

Overview of Texas Stormwater Programs

Association of Clean Water Administrators 2020
National Stormwater Roundtable

February 4 - 6, 2020

Rebecca L. Villalba, TCEQ Stormwater Team

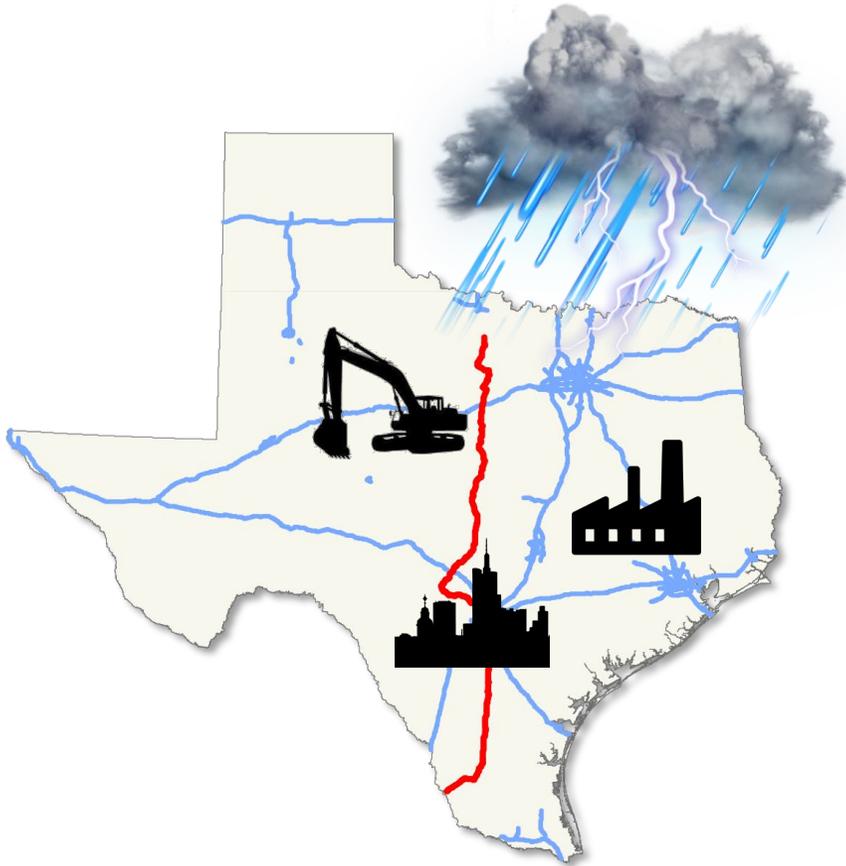


Overview

- ▶ Structure of Texas Stormwater Program
- ▶ Texas 86th Legislative Session
- ▶ General Permit Development
- ▶ Construction General Permit
- ▶ Multi-Sector General Permit
- ▶ Municipal Stormwater
 - ▶ Phase I Individual Permits
 - ▶ Phase II General Permits
- ▶ Challenges



Stormwater Program in Texas



Federal Water Pollution Control Act (Clean Water Act)



Memorandum of Agreement (MOA) between EPA Region 6 and TCEQ (Sept. 14, 1998)



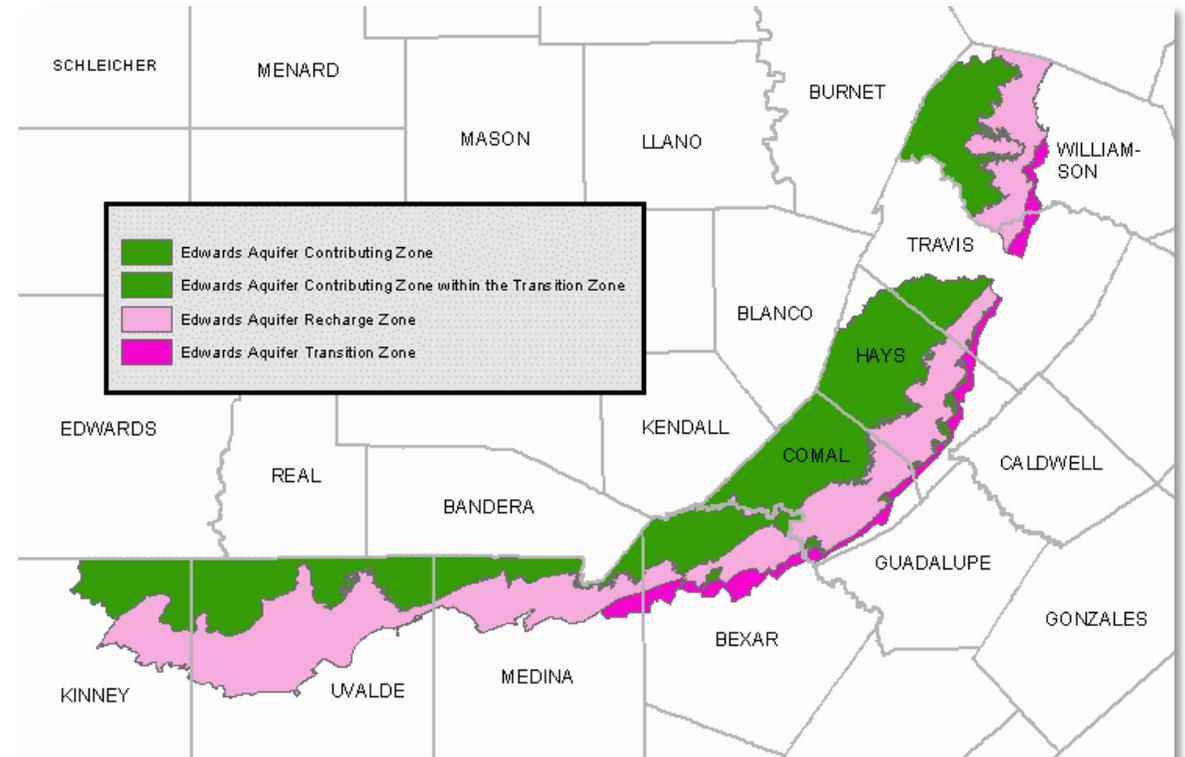
Texas Water Code Chapter 26



Title 30 Texas Administrative Code Chapters 205 & 305

Regulating Stormwater in Texas

- Texas Railroad Commission and EPA regulate Oil and Gas
- Texas Historical Commission
- Texas Parks and Wildlife
- Edwards Aquifer Program
- John Graves Scenic Riverway Protected Area



