



Vojin Janjic
Division of Water Resources

12 August 2021

Dear Vojin-

Thank you for the opportunity to provide input regarding the proposed changes to Permit No. TNR100000, *STATE OF TENNESSEE NPDES GENERAL PERMIT for DISCHARGES of STORMWATER ASSOCIATED with CONSTRUCTION ACTIVITIES* dated 11 May 2021 and supported by *Rationale* dated 6 July 2021. These comments reflect the opinions of staff of the TDEC Division of Natural Areas (DNA), and we are most appreciative of their consideration by TDEC-DWR.

Although our regulatory authority rests with the Natural Areas Preservation Act and Rare Plant Protection and Conservation Act¹, we assist other land-management and regulatory agencies, conservation organizations, and individuals with determining proper management of plants and animals on Tennessee's protected lands and private properties. The rare species data maintained by the division are used by individuals, companies, and public agencies in the environmental permitting and review process.

Based on their education and experience, scientists with the division frequently are asked to provide informed comments during the review processes both for NPDES (CGP) and Aquatic Resource Alteration Permits (ARAP), and among DNA staff are the most likely to encounter permit-associated activities when afield.

Actions authorized under the NPDES program can have a marked impact on terrestrial landforms, of course, and we acknowledge the important role that TDEC-DWR plays in ensuring that proper guidance and controls are represented in our issued permits as well as how they are reflected on the ground. We appreciate the advances in environmental protection that have occurred via these permits over the last twenty years.

Numerous species with partial or fully aquatic life stages are represented as rare, legally protected species as documented in our NatureServe Biotics data system. This is our primary tool that – along with staff expertise – enables our timely review of the potential implications of NPDES CGPs in affected waterbodies. For the most part we, like TDEC-DWR, see siltation is the primary threat to the maintenance of sustainable populations of target organisms, including fish, crayfish, snails, mussels, insects, and amphibians. Discharges to occupied systems at sensitive times of the year – e.g., during breeding, brooding, and development – are the most problematic.

¹ The Division of Natural Areas possesses expertise and data on rare animals, but authority for listed wildlife in Tennessee rests with the Tennessee Wildlife Resources Agency.

Pollution prevention is key, for as noted in the current rationale, “[t]he ELGs do not include specific provisions for sampling, monitoring, inspections, or reporting.”

Per request of MS4s, DNA staff regularly interact with members of several MS4s, most especially in middle Tennessee - where we often find a common interest- insofar that protecting or enhancing rare species fits with the tenets of TDEC’s permit authorizing MS4 activities under the Clean Water Act (CWA) as delegated by the U.S. Environmental Protection Agency (EPA).

These relationships have resulted in prudent conservation measures for both plants and animals and have provided a greater water quality benefit to receiving streams. While we concur that “TDEC does not have the legal authority to enforce local ordinances under this permit [CGP],” referring applicants to the local MS4 is important in maintaining uniform communications and coordination of permit requirements stipulated at the state, county, or municipal level. Such as the MS4s operate only at the discretion of TDEC and the EPA, requiring applicants to submit information to MS4s does not necessarily imply that TDEC shall be responsible for enforcement of local ordinances.

We applaud TDEC-DWR consolidating and strengthening the language of the revised CGP and most especially for implementing electronic NOIs and reporting opportunities. Such should enable a much more thorough review of potential site frailties above and beyond the static forms maintained only in onsite SWPPP boxes. We recognize either system requires truthful reporting by responsible parties and does not negate the vast benefits of regular MS4 and TDEC-DWR staff inspections and enforcement. Satellite imagery has proven useful for internal assessments of potential issues.

Given the apparent difficulties with enforcement of existing prohibitions on simultaneous disturbance of > 50 acres under the current CGP, and the regularly demonstrated need for construction phasing, one could argue for even further reduced acreage under this provision. One well-documented site in the White House MS4 operated an active, open surface of less than 20 acres yet aerial imagery clearly suggested that silt was leaving the site (36.483912°, -86.661825°; Google Earth imagery dated 22 October 2019)

https://dataviewers.tdec.tn.gov/pls/enf_reports/f?p=9034:34031:::34031:P34031_SITE_ID:119328].

This site demonstrates that even the 50-acre limit is not necessarily protective or manageable, and as such we do not support increasing this limit. We recommend a thorough engineering review of the practicality of successful management of CGPs at the present limit. For any CGP, stamped as-built plans must be submitted both to TDEC-DWR and the local MS4 if such exists. We concur with TDEC-DWR that geospatial files are needed for a more thorough staff assessment of each project and its landscape implications. And we wholeheartedly agree with the prohibition on cationic polymers for sediment management. Properly implemented preventative measures should be utilized to achieve the same effect.

We do not support the proposed changes of the *Stabilization Practices* directives, e.g., reflective of “approximate” deadlines, but rather recommend further strengthening of this provision, providing specific timelines, and clear descriptions of any penalties. Such should be undertaken in concert and with reference to corollary MS4 requirements. We concur with the need for more rapid site stabilization as such relates to steep slopes, sinkholes, or fragile receiving bodies. Stakeholders well beyond the limits of disturbance exist along the receiving waters downstream of any given site. We support continuation of twice-weekly inspections of all sites and a greater oversight of the data reported, including staff inspections for corroboration.

Some thought and stakeholder engagement may be warranted in regard to *Post-Construction Stormwater*, especially in the case where no MS4 exists. TDEC has the authority to regulate pollutants in stormwater, and as such has a responsibility to follow the product of post-construction stormwater controls to demonstrate efficacy. If such is not to be part of the CGP then another permit medium may be necessary.

Per *Individual Permits*, “[g]iven the very high number of construction sites across the state, the intent of this provision is to focus Department resources on construction projects that have a greater potential to result in pollution of state waters.” Key to consider here is that state waters include intermittent, seasonal streams that may be of high resource value and high fragility given their location on the landscape. A poorly regulated 15-acre site could have as adverse an impact as a 50-acre site along perennial systems further downstream.

TDEC can learn a great deal from a contemporary review of selected CGP permit actions in a variety of landscapes. Such can demonstrate areas where administrative improvements can produce enhancements through adjustments to the current permit. Please reference [HD 16762](#), [TNR243909/TNR241842](#) and [TNR241055/ TNR240138](#). Collectively these CGPs resulted in the irreversible modification of over 110 acres and loss of at least 1000 LF of seasonally intermittent stream (35.958820°, -86.548210°; Google Earth imagery dated 19 April 2018). The same channel was demonstrated to support the state Endangered streamside salamander, *Ambystoma barbouri*, in a small remnant section immediately downstream of the authorized impacts.

Given this example, we believe that sites assessments remain a key tool in understanding the character of a site and can provide documentation of ecological resources prior to commencement of construction.

Again, I am deeply indebted to you and your colleagues for your tireless efforts to make TDEC-DWR CGPs as protective as they can be for Tennessee’s vast array of landscapes and environments. And on a personal note, I wish to relay staff gratitude for the copious opportunities we have had to work collectively.

We all are better for it.

With kind regards,

A handwritten signature in black ink that reads "Roger McLoy". The signature is written in a cursive, slightly slanted style.

Director of Conservation