



August 5, 2021

BY E-MAIL

Tennessee Department of Environment & Conservation  
Division of Water Resources  
William R. Snodgrass – TN Tower  
312 Rosa Parks Avenue – 11<sup>th</sup> Floor  
Nashville, TN 37243  
Attention: Vojin Janjic

Re: STATE OF TENNESSEE NPDES GENERAL PERMIT for DISCHARGES of STORMWATER  
ASSOCIATED with CONSTRUCTION ACTIVITIES, Permit Number TNR100000 (the  
“Permit”)

Dear Mr. Janjic:

Harpeth Conservancy (“HC”) appreciates the opportunity to comment on the Permit. HC has the following major comments:

- 1) The Permit contains major defects, and its changes are unnecessary and harmful;
- 2) The Permit’s monitoring and inspection requirements should be strengthened rather than weakened because TDEC has proved incapable or unwilling to enforce existing requirements;
- 3) The Permit represents not only a violation of anti-backsliding rules but is another step in Tennessee’s falling further behind in protecting its waters;
- 4) TDEC should follow USEPA guidance and impose numeric limits and monitoring standards in the Permit, particularly because Tennessee seems unable to properly implement and comply with its water quality criteria;
- 5) TDEC erroneously relies on the incorrect assumption that it cannot regulate stormwater volumes; and
- 6) The public participation process and rationale for the Permit are so seriously deficient that TDEC must either extend the 2016 permit temporarily or TDEC must reject the Permit and “start over.”

Each of these points will be discussed in order.

**1) The Permit contains major defects, and its changes are unnecessary and harmful;**

The Permit contains major unresolved issues, as detailed in the annotated copy of the Permit included as Attachment A.

HC supports and agrees with the comments of Amanda Garcia, Esq. recently made on Nashville NewsChannel 5,<sup>1</sup> as well as in the formal comment letter of August 5, 2021, from Southern Environmental Law Center.

As Mr. Greg Denton put it in his comments on the Permit:

The department has proposed relaxing acreage and inspection frequency requirements in Tennessee's stormwater general permit. Considering the widespread and pervasive statewide water quality issue that sedimentation presents, this is a counterintuitive move. Had the previous level of regulation prevented the discharge of sediment from construction sites statewide, perhaps a valid argument could be made for relaxing some requirements. This is not the case.

Please leave the requirements of the construction general permit as is. There is little evidence that the current rules are preventing properly undertaken construction activities from taking place.<sup>2</sup>

**2) The Permit's monitoring and inspection requirements should be strengthened rather than weakened because TDEC has proved incapable or unwilling to enforce existing requirements;**

The monitoring and inspection provisions of the Permit should be strengthened, rather than weakened, as proposed in the Permit, because TDEC has proved unwilling or incapable of enforcing existing stormwater regulations. Just one example will suffice to show TDEC's record of lack of enforcement of its stormwater regulations. The Cumberland Estates subdivision in Williamson County was plagued by repeated issues with stormwater pollution. TDEC's so-called enforcement efforts (extending up to and including the Deputy Director of the Division of Water Resources) were so tardy and ineffective that a local citizens' group was forced to bring a citizen suit under the Clean Water Act ("CWA") to obtain relief. A copy of the Complaint in *Thomas, et. al v. Cumberland Estates, LLC*, detailing the facts is included as Attachment B. Photographs of the extent of the pollution are included in Attachment B as well as below.

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<sup>1</sup> : <https://www.newschannel5.com/news/environmental-group-sounds-alarm-over-proposed-changes-to-stormwater-regulations>.

<sup>2</sup> Comments from Mr. Greg Denton dated August 1, 2021 (emphasis added).









**3) The Permit represents not only a violation of anti-backsliding rules but is another step in Tennessee's falling further behind in protecting its waters.**

A comparison of the Permit to seven (7) year-old USEPA guidance demonstrates that not only does the Permit violate anti-backsliding rules,<sup>3</sup> but also that Tennessee is deliberately retreating from measures to protect its waters, in violation of statutory mandates.<sup>4</sup>

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<sup>3</sup> TN. Comp. R. & Regs. § 0400-40-05-.08 (1)(j).

<sup>4</sup> T.C.A. § 69-3-102 provides, in relevant part:

(a) Recognizing that the waters of Tennessee are the property of the state and are held in public trust for the use of the people of the state, it is declared to be the public policy of Tennessee that 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.

(b) It is further declared that the purpose of this part is to abate existing pollution of the waters of Tennessee, to reclaim polluted waters, to prevent the future pollution of the waters, and to plan for the future use of the waters so that the water resources of Tennessee might be used and enjoyed to the fullest extent consistent with the maintenance of unpolluted waters. (Emphasis added.)



In 2014 USEPA issued its memorandum “Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on LAs”<sup>5</sup> (the “2014 Memo”).

Just a few quotes demonstrate how far the Permit and Tennessee is falling behind the most recent thinking on what must be done to protect against stormwater pollution. The Permit’s failure to establish measurable standards is contrary to USEPA guidance:

EPA continues to support use of an iterative approach, but with greater emphasis on clear, specific, and measurable permit requirements and, where feasible, numeric NPDES permit provisions, as discussed below.<sup>6</sup>

This is necessary because:

...stormwater discharges remain a significant cause of water quality impairment in many places, highlighting a continuing need for more meaningful WLAs and more clear, specific, and measurable NPDES permit provisions to help restore impaired waters to their beneficial uses.<sup>7</sup>

In circumstances such as those obtaining in Tennessee, USEPA recognizes that:

In subsequent stormwater permit terms, if the BMPs used during prior years were shown to be inadequate to meet the requirements of the Clean Water Act (CWA), including attainment of applicable water quality standards, the permit would need to contain more specific conditions or limitations.<sup>8</sup>

Again:

As stated in the 2002 memorandum, where a State or EPA has established a TMDL, NPDES permits must contain effluent limits and conditions consistent with the assumptions and requirements of the WLAs in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(B). Where the TMDL includes WLAs for stormwater sources that provide numeric pollutant loads, the WLA should, where feasible, be translated into effective, measurable WQBELs that will achieve this objective. This could take the form of a numeric limit, or of a measurable, objective BMP-based limit that is projected to achieve the WLA. For MS4 discharges, CWA section 402(p)(3)(B)(iii) provides flexibility for NPDES authorities to set appropriate deadlines for meeting WQBELs consistent with the requirements for compliance schedules in NPDES permits set forth in 40 CFR § 122.47....<sup>9</sup>

The permitting authority’s decision as to how to express the WQBEL(s), either as numeric effluent limitations or as BMPs, with clear, specific, and measurable elements, should be based on an analysis of the specific facts and circumstances surrounding the permit, and/or the underlying WLA, including the nature of the stormwater discharge, available data, modeling results, and other relevant information.

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<sup>5</sup> [https://www3.epa.gov/npdes/pubs/EPA\\_SW\\_TMDL\\_Memo.pdf](https://www3.epa.gov/npdes/pubs/EPA_SW_TMDL_Memo.pdf) (accessed August 5, 2021).

<sup>6</sup> 2014 Memo, page 2.

<sup>7</sup> *Id.*

<sup>8</sup> 2014 Memo, page 3.

<sup>9</sup> 2014 Memo, page 6.

The USEPA further notes that stormwater general permits such as the Permit must contain provisions to assure that WLAs in TMDLs can be met, and that monitoring requirements must be included:

EPA notes that many permitted stormwater discharges are covered by general permits. Permitting authorities should consider and build into general permits requirements to ensure that permittees take actions necessary to meet the WLAs in approved TMDLs and address impaired waters. A general permit can, for example, identify permittees subject to applicable TMDLs in an appendix, and prescribe the activities that are required to meet an applicable WLA.

Lastly, NPDES permits must specify monitoring requirements necessary to determine compliance with effluent limitations. See CWA section 402(a)(2); 40 CFR 122.44(i). The permit could specify actions that the permittee must take if the BMPs are not performing properly or meeting expected load reductions. When developing monitoring requirements, the NPDES authority should consider the variable nature of stormwater as well as the availability of reliable and applicable field data describing the treatment efficiencies of the BMPs required and supporting modeling analysis.<sup>10</sup>

**4) TDEC should follow USEPA guidance and impose numeric limits and monitoring standards in the Permit, particularly because Tennessee seems unable to properly implement and comply with its water quality criteria.**

TDEC should follow USEPA guidance embodied in the 2014 Memo and impose numeric limits and monitoring standards in the Permit, particularly because Tennessee seems unable to properly implement and comply with its own water quality criteria. The 2014 Memo provides that numeric limits should be included when prior measures have failed to attain water quality standards,<sup>11</sup> as is the case in Tennessee.

It is elementary that water quality criteria or standards (“WQS”) define the goals for a water body by designating its uses, setting criteria to protect those uses, and establishing antidegradation policies to protect water bodies from pollutants.<sup>12</sup> WQS also serve as the basis for water quality-based limits in NPDES permits (such as the Permit), as the measure to assess whether waters are impaired, and as the target in a Total Maximum Daily Load (TMDL) to restore impaired waters.

Tennessee has adopted narrative criteria for recreation for various WQS including for solids and turbidity, for example:

(c) Solids, Floating Materials, and Deposits - There shall be no distinctly visible solids, scum, foam, oily slick, or the formation of slimes, bottom deposits, or sludge banks of such size or character that may be detrimental to recreation.

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<sup>10</sup> 2014 Memo, page 7.

<sup>11</sup> See the quoted language from the 2014 Memo, page 2.

<sup>12</sup> See, e.g., T.C.A. § 69-3-108(g).

