

## 10.0 TPDES Construction General Permit

The Clean Water Act (CWA) is the principal law governing pollution control and water quality of the Nation's waterways. The objective of the Act is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. EPA established a nationwide permitting program under Section 402 of the CWA, referred to as the National Pollutant Discharge Elimination System (NPDES). Authority to administer this program has been delegated to the states; in Texas, this program is referred to as the Texas Pollutant Discharge Elimination System (TPDES) and is under the authority of the Texas Commission on Environmental Quality (TCEQ).

The CWA makes it unlawful to discharge storm water from construction sites in Texas, unless authorized by a TPDES Construction General Permit (CGP). Unlike an individual permit that authorizes discharge activities for a specific location, the general permits are for a specific activity (i.e. construction). The operator seeking authorization to discharge storm water is required to comply with the terms of the permit.

This section is intended as a supplement, not a replacement, to the language of the TPDES CGP. While this section should provide answers to typical questions related to the CGP requirements, there are unique aspects of the permit associated with each project. Therefore, users of this document are encouraged to become familiar with the actual language of the CGP. A copy of the TPDES CGP is contained in Appendix A.

### 10.1. Permit Applicability and Coverage

#### 10.1.1 Authorized Discharges

The CGP may be used to authorize:

- *Part II.A.1*  
Discharges of storm water runoff from construction sites of one acre or greater.
- *Part II.A.2*  
Discharges of storm water runoff from construction support activities (e.g. concrete batch plants, asphalt batch plants, equipment staging areas, material stockpiles, material storage yards, material borrow areas, excavated material disposal areas, etc.) provided that:
  - The activity is located with a 1-mile distance from the permitted construction site and directly supports the construction activity.
  - The Storm Water Pollution Prevention Plan (SWP3) includes appropriate controls and measures to reduce erosion and discharge of pollutants in storm water runoff from the supporting site.
  - The activity does not operate beyond the completion date of the construction activity.

- *Part II.A.3, Part II.A.4, and Part III.F.9*

The following non-storm water discharges are eligible to be combined with the above two storm water discharges provided the SWP3 identifies and ensures appropriate pollution prevention measures for them:

- Discharges associated with fire fighting activities.
- Fire hydrant flushing.
- Waters used to wash vehicles, buildings or pavement where detergents are not used and where spills or leaks of toxic or hazardous materials have not occurred (unless the spilled material has been removed).
- Water used to control dust.
- Potable water sources including water line flushing.
- Air conditioning condensate.
- Uncontaminated groundwater or spring water, and foundation or footing drains where flows are not contaminated with industrial materials such as solvents.
- Discharges authorized under another permit.

### **10.1.2 Unauthorized Discharges**

#### *Part II.B.1 through Part II.B.10*

The following are not allowed under the TPDES CGP:

- Discharges composed of anything besides the discharges eligible for authorization listed in Section 10.1.1.
- Post construction discharges.
- Discharges from construction sites that would violate an existing laws, rules or regulations.
- Discharges from construction sites located within Indian Country lands (e.g. the Alabama-Coushatta, Tigua, and Kickapoo Reservations).
- Discharges from construction activities that are associated with oil and gas production.
- Storm water discharges from agricultural activities.

### 10.1.3 Activities Requiring Authorization

Activities such as clearing, grading, and excavating that result in land disturbance of equal to or greater than one (1) acre require authorization under the CGP. However, it is TxDOT's policy is to implement activity-appropriate Best Management Practices (BMPs) for any soil disturbing activity where there is a potential for storm water discharges, regardless of the type of activity or acreage disturbed.

#### Maintenance Activities

*Part I – Definitions: Small construction activity and large construction activity*

Some routine maintenance activities, such as that performed to maintain the original line and grade, hydraulic capacity, and original purpose of a ditch, channel, or other similar storm water conveyance, the routine grading of existing dirt roads, and asphalt overlays of existing roads do not require authorization under the CGP. TxDOT's interpretation of this exclusion exempts shoulder blading to restore the shoulder to its original condition and pavement "reworking" operations if they stay within the limits of the original pavement and do not expose the base or subgrade. Note that if the base or subgrade is exposed or if previously undisturbed land is disturbed (e.g. clearing for staging areas or temporary haul roads) coverage under the CGP could be required.

