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 Small Municipal Separate Stormwater Systems

Permit No. TNS000000

Monday, August 1, 2022

1. ADMINISTRATIVE RECORD

The permit rationale (or fact sheet) dated March 22, 2022, sets forth the Division of Water Resources' (the 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 Stormwater Associated with Small Municipal Separate Storm Water Systems (MS4). The MS4 permit is intended to authorize storm water point source discharges to waters of the State of Tennessee from municipal stormwater source including those from non-traditional sources such as universities and military installations.

The current MS4 permit expired on September 30, 2021. On March 22, 2022, the division issued Public Notice NOPH22-004 per TN Rules, Chapter 0400-40-05-.06 (8), which announced the public hearing, which was 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, April 26, 2022**
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 were provided as well.

On March 22, 2022, the division issued Public Notice #MMXXII-012, which included the draft permit rationale (fact sheet) and established a public comment period that concluded on May 23, 2022. The draft MS4 permit and rationale (fact sheet document) were made available in an electronic format on the division's web site at

https://prod-dataviewers.tdec.tn.gov/dataviewers/f?p=2005:34051:15955566874216:::34051:P34051_PERMIT_NUMBER:TNS000000

The proposed NPDES permit was drafted in accordance with the provisions of the Federal Water Pollution Control Act, the Tennessee Water Quality Control Act, Rule Chapter 0400-40-10, and other lawful standards and regulations.

The division received comments through May 23, 2022. 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

The Division received around 500 comments/questions during the public comment period and public hearing. General comments expressing a favorable opinion focused on the improved specificity, clarity, and flexibility of the permit. General comments expressing a negative opinion the permit or program were focused on the specificity of the permit, costs to run a program, or the public comment process. Similar comments are grouped together in this NOD. Comments are also edited for clarity and brevity.

2.1. PERMANENT STORMWATER/POST CONSTRUCTION

Part/Section	Comment 1:
4.2.5.	Please add a definition for "Stormwater Control Measures (SCMs)"

Response:
The definition of "Stormwater Control Measures" from Rule 0400-40-.05-.02 (84) has been added to subpart 8.1.

Part/Section	Comment 2:
4.2.5.7.b.3.	Delete "agreement" and replace with "instrument". Local law departments for some permittees are unwilling to support their own jurisdiction's use of SCM maintenance agreements. Rather, these law departments identify and support other legal instruments, including but not limited to ordinance requirements, plat notes, easements, and deed restrictions, as sufficient and effective to compel and enforce property owner maintenance of SCMs and permittee right-of-entry for inspections and enforcement. The Division should not be predicating the type of local legal mechanisms used by a local government to compel compliance, but rather the legal authorities and rights needed for compliance. Staff of the Division have indicated verbally (in past discussions) the requirement for a maintenance agreement is the Division's preferred method of: 1) compelling maintenance; and 2) ensuring the SCM owner or maintainer is aware of their responsibilities. However, experience throughout Tennessee since 2008 indicates that a maintenance agreement typically does not increase SCM owner awareness, even at the time property changes ownership. Rather, locally-appropriate legal instruments (not necessarily an agreement) combined with consistent owner communication and education regarding SCM maintenance responsibilities are the key to a more effective SCM maintenance. The permit should reflect this knowledge of Tennessee permittees and not rely so heavily on a maintenance agreement as the critical component for permanent stormwater management programs.

Response:

The language in the permit reflects the language in the rule and cannot be changed. The division would deem other legal instruments such as ordinance requirements, plat notes, easements, and deed restrictions etc. as meeting this requirement.

Part/Section	Comment 3:
4.2.5.2.	There is great concern over the redefinition of stormwater as defined in the TNS00000 section 4.2.5.2. proposed permitting. The "quality" of the water is not what the stormwater control process is designed to regulate, but rather the quantity of runoff necessary to protect streams and communities from the damage due to erosion, siltation, natural drainage structures, and damage to infrastructure caused by ever increasing impermeable surfaces and rain fall. Water quality does not affect the quantity of runoff. Home builders and contractors may benefit from this change, but communities and municipalities will pay the penalty for undersized stormwater management. Please remove this part of 4.2.5.2. in the interest of public safety and the environment.

Response:
Subpart 4.2.5.2. is from Rule 0400-40-10 and cannot be removed. It is important to note the fundamental misconception that this commentor makes. The Division regulates stormwater on the basis of water QUALITY not QUANTITY. Tennessee's national pollutant discharge elimination system (NPDES) permit program addresses water pollution by regulating discharges of pollutants to waters of Tennessee. The standards to treat for stormwater quantity are established by municipal authorities and regulated through local stormwater and flood control requirements.

Part/Section	Comment 4:
4.2.5.7.	Define "other qualified professionals" who are "familiar" with SCMs.

Response:
There are certifications and training for SCM Inspection and Maintenance available from the University of Tennessee Water Center.

Part/Section	Comment 5:
4.2.5.2.	Section 4.2.5.2, page 33, item b. Please clarify "information relevant" and "readily available" in the following statement: "Information relevant to identified SCMs should be made readily available."

Response:
"Information relevant" in this subpart means the details specific to each of those SCM identified by the permittee that will be needed in order to properly design, install and maintain that SCM.

"Readily available" in this subpart means no collection or creation of data is required. If specialized requirements or software are required to view, that equipment/software must be provided to the requestor.

Part/Section	Comment 6:
4.2.5.2.	Numerous comments were received regarding uncontaminated roof runoff that centered around six main concepts. 1. The permit should be concerned with water quantity not water quality. 2. Excluding uncontaminated roof runoff does not meet MEP 3. Uncontaminated roof runoff must be defined 4. Implementation is infeasible 5. Permittees don't have the resources to make these determinations 6. Roof runoff cannot be "uncontaminated" and 7. Is the assumption all roof runoff is uncontaminated?

Response:

1. The exclusion of uncontaminated roof runoff is solely applicable to the calculation of the WQTV when used to design stormwater control measures (or facilities) for the purposes of water quality. The standards established by local jurisdictions for the purposes of flood control facilities is not within the scope of the MS4 permit or related rules. The Division does not prohibit local jurisdictions from developing one set of standards that encompasses both water quality and water quantity provided those standards meet the requirements of Rule 0400-40-10-.04 at a minimum.
2. MEP is established for the Post Construction/Permanent Stormwater MCM by Rule 0400-40-10.04.
3. Roof runoff should be presumed to be contaminated unless an applicant affirmatively demonstrates otherwise. A guidance document is provided for municipalities to evaluate such demonstrations.
4. It is incumbent on the requestor to demonstrate that roof runoff is uncontaminated. The MS4 has the flexibility to not adopt the roof runoff provision or to restrict the use of the provision in certain circumstances such as particular land use categories.
5. – 7.. For treatment practicability, it is important to consider influent concentrations. In cases where influent concentrations are already very low, additional reductions of pollutant concentrations may not be feasible. The International Stormwater BMP Database is an evidence-based resource for characterizing Best Management Practice (BMP) performance and provides effluent concentrations as a reference for feasibility of pollutant removal.

   Roof runoff should be presumed to be contaminated. Roof runoff that has been demonstrated to be uncontaminated may be excluded from the WQTV, however permittees are not required to provide an exclusion to the WQTV for roof runoff. Local policies, processes, and other resources necessary to implement an exclusion should be identified as part of the Permanent Stormwater Management Implementation Plan due within 90 days after the effective date of the permit. The Division issued guidance document DWR-NR-G-12-Municpal Stormwater – 08012022 regarding the

uncontaminated roof runoff exclusion. The guidance explains that the permit provision for uncontaminated roof runoff is applicable to water quality only and roof runoff should be presumed to be contaminated unless an applicant demonstrates otherwise. The guidance can be found here https://www.tn.gov/environment/about-tdec/policy-and-guidance-documents/boe-final-guidance-documents.html

Part/Section	Comment 7:
4.2.5.2.a.	"For design purposes, total suspended solids (TSS) may be used as the indicator for the reduction of pollutants." Question: What other pollutants would TDEC consider in lieu of TSS?

Response:
For pathogens in particular, the Division uses E. coli.

Part/Section	Comment 8:
4.2.5.2.	Commentors made multiple recommendations regarding the design details and examples of SCMs such as: - All infiltration SCMs designed without underdrains to be located within soils providing infiltration rates equal to or greater than 0.5 inches per hour. - Forebay design - permeable pavers" to "permeable pavement" so the term includes various different types of permeable pavement including permeable interlocking concrete pavers (PICP), permeable asphalt, permeable concrete, etc.

Response:
The Division leaves this type of technical specificity to the discretion of the local municipality as they know best what constraints apply to sites within their jurisdiction.

Part/Section	Comment 9:
4.2.5.2.c.	Include this statement: "Filter and Biofiltration MTDs can share pollutant removal processes with treatment types in tiers eligible to treat 1 inch, 1.25 inch, and 2.5 inch water quality treatment volumes. As such, these practices should be allowed as standalone practices or in combination with other storage/infiltration solutions if they meet a minimum 80% TSS reduction. TSS removal rates for these practices must be evaluated using industry wide standards identified by TDEC."

Response:
The WQTV is derived based on the type of treatment provided (e.g., infiltration, biologically active filtration, or detention/settling) regardless how they are made - whether proprietary, modular, or site-built. The only distinction made in the rule is for hydrodynamic separators and flow-through vault settling devices termed as manufactured treatment devices. The term is a vestige from early days of stormwater treatment before innovative SCMs became available in manufactured and modular forms. The final permit includes a provision for treatment trains.

Part/Section	Comment 10:
4.2.5.4.	The first sentence states that permittees must have requirements that "establish, protect, and maintain" water quality buffers. However, the remainder of the permit is a mashup of directive and permissive language that makes it difficult for permittees to understand exactly how to implement this requirement. a. The buffer widths in the draft permit are directive – and, I believe, easy to understand and implement. However, statements pertaining to buffer vegetation are permissive These statements need to be aligned with and explicitly referenced to the definition of a water quality buffer to provide clarity and boundaries to their permissiveness. The same goes with permissive statements pertaining to land uses and activities within the buffer.

Response:
The Division uses this permissive language to provide discretion to local municipality and flexibility for implementation.

Part/Section	Comment 11:
4.2.5.4.	During listening sessions and on one-on-one calls, TDEC has been asked by stakeholders to define or provide further explanation regarding the requirements for permittees to "protect and maintain" water quality buffers. Thus far, a clear answer has not been provided, although I have heard third-hand that TDEC does not believe buffers should be protected with the same intensity as SCMs, and that an easement will be sufficient to meet these requirements. However, looking at the definitions of these words: Protect means "keep safe from harm or injury" and "preserve or guarantee by means of formal or legal measures" Maintain means "cause or enable a condition to continue" Thus, the requirement for permittees to "protect and maintain" water quality buffers means buffers must remain compliant with the permit's definition of buffers (that is, specific widths, vegetation types, and limited uses) once they are established. So, for most local governments, an easement isn't going to be sufficient.

Response:
The buffer requirement to "protect and maintain" applies when a new project (development or redevelopment) is proposed and is reviewed by the municipality. At that time the municipality is required to assure that buffers are provided and remain on site permanently after the construction is complete.

Part/Section	Comment 12:
4.2.5.2.b.	The permit must more clearly explain the criteria to be used to determine the end of one rainfall event and the beginning of a subsequent event. If a 10-hour drive period between events is a standard defining separate events per section 8.1, does the 72-hour infiltration period begin after the completion of the 10-hour period or retroactively from the last measured rainfall when the original rainfall of it is eventually determined to have ended?

Response:
Rule 0400-40-05 and the permit provide a definition of rainfall event . "Rainfall event" means any occurrence of rain, preceded by 10 hours without precipitation that results in an accumulation of 0.01 inches or more. Instances of rainfall occurring within 10 hours of each other will be considered a single rainfall event. The 72 hour drain down period starts when the rain ended.

Part/Section	Comment 13:
4.2.5.4.	TDEC should include the water quality benefits from the riparian buffers to be considered as part of the overall compliance. With the permanent stormwater standards, for example, recent TDOT sponsored research by Tennessee Technological University has found that roadside vegetative swales, which in many cases will be similar in configuration to riparian buffers, may provide runoff reduction of as much as 70%, thus effectively achieving much of the prescribed 80% TSS removal requirement and for many storm events complying with the water quality treatment volume reduction requirement. If TDEC does not include the water quality benefits from the riparian buffers to be considered part of the overall compliance with the permanence from our standard should be clearly stated in the new rules and the rationale for the position provided by direct discussion or citation.

Response:
The Division agrees with the commenter that the rules and the permit provide specific information about what technologies, buffer requirements, and other practices would comply with the Maximum Extent Practicable requirement. In addition to treatment measures, water quality riparian buffers are intended to further maximize pollutant reduction, including nutrients, in a practicable manner.

Part/Section	Comment 14:
4.2.5.4.	Numerous commentors spoke against allowing infiltration based SCMs in the buffer zone. The commentors stated that buffer zone typically have soils that are not suited for infiltration based SCMs. Additionally, it was noted that those infiltration based SCMs will be subject to siltation/debris which will necessitate more frequent maintenance and may render the SCM unusable before its anticipated end of life.

Response:
Buffer widths vary across the state and in some communities extend to the 100-year floodplain width. Therefore, the specifics of buffer use are at the discretion of the local jurisdiction that has site specific knowledge or community-wide experience, to decide if infiltration-based SCMs in their buffer areas should be allowed or if the designer evaluates the applicability of infiltration-based SCMs to the buffer areas on a specific site. Infiltration-based SCMs are allowed outside of the minimum water quality buffer width, at the discretion of the permittee.

Part/Section	Comment 15:
4.2.5.	Are the requirements for SCMs established in this permit applicable to SCMs installed from the start date of this permit forward or are they to be retroactively applied to previously installed SCMs? It will take up a lot of manpower creating a program and researching historical files for information.

Response: The SCM and buffer requirements are not retroactive.

Any SCM or buffer installed during a previous permit terms are applicable to the permit conditions and legal authority established by the permittee at that time. The SCM tracking and inventory system was first established in the 2010 permit. The permittee may maintain two separate systems or merge the data into one system meeting the current rule requirements at a minimum.

Part/Section	Comment 16:
4.2.5.2.	Numerous commentors requested clarification on a definition of "published reference literature." Additionally, concern was express as to equitability of the methods allowed to determine a treatment method for runoff. One method involves 3rd party testing, while the others do not. Inconsistency in the industrial practices (e.g., hand mixing biofiltration media) was pointed out as evidence for the need for 3rd party testing.

Response:
In the absence of industry-side standards for site-built SCMs, the scientific literature sources or the removal rates of SCMs must be refereed publications and other authoritative references such as stormwater management manuals.

Part/Section	Comment 17:
4.2.5.6.	4.2.5.6.c In our opinion this places an unreasonable burden on the MS4 and site contractors. The construction process is a very fluid process and may stretches over years. As written, this would require the MS4, contractor or engineer to visit the site every time a SCM is finished. In some instances, the same SCM could be required to be inspected multiple times. The documentation process for the MS4 alone would be a large burden as ultimately the MS4 would have to create an inspection process for just the completion of SCM's to ensure the contractor is calling us every time one is done. This shall be changed to state once the site or project is completed as defined by the MS4 (Bond release, site stabilization, Certificate of Occupancy, Notice of Termination, etc.). Then the entire site can be inspected at once when construction for the project has finished. Alternative language proposed: each MS4 must have a process in place for their SCM verification process and completion of as-builts.

Response:

The 90-day period starts at the completion of the installation of the post-construction SCMs. This is independent of building completion. The permittee has the option for verification, which includes submittal of as-built plans, permittee inspection, or inspection by a qualified design professional. The rules do not prohibit the permittee from establishing a process or policy that more clearly defines when a post-construction SCM has completed installation.

Part/Section	Comment 18:
4.2.5.2.	Please define "Significantly limit" as it pertains to the following statement: "If the permittee decides to significantly limit the number of SCM options it must be documented in the stormwater management program how the performance standards of Tennessee Rule 0400-40-10-.04 can be met with the limited set of control measures that are allowed.

Response:

The rule and the permit establish in the WQTV table four types of SCM treatment processes. If the municipality elects to use less than the four types, documentation on how the performance standards can be met will be needed.

Part/Section	Comment 19:
4.2.5.2.	TDEC needs to explain how to determine the baseline TSS concentration from which this 80% reduction would be calculated.

Response:

While TSS is allowed to be used as an indicator, the rule specifies WQTV associated with a treatment process, not TSS removal rates.

Part/Section	Comment 20:
4.2.5.2.d.1.	Clarify the sequence of treatment trains utilizing MTDs to ensure different unit removal processes are used in series to meet permanent stormwater standards. Without further clarification, it is likely MTDs with the same unit removal process, i.e., hydrodynamic separator (HDS) to HDS, will be utilized to meet permit requirements.

Response:
It is not technically appropriate to use two hydrodynamic separators (or settling vaults) in the sequence of a treatment train. Since they remove the same particle fraction and their combined removal rate does not yield higher removal than an individual unit.

Part/Section	Comment 21:
4.2.5.2.c.	Clarify within the Water Quality Treatment Volume Table that proprietary filtration and biofiltration manufactured treatment devices (MTDs) can be used to treat 1.0", 1.25", or 2.5" of water quality volume as those types of systems share similar pollutant removal processes with allowable non-proprietary SCMs.

Response:
The WQTV is derived based on the type of treatment provided (e.g., infiltration, biologically active filtration, or detention/settling) regardless how they are made - whether proprietary, modular, or site-built. The only distinction made in the rule is for hydrodynamic separators and flow-through vault settling devices termed as manufactured treatment devices. The term is a vestige from early days of stormwater treatment before innovative SCMs became available in manufactured and modular forms.

Part/Section	Comment 22:
4.2.5.2.	Questions regarding MTDs in treatment trains. 1. If a flow-through MTD must provide an overall treatment efficiency of at least 80% TSS reduction (as required per the last row and last column of the table), then why would the MTD be used in a treatment train? It satisfies the requirement as a standalone MTD and a second SCM is not necessary. 2. Is there any volume criterion associated with the use of MTDs in a treatment train? For example, a designer wants to use a sand filter SCM for water quality treatment but cannot size it to control the entire WQTV. a. If they opt to place a flow-through MTD upstream of the sand filter, is there a WQTV requirement for the MTD? If the answer to

	the question is the WQTV requirement for the MTD is the "maximum runoff generated from the entire design storm" per the SCM treatment table, then why is there a need for the treatment train? Doesn't the MTD alone satisfy the 80% TSS removal requirement? b. Is there a minimum WQTV requirement for the sand filter (i.e., the downstream SCM)?

Response:
The minimum 80% TSS is an overall efficiency and would be applied to the total treatment train. So, individually the components can have lesser removal rates. When a hydrodynamic separator is used in series (or a pretreatment) with a downstream SCM such as a detention pond or a filter, the downstream SCM can have less than 80% TSS removal rate. Please note this provision does not allow for two hydrodynamic separators or vaults (e.g., rated for 60% TSS removal) in series.

Part/Section	Comment 23:
4.2.5.2.c.	The WQTV for manufactured treatment device is specify maximum runoff generated from the entire design storm with the design storm apparently being the one year 24-hour precipitation debt. However, the calculation of peak treated flow rate in the design of a manufactured stormwater treatment device must be based on precipitation intensity not precipitation depth. TDEC must specify a design storm precipitation intensity for this table to be meaningful for designing properly treated flow rate for the manufactured storm water treatment devices.

Response:
The design storm provides distribution of depth and intensity values as they vary across the state. The 1-year, 24-hour storm is the smallest design storm readily available in engineering reference literature in general and in the NOAA Atlas 14 in particular. However, only a portion of the design storm is used in the calculation of the WQTV. Hydrodynamic separators and vault Manufactured Treatment Devices are designed for flowrate, which is a function of rainfall intensity. The smallest design storm that NOAA Atlas 14 provides intensity values for is the 1-year, 24-hour storm.

Part/Section	Comment 24:
4.2.5.1. & 4.2.5.2.	The permit should address circumstances whereby a Permittee May exempt a new construction project for meeting all or part of the permanent stormwater standards due to site physical restrictions including existence of karst features, near surface bedrock preventing infiltration, pre-existing soil contamination, presence of contractive or expansive soils and close proximity to structures, including within 100 ft of roadways or other adverse conditions.