Regulating Stormwater in Texas

Stormwater Permitting Team- TCEQ Headquarters

- 5 permit writers develop: Phase II MS4 GP, CGP, MSGP and individual stormwater permits (Phase I MS4s and industrial SW permits)
- Stormwater Processing Center – 2 staff members assist customers with applications under the MSGP and CGP

TCEQ's Regional Offices - Inspectors

- Inspection of the stormwater permits in all 16 regions
- Typically on-demand inspections (complaints)
- 981 investigations were conducted by TCEQ in FY19
- Rely on MS4s to help keep an eye on CGP and MSGP facilities

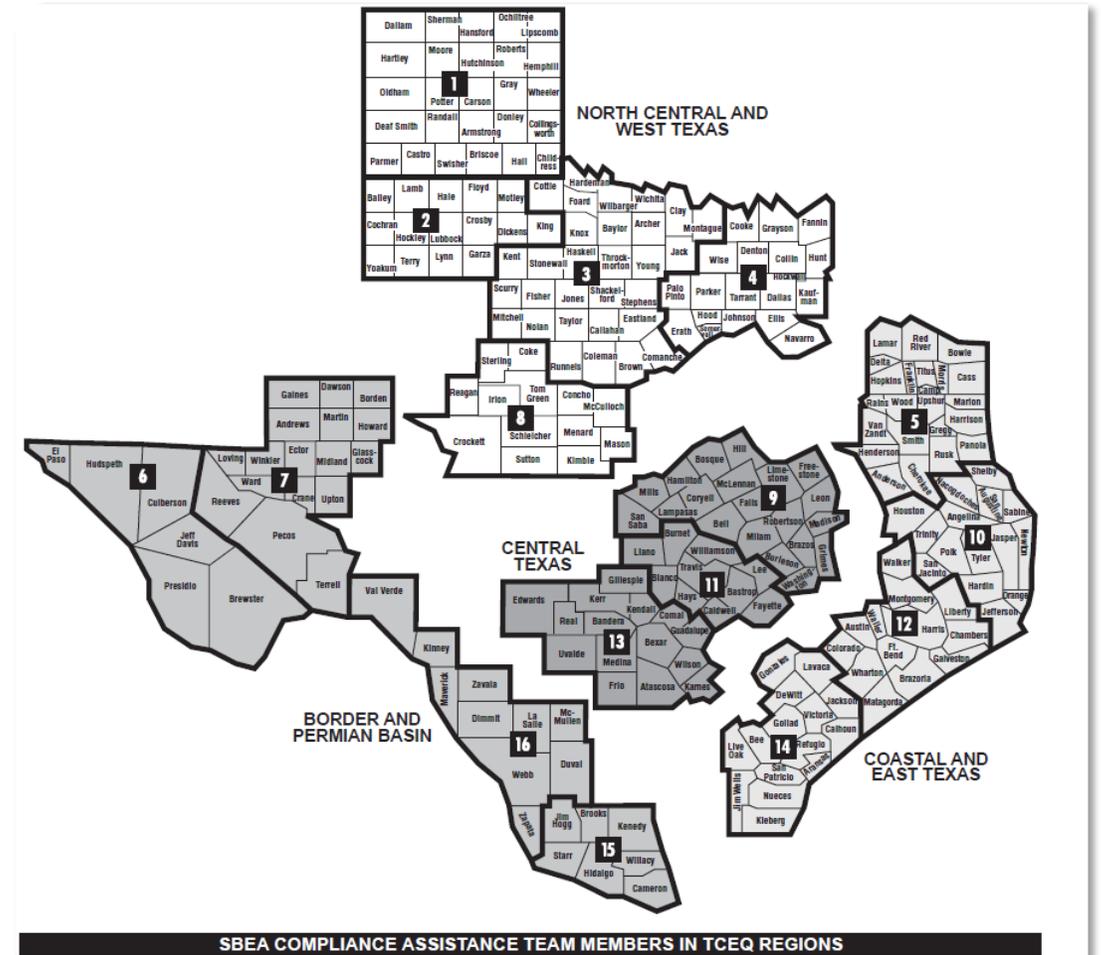
Enforcement- TCEQ Headquarters

- Issue formal enforcement actions
- 95 effective enforcement orders in FY19

Regulating Stormwater in Texas

SMALLS BUSINESS AND LOCAL GOVERNMENT ASSISTANCE PROGRAMS

- Regional Staff
- Hotline
- Environmentor
- Gov. Delivery Groups
- The Advocate Newsletter
- Tools, Guidance, and Resources