(d) Total Suspended Solids, Turbidity, or Color - There shall be no total suspended solids, turbidity or color in such amounts or character that will result in any objectionable appearance to the water, considering the nature and location of the water.<sup>13</sup>

These narrative WQS have proven so ineffectual, including through TDEC's inability or refusal to enforce them (witness the *Cumberland Estates* case, above), that TDEC must impose numeric standards, either in the Permit, or through rule-making,<sup>14</sup> to comply with its statutory duties regarding the issuance of permits.<sup>15</sup>

The Permit fails to recognize that almost all of the discharges it regulates are to waters that are "impaired" and are, or if assessed, should be, on Tennessee's 303(d) list, and subject to TMDL requirements.<sup>16</sup> Further, the Permit does not observe the requirements under the Tennessee Water Quality Control Act that permits cannot be issued which alone or in combination would result in a condition of pollution.<sup>17</sup> Because technology-based effluent limits ("TBELS") have failed to result in the removal of these waters from the 303(d) list, TDEC must employ water quality-based effluent limits ("WQBELS").<sup>18</sup> Impaired waters are supposed to be restored to the point they achieve water quality standards through the process of establishing a total maximum daily load ("TMDL").<sup>19</sup> TMDLs are required to set both wasteload allocations for point sources and load allocations for nonpoint sources. Stormwater discharges regulated by the Permit are, by definition, point sources that require wasteload allocations and, therefore, WQBELS.

Regardless of the status of a TMDL for a waterbody, a Permit must still achieve water quality standards, and regulators cannot wait for a TMDL to be completed. Permits are required to include any more stringent limitations necessary to meet water quality standards.<sup>20</sup> Indeed, the law does not allow TDEC

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<sup>13</sup> TN. Comp. R. & Regs. Rule 0400-40-03-.03(4) (c) & (d). See also the similar WQS for Fish & Aquatic Life, Rule 0400-40-03-.03 (3)(c) & (d). Also applicable are the WQS for Fish & Aquatic Life, for Taste or Odor, Biological Integrity, Habitat, and Flow, and potentially Toxic Substances, Rule 0400-40-03-.03 (3)(f), (m), (n), (o), and (g).

<sup>14</sup> To the extent necessary, please consider these comments as a request or rule-making under T.C.A. § 4-5-201.

<sup>15</sup> See, e.g., T.C.A. § 69-3-108 (g)(1): "The commissioner may grant permits ..., but in granting such permits shall impose such conditions, including effluent standards and conditions and terms of periodic review, as are necessary to accomplish the purposes of this part, and as are not inconsistent with the regulations promulgated by the board."

And (g)(4)(A): "In addition, the permits shall include: (A) The most stringent effluent limitations and schedules of compliance, either promulgated by the board, required to implement any applicable water quality standards, necessary to comply with an area-wide waste treatment plan, or necessary to comply with other state or federal laws or regulations...."(Emphasis added)

<sup>16</sup> See, e.g., <https://www.epa.gov/tmdl/impaired-waters-and-stormwater>: "Throughout the United States there are thousands of waters listed for impairments from stormwater sources. The most common pollutants coming from stormwater sources include sediment, pathogens, nutrients and metals. These impaired waters need a Total Maximum Daily Load (TMDL), which identifies the total pollutant loading that a waterbody can receive and still meet water quality standards, and specifies a pollutant allocation to specific point and nonpoint sources."

<sup>17</sup> T.C.A. § 69-3-108(g)(2) provides: "Under no circumstances shall the commissioner issue a permit for an activity that would cause a condition of pollution either by itself or in combination with others." (emphasis added)

<sup>18</sup> 33 USC § 1311, 33 USC §§ 1311(b)(1)(C), 1312(a), 1313(e)(3)(A), 40 CFR § 122.44(d).

<sup>19</sup> See 33 USC § 1313(d)(1)(C), 40 CFR § 130.7(c)(1).

<sup>20</sup> 33 USC § 1311(b)(1)(C), T.C.A. § 69-3-108(g).



to fail to put a WQBEL into the Permit based on the fact that it is preparing or might eventually prepare a TMDL.<sup>21</sup> Federal regulations under the CWA provide that:

(h) *Wasteload allocation (WLA)*. The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.<sup>22</sup>

Federal CWA regulations also provide that NPDES-regulated storm water discharges are not to be addressed by the load allocation (LA) component of a TMDL.<sup>23</sup>

By definition, the WLAs and LAs are to be expressed in numeric form in a TMDL.<sup>24</sup>

Further, NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs.<sup>25</sup>

Among the numeric standards that the Permit must contain are those for turbidity.<sup>26</sup> Tennessee is substantially behind the standards of even neighboring states.

For example, Alabama regulations prohibit discharges above a numeric turbidity standard, as follows:

Discharges where the turbidity of such discharge will cause or contribute to an increase in the turbidity of the receiving water by more than 50 NTUs above background. For the purposes of determining compliance with this limitation, background will be interpreted as the natural condition of the receiving water without the influence of man-made or man-induced causes. Turbidity levels caused by natural runoff will be included in establishing background levels;...<sup>27</sup>

Georgia imposes turbidity limits based on values in a table, as follows:

The location of the receiving water(s) or outfall(s) or a combination of receiving water(s) and outfall(s) to be sampled on a map or drawing of appropriate scale. When it is determined by the primary permittee that some or all of the outfall(s) will be sampled, the applicable nephelometric turbidity unit (NTU) selected from Appendix B (i.e., based

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<sup>21</sup> See *Upper Blackstone Water Pollution Abatement District v. U.S. EPA*, 690 F.3d 9, n. 8. (1st Cir. 2012); *City of Taunton Dept. of Public Works*, 17 EAB (Env. Appeals Board 5/3/2016), *aff'd*, *City of Taunton v. United States Environmental Protection Agency*, 895 F.3d 120 (1st Cir. 2018). 40 CFR § 122.44(d); *American Paper Institute v. U.S. EPA*, 996 F.2d 346, 350 (D.C. Cir. 1993). *Prairie Rivers Network v. Illinois Pollution Control Board*, 2016 IL App (1st) 150971 ¶¶29-33, 38 (Ill. App. Ct. 2016); *Ala. Dept. of Env. Mgt. v. Ala. Rivers Alliance, Inc.* 14 So. 3d 853, 866-68 (Ala. Civ. App. 2007).

<sup>22</sup> 40 C.F.R. § 130.2(h).

<sup>23</sup> See 40 C.F.R. § 130.2 (g) & (h).

<sup>24</sup> 40 C.F.R. § 130.2(h) & (i), Subsection (i) notes that a TMDL is “The sum of the individual WLAs for point sources and LAs for non point sources and natural background.” (Emphasis added.)

<sup>25</sup> See 40 C.F.R. § 122.44(d)(1)(vii): “When developing water quality-based effluent limits under this paragraph the permitting authority shall ensure that: (A) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and (B) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.”(Emphasis added.)

<sup>26</sup> See also the discussion of other applicable WQS in section 4 of these comments.

<sup>27</sup> <https://adem.alabama.gov/programs/water/waterforms/ALR21CGP.pdf> (accessed August 5, 2021) .

upon the size of the construction site and the surface water drainage area) must be shown for each outfall to be sampled.<sup>28</sup>

North Carolina imposes numeric limits at least in trout waters.<sup>29</sup>

In those limited circumstances where best management practices are permitted in stormwater permits, they must still assure compliance with the WLAs. When a non-numeric water quality-based effluent limit is imposed, the permit's administrative record, including the fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL.<sup>30</sup> The NPDES permit must also specify the monitoring necessary to determine compliance with effluent limitations.<sup>31</sup> Where effluent limits are specified as BMPs, the permit should also specify the monitoring necessary to assess if the expected load reductions attributed to BMP implementation are achieved (e.g., BMP performance data).

TDEC has not demonstrated that either best management practices will be sufficient to achieve water quality standards, or that any monitoring required by the Permit will achieve their objectives. Therefore, numeric limits and appropriate monitoring must be imposed.

## **5) TDEC erroneously relies on the incorrect assumption that it cannot regulate stormwater volumes.**

In Section 6.9 of the Permit rationale, TDEC states that:

References in the current CGP to post-construction stormwater controls or management are proposed for deletion. Post-construction stormwater pollutants should not be regulated in the construction stormwater general permit, and the division cannot regulate stormwater volumes, only pollutants in stormwater. (emphasis added).

This is simply an incorrect statement of the law and cannot furnish the basis for TDEC's abdication of its regulatory responsibilities under the CWA as referenced in Section 6.9 of the Rationale. TDEC has the authority, and indeed is required, under the CWA and Tennessee law to regulate erosion-causing factors such as volume, intensity, and the like. TDEC was reminded of this some time ago. See, for example, the letter dated December 23, 2015, from USEPA Region 4 to TDEC included as Attachment C. Indeed, the state's post-construction stormwater general permit and implementing regulations are premised on TDEC's abilities to regulate stormwater volumes. See NPDES PERMIT NO. TNSOOOOOO, TN. Comp. R. & Regs. Chapters 0400-40-05, 0400-40-10.

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<sup>28</sup> <https://epd.georgia.gov/document/publication/gar100001-stand-alone-may-2018pdf/download> (accessed August 5, 2021).

<sup>29</sup> [https://files.nc.gov/ncdeq/documents/files/StandardsTable\\_06102019.xlsx](https://files.nc.gov/ncdeq/documents/files/StandardsTable_06102019.xlsx) (accessed August 5, 2021).

<sup>30</sup> See 40 C.F.R. §§ 124.8, 124.9 & 124.18.

<sup>31</sup> See 40 C.F.R. § 122.44(i).

**6) The public participation process and rationale for the Permit are so seriously deficient that TDEC must either extend the 2016 permit temporarily or TDEC must reject the Permit and “start over.”**

TDEC is required under federal and state law to engage in a public notice and comment procedure to issue permits. This TDEC has not done. Instead, it has engaged in an opaque private process that does not place all stakeholders on the same footing, and indeed, has given the public “short shrift” in consideration of what requirements the Permit should contain. For example, the rationale for the Permit, sections 6.7, 6.8, and 6.11, for example, states that TDEC consulted with “some stakeholders” and not the public. HC has requested information regarding the identity of these stakeholders, the substance of TDEC’s conversations with them, and how TDEC responded to those private comments. Our request for relevant records is included as Attachment D. To date, no records identifying the stakeholders engaging in the private process, or the substance or justification of their comments, have yet been produced.

We further note that TDEC’s rationale was so flawed that it required two (2) iterations. Both versions of the fact sheet violate applicable state and federal requirements.<sup>32</sup>

In short, TDEC’s public participation process for the Permit is so flawed that TDEC must reject the current draft of the Permit and “start over.” In light of the time necessary to “get it right,” HC would like to suggest that TDEC extend the term of the 2016 permit for a short period. TDEC should promptly convene a true public stakeholder process so that this time all stakeholders can be heard and participate in an effective permit that complies with Tennessee and federal law.

