

Addendum to Rationale
Including
Record of Comments and Responses
(Notice of Determination)

**General National Pollutant Discharge Elimination System (NPDES)
Permit for Discharges of Storm Water Associated
with Construction Activities**

Permit No. TNR100000

September 23, 2021

1 Administrative Record

The permit rationale (or fact sheet) dated July 6, 2021, sets forth the Division of Water Resources' (division's) basis for permit conditions to be applied statewide for the issuance of the new Tennessee National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges of Storm Water Associated with Construction Activities (CGP). The CGP is intended to authorize storm water point source discharges to waters of the State of Tennessee from construction activities that result in the disturbance of one acre or more of total land area.

The current CGP expires on September 30, 2021. On May 11, 2021, the division issued Public Notice NOPH21-002 per TN Rules, Chapter 0400-40-05-.06 (8), which announced the public hearing, conducted at the following date and location:

Location: 312 Rosa L. Parks Avenue
William R. Snodgrass - Tennessee Tower
Multi-Media Room 3rd Floor

Date: Tuesday, June 29, 2021

Informational Session: 5:00 PM Central Time

Public Hearing: 6:00 PM - 8:00 PM Central Time

Interested persons were able to attend by phone or via computer, as call-in and login information was provided as well.

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On July 6, 2021, the division issued Public Notice #MMXXI-027, which updated and expanded information contained in the permit rationale (fact sheet) without changing the contents of the draft permit. Copy of the draft CGP permit and both rationales (fact sheet documents) was made available in an electronic format on the division's web site at http://environment-online.state.tn.us:8080/pls/enf_reports/f?p=9034:34051:15099248722872::NO:34051:P34051_PERMIT_NUMBER:TNR100000.

The proposed NPDES permit was drafted in accordance with the provisions of the Federal Water Pollution Control Act, the Tennessee Water Quality Control Act, and other lawful standards and regulations.

The division received comments through August 5, 2021. This Notice of Determination (NOD) serves as the division's response to questions, comments and issues that were raised at the hearing and/or submitted during the subsequent comment period.

2 Comments and Responses

General

Part/Section	Comment:
General	Multiple Commenters pointed out that some significant changes to the CGP language were not adequately addressed in the rationale.

Response

The division agrees with the commenters that additional explanation would be helpful, and accordingly the draft permit was re-noticed on July 6, 2021 with a revised rationale. There were no changes made to the draft permit at that time.

Part/Section	Comment:
General	The Updated CGP Rationale is an improvement over the version issued on May 11. But...the updated rationale still fails in most cases to explain or justify the agency's proposal to reduce or remove protections of the present permit.

Response:

The division does not agree that the changes put forth for comment in the draft CGP represent the reduction of protections to water quality. The stakeholder base for this general permit is extremely broad, and opinions on the most effective and appropriate levels of submittal, review, site management, and inspection vary considerably. However, based upon comments received, the division has decided to retain a number of the 2016 provisions that had been proposed for removal in the draft permit, such as site assessments and twice-weekly inspections.

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Part/Section	Comment:
General	Can you please include a definition of an outfall, if not in the permit, somewhere on the website? I've seen construction entrances, creeks downstream, the lowest points of a watershed offsite, and sediment traps in the middle of a site all identified as outfalls. There's rampant confusion. For all I know, I might be confused, but I'd like to get everyone on the same page.

Response:

The phrase "point source" and term "outfall" are used interchangeably throughout the permit. The regulatory definition of point source/outfall is included in the "definitions," and a note was added to the final permit, explaining they can be considered synonyms for the purpose of this general permit. All instances of phrase and term were cross-referenced to the "Definitions, Acronyms and Resources."

Part/Section	Comment:
General	There appears to be some back and forth from "streams" and "stream and wetlands." Language throughout the permit needs to be modified to remain consistent throughout.

Response:

The commenter is correct. The statutory definition of stream is:

(38) Stream means a surface water that is not a wet weather conveyance;

In order to avoid any confusion the CGP contains the following definition for the "stream":

"A "Stream" is a surface water that is not a wet weather conveyance. Therefore, as used in this permit, "stream" includes lakes, wetlands and other non-linear surface waters."

The wording of the final permit has been adjusted to use the term consistently throughout.

Part/Section	Comments:
General	The "Comments to draft permit" document (on the TDEC dataviewer), posted July 2, 2021, contains comments and photos from five concerned citizens submitted via email between June 29 and July 2. What's missing from these Permit Documents are the challenges, claims, assertions and arguments of the unidentified "stakeholders" who, according to the rationale, have communicated with the department regarding this permit. Those citizens are entirely within their rights to raise concerns to the department. But their comments

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	and records of those communications, should, like the July 2 collection of emails, be on this page. Good government treats citizens equally.
	No compelling rationale has been offered for weakening the current permit and the process for making these changes has not been transparent. Stakeholders advocating for these permit changes and their arguments have not been disclosed to the public. In the interest of transparency and sound public involvement in this important process, the public deserves to know what stakeholders are proposing the weakened permit criteria.
	(The Commenter) strongly objects to the process for reissuing this permit. As stated in the rationale document, unidentified "stakeholders" have asked for relaxations and TDEC has issued a draft that accommodates those asks without ever providing the source or content of the requests. That's simply not acceptable; Tennessee state government needs to operate in daylight. Any proposal to relax environmental protection needs to have a reasonable basis and the discussion needs to be complete and transparent.

Response:

TDEC does not concur with the premise that the permit has been weakened. This is a narrative, BMP-based permit with complementary effluent limitations to protect water quality. The permit is iterative by nature, and subject to change based on experience with implementation.

Some stakeholders referenced in the rationale are TDEC staff who work in the construction stormwater program, and many of their ideas were considered for the draft CGP, starting with informal discussions that began in early 2020. The division does not normally include internal staff comments as part of the public notice record, nor is it our general practice to identify commenters in rationales and Notices of Determination.

Other stakeholders referenced were legislators who expressed the views of their constituents in conversations with TDEC staff. In such cases, they did not submit written comments that can be uploaded to the TDEC Dataviewer or directly quoted in this Notice.

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Part/Section	Comment:
General	I am asking that TDEC work more closely with individual communities before renewal is granted and also rethink what is needed at the base level of statewide regulations, versus working with municipalities to create an additional a layer of customized regulations that address local conditions and water quality goals, which vary across the state.

Response:

Although the division appreciates this comment, this permit establishes statewide minimum requirements for all construction sites within the scope of regulation. It is not feasible for a statewide general permit to be customized for each community. Municipalities retain the authority to impose more restrictive stormwater management requirements, and to address issues beyond just pollutant control such as flooding.

Part/Section	Comment:
General	Several Commenters have suggested that some of the proposed changes put forth in the draft should not have been included in the draft and cannot be adopted in the final because the division provided no data, studies, or evidence to prove that the changes would not have a negative effect on water quality.

Response:

The division appreciates all concerns about the possibility of weakening water quality protections (though it does not agree with these allegations), but does not agree that we cannot put forth any ideas for comment in a draft permit unless accompanied by empirical evidence. Many of the current CGP conditions (site assessments, the 50-acre limit, twice-weekly inspections, and others) were added to the CGP without any empirical evidence that these conditions would result in water quality improvements, even though they represented significant costs to other stakeholders. It would be difficult if not impossible to gather actual data on (for example) whether less sediment reached TN streams in the last five years because site assessments were adopted. Permits for the regulation of stormwater are, by their nature, iterative.

Part/Section	Comments:
General	I am against changes that would weaken water quality controls through the permit renewal of TNR100000 and that lessen our ability to protect clean water in Tennessee from construction activities. I do support taking the time to renew a permit and find a solution that is at least as protective as the current version.
	The department has proposed relaxing acreage and inspection frequency requirements in Tennessee's stormwater general permit. Considering the widespread and pervasive statewide

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	<p>water quality issue that sedimentation presents, this is a counterintuitive move. Had the previous level of regulation prevented the discharge of sediment from construction sites statewide, perhaps a valid argument could be made for relaxing some requirements. This is not the case. Please leave the requirements of the construction general permit as is.</p>
	<p>I am writing in opposition to the proposed new construction stormwater permit revision (Proposed Revisions to General NPDES Permit for Storm Water Discharges Associated with Construction Activity Permit Number: TNR100000). Every Tennessean understands that sediment from stormwater is a problem in the state; some even know it's the leading cause of pollution. As with all permits, stormwater management should be as stringent as necessary to fulfill the goals of the Tennessee Water Quality Control Act (TCA 69-3-102, The Act). The Act states in plain English that "...the public policy of Tennessee that the people of Tennessee...have a right to unpolluted waters and that the government of Tennessee has an obligation to take all prudent steps to secure, protect, and preserve this right." This bears repeating: "The government of Tennessee has an obligation to take all prudent steps to secure, protect, and preserve this right [of unpolluted waters]." The Act goes on to make clear that TDEC has an obligation to—among other things—prevent the future pollution of the waters. Proposed changes to the existing permit to set a fifty-acre individual permit threshold and to limit inspections run contrary to the Act that has served Tennesseans well for several decades. Tennesseans expect to see the words of the Act mean something. I oppose this rule change which would have the effect of limiting TDEC's tools to address runoff sediment from construction sites</p>

Response:

Please see response to the second general comment above.

Part/Section	Comments:
General	The draft CGP contains several provisions that are less protective than the provisions in the 2016 CGP, in apparent violation of both state and federal law...Under both the federal Clean Water Act and the Tennessee Water Quality Control Act, anti-backsliding requirements mandate that, with certain limited exceptions, limitations and conditions imposed in any new or reissued NPDES permit be at least as stringent as those in previous permits. TDEC must either reinstate

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	<p>the more protective provisions from the 2016 CGP, or it must explain in its Rationale how the modifications it proposes in the draft CGP fit into one of the exceptions to the anti-backsliding requirements, as detailed at 40 C.F.R. § 122.44(l) and Tenn. Comp. R. & Regs. 0400-40-05-.08(j).</p>
	<p>The draft CGP contains several changes from the 2016 NPDES General Permit for Discharges of Stormwater Associated with Construction Activities (2016 CGP) that result in a decrease in environmental protection, such as reduced inspection frequency and the inclusion of larger projects within general permit coverage. TDEC must reinstate the more protective provisions from the 2016 CGP in order to comply with the federal Clean Water Act's prohibition on backsliding... Under both the federal Clean Water Act and the Tennessee Water Quality Control Act, anti-backsliding requirements mandate that, with certain limited exceptions, limitations and conditions imposed in any new or reissued NPDES permit be at least as stringent as those in previous permits.</p>

Response:

EPA Region IV submitted Comments on this CGP draft and expressed no concerns over antibacksliding. NPDES caselaw supports the proposition that antibacksliding does not apply to narrative, BMP-based permits for stormwater.

Part/Section	Comment:
General	(Three Commenters felt that) TDEC should withdraw the draft CGP and redraft it, using the 2016 CGP as the minimum baseline for protections, and then submit that revision for public comment.. If TDEC is not able to complete this before the current permit expires, it should extend the 2016 CGP for another year to allow time for careful consideration and public involvement.

Response:

The division declines to withdraw and redraft the permit. The purpose of a public comment period is to accept comments, and make changes in a final permit as appropriate. There is no need for an additional public comment.

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Section 1

Part/Section	Comment:
1.2.1	The Commenter questions specifying "point source discharges," expressing the opinion that the point of regulating stormwater from construction sites was to capture non-point source pollution.

Response:

EPA rules, based on Clean Water Act provisions for the regulation of stormwater, provide that a construction site disturbing one or more acres of land, or from a smaller site that is part of a common plan of development, is a point source.

Part/Section	Comment:
1.2.1	Paragraph 1 -The Commenter recommends that the phrase "or associated construction support activities" be substituted in place of "or construction materials or equipment storage or maintenance."

Response:

The division agrees with the comment and had changed the wording of the final permit.

Part/Section	Comment:
1.2.1	Paragraph 1 - For consistency, the Commenter requests that the parenthetical "(e.g., borrow areas, overburden and stockpiles of spoil, waste sites, earth fill piles, fueling, waste material)" be replaced with "(See Section 1.2.2)"

Response:

The division agrees with the comment and had changed the wording of the final permit.

Part/Section	Comment:
1.2.1	Paragraph 2 - The Commenter recommends that sentence 2 be reworded as follows: Soil disturbances of less than one acre are required to obtain <i>require</i> authorization under this permit if...

Response:

The division agrees with the comment and had changed the wording of the final permit.

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Part/Section	Comment:
1.2.1	<p>Paragraph 3 - The Commenter recommends that sentence 1 be reworded as follows:</p> <p>Projects of <i>with</i> less than one acre of total land disturbance may also be required to obtain authorization under this permit if:</p>

Response:

While both sentences are grammatically correct, the division prefers the current wording.

Part/Section	Comment:
1.2.1	<p>Paragraph 3 - The Commenter requests clarification on how the division would become aware of the need to require coverage for sites <1 acre prior to land disturbance beginning, and asks if such a site would be required to obtain coverage under an Individual Permit if land disturbance had already occurred.</p>

Response:

The intent of this section is to give the division clear authority to require coverage for <1 acre sites as specified in items a-c, regardless of how the division might become aware of such a site. An individual permit would not automatically be required for a <1 acre site solely on the basis that land disturbance had occurred prior to the determination that coverage under the CGP was indicated.

Part/Section	Comment:
1.2.2 (e)	<p>Define "Comprehensive SWPPP." Starting on Page 2, Section 1.2.2.e the term "comprehensive SWPPP" is used 9 times throughout the draft GP. However, the draft GP does not include a definition of a comprehensive SWPPP. To be consistent with industry standards and avoid confusing the regulated community, the final permit should include a definition of a "comprehensive SWPPP" including how it is different from the initial SWPPP (Section 1.4.2).</p>

Response:

The division appreciates the comment and has replaced the term comprehensive SWPPP to site-wide SWPPP.

Part/Section	Comments:
1.2.3	<p>Include a More Complete List of Non-Stormwater Discharges Authorized by the General Permit. In order for the draft GP to better align with construction operations as well as the authorized non-stormwater discharges promulgated by the United States Environmental Protection Agency's Construction General Permit</p>

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	<p>(Section 1.2.2), we recommend that Section 1.2.3 of the draft GP be modified as follows:</p> <ul style="list-style-type: none">a) Dewatering of collected stormwater and ground water.b) Waters used to wash dust and soils from vehicles and equipment where detergents are not used and detention and/or filtering is provided before the water leaves site. Wash removal of process materials such as oil, asphalt or concrete is not authorized.c) Water used to control dust in accordance with Section 3.5.5 below.d) Potable water sources, including waterline flushings, from which chlorine has been removed to the maximum extent practicable.e) Routine external building washdown that does not use detergents or other chemicals.f) Uncontaminated groundwater or spring water.g) Foundation or footing drains where flows are not contaminated with pollutants (e.g., process materials such as solvents, heavy metals, etc.).h) Discharges from emergency fire-fighting activities.i) Fire hydrant flushings.j) Landscape irrigation.k) Pavement wash waters, provided spills or leaks of toxic or hazardous substances have not occurred (unless all spill material has been removed) and where soaps, solvents, and detergents are not used.l) Uncontaminated air conditioning or compressor condensate."
	<p>Section 1.2.3 Non-Stormwater Discharges Authorized by this Permit Suggest keeping this consistent with the federal CGP and acknowledging that landscape irrigation, firefighting activity, and air conditioning condensate are permitted non-stormwater discharges.</p>

Response:

The EPA's CGP does list discharges from emergency fire-fighting activities, landscape irrigation, uncontaminated air conditioning or compressor condensate as authorized non-stormwater discharges associated with construction activity. These items have been added to the list of non-stormwater discharges authorized.

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Part/Section	Comment:
1.3(d)	How will TDEC know that a discharge will threaten water quality before a discharge has already occurred?

Response:

The intent of this section is to make clear the authority of the division to require an individual permit, either prior to or after discharges have begun, if the director determines the conditions of item d) are met. The division acknowledges that it may not always know prior to discharges occurring. However, discharges that actually cause condition of pollution are prohibited.

Part/Section	Comment:
1.3(g)	The Commenter suggests that prohibitions on discharges that would cause greater than <i>de minimis</i> degradation are meaningless because the applicants are not required in the CGP to notify the division that their discharge might exceed that standard, and that regardless of degradation the division would declare the discharge <i>de minimis</i> anyway.

Response:

The term “degradation” excludes alterations of a short duration (TN Rules, Chapter 0400-40-03-.04(3)). By their nature, construction stormwater discharges are transitory, and while they may result in temporary sediment loading, they do not necessarily result in degradation. This depends on a number of factors, including the ability of the receiving stream to move sediment, as well as the presence of other sources of sediment in the same system.

The commenter’s concerns are addressed in sections 5.4.1 and 6.3. Discharges that violate water quality standards are prohibited by the permit.

The division acknowledges that discharges causing greater than *de minimis* degradation can and do sometimes occur without the division’s knowledge, and that a permittee may violate the permit without reporting it, or even realizing it. However, these discharges are permit violations. If citizens observe what appear to constitute permit violations, they can report them through TDEC’s online portal, currently at <https://www.tn.gov/environment/program-areas/wr-water-resources/water-quality/citizen-water-quality-complaints.html#:~:text=Citizens%20may%20submit%20complaints%20about,as%20possible%20in%20your%20request>.

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Part/Section	Comment:
1.3(h)	The Commenter recommends that TDEC confirm or update the applicability of T.C.A. 70-8-106(e).

Response:

The referenced statute applies to activities covered by the permit. Any permittee covered by this provision should coordinate with TWRA.

