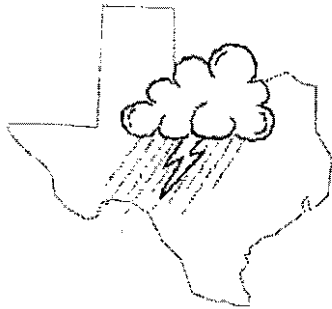


2003 Stormwater - Matthews / Alan Plummer

Plummer



TEXAS CITIES COALITION ON STORMWATER

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MEMORANDUM

TO: PARTICIPANTS, TEXAS CITIES COALITION ON STORMWATER

FROM: JIM MATHEWS
JOE FREELAND

RE: STATUS REPORT – NINTH CIRCUIT DECISION, GENERAL PERMIT

DATE: JANUARY 31, 2003

Executive Summary

- Ninth Circuit ruled against us in a split opinion holding that Cities are not forced to regulate because they have the “option of not discharging stormwater.” Opinion also requires that permitting authorities review NOIs for compliance with MEP standard and provide public notice and opportunity for hearing for each NOI. Motion for rehearing is due February 28. Steering Committee will meet on February 14 to decide whether to continue to pursue.
- Deadline for obtaining permit coverage for MS4 is March 10, 2003. TCEQ general permit will not be issued until late-May at earliest. Regulated Small MS4s will be liable for discharging without a permit until general permit is issued and NOI filed. Recommend that Coalition members contact TCEQ and EPA Region 6 to ask EPA to extend deadline.
- Municipally owned industrial facilities (wastewater treatment plants, vehicle maintenance facilities, landfills, construction) must obtain permit coverage by March 10, 2003. These facilities can use TCEQ’s Multisector General Permit and Construction General Permit.

I. Ninth Circuit Decision

On January 14, 2003, the Ninth Circuit Court of Appeals in San Francisco finally issued an opinion regarding the lawsuits challenging EPA’s Phase II Storm Water Rules. (The opinion can be viewed at <http://www.mandf.com/Opinion.pdf>). The Court rejected our challenges and those made by the National Homebuilders Association and agreed with the challenges made by the Environmental Groups. While this news is disappointing, we do not believe that it represents the final word on the subject.

2 to 1 Decision – The case was decided by a vote of 2 judges to 1 judge (with a published dissent). The majority opinion was authored by the judge that was not present at oral argument and was joined by the judge that is considered by many to be the most liberal judge on the

Federal bench who has written opinions holding that the Pledge of Allegiance is unconstitutional and that the right to bear arms is not an individual right. The majority decision uses tortured reasoning to conclude that EPA's rule does not coerce cities to regulate their citizens. In contrast, the dissenting opinion is clear, concise and well reasoned. These factors increase the potential to overturn the decision of the three judge panel through a motion for rehearing to the full Ninth Circuit or an appeal to the Supreme Court.

Reasoning of the Majority – The majority's opinion rests on the belief that municipalities can avoid EPA's requirement to regulate third persons by either (1) electing not to discharge storm water into waters of the United States, or (2) obtaining an individual permit under the Phase I rule. The futility of both of these alternatives relied on by the majority were exposed and dismissed by the dissent. The dissent notes the impossibility of cities ceasing their discharge of stormwater or refusing to accept discharges from third persons: "The law of gravity is inflexible; the storm water will run downhill through the municipalities into federal waters whether the sewer system is open or blocked. No matter how much we may want to uphold EPA's regulatory scheme, we cannot change the law of gravity."

The dissent also notes that the alternative permit option compels cities to regulate third parties and is not qualitatively different from the Phase II general permit requirements. "Under the Phase I rule, a petitioner must submit description of programs that accomplish essentially the same regulation of third parties as do the three minimum measures of the Phase II rule."

Decision Regarding NOI Review & Public Notice – In addition to ruling against us, the majority of the judges agreed with the Environmental Groups and ruled that the EPA erred in allowing a city to be covered by merely filing a Notice of Intent ("NOI"). The Court held that EPA's approach constituted an impermissible failure to regulate. The Court held that NOIs are the same as permit applications, and that EPA (or the NPDES Permitting Authority) must review every NOI to determine whether the SWMP will reduce discharges of pollutants to the maximum extent practicable. Additionally, the Court held that EPA and the states must make NOIs publicly available and subject to public hearings. The Court remanded the rule to EPA to fix these two problems. This part of the decision creates a problem for EPA and the states because it will force them to commit additional resources and funds to the program. Given the current federal and state budget crises, EPA and the states may not want to take on this additional load. Because the rule has been remanded to EPA, EPA could suspend application of the rule and take a different (non-permitting) approach to implementing the rule. By doing so, EPA could also fix the constitutional problems with its current approach.

Phase I Permit Appeals – The Cities of Abilene and Irving appealed their Phase I permits on many of the same grounds as those raised by the Coalition in the Ninth Circuit. These appeals will be argued before the Fifth Circuit next month. If the Fifth Circuit rules that EPA lacks authority to compel a Phase I city to use its police powers to regulate others, such a split in interpretation of the Clean Water Act could provide the Supreme Court with a reason to hear an appeal of the Ninth Circuit decision.

Next Steps – Procedurally, the next step in this litigation would be to file a motion for rehearing by the panel and by a panel of ten judges from the Ninth Circuit (rehearing en banc). This motion must be filed by February 28. The Ninth Circuit currently has 17 cases pending for which it has granted en banc review of panel decisions. Additionally, filing a motion for rehearing would provide more time to appeal the decision to the Supreme Court, possibly even enough time to allow the Fifth Circuit to issue its opinion.

The Coalition's Steering Committee will meet by conference call on February 14 to decide whether to authorize the filing of a motion for rehearing. Given the Coalition's current funding level, however, we do not believe that we will be able to continue the litigation much further without contributions to the Coalition. Some members of the Coalition have suggested that, if the full Coalition is unwilling to proceed, they would be interested in creating a subgroup of the Coalition to press on with the appeal.

If you feel strongly about the Coalition proceeding with this litigation, please let the Steering Committee or us know before February 14.

II. Obligation to obtain permit authorization for MS4 discharges

EPA's Phase II rule recommended using general permits that authorized Phase II stormwater discharges. The rules established a deadline of December 8, 2002 for the permitting authority to issue general permits and a deadline of March 10, 2003 for regulated small MS4s to obtain permit authorization. EPA's Phase II rule expressly stated, "EPA believes that the dates (in the proposed rule) allow sufficient time for completion of both the NPDES permitting authority's and the permittee's program responsibilities."

Neither EPA Region 6 nor TCEQ have adopted a general permit for small MS4s. EPA Region 6 (which is the Permitting Authority for New Mexico) has not even proposed a general permit. TCEQ has informed us that their general permit for small MS4s will not be considered by the commission before the end of May at the earliest. Additionally, the general permit program proposed by TCEQ was developed prior to the Ninth Circuit's decision and does not appear to be legally sufficient under the Ninth Circuit's ruling that NOIs be treated as permit applications.

This means that regulated small MS4s will not be able to meet EPA's deadline of March 10, 2003 to obtain permit coverage, unless they file an individual permit application (for which no application form exists) and pay an individual permit application fee of \$2,050. Failure to obtain permit authorization by March 10, 2003 will leave small MS4s subject to legal liability and citizen suits under the Clean Water Act.

The most sensible and straightforward solution to this problem would be for EPA to extend the deadline required by its rule. We have discussed the issue of an extension of the deadline with TCEQ staff and believe that a broad based request for this action could be successful. **We urge each of you to write a letter or email to TCEQ inquiring about the status of the Small MS4 general permit, asking how you can obtain legal authorization by March 10, 2003 and asking that the deadline be extended.** We recommend that these letters be addressed to Steve Ligon (TCEQ staff member in charge of storm water permits) and that copies be provided to TCEQ Executive Director Margaret Hoffman, TCEQ Chairman Robert Huston, EPA Region 6 Regional Administrator Lawrence Starfield, and to us. Names, addresses and email addresses are at the end of the memo.