#### Project Specific Locations (PSLs) and Utility Installations

*Part I – Definitions: Common plan of development, Small construction activity, and Large construction activity, Part III - Introduction*

Construction activities that are completed in separate stages, separate phases, or in combination with other construction activities are considered to be "part of a common plan of development" and must be considered cumulatively when determining whether a project should be authorized as a small or large construction activity. However, when activities that are "part of a common plan of development" are under the control of different operators, they may be authorized independently. Individual operators of a site may utilize separate application documents and develop separate SWP3s that cover only their portion of the project provided the SWP3 includes a reference to the other operators of the site.

Earth disturbing activities resulting from either a contractor's Project Specific Location (PSL) or non-joint-bid utility installation within one mile of a project's limits, where TxDOT has neither day-to-day operational control nor the ability to modify the plans and specifications, are part of a "common plan of development" and must therefore be included when determining the total acreage the project will disturb, but, because the activity is not under TxDOT's operational control, TxDOT is not responsible for CGP compliance within these areas. These areas are **not** authorized by TxDOT's application documents (i.e. NOI) and the SWP3s for these areas are the responsibility of the operator of the area. TxDOT's SWP3 should include a statement that the PSL or utility

installation is under the control of the contractor or utility for that activity. The operator of the PSL or utility remains responsible for compliance with the CGP within the boundary of the area in which he/she is the operator.

There are two provisions available that allow TxDOT to require a utility to utilize erosion and/or sediment controls. The first is TxDOT's Utility Accommodation Policy (43 TAC § 21.41), "Site Cleanup", which gives TxDOT the authority to require that:

- Roadways adjacent to utility construction sites shall be kept free from debris, roadway construction material, and mud.
- At the end of every construction day, construction equipment and materials shall be removed as far from the roadway edges as feasible.
- When utility installation is complete, the ROW shall be reshaped to its original condition or better, and the area reseeded or resodded to reduce erosion.
- Should settlement or erosion occur within six months after utility installation is completed, the utility shall reshape, reseed, or resod the area.

The second is TxDOT's Notice of Proposed Installation, TxDOT Form 1023, that requires utility companies agree to use BMPs to minimize erosion and sedimentation resulting from the proposed installation and, that they will revegetate the project area as indicated under the "Revegetation Special Provisions" section of the Notice of Proposed Installation.

## **10.2 Obtaining Authorization to Discharge**

The requirements of the TPDES CGP vary depending on the acreage disturbed. There are three authorization options for small (one to five) acre projects and one procedure for large (five or more acre) projects.

### **10.2.1 Small Sites: Waivers Based on Self-Calculated Low Erosion Potential**

#### *Part II.F*

If the project will disturb one (1) or more acres, but less than five (5) acres, it may qualify for a waiver from the CGP requirements. This option, in most cases, will only apply to very short-term projects. Waivers are based on a self-calculated rainfall erosivity factor, as opposed to the pre-calculated option described below.

There are several resources that are helpful when calculating rainfall erosivity factors. The Texas Agricultural Experiment Station at Texas A&M University maintains an on-line erosivity index calculator at:

<http://SRPH.brc.tamus.edu/epa/index.html>

The EPA has also published a Fact Sheet to assist in the calculation of rainfall erosivity factors. This Fact Sheet can be found at:

<http://www.epa.gov/npdes/pubs/fact3-1.pdf>

In general, the process for obtaining a waiver from CGP authorization requirements is as follows:

- Calculate that the rainfall erosivity factor for the entire period of the construction project is less than five (5).
- Submit a complete, signed Waiver Application form (see Appendix B) to TCEQ at least two days prior to the commencement of construction.
- If construction activity extends beyond the end date used to calculate the erosivity factor, it must be re-calculated using the same project start date and new projected end date. If the value is still under five (5), a new Waiver Application must be submitted to TCEQ. If it is above five (5), authorization must be obtained as per “Small Sites: Authorization for All Other One to Five Acre Projects” described below.