	The tiered approach provided in the table shows a lack of understanding in the complexity of municipal land development regulation as it pertains to stormwater in many areas of Tennessee. The tiered approach targets green infrastructure without an underdrain (i.e., infiltration, evaporation, transpiration, and reuse) as the SCM treatment type of choice since it has the lowest required WQTV.

Response:
To provide equivalency of various treatment processes, the Water Quality Treatment Volume is graduated. The stormwater programs have the flexibility to set requirements specific to their community within the bounds of this rule and select any or all of the four equivalent alternatives. As such, the tiered system of the 2010 permit where SCM not using infiltration, evapotranspiration, and reuse had to provide technical justification of site limitations is no longer applicable. With equivalent treatment options, designers will be able to select the optimum treatment for each site with respect to effectiveness, economics, and expediency. The permit also allows an offsite mitigation program or payment in lieu into a public stormwater fund, or both, to offset the portion of the WQTV that cannot be treated on site.

Part/Section	**Comment 25:**
4.2.5.2.	In some instances, retrofit projects should have the same compliance standards as new developments and redevelopment projects, especially if they are associated with mitigation projects (4.2.5.3). This is briefly mentioned in 4.2.5.7.a.

Response:
Permanent Stormwater standards do not apply to retrofits that are not redevelopment projects.

Part/Section	**Comment 26:**
4.2.5.2.	We recommend TDEC expand this section to mandate infiltration testing requirements for infiltration-based SCMs.

Response:
The Tennessee Permanent Stormwater and Design Guidance Manual provides Infiltration and Soil Testing Methods in Appendix A https://tnpermanentstormwater.org/manual.asp

Part/Section	**Comment 27:**
4.2.5.2.	Do MTDs used for SCM pretreatment purposes need to have a minimum treatment efficiency?

Response:
Neither the rule nor the permit specify minimum treatment efficiency for an SCM.

Part/Section	Comment 28:
4.2.5.2.	TDEC should consider exempting from these performance standards any projects from which all stormwater from the effective impervious areas of the project directly discharge to rivers that drain over 100 square miles. Several other states have included similar exemptions to their post-construction stormwater performance standards (e.g., Stormwater Management Manual for Western Washington Appendix 1-A Page 173 in: https://apps.ecology.wa.gov/publications/documents/1910021.pdf). Waterbodies of that size are not impacted by stormwater runoff/recharge that would be an infinitesimal portion of their overall flow volume. Imposing these post-construction standards on such projects would require costs to be incurred that serve no environmentally justifiable purpose.

Response:
The referenced document refers to a flow control exemption. The federal and state rule does not allow such exemption for water quality.

Part/Section	Comment 29:
4.2.5.2.	The Division should readily accept and allow the use of 80% TSS Removal approaches based on work of Richard A. Claytor and Thomas R. Schueler in 1996 (Design of Stormwater Filtering Systems, 1996), henceforth called "the traditional approach" based on a 1.25" rainfall for WQTV as equivalent to that defined in Part 4.2.5.2 parts b, c, and d. Requiring permittees that have already implemented the traditional approach to modify their ordinance and design support tools or obtain coverage under an individual permit simply to adhere to a prescribed, but no better, approach is unnecessary and costly. Ultimately, such change will not provide an increased level water quality protection than is already implemented by these permittees. There should be a way for TDEC to accept alternate, equivalent approaches from permittees who have already adopted said methods without forcing the permittee to obtain an individual permit. Suggest possibly adding a line such as "Permanent stormwater programs that:1) require 80% TSS Removal of a WQTV no less than 1-inch for infiltration SCMs without an underdrain and 1.25" for non-infiltration SCMs (regardless of SCM treatment type); and 2) have already been adopted prior to the effective date of this permit are considered compliant with this Part."

Response:
Many municipalities covered by the General MS4 permit 2010 and 2016 were not ready to implement the post-construction requirements as evidenced by their

request for extension. Further, the implementation of the post-construction requirements in the remaining municipalities resulted in new legislation added to the Tennessee Code Annotated, an appeal of the 2016 permit, and a settlement of what constitutes Maximum Extent Practicable which was promulgated as a Rule 0400-40-10. The commenter is incorrect in asserting that the Rule and the permit institute a tier approach. The WQTV associated SCM treatment types are all equivalent and with equivalent treatment options, designers will be able to select the optimum treatment for each site with respect to effectiveness, economics, and expediency.

Part/Section	Comment 30:
4.2.5.4.d.	The permittee is not responsible for project design. If the project engineer needs to use alternate buffer widths, they need to provide the criteria they used to develop the alternate buffer width as part of the planning and approval process the permittee uses. Procedures and criteria cannot be developed by the permittee in advance of knowing the type of project, existing land use and physical restrictions.

Response:
In addition to treatment measures, water quality riparian buffers are intended to further maximize pollutant reduction, including nutrients, in a practicable manner. The buffer requirement to "protect and maintain" applies when a new project (development or redevelopment) is proposed and is reviewed by the municipality. At that time the municipality is required to assure that buffers are provided and remain on site after the construction is complete. The municipality has the authority to accept or reject the proposed alternative buffer widths. The permittee needs to develop criteria for alternative buffer widths, which should include type of project, existing land use, and physical conditions that restrict the use of the water quality buffers. Having generally applicable criteria is needed to ensure consistency.

Part/Section	Comment 31:
4.2.5.7.b.	This permit section should also include a requirement that the permittee's program regarding SCM maintenance must include emergency response procedures that are to be implemented when an abandoned non-functioning SCM is impacting adjacent properties due to its inability to manage the runoff directed to the SCM. If the responsible property owner cannot be found, or if the property has entered bankruptcy, the permittee's program must identify how any required emergency maintenance actions and remediation of adjacent properties would be performed.

Response:
The permit states that at a minimum the SCM program must include an allowance or agreement for permittee personnel to access the SCMs for inspections and provide for enforcement actions for failure to maintain SCMs according to agreement.

Part/Section	Comment 32:
4.2.5.2.f.3.	Incentives can take time to develop and adopt. Is there a deadline for submitting incentives to the Division or can they be developed and submitted at any time during the 5-year permit period?

Response:
Incentives are part of the stormwater management program which can be modified as needed per section 4.4.1. of the permit.

Part/Section	Comment 33:
4.2.5.4.d.	Part 4.2.5.4.d. provides alternatives for average riparian buffer width but does not do so for the minimum riparian buffer widths specified in part 4.2.5.4.b. The permit needs to clearly specify whether reduction in the specified minimum riparian buffer width is allowed in any case and, if so, when and how a reduction is acceptable.

Response:
The criteria for the width of the buffer zone can be established on an average width basis at a project, as long as the minimum width of the buffer zone at least equal to the required minimum width at any measured location. Where averaged water quality riparian buffers cannon be implemented, alternative widths may be allowed by the municipality if procedures and criteria are approved by the Division. Review of alternative buffer widths must ensure that implementing full buffer widths would be impracticable and that the maximum practicable buffer widths are required.

Part/Section	Comment 34:
4.2.5.4.	Riparian buffer zones should be protected from stormwater runoff as the pollution carried by this runoff is concentrated and current buffer zones will not be sufficient for protection.

Response:
The permit states that stormwater discharges should enter the water quality riparian buffer as sheet flow, not as concentrated flow, where site conditions allow.

Part/Section	Comment 35:
	The Division should consider eliminating the current buffer zone requirements that are based on the size of the drainage area altogether. I just looked at an area within an MS4 that contains wetlands that would only require a 30' permanent buffer zone based on the size of the drainage area. If this MS4 were to adopt the new permit language then this area would require a 60' buffer zone because the wetland is located in a watershed designated as having unavailable parameters for sedimentation. I believe this discretion will be fairly common and will become a pressure point with the

	regulated community pressuring the MS4s not to adopt the new requirements or to go back to the previous requirements once the difference becomes apparent.

Response:
The rule allows for the use of the 2010 buffer requirements if adopted prior to November 30, 2018, therefore the permit is providing this option. However, the municipality can elect to update their program to use the new buffer sizing requirements. Once the buffer requirements from the rule are adopted by the permittee, the permittee cannot revert back to the 2010 requirements. Moreover, these buffer widths are the same as those that apply during construction pursuant to the CGP.

Part/Section	Comment 36:
4.2.5.4.b. & c.	The definition for buffers does not distinguish whether or not native vegetation should be reestablished or if it's permissible to allow any vegetation (native or otherwise invasive) be allowed to take root in the buffers. We request that this be clarified. Buffers should be considered permanent SCM's and distinguished as such on PLAT's. There is a disconnect in what is required of MS4's on the annual reports related to buffers and what is required of the permittee. Instead, it should be made clear that buffers are permanent SCM's, required to be recorded on the PLAT and treated with the same level of care as a detention pond or bio pond. For these reasons' buffers should not be averaged.

Response:
The definition of Water Quality Buffer is stated in the Rule 0400-40-05. The permit cannot change or alter this definition.

Part/Section	Comment 37:
4.2.5.4.e.	OHWM and TOB are not always the same. Say top of bank or flow line generated from the 2 year storm event. I don't think of "top of bank" as being the same as "ordinary high water mark." Most surveyors consider top of bank as the "break in slope" which is different than the OHWM. Ordinary high-water mark is typically determined by visual observations in the field of wrack lines, scouring, etc.

Response:
Locating the top of bank on a slope is difficult as is a hypothetical 2-year storm event flow line. The Ordinary High Water Mark most of the time leaves physical evidence and can be identified on site.

Part/Section	Comment 38:

4.2.5.	Please define life of the new development or redevelopment project.

Response:
The SCM that serves to treat runoff from the project after construction until the site is re-built must be maintained and remain functional.

Part/Section	**Comment 39:**
4.2.5.2.	TDEC has stated (response to comment 81 in rulemaking) that "the incentive for vertical density is based on the water quality benefits of retaining greenspace, not TSS removal." If this is the case, then the permit must require retained green space as part of the vertical density incentive.

Response:
The vertical density incentive provision is optional and MS4s can define other incentives such as retaining green space.

Part/Section	**Comment 40:**
8.1	Part 8.1. does not contain a definition of "1-year 24-hour" even though that is the design storm for water quality treatment imposed in permit part 4.2.5.2.c.

Response:
The first definition of Subpart 8.1 has been renamed "design storm" and modified accordingly.

Part/Section	**Comment 41:**
4.2.5.3.	Offsite mitigation and In-Lieu-Fee projects need to be given a maximum amount of time before construction completion, so as not to allow years to go by with unmitigated projects.

Response:
The permit provides the local jurisdiction the required flexibility to establish deadlines for project completion. Compliance tools such as the use of performance bonds can be used to establish these deadlines and to ensure that on-site and off-site practices are installed correctly and properly maintained in the long-term. Ordinances/bylaws or codes may need to be changed to support administrative needs when implementing an off-site mitigation program.

Part/Section	**Comment 42:**
4.2.5.3.	Provide guidance on how to determine what the in-lieu-fee amount should be. The cost can be very high when considering administration, land acquisition, design, and O&M.

Response:
There are several resources available that offer cost data or tools to determine costs for O&M for SCMs. Some offer construction costs as well. The following are examples of some resources that may be used to estimate these costs:

• ASCE EWRI Survey of BMP O&M Costs Urban BMP Cost Database — INT'L STORMWATER BMP DBASE https://bmpdatabase.org/urban-bmp-cost

• University of Minnesota/Weiss BMP Cost Estimation Algorithm https://www.casqa.org/sites/default/files/downloads/bmp_cost_resources_in_north_america_nov_2018.pdf (casqa.org)

Keep in mind that most references are not frequently updated (if at all). Permittees will need to take into consideration the age of the reference for cost when establishing its own fee amounts. Once these programs are established, the MS4 should have actual data on which to base adjustments to the fee schedule that would be more representative of the local economic environment.

Part/Section	Comment 43:
4.2.5.3.	This permit section requires off-site mitigation to be accomplished within the same USGS 12 digit hydrologic unit Code (HUC) watershed as the new development project. However, mitigation for aquatic resource alteration permits ARAP and other permitting, and Tennessee now allow compensatory mitigation to be accomplished in at least the same USGS 8 digit HUC watershed and in some cases an even within a neighboring 8 digit HUC watershed. Although many traditional municipal. Phase 2 MS4s may be located in a single HUC 12 watershed. The larger MS4 often bridge multiple watersheds. The permit should be modified to say the off-site mitigation must be performed within the same MS4 as the new development project, regardless of watershed boundaries, thus providing flexibility while still achieving the intent of the permit.

Response:
The language in the permit reflects the language in the rule and cannot be changed. The language states "*The program must ensure that off-site stormwater mitigation will be accomplished within the same USGS 12-digit hydrologic unit code watershed as the new development or redevelopment project, if practicable, and will treat a minimum of 1.5 times the portion of the WQTV not treated on site.*" The program must have a mitigation project approval procedure, and all projects must meet all requirements in this permit. If an appropriate mitigation project within the same HUC 12 as the new development/redevelopment project is demonstrated to be impracticable, an equivalent project in the same HUC -10 may be used.

Part/Section	Comment 44:
4.2.5.1.d.	Implementation Pan - Submit implementation plan for permanent stormwater management program 90 days from the Effective Date on the Notice of Coverage. Please make it line up with when our annual reports are due so that we can put them through the same process with our annual report for public meeting. – Recommendation is to say 90 days or when our annual report is due, whichever is later.

Response:
Rule 0400-40-10-.04 dictates that implementation plans are due 90 days after the effective date of the first new or revised permit issued after the effective date of the rules.

Part/Section	Comment 45:
4.2.5.1.d.	Can the State provide an example, framework, or outline of what is expected to be provided in such an implementation plan?

Response:
The permit provides for the flexibility necessary to allow the varying MS4 programs to establish permanent stormwater implementation plans specific to their communities. A "one size fits all" plan would limit the required flexibility. The Division issued guidance document DWR-NR-G-11-08012022 - NPDES Permit - Guidance for Permanent Stormwater Implementation Plan Submittals for Municipal Separate Storm Sewer Systems (MS4) that provides an outline of the minimum information a MS4 permittee must submit as a permanent stormwater implementation plan. The guidance can be found here: https://www.tn.gov/environment/about-tdec/policy-and-guidance-documents/boe-final-guidance-documents.html

Part/Section	Comment 46:
4.2.5.	Multiple commentors had various suggestions of alternative language, changing due dates, or deleting language for the post construction/permanent stormwater SCM.

Response:
The language in the permit is from Rule 0400-40-10-.04. With the exception of changing the numbering and cross references to align with the permit numbering, the language in this subpart cannot be modified.

Part/Section	Comment 47:
4.2.5.2.c.	As written, permit part 4.2.5.2.c. does not allow for use of more recent (than Atlas 14, Volume 2, Version 3.0) precipitation-frequency data if such data become available during the term of the permit. If newer data become available, the permit should allow for its use in stormwater control measure design.

Response:
Correct. If a new version is issued, the rules will have to be updated to reflect the new reference and subsequently the permit.

Part/Section	Comment 48:
4.2.5.	The permit shall define how the MS4 shall handle agricultural projects and if they are exempt from the coverage and associated provisions of the permit. In particular post construction water quality treatment and riparian buffer requirements.

Response: It is unlikely that truly agricultural activity would also constitute a new development or redevelopment project subject to post-construction stormwater measures. For example, clearing one acre or more of land for planting row crops would not fall within the definition. However, the construction of buildings associated with agriculture (e.g., barns, indoor confined animal feeding structures, etc.) is not exempt from construction stormwater requirements.

Part/Section	Comment 49:
4.2.5.	There shall be language inserted into the permit that states theMS4 shall be considered in compliance with this section if they have already developed and implemented a permanent Stormwater Standard that meets the conditions of the previous permit, still meets MEP and has been approved by TDEC through an audit or written correspondence.

Response:
All permittees must submit an implementation plan within 90 days of the effective date of this permit. Rule 0400-40-10-.04(1)(d) & permit subpart 4.2.5.1.d. states "*If the permittee has implemented a permanent stormwater management program that complies with all requirements of the new or revised permit, the permittee may submit an implementation plan explaining how its program complies and identifying any new or modified elements of its program.*"

Part/Section	Comment 50:
4.2.5.6.	Why does it not mention size/area in 4.2.5.6. Development Project Plan Review, Approval, and Enforcement.

Response:
The first paragraph of 4.2.5. states "*New development and redevelopment projects that disturb one acre or more of land, or less than one acre if part of a larger common plan of development, and discharge into the permittee's MS4.*" This definition applies to the entire subpart.

Part/Section	Comment 51:
4.2.5.6.	Please indicate if these procedures or processes must be in the form of a written document. If so, please provide a clear deadline for preparing this plan. Given the increase in additional documentation required by this permit, permittees should be allowed to gradually document their procedures over the full five-year permit period.

Response:
The SWMP must have a written plan that describes in detail how the permittee intends to comply with the permit's requirements. The permittee has the flexibility to include the policy, procedures, or other process documentation in the written SWMP documentation or as a stand-alone document. The word "written" has been added to 4.1 to clarify.

Implementation timing of subpart 4.2.5. is governed by Rule 0400-40-10-.04. and cannot be changed. Rule 0400-40-10-.04.(1)(d) "*The schedule must indicate completion as soon as feasible but no later than 24 months from the effective date of the first permit issued after the effective date of Tennessee Rule 0400-40-10-.04. Further, if implementation will take longer than 12 months, the plan must include interim milestones. Implementation plans must be submitted to the Division.*"

Part/Section	Comment 52:
4.2.5.6.	This section is redundant and causes confusion during TDEC audits. As written, it requires a separate plan and review process for permanent stormwater management. Construction plans for new and re-development would include permanent stormwater management SCMs. As such, section 4.2.4(f) already requires plan review and approval. Section 4.2.4(h) already requires enforcement actions. Additionally, section 5.5.3.6 of the Construction General Permit requires the project SWPPP to include a description of any measures that will be installed during the construction process to control pollutants in stormwater discharges that will occur after construction operations have been completed. Again, the review required by this paragraph would be accomplished as part of the project review and approval process outlined in section 4.2.4.

Response:
The permit does not require separate project reviews for construction stormwater requirements and permanent stormwater requirements. It is reasonable to design one review process to include all requirements the permittee is responsible. That may include not only construction/permanent stormwater but other program areas such as zoning or codes compliance.

Part/Section	Comment 53:
4.2.5.2.	Please provide guidance on how to incorporate these requirements into lots less than one acre but part of a larger common plan of development. Are these only to be covered by TDEC small lot permits?

Response:
The MS4 must continue to manage post-construction/permanent stormwater at all new development and redevelopment projects that disturb one acre or more of land, or less than one acre if part of a larger common plan of development, and discharge into the permittee's MS4. The SCMs designed for permanent stormwater management will need to meet the requirements of this subpart. Typically, these SCMs will be designed for the entire development, not on a lot-by-lot basis.

Separately, MS4s must also continue to implement and enforce a construction site stormwater runoff pollutant control program as required by subpart 4.2.4. of the permit for construction activities that result in a land disturbance of greater than or equal to one acre. For MS4s that are not a QLP, the Division is the primary permitting authority over the Construction General Permit (CGP) which includes the requirement for subsequent operators of individuals lots in a larger common plan of development to obtain coverage under the CGP.

Part/Section	Comment 54:
4.2.5.2.	As this is written, the burden of SCM design is placed upon the permittee. We believe this is not TDEC's intent. The project designer is responsible for determining what SCM they should use to achieve the water quality standard for the development or re-development. With the vast amount of information currently available to designers, the permittee should not have to be required to provide a suite of SCMs for use. Additionally, section 5.5.3.6 of the Construction General Permit requires the project SWPPP to include a description of any measures that will be installed during the construction process to control pollutants in stormwater discharges that will occur after construction operations have been completed. Since the SWPPP is designed by someone who has completed EPSC Level II certification or a PE, the designer should be already aware of the SCMs available, or where to find data for them, and not require a suite be provided to them by the permittee. Recommend sentences 2, 3 and 4 be deleted.

Response:
The permit in no way requires MS4 personnel to conduct site SCM design. Since the 2003 permit, MS4s have been required to implement strategies to address post-construction runoff including structural BMPs. The 2016 permit clarified this requirement and the Rule 0400-40-10-.04 provided more specificity.

