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Toby Baker,  
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Texas Commission on Environmental Quality  
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Sent via email

**RE: TCEQ Review of Manufactured Treatment Devices; Needed Clarity on Review Standards**

Mr. Baker:

The Stormwater Equipment Manufacturers Association (SWEMA) represents stormwater technology best management practice (BMP) manufacturers as well as affiliated associate and professional members. Our members strongly support stormwater management strategies and regulations that incorporate advances in stormwater science, encourage innovation, and successfully protect and restore receiving waters at an affordable cost for our communities.

Many of our members currently have stormwater manufactured treatment devices (MTDs) that have received a Texas Commission on Environmental Quality (TCEQ) Approval of Innovative Technology and are listed within the publication "Complying with the Edwards Aquifer Rules: Technical Guidance on Best Management Practices" (RG-348). Other members desire to introduce their technologies to the Texas marketplace. In order to do so, a manufacturer must show their technology meets the TCEQ criteria for MTDs. However, there is a paradox within the criteria that makes it difficult for many manufacturers to introduce their products to the market.

The current criterion includes an antecedent dry-period requirement between monitoring events of 72-hour minimum with less than 0.1 inches of rain. This requirement was established based on past industrial stormwater requirements and has been inappropriately transferred to research-based studies utilized for TCEQ approval of proprietary stormwater best management practices within the Edwards Aquifer. The current TCEQ review process requires field-based monitoring for urban stormwater BMPs under the now defunct 2003 Technology Acceptance Reciprocity Partnership (TARP) and the current Washington State Department of Ecology's Technology Acceptance Program – Ecology (TAPE) programs. However, both programs **only have a 6-hour antecedent period**. This is where the current policy conflict exists. The TCEQ program asks for a 72-hr antecedent period, but the field monitoring programs considered acceptable have instead a 6-hr requirement.



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As noted, the field studies following 2003 TARP and TAPE protocols are referred to within TCEQ's Innovative Technology program as acceptable for meeting the state requirements. Indeed, in the 6 updates to the TAPE program over the last 20 years, it has been widely recognized the 6-hour antecedent period is reflective of modern science and provides both researchers and regulators the needed assurance necessary to consider collected data valid. To date, there has been little justification for maintaining the 72-hr antecedent period other than noting it is from an old industrial compliance standard that is not applicable to urban stormwater BMP research studies.

SWEMA understands TCEQ staff is currently reviewing stormwater technologies currently approved under the Innovative Technology program. SWEMA feels such a review process offers an opportunity for TCEQ to review the overall program and update the review criteria to reflect the state of current BMP monitoring science. It is clear much has been learned about stormwater BMP monitoring has been learned since the initial Innovative Technology review program was created.

Our request to TCEQ is to update the Innovative Technology review program so that it aligns with the 2003 TARP and TAPE programs. The current science of urban stormwater BMP monitoring does not support the use of a 72-hour antecedent dry-period requirement.

SWEMA would like to formally request an opportunity to discuss this matter with TCEQ and develop a common ground solution that allows the Innovative Technology Review program to meet its goals while ensuring increased options to cost effectively meet local and regional stormwater quality requirements.

Additionally, SWEMA suggests TCEQ may want to consider aligning their Innovative Technology program with current efforts to develop the Stormwater Testing and Evaluation for Products and Practices (STEPP) program. This program is being built upon the successes of the New Jersey Department of Environmental Protection Laboratory Certification and WA Ecology's TAPE Field Programs. Until the program is fully operation the NJDEP and TAPE programs can be directly referenced for credible MTD performance and design information.

We look forward to receiving your response in the near future. In the meantime, we offer our deep appreciation for your consideration of this request.

Respectfully,

Greg Williams, PhD  
SWEMA President

Cc. Jay Holtz, SWEMA Government Affairs and Regulatory Committee Chair  
Derek Berg, Past SWEMA President  
Chris French, Government Affairs and Regulatory Committee Member