### **10.2.2 Small Sites: Authorization Based on Pre-Calculated Low Erosion Potential**

#### *Part II.D.1*

If the project will disturb one (1) or more acres, but less than five (5) acres, and occurs in a county and during a time frame specifically listed in Appendix A the CGP (see Appendix A), authorization under the CGP may not require the development of an SWP3 or implementation of an inspection routine. The list in the CGP is based on pre-calculated rainfall erosivity factors, as opposed to the self-calculated method described above. This authorization process does not require the implementation of an SWP3 or the submittal of a Waiver Application Form; it minimizes the administrative burden of CGP compliance, **but does not exempt the activity from TCEQ’s jurisdiction or waive the requirement to comply with the applicable elements of the CGP.** Details of the process follow:

- Verify that the construction activity will occur in a county that is listed in Appendix A of the CGP (see Appendix A).
- Verify that the construction activity will be initiated and completed within the time frame specified for that county.
- Complete and sign the Special Construction Site Notice (CSN) for Low Erosion Potential (see Appendix B).

- Post a signed copy of the Special CSN for Low Erosion Potential in a publicly accessible location near the construction activity.
- If storm water from the construction site will discharge into a Municipal Separate Storm Sewer System (MS4) send a copy of the Special CSN for Low Erosion Potential to the operator of the MS4 at least two days prior to commencing construction. This requirement does not apply to TxDOT's construction projects that discharge into an MS4 operated by TxDOT.
- Any concrete batch plant or asphalt batch plant must be separately authorized to discharge storm water under another permit.
- Achieve temporary or final stabilization by the end date specified in Appendix A of the CGP. If temporary stabilization measures are utilized, they must be maintained effectively and final stabilization must be achieved within thirty days of the end date that is specified in the CGP.

### **10.2.3 Small Sites: Authorization for All Other One to Five Acre Projects**

#### *Part II.D.2 and Part III.D*

If the project will disturb one (1) or more acres, but less than five (5) acres, and does not qualify for authorization under one of the two procedures described above, authorization under the TPDES CGP will require the development of an SWP3, inspections of BMPs, and compliance with all other applicable elements of the CGP. The process is detailed below:

- Develop and implement an SWP3 that meets the requirements of the TPDES CGP and that covers all portions of the site for which TxDOT is an operator and references the operator(s) of any portion(s) of the "common plan of development" for which TxDOT is not the operator. During construction activities, this SWP3 must be retained onsite if there is an onsite location to store the plan.
- Complete and sign the Standard Construction Site Notice (CSN) (see Appendix B).
- Post and maintain a signed copy of the Standard CSN in a publicly accessible location near the actual construction activity at least two days prior to the commencement of construction. This notice may be relocated as necessary.
- If storm water from the construction site will discharge into a Municipal Separate Storm Sewer System (MS4), send a copy of the Standard CSN to the operator of the MS4 at least two days prior to commencing construction. This requirement does not apply to TxDOT's construction projects that discharge into an MS4 operated by TxDOT.

### **10.2.4 Large Sites: Authorization for All Projects that Disturb Five or More Acres**

*Part II.D.3 and Part III.D.2(a)*

Large construction sites (those that disturb five or more acres) will require the submittal of an NOI, development of an SWP3, inspections of BMPs, and compliance with all other applicable elements of the CGP. In general, the process to authorize large projects under the CGP is as follows:

- Develop and implement an SWP3 that meets the requirements of the CGP and that covers all portions of the site for which TxDOT is an operator and references the operator(s) of any portion(s) of the “common plan of development” for which TxDOT is not the operator. During construction activities, this SWP3 must be retained onsite if there is an onsite location to store the plan.
- Submit the Payment Submittal Form and a signed and completed and Notice of Intent (NOI) to TCEQ (see Appendix B) at least two days prior to the commencement of construction activities.
- Post and maintain a copy of the NOI in a publicly accessible location near the actual construction activity at least two days prior to the commencement of construction.
- If storm water from the construction site will discharge into a Municipal Separate Storm Sewer System (MS4), send a copy of the NOI to the operator of the MS4 at least two days prior to commencing construction. This requirement does not apply to TxDOT’s construction projects that discharge into an MS4 operated by TxDOT.

### **10.3 Application Documents**

Authorization for large sites (five or more acres) is achieved through the completion, submittal and posting of a Notice of Intent (NOI); small sites (one to five acre) sites are usually authorization through the completion and posting of a CSN.

#### **10.3.1 Notice of Intent (NOI) Requirements**

*Parts II.D.3 (d); II.D. (e); II.D.4; III.A; III.D.2*

Operators of large (five or more acre) construction projects must individually submit an NOI and Payment Submittal Form to TCEQ to obtain authorization under the CGP. An SWP3 that is compliant with the terms and conditions of the TPDES CGP must be developed prior to submittal of the NOI; however, neither the SWP3 nor the CGP itself should be submitted with the NOI. Copies of the NOI must also be posted in a publicly accessible location near the construction activity and submitted to the operator of any

Municipal Separate Storm Sewer System (MS4) that will receive discharge from the site (if applicable).

Unless notified by TCEQ, operators who submit an administratively completed NOI and Payment Submittal Form in accordance with the requirements of the TPDES CGP are provisionally authorized to discharge storm water from construction activities two days after the date the NOI is postmarked. The CGP does not prohibit the submission of late NOIs. However, when a late NOI is submitted, authorization is only for discharges that occur after CGP coverage is granted. TCEQ may take appropriate enforcement actions for any un-permitted discharges.

### **NOI Signatory Requirements**

#### *Part II.D.6*

The NOI must be signed by a person who meets the requirements described under 30 TAC § 305.44. For state agencies, this person would be a principal executive officer, such as a senior executive officer who has responsibility for the overall operations of a principle geographic unit of the agency. TxDOT has interpreted this as the District Engineer (DE), the Division Director, the DE's or Division Director's immediate staff (e.g. Director of Operations), or the Area Engineer (AE). The NOI must be signed by an individual in one of the above positions; 30 TAC § 305.44 does not provide for this responsibility to be delegated.

30 TAC § 305.44 also requires any individual who signs the NOI to sign a certification statement. The NOI itself contains the required certification language and should be used to meet this requirement; a separate certification statement is not required for this purpose.

### **Changing the NOI**

#### *Part II.D.3(c) Part II.D.5 and Part II.E.1*

If relevant information that was submitted on the NOI changes or is found to be incorrect, a Notice of Change (NOC) must be submitted to the TCEQ within fourteen (14) days of discovery. Relevant information could include the billing address, contact information, etc. TxDOT would not consider typing errors, for example, to be "relevant" unless the error is such that it could cause a misinterpretation of the information. The certification and signature requirements are the same as for an NOI.

NOCs may not be utilized if the operator, as described on the NOI, changes. If another operator assumes control over all areas of the site that have not been finally stabilized, a Notice of Termination (NOT) must be submitted to TCEQ (see Section 10.8). The new operator must submit a new NOI at least two (2) days before assuming operational control.

### **Paying the Application Fee**

The TCEQ will consider NOIs that are not submitted in conjunction with a \$100.00 payment (as documented on the Payment Submittal Form) to be administratively incomplete and therefore invalid. TxDOT is required by law to issue an Interagency Transaction for monies due to another state agency. Contact your District Accounting Office for more details regarding this procedure. Note that the Payment Submittal Form and the NOI must be sent to different addresses.