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<sup>32</sup> See 40 CFR §§ 124.8, 124.56 and TN Comp. R & Regs. §§ 0400-40-05-02.-72, -63; 0400-40-05-06 (2) and (3); and 0400-40-10-03 (5)(iii).

Thank you again for the opportunity to comment on the Permit.

Sincerely yours,

Harpeth Conservancy



By: \_\_\_\_\_  
James M. Redwine, Esq.  
Senior Policy Advisor

Obed Watershed Community Association

/s/ \_\_\_\_\_  
By: Dennis Gregg

Public Employees for Environmental Responsibility

/s/ \_\_\_\_\_  
Barry Sulkin

Tennessee Chapter of the Sierra Club

/s/ \_\_\_\_\_  
Axel Ringe





**National Pollutant Discharge Elimination System (NPDES)**

**General Permit for Discharges of Stormwater Associated  
with Construction Activities**

**Permit Number TNR100000**

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Issued by  
**Department of Environment and Conservation Division of  
Water Resources**

**William R. Snodgrass - Tennessee Tower 312  
Rosa L. Parks Avenue, 11th Floor Nashville,  
Tennessee 37243-1102**

Under authority of the Tennessee Water Quality Control Act of 1977 (T.C.A. 69-3-101 et seq.) and the authorization by the United States Environmental Protection Agency under the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (33 U.S.C. 1251, et seq.) and the Water Quality Act of 1987, P.L. 100-4, including special requirements as provided in Subpart 6.4 of this general permit, operators of point source discharges of stormwater associated with construction activities into waters of the State of Tennessee, are authorized to discharge stormwater associated with construction activities in accordance with the following permit monitoring and reporting requirements, effluent limitations, and other provisions as set forth in parts 1 through **Error! Reference source not found.** herein, from the subject outfalls to waters of the State of Tennessee.

This permit is issued on: This  
permit is effective on: This  
permit expires on:

**Draft**

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Jennifer Dodd Director

**Tennessee General Permit No. TNR100000 Stormwater  
Discharges Associated with Construction Activities**

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## PART 1

### 1. COVERAGE UNDER THIS GENERAL PERMIT

#### 1.1. PERMIT AREA

The construction general permit (CGP) covers all areas of the State of Tennessee.

#### 1.2. DISCHARGES COVERED BY THIS PERMIT

##### 1.2.1. Stormwater Discharges Associated with Construction Activities

Discharge of stormwater associated with construction activity, as used in this permit, refers to stormwater point source discharges from areas where soil disturbing activities, or construction materials or equipment storage or maintenance (e.g., borrow areas, overburden and stockpiles of soil, waste sites, earth fill piles, fueling, waste material) are located. Soil disturbing activities include but are not limited to clearing, grading, grubbing, filling and excavation.

This permit authorizes stormwater point source discharges from construction activities that result in soil disturbances of one or more acres. Soil disturbances of less than one acre are required to obtain authorization under this permit if construction activities are part of a larger common plan of development or sale that comprises at least one acre of cumulative land disturbance. One or more site operators must maintain coverage under this permit for all portions of a site that have not been permanently stabilized.

Projects of less than one acre of total land disturbance may also be required to obtain authorization under this permit if:

- a) the director has determined that the stormwater discharge from a site is causing, contributing to, or is likely to contribute to a violation of a state water quality standard;
- b) the director has determined that the stormwater discharge is, or is likely to be a significant contributor of pollutants to waters of the state<sup>1</sup>; or

<sup>1</sup> "Significant contributor of pollutants to waters of the state" means any discharge containing pollutants that are reasonably expected to cause or contribute to a violation of a water quality criteria or receiving stream designated uses.

**Commented [DG1]:** This qualification is a significant issue. If no silt fence were installed the silt would flow overland and not necessarily become concentrated in a ditch or conveyance until outside of the boundary of the project. The whole point of the regulation of stormwater from construction sites was to capture the NON-POINT source of pollution.

**Commented [DG2]:** The draft fails to address how this is triggered. How does the director know about these special conditions? In particular, what current provision of permitting of less than one-acre sites would provide the information by which TDEC could make the determination prior to the beginning of land disturbance? If the special conditions become known as a result of a complaint investigation after land disturbance has occurred, does the project have to stop and attempt to gain coverage as an individual permit?

- c) changes in state or federal rules require sites of less than one acre that are not part of a larger common plan of development or sale to obtain a stormwater discharge permit.

#### 1.2.2. Stormwater Discharges Associated with Construction Support Activities

This permit also authorizes stormwater discharges from support activities associated with a permitted construction site. Support activities may include concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas and borrow areas. Support activities are authorized provided all the following conditions are met:

- a) The support activity is related to a construction site that is covered under this general permit.
- b) The operator of the support activity is the same as the operator of the construction site.
- c) The support activity is not a commercial operation serving multiple unrelated construction projects by different operators.
- d) The support activity does not operate beyond the completion of the construction activity of the last construction project it supports.
- e) Support activities are identified in the Notice of Intent (NOI) and the Stormwater Pollution Prevention Plan (SWPPP). The appropriate erosion prevention and sediment controls and measures applicable to the support activity shall be described in a comprehensive SWPPP covering the discharges from the support activity areas.

TDOT projects shall be addressed in the *Waste and Borrow Policy*. Stormwater discharges associated with support activities that have been issued a separate individual permit or an alternative general permit are not authorized by this general permit. This permit does not authorize any process wastewater discharges from support activities. Process wastewater discharges from support activities must be authorized by an individual permit or other appropriate general permit.

#### 1.2.3. Non-Stormwater Discharges Authorized by this Permit

The following non-stormwater discharges from active construction sites are authorized by this permit provided the non-stormwater component of the discharge is in compliance with Subsection 5.5.3.11:

- a) Dewatering of collected stormwater and groundwater.

- b) Waters used to wash dust and soils from vehicles where detergents are not used and detention and/or filtering is provided before the water leaves site. Wash removal of process materials such as oil, asphalt or concrete is not authorized.
- c) Water used to control dust in accordance with Section 5.5.3.7.
- d) Potable water sources, including waterline flushings, from which chlorine has been removed to the maximum extent practicable.
- e) Routine external building washdown that does not use detergents or other chemicals.
- f) Uncontaminated groundwater or spring water.
- g) Foundation or footing drains where flows are not contaminated with pollutants (e.g., lubricants and fluids from mechanized equipment, process materials such as solvents, heavy metals, etc.).

All non-stormwater discharges authorized by this permit must be free of sediment and other solids, must not cause erosion of soils, and must not result in sediment or erosion impacts to receiving streams.

#### 1.2.4. Other NPDES-Permitted Discharges

Discharges of stormwater or wastewater authorized by and in compliance with a different NPDES permit may be mixed with discharges authorized by this permit.

#### 1.3. LIMITATIONS ON COVERAGE

Except for discharges from support activities, as described in Section 1.2.2 and non-stormwater discharges listed in Section 1.2.3, all discharges covered by this permit shall be composed entirely of stormwater. This permit does not authorize the following discharges:

- a) Post-construction discharges - Stormwater discharges associated with permanent stormwater management structures after construction activities have been completed, the site has undergone final stabilization and the coverage under this permit has been terminated.
- b) Discharges mixed with non-stormwater - Discharges that are mixed with sources of non-stormwater, other than discharges which are identified in Section 1.2.4 and in compliance with Subsection 5.5.3.11 of this permit.
- c) Discharges covered by another permit - Discharges associated with construction activities that have been issued an individual permit in accordance with Subpart 8.11.
- d) Discharges threatening water quality - Discharges from construction sites that the director determines will cause or has the reasonable potential to

**Commented [DG3]:** This is the point made above. This is most likely triggered after polluting discharges have already occurred. Otherwise, how would TDEC know that the discharges threaten water quality?

cause or contribute to violations of water quality standards. Where such a determination has been made, the division will notify the discharger in writing that an individual permit application is necessary as described in Subpart 8.11. The division may authorize coverage under this permit after appropriate controls and implementation procedures have been included in the SWPPP that are designed to bring the discharge into compliance with water quality standards.

- e) Discharges into waters with unavailable parameters - Discharges to waters with unavailable parameters that would cause measurable degradation of water quality for the parameter that is unavailable; or that would cause additional loadings of unavailable parameters that are bioaccumulative or that have criteria below method detection levels. Waters with unavailable parameters means any segment of surface waters that has been identified by the division as failing to support its designated classified uses. A discharge that complies with the additional requirements set forth in Subpart 6.4 is not considered to cause measurable degradation of waters with unavailable parameters, unless the division determines upon review of the SWPPP that there is a reason to limit coverage as set forth in Subpart 1.3(d) above and the SWPPP cannot be modified to bring the site into compliance.
- f) Discharges into Outstanding National Resource Waters - Discharges into waters that are designated by the Water Quality Control Board as Outstanding National Resource Waters (ONRW) pursuant to Tennessee Rules, Chapter 0400-40-03-.06(5), except activities conducted by, or on behalf of, the National Park Service on its own lands.
- g) Discharges into Exceptional Tennessee Waters - Discharges that would cause more than de minimis degradation of water quality for any available parameter in waters designated by TDEC as Exceptional Tennessee Waters. A discharge that complies with the additional requirements set forth in Subpart 6.4 is not considered to cause more than de minimis degradation of available parameters unless the division determines upon review of the SWPPP that there is a reason to limit coverage as set forth in Subpart 1.3(d) above and the SWPPP cannot be modified to bring the site into compliance.
- h) Discharges not protective of aquatic or semi-aquatic threatened and endangered species, species deemed in need of management or special concern species - Discharges or discharge-related activities that are likely to jeopardize the continued existence of listed or proposed threatened or endangered aquatic species, or their critical habitat, under the Endangered Species Act (ESA), or other applicable state law or rule.

**Commented [DG4]:** Because section 6.4 does not require notification of TDEC of discharges that might exceed de minimis impacts, this section is meaningless and an example of unacceptable circular reasoning. It's basically saying that if you make a good faith effort to control for pollution by having reasonable plans, you will not be held accountable for the pollution that actually occurs because your plans and installation were not adequate. In fact, regardless of the damage, TDEC will improperly declare the damage de minimis.