Part/Section	Comments:
1.4.1	The draft GP has weakened the timeframe that the Division will inform the applicant that their application was approved and a Notice of Coverage (NOC) is issued. Section 1.4.1 states: "Absent extraordinary circumstances, NOCs [Notice of Coverage] should be issued within 30 days of NOI submittal..." Under the previous 2016 GP, the Division was more succinct with their approval timeframe (Section 2.6.3) which stated: "...the Division shall, within 30 days: a) issue an NOC to the initial site-wide primary operator for the construction site..." We recommend that the draft GP continue affording the regulated community the opportunity to receive permit coverage within 30 days and that Section 1.4.1 be modified as follows: "Absent extraordinary circumstances, NOCs <i>shall</i> be issued within 30 days of NOI submittal..."
	Section 1.4.1 changes the language around permit NOC issuance. Coverage should be <u>required</u> to be issued within 30 days of NOI submittal, absent extraordinary circumstances. We don't need any Division emails going out to an applicant on day 29 with a list of nit-picky items that must be changed in order for the application to go back into the hopper for another few weeks. (This statement comes from experience.)
	Section 1.4.1 Notice of Intent The new language for NOI review lacks definition, which makes planning projects and managing expectations for submittals unsustainable. Suggest retaining the 2016 TNCGP NOI review period of 30 days.

Response:

There was no intent by the division to alter the timeline goals for review in the CGP, and 30 days remains the goal. The final permit language reads:

Absent extraordinary circumstances, NOCs should be issued within 30 days of NOI submittal, unless the division has responded to the operator within that time requesting additional information.

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The requirement for division staff to issue coverages within 30 days is part of their job performance plans. The use of the word “should” acknowledges the possibility that staff shortages or unanticipated emergencies might cause the 30 day limit to be exceeded on occasion. The purpose of permit language is to set enforceable limits and conditions on permittees, not division staff. Staff performance is handled through training and supervision, not permit language.

Part/Section	Comment:
1.4.1	Pursuant to section 1.4.1 of the draft CGP, “[t]he division may review NOIs and SWPPPs for completeness and accuracy and, when deemed necessary, investigate the proposed project for potential impacts to the waters of the state”... It is not enough that TDEC “may” review NOIs and SWPPPs—it “must” do so, to ensure that Tennessee waters are adequately protected from stormwater pollution... TDEC must review every NOI and SWPPP to ensure compliance with the permit prior to issuing notices of coverage. Without a thorough analysis of NOIs and SWPPPs, TDEC may approve a deficient application resulting in environmental harm.

Response:

Though it is not a legal requirement, it is the intent of the division to review all NOIs and SWPPPs for completeness prior to issuance. However, most staff are not engineers and TDEC does not ‘approve’ submitted plans; the responsibility for effective engineering plans lies with the permittee and their consultants.

Part/Section	Comments:
1.4.2	<p>Storm Water Pollution Prevention Plan</p> <p>The Division currently allows permittees to develop their own Storm Water Pollution Prevention Plans as long as the SWPPP does not contradict or interfere with other updated SWPPPs for this site and also allows new operators, such as contractors, to adopt and certify existing SWPPPs. This section, and references to SWPPPs throughout the permit, requires clarification and simplification. We suggest the following changes:</p> <p>“Operators wishing to obtain coverage under this permit must submit a site-specific SWPPP with the NOI, <i>or sign and certify an existing site-specific SWPPP</i>. The SWPPP developed and submitted by the primary permittee should address <i>all of the operator’s</i> construction-related activities from the date construction commences to the date of termination of permit coverage, to the maximum extent practicable.</p>

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	<p>The SWPPP must address the total acreage planned to be disturbed, including any associated construction support activities (see Section 1.2.2). The SWPPP must be developed, implemented and updated according to the requirements in Part 5 and Section 6.4.1. The SWPPP must be implemented prior to commencement of construction activities.</p> <p>Preparation and implementation of the SWPPP may be a cooperative effort with all operators at a site. New operators with design and operational control of their portion of the construction site are expected to adopt, modify, update and implement <i>their portion of the comprehensive SWPPP. Alternatively, Primary Permittees at the site may develop and submit a SWPPP addressing only their portion of the project, as long as the proposed Best Management Practices (BMPs) are compatible with the comprehensive previously submitted SWPPPs, as updated, and complying with conditions of this general permit."</i></p> <p>SWPPPs must be updated or amended if site activities diverge significantly from those indicated in the initial SWPPP. A copy of the most recent version of the SWPPP must be available at the site.</p>
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Response:

The division agrees with the comment and had changed the wording of the final permit.

Part/Section	Comment:
1.4.3	<p>Please incorporate an optional Change of Information option in the proposed permit similar to that found in 1.4.4 of the federal CGP and provided in the USEPA CDX, which allows a permittee to make changes to an existing permit throughout the life of the site, including address changes, new contractors, new personnel contact info, increases and decreases in area coverage (including transfer, sale, and permanent stabilization of individual residential lots), additional discharges to WOTUS, or other modifications.</p>

Response:

The division is in the process of launching the new MyTDEC Forms online customer portal for submission of permit applications and annual reports. The MyTDEC Forms portal was created to comply with [EPA's National Pollutant Discharge Elimination System \(NPDES\) Electronic Reporting Rule \(eRule\)](#), which requires electronic reporting and sharing of NPDES program data. This rule is modernizing Clean Water Act (CWA) reporting for municipalities, industries, and other facilities and will replace most paper based NPDES reporting requirements with electronic reporting. Subpart 7.3 of the permit further describes electronic submission of documents.

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The customer portal was designed to save program resources, make reporting easier, streamline permit applications, modifications, renewals and terminations, ensure full exchange of basic NPDES permit data between states and EPA, improve environmental decision-making, and better protect human health and the environment.

Part/Section	Comments:
1.4.3 (c)	The Division’s goal to allow for minor changes to the original SWPPP is helpful to the regulated community and should result in less of a burden for TDEC personnel, if applied correctly. The proposed language requires submission of the plans and updated SWPPP to the Division but does not require a NOI. If the changes are sufficiently minor to eliminate the NOI, then it should not be necessary to submit plans and an updated SWPPP to the Division. We suggest that the on-site SWPPP be updated and amended with an updated SWPPP certification signed by the permittee(s).
	Section 1.4.3.c should be modified to allow the addition of more than 10% of the original plan area. I would suggest up to 30%, but not to exceed 10 acres. This saves the Division and the permittee time/money and the unnecessary duplication of forms.
	(The Commenter) understands and supports an additional fee if a COI results in an increase of the total acreage of disturbance and the existing fee structure is exceeded, and that “rolling” area of total disturbance is prohibited. However, (the Commenter) recommends the “10% or 5 acres” limit on the increase in acreage of disturbance be removed from the permit, as we are unaware of any technical criteria used to establish this numerical limit.

Response:

The division is attempting to create reasonable limits for what would constitute a minor modification of permit coverage, in a way that is consistent with NPDES permits and ARAPs. This concept cannot be applied to any undefined increases in acreage. For example, a permittee cannot submit for coverage for a 20-acre site, then choose to double the size of the disturbed area to 40-acres and the change be considered a minor modification, even though this would fall within the same fee category. Such a change would involve large new areas of SWPPP coverage and EPSCs to be reviewed, and potentially significant aquatic features that were not part of the initial review. Iterative changes that would create cumulative impact exceeding 10% of the original plan area, or a total of 5 acres require submittal of updated NOI and SWPPP.

If the changes are sufficiently minor, the SWPPP shall be updated to indicate the additional area(s) of disturbance and the total acreage to be disturbed. The permittee is responsible for thoroughly and accurately identifying all waterbodies (including wetlands and streams)

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located on the added acreage and to provide a determination of the water's status if not previously provided.

Part/Section	Comments:
1.4.	(The Commenter requests that TDEC) Require the submittal of necessary documents as part of permitting.
1.4.4	<p>Can TDEC not require that the permittee show proof of their MS4-obtained permit prior to submitting their NOI to the State? (section 1.4.4)</p> <p>The rollback of the operators responsibility to submit reports to MS4s and comply with MS4 rules and regulations. There should be no change from the 2016 permit conditions for this requirement.</p> <p>The Division proposes to delete the provision of the permit requiring applicants to submit information to Municipal Separate Storm Sewer Systems (MS4s) and comply with local ordinances... We are concerned that these proposed changes could weaken our enforcement efforts, result in delayed detection of (and responses to) problems at these sites, and increase drinking water costs for removing sediment.</p> <p>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.</p> <p>The 2021 draft deletes the operators' responsibility to submit documents to MS4s and comply with sediment control and stormwater management measures required by MS4s...MS4s are an integral part of the NPDES regulatory program and having access to critical information from the permittee is of paramount importance...we would like to better understand why this change is being sought.</p> <p>TDEC should reinstate the requirement for operators to submit information to MS4s and comply with MS4 local ordinances... TDEC may not have the legal authority to enforce local ordinances generally, but it certainly has the authority to include compliance with local laws as a condition of its NPDES permit... EPA regulations require most MS4s to develop, implement, and enforce their own stormwater regulations to prevent water pollution, and as the state agency responsible for protecting the waters of the state, TDEC should help,</p>

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rather than hinder, their efforts. TDEC must continue to require operators to submit the documents to MS4s, and make compliance with local stormwater ordinances a condition of CGP compliance.

TDEC's revised rationale seeks input on the issue of complying with local ordinances. While (the Commenter) understands TDEC's perspective on this issue, having permittees develop their SWPPPs to meet local ordinances does not necessarily translate to TDEC needing to enforce conditions beyond what is in the permit. The permit could still include language that the SWPPP, EPSC, and management measures be designed in accordance with approved municipal stormwater ordinances to help facilitate compliance at the local level.

TDEC's present general permit has this language at Part 3.5.6, Approved local government sediment and erosion control requirements: "Permittees must comply with any additional erosion prevention, sediment control and stormwater management measures required by a local municipality or permitted MS4 program." Now, in Part 1.4.4 of the 2021 draft, Submittal of Documents to Local Municipalities, proposes to reduce that to "permittees are encouraged to coordinate with the local MS4 authority prior to submitting an NOI to the division."

TDEC must require rather than simply encourage NPDES permittees to submit Notice of Coverage and Notice of Termination if the MS4 asks for them. I'm not aware that any construction site operator has ever objected to the present permit provisions for submitting information or that there has ever been a problem. But protecting MS4 rights to information that they must have to administer their part of the NPDES program in an enforceable permit should be maintained. Whether they like it or not, MS4s are part of the NPDES regulatory program. They're required by state and federal rules to have programs and ordinances protecting urban waters from discharges to their stormwater systems. Tennessee's NPDES permit must protect its MS4s and their ability to enforce the ordinances they've been required to adopt. The 2016 language regarding compliance with local requirements, or equivalent, must be retained.

Tennessee law gives the commissioner, and by delegation the director, broad authority to exercise general supervision, enforce laws, make agreements, require information, issue permits and more. If TDEC's counsel or the Tennessee Attorney General has issued a finding that the agency now lacks authority it had in 2016 to require that operators comply with requirements that MS4s are compelled by

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	<p>TDEC to adopt, the agency should post that on Dataviewer as a document relevant to this reissuance.</p> <p>Other states explicitly require that operators comply with local requirements. See for example Mississippi (Permit No. MSR10, Condition S-4, "Compliance With Local Stormwater Ordinances"), Arkansas (Permit No. ARR150000, Part 1, Section B 9, "Applicable Federal, State or Local Requirements") and South Carolina (Permit No. SCR100000, 72-307. Specific Design Criteria, Minimum Standards and Specifications. A.5).</p>
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Response:

Permittees must obtain all required local authorizations related to stormwater management. The SWPPP, EPSC, and management measures must be designed in accordance with approved municipal stormwater ordinances, and permittees are expected to comply with any additional erosion prevention, sediment control, and construction stormwater management measures required by a local municipality or permitted MS4 program. Both Sections 1.4.1 and 1.4.4 of the final permit were modified to reflect the division's position.

Part/Section	Comments:
1.5.1	<p>Clarify the Language Regarding Permit Tracking Numbers. The explanation given in the draft GP regarding the issuance of permit tracking numbers is confusing and conflicting. Section 1.5.1 states: "Construction sites covered under this permit will be assigned permit tracking numbers...", and "Assigning a permit tracking number by the division to a proposed discharge from a construction site does not confirm or imply an authorization to discharge under this permit." It seems that the spirit of Section 1.5.1 is to inform applicants that a permit tracking number may be assigned to the application prior to the issuance of the Notice of Coverage (NOC), and in doing so, authorization to discharge under the GP has not yet been granted by the Division. We recommend that Section 1.5.1 of the draft GP be modified as follows: "Assigning a permit tracking number by the division to an application for a proposed discharge from a construction site does not confirm or imply an authorization to discharge under this permit."</p> <p>Suggest modifying the following sentence: "Assigning a permit tracking number by the division to a proposed discharge from a construction site does not confirm or imply an authorization to discharge under this permit <i>until the permit is listed as active on the TDEC dataviewer.</i>"</p>

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Response:

Upon receiving an NOI submittal, the division promptly uploads it to WaterLog database and assigns a tracking number, prior to staff review. Because the tracking number will appear publicly on WaterLog, Section 1.5.1 makes clear that this does not represent a Notice of Coverage. The division agrees with the commenter, and a wording change has been made in the final permit.

Part/Section	Comment:
1.5.2	The draft permit fails to address what happens if the applicant does not “thoroughly and accurately identify all waterbodies...located on the site and to provide a determination of that water’s status.” TDEC’s mapping resources are not complete enough to catch omissions from the office alone. Site visits by TDEC must be required before issuing CGP coverage.

Response:

Permittees are subject to enforcement action if they fail to comply with permit conditions or if they discharge to, or alter habitat of, waters of the state without permit coverage. The division strives to identify all water resources on the site by reviewing applicant submittals, maps, and satellite imagery, and they conduct site visits to verify hydrologic determinations regularly. There is no rule requirement that TDEC staff field-verify all water features that could exist on a site, nor would that level of scrutiny on all sites be possible at current staffing levels.

Part/Section	Comment:
1.5.2	The Commenter notes a typo in paragraph 6, sentence 4; the word “preceded” should be corrected to “precede.”

Response:

The division agrees with the comment and this has been corrected in the final permit.

Section 2

Part/Section	Comment:
2.1.1	Co-Permittees and Joint and Severable Liability. The second paragraph of Section 2.1.1 of the Draft TCGP states as follows: The site-wide permittee is the first primary permittee to apply for coverage at the site. There may be other primary permittees for a project, but there is only one site-wide permittee. Where there are multiple operators associated with the same project, all operators are required to obtain permit coverage. Once covered by a permit, all

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such operators are to be considered as co-permittees if their involvement in the construction activities affects the same project site and are held jointly and severally responsible for complying with the permit. Joint and several liability and "co-permittee" status should be removed from the draft TCGP for several reasons.

The Clean Water Act DOES NOT require separate operators who are distinct separate entities to be co-permittees or provide for joint and several liability for violations of an NPDES permit. Further, the EPA's current Stormwater Construction General Permit ("EPA CGP") issued in 2017 does not include a requirement for operators in the same development to be co-permittees or jointly and severally liable for violations of the NPDES permit.

In many cases, homebuilders build a limited number of homes per year on "ready-to-build" lots that are purchased from a site developer. In those cases, the homebuilder had absolutely no involvement in the clearing and grading of the site, the construction of the roads, curbing and gutters, and of any of the utilities. Thus, if the site wide developer violates the Tennessee GGP and joint and severable liability remains in the CGP, the homebuilder is at risk of getting dragged into an enforcement action as a co-permittee and liable for significant fines, penalties, and fees (attorney's fees and consulting fees) even if the homebuilder had nothing to do with the violation. Likewise, the site developer should not be liable if they sell lots to a homebuilder and have no control over their operations and the homebuilder fails to follow the Tennessee CGP.

When there are multiple operators in one development, one operator does not have the ability to control the work or actions of the other operators. The other operators or "co-permittees" are separate legal entities and have no ability to change, modify, or influence another operator who is violating the permit.

Joint and several liability is unnecessary and unreasonable given that each operator on a construction site will apply for authorization to discharge under the TGCP individually, i.e., through NOIs. Also, joint and several liability is inconsistent with the EPA CGP language regarding group or individual SWPPPs. The EPA CGP states as follows: "Regardless of whether there is a group SWPPP or multiple individual SWPPPs, each operator is responsible for compliance with the permit's terms and conditions." See the EPA CGP, Part 7.1, Footnote

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No.153. Previous references to joint and several liability were removed from the final version of the EPA CGP, effective June 27, 2019.22

The draft permit includes distinct definitions of operators and requires all operators to comply with the conditions of the permit. In cases where there are multiple operators in a development, TDEC has the ability and authority to determine who is in violation of the CGP and is able to bring charges against an individual or multiple operator who are actually responsible for violations of the Permit. There is no need to include co-permittee or joint and servable liability requirements in the draft permit and they should be removed from the draft permit.

Based on the foregoing, we respectfully request that the second paragraph of section 2.1.1 be modified to read as follows:
The site-wide permittee is the first primary permittee to apply for coverage at the site. There may be other primary permittees for a project, but there is only one site-wide permittee. Where there are multiple operators associated with the same project, all operators are required to obtain permit coverage. Once covered by a permit, all such operators are *responsible for complying with the permit for their portion of the project.* ~~be considered as co-permittees if their involvement in the construction activities affects the same project site and are held jointly and severally responsible for complying with the permit.~~

Response:

The commenter is correct that the division has the ability and authority to enforce upon the party actually responsible for a violation, if that can be determined, and the division does so in the majority of cases. In cases where the responsibility for the violation is unclear, the division retains the right to hold operators jointly responsible, at least until the responsible party can be determined. The language in the final permit has been adjusted to read:

Once covered by a permit, each operator is responsible for complying with the permit. Permittees are jointly and severally liable for a violation related to construction activities that affect the same project site, unless a permittee affirmatively demonstrates to the satisfaction of the Department that its own action, or failure to act, was not a cause of the violation.