### **10.3.2 Construction Site Notice (CSN) Requirements**

*Parts II.D.1. (e); II.D.2. (f); II.D.2. (c); II.D.2. (d)*

In order for a small (one to five acre) construction activity that does not qualify for a waiver to be authorized under the CGP, either a Special CSN for Low Erosion Potential or a Standard CSN must be completed, signed and posted in a publicly accessible location near the construction activity. A copy must also be submitted to the operator of any Municipal Separate Storm Sewer System (MS4) that will receive discharge from the site (if applicable). This notice should not be submitted to TCEQ.

Both the Special CSN for Low Erosion Potential and the Standard CSN require a contact name and phone number. If authorized federal, state or local representatives require information regarding the site, this is the person who should be contacted.

### **CSN Signatory Requirements**

*Part II.D.6*

CSN signature requirements are the same as for an NOI (see Section 10.3.1). As with the NOI, both CSNs contain the required certification language. However the certification language for the Special CSN for Low Erosion Potential additionally contains a statement that the construction activity will begin and end within a time period designated in the TPDES CGP, and that of the Standard CSN contains a statement that an SWP3 has been developed and implemented according to the terms of the CGP. By signing this language, the authorized signatory is certifying that the relevant condition has been met.

### **10.4 Storm Water Pollution Prevention Plans (SWP3s)**

All large (five or more acre) and most small (one to five acre) construction projects will require the development, implementation and maintenance of a Storm Water Pollution Prevention Plan (SWP3). In addition, if a construction project has more than one operator (e.g., TxDOT, contractor, utility), each operator may utilize separate application documents and develop separate SWP3s provided reference is made to the other operators of the construction project (see Section 10.1.3).

The purpose of the SWP3 is to describe the construction site and activity as well as the control measures that will be implemented as part of the construction activity to minimize pollution in runoff.

#### 10.4.1 Description of Site

The SWP3 must include a site/project description that includes the information specified in *Part III.F.1(a) through Part III.F.1(i)* of the CGP. The items that must be included in the site description follow:

- Description of the nature of the construction activity.
- Description of potential pollutants and sources.
- Intended schedule or sequence of major activities that will disturb soils for major portions of the site.
- The total number of acres of the entire property.
- Total number of acres where construction activities will occur (including PSLs within one mile of the site).
- Data describing the soil or the quality of any discharge from the site.
- A general location map (e.g. a portion of a city or county map).
- A detailed site map (or maps) that indicates the following:
  - Drainage patterns and approximate slopes anticipated after major grading activities.
  - Areas where soil disturbance will occur.
  - Locations of all major structural controls either planned or in place.
  - Locations where stabilization practices are expected to be used.
  - Location of offsite material, waste, borrow, fill or equipment storage areas (i.e. PSLs).
  - Surface waters (including wetlands) either adjacent or in close proximity.
  - Locations where storm water discharges from the site directly to a surface water body.
- Location and description of asphalt plants and concrete plants providing support to the construction site and authorized under this general permit.
- Name of receiving waters at or near the site that will be disturbed or that will receive discharges from disturbed areas of the project.
- A copy of the TPDES CGP (see Appendix A)

### 10.4.2 Description of BMPs

Best Management Practices (BMPs) are defined as the schedules of activities, prohibitions of practices, maintenance procedures, structural controls, local ordinances, and other management practices to *prevent or reduce* the discharge of pollutants. Chapter 26 of the Texas Water Code defines pollutant as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state...”

BMPs also include treatment requirements, operating procedures, and practices to control construction site runoff, spills or leaks, waste disposal, or drainage from raw material storage areas.

Erosion and sediment controls must be designed to retain sediment onsite to the extent practicable with consideration for local topography, soil type and rainfall. Because these controls often require maintenance, replacement and/or other modifications due to changing field conditions, the controls must be frequently inspected and the SWP3 must be regularly updated to better control pollutants in runoff (see Section 10.5.4 and Section 10.6).

#### Stabilization Practices

Stabilization practices may include establishment of temporary vegetation, establishment of permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of existing vegetation, etc.

