

Achieving Community Tasks
Successfully
Bayou City Waterkeeper
Coalition for Environment, Equity, &
Resilience

Healthy Port Communities Coalition
Mi Familia Vota
Northeast Action Collective
Sierra Club, Houston Regional Group
Super Neighborhood #48
-Trinity/Houston Gardens

Texas Campaign for the Environment
Texas Environmental Justice
Advocacy Services
Turtle Island Restoration Network
West Street Recovery

February 15, 2024

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A copy has been provided to:

Representatives from the City of Houston, Harris County, Harris County Flood Control District, and U.S. Congress (see attached distribution list)

RE: Request for major amendment of MS4 permit for city of Houston, Harris County, and Harris County Flood Control District (TPDES permit no. WQ0004685000)

Dear Executive Director Keel and Regional Administrator Nance:

We request a major amendment to Texas Pollutant Discharge Elimination System (“TPDES”) permit no. **WQ0004685000**, the Municipal Separate Storm Sewer System (“MS4”) permit for the city of Houston, Harris County, and Harris County Flood Control District (“permittees”).

Through this permit, since 1998, the three co-permittees have shared responsibility for stormwater pollution management across much of the greater Houston region.¹ This permit was last issued in 2009 and expired five years later. Rather than meaningfully update the permit through amendments, the Texas Commission on Environmental Quality (TCEQ) administratively continued the permit in 2014, and again in 2019. To our knowledge, the permit has not been meaningfully updated since 2003—more than 20 years. This has led to inadequate storm water management across our region, as evidenced by: trash clogging parts of our bayous, our waterways listed as impaired and unsafe for recreation, and heightened risks during flooding, as people seek safety and wade through toxic water.

The permit is next up for renewal this year, and no notice of intent to renew or update the permit has been issued. As explained in this letter, a major amendment to this permit is needed to:

¹ The Texas Department of Transportation was a co-permittee, but now operates its stormwater management program under [TCEQ permit WQ0005011000](#).

1. reduce pollution from trash, runoff, and industrial sources into our bayous,
2. increase investment in green infrastructure across this region,
3. enable community input and allow the permittees to learn from and incorporate best practices related to green infrastructure investment identified by EPA,
4. complement ongoing efforts by the permittees to address illegal dumping, invest in green infrastructure and drainage, and reduce sanitary sewer overflows.

With support from EPA Region 6 and the permittees, TCEQ must begin the major amendment process for this permit. This request comes with the support of 133 (and counting) [petition signers](#) across Houston and Harris County, along with the 13 organizations and individuals listed below as signatories alongside Bayou City Waterkeeper.

Thank you,

Bayou City Waterkeeper

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1. TCEQ should require a major amendment of the Houston MS4 Permit

Under the Clean Water Act, National Pollutant Discharge Elimination System (“NPDES”) permits are issued “for fixed terms not exceeding five years.” *33 U.S.C. § 1342(b)(1)(B)*. The State of Texas has had federal regulatory authority to administer the NPDES program in Texas since 1998 through the TPDES program.² Further, the TCEQ has general jurisdiction over the “state’s water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning.” *Tex. Water Code § 5.013(a)(3)*.

Under the federal CWA regulations, TPDES permits can remain in effect if the permittees submit a complete and timely application prior to the expiration to the TCEQ, and, through no fault of the permittee, the TCEQ does not issue a new permit prior to the expiration of the existing permit. *40 C.F.R. § 122.6*. If, as here, a state is authorized to administer the NPDES program, the state may continue to authorize the permit pending renewal until the effective date of the new permit, if State law allows. *40 C.F.R. § 122.6(d)*. But under the Texas Administrative Code, “[a] change in a term, condition, or provision of a permit **requires** an amendment.... If the executive director determines that an amendment is justified, the amendment will be processed under subsections (d) and (f) of this section.” *Tex. Admin Code § 305.62(a)* (emphasis added).

