TCEQ REGULATORY GUIDANCE
Environmental Assistance Division
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Claiming No Discharge from Stormwater Permit Requirements

This document is for owners and operators of industrial facilities that are subject to the Texas Pollutant Discharge Elimination System (TPDES) Multi-Sector General Permit (MSGP) TXR0500000. This guidance will help you understand what a "No Discharge" claim is, and what types of documentation you can use to demonstrate a claim. The information in this guide does not replace any stormwater laws and regulations, which take precedence over the information in this publication.

The MSGP is one of the mechanisms that authorizes industrial facilities, subject to stormwater permitting requirements. Facilities that do not discharge stormwater, either through natural conditions or due to physical changes at the facility, may not need to obtain stormwater permit coverage. The MSGP includes provisions for these types of facilities.

Part II, Section B.12. of the MSGP (TXR050000) – Facilities with No Discharge to Surface Water in the State

You may not be required to obtain coverage for your facility under the MSGP if **all** of these conditions apply:

1. Your facility does **not** discharge stormwater to:
    a. a Municipal Separate Storm Sewer System (MS4); or
    b. surface water in the state.
2. You demonstrate that no discharges from your facility have occurred, nor will occur, in the future.

You may be required to demonstrate that the facility will not discharge stormwater associated with the industrial activity.

What Is No Discharge?

No Discharge is the term used in the MSGP to describe a facility with industrial activities, equipment, and materials that are exposed to stormwater (rain, snow, snowmelt, or runoff) but do not discharge that stormwater from the boundaries of their facility, thereby negating the need for stormwater permit coverage. **If any stormwater discharges, or has the potential to discharge from your facility at any time, you must obtain permit coverage.**

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You do **not** need to obtain coverage for stormwater under the MSGP nor under an individual TPDES permit or alternative general permit if your facility disposes of **all** stormwater associated with industrial activity by any of the following practices:

- Recycling with no resulting discharge.
- Pumping and hauling to an authorized disposal facility.
- Discharge to a publicly-owned treatment works (POTW); however; the permittee would need to obtain authorization from the POTW operator to discharge stormwater into the POTW.
- Underground injection in accordance with Title 30, Texas Administrative Code (30 TAC), Chapter 331.
- Discharge to aboveground storage tanks with no resulting discharge from the facility.
- Containment within property boundaries, with no discharge including no discharge during, or as a result of, any storm event.

While the above practices may exempt a facility from needing authorization under the MSGP, it does **not** exempt the facility from any requirements associated with the transportation, reuse, or disposal of stormwater.

What Types of Documentation Do I Need to Provide to Demonstrate There is No Discharge from My Facility?

The information you provide must be detailed enough to prove that a discharge is not possible. Examples of acceptable forms of documentation include, but are not limited to:

- Topographical maps that clearly show that stormwater from the facility has no outlet from which to discharge.
- Property surveys showing that the slope of the property is enough to contain the stormwater from any rain event.
- Soil profiles from USDA's Natural Resources Conservation Service Web Soil Surveys used to show that the permeability of the soil type is enough to contain the precipitation from a 25 year 24-hour rain event according to the amounts listed in National Oceanic and Atmospheric Administration's Technical Paper 40, available at <www.weather.gov/media/owp/oh/hdsc/docs/TechnicalPaper_No40.pdf>.
- Photographs of berms or ditches surrounding the property that prevent discharges from occurring.
- Video of the facility during previous rain events that show all stormwater being contained.
- Engineering specifications signed and sealed by a licensed Texas Professional Engineer or some combination of these methods.

Acceptable documentation is required for the entire facility, not just the main operations areas. This includes immediate access roads (haul roads), material and waste storage areas, equipment storage areas, loading areas, and unloading areas.

Every facility is different and may have a different potential to discharge. For this reason, the documentation required to prove no discharge may be different for each facility.

My Facility Currently Discharges Stormwater. Can We Alter the Facility So That Stormwater Does Not Discharge, and Then Claim No Discharge Going Forward?

Yes. Your facility is only required to have permit coverage if it discharges stormwater from the boundaries of the facility.

If you can make changes to the facility so that stormwater is no longer discharged, then your facility will no longer need permit coverage. However, you will need to prove that the facility no longer discharges stormwater.

Submit a Notice of Termination if your facility no longer requires permit coverage.