TPDES Stormwater General Permits

Construction
NOIs: 18,177
Waivers: 5

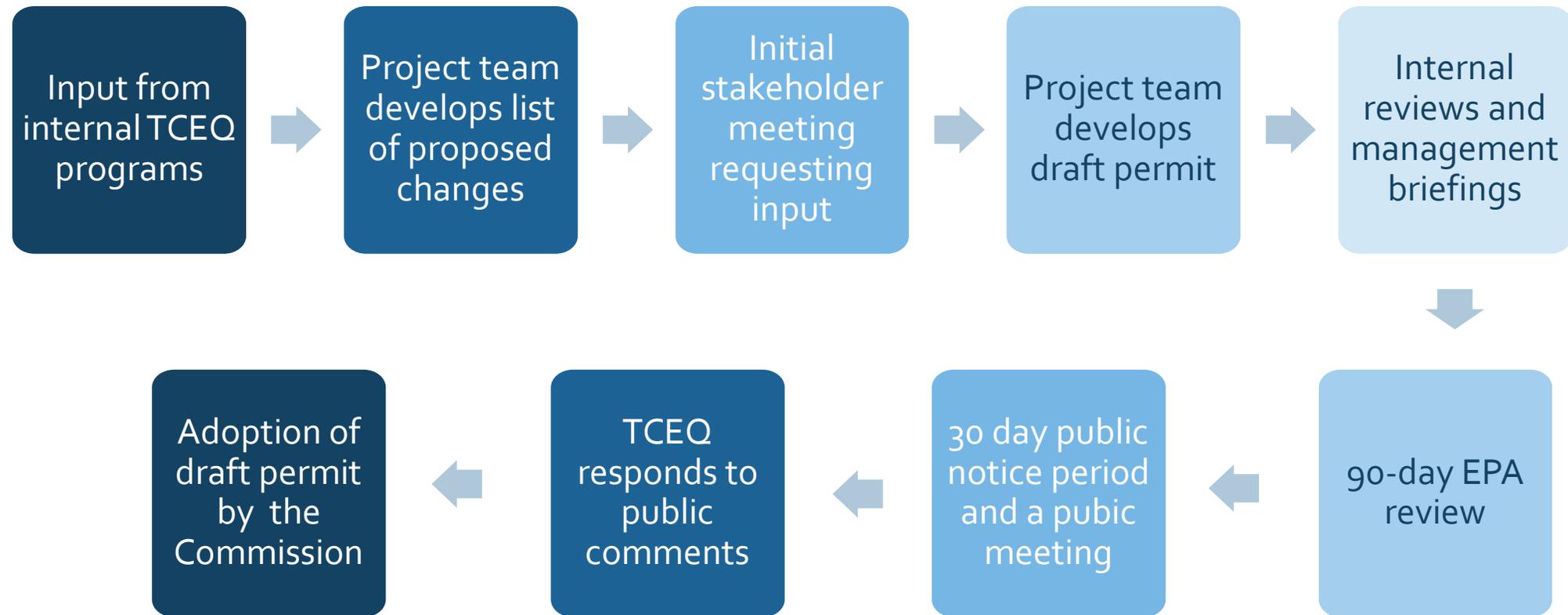
Industrial
NOIs: 8,714
NECs: 3,897

Municipal
Phase II
NOIs: 511
Waivers: 75



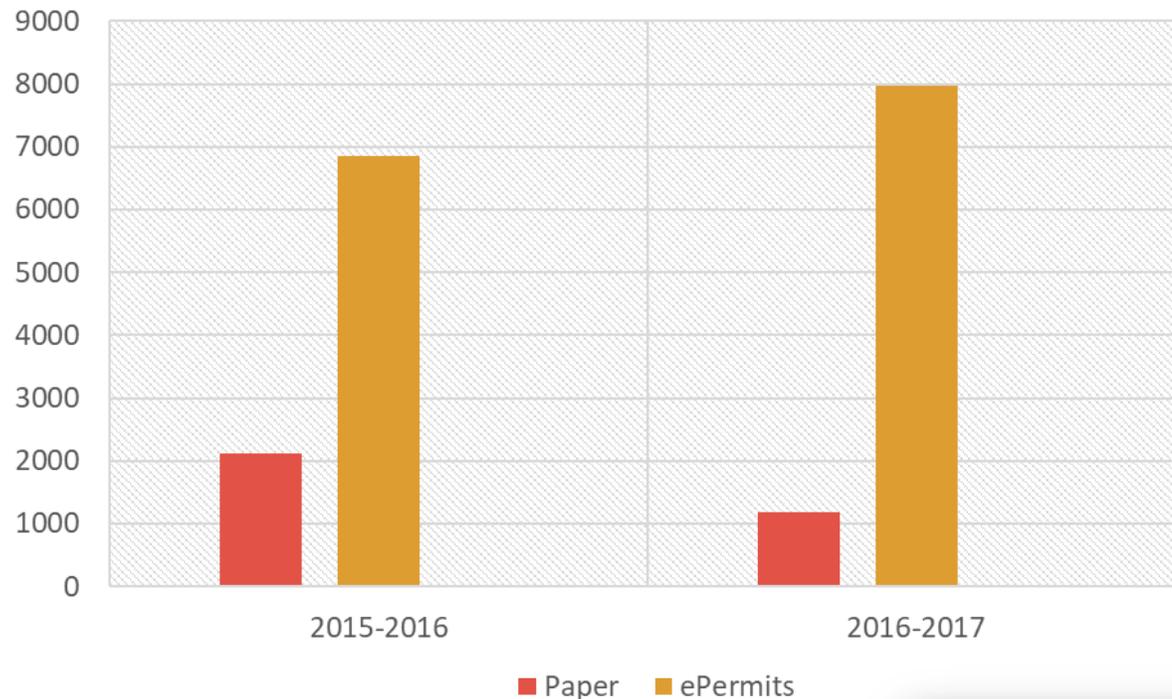
Stormwater General Permit Development Process

- Two-year process that includes:



ePermits System for Stormwater Authorizations

CGP and MSGP Authorizations



► ePermits System automates the process of creating and managing authorizations





Construction General Permit (CGP) TPDES Permit No. TXR150000

- Authorizes stormwater discharges from construction activities disturbing more than one acre of land unless part of a common plan of development
- 4th Iteration of this general permit
 - Effective March 5, 2018
 - Expires March 4, 2023
 - Universe (January 2020):
 - 18,177 NOIs
 - 5 Waivers

Construction General Permit (CGP)

TPDES Permit No. TXR150000

Large Construction Site

- >5 acres
- Submit NOI
- Develop and implement SWP₃
- Post site notice

Small Construction Site

- 1 - <5 acres
- Develop and implement SWP₃
- Post site notice

Tiny Site

- < 1 acre
- NOI, SWP₃, and site notice are **not** required

- TCEQ does not receive and review Stormwater Pollution Prevention Plans (SWP₃s) – required to be kept on-site by permittees
- WQ fee included with Application fee
- ePermits application required as of September 1, 2018

Construction General Permit (CGP) TPDES Permit No. TXR150000

- The CGP does not include requirements for design criteria
- Sites over the Edward's Aquifer Area submit a Water Pollution Abatement Plan for review and approval
- An ever growing universe - TCEQ relies on the MS4s for monitoring compliance at CGP sites



Industrial Stormwater Multi-Sector General Permit (TXR050000)

- 4th iteration of this general permit
- Effective August 14, 2016
- Expires August 13, 2021
- Universe (January 2020)
 - 8,714 NOIs
 - 3,897 No Exposure Certificates (NECs)



Industrial Stormwater Multi-Sector General Permit (TXRo50000)



- Authorizes point source discharges of stormwater associated with industrial activity and certain non-stormwater discharges to surface water in the state
- No-Exposure Option available if industrial activities are not exposed to precipitation

Industrial Stormwater Multi-Sector General Permit (TXR050000)

- Facilities over the Edward's Aquifer Area submit a Water Pollution Abatement Plan for review
- A growing universe - TCEQ relies on the MS4s for monitoring compliance
- TCEQ does not receive and review SWP3s – required to be kept on-site by permittees
- Annual WQ fee
- ePermits application required as of Sept. 1, 2017

Requirements include:

Developing and implementing a SWP₃

Implement and maintain BMPs

Submitting an application (NOI)

MSGP Monitoring Requirements



Quarterly Visual



Benchmark



Hazardous Metals



Sector-Specific Numeric Effluent Limits



Impaired Waters and Pollutants of Concern

Benchmark Monitoring Requirements



**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
BENCHMARK MONITORING REPORT
FOR FACILITIES AUTHORIZED UNDER THE
MULTI-SECTOR GENERAL PERMIT (TXR050000)**

If you have questions about completing this form please contact the Stormwater & Pretreatment Team at 512-239-4671 or SWGP@tceq.texas.gov.