Under subsection (d), moreover, “If good cause exists, the executive director may initiate and the commission may order a major amendment. . . and the executive director may request an updated application if necessary.” *Tex. Admin Code 305.62(d)*. “A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit.” *Tex. Admin Code § 305.62(c)(1)*. “Good cause” includes: “material and substantial changes to the permitted facility or activity which justify permit conditions that are different or absent in the existing permit,” as well as “information, not available at the time of permit issuance, is received by the executive director, justifying amendment of existing permit conditions.” *Tex. Admin. Code § 305.62(d)(1)-(2)*. Changes in relevant legal standards and regulations also offer “good cause” for a major amendment. *Tex. Admin. Code § 305.62(d)(3)*.

As explained in further detail immediately below, material and substantial changes to the permitted activity, as well as new information, support a major amendment: Extensive trash pollution, lack of green stormwater infrastructure requirements, and need for more rigorous industrial regulation and monitoring individually and collectively represent the “material and substantial changes” to Houston’s stormwater issues since the permit’s last administrative continuance in 2019 and last substantive update in 2009. *See Tex. Admin. Code § 305.62(d)(1)-(2)*. A major amendment can also ensure that the permit incorporates updated legal standards and regulations since the last updates fifteen years ago. *See Tex. Admin. Code § 305.62(d)(3)*.

We urge TCEQ and the permit holders to work collaboratively on a major amendment to the Houston MS4 permit for the reasons that follow:

² TCEQ, What is the “Texas Pollutant Discharge System (TPDES)”, https://www.tceq.texas.gov/permitting/wastewater/pretreatment/tpdes_definition.html (last visited Apr. 11, 2022)

a. Increased trash and industrial pollution in waters across Houston and Harris County present “good cause” for a major amendment

Access to clean water is a fundamental human right and is critical for the health and wellbeing of all Houston and Harris County residents. Increased trash and industrial pollution in local waters threaten this vital resource,³ with high levels of contaminants detected in many regional waterways.⁴ This pollution not only degrades the quality of our drinking water supply, but also harms wildlife habitats and ecosystems. The Clean Water Act’s goal of “fishable, swimmable, drinkable” waters is not being met, and a new report from Amnesty International concludes that the health impacts of pollution in the Houston Ship Channel create a human rights concern.⁵

The pollution levels present more than enough evidence of “good cause” for pursuing a major amendment to strengthen clean water protections for the benefit of all local communities. Safeguarding our water against further contamination will help ensure this precious shared asset can be enjoyed for generations to come.

b. The permit can address trash pollution through improved structural controls and clearer language

The current Houston MS4 permit lacks adequate requirements for structural controls to reduce trash and floatables pollution. The section on structural controls only states that controls must be operated to “reduce the discharge of pollutants to the maximum extent practicable.”⁶ This language is too vague given the extensive trash problem across Houston’s waterways.

The permit should specifically require the installation of structural controls aimed at preventing trash pollution. Examples of these controls include catch basin inserts, end of pipe nets, floating trash traps, and vortex separation systems.⁷

Along with requiring these controls, the Houston MS4 permit should detail inspection, maintenance, and reporting requirements to ensure the controls remain effective. For example, the permit could require inspecting catch basins *at least 4 times per year* like the Washington D.C. and Tampa MS4 permits,⁸ instead of twice as currently required; and, require reporting on the amount and type of trash collected using a standardized metric like *wet weight* used in the Washington D.C. permit.⁹ Additionally, the permit should require extra structural controls at locations prone to generating significant trash, like around major public events.

³ See report [Coalition Sues EPA Over Unregulated Water Pollution From Oil Refineries, Plastics Plants, and Other Industries - Healthy Gulf](#).

⁴ See Texas Commission on Environmental Quality. *2022 Texas Integrated Report - Texas 303(d) List (Category 5)*. <https://www.tceq.texas.gov/downloads/water-quality/assessment/integrated-report-2022/2022-303d.pdf>.

⁵ Amnesty International, *The Cost of Doing Business? The Petrochemical Industry’s Toxic Pollution in the USA*, <https://www.amnesty.org/en/documents/AMR51/7566/2024/en/>.

⁶ See [2021 Annual Report, TPDES Permit No. WQ0004685000](#).