III. Permits for Municipal Industrial Sources

Municipally owned industrial sources subject to Phase I permits (such as wastewater treatments plants larger than 1MGD or required to have a pretreatment program, vehicle maintenance facilities, landfills and construction activities disturbing more than 1 acre) owned

by municipalities with populations less than 100,000 **must obtain permit coverage by March 10, 2003**. For sources other than construction, submitting an NOI to be covered by TCEQ's Multi-Sector General Permit and complying with the terms of that permit will provide coverage. Construction activities where more than 5 acres of soil will be disturbed can be covered under TCEQ's Construction General Permit, and construction activities disturbing between 1 and 5 acres will be covered eventually under TCEQ's Phase II Construction General Permit, which is scheduled for adoption in early March 2003. For more information on these general permits, see the TCEQ web page – <http://www.tnrcc.state.tx.us/permitting/waterperm/wwwperm/tpdestom.htm>.

CONTACT LIST

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<p>TCEQ Chairman Robert Huston Mail Code 100 P.O. Box 13087 Austin, TX 78711-3087 Fax: (512) 239-5533 Email: commissr@tceq.state.tx.us</p>	<p>Mr. Lawrence Starfield 6RA USEPA Region 6 1440 Ross Avenue Suite 1200 Dallas, TX 75202 Fax: (214) 665-6648 Email: starfield.lawrence@epa.gov</p>
<p>Jim Mathews Joe Freeland Mathews & Freeland, LLP PO Box 1568 Austin, TX 78767 Fax: (512) 703-2785 Email: jmathews@mandf.com jfreeland@mandf.com</p>	

TO Mark Holliday
817-336-2813

Faxed
10-28-02
5:30 PM

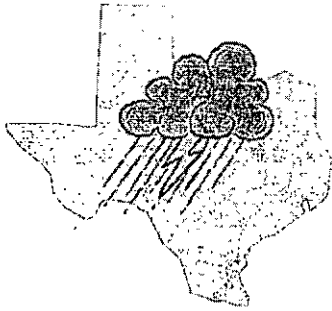
2002 Automatically Designated Cities

City

City of Addison	City of Alamo	City of Alamo Heights
City of Aldine	City of Allen	City of Alton
City of Azle	City of Balch Springs	City of Balcones Heights
City of Barrett	City of Bayou Vista	City of Baytown
City of Bedford	City of Bellaire	City of Bellmead
City of Belton	City of Benbrook	City of Beverly Hills
City of Blue Mound	City of Briar Oaks	City of Brookside Village
City of Brownsville	City of Bryan	City of Bunker Hill Village
City of Burleson	City of Carrollton	City of Castle Hills
City of Cedar Hill	City of Cedar Park	City of China Grove
City of Cibolo	City of Clear Lake Shores	City of Clint
City of Cloverleaf	City of Cockrell Hill	City of College Station
City of Colleyville	City of Combes	City of Converse
City of Coppell	City of Copperas Cove	City of Corinth
City of Crosby	City of Crossroads	City of Crowley
City of Dalworthington Gardens	City of Deer Park	City of Denison
City of Denton	City of DeSoto	City of Dickinson
City of Donna	City of Double Oak	City of Duncanville
City of Edgecliff Village	City of Edinburg	City of El Lago
City of Elsa	City of Euless	City of Everman
City of Fairview	City of Farmers Branch	City of First Colony
City of Flower Mound	City of Forest Hill	City of Fresno
City of Friendswood	City of Frisco	City of Galena Park
City of Galveston	City of Galveston	City of Garden Ridge
City of Glenn Heights	City of Grand Prairie	City of Grapevine
City of Groves	City of Haltom City	City of Harker Heights
City of Harlingen	City of Hebron	City of Hedwig Village
City of Helotes	City of Hewitt	City of Hickory Creek
City of Highland Park	City of Highland Village	City of Highlands
City of Hill Country Village	City of Hilshire Village	City of Hitchcock
City of Hollywood Park	City of Horizon City	City of Howe
City of Humble	City of Hunters Creek Village	City of Hurst
City of Hutchins	City of Jacinto City	City of Jersey Village
City of Katy	City of Keller	City of Kemah
City of Kennedale	City of Killeen	City of Kirby
City of Krum	City of La Feria	City of La Joya
City of La Marque	City of La Porte	City of La Villa

City

City of Lacy Lakeview	City of Lake Dallas	City of Lake Worth
City of Lakeside City	City of Lancaster	City of League City
City of League City	City of Leander	City of Leon Valley
City of Lewisville	City of Live Oak	City of Live Oak
City of Longview	City of Los Fresnos	City of Lumberton
City of Mansfield	City of McAllen	City of McKinney
City of Meadows Place	City of Midland	City of Mission
City of Mission	City of Missouri City	City of Morgan's Point
City of Morgan's Point Resort	City of Nash	City of Nassau Bay
City of Nederland	City of Nolanville	City of North Richland Hills
City of Northcrest	City of Oak Point	City of Odessa
City of Olmos Park	City of Ovilla	City of Palm Valley
City of Palmhurst	City of Palmview	City of Pantego
City of Parker	City of Pearland	City of Pecan Grove
City of Pecan Hill	City of Penitas	City of Pflugerville
City of Pharr	City of Piney Point Village	City of Port Arthur
City of Port Neches	City of Portland	City of Primera
City of Progreso	City of Rancho Viejo	City of Red Oak
City of Richardson	City of Richland Hills	City of River Oaks
City of Robinson	City of Rockwall	City of Rollingwood
City of Rose Hill Acres	City of Rowlett	City of Sachse
City of Saginaw	City of San Angelo	City of San Benito
City of San Juan	City of San Leanna	City of Sansom Park
City of Santa Fe	City of Santa Rosa	City of Schertz
City of Seabrook	City of Seagoville	City of Selma
City of Shady Shores	City of Shavano Park	City of Shavano Park
City of Sheldon	City of Sherman	City of Shoreacres
City of Socorro	City of South Houston	City of Southlake
City of Southside Place	City of Spring Valley	City of Stafford
City of Sugar Land	City of Sunnyvale	City of Sunset Valley
City of Taylor Lake Village	City of Temple	City of Terrell Hills
City of Texarkana	City of Texas City	City of The Colony
City of Trophy Club	City of Tye	City of Tyler
City of Universal City	City of University Park	City of Victoria
City of Vinton	City of Wake Village	City of Watauga
City of Webster	City of Weslaco	City of West Lake Hills
City of West University Place	City of Westlake	City of Westover Hills
City of Westworth Village	City of White Oak	City of White Settlement
City of Wichita Falls	City of Wilmer	City of Windcrest
City of Woodway	Town of Lakeside	



TEXAS CITIES COALITION ON STORMWATER

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NOTICE OF MEETING TO DISCUSS TCEQ'S PROPOSED GENERAL PERMIT FOR SMALL MS4S

DATE: November 7, 2002 1:30 pm
PLACE: Texas Municipal Center, 1821 Rutherford Lane, Austin
INFO: Call Jim Mathews or Joe Freeland (512) 404-7800

If your city is on the enclosed list you will be required to obtain permit authorization for stormwater discharges from your municipal separate storm sewer system (MS4) by March 10, 2003. Even if your city is not on the attached list you may be required to obtain a stormwater permit upon designation by the Texas Commission on Environmental Quality (TCEQ). You should attend this meeting if you are concerned about what your city will be forced to do to comply with stormwater permitting requirements or if you want the opportunity to join with others in influencing those requirements.