Will I Receive a Certificate, or Other Documentation, Stating I Meet the Requirements of No Discharge?

No. Natural and man-made changes to the landscape occur too frequently for the TCEQ to certify that stormwater cannot discharge from a facility. During an investigation, our staff will accept reasonable demonstrations of no discharge.

You are always responsible for ensuring that your facility does not discharge stormwater beyond its boundaries. You must also maintain documentation proving that no discharge is possible.

If you think you will not be able to maintain a condition of No Discharge, then you should seek permit coverage, or you may be subject to enforcement actions.

Stormwater Discharges from My Facility, but Does Not Reach an MS4 or Surface Water. Can I Claim No Discharge?

No. If stormwater discharges from your facility you are required to obtain permit coverage.

Can I Claim No Discharge if Stormwater Discharges to a Creek Within Our Facility's Boundaries?

No. Creeks are considered surface water in the state, and discharges to creeks require permit coverage.

What if Destructive Winds or Substantial Flooding from a Tornado or Hurricane Cause a Breach at My

Facility and Stormwater is Discharged? Will I Receive a Violation or Fine?

Maybe. Part II Section B. 15 of the MSGP covers Force Majeure (30 TAC, Section 70.7). Force Majeure, or "act of God" is an event that would normally be a violation of a rule or statute but was caused solely by an act of God, war, or other catastrophe not within your control is not considered a violation and will not be cited by the TCEQ. While destructive winds and substantial flooding caused by a tornado or hurricane may fall into this category, other weather events like severe thunderstorms or a 25-year flood do not. Discharges from a facility caused by weather events not considered Force Majeure are subject to violations, enforcement and fines. Burden of proof for claiming Force Majeure is on the owner or operator of the facility and the discharge must be reported to the TCEQ Regional Office within five days of the occurrence. Supporting documentation will be required and the claim will be evaluated during the facility's next comprehensive compliance investigation.

Where Can I Obtain More Information About Stormwater or the MSGP Requirements?

The TCEQ's Small Business and Local Government Assistance Section offers free, confidential help to small businesses and local governments working to comply with state environmental regulations. Call us at 800-447-2827 or visit <www.TexasEnviroHelp.org>.

The TPDES MSGP TXR0500000 is available on our website at <www.tceq.texas.gov/goto/msgp>.

Definitions

Definitions adapted from the TPDES MSGP TXR0500000.

Discharge – the drainage, release, or disposal of stormwater associated with industrial activity and certain allowable non-stormwater sources listed in the MSGP to surface water in the state.

Facility – all contiguous land and fixtures (including ponds and lagoons), structures, or appurtenances used at an industrial facility described by one or more of Sectors A through AD of the MSGP.

Industrial Activity – any of the 10 categories of industrial activities included in the definition of "stormwater discharges associated with industrial activity" as defined in Title 40, Code of Federal Regulations, Section 122.26 (40 CFR 122.26) (b)(i)-(ix) and (xi).

Municipal Separate Storm Sewer System (MS4) – a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(a) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over the disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under federal Clean Water Act, Title 33, United States Code, Section 1288 that discharges to surface water in the state;
(b) that is designed or used for collecting or conveying stormwater;
(c) that is not a combined sewer; and
(d) that is not part of a POTW as defined in 40 CFR, Section 122.2.

Stormwater Discharge Associated with Industrial Activity – the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial facility. For the purpose of the MSGP, the term includes, but is not limited to, stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling areas; refuse/waste disposal areas; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms), intermediate products, and final products; similar areas where stormwater can contact pollutants related to industrial activity; and areas where industrial activity have taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this definition, materials handling areas include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located at industrial sites that are separate from the facility's industrial activities, such as office buildings and accompanying

parking lots, as long as the drainage from the excluded areas is not mixed with stormwater drained from areas of a facility that are covered by the MSGP. This term includes discharges from facilities described under the MSGP that are operated by federal, state, or municipal entities. For the complete regulatory definition, including the categories of industrial activity, see 40 CFR 122.26(b)(14).

Surface Water in the State – lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state (from the mean high water mark out 10.36 miles into the Gulf), and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; except that waters in treatment systems that are authorized by state or federal law, regulation, or permit, and that are created for the purpose of waste treatment are not considered to be water in the state.