⁷ EPA, *Decision Rationale Totally Maximum Daily Loads of Trash For the Anacostia River Watershed Montgomery and Prince George’s Counties, Maryland and the District of Columbia*, Sep. 21, 2010, https://doee.dc.gov/sites/default/files/dc/sites/ddoe/publication/attachments/The_TMDL_Decision_Rationale.pdf

⁸ See [D.C. MS4 Permit at 37](#); See [Tampa MS4 Permit at 13](#).

⁹ [D.C. MS4 Permit](#).

The structural controls section of the Houston MS4 permit must be expanded to mandate proven methods of preventing trash from entering waterways. The updated permit should combine clear requirements for implementing, maintaining, and monitoring structural controls to address Houston's extensive trash problem.

c. The permit can address industrial pollution through clearer requirements around pollution prevention and implementing best management practices

The current permit lacks concrete requirements for industrial and high-risk facilities to implement controls and best management practices (BMPs) to prevent stormwater pollution. The permit should incorporate clearer expectations around pollution prevention, including requiring specific structural controls like oil-water separators, ponding, and filtration devices.¹⁰ It should mandate that facilities implement BMPs tailored to their industrial sector, like spill prevention and containment plans.¹¹ Industry plants along the Houston Ship Channel should be explicitly required to prioritize controls that keep toxic chemicals out of stormwater, given their proximity to many impaired waters¹² and vulnerability to sea-level rise and storm surge.¹³

The permit should also expand inspection and enforcement terms for industrial sites. It should create a flexible risk-based inspection schedule, rather than the current approach of inspecting higher risk sites annually. Inspections should thoroughly document site conditions and track BMPs via a database.¹⁴ Enforcement protocols should clearly compel timely correction of deficiencies.

Finally, the permit should incorporate more robust staff training on inspecting industrial facilities and illicit discharges. It should also require public education on stormwater pollution prevention targeting sector-specific commercial and industrial audiences.

d. A major amendment will enable the Houston MS4 permit to incorporate updated guidance on green infrastructure

The federal Clean Water Act defines green infrastructure as “the range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspire stormwater and reduce flows to sewer systems or to surface waters.” *33 U.S.C. 1362(27)*. Green infrastructure provides important water quality benefits compared to traditional “gray” infrastructure. Specifically, green infrastructure is effective at removing pollutants, recharging groundwater, mitigating flooding, reducing urban heat island effects, creating wildlife habitats, and enhancing community

¹⁰ See Environmental Protection Agency. (February 2021). *Industrial Stormwater Fact Sheet Series, Sector C: Chemical and Allied Products Manufacturing and Refining*.
https://www.epa.gov/sites/default/files/2015-10/documents/sector_c_chemical.pdf.

¹¹ [D.C. MS4 Permit](#).

¹² See Texas Commission on Environmental Quality. *2022 Texas Integrated Report - Texas 303(d) List (Category 5)*.
<https://www.tceq.texas.gov/downloads/water-quality/assessment/integrated-report-2022/2022-303d.pdf>.

¹³ See, e.g., [NOAA, Sea Level Rise Viewer](#).

¹⁴ See, e.g., [NYC MS4 Permit](#) (“The use of a geo-locational database system is highly recommended.”)

aesthetics and recreation.¹⁵ Green infrastructure can also be a cost-effective approach for permittees to meet their permit obligations.¹⁶

In 2022, the EPA issued a Compendium of MS4 Permitting Approaches focused on green infrastructure, with sample MS4 permitting language intended to make incorporating green infrastructure as straightforward as possible.¹⁷ The TCEQ must use the suggested terms as their baseline and work further with the permittees to adapt them to the needs of Houston and Harris County residents.