Reporting Period: January – December, 20 [redacted]

Authorization Number: TXR05 [redacted]

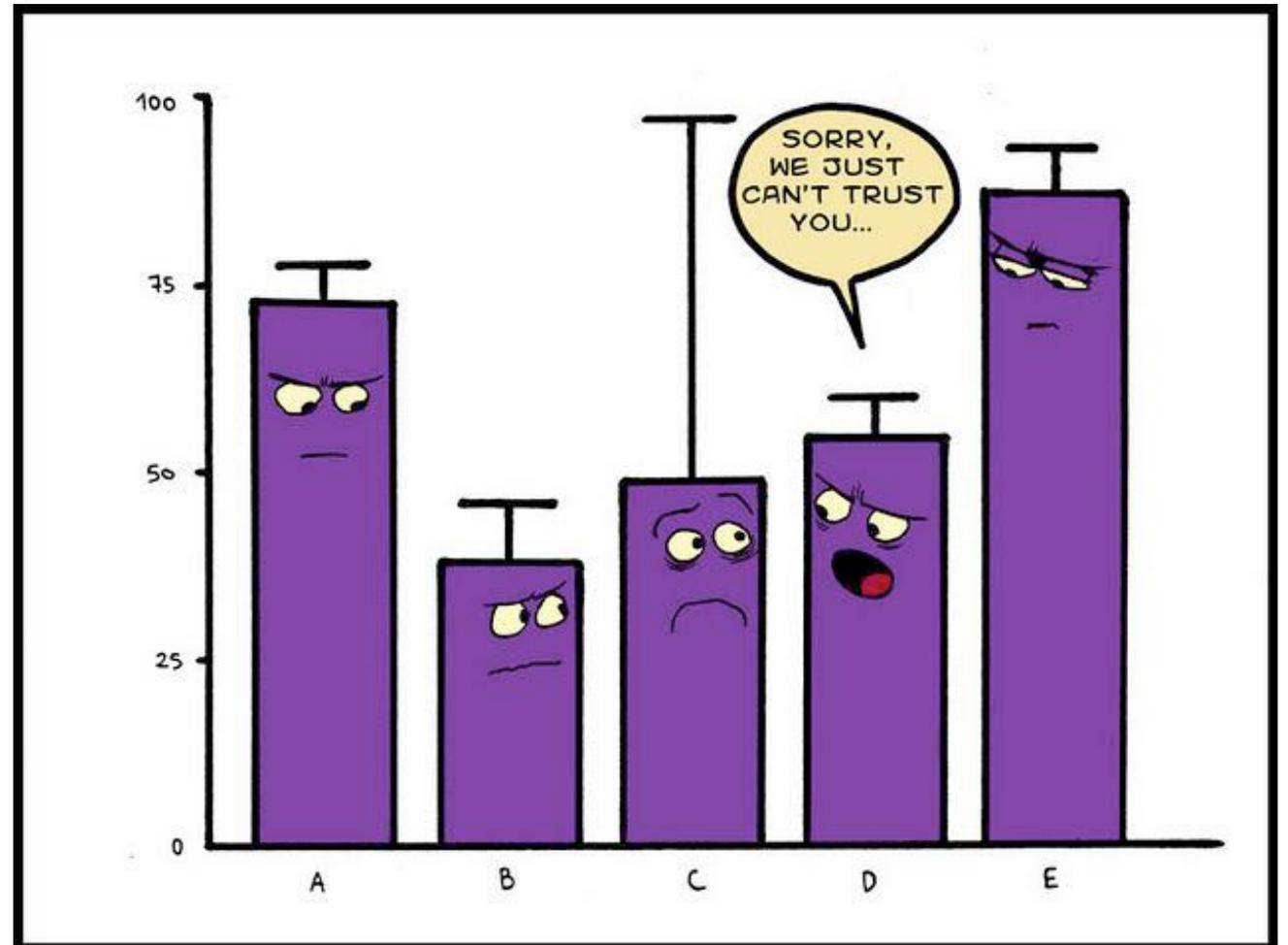
SIC Code: [redacted] Industrial Activity Code: [redacted] Sector:
[redacted]

| Parameter | Benchmark Level (mg/L) | 1 st Period Result (Jan-Jun) | 2 nd Period Result (July-Dec) | Annual Average (mg/L) | Does Annual Average Exceed Benchmark Level (Yes/No) |
|-----------|------------------------|---|--|-----------------------|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

- Submit results of calendar years 1 & 2
- Waiver available for calendar Years 3 & 4

Benchmark Analysis in Texas

- Statistical analysis on results of submitted benchmark samples from Texas permittees
- Median of results are compared to benchmark values in the MSGP
- Benchmark values might be adjusted accordingly



Changes to TCEQ Benchmark Values

2001:

- TCEQ used EPA's benchmark values

2006:

- Changed 10 benchmark values; 3 increase and 7 decrease

2011:

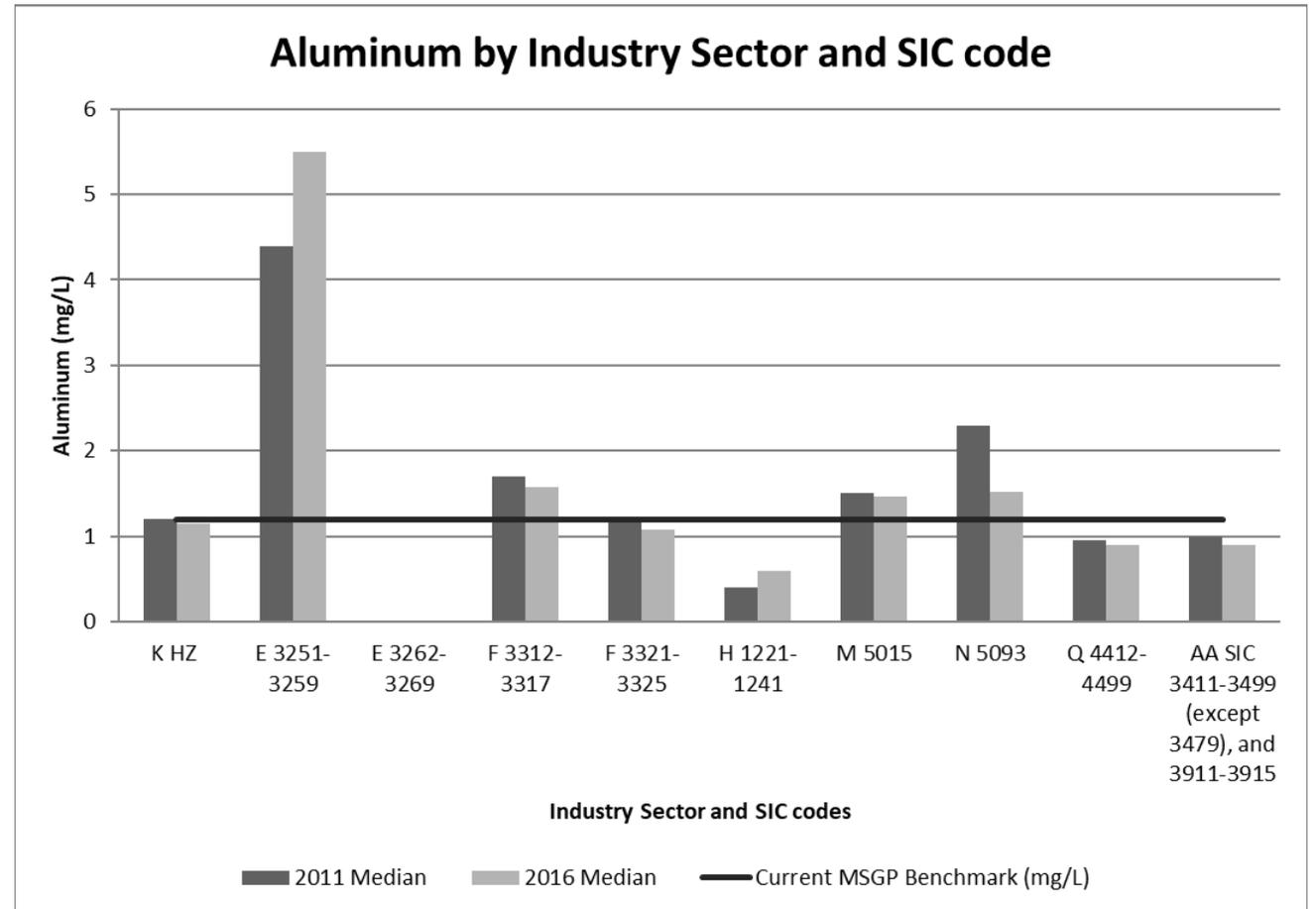
- Changed 10 benchmarks; 2 increase and 8 decrease

2016:

- Changed 3 benchmarks; all were lowered

2021:

- Propose changing 2 benchmarks, both lowered



Electronic Reporting Rule for Texas MSGP



- TCEQ's move to EPA's NetDMR delayed
- Temporary NetDMR reporting waiver issued to permittees Feb. 2019
 - Permittees submit paper DMRs
- eReporting via NetDMR will be required by Aug. 14, 2021

Municipal Separate Storm Sewer Systems (MS4s)

- Small (Phase II) MS4s
 - Regulated under general permit
- Medium and Large (Phase I) MS4s
 - Regulated under Individual permits
- Texas Department of Transportation
 - Statewide individual permit
 - Phases I & II combined
 - Issued Nov. 30, 2016



Municipal Separate Storm Sewer Permits - Phase I MS₄s

- Medium and Large MS₄s
 - Universe: 22 individual TPDES permits
 - Includes 50 permittees due to coalitions/co-permittees



Requirements of Phase I MS4s

Develop a Stormwater Management Program (SWMP) to address Minimum Control Measures (MCMs) in permits

- SWMPs reviewed and approved after permit issuance

Monitoring requirement: Storm events, watersheds or rapid bioassessment, regional wet weather characterization program (developed by NTCOG)

Annual report submittals (every year)

- Annual reports reviewed and approved every year

Phase I MS₄ Permit Renewals EPA Reviews and TCEQ Process Changes

- EPA/TCEQ Lean project to minimize EPA objections
- Ongoing communications before objection letters issued
- TCEQ initiative to process WQ permits more efficiently to meet legislative performance measures
 - e-mail draft permits to applicants
 - Reduce applicants review time of draft permit
- Ability to return applications if public notice is not published within established timeframes

Phase II MS₄ General Permit (TXRo40000)

- Regulates stormwater discharges from publicly owned or operated “Small” MS₄s located in urbanized areas (UAs)
- 3rd iteration of this general permit
- Effective January 24, 2019
- Expires January 23, 2024
- 2010 U.S. Census
 - Universe grew by 200 entities

| Active Universe | |
|-----------------|-----|
| NOIs | 511 |
| Waivers | 64 |
| Total | 575 |

Federal Rule – Phase II MS₄ Remand Rule Status in Texas

- Texas is using Option 2 (two-step process)