The Rule states "*The permittee shall identify a suite of SCMs to be used in various situations.*" This does not mean that the permittee must provide SCM designs. The permittee is required to identify what SCM are allowable in their jurisdiction. This allows the MS4 the flexibility needed to implement a program that is appropriate for their community.

Part/Section	Comment 55:
4.2.5.8.	Easily referenced documents are good to require, but having them available to the public can be more difficult. Members of the public are always able to submit a TORA request. Does this count?

Response:
Subpart 4.2.5.8.b outlines the specific minimum requirements for the inventory and tracking system. It also requires that "*The system must be made available to the Division or to members of the public upon request.*" The Tennessee Public Records Act applies to the records themselves, not the system of maintaining those records. Most likely, the general public would be requesting the records from the system. It is possible for the MS4 to utilize the public records request process to provide access to both the records and the system. If a MS4 uses its public records request process to meet this requirement, it is important for the document custodians and anyone processing these requests to understand how the requirement for the SCM inventory and tracking system is different from the Tennessee Public Records Act.

Part/Section	Comment 56:
4.2.5.8.	What is the record retention time for these documents? Can each MS4s policy determine this?

Response:
State and federal rules require a record retention period of at least three years (see subpart 6.1). MS4s may require a longer retention period.

Part/Section	Comment 57:
4.2.5.9.	The first rows of the table pertaining to Stormwater Mitigation and Public Stormwater Fund Comment: The measurable goals and annual report requirements are difficult to understand and do not track back to the requirements stated in subpart 4.2.5.3, which say nothing about project completion. It is understandable that the Division wants to see that all projects entering a mitigation process are accounted for. However, the measurable goals and annual report requirements predicate project processes that will likely differ from how a viable mitigation and/or fee-in-lieu program actually works and secures funding over time. Some programs may work within the annual budgeting of a stormwater utility and others may secure funding through multi-year program grants. Instead of writing measurables goals and annual report

	requirements for permittees, the Division should allow permittees to write their own measurable goals that best fit their offsite and fee-in-lieu programs.

Response:
The reporting requirements in this row of the table are complex specifically because as the commentor noted, projects don't always fit within one reporting year. There are two measurable goals for this management measure:

1. All mitigation projects must be completed; and
2. All mitigation projects must be funded.

If a MS4 fails to ensure mitigation projects are fully funded and completed, the requirement will not be met as described in 4.2.5.3.a. "*The program must ensure that off-site stormwater mitigation will be accomplished within the same USGS 12-digit hydrologic unit code watershed as the new development or redevelopment project, if practicable, and will treat a minimum of 1.5 times the portion of the WQTV not treated on site.*"

Annual reporting for the requirement that all mitigation projects be completed was edited to remove a line that inadvertently divided one reporting element. This type of change does not show up on track changes. Additionally, the narrative requirement was modified for clarity. The four numbers being reported for this measurable goal will indicate if there are potential issues in meeting the management measure. Since as the commentor stated, mitigation projects have various timelines an annual report element stating that 100% of the projects were completed during the reporting year was not included in the permit.

The annual report requirement for dollars in the stormwater fund has been clarified to include "at the end of the reporting period." These two reporting requirements will indicate if the permittee is meeting the requirement in 4.2.5.3b. that states "the payment amount into a public stormwater fund must be sufficient to design, install, and maintain the stormwater mitigation measures." The Division recognizes that not all MS4s will maintain the same amount of reserves in the fund, however, a significant change of the dollar amount from year to year, would indicate the need for the division to follow up.

Part/Section	**Comment 58:**
4.2.8.9	Multiple commentors expressed a concern that it was problematic to track the time frame for plans review by adding complexity to the already complex land development process. Additionally, one commentor noted that "Plan review timeframes can vary widely based on matters unrelated to permit compliance. These include zoning/subdivision/site planning code

	variances, the role(s) of other departments involved (e.g., planning, codes enforcement, etc.), local government staffing issues (which have been significant since the COVID pandemic), legal issues surrounding a specific land development, the completeness and quality of the submitted plan, and many other factors. A MS4 permit-specified timeframe can unnecessarily complicate these issues in ways that are not easily resolved, ultimately resulting in activity non-compliance. Thus, the draft permit's requirement for a plan review timeframe sets-up permittees for compliance failure on an issue that has nothing to do with water quality protection."

Response:

The permittee is still obligated by rule/permit to "Develop, implement, and enforce policies and procedures for the submittal and review of plans as required by **Error! Reference source not found.**.**Error! Reference source not found.**.". However, 4.2.5.9. has been updated to remove the requirement to establish a timeframe for plans review and associated reporting. The reporting requirement has been updated to include:

- Total number of all new development and redevelopment projects reviewed
- Number of new development and redevelopment projects reviewed in accordance with the established policy and procedure

Part/Section	**Comment 59:**
4.2.5.1.d.	Implementation plans should be contained in the permittee's SWMP. Since the permittee is not required to submit the SWMP to TDEC, it is inappropriate to require a portion of the SWMP be submitted in permit language. It can be submitted upon request. If this item remains in the permit, please provide rationale. Is it TDECs intention to provide feedback to the permittee as to whether the schedule is acceptable or meets permit requirements? As a reminder and as quoted from 55 Fed. Reg. 48052: EPA disagrees with the notion that this regulation, which addresses permit application requirements, should create mandatory permit requirements which may have no legitimate application to a particular municipality. The whole point of the permit scheme for these discharges is to avoid inflexibility in the types and levels of control. Further, to the degree that such mandatory requirements may be appropriate, these requirements should be established under the authority of section 402(p)(6) of the CWA and not in this rulemaking which addresses permit application requirements.

	With this said, we find it difficult to find a legitimate application to a small MS4 program for a mandatory permit requirement requiring the submittal of an implementation schedule. This row should be deleted.

Response:
The implementation plan and its submittal are required by Rule 0400-40-10-.04(1)(d) and will remain. The citation of the Federal Register is from November 16, 1990. This federal register relates to the rules on the application requirements of phase 1 MS4s. The language quoted is part of a larger discussion on establishing a BAT standard for municipal permits instead of using what is now called a stormwater management program as part of the rules outlining application requirements.

Part/Section	**Comment 60:**
4.2.5.8.	It is recommended that TDEC include specific language to indicate that the inventory and tracking system shall be a searchable electronic database that retrieves SCM information by location or other similar identification. A searchable electronic geodatabase is preferred. Paper-based database cannot be effectively used to the evaluation SCM performance.

Response:
Rule 0400-40-10-.04(8)(b) allows for the searchable database to be either paper or electronic. The permit cannot take away the paper database option. The Division encourages the use of a searchable electronic geodatabase. This type of database will better facilitate SCM performance evaluation as well as aide in other strategic objectives of the MS4. Additionally, any electronic database will greatly reduce the burden of public records requests for the data. However, as the emphasis on nutrients reduction continues, the request for the data will become more frequent as such a paper database will not likely be the most feasible system.

Part/Section	**Comment 61:**
4.2.5.8.	Location of SCMs should include latitude and longitude.

Response:
The Division agrees that SCM location should include latitude and longitude, but this is not mandatory. The language in the permit must remain consistent with Rule 0400-40-10-.04(8)(b) which states "*the inventory and tracking system must be a searchable database, either paper or electronic, that retrieves SCM information by location or other similar identification.*"

Part/Section	**Comment 62:**

4.2.5.7.	Under "…..the system should include information and records the permittee will use to demonstrate that SCMs are properly maintained, including but not limited to:", it is recommended to consider the addition of the following information: 1. Drainage area of each SCM 2. Design criteria used for designing/sizing each SCM. Reference to manuals or design documents can be accepted. 3. Name of receiving stream or HUC unit (12 or 8) for each SCM 4. Summary of monitoring data or SCM water quality data, if any 5. Planned inspection and maintenance schedule of each SCM 6. Description of maintenance procedure

Response:
Item #2 is inherent in the requirement 4.2.5.2.b. which states "*The permittee shall identify a suite of SCMs to be used in various situations. Information relevant to identified SCMs should be made readily available*. "Items #5 and #6 are required by the subpart 4.2.5.8.b. 3 & 4 of the permit. The Division agrees that the inclusion of the data elements listed items #1, #3, and #4 would be beneficial However, the language in the permit must remain consistent with Rule 0400-40-10-.04(8)(b).

Items #1 and #3 could possibly be extrapolated using the information required by permit subpart 4.2.3.1. that specifies that the MS4's storm system map shall include, in part, MS4 outfalls, contributing points to the storm sewershed of system outfalls, direction of stormwater flow through the system, and the receiving streams. Data elements required in subpart 4.2.3.1. are required to be submitted as part of the MS4's annual report.

For item #4, while the information may not be specific to SCM water quality data, a summary and copies of monitoring data the MS4 performs during each reporting year in accordance with permit subpart 4.6. - Stormwater Monitoring and Program Evaluation are required to be submitted as part of their annual report.

Part/Section	**Comment 63:**
4.2.5.8.	The Urban Stormwater Control Measures Workgroup of the Tennessee Nutrient Reduction Taskforce submitted comments 61, 62, and 63 in order to enable the collection of additional data for future assessment of potential nutrient reduction by permanent stormwater control measures (SCMs).

Response:
Rule 0400-40-10-.04 already requires the data to be made available. As noted in the above responses, the rule language cannot be changed by the permit to facilitate this objective. However, the Division can simplify and streamline the transfer of the

data required by the rule. An annual report requirement has been added for the submittal of this information beginning in year 3 (the report due in 2025.) This will save the taskforce the time it would otherwise spend requesting the data from each MS4 individually. Plus, it allows the MS4 more time to gather the data since it is a known requirement. Tenn. Code Ann. § 10-7-503(a)(2)(B) requires a response within 7 business days.

2.2. PUBLIC EDUCATION AND OUTREACH

Part/Section	Comment 1
4.2.1.	Multiple commentors suggest a reduction in the number of activities or complete removal of a required number.

Response:
The permit must establish MEP for public education and outreach, and this must be measurable. The suggestion to remove the minimum number of activates would in theory allow the MS4 to state in their SWMP that 0 activities would be completed in a misapplication of MEP. As such, a minimum number of activities will remain in the permit. However, the quantity of activities was one of the most commented on elements. Of particular note was the difficulty of implementation for MS4s with a population of less than 10,000 people. Some of these MS4 have significantly less than 10,000 people and often only a couple of full-time staff for the operation of the entirety of the municipality, not just the MS4 program. As such the number of events has been reduced for the Public and Engineering and Development Community. Additionally, a new population range added for those MS4s that are less than 10,000 people.

Part/Section	Comment 2:
4.2.1.	What level of involvement distinguishes collaborating from sponsoring in a MCM1/MCM2 activity? Is collaboration between two or more MS4's considered a sponsored event?

Response:
The draft permit does not include the terms "collaborate" or "collaboration". The terms used were "conduct" or "sponsor" an activity. The permittee will be credited for either conducting or sponsoring an activity. For further clarification, there is a reference to sponsoring an event located in the table in section 4.2.1.1. and 4.2.2.1, which specifies that sponsoring can include monetary contributions or donation in kind. Conducting an activity can include actions such as organizing, scheduling, or leading the activity itself.

Part/Section	Comment 3:
4.2.1.	What constitutes an "activity" and how are activities measured? For example, is having/using a social media account for stormwater education considered a single activity or can each post (or series of posts) on a different topic considered a single

	activity? Is there a minimum number of people that need to be reached at each event? How does social media help meet these goals?

Response:
The MS4 has broad latitude to define the Public Education and Outreach activities in their PIE plan. There is no minimum number of people to be reached for the activity to "count". However, the number of people reached by a particular activity could be a useful metric in reviewing a particular activity. Social media is clear opportunity to reach the public in a cost-effective manner. The test as to if a social media activity counts as an activity should be one of reasonableness. It would be unreasonable to count the same message communicated across, Twitter, Facebook, and Instagram as three activities. Likewise, it would be unreasonable to count a single message that is in excess of the character limit of twitter so that it takes two tweets to fully communicate as two separate activities. It is important to note a distinction between a social media post for public education and public involvement. The public involvement social media post will solicit a response or participation on the part of the targeted audience. It is permissible for one activity to count both under the public education and outreach MCM and the public involvement/participation MCM.

Part/Section	**Comment 4:**
4.2.1.3.	Multiple commentors expressed confusion at the education requirement for employees regarding job categories. Additionally, comments were receive stating that it was unreasonable to educate employees annually.

Response:
The use of the term "job categories" was used in the same manner as in the 2016 permit. Some human resources departments may refer to "job categories" as classifications or positions based on job responsibility. The language of the permit has been clarified to more clearly detail the requirement that the permittee identifies the job categories that should receive education on any combination of the three management measures identified. "All employees as identified in the PIE plan" means those individuals working in the identified job categories in the PIE plan.

Additionally, the training frequency has been returned to the 2016 requirement of "*New employees must be trained within six months of their employment or movement into an applicable job category. All responsible employees must receive training and/or retraining within the permit term*." See subpart 4.2.6. The annual reporting requirement has been updated to:

> - For employees that are new to the MS4 or new to the job category: provide the total number of employees NOT educated in accordance with the PIE plan within six months

- For existing employees: provide the total number of employees NOT educated in accordance with the PIE plan within the permit term. It is important to understand that this since the term to meet this requirement is the permit term, failure to comply would not be able to be assessed until the last annual report for the permit term.

Part/Section	Comment 5:
4.2.1	There were multiple comments requesting clarification of activity related to the public education and outreach and public involvement/participation MCMs. They are listed below in a Q&A Format.

Response:

Q: Can one event have multiple "activities" within it and thus achieve the requirements of both Public Education and Outreach and Public Involvement/ Participation as discussed in section 4.2.1 & 4.2.2?
A: Yes

Q: Is tabling at an event where the public are invited to participate in an aspect of the SWMP considered a Public Education and Outreach activity, a Public Involvement/ Participation activity or both?
A: Yes, if an educational management measure(s) is addressed from 4.2.1.1 and a participation/involvement management measure(s) is addressed from 4.2.2.1.

Q: Is educating a SCM owner/operator in the field considered one activity, or is the program to educate SCM owners/operators encountered during SCM inspections considered the activity?
A: The program to educate SCM owner/operators would be one activity and the number of SCM owner/operators educated would be the "*approximate number of that audience that was reached*."

Q. Is a single person educated, such as at a field visit or on a phone call considered an acceptable activity?
A: The activity would be described in the PIE Plan. The number of "people" that it reaches is a metric of that activity. If that activity reaches only 1 person, the MS4 would use that in evaluating the effectiveness of that activity.

Part/Section	Comment 6:
4.2.1. & 4.2.2.	Please explain the differences between "Public Education and Outreach", and "Public Involvement/ Participation".

Response:

These two MCMs are closely related and can easily be seen as an extension of each other. Public Education and Outreach focuses on increasing the knowledge of the target audience on the impacts of stormwater discharges and how they can help reduce pollutants. This can be accomplished through the distribution of information (e.g., pamphlets, videos) or through engaging with the target audience to

communicate the educational message. Public Involvement/Participation focuses on directly engaging the target audience in decision making or in an activity that addresses specific issues. It may be helpful to think of Public Education and Outreach as a push of knowledge out to the community and Public Involvement/Participation as a pull of knowledge in from the community.

Part/Section	Comment 7:
4.2.1	For multiple permit cycles, MS4s have implemented locally derived public education and outreach plans that have been compliant with the NPDES program. This permit is a significant leap forward in the prescriptive nature of the permit, defining very specifically numerous management measures and very specific (but arbitrary) numbers of activities. This approach will likely require a complete overhaul of local government outreach programs to ensure compliance with every single element of these sections. Is that TDECs intent? If not, can this section be structured such that local governments have more flexibility to continue implementing programs that already cover these management measures more broadly? TDEC still maintains the authority to review the PIE and make adjustments through audits to verify that the intent of the permit is being met without burdening all permittees with a very prescriptive list of requirements.

Response:

Permittees have been required to address the target audiences specified with the specific management measures (subject) specified since the 2010 permit. This is not a new requirement. If the permittee was in compliance with the 2016 permit, compliance with the 2022 permit would not require a "complete overhaul." It would require confirming the required details are documented for each activity and ensuring the management measure/target audience has been addressed with the appropriate number of activities. See Comment 1 of this section for a discussion on the number of activities.

It is important to understand that an inspection/audit by the division is to determine compliance with the permit terms and conditions. The point to make "adjustments" to the PIE plan is during the process to review the effectiveness of the program. However, adjustments to the PIE plan does not change permit requirements.

Allowing the permittee to choose the management measures, target audience, and delivery method would require a completely new permit commonly called a 2-step permit under the remand rule.

Part/Section	Comment 8:

4.2.1.	This outline for education and outreach does not resemble what most MS4s are currently doing. I would hate to see the general education dissolve due to the new outline and requirements.

Response:
Permittees have been required to address the target audiences for each specific management measure (subject) since the 2010 permit. This is not a new requirement. General Education was not specifically required by the either the 2010 or the 2016 permits.

The division agrees that general education plays an important role in many MS4's Public Education and Outreach programs. However, adding a new management measure for general education would cause a significant burden to those MS4 that are not currently engaging in that activity. Therefore, management measure 4.2.1.1.a. "*General awareness of the impacts on water quality from general housekeeping maintenance/activities*" has been broadened from the 2010/2016 permit language to allow MS4s with general education programs the flexibility to count the general education activities as meeting the permit requirement.

Part/Section	**Comment 9:**
4.2.1.	4.2.1, and then further categorizes sub audiences under each subsection. It is unclear whether these sub-audiences are required targets or just suggested targets. Please clarify the required targets for both the public education and public involvement/participation activities. Suggested audiences should be moved to the rationale, so Division staff don't inadvertently include them as requirements during audits.

Response:
The suggested change has been made. For the Public target audience (4.2.1.1.) and the Engineering and Development Community audience (4.2.1.2.). The subsequent language in the Employees subpart (4.2.1.3.) has been retained because it is providing clarification that this subpart is only appliable to employees dependent on job function.

Part/Section	**Comment 10:**
4.2.1.1	It would make more sense for the chart on page 15 to say a., b., c. d. or e. instead of all must meet the 9X5=45 public outreach numbers. The MS4 can develop their PIE plan around these numbers and type of measures. It would make more sense for the MS4s to pick from the items available and create their PIE plan for the total number of activates to pick from all instead of multiplying each measure by the goal number.

Response:
The suggested change is basically what the 2-step permit is that resulted from the remand rule. Changing to a 2-step permit at this stage would be exceptionally problematic.

While an MS4 may choose to conduct a specific public education and outreach activity that addresses only one management measure, the permit was written to allow the permittee the flexibility of addressing multiple audiences and management measures during one event. A well-planned tabling at a spring festival could meet all of the activity requirements for the public in MCM 1 & 2.

Part/Section	Comment 11:
4.2.1.1.	It would make more sense to combine Management Measures c. Awareness on the proper storage, use, and disposal of pesticides, herbicides, and fertilizers and d. Awareness on the proper storage, use, and disposal of oil and other automotive-related fluids into one measure.

Response:
The suggested change has been made.

Part/Section	Comment 12:
4.2.1.	This part of the permit is one of the minimum requirements but the way it is to be enforced is up to the local MS4 as recommended by EPA and not required as per your own rational statement; therefore the way the local MS4 addresses the requirement should be left up to the MS4 and not delegated as must having specific number of training events. It may be more effective to have U-Tube videos or other digital platforms prepared that address targeted issues in the community as opposed to general meetings with HOA's or other activities that may not provide effective and only eat up local community resources.

Response:
The MS4 chooses the delivery method. There is nothing in the permit prohibiting a social media or online videos. Likewise, the permit does not require HOA or other type of meetings.

Part/Section	Comment 13:
4.2.1.	The objective of this program as stated in the first paragraph is to reduce or eliminate behaviors and practices. This subpart requires the permittee to include a methodology to evaluate components to assess overall effectiveness. How does TDEC intend for the permittee to assess changes in behavior and practices? Please provide guidance. This requirement is well beyond any measurable

	outcomes associated with water quality improvement. I would suggest that, if EPA wants this, they, with their resources, develop, with input of stakeholders, the metrics to measure this and provide that to the permittees as this request is far beyond what should be asked of an MS4.