At a minimum, to promote green infrastructure, we recommend the permit:

- Require education for the public and developers on the benefits of green infrastructure.
- Direct permittees to assess and update local rules to identify and remove barriers to green infrastructure implementation.
- Encourage the consideration of green infrastructure in new development and redevelopment approval processes.
- Establish post-construction stormwater volume control standards using green infrastructure.
- Set a goal for green infrastructure projects in impaired waters to reduce key pollutants of concern.¹⁸

Additionally, we suggest a general provision requiring permittees to evaluate opportunities for green infrastructure projects in impaired waters. This review would cover all aspects of stormwater management under the permit, including public outreach, mapping, construction site controls, post-construction requirements, municipal operations, industrial and commercial sites, and trash and debris control. A corresponding reporting requirement would track progress made to implement these green infrastructure opportunities over the permit term.

e. A major amendment will also allow the Houston MS4 Permit to include updates to strengthen community input and otherwise strengthen permit terms

Through discussions with community leaders and organizations, reviewing local water quality data, and studying model stormwater programs nationwide, we have identified other initial areas needing improvement in the Houston MS4 permit:

- Expand public education and outreach requirements to increase awareness of stormwater pollution issues and solutions.¹⁹
- Set quantitative trash reduction goals and mandate structural controls like inlet filters to address floatable/gross pollution.

¹⁵ [Compendium of MS4 Permitting Approaches: Green Infrastructure](#), 1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Ibid.*, 2-3.

¹⁹ See EPA MS4 Permit Improvement Guide (2010), https://www3.epa.gov/npdes/pubs/ms4permit_improvement_guide.pdf, 18-20.

- Increase monitoring, reporting, and corrective actions at industrial facilities discharging stormwater contamination.
- Establish green infrastructure performance metrics, volume control standards, and local barrier removal targets.
- Documentation, tracking, and transparency procedures for compliance monitoring and enforcement.

Incorporating revisions focused on these priority areas will directly tackle pressing pollution concerns raised by the community. Clear, measurable, and enforceable permit language will also bolster accountability and ability to gauge whether program improvements are delivering real water quality benefits.

f. The TCEQ and permittees should engage in robust engagement to incorporate additional updates to address community needs

We recommend more robust community engagement as part of the permit amendment process to identify additional permit term updates needed to address needs identified by communities. The Jemez Principles for Democratic Organizing include the principle that relevant voices of affected people must be heard in policy decisions affecting them.²⁰

With this principle in mind, outreach should focus on environmental justice (EJ) neighborhoods disproportionately impacted by stormwater pollution. The permittees should make a good-faith effort to involve EJ communities *before* the permit amendment decision is final.

This engagement should include hosting workshops in areas heavily impacted by trash and industrial pollution, including neighborhoods near the Houston Ship Channel, in the Third Ward, and Southwest Houston. Workshops should present key information on the MS4 program and invite input on priorities and be made accessible to speakers of the region’s key languages, including English, Spanish, Vietnamese, and other languages. Facilitating two-way dialogue and centering community perspectives in the updated permit is essential to addressing long-standing environmental justice concerns.

2. Harris County, the City of Houston, and Harris County Flood Control District should express their strong support for an updated MS4 permit

Since the last administrative continuance in 2019, the City, County, and Flood Control District have undertaken new programs and investments that may partially improve some of the underlying stormwater management problems outlined in this letter. Updating the Houston MS4 permit can maximize the success of these ongoing efforts, while also more broadly improving stormwater management across the region through renewed requirements and stronger accountability mechanisms.

For example, in 2023, to resolve a federal civil rights complaint, the City announced new investments to address illegal dumping and maintain ditches, which also will reduce trash

²⁰ See [Jemez Principles for Democratic Organizing](#), Southwest Network for Environmental and Economic Justice (SNEEJ), Jemez, New Mexico, Dec. 1996.

pollution in local water bodies downstream.²¹ The updated permit could implement structural controls identified through the city’s illegal dumping control program, One Clean Houston, with associated inspection, cleaning, and reporting requirements to provide data and accountability.²²

In 2021, the City entered a consent decree with the United States and State of Texas, which will reduce sanitary sewer overflows entering local waterways without treatment, both directly and through stormwater runoff.²³ The permit should require coordination between the stormwater and wastewater programs to minimize contamination from sanitary sewer overflows (SSOs) and maximize the benefits of investment under the consent decree, and this should be coordinated further with ongoing One Water planning within the city of Houston.

Additionally, over the last 10 years, Harris County Flood Control District has continued to invest in green infrastructure projects across the region, and in 2019, the City adopted incentives for green infrastructure development.²⁴ The permit could establish volume reduction standards for green infrastructure or minimum project goals to further encourage these types of sustainable stormwater controls.²⁵ Requirements to assess local barriers to implementation would also complement green infrastructure investment by addressing permitting, codes, and other obstacles.