Option 1 Comprehensive General Permit Approach

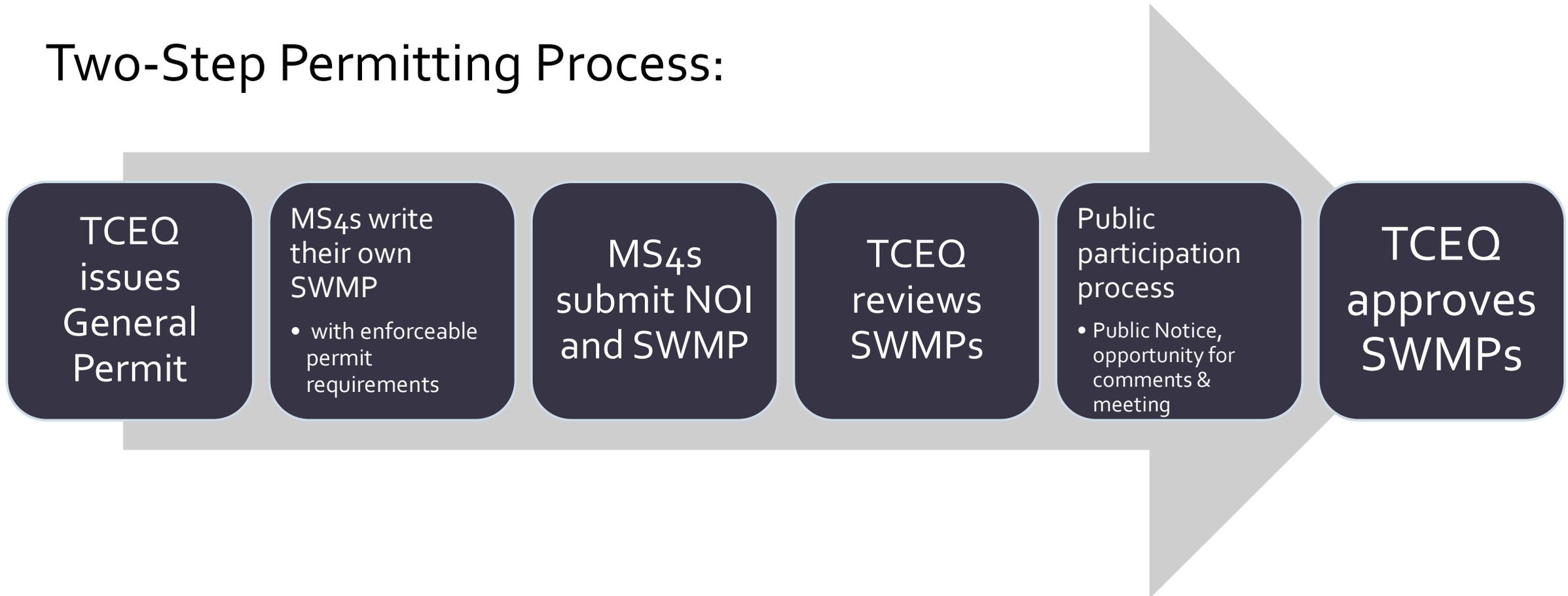
- The general permit includes all requirements necessary to meet the MS₄ permit standard “to reduce pollutants to the maximum extent practicable” (MEP)

Option 2 Two-Step General Permit

- The general permit includes some requirements for all MS₄s
- The state establishes additional requirements and BMPs for individual MS₄s (this is in the SWMPs)

Federal Rule – Phase II MS₄ Remand Rule Status in Texas

Two-Step Permitting Process:



Federal Rule – Phase II MS₄ Remand Rule

Status in Texas

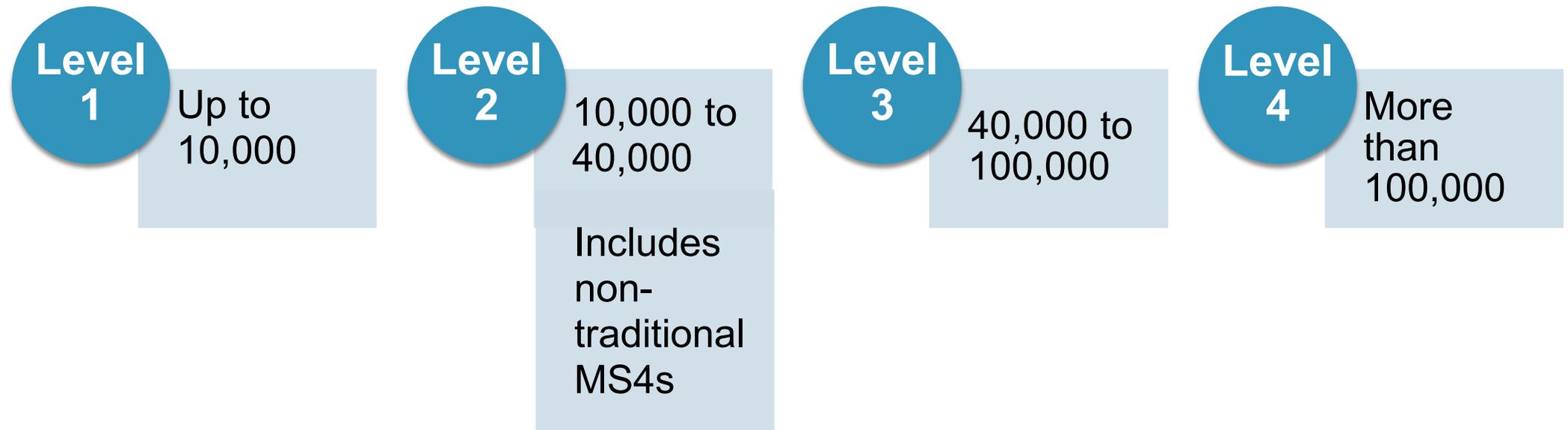
- Two-Step Permitting Process:
 - EPA review of NOIs/SWMPs - TCEQ and EPA developing a process
 - Notice process for NOCs that are not considered minor modifications
 - MS₄s will not publish in the newspaper
 - MS₄s will post (publish) the NOC on its website
 - TCEQ will post NOC on its website if the MS₄ does not have a website

Federal Rules – Electronic Reporting Rule Status in Texas

- MS₄ Phase I Individual Permits and Phase II General Permit (TXRo40000)
 - TCEQ will develop permit module via STEERS/ePermits for applications
 - TCEQ will use EPA's online system for annual reports
 - EPA's online MS₄ module will not be ready by Dec. 2020
 - TCEQ will issue temporary eReporting Waivers to MS₄s in Sept. 2020
 - Annual reports and applications – continue to submit via paper

Requirements of Phase II MS₄ General Permit (TXRo40000)