The CGP requires that:

- *Part III.F.2 (b)*  
Existing vegetation is preserved where it is possible.
- *Part III.F.2(b)(iii)*  
Stabilization must be initiated *as soon as practicable* in portions of the site where construction activities have temporarily or permanently ceased, and must be initiated *no more than 14 days* after the construction activity in a portion of the site has temporarily or permanently ceased, except as provided below.
- *Part III.F.2(b)(iii)(a) through Part III.F.2(b)(iii)(c)*  
Stabilization practices do not have to be initiated on portions of the site where:
  - Earth disturbing activities will be resumed within twenty-one (21) days.
  - Stabilization practices must be initiated as soon as practicable rather than by the fourteenth day under the following circumstances:

- In arid and semiarid areas (areas with an average rainfall of 0-20 inches) and in areas experiencing droughts where the initiation of stabilization is precluded by seasonably arid conditions.
- In areas where the initiation of stabilization practices precluded by snow cover or frozen ground conditions.

The SWP3 must:

- *Part III.F.2 and III.F.2(b)*  
Include a description of interim and permanent stabilization practices, including an implementation schedule.
- *Part III.F.2 (b)*  
Ensure existing vegetation is preserved where it is possible.

The following records must be maintained and either attached or reference in the SWP3:

- *Part III.F.2(b)(ii)(a)*  
Dates when major grading activities occur.
- *Part III.F.2(b)(ii)(b)*  
Dates when construction activities temporarily or permanently cease on a portion of a site.
- *Part III.F.2(b)(ii)(c)*  
Dates when stabilization measures are initiated.

### **Structural Control Practices**

Structural control practices include any control to divert flows away from exposed soils, to limit the contact of runoff with disturbed areas, or to lessen the offsite transport of eroded soils. Structural controls may include but are not limited to: silt fences, earthen dikes, drainage swales, sediment traps, check dams, subsurface drains, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Placement of structural practices in floodplains should be avoided to the degree attainable. The installation of these devices within water bodies or wetlands may be subject to Section 404 of the CWA and may require a special permit and/or coordination with the Army Corps of Engineers.

The CGP requires that:

- *Part III.F.3(a)*  
For common drainage locations that serve an area with ten (10) or more acres disturbed at one time, sediment basins that provide storage for a calculated

volume of runoff from a 2-year, 24-hour storm event must be provided where attainable.

- *Part III.F.3(a) and (b)*  
At a minimum (even for drainage locations that serve an area with less than 10 acres disturbed at one time) silt fences, vegetative buffer strips, or equivalent sediment controls are utilized for all **down slope** boundaries of the project site.
- *Part III.F.3(a) and (b)*  
At a minimum (even for drainage locations that serve an area with less than 10 acres disturbed at one time) silt fences, vegetative buffer strips, or equivalent sediment controls are utilized for all **side slope** boundaries deemed appropriate as dictated by individual site conditions.

The SWP3 must include a description of:

- *Part III.F.2*  
The general timing or sequence for BMP implementation.
- *Part III.F.3*  
Any control practices used to divert flows away from exposed soil.
- *Part III.F.3*  
Any control practices used to limit the contact of runoff with disturbed areas.
- *Part III.F.3*  
Any control practices used to lessen the offsite transport of eroded soils.

### **Other Controls**

In addition to stabilization and structural control practices, the CGP also requires that:

- *Part III.F.2(a)(i)*  
Controls must be designed and utilized to reduce the transport of suspended sediments and other pollutants if necessary to pump or channel standing water from the site.
- *Part III.F.2(a)(v)*  
Controls developed to limit, to the extent practicable, offsite transport of litter, construction debris, and construction materials.
- *Part III.F.5(a)*  
Offsite vehicle tracking of sediments must be minimized.
- *Part III.F.5(a)*  
The generation of dust must be minimized.

- *Part III.F.5(d)*  
Velocity dissipation devices must be utilized along the length of any outfall channel to provide a non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics are maintained and protected.