TCEQ has proposed a general permit for stormwater discharges from designated small MS4s. A small MS4 is any system designed or used for conveying stormwater including storm sewers, roads, ditches, or curbs and gutters owned or operated by a city, county, district, or other public body. TCEQ's proposed general permit is an *unfunded mandate* compelling cities to regulate their citizens. Among other things it will require cities to:

- Develop regulatory programs and enact ordinances for controlling stormwater runoff from construction sites and industrial facilities even though those sites and facilities must obtain their own permit authorization from TCEQ.
- Enact ordinances to regulate stormwater runoff from land development activities.
- Develop and implement a public education program to educate "all constituents" about the adverse effects of stormwater runoff.

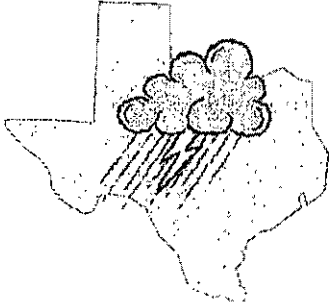


During the TML annual meeting the Steering Committee of the Texas Cities Coalition on Stormwater (TCCOS) met to develop comments on TCEQ's proposed general permit for stormwater discharges from municipal separate storm sewer systems (MS4). Because TCEQ's proposed general permit will affect most cities in Texas and because the March 10, 2003 deadline for permit coverage is imminent, the TCCOS Steering Committee decided to call this meeting. Purposes of the meeting include:

- Provide information concerning TCEQ's proposed general permits for small MS4s.
- Review the coalitions draft comments on the proposed permit.
- Coordinate the submittal of comments by individual members of the coalition.
- Explore other opportunities for improving the draft permit.
- Consider possible future coalition activities.

TCEQ can and should prevent the stormwater permitting program from becoming an unfunded mandate. Please join us in developing and sending a loud and clear message in support of rational stormwater programs that do not unnecessarily burden Texas cities.





TEXAS CITIES COALITION ON STORMWATER

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MEMORANDUM

To: Texas Cities Previously Participating in the Coalition

From: TCCOS Steering Committee

Re: Municipal Storm Water Permitting for Small Texas Cities

Date: September 7, 2001

Status of Municipal Storm Water Permitting

On December 8, 1999, EPA promulgated its final Phase II Storm Water Rule. Pursuant to this rule, municipalities with populations less than 100,000 are now subject to EPA's storm water program for discharges from their municipal separate storm sewer systems ("MS4s"), which includes discharges from all streets and ditches as well as from constructed storm sewers. All cities located in Urbanized Areas (as defined by the Census Bureau) will be required to apply for an NPDES permit (like a wastewater discharge permit) for storm water discharges by March 2003. These cities are known as "automatically designated" cities. Additionally, all cities not in Urbanized Areas, but with populations greater than 10,000 and population densities greater than 1,000 people per square mile, must be reviewed by the NPDES permitting authority to determine whether they should also be permitted. These cities are known as "potentially designated" cities. All designated cities are known as "regulated small MS4s."

EPA has listed your city as either an automatically designated or as a potentially designated city. EPA's lists of cities can be viewed in the December 8, 1999, Federal Register or at the Coalition's web page - <http://www.mandf.com/AffectedTexasCities.htm>. Thus, your city will either have to apply an NPDES permit prior to March 2003, or be assessed by the TNRCC to determine the need for a permit by December 2002.

EPA has delegated the Phase II NPDES permit program to the TNRCC. The TNRCC will develop a permit program for regulated small MS4s in Texas. The TNRCC will also develop criteria to assess all other small MS4s and for applying these criteria, at a minimum, to all potentially designated cities.

In the last few months, the TNRCC has started its process for developing a permit program for regulated small MS4s and for developing the criteria to be used to assess whether

potentially designated cities will have to also obtain NPDES permits. On July 19, 2001, the TNRCC convened the first meeting of a workgroup for stakeholders for the TNRCC's development of Phase II MS4 Storm Water Permits. The TNRCC plans on having the next meeting of the workgroup in late September or early October.

This workgroup will play a significant role in determining whether Texas will have a reasonable and appropriate permit program for regulated small MS4s and in determining the criteria the TNRCC will use to assess potentially designated cities. Regardless of whether your city is automatically or potentially designated, it will be affected by the new permitting program that the TNRCC is developing.

About the Coalition

As you may recall, the Texas Cities Coalition on Stormwater is a group of about 90 Texas cities who joined together in early 1998 to address issues relating to EPA's Phase II Storm Water Program as it relates to municipal separate storm sewer systems ("MS4s"), including the implementation of the program by the TNRCC. Your city participated in the Coalition's initial efforts, but decided to discontinue its participation. A list of the remaining Coalition members and the Steering Committee members is attached. The participating cities represent a broad geographic and demographic cross-section of small Texas cities, including cities listed by EPA as "automatically designated" and "potentially designated."

The Coalition's primary goal has been to ensure that the municipal storm water programs being developed by EPA and TNRCC are reasonable and appropriate. The Coalition's efforts are intended to benefit all Texas Cities affected by EPA's Phase II storm water program and have been closely coordinated with the Texas Municipal League. To date, the Coalition has been reasonably successful in achieving this goal. Through its comments and meetings with EPA on EPA's proposed rule, the Coalition significantly improved EPA's final rule. The Coalition also worked with the TNRCC in developing a general permit rule that did not unnecessarily restrict the TNRCC's ability to develop a General Permit for regulated small MS4s. Additionally, the Coalition is currently challenging EPA's final rule on Constitutional grounds in the United States Court of Appeals for the Ninth Circuit. This case has been briefed and is awaiting submission to the court.

The Coalition's efforts are now focused primarily on working with the TNRCC to develop an acceptable storm water permitting program for regulated small MS4s that is both effective and cost-efficient. Additionally, the Coalition plans to develop guidance and other materials to assist the participating cities with the implementation of the permitting program.

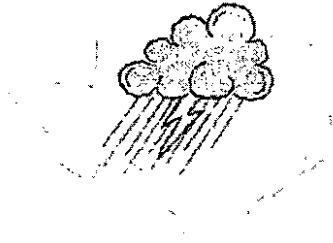
Rejoin the Coalition

The Coalition is committed to working with all affected Texas Cities and the TNRCC to develop a Phase II MS4 program that is both workable and effective. The Coalition's Steering Committee will meet in Austin on September 21, 2001, to refine its strategy for working with the TNRCC in the development of the TNRCC's Phase II MS4 program. A copy of the proposed

Agenda for this meeting is attached. You are invited to this meeting to provide your input to the Coalition on the approach the TNRCC should use.

Your city is also invited to rejoin the Coalition. Our records show that your city paid the initial assessment for participation in the Coalition in 1998, but not the second assessment in 2000. We ask that your city seriously consider renewing its participation in the Coalition at this important juncture. The shape of Texas' MS4 program for small cities will be determined in the next few months, and it is critical that the small cities of Texas work together to help the TNRCC design a workable and cost-effective MS4 program. By renewing its participation in the Coalition, your city will be working with many other small and medium-sized Texas cities in their quest for a scientifically sound and fiscally responsible storm water program, while at the same time gaining access to wealth of information regarding the implementation of and compliance with municipal storm water regulation.

If you are interested in attending the Steering Committee meeting on September 21st, in rejoining the Coalition, or if you want additional information on storm water permitting, please contact Jim Mathews or Joe Freeland by phone at (512) 404-7800 or by email at jmathews@mandf.com or jfreeland@mandf.com.