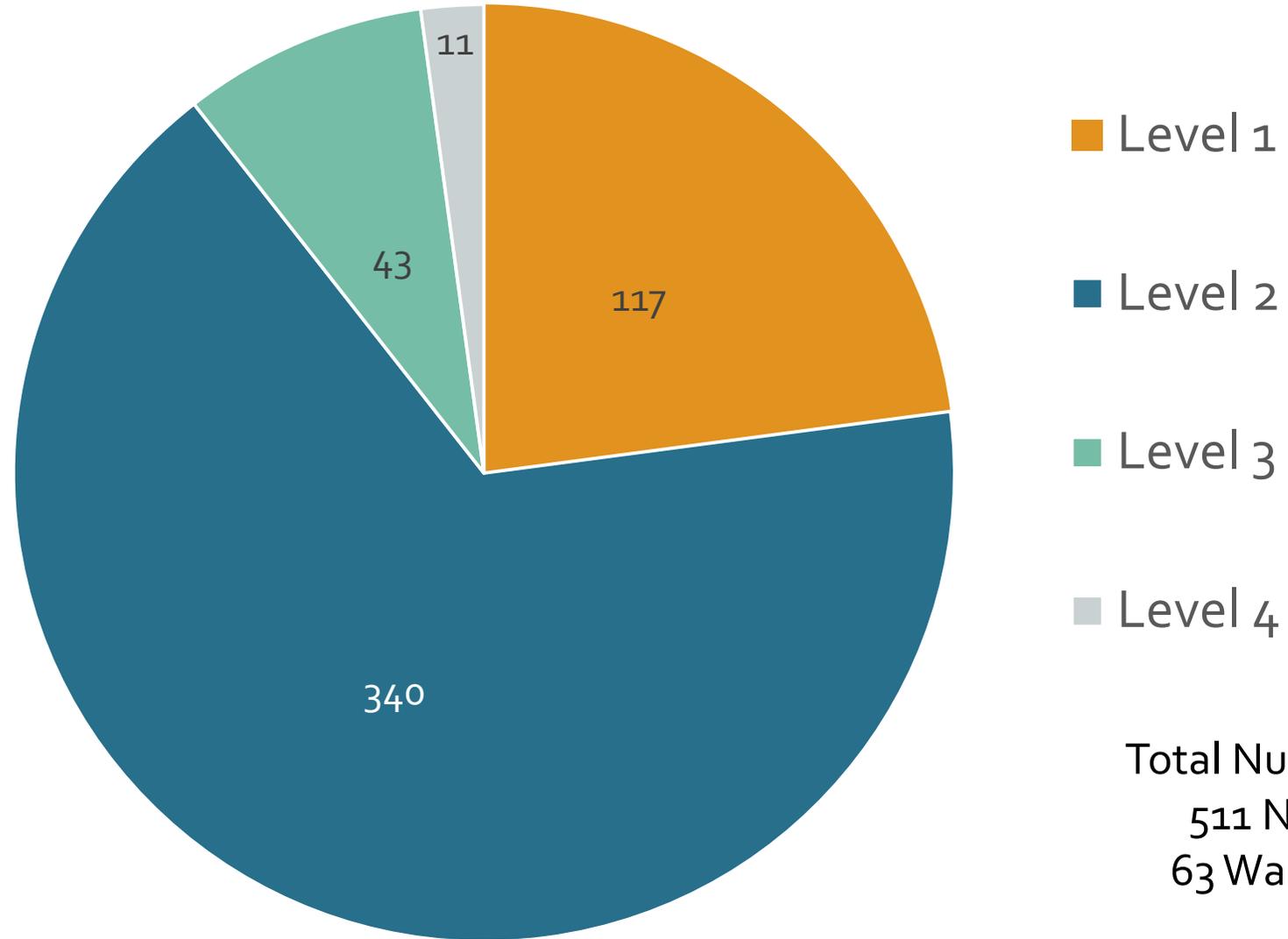
- Tiered Permitting Approach - based on population in the UA



**Based on the 2000 and 2010 Censuses*

Phase II MS₄s Active Authorizations

| Level | Active Authorizations |
|-------|-----------------------|
| 1 | 117 |
| 2 | 340 |
| 3 | 43 |
| 4 | 11 |



Total Numbers:
511 NOIs
63 Waivers

Requirements of Phase II MS4s

- Develop and implement a SWMP that includes:
 - Six Minimum Control Measures (MCMs)
 - Optional 7th MCM for Municipal construction operations
 - Additional requirements for Level 4
 - Address Industrial stormwater sources
 - Requirements for floatables
 - Requirements for flood control structures
 - Additional requirements for discharges into impaired waterbodies
- Submit annual reports every year
 - Flexibility selecting reporting year
 - Fiscal year, calendar year, or permit year
 - Reviewed and approved every year

Modifications to the SWMP during the permit term

- Notice of Change – three types

Changes that do not require an NOC

- Non-substantial changes
- Adding or annexing new areas
- Adding BMPs

Changes that require an NOC

- More frequent reporting or monitoring by the MS₄
- Replacing BMPs with equivalent
- Change to compliance dates – less than 120 days

Changes that require an NOC and public notice

- All other modifications that change permit terms and conditions
- Change to compliance dates – more than 120 days

- The public notice will be posted at the MS₄'s website or the TCEQ website, if the MS₄ does not have one.

Renewing Authorizations under the renewed General Permit

- General Permit Issuance Date: January 24, 2019
- Applications due 180 days after permit issuance

Texas Commission on Environmental Quality

P.O. Box 13087, Austin, Texas 78711-3087



GENERAL PERMIT TO DISCHARGE UNDER THE TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM

under provisions of
402 of the Clean Water Act
and Chapter 26 of the Texas Water Code

This permit supersedes and replaces
TPDES General Permit No. TXR040000, issued December 13, 2013

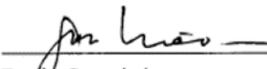
Small Municipal Separate Storm Sewer Systems
located in the state of Texas
may discharge directly to surface water in the state

only according to requirements and conditions set forth in this general permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ or Commission), the laws of the State of Texas, and other orders of the the TCEQ. The issuance of this general permit does not grant to the permittee the right to use private or public property for conveyance of stormwater and certain non-stormwater discharges along the discharge route. This includes property belonging to but not limited to any individual, partnership, corporation or other entity. Neither does this general permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This general permit and the authorization contained herein shall expire at midnight, five years after the permit effective date.