The SWP3 must:

- *Part III.F.4*  
Include a description of any measures that will be installed during the construction process to control pollutants in storm water discharges that will occur *after* construction operations have been completed.
- *Part III.F.5(b)*  
Include a description of construction and waste materials expected to be stored onsite and a description of controls to reduce pollutants from these materials.
- *Part III.F.5(c)*  
Include a description of pollutant sources from areas other than construction and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.
- *Part III.F.9*  
Identify and ensure the implementation of appropriate pollution prevention measures for all eligible non-storm water components of the discharge (see list of eligible non-storm water discharges in Section 10.1.1).

## 10.5 Inspections and Maintenance

*Part III.F.7* of the CGP requires that all erosion and sediment control measures and other protective measures identified in the SWP3 be maintained in effective operating condition.

### 10.5.1 Areas to be inspected

Personnel performing the inspections should be properly trained in the CGP regulations. The CGP requires in *Part III.F.8 (a)* that the following areas inspected:

- Disturbed areas of the site that have not been finally stabilized.
- Areas used for storage of materials that are exposed to precipitation.
- Structural controls for evidence of, or the potential for, pollutants entering the drainage system.

- All erosion and sediment controls identified in the SWP3 to ensure that they are operating correctly.
- Locations where vehicles enter or exit the site for evidence of offsite vehicle tracking.

### 10.5.2 Frequency of Inspections

*Part III.F.8 (a)* of the CGP requires that inspections must be conducted by personnel familiar with the SWP3 according to one of the two following schedules, except as provided below:

- Once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

OR

- Once every 7 days, on a day specifically defined in the SWP3, regardless of whether or not there has been a rainfall event since the previous inspection.

Exceptions to the above described schedules follow:

- Inspection must be conducted at least once every month under the following circumstances:
  - Where sites have been temporarily or permanently stabilized.
  - Where runoff is unlikely due to winter conditions (e.g., site is covered with snow, ice, or frozen ground exists).
  - During seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches).
- Inspections must be conducted as soon as practicable in the event of flooding or other uncontrollable situations which prohibit access to the site.

### 10.5.3 Inspection Reports

An inspection report, as described in *Part III.F.8 (d)*, of the CGP must be made and retained as part of the SWP3. This documentation must be retained at least three years from the date that the site is finally stabilized. The inspection report must include:

- Names and qualifications of personnel making the inspection.
- Dates of the inspection.
- Major observations relating to the implementation of the SWP3, including the locations of:

- Discharges of sediment or other pollutants.
- BMPs that need to be maintained.
- BMPs that failed to operate as designed or that proved inadequate for a particular location.
- Where additional BMPs are needed.

Actions taken as a result of inspections must be described within and retained as part of the SWP3 for at least three years from the date that the site is finally stabilized. Reports must identify any incidents of non-compliance. When an inspection report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the SWP3 and the CGP.

The report must be signed by the person and in the manner required by 30 TAC § 305.128. Anyone who is authorized to sign NOIs and CSNs (see Section 10.3) may sign inspection reports themselves or delegate a representative to do so. Assistant Area Engineers, Maintenance Supervisors, Project Architects or Engineers down to Project Inspectors with overall responsibility for the project may be delegated in this manner. TxDOT has provided documentation to the Executive Director of TCEQ that individuals in the above listed positions are authorized to sign inspection reports. A copy of this memorandum and the transmittal letter to the TCEQ are to be kept with each project's SWP3 files. Districts and divisions may wish to restrict the delegations further; however, no actions outside of the district or division office are needed to document the restrictions.

30 TAC § 305.128 also requires any individual who signs inspection reports to sign a certification statement. This language must be included on all inspection reports and be signed by a person described above.