TEXAS CITIES COALITION ON STORMWATER

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Meeting of the Steering Committee September 21, 2001

Proposed Agenda

I. Status Report

- a. Status of Coalition
- b. EPA Activities
 - i. Model General Permit
 - ii. Menu of BMPs
 - iii. Other
- c. TNRCC Activities
- d. Challenge to EPA's Final Rule
 - i. Status of Briefing/Issues Raised
 - ii. Expected Timeline

II. Additional Participation in the Coalition

- a. Efforts to Recruit Additional Participants
- b. Terms of Participation

III. TNRCC Workgroup on Small MS4 Permitting

- a. Review EPA Model General Permit and Proposed Rewrite of Model General Permit
- b. Review Draft Positions for TNRCC Subgroups
- c. Develop and Approve TCCOS Positions for TNRCC Workgroup
- d. Coordinate Participation in TNRCC Subgroups

IV. Other Business

TEXAS CITIES COALITION ON STORMWATER PARTICIPATING CITIES

City of Addison	City of Alamo Heights	City of Angleton
City of Balcones Heights	City of Bay City	City of Belton
City of Brenham	City of Brownwood	City of Bryan
City of Bunker Hill Village	City of Burkburnett	City of Canyon
City of Castle Hills	City of Cleburne	City of College Station
City of Conroe	City of Copperas Cove	City of Corinth
City of Corsicana	City of Deer Park	City of Del Rio
City of Denison	City of Gainesville	City of Galena Park
City of Galveston	City of Gatesville	City of Georgetown
City of Grapevine	City of Groves	City of Harker Heights
City of Harlingen	City of Hedwig Village	City of Hewitt
City of Hill Country Village	City of Hitchcock	City of Hollywood Park
City of Howe	City of Hurst	City of Jersey Village
City of Katy	City of Keller	City of Kennedale
City of Killeen	City of La Marque	City of La Porte
City of Lake Jackson	City of Lakeside City	City of Lancaster
City of Leon Valley	City of Levelland	City of Lewisville
City of Longview	City of Lufkin	City of McAllen
City of Mount Pleasant	City of Nacogdoches	City of Nederland
City of North Richland Hills	City of Odessa	City of Pampa
City of Pflugerville	City of Pharr	City of Plainview
City of Port Arthur	City of Port Lavaca	City of Port Neches
City of Rockwall	City of Rosenberg	City of Seabrook
City of Selma	City of Sherman	City of South Houston
City of Sunnyvale	City of Temple	City of Terrell Hills
City of Texarkana	City of Texas City	City of Tyler
City of Vernon	City of Victoria	City of Webster
City of West Lake Hills	City of West University Pla	City of Windcrest
City of Woodway	Town of Lakeside	

**TEXAS CITIES COALITION ON STORMWATER
STEERING COMMITTEE LIST**

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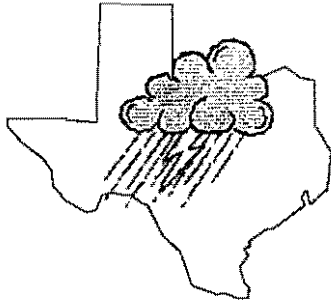
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TEXAS CITIES COALITION ON STORMWATER

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MEMORANDUM

TO: TCCOS PARTICIPATING CITIES

FROM: MATHEWS & FREELAND, LLP

DATE: JULY 5, 2000

RE: COMMENTS ON TNRCC'S PROPOSED GENERAL PERMIT RULE

The Coalition is currently working with the TNRCC to develop a workable Phase II program. One of the critical parts of a workable program will be the development of an acceptable general permit for MS4 discharges. Attached are the Coalition's comments on the TNRCC's proposed revisions to its general permit rule. This is the first step in the process. These rules provide some of the basic provisions for all general permits. The next step will be for the TNRCC to develop specific general permits for MS4 discharges, which may begin as soon as this fall.

The TNRCC's proposed rule suggests that we need to educate the TNRCC staff about the complex issues surrounding MS4 permitting, particularly for smaller cities. We must make sure that the TNRCC staff recognizes that the regulation of municipalities in their governmental capacities is far different than the regulation of industrial sources. As the comments suggest, fee issues are shaping up to be a major point of contention between municipalities and the TNRCC. Realistically under the TNRCC's proposal, small cities could be facing annual storm water permitting fees of between \$2,000 to \$10,000 depending on a number of factors. This number seems extremely high given the EPA's structure of this program.

TNRCC's proposed rule as well as the Coalition's comments can be viewed on the Coalition's web page (<http://www.mandf.com/news.htm>).

If you have any questions regarding these comments or on the TNRCC's proposal, please call Joe Freeland at (512) 404-7800.

**THE TEXAS CITIES COALITION ON STORMWATER
COMMENTS ON
TNRCC'S PROPOSED GENERAL PERMITS FOR WASTE DISCHARGES RULE**

(Rule Log Number 1999-034-205-WT)

Background/General Comment

These comments are filed by the Texas Cities Coalition on Stormwater ("TCCOS" or the "Coalition"). The Coalition is a group of 93 Texas cities who have joined together to address issues relating to EPA's Phase II Storm Water Program as it relates to municipal separate storm sewer systems ("MS4s"), including the implementation of the program by the TNRCC. A list of Coalition members is attached as Exhibit A. The participating cities represent a broad geographic and demographic cross-section of small Texas cities, including cities listed by EPA as "automatically designated" and "potentially designated."

The Coalition's members are required by EPA to obtain coverage under a general permit for their MS4 discharges on or before March 10, 2003. The TNRCC will have to develop these general permits before December 8, 2002. These general permits will be unprecedented in the TNRCC's history because they will cover a vast number of outfalls and will raise a number of significant legal and practical issues. These permits have the potential to raise significant issues regarding the scope of the TNRCC's legal authority to compel local governments to regulate their citizens in a manner prescribed by the TNRCC. These permits will also determine how implementation and enforcement responsibility for the statewide storm water program will be shared between the TNRCC and local governments. TCCOS anticipates that, in many ways, these will not be traditional permits, but will more closely resemble cooperative agreements between the TNRCC and local governments.

To date, the TNRCC has not really begun the difficult task of developing this completely new and comprehensive program. The Coalition is concerned that these proposed rules are intended to be applied to general permits for MS4 discharges as if they were any other discharge. The Coalition has informed the TNRCC that it is committed to working with the TNRCC to develop an acceptable MS4 program. Until the complicated and difficult issues relating to general permits for MS4 discharges have at least been identified, the TNRCC should not take actions now that would create problems that would have to be fixed later.

The Coalition recognizes that the TNRCC needs to proceed with this rulemaking to be able to issue general permits for storm water discharges associated with industrial activities in the near term. However, because the TNRCC has until December 2002 to adopt a general permit for MS4 discharges, and to avoid prejudging how general permits for MS4 discharges will be addressed, the Coalition recommends that the TNRCC exclude general permits for MS4 discharges from the scope of the currently proposed rule. Once the issues relating to the MS4

permits have been resolved, the TNRCC can amend this rule to include such permits within the scope of the rule and modify the rule to the extent necessary.

Specific Comments

Introduction

The Coalition is providing the following specific comments for two reasons. First, these comments address some problems that are of obvious concern regarding general permits for MS4 discharges (without even knowing what those permits might look like), and second, these comments address problems associated with general permits for storm water discharges associated with industrial activities that the Coalition members will also be subject to in the future.

Fees

The Coalition's primary concerns regarding the proposed rule relate to the issue of fees. The proposed rule (§ 205.4(g)) states that the TNRCC through general permits may require a person seeking authorization by general permit to submit an application fee of between \$100 and \$2,000. Additionally, the proposed rule (§ 205.6) states that a person authorized by a general permit shall pay an annual waste treatment inspection fee of at least \$900 per year and may be subject to an annual watershed monitoring and assessment fee of between \$300 and \$40,000.