Discharges or conducting discharge-related activities that will cause a prohibited “take” of federally listed aquatic species (as defined under Section 3 of the ESA and 50 CFR §17.3) unless such take is authorized under Sections 7 or 10 of the ESA.

Discharges or conducting discharge-related activities that will cause a prohibited “take” of state listed aquatic species<sup>2</sup>, unless such take is authorized under the provisions of T.C.A. § 70-8-106(e).

- i) Discharges from a new or proposed mining operation - Discharges from new or proposed mining operations are not authorized.
- j) Discharges into waters with an approved Total Maximum Daily Load - Discharges of a pollutant to waters for which there is an EPA-approved or established total maximum daily load (TMDL) for that pollutant, unless the SWPPP incorporates measures or controls consistent with the assumptions and requirements of the TMDL.

Any discharge of stormwater or other fluids to groundwater via an improved sinkhole or injection well requires a Class V Underground Injection Control authorization by rule, or an individual permit under the provisions of Tennessee Rules, Chapter 0400-45-06.

#### 1.4. OBTAINING PERMIT COVERAGE

A complete NOI, Stormwater Pollution Prevention Plan (SWPPP) and application fee<sup>3</sup> are required to obtain coverage under this general permit. **Submitting for coverage under this permit means that an applicant has examined a copy of this permit and thereby acknowledged the applicant’s claim of ability to comply with permit terms and conditions.**

##### 1.4.1. Notice of Intent (NOI)

Operators wishing to obtain coverage under this permit must submit a complete NOI in accordance with Part 3, using the NOI form provided in Appendix A of this permit. Electronic submittal is encouraged (see NPDES Electronic Reporting for more information). The division may review NOIs and SWPPPs for completeness and accuracy and, when deemed necessary, investigate the proposed project for potential impacts to the waters of the state. Absent extraordinary circumstances,

<sup>2</sup> As defined in the Tennessee Wildlife Resources Commission Proclamation, Endangered or Threatened Aquatic Species, and in the Tennessee Wildlife Resources Commission Proclamation, Wildlife in Need of Management.

<sup>3</sup> Any reference to an “*application*” in this permit should be considered equivalent to the phrase “*complete NOI, SWPPP and application fee*”

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

#### 1.4.2. Stormwater Pollution Prevention Plan (SWPPP)

Operators wishing to obtain coverage under this permit must submit a site- specific SWPPP with the NOI. The SWPPP, developed and submitted by the primary permittee should address all construction-related activities from the date construction commences to the date of termination of permit coverage, to the maximum extent practicable. The SWPPP must address the total acreage planned to be disturbed, including any associated construction support activities (see Section 1.2.2). The SWPPP must be developed, implemented and updated according to the requirements in Part 5 and Section 6.4.1. The SWPPP must be implemented prior to commencement of construction activities.

SWPPPs must be updated or addended if site activities diverge significantly from those indicated in the initial SWPPP. A copy of the most recent version of the SWPPP must be available at the site.

Preparation and implementation of the SWPPP may be a cooperative effort with all operators at a site. New operators with design and operational control of their portion of the construction site are expected to adopt, modify, update and implement the comprehensive SWPPP. Primary permittees at the site may develop a SWPPP addressing only their portion of the project, as long as the proposed Best Management Practices (BMPs) are compatible with the comprehensive SWPPP and complying with conditions of this general permit.

Site operators who are building single family residences on at-grade lots (see Section 2.1.2) and who are submitting an application for coverage under this permit, may complete and submit Form CN-1249, the Stormwater Pollution Prevention Plan (SWPPP) for Single Family Residential Homebuilding Sites. This SWPPP template is available on our website at: [http://tdec.tn.gov/etdec/DownloadFile.aspx?row\\_id=CN-1249](http://tdec.tn.gov/etdec/DownloadFile.aspx?row_id=CN-1249).

Form CN-1249 is not appropriate if significant grading of the lot or lots is necessary.

#### 1.4.3. Permit Application Fee

The permit application fee should accompany the applicant's NOI form. The fee is based on the total acreage planned to be disturbed by an entire construction project for which the applicant is requesting coverage, including any associated

construction support activities (see Section 1.2.2). The applicant may present documentation of areas in the project that will not be subject to disturbance at any time during the life of the project and have these areas excluded from the fee calculation.

The application fees shall be as specified in Tennessee Rules, Chapter 0400-40-11. The application will be deemed incomplete until the appropriate application fee is paid in full. Checks for the appropriate fee should be made payable to "Treasurer, State of Tennessee." Electronic payment methods, if made available by the State of Tennessee, are acceptable and are encouraged. The following conditions apply:

- a) If stormwater discharges from the site or acreage to be disturbed was previously authorized by a CGP, but coverage has been since terminated, a primary operator must submit a new application for coverage under the CGP.
- b) A new primary operator seeking subsequent coverage under an actively covered site must submit the subsequent coverage fee to obtain coverage under an active NOC.
- c) Incidental acreage additions up to 10% of the original plan area, but not to exceed a total of 5 acres, and other minor modifications of the original plan do not require separate NOI submittal. These minor additions require submittal of a plan indicating the additional area(s) of disturbance, the total acreage to be disturbed, and the updated SWPPP. An additional fee is required only if the total acreage of disturbance would require a higher fee than originally paid, and then only the difference is due. New acreage disturbances cannot be added as previously disturbed acreage is stabilized, to create a 'rolling' total of disturbance.
- d) Please note that in addition to the application fee, an annual maintenance fee applies per Tennessee Rules, Chapter 0400-40-11-.02(12)(i).

#### 1.4.4. Submittal of Documents to Local Municipalities

Some permittees may discharge stormwater through an NPDES-permitted municipal separate storm sewer system (MS4) who are not exempted in Section

1.4.5. These permittees are encouraged to coordinate with the local MS4 authority prior to submitting an NOI to the division. Permitting status of all permittees covered, or previously covered, under this general permit as well as the most current list of all MS4 permits is available at: <http://tn.gov/environment/article/tdec-dataviewers>.

**1.4.5. Permit Coverage Through a Qualifying Local Program (QLP)**

Coverage equivalent to coverage under this general permit may be obtained from a qualifying local erosion prevention and sediment control MS4 program. A Qualifying Local Program (QLP) is a municipal stormwater program implemented by an MS4 for stormwater discharges associated with construction activity that has been formally approved by the division. More information about Tennessee's QLP program and MS4 participants can be found at: <https://www.tn.gov/environment/permit-permits/water-permits1/npdes-permits1/npdes-stormwater-permitting-program/tennessee-qualifying-local-program.html>.

If a construction site is within the jurisdiction of, and has obtained a notice of coverage from, a QLP, the operator is authorized to discharge stormwater associated with construction activity under this general permit without the submittal of an application to the division. Permitting of stormwater runoff from construction sites from federal or state agencies (e.g., Tennessee Department of Transportation and Tennessee Valley Authority) and the local MS4 program itself will remain solely under the authority of TDEC.

The division may require any operator located within the jurisdiction of a QLP to obtain permit coverage directly from the division. The operator shall be notified in writing by the division that coverage by the QLP is no longer applicable and how to obtain coverage under this permit.

**1.5. NOTICE OF COVERAGE Permit****1.5.1. Tracking Numbers**

Construction sites covered under this permit will be assigned permit tracking numbers in the sequence TNR100001, TNR100002, etc. Permit tracking numbers assigned under a previous construction general permit will be retained. An operator receiving new permit coverage will be assigned a new permit tracking number. Assigning a permit tracking number by the division to a proposed discharge from a construction site does not confirm or imply an authorization to discharge under this permit.

**1.5.2. Notice of Coverage (NOC)**

The NOC is a notice from the division to the primary permittee informing them that the NOI, the SWPPP, and the application fee were received and accepted. The primary permittee is authorized to discharge stormwater associated with construction activity as of the effective date listed on the NOC.



For new operators seeking subsequent coverage under an existing tracking number, the division will not issue a NOC. New operators that notify the division to be added to an existing coverage are covered upon receipt of notification by the division. The permit record reflecting the additional operator will be published on TDEC's DataViewer in the next update.

The division reserves the right to deny coverage to artificial entities (e.g., corporations or partnerships, excluding entities not required to register with the Tennessee Secretary of State) that are not properly registered and in good standing (i.e., listed with an entity status of "active") with the Tennessee Secretary of State, Division of Business Services. The division also reserves the right to issue permit coverage in the correct legal name of the individual or entity seeking coverage, including each general partner of a general partnership in addition to the general partnership.

Alterations to channels or waterbodies (streams, wetlands and/or other waters of the state) that are contained on, traverse through or are adjacent to the construction site are not authorized by this permit. Such alterations may require an Aquatic Resources Alteration Permit (ARAP): <https://www.tn.gov/environment/permit-permits/water-permits1/aquatic-resource-alteration-permit--arap-.html>.

It is the responsibility of the applicant to thoroughly and accurately identify all waterbodies (including wetlands and streams) located on the site and to provide a determination of the water's status.

For channels, this determination must be conducted in accordance with Tennessee's standard operating procedures for hydrologic determinations set forth at Tennessee Rules, Chapter 0400-40-03.05(9). Wetlands determinations must include the submission of a wetland delineation completed utilizing the USACOE 1987 *Wetlands Delineation Manual* and applicable *Regional Supplement*. For the purposes of permitting, the permittee may choose to provide all aquatic features located on the site the protections afforded to streams and wetlands in lieu of conducting hydrologic determinations. ARAPs are independent requirements from CGP coverage and complete applications for ARAPs shall precede NOI submittal. The division reserves the right to delay or withhold issuance of coverage under the CGP in some cases until the appropriate ARAP coverage has been obtained.

**Commented [DG5]:** The draft permit fails to address what happens if the applicant does not "thoroughly and accurately identify all waterbodies (including wetlands and streams) located on the site and to provide a determination of the water's status." TDEC's mapping resources are not complete enough to catch omissions from the office alone. Site visits by TDEC must be required before approving SWPPs and CGP.



