmark and shall (jointly or individually) develop a monitoring/assessment plan as required in Part II.C.2.a.vi.
- B) Alternatively, if multiple MS4s are discharging into the same impaired watershed with an approved TMDL, with an aggregate WLA for all permitted stormwater MS4s, then the MS4s may combine or share efforts to determine an alternative sub-benchmark value for the pollutant(s) of concern (e.g., bacteria) for their respective MS4. The SWMP must clearly define this alternative approach and must describe how the sub-benchmark value would cumulatively support the aggregate WLA. Where an aggregate benchmark is broken into sub-benchmark values for individual MS4s, each permittee is only responsible for progress in meeting its sub-benchmark value.

iv. Annual Report

The annual report must include an analysis of how the selected BMPs will be effective in contributing to achieving the benchmark value.

v. Impairment for Bacteria

If one of the pollutants of concern is bacteria, the permittees shall include focused BMPs addressing the below noted areas, as applicable, in the SWMP and implement as appropriate. If a TMDL Implementation Plan (I-Plan) is available, the permittees may refer to the I-Plan for appropriate BMPs or provide appropriate alternative BMPs. The SWMP and annual report must include the selected BMPs. Permittees may not exclude BMPs associated with the minimum control measures required under 40 CFR §122.34 from their list of proposed BMPs.

The BMPs shall, as appropriate, address the following:

A) Sanitary Sewer Systems

- 1) Make improvements to sanitary sewers to reduce overflows;
- 2) Address lift station inadequacies;
- 3) Improve reporting of overflows; and
- 4) Strengthen sanitary sewer use requirements to reduce blockage from fats, oils, and grease.

B) On-Site Sewage Facilities (for entities with appropriate jurisdiction)

- 1) Identify and address failing systems; and
- 2) Address inadequate maintenance of On-Site Sewage Facilities (OSSFs).

C) Illicit Discharges and Dumping

Put in place additional effort to reduce waste sources of bacteria; for example, from septic systems, grease traps, grit traps, or other sources.

D) Animal Sources

Expand existing management programs to identify and target animal sources such as zoos, pet waste, and horse stables.

E) Residential Education. Educate residents on the following:

- 1) Bacteria discharging from a residential site either during rainfall runoff events or directly;
- 2) Fats, oils, and grease clogging sanitary sewer lines and resulting overflows;
- 3) Maintenance and operation of decorative ponds; and
- 4) Proper disposal of pet waste.

vi. Monitoring or Assessment of Progress

The permittees shall monitor or assess progress in achieving benchmarks and determine the effectiveness of BMPs, and shall include documentation of this monitoring or assessment in the SWMP and annual reports. In addition, the SWMP must include methods to be used to assess progress.

A) The permittees may use either of the following methods to evaluate progress towards the benchmark and improvements in water quality:

1) Evaluating Program Implementation Measures

The permittees may evaluate and report progress towards the benchmark by describing the activities and BMPs

implemented, by identifying the appropriateness of the identified BMPs, and by evaluating the success of implementing the measurable goals.

The permittees may assess progress by using program implementation indicators such as: (1) number of sources identified or eliminated; (2) decrease in number of illegal dumping; (3) increase in illegal dumping reporting; (4) number of educational opportunities conducted; (5) reductions in sanitary sewer flows (SSOs); or, (6) increase in illegal discharge detection through dry screening, etc.

2) Assessing Improvements in Water Quality

The permittees may assess improvements in water quality by using available data for segment and assessment units of water bodies from other reliable sources, or by proposing and justifying a different approach such as collecting additional instream or outfall monitoring data, etc. Data may be acquired from TCEQ, local river authorities, partnerships, and/or other local efforts as appropriate.

- B) Progress towards achieving the benchmark shall be reported in the annual report. Annual reports shall report the benchmark and the year(s) during the permit term that the MS4 conducted additional sampling or other assessment activities.

vii. Observing No Progress towards the Benchmark

If, by the end of the third year from the effective date of the permit, the permittees observe no progress toward the benchmark either from program implementation or water quality assessments as described in Part II.C.2.a.vi, the permittees shall identify alternative focused BMPs that address new or increased efforts towards the benchmark or, as appropriate, shall develop a new approach to identify the most significant sources of the pollutant(s) of concern and shall develop alternative focused BMPs for those (this may also include information that identifies issues beyond the MS4's control). These revised BMPs must be included in the SWMP and subsequent annual reports.

Where the permittees originally used a benchmark value based on an aggregated WLA, the permittees may combine or share efforts with other MS4s discharging to the same watershed to determine an alternative sub-benchmark value for the pollutant(s) of concern for their respective MS4s, as described in Part II.C.2.a.iii.B) above. The permittees must document, in their SWMP for the next permit term, the proposed schedule for the development and subsequent adoption of alternative sub-benchmarks values for the pollutant(s) of concern for their respective MS4s and associated assessment of progress in meeting those individual benchmarks.