Response:
Evaluation of program effectiveness is a federal requirement. As such, there are numerous guidance documents available that MS4s can use as reference.
Two examples are linked below.
https://www3.epa.gov/npdes/pubs/region3_factsheet_swmp.pdf

https://www.casqa.org/sites/default/files/effectiveness_assessment/rl-02_casqa_white_paper_an_introduction_to_stormwater_program_effectiveness_assessment_2005.pdf

Part/Section	Comment 14:
4.2.1.2.	This permit requirement is inappropriate for permit language. Most people in the Engineering and Development communities are well aware of storm water ordinances and regulations because they have to get permits from TDEC as well as EPSC certifications. Plans have to be processed through the permittee's planning and construction process. This type of training serves no use to the permittee or the engineering and development communities and represents a waste of valuable time and resources of the permittee as well as the engineers and developers. Recommend this requirement be deleted from the permit as TDEC is addressing this in their requirements for Level 1 and 2 certification of professionals in the construction industry and the permittees are already addressing ordinance requirements as part of the plan processing process.

Response:
If most people in the engineering and development community are aware of the management measures, it can be attributed (at least in part) to the educational efforts of MS4s statewide in implementing educational efforts on these management measures ever since the 2010 permit. Neither the 2022 permit nor the 2016/2010 permit require a discrete “training session” as implied by the comment. Many MS4s have found it effective to incorporate education as part of their preconstruction meetings. This has been and continues to be acceptable.

Part/Section	Comment 15:
4.2.1. & 4.2.2. *(this comment and response is not*	There is no question that public education and public involvement is a critical component of stormwater pollution prevention and water quality protection. These control measures can go a long way in preventing nonpoint source pollution in the first place and

duplicated in 2.3)	reducing the need for enforcement of permittee stormwater requirements. With regards to these control measures in the State of Tennessee, my observations as an experienced municipal stormwater consultant are two-fold: - First, generally speaking, Tennessee permittees should and could do a better job of focusing on these control measures as important features of their compliance programs. That is not to say some Tennessee permittees don't have effective public education and involvement BMPs. Some do. But overall – Tennessee Ms4s are struggling to identify and implement a cohesive suite of BMPs. I believe this is primarily related to available funding/resources at the local level, and traditional "norms" of elected officials that engineering and public works departments shouldn't be doing anything other than engineering and public works. That is, they aren't sold on the need to emphasis education and involvement. - In the past, TDEC has not pushed permittees to improve the quality and effectiveness of their BMPs for these control measures. Neither through the MS4 permits to date, nor through audits and enforcement. There has been no carrot or stick to move permittees in the direction of implementing effective public education and public involvement activities. So, in Tennessee, we are where we are with respect to these control measures. However, the draft permit does nothing to improve either of those issues. A higher number of activities may translate into a clear path for compliance and enforcement by TDEC. It's just about accounting for the numbers. But it does not necessarily translate to improved quality and effectiveness of BMPs. I know this through my own experience as a consultant. c. Instead of just "upping" the number of activities for these control measures, TDEC should write and enforce a permit that places emphasis on public education and public involvement activity content, quality, and effectiveness. This will ensure that these two control measures are given the consideration they are due, and that permittee's will spend their time and resources on quality activities rather than just checking boxes.

Response:

The Division agrees that public education and public involvement are important elements in preventing stormwater pollution. The comment that the division needs to improve on MS4 program quality and effectiveness for these MCMs is well taken. Previous permits required MS4s to evaluate the effectiveness of the program. This is continued in the 2022 permit. As shown by many of the comments on the 2022 permit, there were many misperceptions or misreadings of the requirements in the previous permits. By writing the 2022 permit with clearer language, improvements to all MCMs are expected. As is the iterative nature of the MS4 stormwater program,

the MS4 general permit is also iterative improving on the lessons learned in the previous cycles.

2.3. PUBLIC INVOLVEMENT/PARTICIPATION

Part/Section	Comment 1:
4.2.2.2	The first sentence in this is incorrect. This does not address engineers and development community. It is for other commercial agencies.

Response:
This sentence has been deleted.

Part/Section	Comment 2:
4.2.2.	Multiple commentors suggest a reduction in the number of activities or complete removal of a required number.

Response:
The permit must establish MEP for public involvement/participation. The suggestion to remove the minimum number of activates would in theory allow the MS4 to state in their SWMP that 0 activities would be completed in a misapplication of MEP. As such, a minimum number of activities will remain in the permit. However, the quantity of activities was one of the most commented on elements. Of particular note was the difficulty of implementation for MS4s with a population of less than 10,000 people. These MS4s were required to obtain programs because they were part of an urbanized area. Some of these MS4 have significantly less than 10,000 people and often only a couple of full-time staff for the operation of the entirety of the municipality, not just the MS4 program. As such the number of events has been reduced for the General Public and Commercial and Development Community. Additionally, a new population range added for those MS4s that are less than 10,000 people.

Part/Section	Comment 3:
4.2. & 4.4.12	The Stormwater Management Program – is a program of implementing a plan. This plan was and is developed as a type of Standard Operating Procedure. The general public should not have any comment on how the plan is developed for government office to conduct its procedures which are already under TDEC revision. This is redundant and unnecessary. This requirement opens up MS4's to law suits by groups who question internal policies and procedures when TDEC has always given regulations and specified that the MS4 tell TDEC how they will apply the regulations within each jurisdiction.

Response:
The federal rule as found in 40 C.F.R. § 122.34(b)(2), states that the permit should "*…include provisions addressing the need for the public to be included in developing, implementing, and reviewing the stormwater management program*…". It has always been the intent of the TN MS4 permit to provide opportunities for the public to be involved in the development and implementation of the MS4s stormwater management program, as applicable.

Part/Section	Comment 4:
4.2.2.	What level of involvement distinguishes collaborating from sponsoring in a MCM2 activity? Is collaboration between 2 or more MS4's considered a sponsored event?

Response:
The draft permit does not include the terms "collaborate" or "collaboration". The terms used were "conduct" or "sponsor" an activity. The permittee will be credited for either conducting or sponsoring an activity. For further clarification, there is a reference to sponsoring an event located in the table in section 4.2.2.1, which specifies that sponsoring can include monetary contributions or donation in kind. Conducting an activity can include actions such as organizing, scheduling, or leading the activity itself.

Part/Section	Comment 5:
4.2.2.	Is a social media (e.g., Twitter or Instagram) activity considered public involvement/participation? Input from the public can be provided via responses to tweets and posts.

Response:
A social media activity can be considered public involvement and participation, provided the activity solicits a response or action on the part of the targeted audience.

Part/Section	Comment 6:
4.2.2.	There were multiple comments requesting clarification of activity related to the public education and outreach and public involvement/participation MCMs. They are listed below in a Q&A Format.

Response:

Q: Can one event have multiple "activities" within it and thus achieve the requirements of both Public Education and Outreach and Public Involvement/ Participation as discussed in section 4.2.1 & 4.2.2?

A: Yes

Q: Is tabling at an event where the public are invited to participate in an aspect of the SWMP considered a Public Education and Outreach activity, a Public Involvement/ Participation activity or both?

A: Yes, if an educational management measure(s) is address from 4.2.1.1 and a participation/involvement management measure(s) is addressed from 4.2.2.1.

Part/Section	Comment 7:
4.2.1. & 4.2.2.	Please explain the differences between "Public Education and Outreach", and "Public Involvement/ Participation".

Response:

These two MCMs are closely related and can easily be seen as an extension of each other. Public Education and Outreach focuses on increasing the knowledge of the target audience on the impacts of stormwater discharges and how they can help reduce pollutants. This can be accomplished through the distribution of information (e.g., pamphlets, videos) or through engaging with the targeted audience to communicate the educational message. Public Involvement/Participation focuses on directly engaging the targeted audience in decision making or in an activity that addresses specific issues. It may be helpful to think of Public Education and Outreach as a push of knowledge out to the community and Public Involvement/Participation as a pull of knowledge in from the community.

Part/Section	Comment 8:
4.2.2.	4.2.2, categorizes sub audiences under each subsection. It is unclear whether these sub-audiences are required targets or just suggested targets. Please clarify the required targets for both the public education and public involvement/participation activities. Suggested audiences should be moved to the rationale, so Division staff don't inadvertently include them as requirements during audits.

Response:

The suggested change has been made. For the General Public target audience (4.2.2.1.) and the Commercial and Development Community audience (4.2.2.2.).

Part/Section	Comment 9:
4.2.2.	We believe the intent was to delete "-% of comments received from public on construction site project" from the table when "# of comments…." was added.

Response:
The verbiage on the second requirement has been corrected

2.4. ILLICIT DISCHARGE DETECTION AND ELIMINATION

Part/Section	Comment 1:
4.2.3.d.	What is the definition of "significant contributor of pollutions", since there are few promulgated pollutant concentration limits for MS4 stormwater? Guidance on this definition and how a MS4 would quantitatively apply the definition should be provided to ensure consistent application of this requirement. If the permit cannot provide the criteria and methodology by which a MS4 can quantitatively determine if its stormwater discharges are significant (i.e., not de minimis) contributors of pollutants, this section should be deleted. Please elaborate on how to comply with the annual reporting requirements of "% of non-stormwater discharges or flow investigated as a significant contributor of pollutants to the MS4". What denominator is used to find this percentage?

Response:
Subpart 4.2.3.d. is a requirement from 40 C.F.R. § 122.34(b)(3)(ii) and cannot be removed. Additionally, MS4 programs have been implementing this provision since at least the 2003 permit without issue. The definition of "Significant Contributor" from the 2016 permit has been included in the definitions.

While the Division understand the desire to simplify the determination by establishing a definition that "quantifies" a numerical threshold, such a definition would reduce the flexibility of the MS4 to address issues unique to its system. It is important to remember that water quality criteria are both numeric and narrative formats. The list of non-stormwater discharges or flows are allowed by federal rules to be discharged to the MS4 under the presumption that those discharges/flows are not problematic for waters. However, subpart 4.2.3.d. establishes that this list is not a "get out of jail free card". When a flow or discharge that is included in the "non-stormwater discharge" list is identified as a "significant contributor of pollutants", the MS4 must address it as an illicit discharge.

The Annual Report Requirement has been rephrased for clarity.

Part/Section	Comment 2:
4.2.3.g.	Three commentors suggested deleted the requirement and associated reporting for interagency coordination for hazardous waste or materials spill response. They specified cost, and difficultly with coordination of the emergency response agencies as reasons.

Response:
The requirement in 4.2.3.g. was established in the 2010 permit and continued in the 2016 permit. Division staff confirmed the difficulty in implementing the requirement and the general lack of beneficial response from those able to implement this requirement. As such this requirement and associated reporting has been removed.

Part/Section	Comment 3:
4.2.3	Please define corrective action plan and what it entails to be acceptable to TDEC.

Response:
A corrective action plan is a common term used in both the public and private sectors to describe a document that outlines a set of steps for addressing an issue(s). The actual contents of the corrective action plan will depend on the identified illicit discharge itself. The MS4 has broad latitude to determine if a corrective action plan submitted by the owner/developer is acceptable.

Part/Section	Comment 4:
4.2.3. Page 24	If an owner/operator does not provide a corrective action plan even when required by the MS4 what course of action does TDEC require the MS4 to take?

Response:
The MS4 is expected to follow the enforcement response plan (ERP) through progressive enforcement. The MS4 may need to make modifications to the ERP if subsequent actions are not clear.

Part/Section	Comment 5:
4.2.3. page 24	Please explain what is meant by the last sentence in this section "The ERP shall include remedies to address failures by the owner/operator to complete the corrective action plan and eliminate the illicit discharge." Does TDEC intend the MS4 to enforce the corrective action plan and the MS4 to also eliminate the illicit discharge if the owner/operator fails to do so?

Response:
The ERP will need to outline the actions the MS4 will take to remedy violations. In the case of the IDDE program, compliance is elimination of the illicit discharge. A corrective action plan isn't "enforced." Enforcement actions are taken to resolve the violation of an illicit discharge. If a corrective action plan is not submitted and the

illicit discharge is not eliminated, the MS4 will use the ERP to know what enforcement actions need to be taken.

Part/Section	Comment 6:
4.2.3.c.6.	All septic system failures are given 30 days to respond to the health department's notice, therefore all septic system failures that constitute a MS4 illicit discharge will be required to have a "Corrective Action Plan" by the draft permit. Is this TDEC's intent?

Response:
4.2.3.c.6. has been modified to include the following clarification for initial enforcement action "*(including referrals to other regulatory agencies with appropriate jurisdiction)*". The MS4 may make a referral to another agency that has jurisdiction over the illicit discharge. Septic system failure is a great example of this scenario. The site would be referred to TDEC-DWR or the local agency such as a health department. The MS4 would need to provide the documentation to that agency. TDEC or the local agency would then be responsible for enforcement, so no CAP is required.

Part/Section	Comment 7:
4.2.3.	Two commentor express concern regarding confirmed IDDEs where no responsible party or source can be identified.

Response:
Subpart 4.2.3.c.8. has been added to address this scenario.
"*If the responsible party or source of a confirmed illicit discharge cannot be identified after a comprehensive investigation in accordance with all stormwater management program IDDE investigation and tracing procedures, the illicit discharge shall be referred to the Division within fourteen calendar days of completing the investigation. All records and documentation of the investigation will be provided to the Division in the referral. Referrals shall be made to the local environmental field office identified in subpart* ***Error! Reference source not found.***."

Part/Section	Comment 8:
4.2.3.	Management measures table, third row, middle column Comment: The measurable goal wording is confusing and focuses on tracking the reporting source rather than the illicit discharge complaint itself. Suggest rewording to say something like "track all potential illicit discharges reported, categorized by reporting source (public or permittee staff)".

Response:
The suggested change has been made.

2.5. CONSTRUCTION SITE STORMWATER

Part/Section	Comment 1:
4.2.4.i.	Is the allowance for municipal plan review licensed engineers to let their PE substitute for TNEPSC Level 2 going away?

Response:
This allowance for plan review and inspection by a P.E. remains in place. The "or equivalent" language in 4.2.4.i. was modified to provide examples.

Part/Section	Comment 2:
4.2.4.	Define what is meant by project or construction project.

Response:
The verbiage "new development and redevelopment" was added prior to the term project in subparts 4.2.4., 4.2.2., and 4.5 or replaced the term "construction" to clarify.

Part/Section	Comment 3:
4.2.4.f.	What happens if you don't approve a set of plans? TDEC understands that not all plans will get approved, so this needs to be worded differently.

Response:
The language in 4.2.4.f. and the associated reporting requirement has been updated to include (or denial).

Part/Section	Comment 4:
4.2.4.g.	"Mechanisms or plans for public access to information on projects and receiving and considering comments from the public on those projects." How does TDEC intend the MS4 to show that they are "considering comments"? How long does someone have to submit a comment? Does FOIA and TORA not suffice?

Response:
The only change from the 2016 permit for this requirement is the cross reference to the Public Involvement MCM. The permittee has considerable flexibility in defining the scope of this requirement in their SWMP documentation including timeframe for submitting comments.

There are many options for an MS4 to show compliance with this requirement. One option for showing that the MS4 is considering a comment is simply a line or two on the plans review checklist. *e.g.*

- Were comments from the public received? Yes or No,
- Did those comments result in changes to the plan? Yes or No.

The Freedom of Information Act or FOIA is only applicable to federal agencies and would not be applicable to most MS4s in Tennessee.

Tennessee Public Records Act (T.C.A. §10-7-503) requires that the records "made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity" … "shall be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law." The records generated or received by the MS4 are required to be disclosed in accordance with the Tennessee Public Records Act (TPA). A comment on a construction site plan would be considered a record under the TPA and if requested under the TPA, would need to be provided. However, relying on the TPA alone does not meet the requirement of 40 C.F.R. § 122.34(b)(4)(i)(E).

As mentioned previously, this is not a new requirement. Most MS4 are likely implementing this requirement already, however, personnel may not have made the connection that a particular step of the process was originally intended to meet this requirement. Additionally, the permittee is encouraged to review its current process for plans review including those activities it doesn't typically consider part of the MS4 program for opportunities to streamline the process. For example, the planning commission may require all incoming plans to be posted on a publicly available website for a certain number of days prior to their meeting. Simply adding a method of contacting appropriate personnel on this same site would be considered a "mechanism for public access to information and receiving comments".

Part/Section	**Comment 5:**
4.2.4.f.	See comment 58 in the Permanent Stormwater/Post Construction section

Response:
In subpart 4.2.4.f., "and timeframe for review" has been removed in conjunction with the similar change in the Permanent Stormwater/Post Construction section.

Part/Section	**Comment 6:**
4.2.4. h. & j.	There were several comments regarding the 10% inspection requirement for non-priority construction sites. - Why are we entering in the # of last year's active permits on this year's annual report when the data is in last year's annual report? It is a good thig TDEC has specified that non-priority construction sites only require 10% inspection - 100% of all non-priority sites should be inspected quarterly at a minimum, as opposed to the suggested 10% just annually. An MS4 will potentially miss multiple issues.

	For reference, in Chattanooga, 90% of the land disturbing permits that are issued are considered non-priority. - We have issue with a permit requirement to perform inspections on I0% of all non-priority sites. There is a reason they are considered non-priority. Their impact on receiving streams is minimal. The permittee already has the ability, through ordinance, to treat discharges from those sites as illicit and may respond to them accordingly. This requirement is adding more work with not benefit to water quality. Recommend the last sentence be deleted. - Since the measurable goal is 100% inspections, shouldn't the reporting be percent of Priority Construction Activities inspected at least once per calendar month as opposed to percent inspected less than once a month?

Response:
In the 2020, EPA conducted a Permit Quality Review (PQR) on the Division's permits including the Small MS4 General Permit. EPA did acknowledge that the Division was under litigation and in the process of rulemaking. The PQR Report noted the following:

"The Construction Site Stormwater Runoff Pollutant Control Section of the permit should also be modified to specify a minimum inspection frequency for all active construction sites. TDEC should include a minimum inspection frequency of at least once per month, similar to what the permit requires for priority construction sites."

As such, when the division evaluated this requirement for the 2022 draft permit, two issues were identified.

1. What constituted a priority construction activity and by default a non-priority construction site was not clear
2. The need to address the concern from EPA's PQR report

First, the language in the first paragraph of 4.2.4.j. was added to clarify that a *"Priority construction activity shall be at a minimum, those construction activities discharging directly into, or immediately upstream of, waters the state recognized as unavailable condition for siltation or Exceptional Tennessee Waters."*

This language better aligns the MS4 Construction Site Stormwater MCM with the CGP.

Second, the requirement to "Inspect a minimum of 10% of active non-priority construction sites in accordance with the Stormwater Management Program" was added to address the concern from the PQR. This requirement better aligns the MS4 construction site stormwater MCM is with the programmatic requirements of TDEC's construction stormwater program. The iterative nature of the MS4 program will allow the Division to evaluate the effectiveness of this BMP at the next permit

renewal. That could look like a change in the number of inspections or adding more specificity and clarity to the requirement.

To calculate this percentage:

Count the number of non-priority construction activities that were inspected in accordance with the Stormwater Management Program (this will be the numerator of the percentage calculation)
Count the number of non-priority construction activities that were active during the reporting year = - # of non-priority construction activities (this will be the denominator of the percentage calculation)
Divide the numerator by the denominator and convert to a percentage.

Inspecting and enforcing a discharge from a construction site where the MS4 has reviewed and approved EPSC plans under the illicit discharge program may be problematic especially for those operating a QLP.

Part/Section	Comment 7:
4.2.4.	The current annual report form requires the permittee to report how many active permits were inspected during the reporting period. Documenting how many you started with and how many you finished with (as this draft permit reporting requirement specifies) doesn't provide an accurate assessment of how many active permits the permittee dealt with during the reporting period. So, what exactly is this reporting supposed to be for? Let us not just collect data for no reason. Recommend the row be deleted.

Response:

The commentor appears to have confused the inspection reporting requirement for Construction Site Stormwater with the "inventory of actively permitted public and private construction sites" requirement. This response is assuming the comment is for the latter.

In order to more clearly reflect the intent of the requirement, the following changes have been made.