**Tennessee General NPDES Permit No. TNR100000**  
**Stormwater Discharges from Construction Activities**

The treatment and disposal of wastewater (e.g., sanitary, commercial or industrial wastewater) generated during and after the construction must be also addressed prior to issuance of the NOC. The NOC may be delayed until adequate wastewater treatment is identified and accompanying disposal permits are issued.

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**PART 2**

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**2. CONSTRUCTION SITE OPERATORS****2.1. TYPES OF OPERATORS****2.1.1. Owner/Developer**

An owner or developer of a project is a primary permittee. This person has operational or design control over construction plans and specifications, including the ability to make modifications to those plans and specifications. This person may include, but is not limited to, a developer, landowner, realtor, commercial builder, homebuilder, etc. This person may be an individual, a corporate entity, or a governmental entity. An owner's or developer's responsibility to comply with requirements of this permit extends until permit coverage is terminated in accordance with requirements of Part 9.

The site-wide permittee is the first primary permittee to apply for coverage at the site. There may be other primary permittees for a project, but there is only one site-wide permittee. Where there are multiple operators associated with the same project, all operators are required to obtain permit coverage. Once covered by a permit, all such operators are to be considered as co-permittees if their involvement in the construction activities affects the same project site and are held jointly and severally responsible for complying with the permit.

**2.1.2. Commercial Builders**

A commercial builder can be a primary or secondary permittee at a construction site.

A commercial builder who purchases one or more lots from a primary permittee for the purpose of constructing and selling a structure<sup>4</sup> and has design or operational control over construction plans and specifications for that portion of the site, or is hired by an end user, such as a lot owner who may not be a permittee, must obtain coverage in one of the following ways:

- a) The site-wide permittee may transfer coverage to the commercial builder, for the entire site or just the acreage/lots the builder has purchased;

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<sup>4</sup> e.g., residential house, non-residential structure, commercial building, industrial facility, etc.

- b) The commercial builder may submit a new NOI for the acreage purchased, following requirements in Section 3.1.4; or
- c) The commercial builder may be hired by the primary permittee or a lot owner to build a structure, or by mutual agreement build on the site under the existing coverage of the site-wide permittee. In this case, the commercial builder signs the primary permittee's NOI and SWPPP as a contractor (see Section 2.1.3) and is considered a secondary permittee.

### 2.1.3. Contractors

A contractor is considered a secondary permittee. This person has day-to-day operational control of the activities necessary to ensure compliance with the SWPPP or other permit conditions (e.g., the contractor is authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions). A contractor may be:

- a general contractor
- a grading contractor
- an erosion control contractor
- a sub-contractor responsible for land disturbing activities or erosion prevention and sediment control (EPSC) implementation and maintenance
- a commercial builder hired by the primary permittee.

The contractor may need to include in their contract with the party that hired them specific details for the contractor's responsibilities concerning EPSC measures. This includes the ability of the contractor to make EPSC modifications. The contractor should sign the NOI and SWPPP associated with the construction project at which they will be an operator, and submit an NOI to the division indicating their intent to be added to the existing site coverage as an operator.

## 2.2. RESPONSIBILITIES OF OPERATORS

A permittee may meet one or more of the operational control components in the definition of "operator" found in Subpart 2.1. Either Section 2.2.1 or 2.2.2, or both, will apply depending on the type of operational control exerted by an individual permittee.

**2.2.1. Permittees with Design Control**

Permittees with operational control over construction plans and specifications at the construction site, including the ability to make modifications to those plans and specifications, must ensure that:

- a) the project specifications meet the minimum requirements of Part 5 (stormwater pollution prevention plan - SWPPP) and all other applicable conditions;
- b) the SWPPP indicates the areas of the project where they have operational control;
- c) all other permittees implementing and maintaining portions of the SWPPP impacted by any changes made to the plan are notified of such modifications in a timely manner;
- d) all common BMPs (i.e., sediment treatment basin and drainage structures) necessary for the prevention of erosion or control of sediment are maintained and effective until all construction is complete and all disturbed areas in the entire project are stabilized, unless permit coverage has been obtained and responsibility has been taken over by a new primary permittee; and
- e) all operators on the site have permit coverage, if required, and are complying with the SWPPP.

If parties with day-to-day operational control of the construction site have not been identified at the time the comprehensive SWPPP is initially developed, the permittee with operational control shall be considered to be the responsible person until a supplemental NOI is submitted identifying the new operators (see Section 3.1.4). These new operators (e.g., general contractor, utilities contractors, sub-contractors, erosion control contractors, hired commercial builders) are considered secondary permittees. The SWPPP must be updated to reflect the addition of new operators.

**2.2.2. Permittees with Day-to-Day Operational Control**

Permittees with day-to-day operational control of the activities necessary to ensure compliance with the SWPPP or other permit conditions must ensure that:

- a) the SWPPP for portions of the project where they are operators meets the requirements of Part 5 and identifies the parties responsible for implementing the control measures identified in the plan;
- b) the SWPPP indicates areas of the project where they have operational control over day-to-day activities; and

- c) measures in the SWPPP are adequate to prevent soil erosion and control any sediment that may result from their earth disturbing activity.

Permittees with operational control over only a portion of a larger construction project are responsible for compliance with all applicable terms and conditions of this permit as it relates to their activities on their portion of the construction site. This includes, but is not limited to, implementation of Best Management Practices (BMPs) and other controls required by the SWPPP. Permittees shall ensure either directly or through coordination with other permittees, that their activities do not render another person's pollution control ineffective. All permittees must implement their portions of a comprehensive SWPPP.



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## **PART 3**

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### **3. NOTICE OF INTENT (NOI) REQUIREMENTS**

#### **3.1. NOI SUBMITTAL**

##### **3.1.1. Who Must Submit an NOI?**

All site operators must submit an NOI form. For the purpose of this permit and in the context of stormwater associated with construction activity, an “operator” means any person associated with a construction project who meets either or both of the following two criteria:

- a) The person has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications. This person is considered the primary permittee and is typically:
  - the owner or developer of the project,
  - the owner or developer of a portion of the project (e.g., subsequent builder), or
  - the person who is the current owner of the construction site.
- b) The person has day-to-day operational control of the activities necessary to ensure compliance with the SWPPP or other permit conditions. This person is typically a contractor, or a commercial builder hired by the primary permittee, and is considered a secondary permittee.

##### **3.1.2. Existing Sites**

An operator presently permitted under the 2016 construction general permit shall be granted coverage under this new general permit. Coverage will be extended automatically without notification to the division or an additional fee being assessed. A modified SWPPP and a corresponding fee must be submitted by the permittee if needed to come into compliance with the requirements of the new permit. If an operator does not wish to be continued under the new general permit, they may terminate coverage (Section 9.1). If a site with terminated coverage is unstable or if construction continues, a new NOI, SWPPP and application fee must be submitted.

##### **3.1.3. New Sites or New Phases of Existing Sites**

Except as provided in Section 3.1.4, operators must submit a complete NOI, SWPPP and an application fee in accordance with the requirements described in Subpart 1.4. The complete application should be submitted at least 30 days

prior to commencement of construction activities. The permittee is authorized to discharge stormwater associated with construction activity as of the effective date listed on the NOC. The land disturbing activities shall not start until a NOC is prepared and written approval by the division staff is obtained according to Subpart 1.5.

#### 3.1.4. New Operators

New operators proposing to conduct construction activities at a site with existing coverage must submit a supplemental NOI. The supplemental NOI should be submitted prior to the new operator commencing work at the site. The supplemental NOI must reference the project name and tracking number assigned to the primary permittee's NOI. The NOI may not need to be submitted immediately upon assuming operational control if the portion of the site controlled by the new operator is inactive and all the previously disturbed areas are stabilized.

A new operator working as a residential home builder may submit Form CN-1249, the Stormwater Pollution Prevention Plan (SWPPP) for Single Family Residential Homebuilding Sites. This form may be found at: [http://tdec.tn.gov/etdec/DownloadFile.aspx?row\\_id=CN-1249](http://tdec.tn.gov/etdec/DownloadFile.aspx?row_id=CN-1249).

If the primary permittee's company name has changed (but not the site ownership or authorized signators), an updated NOI should be submitted to the division within 30 days of the name change, along with documentation that the name change has been properly registered with the Tennessee Secretary of State, Division of Business Services. If the new operator agrees to comply with an existing comprehensive SWPPP already implemented at the site, a copy of the supplemental or modified SWPPP does not have to be submitted with the NOI.

If the transfer of ownership is due to foreclosure or a permittee filing for bankruptcy proceedings, the new owner (e.g., a lending institution) must obtain permit coverage if the property is inactive but is not stabilized sufficiently. If the property is sufficiently stabilized permit coverage may not be necessary, unless and until construction activity at the site resumes.

#### 3.1.5. Late NOIs

Dischargers are not prohibited from submitting NOIs after construction at their site has already begun. When a late NOI is submitted, and if the division authorizes coverage under this permit, such authorization is only for future discharges. Any

prior, unpermitted, [discharges](#) or permit noncompliances are subject to penalties as described in Section 8.1.2.

### 3.1.6. Who Must Sign the NOI?

All construction site [operators](#) as defined in Subpart 2.1 must sign the [NOI](#) form. Signatory requirements for a [NOI](#) are described in Section 8.7.1. Electronic signatures are deemed to be equivalent to a hardcopy signature. An [NOI](#) that does not bear a valid signature will be deemed incomplete.

## 3.2. FORMAT AND CONTENT OF THE NOI FORM NOI

### 3.2.1. Form

The [NOI](#) form is provided in [Appendix A](#) of this permit. This form and its instructions set forth the required content of the [NOI](#). The [NOI](#) form must be filled in completely. If the [division](#) notifies applicants by mail, E-mail, public notice or by making information available on the world wide web of electronic [NOI](#) forms (see [NPDES Electronic Reporting](#)), the [operators](#) may be required to use those electronic options to submit the [NOI](#) (Section 3.3.2)

Owners, developers and contractors that meet the definition of the [operator](#) in Subpart 2.1 shall apply for permit coverage on the same [NOI](#), if possible. The division may accept separate [NOI](#) forms from different [operators](#) for the same construction site when warranted.