With regard to MS4 general permits, the Coalition's concerns regarding these fee provisions are summarized as follows:

- The TNRCC lacks statutory authority to require application fees for general permits. Texas Water Code § 26.040(k) states that the TNRCC may impose a reasonable and necessary fee under Texas Water Code § 26.0291 (waste treatment fees) on a discharger covered by a general permit, but does not authorize the charging of application fees under Texas Water Code § 5.235. Moreover, the TNRCC lacks the authority to charge application fees of more than \$100. The only authorization to charge a greater fee is from Rider 5 of the current appropriations act. However, the Texas Supreme Court has ruled that the fixing of official fees is a matter of general legislation and that a rider may not embody matters of general legislation because of the constitutional prohibition of Article III §35 of the Texas Constitution. *Moore v. Shepard*, 198 S.W.2d 559 (Tex. 1946). Also see DM-93. Thus, Rider 5 cannot validly amend the \$100.00 limit on wastewater permit fees imposed by water code §5.235.
- Local governments should not be required to submit application fees for discharges associated with MS4 permits. There is nothing about the NOIs and associated storm water management plans that will require the TNRCC to expend any funds for review. As envisioned by EPA, the TNRCC will be under no obligation to review and approve a city's management plan. Without any obligation to review and affirmatively approve or deny, the Coalition sees no reason why the TNRCC should collect an application fee.

- Cities should not be required to submit waste treatment fees for MS4 discharges authorized by a general permit. The Coalition believes that this issue in particular is premature because the resolution of this issue will depend upon how the general permits for MS4 discharges are ultimately structured. As proposed, these fees are mandatory for all general permits. Given the uncertainty relating to the structure of the general permits for MS4 discharges, the TNRCC should consider changing the language in the rule from the mandatory “shall” to the discretionary “may.” Such a change will allow the TNRCC to assess such fees against general permittees where appropriate but will not prejudge that these fees will be assessed against all general permittees. Alternatively, the rule should state that such fees may be charged for MS4 permits and shall be charged for all other general permits.
- The Coalition is unsure of the amount of annual waste treatment fee that a small MS4 would be required to pay. The Coalition is unsure whether existing TNRCC rule 30 TAC § 305.503(g)(2) would require a payment of \$900 per permit or \$900 per outfall. Each city will have numerous storm water outfalls (every storm drain outfall, every street outfall). If the existing rule requires a fee of \$900 for each, the amount for an MS4 permit could be astronomical and far in excess of the \$25,000 cap placed on such fees by Texas Water Code § 26.0291(b). This would compel each small Texas city subject to storm water permits to pay the TNRCC \$ 25,000 for the luxury of receiving rainfall.
- The TNRCC lacks statutory authority to require watershed monitoring and assessment fees for general permits. Texas Water Code § 26.040(k) states that the TNRCC may impose a reasonable and necessary fee under Texas Water Code § 26.0291 (waste treatment fees) on a discharger covered by a general permit, but the statute does not authorize the charging of watershed monitoring and assessment fees under Texas Water Code § 26.0135(h).
- The TNRCC lacks statutory authority to assess municipalities for costs of efforts that duplicate water quality management activities described in Texas Water Code § 26.177. If the TNRCC’s general permits for MS4 discharges contain activities that resemble activities described in §26.177, the TNRCC will lack the authority to assess fees for such costs against municipalities.

With regard to non-MS4 general permits, the Coalition’s concerns regarding these fee provisions are summarized as follows:

- The TNRCC lacks statutory authority to require application fees for general permits. Texas Water Code § 26.040(k) states that the TNRCC may impose a reasonable and necessary fee under Texas Water Code § 26.0291 (waste treatment fees) on a discharger covered by a general permit, but the statute does not authorize the charging of application fees under Texas Water Code § 5.235. Moreover, the TNRCC lacks the authority to charge application fees of more than \$100. The only authorization to charge a greater fee is from Rider 5 of the current appropriations act. However, the Texas Supreme Court has ruled that the fixing of official fees is a matter of general legislation and that a rider may not embody matters of general legislation because of

the constitutional prohibition of Article III §35 of the Texas Constitution. *See Moore v. Shepard*, 198 S.W.2d 559 (Tex. 1946). Also see DM-93. Thus, Rider 5 cannot validly amend the \$100.00 limit on wastewater permit fees imposed by water code §5.235.

- The TNRCC should not assess water treatment fees against municipal discharges associated with industrial activity that are also discharges from the municipal separate storm sewer system. In essence, the TNRCC would be recovering double fees for the same discharge.
- The TNRCC lacks statutory authority to require watershed monitoring and assessment fees for general permits. Texas Water Code § 26.040(k) states that the TNRCC may impose a reasonable and necessary fee under Texas Water Code § 26.0291 (waste treatment fees) on a discharger covered by a general permit, but the statute does not authorize the charging of watershed monitoring and assessment fees under Texas Water Code § 26.0135(h).

Based on the foregoing comments, the Coalition recommends the following:

- The TNRCC should either delete proposed § 205.4(g) in its entirety or should exclude local governments from the scope of the provision.
- The TNRCC should either modify the language in proposed § 205.6 relating to annual waste treatment inspection fees to be discretionary instead of mandatory or should exclude local governments from the scope of the provision.
- The TNRCC should either delete the language in proposed § 205.6 relating to annual watershed monitoring and assessment fees or should exclude local governments from the scope of the provision.

Sharing of Fees with MS4s

The Coalition recommends that the TNRCC include language in this rule that acknowledges that the TNRCC may share fees with local governments with MS4 permits. The TNRCC is directed by Texas Water Code § 26.0291 to use the fees generated by the waste treatment fund to pay its expenses in inspecting waste treatment facilities and enforcing the provisions of Texas Water Code Chapter 26.

Texas Water Code § 26.175 provides that the TNRCC may transfer money or property to a local government for the purpose of water quality management, inspection, enforcement, technical aid and education, and the construction, ownership, purchase, maintenance, and operation of disposal systems. If the general permits for MS4 discharges require that local governments carry out some of the water quality management, inspection, education and enforcement functions that the TNRCC would otherwise have to perform, those municipalities will be eligible for funds collected by the TNRCC under §26.0291, and the TNRCC should expressly recognize through this rule that such transfers may take place.

Eligibility Conditions

The Coalition believes that the provisions of the proposed rule relating to eligibility conditions for use of general permits may be unnecessarily strict when considered in context of MS4 general permits. Under proposed §§ 205.4(c)(2) and 205.4(d)(4), the TNRCC must deny or suspend authorization to use a general permit for a number of reasons including the following: (1) if the discharge is a significant contributor of pollutants impairing the quality of surface or groundwater in the state; and (2) the discharger has failed to pay any portion of a delinquent fee or charge assessed by the executive director, or is the subject of an unresolved agency enforcement action in which the executive director has issued written notice that enforcement has been initiated.

With respect to the first mandatory ineligibility condition, the Coalition believes that this language could be interpreted to prevent many of the MS4s in the state from using general permits. For example, the Trinity River downstream of the Dallas/Fort Worth Metroplex has been identified as being impaired because of pollutants from urban runoff. Would TNRCC staff interpret this rule to prohibit any of the small MS4s in the DFW area (which number in the tens if not hundreds) from using the MS4 general permit for meeting permitting responsibilities? The Coalition recommends that the TNRCC modify this provision to make the eligibility condition discretionary (such as those in §§ 205.4(c)(3) and 205.4(d)(5)).

With respect to the second mandatory ineligibility condition, the Coalition believes that these provisions will have the unfortunate and potentially unlawful effect of depriving local governments of their statutory and due process rights to contest decisions made by the Executive Director and to have these issues addressed by the Commission. Under the proposed rule, a local government that disagrees with the Executive Director's determination on a fee issue would be denied the opportunity to use a general permit merely for contesting the Executive Director's decision. To solve this problem, the Coalition recommends that proposed §§ 205.4(c)(2)(E)(i) and 205.4(d)(4)(C) be deleted. If these rules are not modified, it is essential that the rules define "delinquent fee or charge" and "assessed by the executive director" since these terms have varying interpretations.

More importantly, under the proposed rule, a local government would be denied the opportunity to use a general permit merely for exercising its right to have the Commission review the Executive Director's allegations. This provision creates an untenable dilemma – if the Executive Director commences an enforcement action against any operation of a local government, the local government will have to choose between contesting the Executive Director's allegations or continuing to discharge storm water (a reality that will be governed by a power higher than a local government). The TNRCC should not create such a Hobson's choice by rule.