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Part/Section	Comment:
2.1.3, also 4.1.2 and 6.4.2	<p>Review the use of the word “should,” it needs to be replaced with “shall or must” in most instances in this permit. This is a permit that sets requirements, telling a permittee they should do something leaves it as optional and provides no ground for enforcement. Telling them they shall or must do something, is enforceable. For example 2.1.3, <i>The contractor should sign the NOI and SWPPP associated with the construction project at which they will be an operator, and submit an NOI to the division indicating their intent to be added to the existing site coverage as an operator.</i> Based on this wording it does not require them to sign on to coverage. Another example 4.1.2: <i>The water quality riparian buffer zone should be preserved between the top of stream bank and the disturbed construction area</i> & 6.4.2: <i>The natural water quality riparian buffer zone should be preserved between the top of stream bank and the disturbed construction area.</i> The use of “should” in both of these sections conflicts with the use of “shall” in the previous paragraphs.</p>
	<p>The term ‘should’ is used throughout the permit. Definitive language in certain areas needs to be ‘shall’ and not ‘should’</p>

Response:

The word “should” was used 39 times in the draft. In some cases this is intentional, and represents situations where the condition cannot be stated as an absolute. For example, in part 5.5.1(n) “Planting cover vegetation during winter months or dry months should be avoided” is a general good practice, but it is not prohibited, as weather and ground conditions vary. The word “should” has been replaced with “shall” at 15 locations in the final permit, including those listed by the commenter above.

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Part/Section	Comment:
2.1.3	Clarify Which Notice of Intent (NOI) is to be Submitted by a Secondary Permittee. The draft GP states that a contractor is considered a Secondary Permittee. Section 2.1.3 states “The contractor should sign the NOI and SWPPP associated with the construction project at which they will be an operator, and submit an NOI to the division indicating their intent to be added to the existing site coverage as an operator.” What is not clearly evident is which NOI the contractor should be submitting to the Division; the NOI of the Primary Permittee for whom the contractor works for, or a separate NOI completed by the contractor. We recommend that the Section 2.1.3 of the draft GP be modified to clearly describe which NOI needs to be submitted by a contractor to become an operator onsite.

Response:

The division agrees with the commenter, and the language in part 2.1.3 and on the 2nd page of the NOI form has been modified to provide the requested clarity.

Part/Section	Comment:
2.2.1	Clarify the Responsibility of Permittees with Design Control to Monitor All Onsite Operators. Section 2.2.1 states: “Permittees with operational control over construction plans and specifications... must ensure that (e) all operators on the site have permit coverage, if required, and are complying with the SWPPP.” Expecting a Permittee with Design Control (i.e. Primary Permittee) to monitor other onsite operators and confirm that the other operator(s) has obtained permit coverage and is complying with the SWPPP is unreasonably burdensome and not realistic. Several operators working in a development where each operator may be one of several who obtained permit coverage is very common. Each of the operators who obtains permit coverage will not likely have full or accurate knowledge of all the other operators that may be onsite or their specific areas of control. We recommend that Section 2.2.1.e should be clarified “notify all operators on the site if they are required to have permit coverage and comply with the SWPPP”.

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	All permittees should be treated individually under the permit and one operator shouldn't be expected to enforce compliance of other permittees (2.2.1)
	Permittees with Design Control Item (e) states that permittees with design control "must ensure that . . . all operators on the site have permit coverage, if required, and are complying with the SWPPP." This extends the responsibility and limits of liability for the permittee beyond reasonableness.

Response:

The division agrees with the commenters (see also response under Section 2.1.1 above). The language in paragraph 2.2.1(e) has been changed in the final permit to read:

e) all operators on the site have permit coverage, if required.

Part/Section	Comment:
2.2.1	Define "Supplemental NOI" and update NOI form. Starting on Page 13, Section 2.2.1 the term "supplemental NOI" is used 4 times in the draft GP. However, the draft GP does not include a definition of a supplemental NOI. The example NOI form included in Appendix A of the draft GP does not include any notation or instructions for the applicant(s) on how to express to the Division the submittal of a supplemental NOI. To be consistent and avoid confusing the regulated community, the draft GP should include a definition of a "supplemental NOI", and include a way for the applicants to identify on the NOI (e.g. checkbox) that the submittal is a supplemental NOI.

Response:

The division agrees with the commenter. The term 'supplemental' has been deleted from the final permit, and the language in parts 2.2.1 and 3.1.4 has been modified to provide the requested clarity.

Part/Section	Comments:
2.2.2	Modify the Requirement that all Permittees Must Implement a Single SWPPP. Section 2.2.2 of the draft GP states: "All permittees must implement their portions of a comprehensive SWPPP." However, Section 1.4.2 of the draft GP affords a primary permittee the ability to develop a SWPPP that addresses their portion of the development: "Primary permittees at the site may develop a SWPPP addressing only their portion of the project, as long as the proposed Best Management Practices (BMPs) are compatible with the comprehensive SWPPP and complying with conditions of this general permit." Therefore, we recommend that Section 2.2.2 of the draft CGP

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	be modified as shown: "All permittees must implement their portions of a comprehensive SWPPP; or, the primary permittee must implement the SWPPP they developed that addresses only their portion of the project in accordance with Section 1.4.2."
	Permittees with Day-to-day Operational Control Suggest changing the last sentence of this section to include relevant SWPPPs: "All permittees must implement their portions of a comprehensive the SWPPP."

Response:

The division agrees and this change has been made in the final permit.

Section 3

Part/Section	Comments:
3.1.2	The proposed paragraph states, "A modified SWPPP and a corresponding fee must be submitted by the permittee if needed to come into compliance with the requirements of the new permit." The changes proposed by the 2021 permit would require modifying all SWPPPs to comply with the new permit. Suggest prefacing the sentence to clarify what we believe that the Division intends, e.g., "If the limits of disturbance or expectations for total disturbed acreage change," or expect to receive thousands of updated SWPPPs in order to comply with this paragraph.
	Section 3.1.2 requires modified SWPPPs to be submitted. This has never been required before and should not be in this permit.
	Part 3.1.2.'s Existing Sites section states that "A modified SWPPP and a corresponding fee must be submitted by the permittee if needed to come into compliance with the requirements of the new permit." Part 5.3.1.'s Existing Sites section states that "The current SWPPP should be modified, if necessary, to meet requirements of this new general permit, and the SWPPP changes implemented as soon as practicable but no later than three months following the new permit effective date." First, there seems to be a corresponding fee associated with a modified SWPPP under Part 3.1.2., providing less incentive to modify the SWPPP based on the new permit. Second, the permit should explicitly require the SWPPP be updated under the new permit, or at least that an evaluation be done to determine whether the SWPPP needs to be updated. Permittees would also be required to document (via certification, form, NOI, etc.) that they have gone through the new

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	<p>permit and determined whether their SWPPPs are in compliance with the requirements of the new permit.</p>
	<p>Remove the Requirement for Existing Sites to Submit Their Modified SWPPPs. Section 3.1.2 of the draft GP states: "A modified SWPPP and a corresponding fee must be submitted by the permittee if needed to come into compliance with the requirements of the new permit." As all permittees with existing GP coverage, who wish to maintain coverage, will have to be modify their SWPPPs in some manner (e.g. changes to inspection frequency, etc.), the Division is inviting the submittal of modified SWPPPs from all existing projects statewide. This is not only an unnecessary burden for the regulated community, but also the Division. We recommend that the following sentence be deleted from Section 3.1.2 of the draft GP: "A modified SWPPP and a corresponding fee must be submitted by the permittee if needed to come into compliance with the requirements of the new permit."</p>
	<p>Section 3.1.2 of the proposed permit states that a modified SWPPP and corresponding fee must be submitted by the permittee if needed to come into compliance with the requirements of the new permit. Please clarify what constitutes a resubmittal to TDEC (changes in inspection frequency, removal of "50 acre disturbance limit", etc.). Please include the following language taken from the 2016 permit (or similar) in the proposed permit:</p> <p>Operators of an existing site presently permitted under TDEC's 2016 CGP shall maintain full compliance with the current SWPPP. The current SWPPP should be modified if necessary to meet the requirements of this new general permit, and the SWPPP changes implemented no later than 6 months following the new permit effective date. The permittee shall make the updated SWPPP available for TDEC review upon request.</p>
	<p>The Commenter requests that the opening language of paragraph 1 be replaced with the wording from the 2016 permit for purposes of clarity:</p> <p>Operators of an existing site presently permitted under TDEC's 2016 CGP shall maintain full compliance with the current SWPPP. The current SWPPP should be modified if necessary to meet the requirements of this new general permit, and the SWPPP changes implemented no later than 12 months following the new permit effective date. The permittee shall make the updated SWPPP available for TDEC review upon request</p>

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Response:

The wording from the 2016 permit was kept for purpose of clarity.

Part/Section	Comment:
3.1.3	3.1.3: New Sites or New Phases of Existing Sites "The permittee is authorized to discharge stormwater as of the effective date listed on the NOC." Suggest changing language to read, ". . . as of the effective date listed on the NOC or the TDEC dataviewer." as the issuance of NOCs are sometimes delayed, and the dataviewer is widely accepted as reliable.

Response:

The suggested verbiage was included in the final permit.

Part/Section	Comment:
3.1.4	Please include language in the proposed permit that either specifically binds public utility companies to a permittee's SWPPP and compliance program, requires utility companies to obtain a separate permit as part of a common plan of development, or clearly protects a permittee from compliance violations committed by public utilities on the permittee's site.

Response:

The division understands that utility work has created compliance problems on sites in the past. The current/proposed TNCGP's definition of operator captures the fact that a utility company (public/private) that meets the definition of an operator would be required to obtain coverage under and comply w/ the TNCGP for construction SW discharges. To make this clear the language in part 2.1.1 will be modified to specifically include utility companies:

This person may include, but is not limited to, a developer, landowner, realtor, commercial builder, homebuilder, utility company, etc.

Part/Section	Comment:
3.1.5	Section 3.1.3 of the draft CGP requires a complete application (which includes the NOI, SWPPP, and fee) to be submitted at least 30 days prior to commencement of construction activities. But section 3.1.5 contains a problematic loophole, stating that "[d]ischargers are not prohibited from submitting NOIs after construction at their site has already begun," but that any prior, unpermitted discharges are subject to penalties. This language provides an opportunity to completely bypass the preferred application process, so long as the operator can claim that no unpermitted discharges occurred before

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	they bothered to submit their NOI... The draft CGP must require individuals to submit NOIs prior to commencing construction. Under the draft CGP, there is little incentive to submit NOIs before starting construction... Additionally, there are no submittal deadlines mentioned in the draft CGP... TDEC must impose a fine or penalty for late NOIs to discourage future late submittals.
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Response:

The proposed language includes a deadline for submittals “within 30 days prior to commencement of construction activities” (3.1.3) and specifies that “The land disturbing activities shall not start until a NOC is prepared and written approval by the division staff is obtained according to Subpart 1.5.” The wording the Commenter references in 3.1.5 is intended to require an operator to obtain coverage even if they have already begun land disturbing activities in violation of 3.1.3. Section 3.1.5 goes on to say “Any prior unpermitted discharges or permit non-compliances are subject to penalties as described in Section 8.1.2.

Part/Section	Comment:
3.3.1	Traditional Submittal Suggest referring to QLPs in this section for consistency.

Response:

The division appreciates the comment and has added a reference to this section which refers to Part 1.4.5. Permit Coverage Through a Qualifying Local Program (QLP) for operators seeking coverage through a QLP.

Part/Section	Comment:
3.3.2	(The Commenter) supports the use of paperless electronic submittals on a web-based system similar to that of the USEPA CDX for not only NOI submittals, but also for changes of information/modifications to existing permits and Notices of Termination. (The Commenter) also requests that an electronic payment option be made available, thus eliminating the need for a cover letter and a check to be mailed to a TDEC field office.

Response:

The division is in the process of launching the new NPDES Electronic Reporting online customer portal for submission of permit applications and other reports. If the division notifies applicants by mail, E-mail, public notice or by making information available on the world wide web of electronic application submittal, the operators may be required to use those electronic options to submit the NOI, SWPPP and an application fee.

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Part/Section	Comments:
3.3.2	<p>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.</p> <p>The draft CGP does include some improvements on the 2016 CGP, such as the electronic reporting requirement...The electronic reporting requirement will streamline the reporting process, making the collection and processing of data timelier and more accurate, as well as increasing TDEC’s ability to share information with the public. These positive changes should be included in any final version of the CGP.</p>

Response:

Thank you for the supportive comment.

Section 4

Part/Section	Comments:
4.1	<p>The EPA memorandum of November 12, 2010 to Water Managers in Regions 1-10 states, “EPA now recognizes that where the NPDES authority determines that MS4 discharges and/or small construction storm water discharges have the reasonable potential to cause or contribute to water quality standards excursions, permits for MS4s and or small construction stormwater discharges should contain numeric effluent limitations where feasible to do so.” TDEC has consistently taken the position that numeric effluent limitations are not feasible. EPA obviously disagrees, as do we. Indeed, we believe TDEC should adopt a numeric effluent limit of 50 nephelometric turbidity units (NTU), which is the EPA standard for drinking water, as modified for consistency with the appropriate reference streams for the specific ecoregion.</p> <p>TDEC should follow USEPA guidance and impose numeric limits and monitoring standards in the Permit, particularly because Tennessee seems unable to properly implement and comply with its water quality criteria... Because technology-based effluent limits (“TBELS”) have failed to result in the removal of these waters from the 303(d) list, TDEC must employ water quality-based effluent limits (“WQBELS”).</p>

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Response:

EPA withdrew its rule requiring numeric effluent limitations in NPDES permits for construction stormwater. EPA has not yet promulgated legally and scientifically defensible numeric TBELs, so there are no effluent limitations guidelines for this point source category that include numeric limitations. EPA's inability to develop defensible numeric limits supports TDEC's conclusion that doing so is not feasible at this time, and accordingly that a suite of BMPs is the appropriate way to implement TBELs in this permit. If EPA promulgates rules with numeric effluent limitations in the future, TDEC would apply such rules in the first permit reissuance following the effective date of that rule, assuming the EPA rule remains in effect at that time.

The commenters further confuse permit requirements with noncompliance. The permit includes an array of enforceable, narrative water quality-based effluent limitations. Among other provisions, the permit provides that it does not authorize discharges that threaten water quality (1.3.d); discharges to waters with unavailable parameters that would cause measurable degradation of the unavailable parameter (1.3.e), discharges that are not protective of aquatic or semi-aquatic threatened and endangered species (1.3.h), and discharges to waters with an applicable TMDL unless the SWPPP incorporates controls consistent with the TMDL (1.3.j). Moreover, part 6.3.2 of the permit prohibits discharges that violate water quality criteria, cause objectionable appearance, or harms fish and aquatic life.

Many of the conditions complained of by the Commenters are permit violations subject to enforcement. Adding numeric effluent limitations is not necessary for the protection of water quality, as the permit already prohibits those discharges. There are currently more than 10,000 active CGP coverages throughout the state. TDEC does not have the staff to be at every construction site during every rain event. However, TDEC does investigate and address citizen complaints, which can be submitted through TDEC's web portal, currently found at <https://www.tn.gov/environment/program-areas/wr-water-resources/water-quality/citizen-water-quality-complaints.html#:~:text=Citizens%20may%20submit%20complaints%20about,as%20possible%20in%20your%20request>. In MS4 communities, local governments are responsible for stormwater enforcement, and should be the first point of contact for complaints.

Part/Section	Comment:
4.1.	Define "Best Practicable Control Technology Currently Available." Section 4.1 introduces the term "best practicable control technology (BPT) currently available"; however, the draft GP does not include a definition or examples of a best practicable control technology currently available. To be consistent and avoid confusing the regulated community, the draft GP should include a definition of a "best practicable control technology (BPT) currently available",

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	including how it differs from a best management practice (BMP) already defined in Section 10.1.
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Response:

Language used in Part 4 of the permit (Construction and Development Effluent Guidelines) was adopted, for the most part, verbatim from Federal Register dated December 1, 2009 ([Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category](#)). In that document, EPA provided basis and explanation for establishing a series of non-numeric effluent limitations, as well as use of best management practices as a form of non-numeric limitations, all which were incorporated in this and previous construction general permits:

“In establishing effluent limitations guidelines for a point source category, the CWA requires EPA to specify BPT effluent limitations for conventional, toxic, and nonconventional pollutants. In doing so, EPA is required to determine what level of control is technologically available and economically practicable. CWA section 301(b)(1)(A). In specifying BPT, the CWA requires EPA to look at a number of factors. EPA considers the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application. The Agency also considers the age of the equipment and facilities, the process employed and any required process changes, engineering aspects of the application of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator deems appropriate. CWA section 304(b)(1)(B). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performance of facilities within the category of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, EPA may require higher levels of control than currently in place in a category if the Agency determines that the technology can be practicably applied. See e.g., *American Frozen Foods Inst. v. Train*, 539 F.2d 107, 117 (D.C. Cir. 1976).

EPA assesses the cost-reasonableness of BPT limitations by considering the cost of treatment technologies in relation to the effluent reduction benefits achieved. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology. This “limited cost-benefit analysis” is intended to “limit the application of technology only where the additional degree of effluent reduction is wholly out of proportion to the costs of achieving such marginal level of reduction.” See *EPA v. National Crushed Stone Ass'n*, 449 U.S. 64 71 (1980). Moreover, the inquiry does not require the Agency to quantify benefits in monetary terms. See, e.g., *American Iron and Steel Institute v. EPA*, 526 F.2d 1027, 1051 (3rd Cir. 1975).

In balancing costs against the effluent reduction, EPA considers the volume and nature of the expected discharges after application of BPT and the cost and economic impacts of the required level of pollution control. In past effluent limitation guidelines, BPT cost-

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reasonableness comparisons ranged from \$0.26 to \$41.44 per pound removed (in 2008 dollars). This range is not inclusive of all categories regulated by BPT, but nonetheless represents a very broad range of cost-reasonableness values. About half of the cost-reasonableness values represented by this range are less than \$2.99 per pound (in 2008 dollars).

[...]