For the inventory requirement in 4.2.4.d the first reporting requirement has been changed to total number of active construction activities

The value reported here
= (the Total number of active non-priority construction activities) + (Total Number of Priority Construction Activities)

The second reporting element has been changed to:
Total number of active non-priority construction activities with incomplete inventory information.

Part/Section	Comment 8:
4.2.4.	Commentors indicated confusion with the requirement for implementation of the changes necessary due to reissuances of the NPDES general permit for construction stormwater runoff (CGP, TNR100000)

Response:
The language has been revised to more clearly explain the due dates associated with the requirement to complete modifications to ordinance or other regulatory mechanism for construction site runoff pollutant control program consistent with requirements of the NPDES general permit for construction stormwater runoff (CGP, TNR100000).

Previous the CGP and the MS4 general permit were issued in conjunction with each other. This was not possible due to the rulemaking process for the MS4 program. As such the MS4 general permit had to address two scenarios. First, legal authority updates necessary as a result of the CGP effective October 1, 2021. Second, legal authority updates necessary as a result of the next CGP which will be issued during the term of the MS4 general permit.

Subpart 4.2.4.a.1. addresses the first scenario requiring legal authority updates necessary as a result of the CGP effective October 1, 2021, to be completed within 24 months of the effective date of the MS4 general permit.

Subpart 4.2.4.a.2. addresses the second scenario requiring legal authority updates necessary as a result of the CGP that will be effective after September 30, 2026, to be completed within 18 months of the effective date of the subsequent CGP i.e. the CGP with an effective date after September 30, 2026.

2.6. GOOD HOUSEKEEPING/POLLUTION PREVENTION

Part/Section	Comment 1:
4.2.6	Please add a definition for “in a timely manner.”

Response:
The verbiage was removed, so no definition is required.

Part/Section	Comment 2:
4.2.6.	Page 43 talks about an O&M program while page 44 talks about an O&M Facility Plan, without actually stating a requirement for a "plan". 1. Please correct or clarify, differentiating between the two if both are required. 2. Please clarify which items, if any, must be established or provided as written documentation along with a clear deadline for preparing these plans, and whether (or not) the facility plans must be submitted. Given the increase in additional documentation required by this permit and the fact that O&M Facility Plans may identify new resources or equipment needs at facilities, permittees should be allowed several years to budget for and prepare these plans, and then the remainder of the five-year permit period to fully implement them.

Response:
The language has been modified to clarify.

"*An O&M Facility Plan for each applicable municipal facility shall be developed and implemented and must include the following at a minimum.*"

The plan is the document the program includes the plan, other documents such as checklists or procedures, the training and associated documentation, site inspections, and any other actions needed to implement the BMPs.

The O&M plans, procedures and any other documentation for all existing municipal facilities should already exist since they were required under the 2016 permit. If modifications need to be made due to changes at the facility, those changes should be made and reported as a modification under subpart 4.1. Most likely these changes would be considered minor modifications unless a BMP, SCM, component or control is being removed.

Part/Section	Comment 3:
4.2.6.	Under section "4.2.6 Pollution Prevention/Good Housekeeping", it is recommended that TDEC receive information from permittees where street sweeping is performed. Data on miles of lanes swept, loads of leaves collected, and frequency of street sweeping shall be made available to TDEC for evaluation.

Response:
The MS4 may select street sweeping as a BMP, however, it is not required. If street sweeping is selected, the data elements described are an excellent way to evaluate program effectiveness and would be available upon request by the Division.

Part/Section	Comment 4:
4.2.6.	It is recommended that TDEC receive available information pertaining to fertilizer use to maintain SCMs such as location and frequency of fertilizer use, type of fertilizer, and amount of fertilizer used.

Response:
The MS4 may include fertilizer management as a BMP, however, it is not required. If fertilizer management is selected, the data elements described are an excellent way to evaluate program effectiveness and would be available upon request by the Division.

2.7. LEGAL AUTHORITY, COMPLIANCE & ENFORCEMENT

Part/Section	Comment 1:
4.4.1.2	This requirement opens up MS4s to lawsuits by groups who question internal policies and procedures when TDEC has always given regulations and specified that the MS4 tell TDEC how they will apply the regulations within each jurisdiction. This is overreaching. TDEC is the auditing agency. Let TDEC review and comment in the minor or major SWMP changes since all historical MS4s already have copies of these documents on file.

Response:

The section 5.4 of the 2016 permit states the following "Prior to submitting the annual report to the division, the permittee must present the annual report to the public for suggestions and comment. This may be done through any public communication method the permittee chooses such as a public hearing or by publishing a documents on the permittee's website. The permittee should respond to any comments received. The annual report included any modifications or replacements to any activity/control measure.

The 2022 permit removes this publication of the annual report for the solicitation of comments and suggestions. The EPA mandated electronic reporting of the annual report requires specific data to be submitted in a specific format. While standardization and consistency will be improved with electronic reporting, flexibility will be lost. Subparts 4.2.2. and 4.4.1 of the 2022 permit require the permittee to include in the SWMP how the MS4 will solicit comments and suggests for the program. These subparts also implement 40 C.F.R. § 122.34(b)(2)(i) which states "The permit must identify the minimum elements and require implementation of a public involvement/participation program that complies with State, Tribal, and local *public notice requirements*." It is important to note that the 2022 permit does not supersede any public notice requirements for the passage of ordinances or other legal authorities.

The language of 4.4.1.2. has been modified to more clearly detail what documentation is required to be placed on the formal public notice. It also includes a requirement to state in the Stormwater Management Program a description of this process. This description should clearly define what is available for review and comment in the public notice process that the permittee develops. While defining the scope of public involvement is permissible, simply stating that the public is not allowed to comment or otherwise be involved is not permissible.

Part/Section	Comment 2:
4.2.5.6.c	Rulemaking does not grant legal authority to a permittee to violate an individual or company's property right. Requiring the permittee to establish legal authority to do so puts the permittee as the target for legal action. Additionally, requiring an individual or company to surrender their property rights before they will be issued a permit is inappropriate. The permittee has legal authority over the municipal separate storm sewer system, not private storm sewer systems. This legal authority is granted in the Clean Water Act. Section 40 C.F.R. § 122.26 defines an MS4 as "owned or operated by a State, city, town, borough, county, parish, district, association, or other public body". Nowhere does it say the permittee has legal authority over a private separate storm sewer system. To this, the permittee should only be required to address maintenance issues if it detects an illicit discharge into the municipal system. The draft permit goes on to expound on the fact that this permit does not grant the permittee authority to trespass (section 7.14). But, TDEC expects the permittee to provide, through ordinance, the legal right to trespass. How well did that work for TWRA? The city cannot do this.

Response:

Regulatory authority over private SCMs is delegated by the State to municipalities through T.C.A. § 68-221-1105(a)(1) which states "*Exercise general regulation over the planning, location, construction, and operation and maintenance over storm water facilities in the municipality, whether owned and operated by the municipality or not*."

The commenter is correct in that the permit does not convey property right nor does it grant the legal authority to trespass. The legal authority to access private property to inspect or maintain must include the authorities outlined in section 4.7 of the permit.

We believe the TWRA case referenced is *Rainwaters v. Tenn. Wildlife Resources Agency.* The crux of the case is warrantless searches of property. This case is not settled law. MS4 personnel should contact their attorney for legal opinions.

To be clear, the MS4 permit in no way directs permittees to conduct warrantless searches of property. If entry is denied, MS4 personnel would follow the ERP which would be written in accordance with the legal authority of the permittee likely directing the MS4 personnel to obtain a warrant. Again, MS4 personnel should contact their attorney for questions regarding legal authority.

Part/Section	Comment 3:
4.2.5.6.	Requiring the permittee to maintain any documentation in regards to inspection and maintenance of private SCMs exceeds the regulatory authority of the permittee. Just propagating these requirements in rulemaking does not make them legal. The State is making the permittee a target for litigation, removing the burden of defense from the State and placing it upon the permittee.

Response:
Requiring documentation of inspection and maintenance of private SCMs is outside the regulatory authority of the permittee only if the permittee has failed to comply with the legal authority requirements of this and previous permits.

Part/Section	Comment 4:
7.18 & 7.19	The first line of 7.18 says the permittee will operate and maintain all facilities. We do not operate or maintain private facilities. This needs to be clarified as the permittee has no right or obligation to maintain or operate installation on private property and can only address those facilities when the facility fails, resulting in an illicit discharge into the MS4 system. This is a similar issue on 7.19. The MS4 will allow entry and inspection on public owned property but cannot require such on private property without a warrant or permission of the owner.

Response:
Subparts 7.18 and 7.19 are standard conditions in all NPDES permits. The application of these requirements to private property would be implemented through the permittee's legal authority. There should be analogous terms in the permittee's legal authority as well as any type of permit or other instrument used by the permittee to authorize a discharge to the MS4.

Part/Section	Comment 5:
4.7.1	There were several comments regarding the solicitor certification in section 4.7.1. - Those portions of the permit that require some type of ordinance implementation. That would seem to make this section appear rather redundant. - The permittee will enforce its ordinance and if TDEC deems the ordinance non-enforceable then TDEC needs to submit to the permittee the changes required. - The rationale used (section 5.7, Legal authority) have little to do with a small MS4. Nothing in the referenced 40 CFR § 122.34(b)(3)-(4) requires legal authority certification. 40 CFR § 122.26(d)(2)(i) applies to large or medium MS4s and, again, does not require legal certification and is being cited as the basis for BMPs. Many of the items specified in this draft permit are legally questionable (property right violations at the least, extortion at the worst). - An attorney's certification of the small MS4s SWMP is inappropriate/onerous.

Response:
Subpart 4.7 a-f reiterates the elements legal authority necessary to implement the SWMP as found in the rest of Part 4. The federal requirements for small MS4 programs do not have a designated section describing the legal authority requirements like the language for the medium/large MS4 programs. Instead, the legal authority requirements are embedded into the six minimum control measures. The 2022 permit consolidates the legal authority requirements into one location in the permit for clarity.

Division staff are not attorneys and are not equipped to make a legal opinion of the adequacy of the permittee's legal authority. The Department's Office of General Council (OGC) represents the department on legal matters. It would be a conflict of interest for OGC to draft a legal opinion for an MS4.

The language in 40 C.F.R. § 122.26(d)(2)(i) is direct regarding the legal authority requirements. It was used as a basis for the language in the permit. Without adequate legal authority the MS4 would be unable to perform many vital SWMP functions such as performing inspections and requiring installation of control measures. In addition, the permittee would not be able to penalize and/or attain remediation costs from violators. The requirement for the attorney to confirm that the permittee has the legal authority to implement the SWMP is a recommendation from the EPA's MS4 Permit Improvement Guide (EPA 833-R-10-001). It is much less onerous and expensive for an attorney to review and correct any inadequacy of legal authority before they become problematic and impede the permittee's ability to implement the SWMP. Some of the comments received indicating a fundamental lack of understanding of legal authority. This is understandable as MS4 personnel

are rarely licensed attorneys. All of which substantiate the need for an attorney to review the MS4's legal authority.

The requirement for submittal of this certification has been changed from the 2nd annual report to the 3rd annual report to provide additional time for attorney review after the changes have been made for the Post construction/permanent stormwater requirements.

Example of Solicitors Certification Statement

(Date)
{Name and Address)
Re: Legal Authority for (NAME OF PERMITTEE) – (TNSXXXXXX)

Dear:

As counsel for the (PERMITTEE) the following statement is submitted pursuant to the requirements contained in the MS4 General Permit TNS000000 regarding legal authority for the (PERMITTEE) to implement the (PERMITTEE) MS4 Stormwater Management Program (SWMP).

The (PERMITTEE) has adequate authority to carry out the program described in MS4 General Permit TNS000000.
The following references to the legal authority requirements of MS4 General Permit TNS000000 subpart 4.7 are correlated with the sections of the (PERMITTEE) legal basis providing the required authority. Where the authority is not apparent from a reading of the (Ordinance, Code, or other legal authority) an explanation is provided.

a. Section _____ of the (Ordinance, Code, or other legal authority) prohibits non-stormwater discharges into the storm sewer system and authorizes appropriate enforcement procedures and actions.

b. Section _____ of the (Ordinance, Code, or other legal authority) requires erosion and sediment controls, and provides for sanctions to ensure compliance.

c. Section _____ of the (Ordinance, Code, or other legal authority) addresses post-construction/permanent stormwater runoff from new development and redevelopment projects. New development or redevelopment projects may not discharge to the MS4 system without an (DESCRIBE MECHANISM FOR CONTROL, e.g. land disturbance permit) which may contain various terms, conditions, and prohibitions as found in Section _____ of the (Ordinance, Code, or other legal authority).

d. (PERMITTEE) may obtain remedies for noncompliance, seek injunctive relief, seek or assess penalties and enact the enforcement response plan as required in subpart 4.5 of permit TNS000000. (PERMITTEE) may seek injunctive relief for noncompliance if any such noncompliance might result in irreparable harm to the MS4 system, to the health and safety of workers, or to the environment; and because damages at law would not be an adequate remedy. A civil penalty is authorized by Section _____ of the (Ordinance, Code, or other legal authority). The civil penalty may equal a sum not to exceed $_____per day per

violation. Injunctive relief is authorized by Section _____ of the (Ordinance, Code, or other legal authority).

e. Section _____ of the (Ordinance, Code, or other legal authority) requires compliance with conditions in ordinance, permits, contract, orders, or other requirements.

f. The (PERMITTEE) may conduct inspection, surveillance, and monitoring activities and shall have the authority to enter the premises of any discharger in which a discharge source or permanent stormwater control measure is located or in which records are required to be kept to assure compliance with Stormwater Management Program requirements under authority granted in (Ordinance, Code, or other legal authority) Section _____ .

As stated above, (PERMITTEE) has sufficient authority to implement the requirements of its Stormwater Management Program to minimize the discharge of pollutants to the maximum extent practicable and to individual MS4 users through use of (DESCRIBE MECHANISM FOR CONTROL), and by direct enforcement of its (Ordinance, Code, or other legal authority). A description of the exact procedures to be used in implementing the Stormwater Management Program is available upon request.

Sincerely,

Part/Section	Comment 6:
Various	There are numerous requirements in this permit that are not required by the Clean Water Act or other federal laws as well as numerous instances where this draft permit exceeds the requirements the EPA includes in the permits EPA issues to small MS4s. In many cases, requirements contained in this permit are only recommendations or guidance in the EPA issued permits. Still others are not alluded to in 40 C.F.R. § 122.34 at all.

Response:

Guidance as identified in 40 C.F.R. § 122.34 is located in the permit rationale. The rationale does not create permit terms and conditions. EPA made it clear in the December 9, 2016, federal register notice that a MS4 permit that copies the federal rules would not be acceptable. National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System General Permit Remand Rule, 81 Federal Register 89335 (December 9, 2016).

"The final rule retains the proposed rule requirement for "clear, specific, and measurable" permit terms and conditions. Accompanying the promulgation of this requirement, EPA is also publishing an updated version of its compendium of permit examples from the proposed rule (i.e., MS4 Compendium of Permitting Approaches: Part 1: Six Minimum Control Measures (EPA, 2016)), which includes provisions from EPA and state MS4 general permits that provide examples of clear, specific, and measurable requirements. EPA also retains the examples provided in the proposed rule preamble of permit language that would generally not qualify as clear, specific, and measurable, which is included here, with minor edits:

• Permit provisions that simply copy the language of the Phase II regulations verbatim without providing further detail on the level of effort required or that do not include the minimum actions that must be carried out during the permit term. For instance, where a permit includes the language in § 122.34(b)(4)(ii)(B) (i.e., requiring ". . . construction site operators to implement appropriate erosion and sediment control best management practices") and does not provide further details on the minimum set of accepted practices, the requirement would not provide clear, specific, and measurable requirements within the intended meaning of the proposed Traditional General Permit Approach. The same would also be true if the permit just copies the language from the other minimum control measure provisions in § 122.34(b) without further detailing the particular actions and schedules that must be achieved during the permit term."

Part/Section	Comment 7:
4.1	- A new paragraph has been added to this section concerning mechanisms for documenting compliance with the permit. A review of the rationale provides no guidance concerning this requirement. - Please provide guidance or remove from the permit.

Response:
Recordkeeping is a standard condition of all NPDES permits. The 2022 permit does add specificity as to the documentation. First, electronic reporting requires the division to transmit specific constrained data elements. The large program narrative pdf will not meet the electronic reporting requirements. Second, Division staff have had widespread difficulty during inspections and audits obtaining documentation. It is the responsibility of the MS4 staff to produce documentation to show compliance with the permit. The documentation requirement is not new. It is a fundamental aspect of every NPDES permit.

Part/Section	Comment 8:
4.1	We take issue with changes of the SWMP having to be approved through TDEC. TDEC does not require a copy of the SWMP be submitted to them for approval so why would changes that a permittee believes are required to improve their Program have to be approved? This also restricts the inherit flexibility that the permit process should be affording the permittees for program implementation. Additionally, the references used in the rationale accompanying the draft permit (subpart 5.6, SWMP Modification) do not require this. 40 CFR 122.63 deals with modifications to permits, not SWMPs and 40 CFR 122.34(d) requires changes to the SWMP be reported in the annual report but does not require them to be approved by TDEC. Recommend the last sentence of the first paragraph be changed to read: Changes to the SWMP must be approved and documented reported with the annual report according to according to sub part 4.4

Response:
The Division did not set up a formalized process of program documentation submittal and approval. However, the 2003 (and subsequent permits) required NOI documentation provided by permittees included descriptions of the existing and planned stormwater management program. By issuing a notice of coverage those programs were approved by the Division. In order for the Division to fully implement the Traditional or Comprehensive Permitting approach as necessitated by the remand rule, the 2022 permit needed to ensure that the permittee would not establish a set of minimum measures that would reduce discharges by less than the maximum extent practicable through SWMP modifications. However, it was also necessary for the 2022 permit to provide flexibility for the MS4 to modify their program. Therefore, the concept of major/minor modifications that is utilized in NPDES permits see 40 C.F.R. 122.63 was implemented in the 2022 permit so that

MS4 were not unnecessarily constricted from making the needed improvements to their programs.

For more information on the remand rule regarding this topic see:

National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System General Permit Remand Rule, 81 Federal Register 89324 (December 9, 2016).

Part/Section	Comment 9:
Various	Throughout the permit, remove the words "all", "any" and 100% as it is all-inclusive and suggests that missing any one element or partial element of the permit, no matter how small or insignificant, would put the permittee at risk for violation of the permit. Specifically, the phrase "100% of all" is used frequently in the "Measurable Goals" column of the permit compliance tables.

Response:
Suggested changes are not made since this is the intent of a clear, specific, and measurable permit. The permittee would be in violation of the permit if it did not meet the requirements. For example, if a MS4 reports any value other than 100% for the IDDE requirement of "- % of potential illicit discharges investigated within 7 days of receipt," it is in violation of the permit.

Part/Section	Comment 10:
4.5.4.	Requirements for Chronic Violators is a good section. - The last sentence should be rewritten to say… "If corrective actions are not taken, the permittee shall pursue progressive enforcement and, if need be, to protect the public health, safety, and welfare and prevent further damages to waters, the permittee shall perform the necessary work and assess against the owner/operator the costs incurred for repairs."

Response:
The requested change has not been made. The permit regulates water quality, and the additional matters are outside of the scope of the permit.

2.8. IMPLEMENTATION AND REPORTING

Part/Section	Comment 1:
Various	Multiple commentors requested a table listing the due dates.

Response:
A table is provided below. In addition, changes were made to 4.1.2. and 4.2.4. to clarify the reporting requirement and correct a typo..