Denial or suspension of use of a general permit because of a contested enforcement action is not required by statute. In fact, the statute (Texas Water Code § 26.040(h)) states that the TNRCC may deny or suspend a discharger's authorization to discharge under a general permit if, after hearing, the TNRCC determines that the discharger's compliance history contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process. This provision has been incorporated into the proposed rule

at § 205.4(e). Given the presence of this provision, the Coalition does not see the need for §§ 205.4(c)(2)(E), 205.4(c)(3)(D), 205.4(d)(4)(C), and 205.4(d)(5)(E) and requests that these provisions not be included in the final rule.

If the proposed provisions are not modified, it is essential that the rules better clarify what specific actions of the Executive Director will justify the automatic suspension of use of a general permit. Does “an unresolved agency enforcement action in which the executive director has issued written notice that enforcement has been initiated” mean a notice of violation, or is it an executive director’s preliminary report?

Notices of Change Requirements

Given the scope of the storm water management programs that will be required by MS4 general permits, and the workings of internal municipal government, the Coalition questions whether it will be practical for a local government to give the TNRCC notice of changes in the program at least ten days before the change is made as would be required by proposed § 205.4(h). This is a complicated issue that deserves greater study. For MS4 general permits, the Coalition recommends that the specific provisions regarding notice of changes be addressed in the MS4 general permit rather than in this general permit rule.

Notification of MS4s

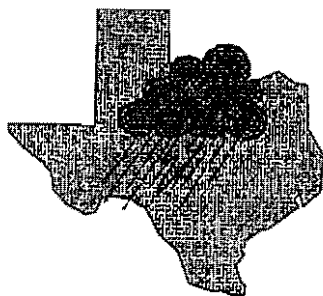
Proposed § 205.4(i) states that when requested by a county or municipality, the TNRCC *may* establish a provision in a general permit for notification by the discharger to a county judge or mayor of NOIs that would allow discharges within their respective jurisdictions. The Coalition believes that this provision should be a mandatory requirement of all general permits. Local governments need to know of the presence of waste discharges within their boundaries and EPA’s storm water rules require that regulated storm water dischargers within an MS4 provide a copy of the dischargers NOI to the MS4. Therefore, the Coalition recommends that the TNRCC modify this rule as follows:

Section 205.4(i) ~~When requested by a county or municipality, the~~*The* commission ~~may~~*shall* establish a provision in a general permit for notification by requiring the discharger to notify ~~at~~*the* county judge or mayor of a municipality of NOIs that ~~would allow discharges authorized by a general permit within~~ their respective jurisdiction. . . .

Time to File Individual Permit Renewal Application

Proposed § 205.5(d) states that if the Commission has not proposed to renew a general permit at least 90 days before its expiration date, dischargers authorized under the general permit must submit an individual permit application before the expiration of the general permit. In essence, this will require local governments to prepare and submit individual MS4 applications within a 90-day time period. Given the breadth of the existing individual MS4 permit application, no local government would be able to meet this application requirement. Therefore, the Coalition recommends that the TNRCC modify its proposal to exempt MS4 permits from this 90-day limitation. The Coalition recommends that the TNRCC modify the proposed rule as follows:

Section 205.5(d) If the commission has not proposed to renew a general permit at least 90 days before its expiration date, dischargers authorized under the general permit shall submit an application for an individual permit before the general permit's expiration. If an application for an individual permit is submitted before the general permit's expiration, authorization under the expired general permit remains in effect until the issuance or denial of an individual permit. // *an application for an individual permit for storm water discharges from municipal separate storm sewer systems is submitted within one year after the general permit's expiration, authorization under the expired general permit remains in effect until the issuance or denial of an individual permit.*



TEXAS CITIES COALITION ON STORMWATER

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FAX TRANSMITTAL SHEET

FROM: Steering Committee -- Texas Cities Coalition on Stormwater

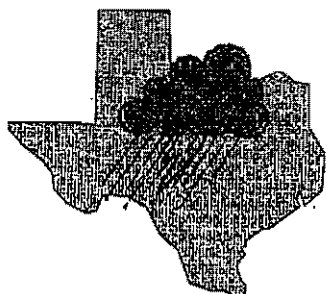
DATE: December 1, 1999

TO:

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 City of Angleton -- Ruth Hertel
 City of Bay City -- Clark H. Young
 City of Belton -- Jeff Holberg
 City of Brownwood -- Gary Butts
 City of Bunker Hill Village -- Ruthie Sager
 City of Canyon -- Glen Metcalf
 City of Cleburne -- Larry Barkman
 City of Conroe -- Dean Towery
 City of Corsicana -- Connie Standridge
 City of Del Rio -- Robert Nettleton
 City of Gainesville -- Mike Land
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Total Pages Sent -- 8 + Cover

**TEXAS CITIES COALITION ON STORMWATER**

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MEMORANDUM

To: Participating Cities
From: TCCOS Steering Committee
Re: EPA's Final Phase II Rule
Date: November 30, 1999

EPA's Final Phase II Rule

EPA signed the final Storm Water Phase II Rule on October 29, 1999. The rule has not yet been published in the Federal Register, but should be published soon along with EPA's response to comments. Attached is a brief summary of the basic provisions of this very complex rule. Mathews and Freeland will prepare a detailed summary of the final rule after it is published. This should be distributed to Coalition members around the first of the year.

Future Activities of the Coalition

The Coalition was originally formed in February 1998 to provide an effective and efficient way for Texas cities to comment on EPA's Phase II Rule and to work with EPA in the development of the rule. As noted above, this work is nearly complete. After the Coalition was formed, TNRCC proposed its rules implementing Section 26.177 of the Texas Water Code, the municipal storm water program mandated by the Texas Legislature. The Coalition was able to work effectively with TNRCC in developing rules that appear to be reasonable and workable for Texas cities.

The Steering Committee met in Dallas on November 18, 1999, during TML's annual meeting. The Steering Committee received a report from Mathews & Freeland and Alan Plummer & Associates, and began discussing possible future activities for the Coalition.

Currently, the Steering Committee is studying the following possible actions:

- Challenging EPA's final rule by judicial review and/or congressional review or independent legislation to amend the Clean Water Act;
- Working with TNRCC and other interested participants to develop an acceptable state approach for Phase II;
- Working with the Texas Legislature to develop an acceptable approach for Phase II;
- Providing Phase II guidance and compliance assistance to Coalition members;
- Coordination with the Texas Public Works Association.

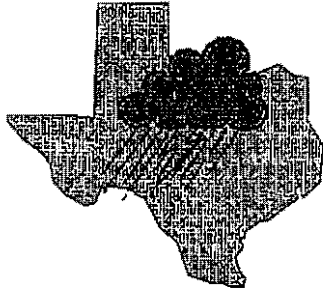
The Steering Committee plans to meet again in January to decide whether to pursue any or all of the actions listed above. The Steering Committee would like your thoughts on these issues. Please contact any of the Steering Committee members, or Jim Mathews to discuss possible future actions by the Coalition.

Congressional Review Feasibility

Under Federal law, Congress can disapprove of a major EPA rule, such as the Storm Water Phase II Rule, by enacting a joint resolution within 60 days after the rule's promulgation. Although Congress has never disapproved of a major EPA rule, we believe that strong grounds exist for congressional disapproval of EPA's Phase II Storm Water Rule and would like to assess the willingness of the current Congress to undertake that review.

We know that members of the Texas Congressional Delegation call on many municipal leaders during the long Christmas break. The more cities that raise stormwater issues with Congress, the more likely it is that Congress might be willing to disapprove of EPA's rule, or to make needed changes in the Clean Water Act. We have attached a briefing paper for use by your city's leaders when meeting with members of the Texas Congressional Delegation. It provides the reasons why we believe that Congress should disapprove of EPA's rule. Please provide copies of this briefing paper to those city leaders that may meet with members of the Texas Congressional Delegation during the break.