The regulations promulgated today include non-numeric effluent limitations that will control the discharge of pollutants from C&D sites. It is well established that EPA has the authority to promulgate non-numeric effluent limitations in addition to, or in lieu of, numeric limitations. The CWA does not mandate the use of numeric limitations and EPA's position finds support in the language of the CWA. The definition of "effluent limitation" means "any restriction * * * on quantities, rates, and concentrations of chemical, physical, biological, and other constituents * * *" CWA section 502(11) (emphasis added). EPA regulations reflect the Agency's long standing interpretation that the CWA allows for non-numeric effluent limitations. EPA regulations explicitly allow for non-numeric effluent limitations for the control of toxic pollutants and hazardous substances from ancillary industrial activities; for the control of storm water discharges; when numeric effluent limitations are infeasible; or when the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA. See 40 CFR 122.44(k).

Federal courts have recognized EPA's authority under the CWA to use non-numeric effluent limitations. In *Citizens Coal Council v. U.S. EPA*, 447 F.3d 879, 895-96 (6th Cir. 2006), the Sixth Circuit, in upholding EPA's use of non-numeric effluent limitations, agreed with EPA that it derives authority under the CWA to incorporate non-numeric effluent limitations for conventional and non-conventional pollutants. See also, *Waterkeeper Alliance, Inc. v. U.S. EPA*, 399 F.3d 486, 496-97, 502 (2d Cir. 2005) (EPA use of non-numerical effluent limitations in the form of best management practices are effluent limitations under the CWA); *Natural Res. Def. Council, Inc. v. EPA*, 673 F.2d 400, 403 (D.C. Cir. 1982) ("section 502(11) [of the CWA] defines 'effluent limitation' as 'any restriction' on the amounts of pollutants discharged, not just a numerical restriction.")

Part/Section	Comment:
4.1.2	The CGP states that discharges must enter the buffer zones as sheet flow, not as concentrated flow. Does this mean that if a section of silt fence fails a violation has occurred? Please clarify.

Response:

Not necessarily. The permit states "Stormwater discharges must enter the water quality riparian buffer zone as sheet flow, not as concentrated flow, where site conditions allow. Sheet flow is achieved by land contouring or where shallow slope occurs naturally. Failed silt fence like any other stormwater control in disrepair shall be replaced, modified or repaired

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as necessary, before the next rain event; but in no case more than seven days after the need is identified.”

Part/Section	Comment:
4.1.2	<p>The Commenter recommends the following wording change in the 4th sentence of paragraph 1:</p> <p>Because of <i>the potential of</i> heavy sediment loading associated with construction site runoff, water quality riparian buffers are not primary sediment control measures...</p>

Response:

The suggested change has been incorporated in the final permit.

Part/Section	Comment:
4.1.2	<p>Paragraph 1, last sentence: The Commenter recommends that some examples of “rehabilitation and enhancement” of a natural buffer zone be provided.</p>

Response:

Additional planting of trees and shrubs is the most common example of “rehabilitation and enhancement” but providing grass filter strips or level spreaders can also enhance the filtering function of the water quality riparian buffer.

Part/Section	Comment:
4.1.2 and 6.4.2	<p>Paragraph 2, last sentence: The Commenter recommends the following wording changes:</p> <p>If the construction site encompasses both sides of a stream, buffer averaging can be applied to both sides, but <i>each side must average</i> the 30-foot criterion must be applied independently.</p> <p>The same change should be made in 6.4.2, where this sentence occurs again.</p>

Response:

The proposed change has been incorporated in the final permit.

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Part/Section	Comment:
4.1.2	Paragraph 3, 2 nd sentence: The Commenter requests that some examples be provided of "BMPs providing equivalent protection".

Response:

Site specific conditions often require a variety of equivalent protection measures when the full width of the water quality riparian buffer cannot be provided. The EPA CGP Appendix G provides an excellent example of equivalent measures.

Part/Section	Comment:
4.1.2	Section 4.1.2 of the draft CGP requires a 30-foot natural water quality riparian buffer for all streams and wetlands with available parameters adjacent to construction sites, to the maximum extent possible. The draft CGP should increase the required buffer to 50 feet so Tennessee's CGP is as protective as the EPA's CGP. It is crucial to require buffer zones that are wide enough to protect the water because the buffers remove additional pollutants. At minimum, TDEC must remove the equivocal language allowing a less than 30-foot barrier if it is "not possible," unless TDEC is able to articulate what circumstances would allow a smaller barrier to meet the water protection standards for a NPDES permits. Additionally, the definition of a buffer must consider the ground cover and slope of the land. A 30-foot steep slope lacking in vegetative groundcover may not be an effective buffer, but a 30-foot buffer on flat land with tall grass may be effective. Considering the ground cover and slope when calculating the required buffer for each permit will ensure the permit adequately protects the water surrounding the site.

Response:

The pertinent portion of the EPA CGP is provided below. The federal language requires 50-foot buffers only if there are no erosion and sediment controls used in combination with the buffer, and provides for the use of engineering equivalents in the form of erosion and sediment controls.

40 C.F.R. PART 450—CONSTRUCTION AND DEVELOPMENT POINT SOURCE CATEGORY Subpart B—Construction and Development Effluent Guidelines §450.21 Effluent limitations reflecting the best practicable technology currently available (BPT). (6) Provide and maintain natural buffers around waters of the United States, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible;

2.2.1 Provide and maintain natural buffers and/or equivalent erosion and sediment controls when a water of the U.S. is located within 50 feet of the site's

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earth disturbances. Compliance Alternatives. For any discharges to waters of the U.S. located within 50 feet of your site's earth disturbances, you must comply with one of the following alternatives: i. Provide and maintain a 50-foot undisturbed natural buffer; or ii. Provide and maintain an undisturbed natural buffer that is less than 50 feet and is supplemented by erosion and sediment controls that achieve, in combination, the sediment load reduction equivalent to a 50-foot undisturbed natural buffer; or iii. If infeasible to provide and maintain an undisturbed natural buffer of any size, implement erosion and sediment controls to achieve the sediment load reduction equivalent to a 50-foot undisturbed natural buffer.

See Appendix G, Part G.2 for additional conditions applicable to each compliance alternative where Table G-7 establishes buffer size for high risk sites as follows:

Risk Level Based on Estimated Soil Erosion

Retain \geq 50' Buffer - No Additional Requirements

Retain $<50'$ and $>30'$ Buffer - Double Perimeter Control

Retain $\leq 30'$ and $>10'$ Buffer - Double Perimeter Control Double Perimeter Control and 7-Day Site Stabilization

Retain $\leq 10'$ Buffer - Double Perimeter Control Double Perimeter Control and 7-Day Site Stabilization

Moderate risk and Low risk sites can do less than high risk sites.

Please note that the minimum buffer established by the EPA is less than 10 ft (buffer of any size).

Part/Section	Comment:
4.1.2.1(b)	The Commenter requests clarification on interpretation of the term "land use". If a permittee tears down a shopping mall and replaces it with condos, does this constitute a change in land use?

Response:

Part (a) of this section refers to existing uses: *"Existing uses may include buildings, parking lots, roadways, utility lines and on-site sanitary sewage systems. Only the portion of the buffer zone that contains the footprint of the existing land use is exempt from buffer zones."* In this context land use refers to development as a whole, so replacing one type of building or parking lot with one of a different commercial, residential, or industrial use would not constitute a change.

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Part/Section	Comment:
4.1.2.1(b)	<p>Item (b) states: If an area with an existing land use is proposed to be converted to another use or the impervious surfaces located within the buffer area are being removed, buffer zone requirements shall apply.</p> <p>This section lists exemptions from buffer zone requirements, yet item (b) describes situations where buffers apply. Also, as worded removal of existing impervious surfaces require buffer zones, but leaving existing impervious surfaces does not. This will encourage operators to leave impervious surfaces in place.</p>

Response:

The language in this section does not represent a change from the 2016 permit. The commenter is correct that the division is not proposing at this time to require a new permittee to remove pre-existing impervious infrastructure within buffer zones.

The commenter points out what might be considered a “wording paradox” by including situations where buffers apply in a section listing buffer zone exemptions, but the division finds the language appropriate and helpful as worded.

Part/Section	Comments:
4.1.4(b)	<p>Another pollution prevention example is to “minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater” (Part 4.1.4.b.) by requiring the permittee to provide cover (e.g., plastic sheeting, temporary roofs) or a similarly effective means designed to minimize the discharge of pollutants from these sources.</p> <p>The draft permit should address how the operators should minimize the exposure of landscaping materials to precipitation.</p>

Response:

The division does not find it necessary to specifically prescribe the methods used by the permittee to minimize exposure to precipitation and stormwater. Roofs and tarps are obvious controls to minimize exposure to rainfall, but these do not protect from stormwater flows cross the site.

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Part/Section	Comment:
4.1.5	The Commenter suggests that sections 4.1.5 and 1.3 should be combined, since they both describe “not authorized” and “prohibited” discharges.

Response:

The two sections may be redundant to some extent. However, the division prefers to list all the prohibited discharges under ELGs in one place for convenience in part 4.1.5.

Section 5

Part/Section	Comments:
5 general	<p>I believe in practicality the typical site assessment does not add much to the job...it appears to be more a check the box. My thoughts: The job has already started (which is good to see if BMPs are working). Negative reports do not appear to have any real repercussions. Sediment basins or traps are not really measured for adequacy (and this can be difficult to just visually notice inadequacies). The assessor may have little field ability as to see inadequacies. The design engineer may be the assessor and may be still tied to the developer close enough to not want to create a problem (better if it is an outside assessor-third party). So in short I don't see where it has been as effective as was hoped in the permit.</p> <p>Section 5.5.3.3 Site assessments (to verify proper installation of EPSC) and twice weekly inspections should be conducted by a qualified individual for all sites, not just those greater than 50 acres. This would preferably be the designer who can confirm that what they drew on the plans was installed as they intended it to be. The fact that people are not doing it or not doing it well is not a reason to omit it from the smaller CGP sites. Site assessments have been seen by our Land Development Office to be a critical piece of the site's likelihood of compliance.</p> <p>Site assessment section should be added back to the permit. Having a PE or a level II review what was installed to ensure it is functioning per the plans and per technical standards is extremely helpful.</p> <p>Site assessment section should be added back to the permit for < 50ac. – I.E. – (The certification level is different for the individual</p>

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inspecting the site as a Level 1 EPSC for the twice-weekly and the requirements for the site assessment as a Level 2 EPSC, LA, or PE)

For any CGP (coverage), stamped as-built plans must be submitted both to TDEC-DWR and the local MS4 if such exists... 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.

The 2021 draft would roll back TDEC's requirement that construction site operators conduct site assessments. The department has provided no data or justification for the need for this change, and therefore we ask that it be removed from consideration.

The reduction in site assessments...will result in poor construction practices. Since there will be less oversight...the operator will obviously feel less need to properly protect the site from discharge of sediment and construction materials. In addition, the deletion of site assessments for sites less than 50 acres appears to be particularly troublesome. As a practical matter there would be no oversight of construction practices by the regulators for sites less than 50 acres.

Quality Assurance Site Assessment (QASA)

The QASA requirement in the expiring permit held engineers to their designs, and helped ensure EPSC measures were installed properly. The engineer/consultant would be sure to have the project move forward correctly, which would make contractors and permittees more likely to succeed in keeping sediment from migrating away from work areas. Removing the QASA requirement will only reduce compliance, and will very likely increase the probability of permittees and contractors becoming found in non-compliance sometime in the project.

The 2021 draft would roll back TDEC's requirement that construction site operators conduct site assessments. Having an expert on site who knows what was designed and how it's intended to work early on in the project is widely recognized to be one of the most effective protections in the present permit... It makes no sense to remove this protection of 5- and 10-acre drainages simply because they're part of projects that are not planned to disturb more than 50 acres at any one time. If anything, the site assessment requirement should extend to all controls on sites draining to unavailable waters or Exceptional Tennessee Waters.

Part 6.11 of the Updated CGP Rationale, Site Assessments, cites arguments from unidentified stakeholders that it's redundant for the

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permit to require that a design expert conduct within 30 days of commencement of construction a quality assurance assessment to verify the installation, functionality and performance of EPSC measures described in the SWPPP.

It's not redundant. The "initial inspection" mentioned at 5.5.3.8 is not required to be performed by a design expert. In fact, nowhere in the draft permit is the stormwater control plan designer, or any design expert, required to ever be physically present on the construction site. Not in plan preparation, not as part of an on-site pre-construction meeting, and not at termination as many other states require.

Designers and stormwater professionals I've interacted with report dual benefits resulting from designers being on site. First, they're able to catch mistakes and opportunities for improvement in contractors' implementation of plans. But also important, designers report that site visits help them produce better plans – more complete, more useful to the contractor.

Site assessments should be fully restored to the permit and a site assessment report form should be provided as an appendix.

Conducting site assessments is a crucial way to ensure the permittee is complying with the CGP. Without site assessments, it could take weeks or months to discover the SWPPP is inadequate... Because conducting site assessments is not overly burdensome and inadequate SWPPPs can have an enormous environmental impact, TDEC must reinstate the 2016 CGP site assessment requirements in the draft CGP. Given the scope of the sediment pollution problem across our state, TDEC should also mandate that site assessment occur before construction begins, to ensure that the erosion prevention and sediment control measures outlined in the SWPPP are in place before any major rain event.

Site assessments shall be conducted prior to commencement of work, not within 30 days, as currently stated under 5.5.3.3(c).

Response:

The draft permit included language in part 5.5.3.8 specifying that initial inspections must indicate whether all EPSCs had been installed as designed. This was intended to be the rough equivalent to site assessments, with the main difference being that the qualifications of the person conducting the initial inspection were not held to the standard currently prescribed for site assessments.

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Commenters representing MS4 regulatory programs, as well as engineers who design and inspect sites, weighed in strongly in favor of maintaining the stricter qualifications, defending them as an important part of effective site management. Accordingly, the site assessment requirement has been reinserted in the final permit.

Because many of the controls, including basin construction and drainage structures leading to the basins, require earth-moving activities to install them, the division cannot mandate that site assessments must be conducted in all cases prior to the beginning of construction.

Part/Section	Comment:
5 General	(The Commenter recommends that TDEC) Engage design professionals and water quality engineers on the front end of the process to share advice and help with troubleshooting.

Response:

The division sponsors EPSC training and certification programs for design professionals and site inspectors.

Part/Section	Comment:
5 General	A site assessment form added to the permit as an attachment would be very helpful.

Response:

We agree that a site assessment form may be a useful addition both for permittees and division staff. Such form may be designed as a stand-alone document, or incorporated within the existing inspection form. The division staff will be working on the form during the next permit cycle, and will consult with DWR inspection staff, MS4 inspectors, and private sector inspectors on the contents and format of such a form.

Part/Section	Comment:
5.1	Paragraph 3, 1 st sentence: The Commenter recommends replacing the term “finally stabilized” with the term “permanently stabilized” throughout the document.

Response:

The suggested change has been incorporated in the final permit.

Part/Section	Comment:
5.2	PE Stamp Requirement The new TNCGP language in Section 5.2 that allows for sites greater than five acres of disturbance to have a Storm Water Pollution Prevention Plan (SWPPP) be developed by various specialists is inappropriate. SWPPPs that have technical information related to the

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	discharge of construction stormwater should be developed by a Professional Engineer (PE), licensed to work in the State of Tennessee. While a Certified Professional in Erosion Control, or Level II Certification provides a lot of background in sediment migration and water dynamics, there is no better option than requiring a licensed PE to develop the SWPPP.
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Response:

The requirement regarding plans and specifications for any building or structure, changes in topography and drainage, including the design or modification of sediment basins or other sediment controls involving structural, hydraulic, hydrologic or other engineering calculations to be prepared by a professional engineer or landscape architect registered in Tennessee and signed and sealed in accordance with the Tennessee Code Annotated, Title 62, Chapter 2 and the rules of the Tennessee Board of Architectural and Engineering Examiners remains unchanged in the final permit. The proposed change, retained in the final permit, only addresses the narrative portion of the SWPPP.

Part/Section	Comment:
5.2	TDEC should retain the qualification requirements to prepare SWPPPs for sites disturbing five acres or less... Section 5.2 of the draft CGP removed these qualification requirements for sites less than or equal to five acres of disturbance, instead providing optional templates for SWPPP preparation... Requiring that SWPPPs be prepared by individuals who are knowledgeable about erosion control practices and engineering is a basic safeguard in ensuring that the plans will actually prevent water pollution.

Response:

The language concerning sites <5 acres has not substantively changed from the 2016 permit. The intent is to allow private landowners, such as a farmer, to utilize the templates for small disturbances >1 acre rather than hire an engineer at what might be an unaffordable cost.

Part/Section	Comment:
5.2	Consider making it more definitive as to what kind of site SWPPP can be submitted with fewer requirements. Commercial sites need a more detailed SWPPP.

Response:

The site-wide SWPPP is required in accordance with the requirements of part 5 of the permit. It is not necessary to prescribe level of complexity for various types of SWPPPs.

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Part/Section	Comment:
5.2	Under section 5.2, add the statement that “the State may determine if the use of a template for a site under 5 acres is not acceptable.” A number of commercial sites and infill developments will be less than 5 acres yet may need more detailed SWPPP preparation. Templates may be helpful for the homeowner or farmer clearing small amounts of land, but many developers will have the ability to hire or use their professional staff to develop individual plans.

Response:

The permit states that “Form CN-1249 is not appropriate if significant grading of the lot or lots is necessary”, allowing the division discretion to deny the use of templates in situations the commenter describes.

Part/Section	Comment:
5.2	For sites >5 acres, the language of 5.2, states that only the narrative portion of the SWPPP be prepared by a qualified individual. Clarification on what is included in the narrative should be given (e.g.; site plans, BMP selections, maps, inspection & maintenance procedures, etc.)

Response:

Part 5.5.1 identifies the information required for the narrative portion of the SWPPP. At a minimum the narrative shall provide a description of pollutant sources and other information (when applicable) as indicated in 5.5.1. a) through n).