After permit coverage has been granted to the primary permittee, any subsequent [NOI](#) submittals must include the site's previously assigned permit tracking number and the project name. The SWPPP shall be prepared in accordance with Part 5, and must be submitted with the [NOI](#) unless the [NOI](#) is only being submitted to add a secondary permittee to an existing coverage.

### 3.2.2. Construction Site Map

An excerpt (8 ½" by 11" or 11" by 17") from the appropriate 7.5 minute [United States Geological Survey](#) (USGS) topographic map (or other map showing contours) with the proposed construction site centered, must be included with the [NOI](#). The entire proposed construction area must be clearly outlined on the map, with all acreage to be disturbed clearly identified. All outfalls discharging runoff from the property, [streams](#) receiving the [discharge](#), and storm sewer systems conveying the [discharge](#) from outfalls should be clearly identified and marked on the map. [NOIs](#) for [linear projects](#) must specify the location of each end of the construction area and all areas to be disturbed. Commercial builders that

develop separate SWPPPs that cover only their portion of the project shall also submit a site or plat map that clearly indicates the lots for which they are applying for permit coverage, and the location of EPSCs that will be used at each lot (Section 5.5).

### **3.3. WHERE AND HOW TO SUBMIT AN APPLICATION**

#### **3.3.1. Traditional Submittal**

The applicant shall submit the NOI, SWPPP and application fee to the appropriate Environmental Field Office (EFO) for the county where the construction activity is located and where stormwater discharges enters waters of the state. If a site straddles a county line of counties that are in different EFO service areas, the operators shall send the NOI and the application fee to the EFO that provides coverage for the majority of the proposed construction activity.

A list of counties and the corresponding EFOs is provided in Subpart 3.4. The division's Nashville Central Office will serve as a processing office for NOIs submitted by federal or state agencies (e.g., TDOT, TVA and the local MS4 programs).

#### **3.3.2. Submittal Using Electronic Forms**

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

For more information, visit

<https://www.tn.gov/environment/program-areas/wr-water-resources/netdmr-and-electronic-reporting.html>.

**3.4. TDEC ENVIRONMENTAL FIELD OFFICES (EFOS) AND CORRESPONDING COUNTIES**

<u>EFO Name</u>	List of Counties
Chattanooga	Bledsoe, Bradley, Grundy, Hamilton, Marion, McMinn, Meigs, Polk, Rhea, Sequatchie
Columbia	Bedford, Coffee, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Marshall, Maury, Moore, Perry, Wayne
Cookeville	Cannon, Clay, Cumberland, De Kalb, Fentress, Jackson, Macon, Overton, Pickett, Putnam, Smith, Trousdale, Van Buren, Warren, White
Jackson	Benton, Carroll, Chester, Crockett, Decatur, Dyer, Gibson, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, Madison, McNairy, Obion, Weakley
Johnson City	Carter, Greene, Hancock, Hawkins, Johnson, Sullivan, Unicoi, Washington
Knoxville	Anderson, Blount, Campbell, Claiborne, Cocke, Grainger, Hamblen, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier, Union
Memphis	Fayette, Hardeman, Shelby, Tipton
Nashville	Cheatham, Davidson, Dickson, Houston, Humphreys, Montgomery, Robertson, Rutherford, Stewart, Sumner, Williamson, Wilson

TDEC may be reached by telephone at the toll-free number 1-888-891-8332 (TDEC). Local [EFOs](#) may be reached directly when calling this number from the construction site, using a land line.

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**PART 4**

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**4. CONSTRUCTION AND DEVELOPMENT EFFLUENT GUIDELINES****4.1. NON-NUMERIC EFFLUENT LIMITATIONS**

Any point source authorized by this general permit must achieve, at a minimum, the effluent limitations representing the degree of effluent reduction attainable by application of best practicable control technology (BPT) currently available.

**4.1.1. Erosion prevention and sediment controls**

Design, install and maintain effective erosion and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed and maintained to:

- 1.) Control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges;
- 2.) Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points;
- 3.) Minimize the amount of soil exposed during construction activity; 4.) Minimize the disturbance of steep slopes;
- 5.) Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
- 6.) Provide and maintain natural buffers as described in Section 4.1.2, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible;
- 7.) Minimize soil compaction. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted; and
- 8.) Unless infeasible, preserve topsoil. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.

**4.1.2. Water Quality Riparian Buffer Zone Requirements**

The water quality riparian buffer zone requirements in this section apply to all streams and wetlands with available parameters adjacent to construction sites

(for waters with unavailable parameters or Exceptional Tennessee Waters, see Section 6.4.2). A 30-foot natural water quality riparian buffer shall be preserved between such waterbodies and the disturbed areas, to the maximum extent practicable, during construction activities. The water quality riparian buffer is required to protect waters of the state that are not wet weather conveyances as identified using Tennessee's standard operating procedures for hydrologic determinations set forth in Tennessee Rules, Chapter 0400-40-03-.05(9).<sup>5</sup> Because of heavy sediment load associated with construction site runoff, water quality riparian buffers are not primary sediment control measures and should not be relied on as such; the primary purpose of water quality riparian buffers is additional pollutant removal. Stormwater discharges must enter the water quality riparian buffer zone as sheet flow, not as concentrated flow, where site conditions allow. Rehabilitation and enhancement of a natural buffer zone is allowed, if necessary, to improve its effectiveness in protecting waters of the state.

The water quality riparian buffer zone should be preserved between the top of stream bank and the disturbed construction area. The 30-foot criterion 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 is more than 15 feet at any measured location. If the construction site encompasses both sides of a stream, buffer averaging can be applied to both sides, but must be applied independently.

Construction activities within the water quality riparian buffer zone should be avoided and existing forested buffer areas should be preserved whenever possible. Where it is not practicable to maintain a full water quality riparian buffer, BMPs providing equivalent protection to a receiving stream as a natural water quality riparian buffer must be used. A justification for use and a design of equivalent BMPs shall be included in the SWPPP. Such equivalent BMPs are expected to be routinely used at construction projects typically located adjacent to surface waters. These projects may include sewer line construction, roadway construction, utility line or equipment installation, greenway construction, construction of a permanent outfall or a velocity dissipating structure.

This requirement does not apply to any valid Aquatic Resources Alteration Permit (ARAP), or equivalent permits issued by federal authorities. Additional buffer zone requirements may be established by the local MS4 program.

<sup>5</sup> If obtaining permit coverage for the first time following the effective date of this permit, 15-foot buffers are also required for any wet weather conveyance identified as waters of the United States by the U.S. Army Corps of Engineers or the Environmental Protection Agency.

**Commented [DG6]:** If a section of silt fence fails, is this now a violation as there is now "concentrated flow?" The draft permit must clarify this issue.



4.1.2.1. Water quality riparian buffer zone exemption based on existing uses

Water quality riparian buffer zones as described in Section 4.1.2 shall not be required in portions of the buffer where certain land uses exist and are to remain in place according to the following:

- a) A use shall be considered existing if it was present within the buffer zone as of the date of the Notice of Intent for coverage under the construction general permit. Existing uses may include buildings, parking lots, roadways, utility lines and on-site sanitary sewage systems. Only the portion of the buffer zone that contains the footprint of the existing land use is exempt from buffer zones. Activities necessary to maintain uses are allowed provided that no additional vegetation is removed from the buffer zone.
- b) If an area with an existing land use is proposed to be converted to another use or the impervious surfaces located within the buffer area are being removed, buffer zone requirements shall apply.

**Commented [DG7]:** This section of the draft permit must be clarified. If the applicant is going to tear down a shopping center and put in condominiums, is it exempted if the building footprint remains unchanged? Or because this is a change of use, does the exemption not apply? What if the parking lot is in the buffer? Since it's still a parking lot, though now for condominiums, does the exemption apply?

**Commented [DG8]:** This would suggest that changing the shopping center to condominiums would require the removal of the parking lot because the land use has changed. Which is it?

4.1.2.2. Pre-approved sites

Construction activity at sites that were pre-approved prior to February 1, 2010, is exempt from the buffer requirements of Section 4.1.2. Evidence of pre-approval for highway projects shall be a final right-of-way plan; and, for other construction projects, the final design drawings with attached written and dated approval by the local, state or federal agency with authority to approve such design drawings for construction.

4.1.3. **Dewatering**

Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls. Appropriate controls may include weir tanks, dewatering tanks, gravity bag filters, sand media particulate filters, pressurized bag filters, cartridge filters or other control units providing the level of treatment necessary to comply with permit requirements.

4.1.4. **Pollution Prevention Measures**

The permittee must design, install, implement and maintain effective pollution prevention measures to minimize the discharge of sediment and other pollutants.

At a minimum, such measures must be designed, installed, implemented and maintained to:

- a) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water and other wash waters not containing soaps or solvents. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
- b) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater; and
- c) Minimize the discharge of pollutants from spills and leaks, and implement chemical spill and leak prevention and response procedures.

**Commented [DG9]:** The draft permit should address how you minimize the exposure of landscaping materials to precipitation.

#### 4.1.5. Prohibited Discharges

The following discharges are prohibited:

- a) Wastewater from washout of concrete, unless managed by an appropriate control.
- b) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials.
- c) Fuels, oils or other potential pollutants used in vehicle and equipment operation and maintenance.
- d) Soaps or solvents used in vehicle and equipment washing.

## PART 5

### 5. STORMWATER POLLUTION PREVENTION PLAN (SWPPP) REQUIREMENTS

#### 5.1. THE GENERAL PURPOSE OF THE SWPPP

A SWPPP must be prepared and submitted along with the [NOI](#) as required in Section 1.4.2. The primary permittee must implement the SWPPP and maintain effective Best Management Practices ([BMPs](#)) from commencement of construction activity until final stabilization is complete, or until the permittee does not have design or operational control of any portion of the construction site. If a SWPPP submittal contains contradictory or ambiguous information, [the division](#) will hold the permittee to the most stringent interpretation of the information submitted. Requirements for termination of site coverage are provided in Part 9.

A site-specific SWPPP must be developed for each construction project or site covered by this permit. The design, inspection and maintenance of [BMPs](#) described in the SWPPP must be prepared in accordance with good engineering practices. At a minimum, [BMPs](#) shall be consistent with the recommendations contained in the current edition of the [Tennessee Erosion and Sediment Control Handbook \(the handbook\)](#).