The Steering Committee will attempt to assess the willingness of the Texas congressional delegation to undertake congressional review of EPA's Phase II Storm Water Rules when we meet in January. We would appreciate any feedback that you can offer to us. Again, please feel free to contact any of the Steering Committee members or Jim Mathews if you have any questions, information or comments.



TEXAS CITIES COALITION ON STORMWATER

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BRIEFING PAPER ON WHY CONGRESS SHOULD DISAPPROVE OF EPA'S PHASE II STORMWATER PROGRAM FOR SMALL CITIES

November 30, 1999

1. **Congress is authorized to disapprove of EPA's Phase II Storm Water Rules through the Congressional Review Act.**
 - EPA must submit its Phase II Storm Water Rule to each house of Congress. Congress has sixty (60) days (excluding adjournment for more than three days), to disapprove of EPA's rule.
 - A rule shall not take effect if Congress enacts a joint resolution of disapproval.
 - A congressional joint resolution of disapproval is subject to a presidential veto.

2. **Congress has not authorized EPA to require permits for stormwater discharges from cities under 100,000 in population ("Small Cities").**
 - When Congress amended the Clean Water Act in 1987, it specified that only cities with a population greater than 100,000 were required to obtain stormwater discharge permits.
 - The 1987 amendments authorized EPA to issue regulations establishing a program to regulate stormwater discharges other than those expressly identified as needing to obtain a permit. These regulations were to be based on two studies that the 1987 amendments directed EPA to prepare and submit to Congress. In specifying the minimum requirements for this new program, Congress never used the word "permit."
 - The studies mandated by the 1987 amendments were: (1) by October 1, 1988, EPA was directed to report to Congress about the nature and extent of pollutants in stormwater discharges from Small Cities; and (2) by October 1, 1989, EPA was directed to report to Congress about the procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality.
 - EPA failed to follow congressional intent. No reports were submitted to Congress in 1988 or 1989. Instead, EPA submitted a report to Congress concerning the procedures and methods it proposed to control stormwater discharges in 1994

before submitting its report in 1995 identifying stormwater discharges that were not required to obtain a permit and determining the nature and extent of pollutants in such discharges. Simply put, EPA proposed a solution before it had studied the problem as directed by Congress.

- EPA now asserts that “it does interpret the Congressional reporting requirements of Clean Water Act Section 402(p)(5) to be the sole basis for determining sources to be regulated” under” EPA’s Phase II rule.
- Congress has not reauthorized the Clean Water Act or affirmatively agreed or disagreed with EPA’s decision to use the NPDES permit program to regulate stormwater discharges from Small Cities.

3. The NPDES permit program is an inappropriate regulatory mechanism to regulate stormwater discharges from Small Cities.

- NPDES permits are too inflexible. NPDES permits are subject to a very complex administrative process. The experience of larger cities under Phase I stormwater rules and EPA’s administration of NPDES permits for wastewater discharges suggest that these permits will be very difficult for Small Cities to change or amend once issued.
- The use of a “command and control” program such as the NPDES permit program will not further a cooperative effort between Federal, State and local governments to work as partners in protecting the environment. EPA is forcing Small Cities to do EPA’s job (regulate activity that is already subject to EPA’s permit requirements).
- The use of NPDES permits will subject Small Cities to enforcement by TNRCC, EPA and citizen suits. Such enforcement of permit provisions requiring Small Cities to regulate the acts of its citizens is inequitable given that the states and EPA are not subject to comparable enforcement provisions for their failures to regulate. Moreover, citizen suit enforcement of a Small City’s failure to regulate violates the fundamental notion of a representative democracy.

4. EPA’s program violates the United States Constitution.

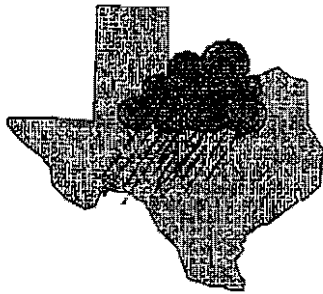
- EPA’s approach violates the Tenth Amendment. The United States Supreme Court has held that the United States Constitution does not authorize the Federal government (including a federal agency like the EPA) to compel State or local governments to enact or administer a Federal regulatory program.
- EPA does not have the authority to coerce cities to do that which EPA and the States are unwilling or unable to do themselves — regulate those activities of the public that have the potential to impact storm water quality. Although EPA’s water quality goals may be worthy and in fact are shared by cities, EPA’s method

of achieving these goals distorts the concept of Federalism embodied in the United States Constitution and infringes upon the Constitution's Tenth Amendment reservation of powers in the States and their political subdivisions.

5. EPA's program constitutes Federal land-use planning.

- EPA's goal for this program is to dictate land-use decisions for Small Cities. EPA characterizes this as "pollution prevention" rather than land-use, but the results are the same -- EPA will use this program to dictate reductions in the amount of imperviousness in urban areas.
- Congress did not intend for EPA to intrude into local land-use planning, an area traditionally reserved to State and local governments, as shown by the text of the Clean Water Act, and the legislative history behind it. In overriding President Reagan's veto of the 1987 Clean Water Act Amendments, Congress repeatedly stated that the provisions of the bill were not intended to achieve Federal land-use planning.
- EPA's approach will have a disasterous effect on land-use planning as developers flee local regulations in "urbanized areas," resulting in additional urban sprawl. This is likely to result in more detrimental impact on streams as rural land is cleared and septic tanks constructed.





TEXAS CITIES COALITION ON STORMWATER

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OVERVIEW OF EPA'S FINAL PHASE II STORM WATER RULE

What cities are affected?

- All cities located in Urbanized Areas (1990 or 2000 census) will be automatically required to obtain permits for discharges from their municipal separate storm sewer systems (MS4s).
- Cities outside of Urbanized Areas with populations greater than 10,000 and population densities greater than 1,000 per square mile may be required to obtain permits for discharges from their MS4s. The permitting authority (TNRCC) must develop and apply criteria, by December 2002, to determine whether these cities must obtain permits.
- Other cities as designated by TNRCC or EPA for water quality reasons.

Are there any waivers or exemptions?

- TNRCC may waive permit coverage for cities with populations less than 1,000 if the city is not contributing substantially to the pollutant loadings of a physically interconnected MS4 and if the receiving stream has not been identified as being impaired by urban runoff. Generally, the TNRCC will be required to establish that a city cannot use this waiver.
- TNRCC may waive permit coverage for cities with populations less than 10,000 if the TNRCC has evaluated all waters of the United States that receive a discharge from the city, and if the TNRCC has determined that storm water controls are not needed based on wasteload allocations. Generally, the city will be required to prove their eligibility for this waiver.

What are the deadlines under the rule?

- October 2000 - EPA issues model permit and "tool box" with fact sheets, guidances, and menu of BMPs.
- December 2000 - TNRCC modifies its NPDES programs if no statutory changes are required.
- October 2001 - EPA issues guidance on measurable goals.

- December 2001 - TNRCC modifies its NPDES programs if statutory changes are required.
- December 2002 - TNRCC issues general permit. TNRCC designates small cities not located in urbanized areas based on criteria developed by the TNRCC.
- March 2003 - Regulated small cities submit permit applications or NOIs; Small City-owned industrial sources (landfills, wastewater treatment plants, vehicle shops) submit permit applications or NOIs.
- March 2008 - Regulated small cities' programs fully developed and implemented.

What permit options are available?

- General permit implementing EPA's six minimum measures including ordinances to regulate construction sites, development and illicit discharges.
- Alternative individual permits for those small cities that refuse to waive their constitutional rights by accepting a permit mandating the adoption of local ordinances to regulate activity that is already subject to EPA permit requirements. These permits require the submission of a two-part permit application containing a significant amount of monitoring data.