#### **10.5.4 Maintenance of BMPs**

The CGP requires that:

- *Part III.F.2(a)(ii)*  
Control measures must be installed and maintained according to the manufacturer's or designer's specifications.
- *Part III.F.2(a)(ii)*  
Controls must be replaced or modified as soon as practicable after discovery that the control has been used incorrectly, is performing inadequately, or is damaged.
- *Part III.F.2(a)(iii)*  
Sediment must be removed from sediment traps and sedimentation ponds no later than the time that design capacity has been reduced by 50%.

- *Part III.F.2(a)(iv)*  
If sediment escapes the site, accumulations must be removed at a frequency to minimize further negative effects and, whenever feasible, prior to the next rain event.
- *Part III.F.7*  
Maintenance must be performed before the next anticipated storm event or as necessary to maintain the continued effectiveness of storm water controls.
- *Part III.F.7*  
If maintenance before the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable.
- *Part III.F.7*  
Erosion and sediment controls that have been intentionally disabled, run-over, removed, or otherwise rendered ineffective must be replaced or corrected immediately upon discovery.
- *Part III.F.8(c)*  
If existing BMPs are modified or if additional BMPs are necessary, an implementation schedule must be described in the SWP3 and, wherever possible, those changes implemented before the next storm event.

## 10.6 Modifications to the SWP3

The SWP3 must be revised/updated/modified:

- *Part III.E.1*  
Whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants that has not been previously addressed in the SWP3.
- *Part III.E.2*  
Whenever inspections or investigations by site operators, local, state or federal officials indicate that the SWP3 is proving ineffective in eliminating or significantly minimizing pollutants from the construction site or otherwise is not achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity.
- *Part III.F.8(c)*  
Based on the results of the inspections, as necessary, to better control pollutants in runoff. Revisions must be completed within 7 days following the inspection.
- *Part III.F.8(d)*  
To include actions taken as a result of inspections.

### **10.7 Record Keeping, Retention and Accessibility**

TxDOT must retain copies of storm water pollution prevention plans and all reports required by this CGP, and records of all data used to complete the NOI for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request at the request of the executive director of TCEQ (see 30 TAC § 319.7(c)).

The CGP requires that the SWP3 (including a copy of the CGP language) be retained **at the construction site** or, if the site is inactive or does not have an onsite location to store the plan, a notice must be posted describing the location of the SWP3. TxDOT and/or contractor personnel with day-to-day operational control over SWP3 implementation must have a copy of the SWP3 available at a central location onsite for the use of all operators and those identified as having responsibilities under the SWP3 whenever they are on the construction site.

The SWP3 must be made readily available at the time of an onsite inspection to: federal, state, or local official agency that approves sediment and erosion plans, grading plans, or storm water management plans; local government officials; and the operator of a municipal separate storm sewer receiving discharges from the site.

The CGP does not provide the public with any right to trespass on a construction site for any reason, including inspection of the site; nor does this CGP require the permittee to allow members of the public access to the construction site.

### **10.8 Terminating Permit Coverage**

Each operator must submit a Notice of Termination (NOT) to TCEQ to terminate their CGP coverage. Compliance with the CGP is required until the NOT is submitted. The permittee's authorization to discharge under the CGP terminates at midnight of the day the NOT is postmarked. All permittee's must submit a NOT within 30 days after one or more of the following conditions have been met:

- Final stabilization has been achieved on all portions of the site for which the permittee is responsible.

OR

- Another operator/permittee has assumed control of all areas of the site that have not been finally stabilized.

Enforcement actions may be taken if a permittee submits a NOT without meeting one or more of these conditions.

### **10.9 Penalties for Permit Noncompliance or Violations**

TxDOT personnel should be aware that we must comply with all applicable conditions of the CGP. Any permit non-compliance constitutes a violation of the Clean Water Act and is grounds for enforcement actions. Enforcement actions may include permit termination, revocation, denial or a permit renewal, monetary fines and/or imprisonment. The amount of the monetary fines varies, depending upon the type and severity of the penalty. The fines can be up to \$10,000 per day, per violation (up to \$27,500 per day) and/or imprisonment.