Once a definable area has been [finally stabilized](#) as described in Subsection 5.5.3.4, the permittee may identify this area on the SWPPP. No further SWPPP or inspection requirements apply to that portion of the site (e.g., earth-disturbing activities around one of three buildings in a complex are done and the area is finally stabilized, one mile of a roadway or pipeline project is done and finally stabilized, etc.).

For more effective implementation of [BMPs](#), a cooperative effort by the different [operators](#) at a site to prepare and participate in a comprehensive SWPPP is expected. Primary permittees at a site may develop separate SWPPPs that cover only their portion of the project. In instances where there is more than one SWPPP for a site, the permittees must ensure the [stormwater](#) discharge controls and other measures are compatible with one another and do not prevent another [operator](#) from complying with permit conditions. The comprehensive SWPPP developed and submitted by the primary permittee must assign responsibilities to secondary permittees and coordinate all [BMPs](#) at the construction site. Assignment and coordination can be done by name or by job title.

## 5.2. QUALIFICATION REQUIREMENTS

For sites greater than five acres of disturbance, the narrative portion of the SWPPP shall be prepared by a registered engineer or landscape architect, a Certified Professional in Erosion and Sediment Control (CPESC) or a person that successfully completed the "Level II Design Principles for Erosion Prevention and Sediment Control for Construction Sites" course.

For sites less than or equal to five acres of disturbance, these qualification requirements do not apply, and the division provides the following optional templates:

- Form CN-1249, the Stormwater Pollution Prevention Plan (SWPPP) for Single Family Residential Homebuilding Sites. This SWPPP template is available at: [http://tdec.tn.gov/etdec/DownloadFile.aspx?row\\_id=CN-1249](http://tdec.tn.gov/etdec/DownloadFile.aspx?row_id=CN-1249). Form CN-1249 is not appropriate if significant grading of the lot or lots is necessary.
- SWPPP Template for Sites Not Requiring Engineer Design from the DWR – NR – G – 02 - Construction Stormwater – 05172019 Guidance regarding construction stormwater general permit coverage involving sites with Non-Engineer Design SWPPPs – Attachment A: <https://www.tn.gov/content/dam/tn/environment/water/policy-and-guidance/dwr-nr-g-02-cgp-non-engineering-swppp-final-051719.pdf>.

Plans and specifications for any building or structure, changes in topography and drainage, including the design or modification of sediment basins or other sediment controls involving structural, hydraulic, hydrologic or other engineering calculations shall be prepared by a professional engineer or landscape architect registered in Tennessee and signed and sealed in accordance with the Tennessee Code Annotated, Title 62, Chapter 2 and the rules of the Tennessee Board of Architectural and Engineering Examiners. Engineering design of sediment basins or equivalent sediment controls must be provided for construction sites involving drainage to an outfall totaling 10 or more acres (Subsection 5.5.3.5) or 5 or more acres if draining to waters with unavailable parameters or Exceptional Tennessee Waters (Section 6.4.1).

**5.3. SWPPP PREPARATION AND COMPLIANCE****5.3.1. Existing Sites**

Operators of an existing site, presently permitted under the division's 2016 construction general permit, shall maintain full compliance with the current SWPPP. The current SWPPP should be modified, if necessary, to meet requirements of this new general permit, and the SWPPP changes implemented as soon as practicable but no later than three months following the new permit effective date. The permittee shall make the updated SWPPP available for the division's review upon request.

**5.3.2. New Sites or New Phases of Existing Sites**

For construction stormwater discharges not authorized under an NPDES permit as of the effective date of this permit, a SWPPP that meets the requirements of Part 5 of this permit shall be prepared and submitted along with the NOI and an appropriate fee for coverage under this permit.

**5.3.3. Signature Requirements**

The SWPPP shall be signed by the operators in accordance with Subpart 8.7, and if applicable, certified according to requirements in Section 5.2. Electronic signatures are deemed equivalent to original signatures. A SWPPP that does not bear a valid signature will be deemed incomplete.

**5.3.4. SWPPP Availability**

A copy of the current version of the SWPPP shall be retained on-site at the location which generates the stormwater discharge in accordance with Part 7 of this permit. If the site is inactive or does not have an onsite location adequate to store the SWPPP, the location of the SWPPP, along with a contact phone number, shall be posted on-site. If the SWPPP is located off-site, reasonable local access to the plan during normal working hours must be provided.

The permittee shall make the current SWPPP and inspection reports available upon request to the director; the local agency approving erosion prevention and sediment control plans, grading plans, land disturbance plans or stormwater management plans; or the operator of an MS4.

**5.4. KEEPING SWPPP CURRENT****5.4.1. SWPPP Modifications**

The permittee must modify, update and re-sign the SWPPP if any of the following conditions apply:

- a) Whenever there is a change in the scope of the project that would be expected to have a significant effect on the discharge of pollutants to the waters of the state and which has not otherwise been addressed in the SWPPP.
- b) Whenever there is a change in chemical treatment methods, including the use of different treatment chemical, different dosage or application rate or different area of application.
- c) Whenever inspections or investigations by site operators or local, state or federal officials indicate the SWPPP is proving ineffective in eliminating or significantly minimizing pollutants from sources identified under Section 5.5.2, or is otherwise not achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activity. Where local, state or federal officials determine that the SWPPP is ineffective in eliminating or significantly minimizing pollutant sources, a copy of any correspondence to that effect must be retained in the SWPPP.
- d) Whenever any new operator (typically a secondary permittee) who will implement a measure of the SWPPP must be identified (see Subpart 3.1.1 for further description of which operators must be identified).
- e) Whenever it is necessary to include water quality protection measures as required by the applicable wildlife management agency intended to prevent a negative impact to legally protected state or federally listed fauna or flora (or species proposed for such protection – Subpart 1.3). Amendments to the SWPPP may be reviewed by the division, a local MS4, the EPA, or an authorized regulatory agency.
- f) Whenever a Total Maximum Daily Load (TMDL) is developed for the receiving waters for a pollutant of concern (e.g., siltation). A list of Tennessee's TMDLs can be found at: <https://www.tn.gov/environment/program-areas/wr-water-resources/watershed-stewardship/tennessee-s-total-maximum-daily-load--tmdl--program.html>.

**5.5. COMPONENTS OF THE SWPPP**

The SWPPP must:

- a) identify all potential sources of pollutants likely to affect the quality of stormwater discharges from the construction site;
- b) describe practices to be used to reduce pollutants in stormwater discharges from the construction site; and
- c) assure compliance with the terms and conditions of this permit.

The SWPPP shall include the items described in Sections 5.5.1, 5.5.2 and 5.5.3.

**5.5.1. SWPPP Narrative**

Each SWPPP shall provide a description of pollutant sources and other information as indicated below:

- a) A description of all construction activities at the site, including the intended sequence of activities which disturb soils for major portions of the site (e.g., grubbing, excavation, grading, utilities and infrastructure installation).
- b) Estimates of the total area of the site and the total area that is expected to be disturbed by excavation, grading, filling or other construction activities.
- c) A description of the topography of the site, including an estimation percent slope and drainage area (acres) serving each outfall. Drainage area estimates should include off-site drainage, if applicable.
- d) Hydric soils must be clearly identified.
- e) A description of how the runoff will be handled to prevent erosion at the permanent outfall and receiving stream.
- f) An erosion prevention and sediment control (EPSC) plan with the proposed construction area clearly outlined. The plan should indicate the boundaries of the permitted area, drainage patterns, approximate slopes anticipated after major grading activities, areas of soil disturbance, an outline of areas which are not to be disturbed, the location of major structural and nonstructural controls identified in the SWPPP, the location of areas where stabilization practices are expected to occur, surface waters including wetlands and sinkholes, and identification on the erosion control plan of outfall points intended for coverage. The erosion control plan must meet requirements stated in Section 5.5.3.
- g) A description of any discharge associated with industrial activity other than construction stormwater that originates on site and the location of that activity and its permit number.



- h) Identification of any stream or wetland on or adjacent to the project, a description of any anticipated alteration of these waters and the permit number or the tracking number of the Aquatic Resources Alteration Permit (ARAP) or Section 401 Certification issued for the alteration.
- i) The name of the receiving waters (this does not include wet weather conveyances connecting the site discharge to the receiving stream).
- j) Identification if those receiving waters have unavailable parameters for siltation.<sup>6</sup>
- k) Identification if those receiving waters are Exceptional Tennessee Waters.<sup>7</sup>
- l) If applicable, clearly identify and outline the buffer zones established to protect waters of the state located within the boundaries of the project.
- m) A description of the construction phasing for projects of more than 50 acres (Subsection 5.5.3.2).
- n) The timing of the planting of the vegetation cover must be discussed in the SWPPP if permanent or temporary vegetation is to be used as a control measure. Planting cover vegetation during winter months or dry months should be avoided.

#### 5.5.2. SWPPP and EPSC plans

The SWPPP must include EPSC plans (Section 5.5.3) showing the approximate location of each control measure and a description of when the measure will be implemented during the construction process (e.g., prior to the start of earth disturbance, as the slopes are altered and after major grading is finished). The different stages of construction and the EPSC measures that will be utilized during each stage should be depicted on multiple plan sheets as described below..

Three separate EPSC plan sheets should be developed for most sites, with the exception of single-lot homes or commercial lots of less than or equal to 5 acres, for which a single plan sheet may be sufficient:

- a. The first plan sheet will address the EPSC measures necessary to manage stormwater runoff, erosion and sediment during the initial land disturbance (grading) stage.

<sup>6</sup> DWR Construction Stormwater Permitting Map Viewer can be found at: <https://tdeconline.tn.gov/dwrcgp/>

<sup>7</sup> List of Exceptional Waters and ORNWs in Tennessee can be found at: [https://tdec.tn.gov:8090/pls/enf\\_reports/f?p=9034:34304](https://tdec.tn.gov:8090/pls/enf_reports/f?p=9034:34304;); corresponding map viewer is under development

- b. A second plan sheet will address the EPSC measures necessary to manage stormwater runoff, erosion and sediment during any interim grading and construction stages.
- c. The third plan sheet will address the EPSC measures necessary to manage stormwater runoff, erosion and sediment during the final grading stage while final site stabilization is being achieved.