Who	Permit Section	Requirement	Due Date The Due Dates provided here is for reference. Compliance determinations will be made applying applicable laws, regulations, permits to the specific facts.
New permittees	2.1.	Submit NOI to the Division	Within 180 days of notice
Existing permittees	2.1.	Submit NOI to the Division	Within 90 days of the effective date of this permit
All permittees	3.1.1.	Revise SWMP to include BMPs specifically targeted to achieve reductions prescribed by any TMDLs	Within 180 days of newly approved or established TMDL
All permittees	4.1.	Complete changes required by this permit unless otherwise specified	Within 12 months of effective date of NOC
New permittees	4.1.1.	Develop and fully implement program, except where noted otherwise	Five years from the issuance date of this permit
New permittees	4.1.1.Table	Submit implementation for permanent stormwater management program	Within 90 days from the effective date of this permit
New permittees	4.1.1.Table	Submit completed copy of EPA's Water Quality Score Card, with subsequent Annual Report	Subsequent Annual Report, after first year of obtaining initial permit coverage
New permittees	4.1.1.Table	Submit alternate monitoring plan to Nashville Central Office, if selecting Option 2 monitoring plan	Within 24 months from the effective date on the NOC
New permittees	4.1.1.Table	All updates to the legal authority required by changes to this permit shall be fully implemented and adopted (as applicable)	As soon as possible in conjunction with the permanent stormwater legal authority (not to exceed 24 months from the Effective Date on the Notice of Coverage)
New permittees	4.1.1.Table	Implementation of permanent stormwater management program	Either the effective date of the notice of coverage or as specified in the implementation plan (not to exceed 24 months from the effective date of this permit)
Existing permittees	4.1.2.Table	Updates to legal authority required by this permit, fully implemented and adopted	Within 24 months from the effective date of this permit

Who	Permit Section	Requirement	Due Date The Due Dates provided here is for reference. Compliance determinations will be made applying applicable laws, regulations, permits to the specific facts.
Existing permittees	4.1.2.Table	Modifications to ordinance or other regulatory mechanism for construction site runoff pollutant control program consistent with requirements of any reissued the NPDES general permit for construction stormwater runoff effective October 1, 2021.	Within 24 months from the effective date of this permit
Existing permittees	4.1.2.Table	Modifications to ordinance or other regulatory mechanism for construction site runoff pollutant control program consistent with requirements of NPDES general permit for construction stormwater runoff with an effective date after September 30, 2026.	Within 18 months of the reissuance of the construction general permit
Existing permittees	4.1.2.Table	Implementation of permanent stormwater management program	Within 24 months of the effective date of this permit
Existing permittees	4.1.2.Table	Submit implementation plan for permanent stormwater management program	Within 90 days from the effective date of this permit
Existing permittees	4.1.2.Table	Submit alternate monitoring plan to Nashville Central Office, if selecting Option 2 monitoring plan	Within 24 months from the effective date of the permit
All permittees	4.2.2.Table	Complete formal public notice process for entire SWMP, and submit copy of notice and any public response/comment with Annual Report	Prior to second Annual Report due date, and submit with second Annual Report
All permittees	4.2.4.a.1.	Modifications to ordinance or other regulatory mechanism for construction site runoff pollutant control program consistent with requirements of any reissued the NPDES general permit for construction stormwater runoff effective October 1, 2021.	Within 24 months from the effective date of the permit

Who	Permit Section	Requirement	Due Date The Due Dates provided here is for reference. Compliance determinations will be made applying applicable laws, regulations, permits to the specific facts.
All permittees	4.2.4.a.2.	Modifications to ordinance or other regulatory mechanism for construction site runoff pollutant control program consistent with requirements of NPDES general permit for construction stormwater runoff with an effective date after September 30, 2026.	Within 18 months of the reissuance of the construction general permit
All permittees	4.2.4.Table	Modifications to ordinance or other regulatory mechanism for construction site runoff pollutant control program consistent with requirements of NPDES general permit for construction stormwater runoff with an effective date after September 30, 2026.	Within 18 months of the reissuance of the construction general permit
All permittees	4.2.5.1.(d)	Submit implementation plan for permanent stormwater management program	Within 90 days after the effective date of the first new or revised permit issued after the effective date of Tennessee Rule 0400-40-10-.04
All permittees	4.2.5.1.(d)	Full implementation of permanent stormwater management program	Within 24 months from the effective date of the first permit issued after the effective date of Tennessee Rule 0400-40-10-.04
New permittees	4.2.5.5.	Review local codes and ordinances using EPA's Water Quality Scorecard and submit with subsequent Annual Report	With subsequent Annual Report, after first year of obtaining initial permit coverage
New permittees	4.2.5.5.	Update codes and ordinances or other legal instruments as necessary to comply with the permit	Within 24 months of coverage under this permit
New permittees	4.2.5.8.(a)	Implement a system to track the status of all public and private SCMs	Within 24 months of coverage under this permit
All permittees	4.4.3.	Implement the Stormwater Management Program in any new areas added to the MS4	Within one year from the addition of the new areas

Who	Permit Section	Requirement	Due Date The Due Dates provided here is for reference. Compliance determinations will be made applying applicable laws, regulations, permits to the specific facts.
All permittees	4.4.3.	Develop plan for implementing the SWMP in any new areas added to the MS4	Within 90 days of transfer of ownership, operational authority, or responsibility of any new areas
All permittees	4.6.1.1.2.	Submit alternate monitoring plan to Nashville Central Office, if selecting Option 2 monitoring plan	Within 24 months of the effective date of this permit
All permittees	5.1	Submit Annual Report to the Division	By September 30th of each calendar year

Part/Section	Comment 2:
4.2.4	The table in part 4.2.4. contains an Annual Report Requirement of "% Priority Construction Activities inspected at a frequency of less than once per calendar month." The way this is worded, a site inspected once per calendar month would not be counted in the annual report percentage but would comply with the associated Measurable Goal. It would be more consistent to word the reporting requirement the same as the goal (i.e., "% Priority Construction Activities inspected at least once per calendar month.").

Response:
The suggested change was made.

Part/Section	Comment 3:
Various	A statement needs to be made in the permit that acknowledges the settlement agreement between TDEC and the Shelby County small MS4s. This is necessary to ensure that the small MS4s in Shelby County are not sued for noncompliance with their permit by a third party.

Response:
The settlement agreement remains in effect separately from this permit. The Shelby County MS4s have a different compliance schedule for postconstruction stormwater as a result of that settlement. However, it is not appropriate to incorporate the specifics of the settlement with Shelby County MS4s into this general permit.

Part/Section	Comment 4:
Various	Change "of this permit" to "the NOC". This permit should not require any timeframe that begins earlier than the date of the NOC for the permit. Must have coverage before you can comply with the permit.

Response:
Compliance deadlines for Post Construction/Permanent Stormwater are specified in the rule and cannot be changed. As such the due dates for other requirements were coordinated with the due dates required by the rule. This was done to simplify the compliance deadlines and prevent the MS4 from having to take ordinances through the adoption process multiple times.

Part/Section	Comment 5:
Various	For most of the new sub-plans, reports, procedures, and annual reporting requirements in the draft permit, a deadline for implementation is not provided. Does this mean permittees are required to step-up administratively immediately when the permit becomes effective?

Response:
For existing permittees, changes that do not have a specific due date associated with it would fall under first paragraph of 4.1.2.

Part/Section	Comment 6:
Various	Comments were received related to the implementation due dates. - General Comments to the "tight" timeframes - Comments that the existing timeframes are not sufficient for developing new "Sub-plans" and documentation - Request to extend compliance timeframes to a minimum of 3 years - Request to phase in annual report requirements

Response:
Post construction/permanent stormwater requirements are established by Rule 0400-40-10-.04 and cannot be changed.

Timeframes for compliance in the 2016 permit ranged from 6 months to 24 months. Some of these timeframes were from the NOC while others the effective date of the permit. The draft permit was written to simplify the various timeframes. However, different requirements have different timeframes for implementation based on the anticipated complexity of the requirement. Particular attention was paid to the timeframe for adoption of legal authority. The Division understands that MS4 have variations in the requirements for adopting legal authorities and the issues that can arise from having to make multiple updates to the same legal authority for different requirements. So, the timeframes were established around those required in the rule.

Generally, many of the due dates for program element updates in the 2016 permit was 12 months. Therefore, 4.1.2. has been updated to allow for 12 months for programmatic updates.

There seems to be a misperception that the 2022 draft permit established a significant number of new sub-plans, procedures, and documentation. The plans, and procedures for each of the program elements should already exist because they are required under the previous permits. The MS4 have always had to show evidence of compliance with the permit through documentation such as filled out forms, reports, and other tracking information. The 2022 draft permit does require more specific information to be submitted on the annual report. Some changes have been made to the annual report

requirements based on specific comments that should simplify the reporting on some program elements.

See Comment 22 in section 2.10 for further discussion on documentation.

Part/Section	Comment 7:
Various	Newly permitted MS4 jurisdictions should have the entire five-year permit period to fully implement a SWMP. Effective MS4 permit compliance requires ample forethought and a corresponding change in municipal resources. Two years is not enough time when one considers the time it takes to educate municipal staff and elected officials, create, and agree on a viable plan for compliance and its financial implications to the permittee, and then secure staff/resources to implement a full suite of compliance activities.

Response:
Post construction/permanent stormwater requirements are established by Rule 0400-40-10-.04 and cannot be changed.

40 C.F.R. § 122.34(a)(1) states "*For permits providing coverage to any small MS4s for the first time, the NPDES permitting authority may specify a time period of up to 5 years from the date of permit issuance for the permittee to fully comply with the conditions of the permit and to implement necessary BMPs*."

4.1.1. has been updated to "*Permittees that have not been previously covered under an MS4 permit must develop and fully implement the program within five years from the issuance date of this permit …*"

Two rows have been added to the table which require all legal authorities to be updated (and adopted) and the post construction /permanent stormwater program to be fully implemented within 24 months from the NOC. *See below*

Legal Authority e.g., Ordinance Updates	*All updates to the legal authority required by changes to this permit shall be fully implemented and adopted (as applicable)*	As soon as possible in conjunction with the permanent stormwater legal authority (not to exceed 24 months from the Effective Date on the Notice of Coverage)
Error! Reference source not found.	*Implementation of permanent stormwater management program*	*Either the effective date of the notice of coverage or as specified in the implementation plan (not to exceed 24 months from the effective date of this permit)*

Part/Section	Comment 8:
1.5, 2.2.1, 6.2	These sections require electronic reporting. Unless the submittal is by a means that involves personal computer software such as Word or Adobe, the Town will not be able to comply. Hard copy paper submittal needs to be an acceptable means of submittal as a normal process not on a waiver basis. Review of subpart 6.2 indicates that the only waiver that will be considered is in the event of "large-scale emergencies and/or prolonged electronic reporting system outages, . . ." Small Towns and Counties may not have the means of electronic submission nor the taxpayer money to upgrade. Paper submission needs to remain an option without a waiver requirement.

Response:
MS4 NOIs and annual reports are required to be reported electronically under federal rule 40 C.F.R. Part 127. In order to report electronically, the permittee only needs to have access to a unique email address, computer, and the internet.

They only way to be authorized to report via paper is through the waiver process. The federal rule (40 C.F.R. § 127.15) allows for three types of waivers: episodic, permanent, and temporary. The language in the comment above refers to an episodic wavier. These waivers are granted by the Division when there is some sort of emergency such as natural disasters and cyber-attacks. Permanent waivers are only available facilities and entities owned or operated by members of religious communities that choose not to use certain modern technologies (*e.g.,* computers, electricity). The temporary waiver can be requested by any NPDES permittee, but approval is not guaranteed. More information can be found at
https://www.tn.gov/environment/program-areas/wr-water-resources/netdmr-and-electronic-reporting/e-report-waiver.html

For additional Questions please call Erica Fey at 615.253.7325
Division of Water Resources
ATTN: Compliance & Enforcement Unit
Tennessee Tower, 11 Floor
312 Rosa L. Parks Ave.
Nashville, TN 3724

Part/Section	Comment 9:
4.6.2.	Please provide a copy of the annual report for comment. It would seem that the annual report would be the program evaluation. Otherwise, why do an annual report? If an evaluation must be done I would think one midway through the permit cycle and one at the end of the permit cycle would be more appropriate as opposed to annually

Response:
The annual report will only be available electronically through the MyTDEC Forms online reporting portal. The items listed in the annual report requirement column will be what

is required to be reported in the annual report. The annual report may have questions for functionality for example "Is this a QLP?" If "no" is selected, all of the questions related to a QLP will not be visible.

The program evaluation is a specific and separate requirement from the annual report. The permittee is free to evaluate the effectiveness of the program more frequently than annually, but the permit will continue to require only annual evaluations.

Part/Section	Comment 10:
Various	Multiple comments were received requesting clarification on what to use as the numerator or denominator for calculation of the percentages on the annual report. Additional requests were made to simplify the annual reporting and avoid redundant reporting.

Response:
The annual report requirements were reviewed and, where possible, the element was rephrased.

Part/Section	Comment 11:
	The requirement for a SWMP Evaluation Report should be eliminated from the draft permit. Permittee evaluation of their stormwater management program has always been required under prior permits and is documented in their annual reports (e.g., 2020-21 Small MS4 Permit Annual Report Part 8). Why is it now necessary for permittees to create yet another written document to address a requirement already provided for under the annual report? Further, why is it necessary for the SWMP Evaluation Report to restate program activities already provided and described under the NOI, annual report, newly required sub-plans (e.g., publicity plan, implementation plan, etc.), and other written elements of the SWMP? This additional paperwork for permittees does not improve the potential for program effectiveness because permittee resources will be spent on paperwork rather than water quality protection.

Response:
The report as described in the 2022 draft permit rephrased and reformatted to be reported in various reporting elements in similar format to the annual report under the 2016 permit**.**

2.9. MONITORING AND STREAMS

Part/Section	Comment 1:
4.6.1.1.1	The third paragraph of part 4.6.1.1.1. contains the following statement, "This does not preclude permittees from sampling additional stream segments if designated during the permit term." However, the final paragraph of the part states, "…the permittee is only required to monitor the stream segments that were designated as unavailable conditions for nutrients, pathogens, and siltation by the Division upon the effective date of this permit." The first statement implies that additional segments might be added to monitoring requirements if additional unavailable parameters waterbody segments are identified during the term of the permit; however, the second statement indicates this is not the case. It is unclear whether the second statement is meant to apply only to the visual stream survey requirements in the part or if it also applies to the bacteriological monitoring requirements discussed earlier in this part of the permit.

Response:
The two quoted sentences were moved from a footnote in the 2016 permit to the body of the permit.

The last sentence of the subpart establishes the requirement "*For the purpose of complying with subpart, the permittee is only required to monitor the stream segments that were designated as unavailable conditions for nutrients, pathogens, and siltation by the Division upon the effective date of this permit.*"

The sentence "*This does not preclude permittees from sampling additional stream segments if designated during the permit term*" has been removed as it was clarifying that the permittee may **choose** to do additional sampling. Even with the language removed from the permit, the permittee still has the ability to conduct additional sampling.

Part/Section	Comment 2:
4.6.1.4.	The table in part 4.6.1.4. does not contain any Measurable Goals. Either one or more goals need to be added to the table or that column of the table removed to avoid confusion. The Measurable Goals could be related to actual performance of the required monitoring.

Response:
A measurable goal has been added for Option 1 and Option 2. Additionally, a self-certifying statement has been added for the permittee to confirm that monitoring has been performed in accordance with either 4.6.1.1.1 (Option 1) or 4.6.1.1.2 (Option 2) (if no, explain)

Part/Section	Comment 3:
4.6.1.1.	There were several stakeholder meetings in 2021 that specifically addressed monitoring requirements. With few exceptions, the general consensus of the stakeholders was that the monitoring requirements contained in the current permit, Option 2, was adequate for the small MS4. It appears that TDEC has decided to expand not only the Option 1 requirements but also Option 2 monitoring requirements even though they have no legal basis for them. We specifically address those concerns in our attached comments and object to the draft permit attempt to justify such monitoring as illicit discharge detection and elimination as well as a way of assessing program effectiveness. TDEC's rationales for monitoring contained in the rationale sheet goes far beyond those two reasons and are probably more accurate in their justification for TDEC's apparent decision to disregard stakeholder input on this area of control. We wish to emphasize here, in addition to our specific comments, that stream monitoring requirements expounded upon in this draft permit have no legitimate application to a permittee and should be removed from permit language, specifically when they apply to pollutants of concern which have no TMDLs.

Response:

In a letter from EPA Region IV dated April 15, 2010, EPA identified four areas of focus, one of which was TMDL implementation. In that letter, EPA states "*permits should also address the monitoring and assessment of MS4 pollutant load contributions – either at the outfalls and/or in the receiving waters*." The 2010 permit was issued with the monitoring requirement that would be called Option 1 in subsequent permits. The 2016 permit added Option 2 for monitoring which gave the MS4 much more flexibility in defining its own monitoring program.

The MS4 permit is meant to be iterative. Only 10 MS4s utilized Option 2 from the 2016 permit. This was surprisingly low adoption especially considering Option 2 allowed for MS4 programs to better allocate resources based on local concerns. The monitoring subpart in the 2016 permit was found to be confusing by TDEC staff as well as MS4 personnel. The modifications to this subpart was in an effort to clarify the requirements of Option 1 as well as provide additional flexibility to develop its own stream survey protocols if desired. Option 2 was expanded to better illustrate what was required in the monitoring plan submittals as well as clarifying the language.

The fundamental objective of the MS4 program is to reduce pollutants to the maximum extent practicable. It is reasonable to utilize monitoring data to evaluate the effectiveness of BMPs, identifying sources of pollutants and understanding the receiving waterbodies of the MS4. In a response to a comment to remove the monitoring requirement in the 2010 permit, NOD stated "*Designated uses must be protected on all streams not just those*

that are assessed as impaired or have a TMDL developed. Analytical and non-analytical monitoring are effective methods of evaluation of water quality."

In review of the permit language for this comment, it was noted that a sentence describing which streams at a minimum were required to be monitored was unintentionally omitted. As such, the sentence from the 2016 permit was returned with clarification to prevent confusion with inconstant verbiage of the 2016 permit.

Part/Section	Comment 4:
1.4 & 3.1.1. & 3.1.2.	This section states that TDEC may require an MS4 to create a Corrective Action Plan if stormwater discharges from the MS4 are determined to cause or contribute to an in-stream exceedance of water quality standards. Since stormwater in and of itself does not meet the definition of what constitutes a pollutant (see Virginia Department of Transportation, et al, v. EPA, et al., No. 12-775 (E.D. Va. 2013), the permit must include the criteria and methodology by which a MS4 can quantitatively determine if its stormwater discharges contribute to an exceedance of the water quality standards that presently are defined only for in-stream water pollutant concentrations. The permit must include the criteria and methodology by which an MS4 can quantitatively determine if its stormwater discharges contribute to an exceedance of the water quality standards that presently are defined only for in-stream water conditions. There are presently no promulgated standards in Tennessee regulating MS4 stormwater discharges for the parameters specified in this section (i.e., nutrients, pathogens, and siltation).

Response:
This permit does not regulate stormwater flow as a pollutant. Rather this provision refers to the pollutants contained in stormwater.

If a stream has been assessed as unavailable conditions due to a particular parameter and the MS4 discharge contains that parameter in significant amounts, the MS4 discharge is likely to be contributing to an instream water quality criteria violation. The specific facts of a particular situation will determine whether the MS4 discharge causes or contributes to instream violations, such as the frequency of discharge, concentration or loading of pollutants in the discharge, and the characteristics of the particular pollutant.

Water quality criteria exist as both numerical and narrative standards and can be found in Rule 0400-40-03 and use classifications can be found in Rule 0400-40-04
https://publications.tnsosfiles.com/rules/0400/0400-40/0400-40.htm

The statement "there are presently no promulgated standards in Tennessee regulating MS4 stormwater discharges for the parameters specified in this section (i.e., nutrients,

pathogens, and siltation)" is incorrect. Rule 0400-40-05.15 has been promulgated and establishes MEP for post construction/permanent stormwater. The MEP for other program elements are established through conditions of the permit.

Subpart 3.1 of the rationale outlines the relationship between the permit and the TMDL.

Part/Section	Comment 5:
4.6.1.1. a, b & c	Streams were assessed with unavailable parameters before the permit is issued. Compliance with the permit would be what, non-compliant, if the streams continue to be assessed with unavailable parameters? What is the measurement TDEC is expecting that would show the permittee is in compliance with the permit?

Response:
Neither the 2022 permit nor the 2016/2010 permits establish delisting of receiving streams as a permit requirement. Instead, the data from monitoring, whether it is quantitative or qualitative, should be used in the evaluation of the Stormwater Management Program effectiveness.

