



**SIERRA
CLUB**

Sierra Club
Tennessee Chapter
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August 5, 2021

State of Tennessee, TDEC/Water Resources
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, TN 37243

Sent via email

Re: Proposed Revisions to General NPDES Permit for Storm Water Discharges
Associated with Construction Activity Permit Number: TNR100000

Dear Mr. Janjic:

We, the Tennessee Chapter Sierra Club, appreciate and thank you for the opportunity to submit comments on the above-referenced draft permit on behalf of our more than 9,000 members across Tennessee. Our comments are as below:

Overall, we find the draft 2021 CGP not protective of Tennessee's waters. The changes from the 2016 permit result in a decrease in environmental protection, such as reduced inspection frequency, an inclusion of larger projects within general permit coverage, and the lack of a requirement for operators to open their stormwater pollution prevention plans ("SWPPPs") to public comment. TCA 69-3-102 states in part, "the people of Tennessee, as beneficiaries of this trust, have a right to unpolluted waters. In the exercise of its public trust over the waters of the state, the government of Tennessee has an obligation to take all prudent steps to secure, protect, and preserve this right." It further states, "the purpose is to abate existing pollution of the waters of Tennessee, to reclaim polluted waters, [and] to prevent the future pollution of the waters." Backsliding, which this draft permit does, is further prohibited by the federal Clean Water Act.

We do not provide detailed line-by-line critiques of the draft CGP. The comments below concern the provisions outlined in the Rationale and are adequate to convey our position that the permit should be strengthened, not weakened. The problem of construction stormwater runoff pollution is great, and growing, even under the conditions of the 2016 permit. To suggest weakening what is already an ineffective permit is simply unacceptable.

We also agree with and support the comments submitted by the Southern Environmental Law Center, Harpeth Conservancy, Paul Davis, and Greg Denton.

The second Rationale makes several references to unnamed stakeholders, specifically in sections 6.7 and 6.8. We want to inform and remind TDEC that the Sierra Club and other environmental organizations, such as referenced above, as well as the public, are also stakeholders in the quality

of Tennessee waters. For TDEC to hold private discussions with unnamed “stakeholders” apart from the legally mandated public participation process required in the crafting of this draft permit seems unethical if not illegal.

In section 4 of the Rationale, reference is made to EPA guidelines for ELG’s and it is stated that the guidelines establish minimum narrative requirements. This is not accurate. The EPA memorandum of November 12, 2010 to Water Managers in Regions 1-10 states, “EPA now recognizes that where the NPDES authority determines that MS4 discharges and/or small construction storm water discharges have the reasonable potential to cause or contribute to water quality standards excursions, permits for MS4s and or small construction stormwater discharges **should contain numeric effluent limitations** (my emphasis) where feasible to do so.” TDEC has consistently taken the position that numeric effluent limitations are not feasible. EPA obviously disagrees, as do we. Indeed, we believe TDEC should adopt a numeric effluent limit of 50 nephelometric turbidity units (NTU), which is the EPA standard for drinking water, as modified for consistency with the appropriate reference streams for the specific ecoregion.

In section 6.3 of the Rationale, TDEC is dropping the requirement for MS4 authorities to be notified by applicants and for applicants to comply with local ordinances. While it is true that TDEC does not have the authority to force applicants to comply with local ordinances, it certainly has the authority to require applicants to notify MS4 authorities of proposed projects. TDEC and MS4 authorities should be working in partnership, not in ignorance of what each other is doing.

Section 6.5. We strongly object to TDEC’s dropping of the requirement that projects of over 50 acres must apply for individual NPDES permits. This opens up a gaping loophole for operators to circumvent water quality protection requirements that were contained in the 2016 permit. The cumulative impact of excluding permits for sites that disturb over 50 acres can be enormous and eliminate scrutiny and public participation. TDEC provides no scientific basis for this change. Site assessments should be required for every permitted site, not just sites of over 50 acres. Even one acre of disturbed soil that is lacking in stormwater protection practices is capable of washing unacceptable amounts of soil particles into receiving streams. The driver for permit requirements should be the maximum protection of water, not the convenience or level of effort of the applicant or TDEC permit writers.

Likewise reducing inspection requirements for most permitted sites from 2/week to once per week allows an unacceptable level of leeway for sloppy site management to result in pollution of receiving streams. The bulk of sediment eroding from a site can move very quickly with respect to a flood event and the existing requirement of monitoring 2/week is already minimal with respect to detecting sediment flows. Reducing the frequency of required sampling to once a week will effectively decrease the identification of problems and result in more degradation to water quality.

Section 6.7. Again, anonymous “stakeholders” want TDEC to relax deadlines for stabilization practices. The definition of a deadline implies a set date, not some “approximate” time to allow for an operator’s convenience. Keep the specific deadlines.

Section 6.8. It is acknowledged by everyone that construction projects have been increasing and will continue to increase as Tennessee’s population grows. Construction stormwater runoff

already constitutes the majority of pollution of Tennessee's waters. In Tennessee, over 6,000 miles of streams and over 18,000 acres of lakes are primarily polluted by sediment. Reducing the schedule of inspections by qualified individuals is not the way to fulfill the mandate of Tennessee's Water Quality Control Act to abate existing pollution and prevent future pollution.

Section 6.9. The EPA has clearly said that states do have the authority to regulate stormwater runoff volumes as a surrogate measure for pollution. TDEC is in error in taking the position that they do not have that authority.

Section 6.10. TDEC seems to imply in permit section 8.11.1 that the burden of petitioning the Director to require an individual permit lies on the public, as in "any interested person". The public does not have the expertise or knowledge of TDEC regulations to be capable of doing that. There should be an emphasis on requiring TDEC inspection staff to assess the likelihood of a project to require an individual permit when a pre-construction site assessment is made.

Section 6.11. Once more, anonymous "stakeholders" want TDEC to relax the requirement for site assessments on sites where over 10 acres drain to a single point of discharge. NO! This is tantamount to relying on the fox to guard the henhouse. Without site assessments, who is to say SWPP's are inadequate, or permit conditions are being violated? Site assessments are crucial, and we further believe site assessments should be required for all sites, regardless of acreage.

In light of our concerns, we believe TDEC should withdraw the draft permit and redraft it utilizing the 2016 permit as a base and in accordance with current EPA guidance. If insufficient time is available to do that before the 2016 permit expires, we recommend TDEC extend the 2016 permit for a period of a year or more to allow for a more rigorous revision.

Thank you for the opportunity to provide comments on this important matter.

Sincerely,

/s/

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Water Quality Chair

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