This patchwork reflects real interest within the County and City to address MS4 issues and underlines the need for a more comprehensive update to the MS4 program. Updating the Houston MS4 permit also presents a chance to formally codify best practices and successful initiatives into enforceable requirements. Ensuring continued resource allocation and expanding promising efforts through permit obligations can lead to greater and more consistent implementation over time. Requirements can adapt as new issues emerge or innovative solutions arise over subsequent permit terms.

3. Through its oversight role, EPA may request TCEQ to initiate an amendment, review and object to the draft permit, and ensure compliance with relevant law

In 1998, the EPA authorized Texas to develop and implement the Texas Pollutant Discharge Elimination System program. This delegation requires TCEQ to follow its own regulations implementing the Clean Water Act and reserves several important oversight roles for the EPA. *See* Memorandum of Agreement Between the TCEQ and the EPA, Region 6 Concerning the National Pollutant Discharge Elimination System (“2020 MOA”).

EPA has expressly retained the right to review draft MS4 permits, 2020 MOA § IV(C)(1)(k), and object to draft permits. *Id.* § IV(C)(3). EPA, moreover, has the power to ask TCEQ to initiate procedures to amend a permit. *Id.* § III(A)(17). EPA is responsible for verifying that the TPDES program is consistent with all federal regulations, EPA policies and guidance, all requirements of

²¹ See [Voluntary Resolution Agreement Between the United States of America and The City of Houston](#).

²² See [City of Houston One Clean Houston Initiative](#) (2023).

²³ See [Houston Consent Decree, City of Houston](#). See also, [Bayou City Waterkeeper’s Justice in the Sewers Hub](#).

²⁴ See [Harris County Low Impact Development & Green Infrastructure Design Criteria for Stormwater Management](#) (2011). See also [Houston Incentives for Green Development](#) (2019).

²⁵ See [Compendium of MS4 Permitting Approaches: Green Infrastructure](#), 2-3.

its memorandum of agreement with the TCEQ, TCEQ CWA §106 program grants, and applicable regulations.

For the reasons raised in this letter, we ask EPA Region 6 to ask TCEQ to initiate a major amendment of the Houston MS4 Permit, if TCEQ does not independently choose to do so on its own. *See* 2020 MOA § III(A)(17).

EPA also must ensure that TCEQ is administering the TPDES program in compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964. 2020 MOA § III(A)(23). The Title VI complaint resulting in an illegal dumping settlement in the City of Houston potentially has a relationship with the issues raised in this letter and underscores the need for EPA to hold TCEQ accountable to moving forward with a major amendment.²⁶

Conclusion

Updating this Houston MS4 permit offers a chance to tackle region-specific challenges, respond to community concerns, and bring stormwater management across the region into the 21st century. By making improvements in the clarity and specificity of the permit, especially in areas like trash management, industrial discharges, green infrastructure, and enforceability, the updated permit can significantly contribute to safeguarding the region's waters and community well-being.

To move this process forward, we respectfully request:

1. For the TCEQ to require a major amendment of permit no. WQ0004685000.
2. If the TCEQ does not require a major amendment on its own, for the EPA to ask TCEQ to initiate a major amendment.
3. For all the governmental entities, including the permittees, to increase public education and awareness programs, particularly for communities most affected by the permit renewal, so they can learn more about the MS4 permit renewal and ask questions by the end of this year, in anticipation of the public comment period in 2024.
4. For the City of Houston, Harris County, and Harris County Flood Control District to voice strong support for properly updating this permit and embrace it as an opportunity to build on the substantial investment represented by the efforts named in section 2 above.

²⁶ See [Voluntary Resolution Agreement Between the United States of America and The City of Houston](#).

Distribution list:

City of Houston

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- Raymond Beckford, Stormwater Quality Manager, Harris County Engineering Department, raymond.beckford@eng.hctx.net

Harris County Flood Control District

- Dr. Tina Peterson, Executive Director, Harris County Flood Control District, tina.peterson@hcfcd.org

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