Part/Section	Comment 6:
4.5.2.	NPDES Permit Referrals. It is our opinion that the MS4 shall NOT be responsible for determining whether a TDEC permitted facility is in compliance with their TDEC issued permit. If a TDEC permit allows a particular discharge to be permitted, then TDEC shall be the responsible party for determining whether that discharge and/or facility is in compliance with their TDEC permit. The only responsibility of the MS4 shall be the reporting or "referral" to TDEC that a potential discharge and violation has occurred. TDEC shall then be responsible for any enforcement actions against the facility resulting from permit non-compliance actions or activities due to this. As conveyed by our legal staff this can be considered overreach by the MS4 and the City does not intend to insert itself into these determinations or enforcement actions. This particularly applies to Industrial facility permits. If our MS4 permit does not authorize the coverage (1.4.b Limitation on coverage) then MS4 staff shall not be required to determine what is authorized by an industrial permit. MS4 staff shall be familiar with their MS4 permit, and not with another sectors NPDES permit and it's permitted discharges.

Response:
Compliance determinations of state issued permits are the responsibility of the state agency. Contrary to what the commentor believes, this language has been in the MS4 permit since 2010 and in no way obligates or even grants the authority to take enforcement on a state issued permit.

Additionally, the MS4 has enforcement responsibility under the IDDE, construction stormwater and post construction/permanent stormwater MCMs. A discharge may be in violation of both local ordinances and state rules. The best path forward regarding enforcement may be with the local agency taking the lead, the state agency taking the lead or a combination of both. The decision will always be based site specific considerations.

The commentor's position that MS4 staff shall not be familiar with another sector's NPDES Permit is problematic. Subpart 4.2.4. requires a construction site stormwater runoff control EPSC measures in the ordinance to be consistent with the requirement in the NPDES general permit for construction stormwater runoff. Furthermore, being familiar with the TMSP will aid the MS4 staff in IDDE determinations. For example, if a discharge from an industrial site is discovered, it is prudent for the MS4 staff to know if the site has a certification of no exposure vs. permit coverage. The former would result in IDDE enforcement.

Part/Section	**Comment 7:**
4.6.1.1.1.	On Page 55 the draft states "Adopt existing survey protocols such as the ones available through the Natural Resources Conservation Service, State of Maryland Department of Natural Resources, and/or the State of Tennessee Habitat Assessment Protocol and related Stream Survey Field Sheets; or…". Please provide references to the survey protocols listed here.

Response:
The example protocols listed in the permit can be found using the following URLs (subpart 8.3 of the permit has been updated with these links as well):

Natural Resources Conservation Service
https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1043252.pdf

State of Maryland Department of Natural Resources
https://dnr.maryland.gov/streams/Publications/SCAProtocols.pdf

Tennessee Habitat Assessment Protocol as identified in in the Division's Quality System Standard Operating Procedure for Macroinvertebrate Stream Surveys
https://www.tn.gov/content/dam/tn/environment/water/policy-and-guidance/DWR-PAS-P-01-Quality_System_SOP_for_Macroinvertebrate_Stream_Surveys-122821.pdf

Tennessee related Stream Survey Field Sheets
https://www.tn.gov/content/dam/tn/environment/water/watershed-planning/wr_wpu_pub_stream-survey-habitat-5.0.xlsx

Part/Section	Comment 8:
1.4	Multiple commentors stated that "The permit should recognize a phased process to achieving water quality standards." Additionally, "Permittees cannot guarantee that the chosen BMPs will fully address the discharge of pollutants or that the BMP will immediately result in non-degradation of the waterbody." Commentors suggest various language changes to 3.1.1. and 3.1.2.

Response:

These comments seemed to be based in a misunderstanding of TMDL and the WLA for MS4. TMDL WLAs, related to stormwater permitting, are based on the concept of MEP and the iterative nature of stormwater management which includes BMPs. The SWMP already requires an evaluation of effectiveness of BMPs which speaks to the iterative nature of MEP. When discussing WLAs of MS4s, the TMDLs will typically state "*WLAs will be implemented as Best Management Practices (BMPs) as specified in Phase I and II MS4 permits. MS4 permits do not specify numeric limits for sediment concentration or loading; therefore, WLAs should not be interpreted as numeric limits*." The BMPs established by the permit or rule in the case of post construction/permanent stormwater are the narrative limits to comply with the TMDL. In the event that a specific BMP is called out in the TMDL, that BMP would need to be implemented if not already in accordance with subpart 3.1. If a BMP is determined to not be effective, the SWMP will need to be modified in accordance with subpart 4.4.1.

Part/Section	Comment 9:
4.6.1.1.1.	The draft states that the permittee may Develop their own protocol which must address 14 Visual Survey Assessment elements. Must all 14 elements listed be assessed in each stream?

Response:

Yes, if the permittee chooses to develop their own visual stream protocol the protocol must contain, in part, the visual survey assessment elements listed in permit subpart 4.6.1.1.1.b.5. for stream segments that were designated as unavailable conditions for nutrients, pathogens, and siltation by the Division upon the effective date of this permit.

Part/Section	Comment 10:
3.1	We have issue with the last sentence of the first paragraph. This sentence gives TDEC the authority to require a corrective action plan by the permittee if discharges from the MS4 are determined to cause or contribute to an in-stream exceedance of water quality standards. We believe this is the purpose of TMDLs with WLA and an implementation plan. As such, it is inappropriate to place this language in this permit. Recommend the last sentence be deleted

Response:
No NPDES permit may be issued that allows a discharge that causes or contributes to violation of water quality criteria: this is a foundational principle that applies to all types of NPDES permits, including for stormwater. Moreover, WLAs in TMDLs are not self-actualizing: they are implemented through NDPES permits. Choosing, designing, and maintaining appropriate stormwater BMPs is the responsibility of the MS4, as defined under the appropriate sections. When discharging to a steam with unavailable parameters, BMP design must take permit requirements and TMDL requirements into account. All permit requirements must be within compliance in order to meet the MEP standard.

Part/Section	Comment 11:
4.6.1.1.2.	Clarify the statement (item e.) "Utilize Division protocols identified above in Option 1 or protocols approved by the Division for instream monitoring." Which protocols in Option 1 is TDEC referring to?

Response:
The protocols that permit subpart 4.6.1.1.2. is referring to are the:

Semi-Quantitative Single Habitat (SQSH) Method and Habitat Assessment Protocol as identified in the Division's most current version of the Quality System Standard Operating Procedure for Macroinvertebrate Stream Surveys
https://www.tn.gov/content/dam/tn/environment/water/policy-and-guidance/DWR-PAS-P-01-Quality_System_SOP_for_Macroinvertebrate_Stream_Surveys-122821.pdf

Division's most current version of the Quality System Standard Operating Procedure for Chemical and Bacteriological Sampling of Surface Water
https://www.tn.gov/content/dam/tn/environment/water/policy-and-guidance/dwr-wqp-p-01-qssop-chem-bac-082918-update-2022-jan.pdf

Related Stream Survey Field Sheets
https://www.tn.gov/content/dam/tn/environment/water/watershed-planning/wr_wpu_pub_stream-survey-habitat-5.0.xlsx

Subpart 8.3 of the permit has been updated with these links as well.

Part/Section	Comment 12:
4.6.2.	Please provide a definition for "wet weather screening" as it pertains to section 4.6.2 item b. (Page 59).

Response:
For the purposes of permit subpart 4.6.2. b. wet weather screening pertains to investigations the permittee performs related to screening of the MS4 outfalls during or immediately after a rain event to assess whether pollutants are being flushed into a waterway via stormwater runoff.

Part/Section	Comment 13:
4.6.1.1.	The introduction to this section adds requirements to the monitoring program that are costly and beyond capacities of many MS4s, especially the small rural ones. For example, the draft proposes the monitoring and assessment program be designed with specific objectives. For an MS4 with steams impaired due to e-coli only and no construction activity, the above is a financial burden to evaluate something over which we have little to no control (e-coli is primarily caused be leaking septics--controlled by TDEC solid waste or animal activity--agriculture is exempt from the stormwater program. In another similar comment, the commentor also noted that A permittee may wish to help TDEC perform sampling that may result in the removal of a stream segment from the 303(d) list but making those requirements part of permit language is simply placing the work, and the associated financial burden, TDEC should be performing on the permittee.

Response:
The Option 2 Monitoring Plan objectives were removed and merged with the objectives in 4.6.1.1. a-e. The two sets of objectives were somewhat duplicative and seem to be confusing commentors.

The permit describes 2 options the permittee has for complying with this subpart. Option 1 is prescriptive and detailed. Option 1 meets the objectives a-b of that list and partially meets the objective c-e. To fully meet the objectives of c-e, the MS4 must use the data gathered in evaluating the Stormwater Management Program effectiveness. If that data indicates an illicit discharge, a source of that pollution, the actions of the IDDE program would be triggered.

If the MS4 choses Option 2, the monitoring plan will be developed to meet those objectives. The MS4 will still need to use the information gathered Stormwater Management Program Effectiveness.

For the example provided "*streams impaired due to e-coli only and no construction activity*", the MS4 would likely be better served by choosing Option 2. That would allow the MS4 to design the monitoring plan around the unique conditions of the receiving waters and land uses.

The objective of the monitoring subpart of the small MS4 permit is to evaluate the effectiveness of the Stormwater Management Program NOT stream delisting.

Part/Section	**Comment 14:**
4.6.1.1.1. & 4.6.1.3.	Requires the use of TDEC internal procedures for stream assessment of stream habitat. Not only is it inappropriate to require a permittee to use procedures they have never had the opportunity to provide comment upon, this type of testing requires the permittee to out source the testing, requires a biologist to interpret and has no value to the permittee. This is why the permittees pushed for something else. If TDEC needs to keep it in the permit to prevent "backsliding", so be it but do not expand it to the point that you have in this permit. Don't make the permittees do the work of TDEC through permit language.

Response:
The permittee has the ability to select Option 2 for monitoring and developing their own monitoring plan based on the needs and resources of their particular MS4. Option 2 (subpart 4.6.1.1.2.g) does allow for alternative protocols.

Subpart 4.6.1.3. Semi-Quantitative Single Habitat (SQSH) Reporting is applicable to MS4s selecting Option 1 monitoring. It is only required of MS4s selecting Option 2 monitoring when the MS4 developed monitoring plan includes SQSH macroinvertebrate surveys in accordance with Division protocols.

Part/Section	**Comment 15:**
4.6.1.1.2.	"Provisions for an administratively continued small MS4 general permit." If the MS4's monitoring plan is for one permit cycle could the provisions for an administratively continued permit be "ensure the monitoring is complete for the permit cycle"?

Response:
When the 2016 Small MS4 General permit expiration date passed, it became "administratively continued." Those with coverage continued to be covered under the terms of the 2016 permit. This caused a lot of confusion with regards to monitoring. This provision is to prevent the confusion if there is a delay in the issuance of the next MS4 permit. MS4s selecting option 2 should ask themselves "if the MS4 permit isn't

issued on time, what am I going to do with regards to monitoring?" If that permittee sets up their monitoring plan on 5-year cycles, the answer may be return to the plan for the first cycle. Or they could choose to go a different direction such as "in the event of an MS4 permit delay of issuance, the MS4 will do X monitoring on stream that met Y condition during the previous 5 years."

Part/Section	Comment 16:
4.6.1.1.2.	Why do we have to submit to Nashville and not the Field office that has the best knowledge of the conditions in this area? The rationale basically implies that the current, broadly designed, option 2, prevented some permittees from taking the opportunity it provided. So, taking away flexibility removes that prevention? TDEC approved the plans permittees developed for use in option 2. Don't make things less flexible, just make sure the monitoring plans submitted fit the permit.

Response:
Monitoring plans are submitted to the email address Water.Permits@tn.gov. The staff monitoring this email address, will upload the documents to the Division's database and notify the appropriate stormwater staff of receipt. Using a centralized email prevents confusion and other issues due to staff turnover.

The lack of details seemed to put many off from even looking into Option 2. What constituted an acceptable plan was not defined in the permit. As such, Division staff developed a Best Professional Judgment (BPJ) approach to plan review. That list of review topics for a BPJ determination was used to make the itemized list in 4.6.1.1.2. Option 2 in the 2022 permit isn't more or less flexible as the 2016 permit, the permit just more clearly articulates the expectation.

Part/Section	Comment 17:
4.6.1.2.1.	TDEC needs to understand that small MS4s function to serve the communities they represent. They do not normally have a staff made up of environmental specialists. Please define in simpler terms what this paragraph means.

Response:
Representative sampling is a standard NPDES permit requirement. When a permittee takes analytical monitoring samples, they must take those samples under normal conditions of the discharge or stream. For a receiving stream, this means samples cannot be taken during extreme conditions such as a severe drought or a record breaking flood.

Additionally, MS4s with a population of less than 10,000 may be eligible for compliance assistance from the Small Business Environmental Assistance Program (SBEAP).
Contact BGSBEAP@tn.gov for more information

https://www.tn.gov/environment/program-areas/sbeap-small-business-environmental-assistance.html

Those with a population above 10,000 may be eligible for some limited compliance assistance from the program and is encouraged to contact the SBEAP to discuss.

Part/Section	Comment 18:
4.6.2.	What are the metrics TDEC intends the permittee to use to measure the effectiveness of the SWMP?

Response:
The specific program elements will have additional requirements for the MS4 to articulate how it will determine program effectiveness. Many of measurable goals identified throughout the permit can be a metric for program effectiveness.

2.10. MISCELLANEOUS

Part/Section	Comment 1:
General	The permittee refers to both SCMs and BMPs. Define the difference or be consistent with just one.

Response:
The definition of BMP was already included in the definitions. The definition of SCM has been added to the permit.

Part/Section	Comment 2:
General	Will the 303(d) list have layers labeled with the up-to-date language for waterbodies (unavailable, etc…) that are used in the Permit?

Response:
The 303(d) list approved by EPA on April 22, 2022, is available on the Division's Website https://www.tn.gov/environment/program-areas/wr-water-resources/water-quality/water-quality-reports---publications.html in the Water Quality Assessment Publications section. The 303(d) list is a static report of stream assessments that MS4 will use to in determining if a receiving waterbody is assessed as "unavailable conditions" (see subpart 3.1 of the permit). The term "layer" in the comment is likely referring to the Division's GIS public mapviewer https://tdeconline.tn.gov/dwr/. This mapviewer is current as June1, 2022, with the assessments included in the 303(d) list. However, it is important to note that the Division assesses waterbodies on a five-year watershed cycle. The revisions to assessments are incorporated in the mapviewer more frequently than the 303(d) list which is updated (every three years).

Part/Section	Comment 3:
1.3.3.2	Fifth bullet, line 2 -Add the word "storm" before the word "sewer" (two places).

Response:
The suggested change will not be incorporated since the verbiage highlighted below is the definition of infiltration from 40 C.F.R. § 35.2005(b)(20)

- Uncontaminated groundwater infiltration (Infiltration is defined as water other than wastewater that enters a sewer system, including sewer service connections and foundation drains, from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.)

Part/Section	Comment 4:
3.2.1.1.	Paragraph 2, line 1 The sentence begins with the word Either. Doesn't appear to belong.

Response:
The use of either/or in this subpart establishes that one of the two conditions must be met. No changes were made to the permit.

Part/Section	Comment 5:
4.3.2	Subpart d - could not locate CN-1440 on the website

Response:
The file was originally located on the construction stormwater site page. It has now been cross linked to the MS4 page as well.

Part/Section	Comment 6:
4.4.1.1.	What is a component, control, or requirement to the SWMP as opposed to a BMP/activity?

Response:
"Component, control, or requirement" is language that has carried over from the 2016 permit. However, due to the complexity of that sentence in the 2016 permit, language was broken up into a bulleted list where the language related to BMPs was moved to its own bullet. "Component, control, or requirement" may be a part of a BMP (for example revising the inspection form for construction site inspections) or an element of the SWMP that is specified in the Stormwater Management Program Plan documentation that is not otherwise a BMP. SCM was added to the language to clarify. Additionally, BMPs and SCMs were added to both 4.4.1.1.e and 4.4.1.2.a. for clarity.

The word activity should be understood in the context of the part. For example, activity is used in the MCM 1 in the context of a "*thing the MS4 does for meeting the BMP for a particular Management measure and target audience*." When used as industrial activity or activities, the context shows that this term is referring to not just the industrial site itself but include the actions occurring on the site such as manufacturing, processing and material storage.

Part/Section	Comment 7:
4.2.3.1.	Is it TDEC's intent that the storm system map include only MS4 outfalls?

Response:
"MS4" has been added before Outfalls in 4.2.3.1.a.. Additionally, "storm" has been added to 4.2.3.1.b. before sewershed to clarify that it is distinct from a wastewater sewershed.

Subpart 4.2.3.1. establishes minimum elements of the MS4 System Map. Permittees are encouraged to map their storm sewer system as needed to support the MS4 program. Additionally, permittees are not expected to maintain one map that only contains information for the MS4 program. The permittee can use a map to meet the needs of multiple programs.

Part/Section	Comment 8:
4.2.3.1.	In addition to the location of each outfall, the permit-required mapping should include a basic description of the outfall structure (e.g., concrete pipe, metal pipe, box culvert, lined ditch unlined ditch), its approximate size and estimate of peak flow and/or drainage area. One issue identified by the NTF is that there is no reliable data available to estimate the nutrient contamination originating from the MS4 stormwater discharges this data would allow generation of such an estimate.

Response:
The Division agrees that the inclusion of the data elements listed would be extremely beneficial in multiple areas, not just nutrient loading determinations. The Division is still in the beginning stages of implementing geospatial data across multiple agencies. This permit requires submittal of the map identified in 4.2.3.1. electronically if available. The Division strongly encourages all MS4 with the capability to gather such data to begin doing so. However, considering we have MS4 that still have a paper and pencil storm sewer system map, it is premature to require such data across the board.

Part/Section	Comment 9:
4.2.3.1.	Since the TDOT MS4 borders most other MS4s, TDOT has found it useful to document where stormwater discharges from other MS4s flow onto the TDOT MS4. All MS4s that border another MS4 should share available mapping where stormwater from their MS4 discharges onto any adjacent MS4 as part of the outfall mapping

Response:
4.2.3.1.b. has been clarified to include flow from adjacent MS4s.

Part/Section	Comment 10:
4.2.3.	Two commentors suggested deleting the annual report requirement to submit the storm system map. One commentor reasoned "The map for this MS4 is over 20 printed three foot X two foot sheets with handwritten entries. It is an undue burden to require the taxpayer to pay for more expensive options." While the other commentor stated "If you want to make sure the permittee has one, perform an audit. This serves absolutely no purpose for annual reporting."

Response:

The storm system map is a required BMP established by federal rule for implementation of the IDDE program. The permit does not require the use of electronic mapping software, however, the 2016 permit did state that a GIS based map is preferrable. The permit allows for three options to submit the map, a REST service location, geodatabase/shapefile, or a copy of the map. The GIS preference is reflected in the first two options for submittal. The third option provides additional flexibility for those systems that have maps located in proprietary software, computer aided drafting (CAD) programs or paper. This third option allows for a file such as a pdf or jpeg to be uploaded. The Division encourages any MS4 still using paper maps for their system to investigate transitioning to an electronic based mapping system.

Submittal of the map during the annual report is not simply to make sure the permittee has one. It is a mechanism for the Division's oversight of the MS4 program and will remain.

There are funding sources available for development of electronic mapping such as the American Rescue Plan (ARP)
https://www.tn.gov/environment/arp.html.

Tennessee Association of Utility Districts (TAUD) is also available to provide assistance to Municipalities for seeking ARP funding for stormwater.
Systems will need to complete a scorecard in order to apply for ARP funds.

https://www.tn.gov/environment/arp/infrastructure-scorecard.html
Contact Ethan Carter (ethancarter@taud.org) or John Greer (johngreer@taud.org) for more information

Additionally, MS4's that are below population 10,000 may be eligible for compliance assistance from the Small Business Environmental Assistance Program (SBEAP).
Contact BGSBEAP@tn.gov for more information
https://www.tn.gov/environment/program-areas/sbeap-small-business-environmental-assistance.html

Part/Section	Comment 11:
General	Please define "activity" as it pertains to the minimum number of activities the MS4 must conduct each reporting year

Response:
Activity - a thing that a person or group does or has done.