What will the general permit require?

- Will contain at least the following six minimum control measures.
- Public education and outreach – A permittee must develop a program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps the public can take to reduce pollutants in storm water discharges. A measurable goal for this control measure could be the achievement of a certain percentage reduction in litter or animal waste detected in discharges.
- Public involvement and participation – A permittee must, at a minimum, comply with State, and local public notice requirements. A measurable goal for this control measure could be obtaining a certain percentage of community to participate in community clean-ups.
- Illicit discharge detection and elimination – A permittee must develop, implement and enforce a program to detect and eliminate illicit discharges. A measurable goal for this control measure could be getting a certain percentage of households to participate in household hazardous waste collection events.
- Construction site storm water runoff control - A permittee must develop, implement and enforce a program to reduce pollutants in any storm water runoff from construction activities that result in land disturbance of greater than or equal to one acre. A measurable goal for this control measure could be obtaining an increase in the numbers of sensitive aquatic organisms in local waterbodies.

- Post-construction storm water management – A permittee must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre. The program must ensure that controls are in place that would prevent or minimize water quality impacts. The permittee must develop and implement strategies which include a combination of structural and/or non-structural best management practices, use an ordinance to address post-construction runoff, and ensure adequate long-term operation and maintenance of BMPs. A measurable goal for this control measure could be the achievement of a reduced percentage of new impervious surfaces associated with new development projects.
- Pollution prevention/good housekeeping for municipal operations – A permittee must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance. A measurable goal for this control measure could be obtaining a certain percentage reduction in floatables discharged.

How quickly do these programs have to be developed?

- The TNRCC can give a permittee up to five years from the date of permit issuance to fully develop and implement a storm water program.

What monitoring, recordkeeping and reporting will be required?

- TNRCC will be allowed to require monitoring, but EPA is not requiring any monitoring of storm water runoff.
- Records are required to be kept for at least 3 years and must be made available to the public upon request.
- Permittee must submit an annual report that includes: (1) status of compliance with permit conditions, and assessment of the appropriateness of the identified BMPs and progress towards achieving identified measurable goals; (2) results of information collected and analyzed, including monitoring data, if any; (3) a summary of the storm water activities to be undertaken during the next year; (4) changes in any identified BMPs or measurable goals; and (5) notice that the permittee is relying on another governmental entity to satisfy some of the permit obligations.

How much will it cost to comply with this rule?

- EPA estimates that it will cost small cities approximately \$9.16 per household per year to comply with the rule.
- For comparison purposes, the City of Austin spends about \$22.70 per capita per year (without considering capital costs) on their storm water program.

**TOWN OF ADDISON
PAYMENT AUTHORIZATION MEMO**

DATE: 10-27-99

Claim # _____

Check \$ 1100.00

Vendor No. _____
 Vendor Name Mathews & Freeland, L.L.P
 Address P.O. Box 1568
 Address Austin, TX
 Address _____
 Zip Code 78768-1568

INVOICE # OR DESCRIPTION	FUND	DEPT	OBJ	PROJ	SAC	AMOUNT
	(00)	(000)	(00000)	(00000)	(000)	(\$000,000.00)
<u>Letter from Coalition</u>						<u>1100.00</u>

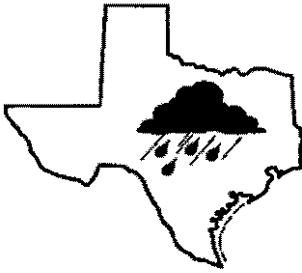
TOTAL \$ 1100.00

EXPLANATION On 2-18-98 the Town agreed to join a Texas Cities Coalition on Stormwater. The contribution level was set at \$0.10 per capita. Calculation of amount due: Estimated population = 11,000 x \$0.10 = \$1100.00



 Authorized Signature

 Finance



TEXAS CITIES COALITION ON STORMWATER

PO Box 1568 Austin, Texas 78768-1568
(512) 404-7800 Fax (512) 703-2785

October 18, 1999

James C. Pierce, Jr., P.E., DEE
Assistant City Engineer
City of Addison
P.O. Box 9010
Addison, TX 75001-9010

Re: Contributions

Dear Mr. Pierce:

According to the Coalition's records, your city requested to participate in the Texas Cities Coalition on Stormwater, but we have not yet received your contribution. On behalf of the Steering Committee, I urge you to make this payment now to ensure that the Coalition can continue its work on the development of rational and cost-effective stormwater regulatory programs on both the state and federal levels.

To date, the Coalition has made great strides toward achieving its goals. The Coalition has submitted comments to EPA on its proposed Phase II storm water rule. Also, the Coalition successfully worked with the TNRCC to make necessary improvements in the TNRCC's storm water rule. However, there remains much that the Coalition needs to do. EPA's final Phase II storm water rule will be promulgated by October 29, 1999. The Coalition needs additional funds to be able to thoroughly analyze and explain the rule for the participating cities. If necessary, the Coalition needs funds to be able to lay the foundation for any legal challenge to EPA's final rule. Additionally, numerous bills have been filed in Congress to revise the existing storm water program. The Coalition needs additional funds to participate in the development of any new storm water program.

As you should recall, the Steering Committee, at its initial meeting, decided to set the contribution level for participating in the Coalition at 10¢ per capita. These contributions are deposited directly into a client trust account established on behalf of the Coalition by the law firm of Mathews & Freeland, L.L.P. All work authorized to be performed on the Coalition's behalf by its consultants is billed on a time and materials basis, and all bills are reviewed and approved by me, as Chairman of the Steering Committee. If your city does not want to pay its contribution, please let us know so that we can remove your city from the list of Coalition participants.

Mr. Jonathan Graham

October 18

Page 2

Please make payment of your contribution to Mathews & Freeland, L.L.P., at the Coalition's address shown on the preceding page as soon as possible to ensure that the Coalition's efforts will continue. If you need a Federal Tax ID number for your payment, please use 74-2862896. If you have any special billing needs (such as an invoice for a specific amount), please call Joe Freeland at the number shown on the preceding page. If you have any questions, please feel free to call me at (254) 298-5674 or Jim Mathews or Joe Freeland at the number shown on the preceding page.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Graham". The signature is written in a cursive style with a large, looping initial "J".

Jonathan Graham
City Attorney, City of Temple
Chairman, Texas Cities Coalition on Stormwater

TEXAS PHASE II STORM WATER CITIES PARTICIPATION AGREEMENT

The City listed below agrees to participate in a joint effort of Texas cities to address legal and regulatory issues relating to the Environmental Protection Agency's Phase II Storm Water Program. This joint effort will be led by a Steering Committee made up of representatives of some of the participating cities. The City authorizes the law firm of Mathews & Freeland, L.L.P. to perform legal and regulatory services on behalf of the group at the direction of the Steering Committee. The City's contribution to this joint effort will be determined by the Steering Committee, but this contribution will not exceed ten cents (10¢) per capita.

James C. Pierce, Jr.
Signature of Authorized Representative
2-18-98
Date
James C. Pierce, Jr., P.E., DEE, Assistant City Engineer
Printed Name - Title

CITY: Town of Addison
CONTACT PERSON/POSITION: James C. Pierce, Jr., P.E., DEE
Assistant City Engineer
ADDRESS: P.O. Box 9010
Addison, TX 75001-9010
PHONE/FAX/EMAIL: 972-450-2879; Fax 972-450-2834
jc.pierce@flash.net

Return this form by mail or fax by February 20, 1998*, to the following address:

Mathews & Freeland, L.L.P. Fax: (512) 703-2785
P.O. Box 1568
Austin, Texas 78768-1568

* By returning this form before February 20, 1998, you will be able to receive a copy of a Briefing Paper and Draft Comments, which will be circulated to Participating Cities prior to the scheduled March 2, 1998, Steering Committee meeting. However, failure to return this form by February 20, 1998, will not preclude your ability to subsequently join the group.

