



Texas Commission on Environmental Quality  
*Protecting Texas by Reducing and Preventing Pollution*  
NONPOINT SOURCE PROGRAM

## **Funding Eligibility for TCEQ 319 Grant Program Projects in MS4 Jurisdictions**

### **Background**

Under Section 319 of the Clean Water Act, states receive federal grant funding that supports a wide variety of activities including technical assistance, financial assistance, education, training, technology transfer, implementation and monitoring to assess the success of specific nonpoint source (NPS) projects. NPS funds can be used, with certain limitations as discussed below, to assist in the management of urban runoff. Integrated together, the NPS Program and the Texas Pollutant Discharge Elimination System (TPDES) permit program can be very effective catalysts for action and water quality improvement.

### **What is an MS4?**

A municipal separate storm sewer system (MS4) is a conveyance or system of conveyances (including sewers, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, storm drains) that is:

- Owned or operated by a public entity (for example, a state, city, town, county, district) that has jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes and discharges into U.S. water bodies
- Not connected to a wastewater collection system, wastewater treatment plant, or publicly owned treatment works (sewage treatment plant)
- Designated or used to collect or convey storm water

Storm water runoff often comes into contact with pollutants, and is then commonly transported through MS4s and often discharged untreated into local water bodies. In order to prevent harmful pollutants from being washed or dumped into an MS4, some MS4 operators must obtain a TPDES permit and develop a storm water management program.

### **How do I know if my project is within a permitted MS4 area?**

Regulated MS4 areas are based on urban population and the rules were issued in two phases:

- Phase I, issued in 1990, required *medium* and *large* cities or certain counties with populations of 100,000 or more, based on the 1990 U.S. Census, to obtain TPDES permit coverage for their storm water discharges.
- Phase II, issued in 1999, requires MS4s to obtain TPDES permit coverage for their storm water discharges if they are fully or partially located within an urbanized area (UA) as defined by the U.S. Census Bureau. UAs have total residential populations of 50,000 or more, including a “core” of one or more census blocks with a residential density of at least 1,000 people per square mile and any census blocks surrounding a “core” of these census blocks with at least 500 people per square mile - see [http://www.census.gov/geo/www/ua/ua\\_2k.html](http://www.census.gov/geo/www/ua/ua_2k.html), Phase II also includes any small MS4s outside the UAs that are designated by the TCEQ as regulated Phase II MS4s. UAs are updated during each decennial Census, so the Phase II MS4 regulations include MS4s located within the 2000 UAs as well as subsequent UAs.



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Generally, Phase I MS4s are covered by individual permits and Phase II MS4s are covered by a general permit. Each regulated MS4 is required to develop and implement a storm water management program (SWMP) to reduce the contamination of storm water runoff and prohibit illicit discharges.

If you need further assistance determining if your project is located within an MS4 area, the TCEQ Storm Water Team is available to answer questions at (512) 239-4671, or by email at [swgp@tceq.texas.gov](mailto:swgp@tceq.texas.gov). Or visit TCEQ Storm Water Permits website @ [http://www.tceq.texas.gov/nav/permits/sw\\_permits.html](http://www.tceq.texas.gov/nav/permits/sw_permits.html).

### **How is the Section 319 grant program related to the MS4 permit program?**

The Section 319 program and the MS4 program are both aimed at reducing pollutant loading into surface waters. However, there are some important distinctions:

#### ***Purpose of Program:***

- **MS4 Program:** Regulatory – Discharges from storm water conveyance systems are “point sources” and are covered under a general or individual permit.
- **319 Program:** Assistance – The 319 program supports watershed planning and implementation of NPS best management practices (BMPs) through grants.

#### ***Scope of Program:***

- **MS4 Program:** Effective in urban and suburban areas.
- **319 Program:** Carried out in urban, suburban, rural, and agricultural areas.

### **Can I use Section 319 grant funds to implement MS4 permit requirements?**

*No.* 319 grant funds cannot be used to pay for the storm water pollution controls required in an MS4 permit. However, 319 funds can potentially be used to fund storm water management activities that go **above and beyond** permit requirements.