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Part/Section	Comment:
5.2	<p>Paragraph 1 – Commenter recommends that TDEC not limit the qualifications of a SWPPP preparer exclusively to that of one particular professional organization such as CPESC, rather follow the definition of a “Qualified Person” as defined by the Federal GP as various professional organizations and certifications exist throughout the industry. The Commenter recommends that the proposed text in paragraph 1 be replaced with the following for consistency with the Federal GP and the 2016 permit:</p> <p>The narrative portion of the SWPPP shall be prepared by an individual who has a working knowledge of erosion prevention and sediment controls, such as (but not limited to) a CPESC or a person that has successfully completed the “Level II Design Principles for Erosion Prevention and Sediment Control for Construction Sites” course.</p>

Response:

The proposed change has been implemented in the final permit.

Part/Section	Comment:
5.2	SWPPP template, Attachment A, is unavailable via link.

Response:

TDEC Guidance document and template were published as two separate documents. Final permit was modified to include both links:

- SWPPP Template for Sites Not Requiring Engineer Design from the DWR – NR – G – 02 - Construction Stormwater – 05172019 Guidance regarding construction stormwater general permit coverage involving sites with Non-Engineer Design SWPPPs: <https://www.tn.gov/content/dam/tn/environment/water/policy-and-guidance/dwr-nr-g-02-cgp-non-engineering-swppp-final-051719.pdf>
Attachment A (template):
<https://www.tn.gov/content/dam/tn/environment/water/policy-and-guidance/dwr-nr-g-02-cgp-non-engineering-swppp-final-051719-template.docx>.

Additional cross-reference link was added to the guidance document.

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Part/Section	Comment:
5.2	Use of the provided SWPPP templates does not apply if “significant grading” is going to occur. Define significant grading?

Response:

Significant grading in this context refers to activities that will significantly alter site topography, such as cut and fill, to the extent that EPSCs in the provided templates may not be adequate.

Part/Section	Comment:
5.2	Section 5.2 - Language needs to be consistent with <i>DWR-NR-G-02-Construction Stormwater-05172019 Guidance regarding construction stormwater general permit coverage involving sites with Non-Engineer Design SWPPPs</i> . The document states under “GUIDANCE” that if any of the questions were answered yes then SWPPP must contain a registered architect or engineer designed component. Number one from this section, “Does the construction site discharge to receiving waters with unavailable parameters for siltation or habitat alterations, or that are Exceptional Tennessee Waters?” fails to be captured/reflected in the language of section 5.2.

Response:

Thank you for the comment. The wording of the guidance document referenced by the commenter will be re-evaluated, and it will be updated to conform with the final wording of section 5.2 if needed.

Part/Section	Comments:
5.3.1	<p>5.3.1: Existing Sites</p> <p>Three months is not enough time to update all SWPPPs to comply with the requirements of the new permit. Request six months.</p> <p>We have concern that the Division is creating a narrow timeline to reissue approvals. Section 5.3.1 of the draft GP states: “The current SWPPP should be modified, if necessary, to meet requirements of this new general permit, and the SWPPP changes implemented as soon as practicable but no later than three months following the new permit effective date. The permittee shall make the updated SWPPP available for the division’s review upon request.” Is the division certain that 90 days will be enough time to approve all the resubmittals in a timely fashion?</p>

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	The Commenter requests that active linear infrastructure projects be allowed 1 year to update SWPPPs to the new permit requirements (due to the high number of such projects affected).
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Response:

The previous deadline of 12 months has been reinstated.

Part/Section	Comment:
5.3.1	The Commenter recommends that this section be removed, since it is redundant to the language found in section 3.1.2.

Response:

All requirements regarding SWPPP updates in the final permit were made by cross-referencing Section 5.3.1. In addition, phrase “current SWPPP” was replaced with phrase “existing SWPPP.”

Part/Section	Comment:
5.3.4	Members of the public should have the opportunity to comment on SWPPPs. The draft CGP fails to provide the public an opportunity to comment on the SWPPPs of individual projects covered by the CGP. Public participation is a critical component to achieving the goals of the Clean Water Act. 33 U.S.C. § 1251(e). The SWPPPs are the main mechanism by which the goals of the CGP are enacted, and each project covered by the CGP must submit its own SWPPP. Without an opportunity for Comment:, the public is prevented from providing valuable feedback to the operator and TDEC about whether a particular SWPPP in a particular location will be adequately protective... he draft CGP should allow public comment on the SWPPP. At minimum, SWPPPs must be available for public review and conditions and limits in the draft CGP should ensure that NOIs and SWPPPs are not the “functional equivalent” of permit applications.

Response:

General permits by definition do not include the opportunity for public comment on each individual site. Providing a public comment period on each site issued coverage would be equivalent to requiring an Individual Permit for each site, making the CGP obsolete. The division reviews and issues coverage on approximately 2,000 construction sites each year, which should serve to illustrate the magnitude of such a permitting strategy. However, the permit does allow for the public to comment on existing SWPPPs, the effectiveness of their implementation, and observed effects on receiving waters at any time – see response to Subpart 1.3(g).

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Part/Section	Comments:
5.4.1	<p>SWPPP Modifications</p> <p>"The permittee must modify, update and re-sign the SWPPP if any of the following conditions apply:" Suggest, "The <i>responsible</i> permittee must modify, update and re-sign <i>recertify</i> the SWPPP."</p> <hr/> <p>The draft GP is not clear as to what the phrase "...re-sign the SWPPP..." implies. Does it mean the signing of an amendment/modification form, or that the permittee needs to re-certify the SWPPP? We recommend Section 5.4.1 of the draft GP be modified as shown: "When the following conditions apply, the permittee or a duly authorized representative of the permittee must modify, update and re-sign the SWPPP, if any of the following conditions apply... and document and certify the modification in the SWPPP:"</p>

Response:

The division agrees with both commenters; for simplicity, the suggestion to replace *re-sign* with *recertify* was included in the final permit.

Part/Section	Comments:
5.5	<p>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.</p> <hr/> <p>Part 6.9 of the Updated CGP Rationale, Post-Construction Stormwater, says no reference will be made in the CGP to post-construction requirements because only MS4s regulate post-construction stormwater discharges. That reasoning needlessly removes protection from waters in developing areas.</p> <p>Section 3.5.4 of the present permit, Stormwater management, renumbers to 5.5.3.6 in the 2021 draft. The newer and much shorter version drops all mention of steps to be taken during the construction process to control pollutants after construction operations have been completed, including those for discharges to impaired waters where SWPPPs would no longer describe measures to control pollutants from increased impervious surfaces.</p> <p>Even this sentence would be removed: "All permittees are encouraged to limit the amount of post construction runoff voluntarily, if not</p>

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	<p>required by local building regulations or local MS4 program requirements, to minimize in-stream channel erosion in the receiving stream.”</p> <p>The proposed change would boost the likelihood that waters in developing areas, particularly where there is not an effective MS4-operated post-construction control program, will be continually degraded. For projects within MS4s, the proposed change would increase the likelihood that operators will not have planned for the post-construction controls they’re required to have in place at termination of active construction. The reissued permit needs to maintain existing protection</p>
	<p>TDEC should retain requirements for the SWPPPs to include descriptions of post-construction stormwater control practices... In the Notice of Determination for the 2016 CGP, TDEC explains these requirements by noting that 40 C.F.R. § 122.26(c)(1)(ii) requires SWPPPs to include, among other things, “[p]roposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements,” and “[a]n estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge.” 2016 CGP NOD, 15-16... As the federal regulations cited in the 2016 CCGP NOD have not changed, TDEC must explain why the federal regulations no longer require the SWPPP to include these elements.</p>

Response:

The division does not necessarily agree that post-construction pollutants should be addressed in a permit regulating construction activities. However, we agree with the commenters that post-construction controls are required in the federal regulations, so they have been retained in the final permit.

Part/Section	Comment:
5.5.1	TDEC could require that the construction site map or SWPPP narrative indicate downstream waters (and impairment status of downstream water), as well as designated points where vehicles will exit onto paved roads, locations where materials will be stockpiled, and other specific sources of pollutants likely to affect the quality of stormwater discharges from the construction site. For each pollutant-generating activity, the permittee could include in the SWPPP an inventory of

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	pollutants associated with that activity, which could be discharged in stormwater from the site.
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Response:

This section does require the identification of receiving waters and their impairment status (items h – k). Item (g) addresses other pollutants on site. Stockpiles and borrow areas are addressed under 5.5.3.1(e), and vehicle accesses onto public roads are addressed under 5.5.3.1(j). Inventory of pollutant sources is required in section 4.1.4 of the permit (Pollution Prevention Measures), specifically in paragraph (b). The inventory of pollutants through individual identification (via CAS number, chemical formula, or even common chemical name – commenter is not clear) would be a costly proposition with little or no measurable impact to stormwater runoff quality or implementation of BMPs at the site.

Part/Section	Comment:
5.5.1(j)	The draft permit seems to only be concerned with siltation impairments and requires identification of receiving waters with just siltation impairments. However, habitat alteration listings could be attributed to construction activities, and nutrients could also potentially leave a construction site, especially during site stabilization or when fertilizers area applied. If TN is choosing to look solely at siltation impairments, please include in the rationale why other parameters are not included.

Response:

The language in the previous version of the CGP related to habitat alteration was inconsistent with stream assessment parameters and needed to be corrected. Sedimentation/siltation is the EPA ATTAINS parameter most directly related to runoff from construction sites. While this parameter could be extrapolated as a habitat alteration where sediment can fill substrate habitat, the Tennessee assessment process considers sedimentation/siltation a distinct pollutant and not part of habitat alteration. All stream miles that would have been protected under Unavailable Parameters under the 2016 language will receive the same protections in the 2021 version.

Part/Section	Comments:
5.5.2	SWPPP and EPSC Plans Suggest requiring drainage area maps for each phase with outfalls and acreage identified on the drainage area maps.
	The EPSC section under Part 5.5.3. could include specific control measures to help describe how the permittee can address the non-numeric effluent limitations contained in Part 4.1.1. For example, “to minimize soil compaction,” the permittee could be required to restrict vehicle and equipment use in these locations.

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	<p>Paragraph 2: The Commenter agrees that 3 EPSC plan sheets are not needed for projects of 5 acres or less, and requests the following wording addition:</p> <p>Three separate EPSC plan sheets should be developed for most sites, with the exception of single-lot homes, commercial lots, <i>or linear infrastructure projects</i> of less than or equal to 5 acres, for which a single plan sheet may be sufficient:</p>
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Response:

Section 5.5.1(c) and (f) specify that SWPPPs must include drainage areas, drainage patterns, and outfalls; sections 1.4.2 and 5.4.1 require the SWPPP to updated if needed. The division does not find it necessary to specify exactly how permittees may achieve compliance with the conditions. The phrase “or linear Infrastructure projects” has been added to the final permit as suggested.

Part/Section	Comments:
5.5.3.1(a)	<p>Section 5.5.3.1.a of the draft GP states: “Sediment controls shall be designed to retain mobilized sediment on site to the maximum extent practicable.” The draft GP’s use of the term ‘retain’ is unnecessarily burdensome and unachievable for the permittees... A sediment control that is installed and maintained in accordance with the BMP Manual and is ‘performing’ during its design storm event will still release sediment offsite, albeit at a greatly reduced rate... to require the permittees to “...retain mobilized sediment on site to the maximum extent practicable.” is an unachievable standard that will intentionally cause the permittees to be in noncompliance with the GP. We recommend that Section 5.5.3.1.a of the draft GP be modified as follows: “Sediment controls shall be designed to retain mobilized sediment on site to the maximum extent practicable to minimize the discharge of pollutants in stormwater from the construction activity.”</p> <p>The Commenter questions the use of the phrase “to the maximum extent practicable.” The draft should state that no controls meet the terms of the permit if the resulting discharge causes more than de minimis pollution of TN waters.</p>

Response:

The division recognizes that erosion and sediment controls are not 100% effective in retaining sediment on site, hence the wording “to the maximum extent practicable.” The standards for erosion and sediment control effectiveness and discharge quality are laid out in various portions of the permit, including sections 1.3, 4.1, 5.5.3.1, and 6.3.1.

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Part/Section	Comment:
5.5.3.1(e)	Erosion Prevention and Sediment Controls "Erodible material storage areas (e.g., overburden and stockpiles of soil) and borrow pits that are used primarily for the permitted project and are contiguous to the site are considered a part of the site." Remove the word contiguous. Such areas are not always contiguous.

Response:

The phrase "and are contiguous to the site" has been removed from the final permit.

Part/Section	Comment:
5.5.3.1(i)	5.5.3.1(i) - Temporary EPSC measures removed during the day provide zero treatment during a rain event. Add language in bold. EPSC measures must be in place and functional before earth moving operations begin and must be constructed and maintained throughout the construction period stages as appropriate. <i>Temporary measures may be removed at the beginning of the workday but must be replaced at the end of the workday and prior to any rain event.</i> As written it creates a loophole that allows measures to be removed at the beginning of the workday and not replaced prior to a rain event, potentially allowing a discharge during the workday. This creates a challenge for MS4s to issue enforcement for discharges if the CGP allows measures to be removed during the day.

Response:

The division is reluctant to add this language, as not all rain events are predictable, and not all events are significant enough to warrant stopping work.

Part/Section	Comment:
5.5.3.1(i)	The link for "temporary measures" under 5.5.3.1.i goes to "temporary stabilization" in the definition section. Add a definition for "temporary measures" and fix the link.

Response:

The hyperlink associated with the phrase "temporary measures" has been removed from the final permit.

Part/Section	Comment:
5.5.3.1(i) and 5.5.3.4	"Temporary measures" is presented to be defined, but is not defined under the definition section.

Response:

While there is not a specific duration set, temporary measures have a short life span or are intended to be easily removed such as straw cover or a wattle.

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Part/Section	Comment:
5.5.3.2	<p>(The Commenter) recommends 5.5.3.2 of the proposed permit be revised to:</p> <p>Construction phasing is <i>required</i> on all sites regardless of size as an effective practice for minimizing erosion and limiting sedimentation. <i>It is recommended that</i> construction be phased to keep the total disturbed area less than 50 acres at any one time.</p>

Response:

It is not practical or even feasible to enforce construction phasing on every construction site, without taking into consideration size, type of soil, slope (or lack of) and other site-specific characteristics. The second sentence was included in the final permit verbatim.

Part/Section	Comments:
5.5.3.3	<p>Projects Exceeding 50 Acres of Disturbance</p> <p>It is understandable that the Division needs additional assurances that pollution will not occur if a larger area is exposed to erosion. We think that instead of requiring information once the disturbance occurs, it would be better for the regulated community and the regulators to identify potential disturbed area and provide additional information at the time the NOI and SWPPP are submitted, rather than relying on everyone to remember to submit it when the disturbance occurs.</p> <p>We also suggest clarifying that the 50 acre limit applies to a permit or combination of permits for the same project by the same permittee. In addition to the suggestions below, we suggest that the Division retain the right to modify the site's permit(s) to limit disturbed area to 50 acres if EPSC BMPs are ineffective, and offsite sediment loss becomes a chronic problem at a permitted site.</p> <p>a) "The permittee shall notify the Division immediately if more than 50 acres of disturbance is planned." The word "immediately" is subject to interpretation and confusion regarding notification to the Division difficult to manage by all parties as the limits of disturbance change throughout the duration of construction. Suggest requiring that the potential for more than 50 acres of disturbance be clearly identified and described in the SWPPP or included in future SWPPPs if a</p>

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	<p>combination of permits results in more than 50 acres of simultaneous disturbance at one project by the same permittee.</p> <p>b) Requiring inspections twice per week plus after rain events is excessive. Because we have been stormwater consultants since 2002, we have considerable experience with rain event inspections. Rain event inspections by their nature are impossible to schedule and therefore difficult to staff. They require having personnel on call weekends and holidays, as well as constantly re-adjusting inspection schedules. We have had to cancel appointments, postpone vacations, and pay overtime in order to staff qualified personnel to conduct rain event inspections. Conducting inspections twice per week is consistent with other requirements. Focus should be on prompt repairs and stabilization.</p> <p>c) Because most large sites inevitably have outfalls that drain more than five or 10 acres, we suggest eliminating the language addressing outfalls in its entirety and requiring monthly site assessments (paragraph "c" doesn't specify follow-up site assessments) that include all disturbed area whenever more than 50 acres are disturbed.</p> <p>Suggest requiring that the monthly site assessments be submitted to the Division within 10 days of completion if deficiencies are found at a site that disturbs more than 50 acres.</p> <p>d) Suggest including detailed soil information with the submitted SWPPP if there is a potential for more than 50 acres to be simultaneously disturbed.</p>
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Response:

Ideally the permittee will indicate the intent to disturb >50 acres at the time of NOI submittal, but in some cases the intent to disturb >50 acres at one time may not be part of the initial plan. The permit coverage is extended to the common plan of development, but separate development sites by the same permittee that are not part of the same common plan cannot be 'lumped together' and regulated as a totaled acreage of disturbance. The final permit retains the requirements for phasing of disturbance wherever possible, and part 1.3(d) allows for the division to require an Individual Permit when necessary to protect water quality. The final permit includes requirements for quarterly site assessments. Detailed information on soil erodibility is required under part d.

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Part/Section	Comment:
5.5.3.3	The Commenter requests that existing permitted sites be exempted from the requirements of 5.5.3.3 unless the site discharges directly to a known ETW, ONRW, or Water with Unavailable Parameters

Response:

The provisions of section 5.5.3.3 will not apply retroactively to any sites already issued coverage under the 2016 CGP.

Part/Section	Comment:
5.5.3.3	The draft permit should specifically state that TDEC personnel shall always have access to the site for inspection purposes.

Response:

Rights of entry for inspection purposes by division staff are laid out in Subpart 8.14.