EFFECTIVE DATE: 1-24-19

ISSUED DATE: 1-24-19

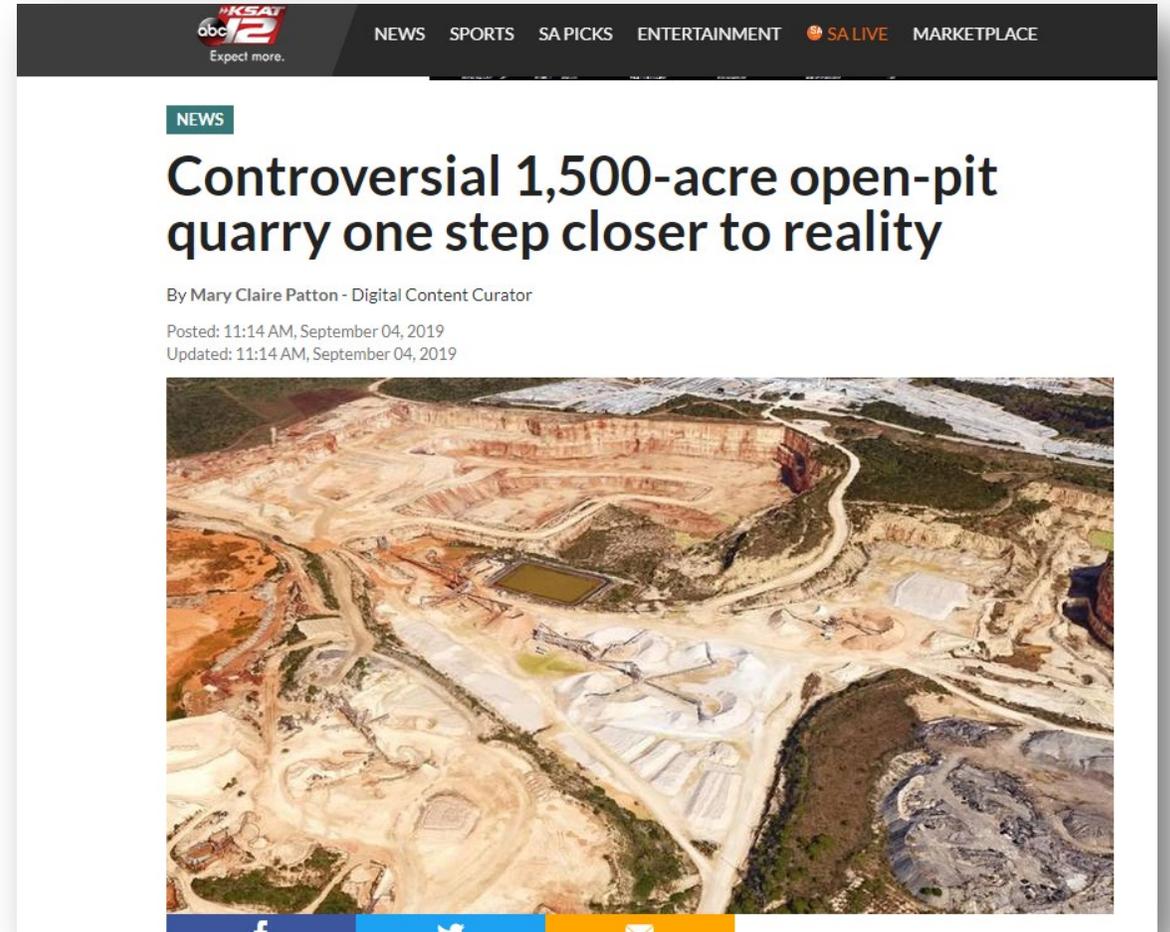

For the Commission

Process to Renew an MS₄ Authorization

1. Admin. review - Applications Review and Processing Team
2. Tech review of discharge information - Water Quality Standards & Implementation Team
3. Tech review of SWMP - Stormwater Team
4. Draft public notice - Stormwater Team
5. MS₄ publishes public notice
6. Respond to public comments – Stormwater Team and Legal
7. Public meeting if requested
8. Issuance of authorization
9. MS₄ posts the approved SWMP on its website

Challenges for Stormwater Program in Texas

- Knowledgeable and involved public
- Environmental organizations involvement
- Increase in water body impairments
- Greater interest in certain industrial activities



Texas 86th Legislative Session

STORMWATER RELATED BILLS

| Senate Bills | House Bills | Topic | Status |
|--------------|-------------|---|--|
| SB 816 | | Allowing Phase I MS4s to prohibit plastic bags | Not passed by Business & Commerce Committee |
| SB 515 | HB 2098 | Study the effects of the construction of a Border wall on stormwater | Not passed by Water & Rural Affairs Committee |
| SB 2124 | HB 909 | Adopt BMPs for Aggregate Production Operations | Not passed by Natural Resources & Economic Development Committee |
| SB 1381 | HB 1059 | Biennial study of the use of Green stormwater infrastructure in Texas | Vetoed by the Governor |
| | HB 1235 | High Speed Rail – all permit requirements must be met before a permit is issued | Withdrawn |
| | HB 1671 | Expand John Graves Scenic Riverway pilot program to the San Jacinto River | Not passed by Natural Resource Committee |

John Graves Scenic Riverway Protected Area

- Requirements for the general permit versus the individual permit based on the quarry location relative to the protected water body

| Distance | Type of Permit Required | Requirements |
|--------------------------------|-------------------------|--|
| 0 to 200 Feet | Prohibited | No permits are allowed in this area |
| More than 200 to 1,500 Feet | Individual Permit | <ul style="list-style-type: none">• Performance Criteria (Pollution Prevention Plan)• Restoration Plan• Financial assurance for restoration• Additional Performance Criteria• Technical Demonstration• Reclamation Plan• Financial assurance for reclamation |
| More than 1,500 Feet to 1 Mile | Individual Permit | <ul style="list-style-type: none">• Performance Criteria (Pollution Prevention Plan)• Restoration Plan• Financial assurance for restoration |
| > 1 mile | General Permit | <ul style="list-style-type: none">• Performance Criteria (Pollution Prevention Plan)• Restoration Plan• Financial assurance for restoration |

Challenges for Stormwater Program in Texas

- 2020 U.S Census
- Growing universe
- Increased SWMP review workload
- Small MS₄ permittees not understanding the Clear, Specific, and Measurable requirements

Challenges for Stormwater Program in Texas

- Complex and extensive comments from permittees on draft Phase I MS₄ individual permits
- Need permittee acceptance of draft permit
- Delays in permittees publishing notices



Thank You!



Rebecca L. Villalba, Team Leader

Texas Commission on Environmental
Quality

Stormwater Team



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