When you are developing or updating your SWMP for your MS4 permit, you must make sure that any BMPs that are above and beyond the permit requirements are either not included at all in the SWMP or that you clearly indicate that the BMP you are describing is being implemented outside of the scope of the permit requirements.

### **What does it mean to go *above and beyond* the requirements of a permit?**

There are three ways to ensure that a proposed BMP or activity is above and beyond permit requirements:

- Extend the educational activity or other BMP beyond the MS4 boundary so it focuses on the entire watershed.
- If you want to install a BMP similar to one already listed in the MS4 permit or your SWMP, install one that reduces nonpoint source pollution at a greater rate than the permit requires or the SWMP includes.
- Install a BMP that is not listed in the SWMP or the permit.



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### **What is the difference between retrofits, redevelopment, and new construction?**

Retrofits are opportunities to add a water quality benefit to an existing site, structure, or BMP. In order for a retrofit to be eligible for 319 funds, the retrofit needs to include features that improve water quality. Examples of retrofits include adding a rain garden or bioswale to a property, installing rain barrels at a house, or turning a dry pond into a constructed wetland. Most retrofits are outside of the scope of a SWMP and are potentially eligible for 319 funding.

Redevelopments are alterations of a property that change a site or building in such a way that there is disturbance of one acre or more of land.

New construction is similar to redevelopment except that the property lacks any buildings or infrastructure when the alterations begin. Redevelopments and new constructions are subject to storm water control provisions of the MS4 permit and are only eligible for 319 funds if the proposed BMP goes above and beyond the permit requirement.

### **What is the difference between storm water runoff before it enters the MS4 conveyance system, storm water in the MS4 conveyance system, and storm water that has left the MS4 conveyance system?**

BMPs that treat or control storm water before it enters the MS4 storm water conveyance system are potentially eligible for 319 funding.

BMPs that treat storm water that has already entered the MS4 conveyance system generally are not eligible for 319 funding unless the above and beyond criteria are met. Similarly, a BMP placed at the end of the conveyance system (such as a detention pond) to manage storm water in the MS4 before it is discharged into a receiving water body, would generally be considered a point source control and would not be eligible for 319 funding unless the BMP was designed and operated to achieve water quality objectives in excess of those required in the MS4 permit.

BMPs that address storm water after it has left the MS4 conveyance are potentially eligible for funding if: (1) they are designed and operated to achieve water quality objectives in excess of those required in the MS4 permit or (2) they address water quality problems created as the storm water flows from the MS4 conveyance system into the receiving water body, separate from what it carried while inside the MS4.

### **Where do I find out what storm water pollution controls are required under the applicable MS4 permit?**

In Phase II MS4 permits, there are six minimum control measures required. The minimum control measures (MCMs) are spelled out in the Texas General Permit TXRO40000 under Part III, Section A; although these MCMs may be revised as subsequent renewal permits are issued. Individual MS4 permits (i.e., for Phase I, medium or large MS4s) generally include additional control measures, and those are described in each individual MS4 permit.

The six minimum control measures currently required for small MS4s (i.e., Phase II) include:

1. Public education and outreach
2. Public participation/involvement
3. Illicit discharge, detection and elimination
4. Construction site runoff control



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5. Post-construction site runoff control; and
6. Pollution prevention/good housekeeping

For each MCM, there is a list of practices and/or BMPs that the MS4 entity is required to implement to control storm water. For the most part, Section 319 funds cannot be used to construct facilities or carry out activities required as part of the minimum control measures.

**How do I find more information about MS4 permits?**

If you need further assistance determining if your project is located within an MS4 area, the TCEQ Storm Water Team is available to answer questions at (512) 239-4671 or by email at [swgp@tceq.texas.gov](mailto:swgp@tceq.texas.gov). Or visit TCEQ Storm Water Permits website @ [http://www.tceq.texas.gov/nav/permits/sw\\_permits.html](http://www.tceq.texas.gov/nav/permits/sw_permits.html). You may also contact the Small Business and Local Government Assistance Hotline at (800) 447-2827.

**Who can I talk to about whether my specific project would be eligible for 319 funds in an MS4 area?**

Questions about BMPs in MS4 areas can be addressed by the TCEQ by e-mail at [nps@tceq.texas.gov](mailto:nps@tceq.texas.gov) or by telephone at (512) 239-6682.