Part/Section	Comments:
5.5.3.3	<p>The Commenter supports the removal of the “50 acre disturbance limit” from the permit for sites where construction stormwater runoff does not drain directly to a known Exceptional TN Water, Outstanding National Resource Water, or Waters with Unavailable Parameters, as attempting to apply a numeral limit to the amount of soil disturbance occurring at one time at a site is considered arbitrary, and does not take into account site-specific characteristics...Additionally, 4.1.1 of the proposed permit thoroughly addresses erosion prevention and sediment controls, similar to that found in the Federal CGP.</p> <p>(The Commenter) appreciates and is supportive of the changes proposed in the revised NPDES permit for discharges of stormwater for construction related activities. In particular, the Chamber agrees that removing the prohibition on conducting more than 50 acres of disturbance at one time under CGP coverage is appropriate given that the individual permit process costs applicants time and resources and the additional requirements have not shown to improve water quality.</p> <p>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... 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.</p> <p>The Division proposes to ... delete the prohibition on conducting more than 50 acres of disturbance at one time (projects involving the</p>

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	disturbance of more than 50 acres of land will be subject to additional rules)...We are concerned that these proposed changes could weaken our enforcement efforts, result in delayed detection of (and responses to) problems at these sites, and increase drinking water costs for removing sediment.
	Projects that will disturb more than 50 acres at a time, which used to require an individual NPDES permit, would be allowed general permit coverage with this change, and avoid the more rigorous scrutiny and public participation requirements of individual permits...Even if individual permit requirements do not “necessarily” provide greater benefits to water quality, they certainly provide more opportunity for public participation and careful planning, and often impose greater disclosure requirements on permit applicants... Restrictions such as the 50-acre limit help ensure that activities covered by the permit do not have the “reasonable potential” to harm water quality... In allowing general permit coverage for larger projects, TDEC is going backwards to a less protective standard than what previously applied. General permit coverage should not be extended to sites greater than 50 acres given the increased potential for erosion and sedimentation.
	Proposed changes to the existing permit to set a fifty-acre individual permit threshold and to limit inspections run contrary to the Act that has served Tennesseans well for several decades.

Response:

The difficulties in specifying a prohibition on disturbances greater than 50 acres (or any other arbitrary acreage limit) are discussed in the rationale. EPA is considering comments on specific acreage limits for the federal CGP; if EPA sets an acreage disturbance limit that is scientifically and technologically defensible, the division can adopt it in the following permit cycle.

Until then, the division agrees that additional conditions for sites greater than 50 acres of disturbance are appropriate, both as additional protection and as incentive for phasing. Accordingly, a number of additional requirements, including but not limited to quarterly site assessments and monitoring requirements typically associated with NPDES individual construction permits have been added to Subsection 5.5.3.3.

Part/Section	Comment:
5.5.3.3a)	Bullet 5.5.3.3(a) is redundant and should be removed.

Response:

The intent of item (a) is for the permittee to notify the division immediately if it intends to disturb greater than 50 acres at one time. This requirement is not redundant if the permittee did not intend to disturb >50 acres at the time they submitted for coverage.

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Part/Section	Comments:
5.5.3.3(b)	<p>The Commenter recommends that 5.5.3.3(b) be revised to:</p> <p>Operator inspections as described in subsection 5.5.3.8 shall be completed at least once every 7 calendar days and within 24 hours of the end of a rain event, or by the end of the following business or workday, that is 0.5 inches or greater.</p> <p>Section 5.5.3.3b includes a requirement for an additional inspection following a rain event. This was dropped from the last two permits for good reason. It is very difficult to comply with and ends up being a waste of time as well as an opportunity for another technicality against an operator.</p> <p>Eliminate Post-Rainfall Event Inspections for Projects Exceeding 50 Acres of Disturbance at One Time. Section 5.5.3.3.b of the draft GP proposes an inspection frequency specific to projects that exceed 50 acres of disturbance at one time of “twice per week and following any rainfall event of more than 0.5 inches in 24 hours, rather than weekly.” The proposed requirement to conduct an inspection twice per week and after any 0.5-inch or greater rainfall event is excessive and unnecessarily burdensome for both the permittee and inspector with no direct benefit to the environment. Depending on seasonal conditions and weather patterns, permittees subject to this additional requirement could encounter scenarios where projects will require an inspection as often as seven days per week.</p> <p>Also, without additional language qualifying that the post-rain inspections are to occur during ‘normal business hours’, these unscheduled, weather-driven inspections have the potential to cause a lapse in response time for items identified on a weekend or holiday, despite the excessive inspection frequency. Having inspections occur on scheduled, routine days allows permittees the ability to ensure that BMP maintenance contractors are available at the construction site the next day following each inspection for expedient and timely response to items identified by the inspector.</p> <p>Most permittees use third-party inspectors to conduct the required operator inspections. Having a routine inspection frequency that does not include post-rainfall event inspections allows these third-party inspection firms to accurately forecast the amount of inspections that a project will require and offer a standard price to permittees.</p>

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	<p>Replacing this consistency with an increased and unpredictable inspection frequency will result in an additional financial burden on the regulated community...Additionally, under the conditions of the current permit, third-party inspection firms are able to stagger their inspection dates in such a way that they are able to maximize the time spent inspecting each construction site. Post-rainfall event inspections would cause these firms to have to inspect all of their client's projects subject to this proposed frequency in a single day, reducing the time available to conduct a thorough inspection.</p> <p>Therefore, we recommend that Section 5.5.3.3.b be modified as follows: "Operator inspections as described in Subsection 5.5.3.8 shall be conducted twice per week and following any rainfall event of more than 0.5 inches in 24 hours, rather than weekly."</p>
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Response:

The division generally agrees with the commenters. The final permit requires twice-weekly inspections, quarterly site assessments, and monitoring for disturbances greater than 50 acres.

Part/Section	Comment:
5.5.3.3(c)	In general, the use of the term "site assessment" makes the reader think it is for the whole site when it is only for the outfall of a 5 or 10 acre drainage area. Change the name to something like "sediment basin inspection" if that is all it is.

Response:

The site assessment includes all EPSCs that drain to an outfall of 10 acres or more, not only the sediment basin at the end of the treatment chain. The division prefers to keep the term 'site assessment' to avoid confusion. See also response under part 5 – General.

Part/Section	Comment:
5.5.3.4	Provide a maximum length of time that "temporary stabilization" is allowed to be used? Does temporary mean 1 day, 1 week, 1 month,...?

Response:

While there is not specific duration set, temporary stabilization has a short life span such as straw cover or winter rye growth as opposed to perennial vegetation.

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Part/Section	Comment:
5.5.3.4	...it's well accepted that minimizing exposure of disturbed areas is one of the best strategies for minimizing sediment releases to waters. Therefore the word "should" needs to be replaced with "must" in the sentence "Stabilization measures should <i>must</i> be initiated as soon as possible in portions of the site where construction activities have temporarily or permanently ceased."

Response:

See response to comment under part 2.1.3 concerning the use of "should" vs "shall" in the permit language.

Part/Section	Comments:
5.5.3.4	TDEC's proposed changes to implementing stabilization practices to "approximately 2 weeks" and "approximately one week" after the construction activity has temporarily or permanently ceased needs to be tightened. While EPA understands the rationale of providing more flexibility to allow for unforeseen circumstances, we are also pushing states to move towards more specific and measurable permit requirements. TDEC could instead keep the existing deadlines of "no later than 14 days" or "no later than 7 days" and include language so that additional time (but no more than a defined timeframe) could be allowed to accommodate certain site conditions, weather conditions, equipment failures, personal emergencies, etc., and that these issues would need to be documented.
	Definitive time frames should be stated. Enforcement will be difficult given the time frames as stated in the draft.
	The Commenter recommends that the word "approximately" be removed and that "14 days" and "7 days" be utilized instead of "two weeks" and "one week". For sake of clarity, consistency, and enforceability these terms need to be more precise.
	The draft permit substitutes unclear requirements where the expiring permit is clear, specific and measurable.
	The present permit requires that "Temporary or permanent soil stabilization at the construction site must be completed no later than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased." ...the agency now proposes to substitute the phrase "within approximately 2 weeks" for "no later than 14 days." That same section lists situations in which temporary stabilization measures are not required. Item b in that list says "Where

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	<p>construction activity on a portion of the site is temporarily ceased, but soil disturbing activities is planned to resume within 2-3 weeks.”</p> <p>NPDES permit authorities are instructed by a court ruling commonly called the “Remand Rule” to make requirements clear, specific and measurable. Common sense says the same. These changes take Tennessee’s permit in the opposite direction. It’s indefinite language, too awkward to measure or enforce, and unclear to permittees, contractors, the public, MS4 staff and TDEC’s own staff.</p>
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Response:

The division agrees with the commenters. The standard for NPDES permit language as set forth by EPA and legal precedent is that permit conditions should be clear, specific, and measurable (and therefore enforceable). The language for all time deadlines has therefore been reverted to “14 days” and “7 days”, and the word “approximately” has been deleted. However, the division recognizes that rigid application of these deadlines is not always desirable, and that enforcement discretion may be exercised for good cause (such as extreme weather conditions, personal emergencies, and ‘acts of God’).

Part/Section	Comment:
5.5.3.5	<p>1st paragraph. The draft states that structural controls shall not be placed in streams or wetlands except as authorized under an ARAP. Using a stream for treating water quality is not permitted under current ARAP rules, therefore this statement is misleading and must be corrected.</p>

Response:

The commenter is not entirely correct. The language used is reflective of the wording in TWQCA 69-3-108 and does not imply that any such instream structural control would be routinely permitted under an ARAP. Most General ARAPs and Individual ARAP Permits contain conditions that prohibit instream treatment, require adequate standard upland EPSC measures, and require work to be conducted in the dry wherever practicable. However, while the ARAP rules cannot be used to authorize a point source discharge, they do not otherwise explicitly prohibit instream treatment of NPDES point or non-point sources, and the division cannot completely rule out the possibility of permitting a temporary instream structural control in an unusual circumstance with no practicable alternative, such as an emergency response or complex remedial situation.

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Part/Section	Comment:
5.5.3.5	3rd paragraph. The draft permit language must ensure that any structure used to divert runoff around a disturbed area does not itself become a source of erosion.

Response:

The permit specifies that the design of erosion prevention and sediment controls must adhere to good engineering practices. Part 6.3.2. (c) states *“The stormwater discharge must not contain total suspended solids, turbidity, or color in such amounts or character that will result in any objectionable appearance compared to the turbidity or color of the receiving water, considering the nature and location of the water.”*

Part/Section	Comments:
5.5.3.5	The draft CGP does include some improvements on the 2016 CGP, such as...the prohibition on cationic polymers, which represent important increases in protection for the waters of Tennessee. The prohibition on cationic polymers is... a large step in the right direction, as these toxic chemicals contaminate the water and harm many aquatic organisms. These positive changes should be included in any final version of the CGP.
	We wholeheartedly agree with the prohibition on cationic polymers for sediment management. Properly implemented preventative measures should be utilized to achieve the same effect
	Paragraph 2 – Commenter supports the prohibition on cationic polymers for the use of soil erosion and sediment control.

Response:

Thank you for the supportive comments.

Part/Section	Comment:
5.5.3.5	Section 5.5.3.5, Page 34 states: “The discharge structure from a sediment basin must be designed to retain sediment during lower flows.” The draft GP’s requirement to “...retain sediment during lower flows” from a sediment basin is poorly defined and an unachievable standard. Additionally, it is not clear what is meant by the term “lower flows”. Does this mean lower flow rates (ft/sec) or flows from smaller rain events (e.g. less than 0.5 inches)? The BMP Manual requires a sediment basin to have a permanent pool. Any rain event causing runoff to enter into the sediment basin will raise the water level in the basin above the permanent pool elevation and result in a discharge offsite; either through a skimmer device or a perforated vertical pipe. These two types of dewatering devices can reduce, but not prevent, the discharge of sediment from the sediment basin. Therefore, we

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	recommend modifying Section 5.5.3.5 of the draft GP as follows: “The discharge structure from a sediment basin must be designed to retain sediment during lower flows in accordance with the most current version of the Tennessee Erosion & Sediment Control Handbook.”
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Response:

The division agrees and the suggested language has been added to the final permit.

Part/Section	Comments:
5.5.3.5	Please define “alternative design procedures” if a sediment basin is not going to be used.
	Paragraph 5 - Provide clarification and/or further explanation for “alternative design procedure.” Working in this field, I have no idea what this means or what is required.

Response:

The division agrees that the term “alternative design procedure” is not clear. Instead, “site-specific design “ will be used in the permit. The site specific design does not use the rule-of-thumb (Total sediment storage volume = 134 yd³ /acre (3,618 ft³ /acre) of drainage) but instead, uses a physically-based approach, such as RUSLE, to size the total storage volume to protect critical aquatic resources, and safety and health of the public.

Part/Section	Comment:
5.5.3.8	(The Commenter recommends that TDEC) Increase staffing and streamline the inspection process with adequate site visits and documentation.

Response:

The division is attempting, via a combination of this permit revision, training, and on-line submittal and reporting, to direct more of our available manpower into field inspections and enforcement, rather than uploading, reviewing and processing submitted information.

Part/Section	Comment:
5.5.3.8	The draft permit must state the role of TDEC inspectors as enforcement agents.

Response:

The regulatory role of the division as the permitting agency (authority, powers of the commissioner, rights to inspect and enforce, etc.) is laid out elsewhere in statute and rule, and it is not necessary to recapitulate it in the permit language. The CGP, as with any permit language, sets forth conditions and limitations on the permittee, not upon the regulatory agency.

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Part/Section	Comment:
5.5.3.8	If the same inspector is identified performing multiple incorrect inspections, perhaps they should receive some disciplinary action up to and including losing their certification.

Response:

The division does not currently have a mechanism in place to decertify an inspector. The permit provides for enforcement for violations of permit conditions, including failure to submit information or falsifying information.

Part/Section	Comment:
5.5.3.8	Section 5.5.3.8 should start with reference to the initial site assessment to verify proper installation of all designed EPSC, as this inspection comes first. <u>Then</u> it should reference the weekly inspections.

Response:

The division agrees with the commenter that site assessment language belongs prior to the discussion of twice-weekly inspections, and this change has been made in the final permit.

Part/Section	Comment:
5.5.3.8	Consider adding the language of “initial certification inspection” instead of just site assessment. This could refer to the start of the project or start of significant/new phasing of the project. This initial certification inspection would require that a person with a certification level mentioned in 5.5.3.3(c) 1-3 would sign off that all of the controls are in place and installed properly, including ponds, fences, limits of disturbance markers, washouts, etc. After that, the lesser certified inspector would be allowed to do the rest of the inspections (i.e., post rain inspections and once/twice weekly inspections).

Response:

See responses under parts 5 – General and 5.5.3.3(c) above.

Part/Section	Comment:
5.5.3.9	The Commenter recommends language similar to that of a Region 7 CGP be included in the proposed permit: <i>Areas inaccessible due to flooding or other unsafe site conditions shall be inspected within 72 hours of being accessible.</i> Please include a forgiveness clause or waiver that can be applied by permittees when good cause exists, such as an act of God, labor

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	strike, or flood (as per the USEPA NPDES Permit Writer’s manual, 2010).
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Response:

The division recognizes that rigid application of permit conditions is not always desirable. Enforcement discretion is often exercised by staff for good cause (such as extreme weather conditions, personal emergencies, and ‘acts of God’). We are unaware of any situations where the division has unreasonably enforced upon a permittee following a flood or other extreme conditions.

Part/Section	Comment:
5.5.3.10	The Permit’s monitoring and inspection requirements should be strengthened rather than weakened because TDEC has proved incapable or unwilling to enforce existing requirements.

Response:

The division appreciates the commenter’s desire to strengthen these requirements but must question the logic of the above statement. If the Commenter truly believes TDEC is incapable or unwilling to enforce its existing requirements, how would adding additional requirements solve that issue?

Part/Section	Comment:
5.5.3.10	Weekly inspections should be adequate. I understand that some were complaining about the inspection reduction and that it would result in increased sediment in the waters but I don’t think that it would amount to that much if the inspectors were diligent in their inspections and GC’s did what they know that they are supposed to do.
	(The Commenter) agrees that the site inspection frequency should be revised to not exceed the federal minimum requirement. If there is no known evidence that adhering to the federal standard has caused pollution or increased pollutant discharges, as outlined in the permit rational, then no justification exists for twice-weekly inspections and, thus, the requirement should be revised.
	Commenter supports the reduction in site inspection frequency, as better reflecting the Federal CGP and neighboring states stormwater compliance programs. However, please clarify if the intent of the proposed permit language is to require inspections one day a week, or once every 7 seven calendar days. “Weekly” insinuates an inspection can be completed on a Monday, and not again completed until Friday of the following week, thus allowing for 11 days between inspections.

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Inspections should be twice weekly as they were in the previous permit. Weekly inspections will lengthen the time failed measures will remain failing, thus increasing sediment discharges off site to Waters of the State and the local MS4 which we are responsible to maintain with tax dollars.

(The Commenter) agrees with the proposed reduction of the minimum inspection frequency to once per week. (The Commenter) plans to continue self-monitoring and voluntary twice weekly inspection frequencies when site inspections warrant the need.

Subsection 3.5.8.1 of the 2016 CGP required certified individuals to conduct twice weekly inspections for all construction sites. The draft CGP drops that down to once weekly inspections... a higher inspection frequency is fully justified; certainly, there is no reason to inspect even less frequently than the current standard. Many problems could arise within a week, making this change a major step backwards for water protection in Tennessee... To ensure problems are addressed and resolved as soon as possible, inspections should continue to be conducted twice weekly for all projects.

The Division proposes... to reduce the frequency of regular inspections. We are concerned that these proposed changes could weaken our enforcement efforts, result in delayed detection of (and responses to) problems at these sites, and increase drinking water costs for removing sediment.

We support continuation of twice-weekly inspections of all sites and a greater oversight of the data reported, including staff inspections for corroboration.

(The Commenter) conducts Erosion Prevention and Sediment Control (EPSC) inspections for multiple clients, and we are concerned with reducing the frequency to once per week. Since some 303(d) listed watersheds will still require twice weekly schedule, and some watersheds allow for once per week, this will confuse permittees. Some sites straddle multiple watersheds, and could have differing requirements for different sides of a single project site. GEOServices hires staff when we get ne EPSC inspection jobs; reducing inspection frequency may negatively impact future employment opportunities at our company.