Part/Section	Comment 12:
8.1 (page 84)	The definition of "Waters with unavailable parameters" on page 84 should be modified to align with Rule 0400-40-03-.06(2): "Unavailable parameters exist where water quality is at, or fails to meet, the levels specified in water quality criteria in Rule 0400-40-03-.03, even if caused by natural conditions."

Response:
The Division agrees and the change has been made.

Part/Section	Comment 13:
Part 4	There were several comments that were rooted in not understanding the structure of the permit.

Response:
The permit structure is hierarchical. Part 4 is the Stormwater Management Program (SWMP). Subpart 4.1 specifies the requirements to the SWMP as a whole such as "The SWMP must include the following information documented in a plan for each of the program elements described in this part". This is establishing the requirement for a plan that includes each program element i.e., 4.2, 4.3, 4.4, 4.5 etc. and contains the items listed in a-e. Item e states "Specific elements detailed in each subpart of this Part" i.e., 4.2, 4.3, 4.4, 4.5 etc.

Likewise, Public Education and Outreach on Stormwater Impacts (MCM 1) has verbiage immediately under 4.2.1. heading that is applicable to the entirety of the MCM. This language includes an itemized list of what should be in the PIE plan. So, for MCM 1 subpart 4.1.e. means the items listed in 4.2.1. a-d.

For Public Education and Outreach, there are three critical elements to the BMP, target audience, message or subject, and delivery method. 4.2.1.1. specifies the requirement where the target audience is the public. The Management Measures list the message or subject. The permittee decides the delivery method. The table at the end of the section identifies the measurable goals, and how it is to be reported on the annual report.

Subpart 4.2.2. specifies the requirements for the Public Involvement/Participation (MCM 2). This section differs from MCM 1 in that there are specific reporting requirements, management measures and measurable goals that are not restricted to specific audience as shown in 4.2.2.1. and 4.2.2.2.

The MS4 program is complex. One cannot each bullet point as its own requirement in isolation and understand the permit.

Part/Section	Comment 14:
all	Various broken links, typos, spelling, grammar readability issues.

Response:
Body of the Permit
The corrections are made in the permit and are not itemized.

Rationale
The rationale section of the draft permit is intended to be static. It serves a basis for the draft permit. Changes to the rationale are completed through notation in this response to comments.

Subpart 5.2 of the rationale is amended to read as follows:
Tennessee Rule 0400-40-10-.04 allows for implementation of the permanent stormwater management program of no more than twenty-four (24) months ~~to implement fully implement the program~~. In order to establish a clear requirement of fully implementation, new permittees will have 24 months to implement ~~fully~~ the entirety of the Post Construction/Permanent Stormwater MS4 program. The EPA scorecard is required within 12 months and the implementation plan within 90 days. ~~As~~ Since this time frame is established by the permanent stormwater rule, it will remain the same.

Subpart 5.~~2~~3 of the rationale is amended to read as follows:
Tennessee Rule 0400-40-10-.04 allows for implementation of the permanent stormwater management program of no more than twenty-four (24) months to implement ~~fully implement~~ the program. ~~although some MS4s, in order to avoid confusion with numerous implementation due dates and allow the MS4s to make all required changes to the legal authority at once, existing.~~ Existing permittees will have 24 months to fully implement all changes to the legal authority required by this permit so that the legal authority for the entire program can be updated at one time. All other changes with the exception of permanent stormwater requirements will be fully implemented within 180 days.

The first sentence of Part 8 of the rationale is amended to read as follows:
Part **6** establishes a provision for a waiver from electronic reporting.

Part/Section	Comment 14:
8.1	The definition provided for "Terminated" "QLP Status" in part 8.1. does not appear to be contextually accurate. It is related more to a terminated permit coverage than terminated status as a QLP.

Response:
The QLP Status definition of "terminated" in Subpart 8.1 is referring to the construction site not the QLP itself.

Part/Section	Comment 15:
1.3.3.2.	The list of allowable non-stormwater discharges includes "Dechlorinated swimming pool discharges" but makes no mention of saltwater pools. Salt is mentioned as a pollutant of concern at other places in the permit. The permit should make clear that discharges from saltwater pools are not among those allowed.

Response:
The list in 1.3.3.2. is from the federal rule. However, in reviewing this comment, it was noted that "foundation drains" was missing from the list. That oversight has been corrected. If saltwater swimming pool discharges is an issue in a particular MS4 jurisdiction, it may be beneficial to generate educational materials.

Part/Section	Comment 16:
4.4.1.2.	Parts 4.4.1.1. and 4.4.1.2. contain requirements regarding minor and major modifications to the stormwater management program and state that public notice is not required. The need for public notice will be somewhat dependent upon the local legal authority for each small MS4

Response:
It is important to note that subparts 4.4.1., 4.4.1.1. and 4.4.1.2. are related to modifications of the SWMP. Ordinances and other legal authorities may have a separate and distinct public notice process from what is described here. Subparts 4.4.1., 4.4.1.1. and 4.4.1.2. do not in any way alter that public notice process required for adoption of legal authorities.

Part/Section	Comment 17:
4.4.1.	Small MS4s are not required to submit major modifications for formal public notice process. The program modifications specified in subpart 4.4.1 apply to large and medium MS4s. Subpart 5.6 of the rationale, included with the draft permit, refers to 40 CFR 122.63 which applies to modifications of permits, not the SWMP. This row should be deleted from the permit.

Response:
The federal rule as found in 40 C.F.R. § 122.34(b)(2)(i), states that the permit must identify the minimum elements and require implementation of a public

involvement/participation program that complies with State, Tribal, and local **public notice requirements**." (Emphasis Added) In discussing this requirement with the Division's attorney, it was clarified that the public notice process e.g., 30 days in a newspaper is not directly applicable to MS4. This allows for the use of "local public notice requirements." As such, subpart 4.1 will remain as it was designed to provide MS4 the flexibility to designate their own public notice process and better specify when a change was significant enough to go through that process. 40 C.F.R. § 122.63 does refer to modifications of NPDES permit. This language was used as a best professional judgement basis (along with the previous permit) for the permit conditions specifying the distinction between major and minor modifications.

Part/Section	**Comment 18:**
Appendix 1	Within this permit, the Division has already written the BMPs and measurable goals explicitly. That those items are to remain, this information should be pre-set in the permittee's NOI to reduce the permit's administrative burden on permittees.

Response:
Elements that are prescribed in the permit, will be hard coded into the MyTDEC forms NOI. Additionally, there will be some "decision" questions that will show or hide relevant portions of the NOI. For example, if the MS4 is not a co-permittee, MyTDEC Forms will not show the sections specific to co-permittee.

Part/Section	**Comment 19:**
Various	The draft permit includes requirements for documentation/reporting of most or all of this same information multiple times, in annual reports, the SWMP Evaluation Report, and other required sub-plans (PIE Plan, publicity plan, etc.). The Division should re-examine and eliminate redundant reporting elements to reduce the permit's administrative burden on permittees.

Response:
In the tables identifying the management measures, measurable goals and annual report requirements, there are some reporting elements that originate in the authority of one MCM, but has been historically handled in the scope of a different MCM. When this is the case, the requirement is explicitly listed in only one MCM. The second MCM will have a line item in its respective table that cross references where that requirement is to be reported.

The "sub-plans (PIE Plan, publicity plan, etc.)" are written components of the SWMP. They are not in addition to a written SWMP plan.

- Item 4.6.2.a. has been removed since it is part of the permit conditions.

- Item 4.6.2.c. has been removed and replaced with a yes/no question in the subsequent table.
- Item 4.6.2.f. has been modified to encompass both the original requirement and the requirement of 5.2 line 2 anticipated changes. 5.2 line 2 has been removed.
- Item 4.6.2.g. has been removed since it is duplicative of 4.4.1. reporting. 4.4.1. reporting has had a yes/no question added for each program element so that the Annual report form can hide/show relevant sections.
- Item 5.2. line 4 requiring reporting of monitoring has been removed since that information is reported under 4.6.1.4.

Part/Section	Comment 20:
Appendix A	The Notice of Intent (NOI) form included as Appendix 1 to the permit includes a purpose statement identifying applicable entities for whom the form is intended. It is unclear whether this is supposed to be an exhaustive list of applicable facilities and, if so, whether it sufficiently incorporated all forms of non-traditional small MS4 entities. This may lead to confusion on the part of some non-traditional entities as to whether this NOI form applies to them.

Response:
The list of agencies has been modified to include “other public agencies”.

Part/Section	Comment 21:
1.4	We are concerned with the "contribute to" language. The "contribute to" language was purposely removed from TDEC regulations with such intent clearly evidenced in rulemaking response to comments. It should also be noted that case law specifically determined that liability can only be imposed for causing a violation, not "contributing to" a violation. We request that the "or contribute to" language be removed from this section as well as anywhere else it may appear in the permit.

Response:

The concept of “causing or contributing” to a violation of water quality is established in the Clean Water Act and EPA’s implementing regulations, including 40 C.F.R. § 122.44(d)(1), which requires NPDES permits to impose water quality-based effluent limitations on discharges of pollutants that have the reasonable potential to cause or contribute to a violation of state water quality standards. This provision is applicable to TDEC’s issuance of NPDES permits 40 C.F.R. § 123.25(a)(15). This language has been in the Small MS4 permit since 2010.

The Tennessee Water Quality Control Act incorporates the concept of “contributing” to water quality violations by prohibiting the issuance of permits for activities that “would

cause a condition of pollution either by itself or in combination with others." Tenn. Code Ann. § 69-3-108(g) (emphasis added).

Accordingly, the permit's "contribute to" language will be retained.

Part/Section	Comment 22:
Various	There are numerous statements pertaining to documentation in the SWMP or in the program that imply there are additional written elements required by the Division beyond the NOI and annual reports previously required. It is not always clear when something is required as a written element, and when it is not. Multiple commentors indicated confusion as to when written documentation is required and also asked for additional time to implement the new documentation requirements.

Response:
The Stormwater Management Program must have a written plan that describes in detail how the permittee intends to comply with the permit's requirements. The permittee has the flexibility to include the policy, procedures, or other process documentation in the written SWMP documentation or as a stand-alone document. The word "written" has been added to 4.1 to clarify. Additionally, SWMP has been removed from the permit and replaced with its expansion. The definitions of Stormwater Management Program and Stormwater Management Plan have been added to the definitions in subpart 8.1.

Written documentation for the Stormwater Management Program was the intent of the 2003 permit. However, the language from the federal rule and the permit was easily misunderstood. The 2010 permit first required this written documentation to be provided in the first annual report. The 2016 permit further clarified that it is a written compilation of the elements of the stormwater management program. The permit further acknowledges that it is considered one document, but may consist of separate standalone components. The changes in the federal rule due to the remand rule explicitly require "written storm water management program document or documents".

The 2022 permit draft permit allows MS4s 180 days to make program changes to all elements, the table in that subpart shows the exceptions for those elements with different due dates. That language has been clarified to include both the Stormwater Management Program and written documentation or "plans".

Part/Section	Comment 23:
4.3	The definition of a QLP in the first sentence of the Part implies the Division can designate QLPs on their own. It is suggested this be revised to indicate the MS4 must desire and apply for QLP status or otherwise has a say in being identified as a QLP.

Response:
The Division disagrees that that this sentence implies that the Division can designate QLPs on their own.

Part/Section	Comment 24:
4.2.4.j.	Priority sites are defined as "those construction activities discharging directly into, or immediately upstream of, waters the state recognized as unavailable condition for siltation or Exceptional Tennessee Waters." - Please define "directly into" and "immediately upstream". Is this 10', 1000', etc. - Steps to identify priority sites should include the nature of the construction activity, topography, and the characteristics of soils and receiving water quality.

Response:
For the purposes of 4.2.4.j., "directly into" means the receiving stream of the discharge. For the purposes of 4.2.4.j., "immediately upstream" means discharges upstream of such waters and because of the proximity to the segment and the nature of the discharge is likely to cause more than de minimis degradation in the unavailable or exceptional segment (see Footnote 9 of the 2021 CGP). The permittee may use the CGP Mapviewer located at https://tdeconline.tn.gov/dwrcgp/ which indicates unavailable conditions due to siltation, by a pink line and watershed area. ETWs are not currently mapped, however, the list of EWTs can be found at:
https://dataviewers.tdec.tn.gov/pls/enf_reports/f?p=2005:34304::::::

There is flexibility by design in the determination for MS4 to identify additional qualifiers to the classification of priority construction sites. The MS4 is free to consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality in addition to the requirements described in the permit.

Part/Section	Comment 25:
8.1	The definition for "clearing" should be re-evaluated. It appears the definition of grubbing has been substituted for clearing. This is confusing. This is especially important because in the new CGP, clearing is considered a land disturbing activity.

Response:
The definition of "clearing" was copied from the 2021 CGP for consistency. However, the MS4 permit does correct a typo.

Part/Section	Comment 26:
8.1	Definition of Disturbed Area: This new definition includes a sentence that the area cannot be limited to only the portion of the total area that the site-wide owner/developer initially disturbs. As written, this can be read to mean the family building a single-family residence which will disturb no more than a half acre on a platted lot of more than an acre is subject to permit requirements. If this is the intent, it goes against the premise of the program which is to regulate those projects which disturb an acre or more and will result in unneeded paperwork and costs to the owner/developer. Request this be clarified to leave no doubt that only projects that disturb an acre of more or are part of a larger common plan or development are subject to permit requirements.

Response:
The definition of "disturbed area" was copied from the 2021 CGP for consistency. The first sentence of the definition already states "*…total area presented as part of the development (and/or of a larger common plan of development) subject to being cleared, graded, grubbed, filled, or excavated during the life of the development*." The example of the 0.5 acre of disturbance on a lot greater than one acre that is not part of a larger common plan of development that would disturb one acre or more would not trigger the permit requirements.

Part/Section	Comment 27:
4.1	On page 11, 1st paragraph, 4th sentence "… in accordance with subpart 4.4 and in conjunction with the requirements found in various sections throughout this permit" Comment: Please replace "the requirements found in various sections throughout this permit" with specification of the permit parts where these requirements are found so it is clear the requirements to which this section refers.

Response:
The suggested change has been made.

Part/Section	Comment 28:
4.4.2.	Stormwater Management Program Updates Required by the Division The phrase "as needed" is too broad, essentially allowing the Division to compel SWMP changes beyond the scope of the permit. These words should be replaced with "in keeping with the requirements of this permit".

Response:
This subpart has been removed in its entirety. The Division will determine compliance with the permit. If the permittee is not in compliance with the permit, the required

actions to be taken by the permittee will be dependent on the violation itself and documented through informal and formal enforcement.

Part/Section	Comment 29:
4.5.4.	The first sentence should end after the word "component" and the remainder of the sentence deleted.

Response:
This sentence has been in the Small MS4 General Permit since 2010 and has not been problematic. The language will remain.

Part/Section	Comment 30:
1.4. b.	Replace language in bullet l .4(b) As written, this permit limitation would appear to prohibit storm water discharges associated with industrial activities into the MS4 system. We realize it could not be TDEC's intent to prohibit such discharges into the MS4 system. We therefore request the language be clarified to reflect that while the small MS4 permit is not deemed an NPDES permit for the discharge of industrial storm water issued to a facility under 40 CFR §122.26(b)(l 4), the small MS4 permit does authorize the receipt of such discharges by the municipality and the subsequent discharge of it through the MS4. Accordingly, we request the language be replaced as follows: Permitted stormwater discharges associated with industrial activities, as defined in 40 CFR §122.26(b)(14) as such discharge into the MS4 system requires the discharger to have individual or general NPDES permit coverage. Notwithstanding any provisions to the contrary, this permit does authorize the receipt and subsequent discharge by the small MS4 of the storm water associated with industrial facilities. Stormwater discharges from certain construction related industrial activities, as defined along with other construction activities in this permit, are excluded from this limitation.

Response:
Subpart 1.4 is a list of discharges that are not authorized under the Small MS4 General Permit. As such, sub-part 1.4 doesn't prohibit or mandate anything; it simply lists discharges that are not authorized under this permit. Industrial stormwater discharges are (or should be) authorized under the Tennessee Stormwater Multi-Sector General Permit for Industrial Activities (TMSP), construction general permit, or an individual NPDES permit and are not authorized by this general permit. The language will remain.

Part/Section	Comment 31:
1.4.f.	Recommend this paragraph be deleted. As written, this paragraph would leave the permittee open to possible third party litigation. While a spill response can usually be handled by emergency responders, the permittee has little control over spills that occur when they are not made aware of the spill. These types of spills should be treated as illicit discharges by the permittee.

Response:
Subpart 1.4 is a list of discharges that are not authorized under the Small MS4 General Permit. It does not speak to emergency response procedures. The language will remain.

Part/Section	Comment 32:
Various	A general concern was expressed that MS4 do not have the resources to document, track and report on their MS4 program. The 2022 draft permit constitutes a considerable increase in the administrative burden. Further stating "Many permittee programs are underfunded already. Getting and sustaining additional funds to provide resources for permit accounting, reporting, and documentation will be difficult at best.

Response:
The Small MS4 General Permit was originally issued in 2003 and gave MS4 until February 27, 2008, to fully develop, implement, and enforce the stormwater management program. This includes the generation of documentation, tracking compliance and reporting.

T.C.A. §§ 68-221-1106 and 68-221-1107 were enacted in 2003 to allow the collection civil penalties and fees by municipalities for stormwater or flood control facilities. T.C.A. § 68-221-1106. Failure to properly fund and staff the MS4 program is a compliance issue not a permitting issue.

Part/Section	Comment 33:
General	This shifts the focus of stakeholders, including TDEC and permittees, away from compliance based on BMP quality and effectiveness to compliance based-on activity reporting, tracking, and accounting.

Response:
The Division disagrees. The draft permit increases clarity and regulatory certainty for structural and non-structural BMPs as well as reporting and compliance. Compliance with permit conditions is reported in a demonstrative manner in the annual report. As such, Division staff will be better able to focus on potential compliance issues during the inspection after reviewing the annual report. Additionally, increase clarity in the permit is expected to allow for the more effective use of time during inspections allowing for more effective compliance determinations by the Division.

Part/Section	Comment 34:
General	Census Update

Response: On July 20, 2022, EPA published an interim guidance on Census Elimination of "Urbanized Area" definition. This guidance states:

> On March 24, 2022, the Census Bureau finalized revisions to its criteria for defining urban areas based on the results of the 2020 Decennial Census. As part of that action, the Census Bureau ceased distinguishing between different types of urban areas, including "urbanized areas." This means that the Decennial Census, starting in 2020 and into the future, will not identify "urbanized areas." Because the Phase II regulations are written to cover MS4s located in "urbanized area[s] as determined by the latest Decennial Census," questions have arisen about what effects the Census Bureaus' new change has on which systems are considered regulated small MS4s moving forward.
>
> EPA is currently evaluating next steps to provide clarity on this issue, including whether revisions to the Phase II stormwater regulations may be appropriate."

The Division will provide additional direction to MS4s after the urban area data maps have been issued by the Census Bureau. As with the previous census, the Division will individually notify any municipalities that will be required to develop an MS4 (New Permittees). Existing County MS4s where the MS4 program is applicable only to the urbanized area should continue to implement the MS4 program in the urbanized area as defined by the 2010 census until otherwise notified by the Division.

The interim guidance document can be found at EPA's website https://www.epa.gov/npdes/interim-guidance-census-elimination-urbanized-area-definition

3. DETERMINATION

While part 1 of this notice of determination outlines the administrative record for this permit, the administrative history of Rule 0400-40-10 is also pertinent to this permit. A draft of Rule 0400-40-10 was public noticed on May 2, 2019, and the public hearing was on July 15, 2019. In 2019, the Division also conducted an in person listening session in each of the 3 grand divisions of Tennessee to discuss the process and pending rules. The rules were approved by the Board of Water Quality, Oil, and Gas on April 20, 2021. The approval of the rulemaking documentation included a response to comments received during the

public notice period and changes to the rules made as a result. In September and November of 2021, the division held additional virtual listening sessions for stake holders regarding Rule 0400-40-10. Once the rule went to the Secretary of State's Office, Division personnel attended the eight Tennessee Stormwater Association Meetings (TNSA) presenting on the various state and federal rules changes that would be implemented in the draft permit.