The reduction of operator inspections from twice per week to once per week weakens the permit requirement. There should be no change from the 2016 permit conditions for this requirement.

The 2021 draft proposes to significantly cut construction site operators' responsibility to inspect most sites. It is not reasonable to

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think that this change will result in adequate protection of waters of the state. By cutting the schedule from 2 times a week in half, we believe it leaves streams unnecessarily vulnerable.

I am opposed to any changes in the current permit process that will reduce inspection or in any way roll back requirements for developers currently in place to address storm water runoff and subsequent risks to added pollution and/or flooding. If the TN requirements exceed federal regulations, then I congratulate TN for being a leader. Developers must be inspected and accountable. Watering down invites abuse.

Requiring inspections twice per week plus after rain events is excessive. Because we have been stormwater consultants since 2002, we have considerable experience with rain event inspections. Rain event inspections by their nature are impossible to schedule and therefore difficult to staff. They require having personnel on call weekends and holidays, as well as constantly re-adjusting inspection schedules. We have had to cancel appointments, postpone vacations, and pay overtime in order to staff qualified personnel to conduct rain event inspections. Conducting inspections twice per week is consistent with other requirements. Focus should be on prompt repairs and stabilization.

The 2021 draft proposes to cut in half construction site operators' responsibility to inspect most sites. Inspections regularly conducted and documented by trained individuals are proven to result in faster response to problems with stormwater controls and result in better protection of waters. I have heard no objection to the present 2-per-week inspection frequency...

TDEC's proposed schedule of inspections would allow inspections to be as much as 11 days apart – from Monday of one week until Friday of the next week. That's much more than the present maximum of 4 days. It could rain every day during that time as long as the 0.5 inches in 24 hours threshold isn't exceeded.

Comment:

I believe the reduction of inspection frequency would be major step backwards with regards to the protection of our Tennessee waters. I have been conducting EPSC inspections for over 17 years for the Tennessee Department of Transportation, as well as other large entities (such as CSX and Colonial Pipeline) and know firsthand the importance of maintaining regular, frequent communication with contractors during the construction process. The current requirement of twice per week inspections already has its own disadvantages with

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maintaining this communication and keeping up with the land disturbing activities that occur at a very rapid pace when using heavy/large equipment (dozers, excavators, etc.). Combine that with the frequency of intense rainfall that we often experience in this part of the country, and that equates to the constant need for adaptation to EPSC-related issues upon each follow-up inspection.

If an inspector is not present for up to 11 days between inspections, numerous major water quality issues will certainly arise. No doubt about it. Numerous examples come to mind, such as a contractor constructing a temporary stream diversion channel prior to in-stream work without an inspector on-site to provide professional guidance... then a 2-inch rainfall event occurs within a 2-hour period before construction is complete... well, you can imagine the outcome is far from ideal for the downstream receiving waters. Another example: a contractor finishes a culvert construction for a stream during the time in between inspections and decides to go ahead and place the permitted riprap outlet protection. In order to do so, the contractor decides that the channel needs to be over-widened for placement of the protection, as well as further channel widening downstream, beyond the project limits to accommodate high flow. And/or assumes that if the outlet received riprap protection, then the inlet side must get riprap protection and over-widening as well (neither of which are permitted).

Additionally, keeping track of dates of land-disturbing activities and the need for stabilization (one of the most effective ways of preventing erosion) is nearly impossible with reduced inspection frequency. Identification of maintenance needs and the ability to ensure that they are completed in a timely manner would also be nearly impossible.

From our experience, we believe the reduction of twice weekly required inspections to once weekly will prove to be very detrimental to the corrections and needed additions of control measures. We also believe this will result in increased sediment load on the waters of Tennessee as well as resulting in contractors and municipalities operating outside of permit compliance. We specifically believe this will be the case on commercial sites (we believe it to be possible that individual residential sites could be adequately inspected on a once per week basis). Our experience for your consideration is as follows:

- Commercial sites are ever changing. We believe a once per week inspection requirement will lessen the ability for the sites to be

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properly inspected due to multiple grading changes taking place in land disturbance daily. We all understand there are failures and shortfalls in erosion protection installation and plans. These failures and shortfalls need to be addressed promptly to protect against sediment releases. With inspections reduced to once per week, sites will be more difficult to keep in compliance. The results will be increased sediment runoff from the sites.

- Erosion inspections bring a trained professional to the site to examine outfalls and existing conditions of sediment controls for adequacy. Inspections are proactive and not reactive. An adequate number of proactive inspections help protect the waters of Tennessee. We believe the reduction in weekly inspections will reduce inspections to a reactionary level.
- We find that local municipalities (including Metro Nashville) are limited on personnel to conduct stormwater inspections. Municipalities have come to depend on the twice weekly inspection process to assist in keeping sites compliant and to protect the waters of Tennessee. It is our belief that the required inspection process reduced to once per week will only exacerbate this already strained situation in local municipalities.
- Additionally, we believe the reduction in required weekly inspections will provide a signal (whether true or perceived) that sediment and erosion control is not as critical as presently regarded for the protection of Tennessee waters. We believe control measure repair and implementation will suffer and therefore the waters of Tennessee will also suffer.
- Site inspections are typically very reasonable in cost (a few hundred dollars per month) to ultimately help ensure protection of the waters of Tennessee. Everyone wants to eliminate unneeded expense. We however believe the minimal reduction of possible costs to owners on inspections to be outweighed by what we perceive as professionals to be expected degradation of the waters of Tennessee.

The industry is used to twice weekly inspections. I.E. – (If available parameter sites go to once a week inspections then technically the site could go 11 days without inspection, which could mean a site is only inspected 3 times a month. BMPs are knocked down daily and non-priority sites need these inspections in order to make sure the site stays healthy and in compliance. Small municipalities may not have inspections set up monthly so you would end up with very little oversight.)

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What was the rationale from the 2005 permit that was given when inspection requirements changed from once per week + after rain events to twice weekly? Please provide an explanation as to why this rationale is no longer valid.

Response:

Local MS4s and private sector consultants who conduct compliance inspections have commented strongly in favor of twice-weekly inspections, and the division is unwilling to disregard their experience.

Some Commenters have also pointed out that the draft language as proposed would still require twice weekly inspections for sites that discharge to ETWs, Waters with Unavailable Parameters, and >50 acres disturbed (see comment under section 6.4.1c below). Given that many stream miles in urban and suburban areas are listed as waters with unavailable conditions for sediment, a large percentage of sites would still require twice weekly inspections, and some sites would require twice weekly inspections on one part of the site and weekly inspections on the rest. This seems to complicate site management while creating little benefit.

Others have commented on the real-life impracticability of conducting inspections immediately following significant rain events. Meeting such a requirement 7 days a week is a logistical challenge for staffing, time off, overtime, etc., because a significant rainfall event is likely most weeks in Tennessee, and some weeks may have multiple such events. Part of the original rationale behind twice weekly inspections was to create a more practical approach than weekly inspections plus inspections following significant rain events without sacrificing protections to water quality.

Therefore the division has changed the language in the final version to twice weekly inspections, without the requirement to inspect immediately following significant rain events.

Part/Section	Comment:
5.5.3.10(i)	Section should better reflect section 3.5.8.2(i) from the previous permit. The new permit fails to mention that subsequent primary permittees are required to conduct inspections. Ensure language is clear that subsequent primary permittees shall or must conduct inspections, not "should".

Response:

The following has been added to subsection (i):

"Subsequent primary permittees who have obtained coverage under this permit shall conduct twice weekly inspections as per the requirements in Subsection 5.5.3.9."

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Part/Section	Comment:
5.5.3.10	The Commenter recommends removing the 2 nd sentence in part (a) of this section (“Inspections should be performed at least 72 hours apart”) if inspection frequencies are reduced to once per week.

Response:

See response concerning frequency of inspections under part 5.5.3.10 above.

Part/Section	Comment:
5.5.3.10	If once a week inspections are going to be allowed to stay, then require that no more than 7 calendar days pass between inspections and make the post-rain inspection threshold 0.25” instead of 0.5”.

Response:

See response concerning frequency of inspections under part 5.5.3.10 above.

Part/Section	Comment:
5.5.3.10(h)	The draft permit does not, but must, state how TDEC would know how inspection records had been falsified to be able to use its enforcement powers.

Response:

Obviously the division cannot always know that records have been falsified. There is no requirement for permit language to specify how the regulatory agency will conduct investigations, nor is it necessarily desirable to do so.

Part/Section	Comment:
5.5.3.11	Similarly, the pollution prevention measures under Part 5.5.3.11 could be expanded to include specific control measures to address various pollutant sources/activities and help meet the effluent limitations contained in Part 4.1.4. For instance, a specific measure to “minimize the discharge of pollutants from spills and leaks” could be to use drip pans and absorbents under or around leaky vehicles.

Response:

The division does not deem it necessary or desirable to specify engineering controls or other minimizing measures to the permittees. Site conditions vary and engineers and operators should have the flexibility to design to their situation.

Part/Section	Comment:
5.5.3.11	Section 5.5.3.11 of the draft CGP proposes that the “Estimated volume of the non-stormwater components of the discharge must be included in the design of all impacted control measures.” The proposed requirement for the permittee to attempt to quantify the

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	<p>volume of infrequent, unplanned, and unanticipated flows such as foundation/footing drains, uncontaminated groundwater or spring water is impractical, burdensome, and unfeasible...in residential construction, many portions of a project (e.g. closed individual residential lots, amenity areas, common spaces) are removed from the permittee's area of control throughout the life of the project. When these areas are sold and deeded to the subsequent property owners, the permittee can no longer exercise control over the volume or type of non-stormwater discharge generated at each individual property.</p> <p>Therefore, we recommend the following sentence be deleted from Section 5.5.3.11 of the draft CGP: "Estimated volume of the non-stormwater components of the discharge must be included in the design of all impacted control measures."</p>
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Response:

The division does not agree with the commenter. The purpose of this requirement is to ensure that the controls implemented are adequately sized to handle the flows directed to them. It does not imply that permittees have control over all such volumes.

Section 6

Part/Section	Comment:
6.3	<p>...the draft CGP's requirements to ensure compliance with state water quality standards are not detailed enough to protect water quality. Section 6.3.1 states only that "[t]his permit does not authorize stormwater or other discharges that would cause or contribute to a violation of a state water quality standard", and contains no actual guidance for permittees on how to make sure such discharges do not occur... For example, TDEC could add additional best management practices to address water quality, as it does in the draft CGP for the special circumstances of discharges into waters with unavailable parameters or Exceptional Tennessee Waters...The insufficiency of the water quality-based limits in the draft CGP is even more striking when considering the apparent lack of any monitoring requirements to ensure compliance with those limits. Monitoring to "assure compliance with permit limitations" is required by 40 C.F.R. § 122.44(i), but the draft CGP does not contain information on how permittees are meant to monitor their operations for violations of effluent limits.</p>

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	In addition to revising the water quality-based permit limits to make them specific and actionable, TDEC should also include monitoring requirements for those limits.
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Response:

See response to Comments under part 4.1 above concerning water-quality based limits.

Part/Section	Comment:
6.4.1	Footnote, page 40. Please explain why this qualifying statement is presented as a footnote and not in the text itself.

Response:

The division felt the inclusion of this sentence in item (a) made an already complex paragraph even harder to read, and so added it as a footnote. It was intended to make the section clearer and represents no more than a stylistic choice.

Part/Section	Comment:
6.4.1(d)	The draft permit must specify how TDEC would know that an operator is contributing to impairment of a stream, and finds this section of the permit to be “non-sensical”.

Response:

The division disagrees that the CGP language must specify how it might arrive at this conclusion, whether by complaint, inspection, assessment, or some combination thereof. The division acknowledges that it is possible that such impairment could be occurring at a site without its knowledge.

Part/Section	Comment:
6.4.1	6.4.1 SWPPP/BMP Requirements f) Required sediment traps for small drainage areas are often swiftly removed during mass grading when they are in the way of future infrastructure or travel routes. Field conditions are fluid, and EPSC professionals routinely request installing smaller sediment traps as needed as field conditions change. Suggest removing this requirement and relying upon the inspector’s professional judgment.

Response:

The division understands the dynamic nature of construction sites and that BMPs change through the initial, intermediate and final stages of construction. For the protection of sensitive receiving waters, adequately planned sediment capture and storage for large drainage areas (3-5 acres) is important - therefore this requirement will be retained.

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Part/Section	Comment:
6.4.1	Section should mirror the previous permit requirements and include waters with unavailable parameters for habitat alterations. Definition of unavailable parameters should be updated as well.

Response:

The language in the previous version of the Construction General Permit related to habitat alteration was inconsistent with stream assessment parameters and needed to be corrected. Sedimentation/siltation is the EPA ATAINS parameter most directly related to runoff from construction sites. While this parameter could be extrapolated as a habitat alteration where sediment can fill substrate habitat, the Tennessee assessment process considers sedimentation/siltation a distinct pollutant and not part of habitat alteration. All stream miles that would have been protected under Unavailable Parameters under the 2016 language will receive the same protections in the 2021 version.

Part/Section	Comment:
6.4.1(c)	Weekly inspections are still 2 times per week for impaired streams. Are these only streams in the “pink cloud” of TDEC’s mapviewer or would this include the entire watershed of a stream that is listed as impaired (e.g.; South Chickamauga Creek in Chattanooga)?

Response:

Yes, the stream miles included in the ‘pink cloud’ on the TDEC MapViewer are included as waters impaired for siltation. The ‘pink cloud’ coverage is provided to make it easier for the applicants and public to determine if a discharge would be considered as discharging to a stream with unavailable parameters for siltation.

Part/Section	Comment:
6.4.1(c)	Is the intent for discharges to waters with unavailable parameters to be inspected twice weekly or is this a typo? Inspections should be twice weekly regardless of impairment. If a site has a watershed that is split with one side draining to a stream with available parameters and the opposite side discharging to a stream with unavailable parameters, what is the inspection schedule? Does each side of the site have a different schedule? This is going to be hectic for all parties involved to keep track of. This will cost the developers and MS4s more time and money to keep track of.

Response:

The commenter makes a good point concerning the practicality of having weekly inspections on some sites, or parts of sites, and twice weekly inspections on others. See response to comments under 5.5.3.10 above.

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Part/Section	Comment:
6.4.1(c)	Last paragraph. The Commenter requests clarification: work within a buffer zone can be allowed under an ARAP permit, but does this change the CGP prohibition against building any new structures in the buffer zone?

Response:

An ARAP would only authorize building of structures (alterations to a jurisdictional water feature) that were identified in that specific ARAP (headwalls, footings etc.). ARAPs do not authorize structures or disturbance activities related to adjacent construction (gazebos, walking trails, etc.). ARAPs do not supersede or grant authorization related to local buffer requirements such as MS4 regulations.

Section 7

Part/Section	Comments:
7.2	<p>TDEC's 2016 permit, Part 6.2, Accessibility and Retention of Records, says this: "The permittee shall retain a copy of the SWPPP and a copy of the permit at the construction site (or other local location accessible to the director and the public) from the date construction commences to the date of termination of permit coverage."</p> <p>The corresponding section of the 2021 draft permit is Part 7.2. Now the parenthetical phrase says "or other location accessible to the division." There's no discussion of the deletion of "public" in the rationale. Some provision for public access must be made. This issue is cured if up-to-date versions of plans will be available on TDEC's site and if the site notice explains to readers how to access those plans.</p> <p>TDEC should continue to require that (SWPPPs) are made readily available to the public, who have a right to know how waters in the public trust will be protected...up-to-date plans should be made available on TDEC's website, so that all public stakeholders statewide can easily access them.</p> <p>7.2.1. Posting Information at the Construction Site Suggest including a central location, such as the exterior of the construction trailer or office, as long as it is accessible to the public, as a location for posted information.</p>

Response:

The division's intent is to maximize transparency, publish all available and current documents on the world wide web, while protecting permittee property rights. Specifically,

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Section 7.2.1 states: "This permit does not provide the public with any right to trespass on a construction site for any reason, including inspection of a site. This permit does not require permittees to allow members of the public access to a construction site."

Part/Section	Comment:
7.2.1(b)	<p>Add Electronic Maintenance of Inspection Reports. Section 7.2.1.b of the draft GP states: "The permittee shall also retain the following items in an appropriate location onsite...b) a copy of all required inspection reports;" The draft GP is inhibiting the permittees' evolution into more efficient inspection report technologies; and, the requirement that the inspection reports be retained in hard copy form is an unnecessary burden on the permittees and provides no apparent benefit to water quality or the environment. The use of electronic inspection reporting technologies affords the permittees greater efficiencies in conducting, managing, and retaining the completed inspection reports. Additionally, keeping inspection reports electronic reduces paper consumption and the need for onsite storage of all the inspection reports conducted throughout the life of the development while covered under the GP.</p> <p>Electronic inspection reporting technologies allows for bona fide e-signatures for signing and certifying the reports; provides greater transparency to the permittees; and, can be made available upon request in a timely manner via numerous types of electronic devices (e.g. laptops, tablets, smartphones, etc.).</p> <p>Therefore, to better align with current industry practices and available technologies available to the permittees, we recommend that Section 7.2.1.b of the draft GP be modified as shown: "The permittee shall also retain the following items in an appropriate location onsite...b) a copy of all required inspection reports, or the required inspection reports be electronically accessible through the permittees environmental system so that the documents can be made available at the time of an onsite inspection or upon request by the Division;"</p>

Response:

A phrase "or other location accessible to the division," like used with regards to the SWPPP, has been added to the final permit.

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Section 8

Part/Section	Comment:
8.2	Continuation of the Expired General Permit Request six months to update SWPPPs.

Response:

Existing permittees are required to update their SWPPP, if necessary, within 12 months of the new CGP effective date.

Part/Section	Comment:
8.7.3(c)	<p>Remove the Requirement to Provide Contact Information for Duly Authorized Representatives. Section 8.7.3.b states: "...a duly authorized representative may thus be either be a named individual or any individual occupying a named position". Section 8.7.3.c then states: "The written authorization shall be a written document including the name of the newly authorized person or any individual occupying a named position as described in paragraph b) above, and the corresponding contact information (title, mailing address, phone number, fax number and E-mail address) for the authorized person or position." The requirement to include contact information on the written authorization delegating a duly authorized representative(s) is an unnecessary paperwork burden to the regulated community, is information contained elsewhere in the SWPPP, and provides no apparent benefit to water quality or the environment.</p> <p>Section 8.7.3.b affords the permittee the ability to delegate a duly authorized representative (DAR) to any individual occupying a named position, rather than delegating a DAR by a named individual. This streamlines the written authorization process for the permittees when there may be several individuals onsite that occupy the delegated named position; and, relieves the permittees of the paperwork burden of writing and resubmitting a delegation letter each time a named individual changes.</p> <p>The spirit of the signatory requirements of Section 8.7 of the draft GP, adapted from 40 CFR § 122.22, is to delegate signing authority to a DAR to sign certain documents required by the program. It is not to provide contact information for the DAR, which may be listed on the jobsite posting and is included in the SWPPP. We recommend the following be deleted from Section 8.7.3.c of the draft CGP: "The written authorization shall be a written document including the name</p>

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	of the newly authorized person or any individual occupying a named position as described in paragraph b) above, and the corresponding contact information (title, mailing address, phone number, fax number and E-mail address) for the authorized person or position.
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Response:

The DAR is not only a designated signatory for the permittee, but (at least potentially) also a responsible party. Because of this contact information is necessary. As provided in part b, the DAR may be a designated position rather than an individual; in that case the contact information the division would use to contact the holder of that position is required.

Part/Section	Comment:
8.9	This section should specify that discharges of stormwater across private property is a violation of this permit rather than leaving the burden of proof and legal costs to the adjoining landowner.

Response:

The division has the authority to regulate the discharge of pollutants into the state's waters, and cannot regulate private property damages. The purpose of section 8.9 is to make clear that the issuance of coverage by the division confers no rights concerning private property upon the permittee.

Part/Section	Comment:
8.11.1	The criteria for requiring an Individual Permit should also include "when best practicable method is not sufficient to protect water quality".

Response:

The division believes that the intent of the commenter is already addressed in paragraph b) of this section: "The total acreage to be disturbed and/or total drainage area to an outfall may exceed the capability of standard EPSCs and other BMPs to prevent pollution to waters"

Part/Section	Comment:
8.11.1	TDEC seems to imply in permit section 8.11.1 that the burden of petitioning the Director to require an individual permit lies on the public, as in "any interested person". The public does not have the expertise or knowledge of TDEC regulations to be capable of doing that. There should be an emphasis on requiring TDEC inspection staff to assess the likelihood of a project to require an individual permit when a pre-construction site assessment is made.

Response:

The intent of the wording is that *in addition to the director* any interested party may petition the division to require an Individual Permit (this wording is not changed from the 2016 CGP). Staff can and ideally would identify the need for an Individual Permit during the initial SWPPP

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review, but to *require* staff to make that determination prior to construction would seem to limit their ability to require an Individual Permit at a later stage of construction, which is always possible.

Part/Section	Comment:
8.11.1	(The Commenter) acknowledges that this new language clarifies the possibility that a project with CGP Coverage could be required to obtain an individual permit. The criteria for the division to require an individual permit are indeterminate and may result in high risk to ...construction contracts, budgets, and schedules. In addition, (the Commenter) is concerned that any interested person who opposed (a project) during the development may now petition for an individual permit action to delay, stop, or otherwise negatively impact project completion.

Response:

The language allowing for an interested third party to petition the director is not changed from the 2016 permit. The permit language already allowed the director to require an Individual Permit if deemed necessary to protect water quality, but provided no criteria describing on what basis such a decision might be made (other than the 50-acre disturbance limit). These criteria are intended to be general and are non-encompassing examples (*“may include but are not limited to”*). The director is under no obligation to agree with a requestor, and the decision to require an Individual Permit lies solely with the director.

Part/Section	Comment:
8.14	There should be an equivalent section on the inspection and entry rights of regulators in the General Permit section. Placing it in the Individual Permit section suggests that such inspection rights only apply under the Individual Permit.

Response:

Section 8.14 applies to all sites. Section 8.11 is the section that addresses Individual Permits.

Section 9

Part/Section	Comment:
9.1.1(a)	Once the lots in (a) subdivision are stabilized and ready for housing construction the developer will sell developed lots to home builders for their construction phase. In this scenario a developer has completed construction of development, and lots have achieved final stabilization. The developer should be eligible to file a notification of

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	<p>termination, as his only remaining business activity is the real estate transaction phase of their business model by selling developed lots.</p> <p>We seek clarification on the notice of termination (NOT) eligibility. Several developers have noted in the past they were not granted a NOT until they had sold nearly all the developed lots. Having to maintain permits coverage for fully stabilized lots is burdensome. Depending on economic conditions and the market for lot sales, a developer may own a portion of fully stabilized lots for years. These vegetative lots do not require routine inspections and are not a cause for concern.</p> <p>A simple process should be afforded a primary permittee to terminate his/her coverage when no more earth-disturbing activities are to take place on his/her stabilized lots but other secondary permittees/lot owners continue with their construction. Currently, the primary permittee is not allowed to terminate coverage until all lots are built upon, even though the primary has sold all his/her lots and has common areas stabilized. Permit coverage and responsibility should only be placed on the individual owner of their portion of the site.</p>
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Response:

Section 9.1.1. b) allows for primary permittees to terminate coverage if the primary has transferred control of all areas of the site to another operator, and that operator has submitted an NOI and obtained coverage under the permit.

To help clarify the intent of 9.1.1. b) the following has been added to 9.1.1.a):

- a. For areas the primary permittee has control, all earth-disturbing activities construction support activities permitted under Section 1.2.2 at the site are complete and the following requirements are met*

Part/Section	Comment:
9.1.2	Section 9.1.2 states that termination is only effective when published on the DataViewer as "inactive." This changes the "Notice" of Termination into a "Request" for Termination and is subject to an individual actually entering the information into the DataViewer. That process for other documents to appear on the DataViewer has not been very reliable or timely. The permit termination should be effective upon submittal to the Division.

Response:

The division prefers to retain the right to confirm that actual site conditions meet the requirements for termination. While this may seem to conflict with the concept of a notice,

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the division believes that this process is effective in avoiding enforcement actions against permittees and thus results in better customer service as well as efficiency.

A timeframe for processing NOTs is included in Part 9.1.2. Specifically, if the division has information indicating that the permit coverage is not eligible for termination, written notification will be provided within 30 days of receipt that permit coverage has not been terminated. Otherwise, accurate and complete NOT submittals will be processed promptly and published on the TDEC Dataviewer as "Inactive."

The division agrees with the commenter that there have been some examples of NOTs that have not been updated on the TDEC Dataviewer in a timely manner. Staff are expected to meet the above time frames, and the division commits to improving the timeliness of TDEC Dataviewer updates.

Part/Section	Comment:
9.1.2	(The Commenter recommends that TDEC) Improve enforcement with an efficient post construction follow-up process.

Response:

See response to comment 5.5.3.8 above concerning increasing staffing and streamlining inspections.

Part/Section	Comment:
9.4	Where to Submit a NOT? Suggest referencing electronic submittal for clarity.

Response:

The requested change has been made in the final permit.

Section 10

Part/Section	Comment:
10 (Definitions)	An additional explanation should be added to "the handbook" definition that clearly states that it is intended to represent a minimum standard of care and is not the ultimate source or only source of BMP guidance.

Response:

The division added the following to the second sentence in the definition "... BMPs and represents the minimum standard of care." and concluded the definition with the following sentence: "Other sources of BMP design guidance may be used. "

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Part/Section	Comment:
10 (Definitions)	Definition of “de minimis”. The draft permit should not reference guidance about water withdrawals because they are not permitted under this CGP.

Response:

The definition of de minimis provided is taken directly from the Tennessee Rules, Chapter 0400-40-03 - General Water Quality Criteria. It does not imply that water withdrawals are covered under this CGP.

Part/Section	Comment:
10 (Definitions)	Definition of “de minimis.” The draft permit must explicitly state that cumulative impacts will be considered as required by TCA 69-3-108(g) and 60-3-102.

Response:

The definition of de minimis provided is taken directly from the Tennessee Rules, Chapter 0400-40-03 - General Water Quality Criteria.

Part/Section	Comment:
10 (Definitions)	Definition of “point source.” Please clarify: the initial use of this term in the CGP also includes non-point flow from impervious surfaces and is therefore confusing.

Response:

Please see response under part 1.2.1 above concerning ‘point source discharges’.

Part/Section	Comment:
10 (Definitions)	The Commenter recommends the Federal CGP definition of a “Qualified Person” be included in the Definitions section of this proposed permit.

Response:

Depending on the context, definition of the Qualified Person (or individual) may differ.

With respect to site assessments, it means:

1. A licensed professional engineer or landscape architect;
2. A Certified Professional in Erosion and Sediment Control (CPESC); or
3. A person who has successfully completed the “Level II Design Principles for Erosion Prevention and Sediment Control for Construction Sites”

With respect to inspections, it includes:

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1. a person with a valid certification from the “Level I - Fundamentals of Erosion Prevention and Sediment Control” course,
2. a licensed professional engineer or landscape architect,
3. a Certified Professional in Erosion and Sediment Control (CPESC), or
4. a person who has successfully completed the “Level II - Design Principles for Erosion Prevention and Sediment Control for Construction Sites” course.

Adding a definition for a “Qualified Person” may cause confusion to applicants and permittees. The definition will therefore not be included in the final version of the permit, but will remain associated with duties expected to be performed.

Part/Section	Comment:
10 (Definitions)	definition of a “Unavailable parameters”. The lack of assessed stream miles continues to be a problem in headwater streams. The CGP should require a stream assessment by a QST professional if the receiving stream segment has not previously been assessed.

Response:

Only the division can assess stream miles for use support and impairment. The term “QST professional” is unfamiliar to division staff.

Part/Section	Comment:
10 (Definitions)	“Waters” definition should be modified to “waters or waters of the state” as in the previous permit. It shall be made clear this is defining waters of the state.

Response:

The division agrees and this change has been made in the final permit.

Part/Section	Comment:
10 (Definitions)	Suggest defining the following terms for clarity: Outfall, Structural BMP, Non-structural BMP.

Response:

The phrase “point source” and term “outfall” are used interchangeably throughout the permit. The regulatory definition of point source/outfall is included in the “definitions,” and a note was added to the final permit, explaining they can be considered synonyms for the purpose of this general permit. All instances of phrase and term were cross-referenced to the "Definitions, Acronyms and Resources." The following definitions have been added or expanded in Part 10 of the final permit:

Outfall – point where runoff leaves the site as a concentrated flow in a discrete conveyance.

Added to the Best Management Practice (BMP) definition:

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BMPs include source control practices (non-structural BMPs) and engineered structures designed to treat runoff.

- Structural BMPs – are facilities that help prevent pollutants in stormwater runoff from leaving the site.
- Non-structural BMPs are techniques, activities and processes that reduce pollutants at the source.

Part/Section	Comment:
10 (Definitions)	The definition of “Take” is not limited solely to endangered species. The definition should be consistent with the usage in section 1.3(h)

Response:

The division agrees and this change has been made in the final permit.

Forms

Part/Section	Comment:
Forms	All forms, NOI, NOT, inspection form, should be separated from their instructions as different documents for the purpose of downloading/printing in order to save paper.

Response:

The division must maintain full compliance with the State’s policies on forms, which require it to include directions as part of the same file in the spirit of good customer service. We apologize for the inconvenience.

Part/Section	Comment:
NOI form	Please add additional space to fill out contractor information, especially now that the form is two pages long.

Response:

The division agrees and this change has been made on the NOI form.

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Part/Section	Comment:
NOT form	<p>The check boxes for reasons for termination can be misleading. In the Section, "Check the reasons for termination of permit coverage, we suggest the following:</p> <p><input type="checkbox"/> Primary Permittee termination: Stormwater discharges associated with construction activity is no longer occurring, or, you have obtained alternate permit coverage. according to Part 9.1.1.</p> <p><input type="checkbox"/> Secondary Permittee termination: You are no longer the operator at the construction site, according to Part 9.2.1.</p> <p>Add a line or section to identify responsibility for ongoing maintenance of post construction SCMs, according to Part 9.1.1 a) iv.</p>

Response:

The division agrees and these changes have been made on the NOT form.

Part/Section	Comment:
Inspection Report form	<p>Please add more room for Comments now that the form is two pages. Carry tracking number, site name, and date to page two of the form.</p>

Response:

The division agrees and this change has been made on the Inspection Form.

Part/Section	Comment:
Inspection Report form	<p>The draft CGP's Inspection Report Form is overly simplistic. Draft CGP, Appendix C. It only requires the inspector to check boxes that indicate whether the Erosion Prevention and Sediment Controls are functioning correctly. If the inspector checks "no," they are asked to describe it in the comment section, but no other guidance is given. Instead, the Inspection Report should ask targeted questions to ensure the inspector is conducting a thorough investigation and the permittee is following the correct procedures. "Yes" or "No" boxes fail to provide the necessary level of detail to ensure compliance with the CGP, as is necessary to ensure full protection</p>

Response:

The questions currently provided on the Inspection Form are targeted to general compliance and are intended to be flexible enough to apply to all sites. The division is unclear what targeted questions the commenter would suggest and would be interested in discussing such suggestions.

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Part/Section	Comment:
Inspection Report form	The inspection report form is an entirely visual inspection. How can the inspector know if an outfall has exceeded the 5% of assimilative capacity based on a single inspection? If the receiving stream is already muddy from other sediment, is a muddy discharge acceptable since it won't cause an objectionable contrast?

Response:

Although a discharge of sediment-laden water may not cause objectionable color contrast, it still must still comply with 6.3.2.a), b), and d). The inspection form does not reference assimilative capacity, and the commenter is correct that assessing a stream for impairment is a separate action and process from an inspecting a site to determine compliance with permit conditions.

Part/Section	Comment:
Inspection Report form	<p>Inspection Certification (Inspection Form) <i><u>PLEASE KEEP THIS FORM TO ONE PAGE</u></i></p> <p>Please consider the following changes on the form in the appropriate boxes:</p> <p>“Current approximate <u>disturbed</u> acreage” (underline “disturbed”)</p> <p>“Rainfall total since last inspection”</p> <p>“Current weather/ground conditions:”</p> <p>Under “Please check the box if the following...” change to “Weekly inspection forms”</p> <p>“1. Are all applicableper the SWPPP for the current phase?”</p> <p>“2. Are EPSCs functioning....areas? (permit section 4.1.5)</p> <p>“3. Are EPSCs functioning....water quality impacts? (permit section 5.3.2)</p> <p>“4. Are EPSCs functioning...” (drop parentheses)</p> <p>“5. If applicable...appropriate controls? (permit section 4.1.4) <u>Also, add a N/A box to check</u></p> <p>“6. If construction...within 14 days? (permit section 3.5.3.2) <u>Also, add a N/A box to check</u></p> <p>“7. Have pollution...and other wash water? (permit section 4.1.5) <u>Also, add a N/A box to check</u></p> <p>“8. If a concrete...and maintained?” Delete the “If no...” part, keep N/A</p> <p>“9. Have all previous...section.” <u>Also, add a N/A box to check</u></p> <p>“Comments Section. If the answer...the problem and <u>summarize</u> corrective actions...”</p>

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Response:

These suggested changes have been made to the Inspection Form, with the exception of the requested deletion in Question #8. There was no need to change the form to read “weekly inspections”; see response to comment under part 5.5.3.10.

Part/Section	Comment:
Inspection Report form	<p>I wanted to ask if we could reword Question #7 of the current report. As it is worded it only puts emphasis on wheel wash & not the entirety of the section 4.1.5. If possible, I have an example below that would remove the emphasis on wheel washouts, and make it a general term (as 4.1.5 covers much more than wheel washing)</p> <p><i>Example: Have pollution prevention measures been installed, implemented, and maintained to minimize the discharge of pollutants on/from the site per section 4.1.5? If “No,” describe below the measures to be implemented to address deficiencies.</i></p> <p>I removed the wording on only wheel washing, as it covers much more than previously stated. It covers lunch trash, paint, construction materials, porta johns, etc.</p>

Response:

The division agrees with the commenter. Question #7 of the Inspection Form has been revised to read:

“Have pollution prevention measures been installed, implemented, and maintained to minimize the discharge of pollutants from wash waters, exposure of materials, and discharges from spills and leaks per section 4.1.4.?”

Part/Section	Comment:
Inspection Report form	<p>Instructions, paragraph 6. There should be a requirement to notify TDEC of any inadequate control measures, quantify the in-adequacies, and applicants should be given 7 days to “replace, modify, or repair” them. If there is no report to TDEC, who ensures that the situation is corrected in a timely manner and that pollution is not allowed to continue?</p>

Response:

The responsibilities of permittees to conduct inspections, submit and retain records, and to comply with the conditions of this permit are provided in parts 5, 6, 7, and 8. The information on the inspection reports is available to operators and division staff as needed. The division

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does not intend to pursue additional requirements for self-reporting of non-compliance at this time.

3 Determination

In conclusion, the comments included in this notice of determination document were compiled based on their relevance to the permit content, intent, and interpretation of this general permit, rather than implementation of the permit conditions (e.g., penalty evaluations, appropriateness of various enforcement measures, development of TMDLs, etc.). Those questions or comments that became a moot point as a result of the changes made in the final permit were considered by the division, but not included in this document.

The division will continue to work with task force groups for Qualifying Local Programs and stakeholders interested in further revisions and possible modification of this permit, if necessary. Any such modifications (other than minor modifications) would be subject to further public comment:.

The division's decision on this matter is to issue a General NPDES Permit for Storm Water Discharges Associated with Construction Activity, Permit No. TNR100000.

Date: September 27, 2021



Vojin Janjić
Manager, Water-Based Systems Unit