The description and implementation of controls shall address the following minimum components, as described in Sections 5.5.3, 5.5.3.6 and 5.5.3.7. Additional controls may be necessary to comply with Section 6.3.2.

### 5.5.3. Erosion Prevention and Sediment Controls (EPSC)

#### 5.5.3.1. General criteria and requirements

- a) The erosion prevention controls shall be designed to eliminate to the maximum extent practicable the dislodging and suspension of soil in water. Sediment controls shall be designed to retain mobilized sediment on site to the maximum extent practicable.
- b) All control measures must be properly selected, installed and maintained in accordance with the manufacturer's specifications and/or good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control.
- c) If sediment escapes the permitted area, off-site accumulations that have not reached a stream must be removed at a frequency sufficient to minimize off- site impacts (e.g., sediment that has escaped a construction site and collected in a street must be removed so that it does not subsequently wash into storm sewers and streams during the next rain or so that it does not pose a safety hazard to users of public streets). Permittees shall not initiate remediation or restoration of a stream without receiving prior authorization from the division. This permit does not authorize access to private property. Arrangements concerning the removal of sediment on adjoining property must be settled by the permittee and the adjoining landowner.
- d) Sediment must be removed from sediment traps, silt fences, sediment basins and other sediment controls when design capacity has been reduced by 50%.
- e) Erodible material storage areas (e.g., overburden and stockpiles of soil) and borrow pits that are used primarily for the permitted project and are contiguous to the site are considered a part of the site and shall be identified on the NOI, addressed in the SWPPP and included in the fee calculation. TDOT projects shall be addressed in the Waste and Borrow Manual per the Statewide Stormwater Management Plan (SSWMP).

**Commented [DG10]:** This is a significant avenue for evasion of / from the draft permit's requirements. It should be clarified to state that no method meets the terms of this permit if the resulting discharge causes more than de minimis pollution of TN waters.

- f) Pre-construction vegetative ground cover shall not be destroyed, removed or disturbed more than 14 days prior to commencement of grading or earth moving activities unless the area is subsequently temporarily or permanently stabilized.
- g) Clearing and grubbing must be held to the minimum necessary for grading and equipment operation. Existing vegetation at the site should be preserved to the maximum extent practicable. The limits of soil disturbance shall be clearly outlined in the SWPPP and the areas to remain undisturbed clearly indicated on the site, with the methods to be used to mark these areas described in the SWPPP.
- h) Construction must be sequenced to minimize the exposure time of graded or denuded areas.
- i) EPSC measures must be in place and functional before earth moving operations begin and must be constructed and maintained throughout the construction period stages as appropriate. Temporary measures may be removed at the beginning of the workday but must be replaced at the end of the workday.
- j) Off-site vehicle tracking of sediment and the generation of dust shall be minimized. A stabilized construction access shall be described and implemented to reduce the tracking of mud and dirt onto public roads by construction vehicles.

#### 5.5.3.2. Construction phasing

Construction phasing is recommended on all projects regardless of size as an effective practice for minimizing erosion and limiting sedimentation. Construction should be phased to keep the total disturbed area less than 50 acres at any one time. This includes off-site borrow or disposal areas that meet the conditions of Section 1.2.2. Areas where construction is completed must be stabilized within 14 days (Subsection 5.5.3.2).

#### 5.5.3.3. Projects Exceeding 50 acres of Disturbance

On projects where the permittee chooses to disturb more than 50 acres at one time, the following additional requirements shall apply:

- a) The permittee shall notify the division immediately if more than 50 acres of disturbance is planned.
- b) Operator inspections as described in Subsection 5.5.3.8 shall be conducted twice per week and following any rainfall event of more than 0.5 inches in 24 hours, rather than weekly.

- c) Site assessments shall be conducted at each outfall draining 10 or more acres (Section 5.5.3.5) or 5 or more acres if draining to waters with unavailable parameters or Exceptional Tennessee Waters (Section 6.4.1). The site assessment is a documented site inspection conducted by a qualified individual to verify the installation, functionality and performance of the EPSC measures described in the SWPPP. Site assessments shall cover the entire disturbed area and occur within 30 days of construction commencing at each portion of the site that drains the qualifying acreage. The site assessment shall be performed by individuals with one or more of the following qualifications:
  - 1. A licensed professional engineer or landscape architect;
  - 2. A Certified Professional in Erosion and Sediment Control (CPESC); or
  - 3. A person who has successfully completed the "Level II Design Principles for Erosion Prevention and Sediment Control for Construction Sites".
- d) Data describing the erodibility of soils on site, how the soil type erodibility will dictate the needed control measures and how the soil may affect the expected quality of runoff from the site shall be provided. The data may be referenced or summarized. Hydric soils must be clearly identified.
- e) A geospatial file shall be submitted to the division which identifies the project area boundaries as a polygon feature. This polygon feature can be submitted in any common data format (e.g., .kml file, shapefile, feature layer, etc.) that is compatible with common geographic systems software (e.g., Google Earth, ESRI, QGIS, etc.). The file name should reflect the same site name provided on the permit application, or a permit tracking number, if available.

**Commented [DG11]:** The draft permit should specifically state that TDEC personnel shall always have access to the site for inspection purposes.

#### 5.5.3.4. Stabilization practices

The SWPPP shall include a description of temporary and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved when possible. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees and the preservation of mature vegetation. When seasonal or climate conditions would prevent timely establishment of vegetation other stabilization practices must be utilized. Use of impervious surfaces for final stabilization in lieu of a permanent vegetative cover should be avoided where practicable. No stabilization control measures or EPSC measures are to be

installed in a stream without obtaining a Section 404 permit and an Aquatic Resources Alteration Permit (ARAP).

Stabilization measures should be initiated as soon as possible in portions of the site where construction activities have temporarily or permanently ceased. Temporary or permanent soil stabilization at the construction site must be completed within approximately 2 weeks after the construction activity in that portion of the site has temporarily or permanently ceased. In the following situations, temporary stabilization measures are not required:

- a) Where the initiation of stabilization measures is precluded by snow cover or frozen ground conditions or adverse soggy ground conditions, stabilization measures shall be initiated as soon as practicable.
- b) Where construction activity on a portion of the site is temporarily ceased, but soil disturbing activities is planned to resume within 2-3 weeks.
- c) In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures such as properly anchored mulch, soil binders or matting must be employed.

Steep slopes shall be stabilized within approximately one week after construction activity on the slope has temporarily or permanently ceased.

Permanent stabilization with perennial vegetation (using native herbaceous and woody plants where practicable) or other permanently stable, non-eroding surface shall replace any temporary measures as soon as practicable. Unpacked gravel containing fines (silt and clay sized particles) or crusher runs will not be considered a non-eroding surface. On sites where disturbed acreage will be returned to its prior agricultural use (i.e. row crops, pasture) normal agricultural practices can be substituted.

#### 5.5.3.5. Structural practices

The SWPPP shall include a description of structural practices utilized to divert flows from exposed soils, store flows or otherwise limit runoff and discharge of pollutants from exposed areas of the site. Such practices may include, but are not limited to silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions and temporary or permanent sediment basins. Structural controls shall not be placed in streams.

or wetlands except as authorized by a section 404 permit and/or Aquatic Resources Alteration Permit (ARAP).

EPSC measures shall be designed to minimize erosion and maximize sediment removal resulting from a 2-year, 24-hour storm (the design storm). The design of erosion prevention and sediment controls must adhere to good engineering practices. The drainage area recommendations and treatment design specifications are provided in the Tennessee Erosion and Sediment Control Handbook. Chemical treatment of the stormwater runoff may be necessary to minimize the amount of sediment being discharged when clay and other fine particle soils or highly erodible soils are present at the construction site. However, the use of cationic polymers for treatment is prohibited.

For an outfall that receives drainage from 10 or more acres, a minimum sediment basin volume that will provide treatment for a calculated volume of runoff from a 2-year, 24-hour storm and runoff from each acre drained, or equivalent control measures as specified in the Tennessee Erosion and Sediment Control Handbook, shall be provided until final stabilization of the site. A drainage area of 10 or more acres includes disturbed and undisturbed portions of the site and areas adjacent to the site, all draining through the common outfall. Where an equivalent control measure is substituted for a sediment basin, the equivalency (with respect to sediment removal) must be justified to the division. Runoff from any undisturbed acreage should be diverted around the disturbed area and the sediment basin. Diverted runoff can be omitted from the volume calculation. Sediment storage expected from the disturbed areas must be included. Discharges from basins and impoundments shall utilize outlet structures that only withdraw water from near the surface of the basin or impoundment, unless infeasible.

All calculations related to drainage areas, runoff coefficients and basin volumes must be provided in the SWPPP. The discharge structure from a sediment basin must be designed to retain sediment during the lower flows. Muddy water to be pumped from excavation and work areas must be held in settling basins, filtered or chemically treated prior to its discharge into surface waters. Water must be discharged through a pipe, grassed or lined channel or other equivalent means so that the discharge does not cause erosion and sedimentation. Discharged water must not cause an objectionable color contrast with the receiving stream.

Sediment structures treating drainage areas in excess of 25 acres require an alternative design procedure that accurately defines the site hydrology, site- specific sediment loading, hydraulics of the site, and adheres to all Tennessee

**Commented [DG12]:** Using a stream for treating water quality is not permitted under current ARAP rules; therefore, this statement is misleading and must be corrected.

**Commented [DG13]:** The draft permit must, but does not currently, ensure that this new diversion ditch does not itself become a source of erosion.

Erosion and Sediment Control Handbook design recommendations for sediment basins.

Velocity dissipation structures shall be installed if needed to provide for non- erosive discharge velocities to wet weather conveyances or streams.

5.5.3.6. Stormwater management

The following factors must be accounted for in the design of all stormwater controls:

- a) The nature of stormwater runoff and run-on at the site, including factors such as expected flow from impervious surfaces, slopes, and site drainage features. Stormwater controls must be designed to control stormwater volume, velocity, and peak flow rates to minimize discharges of pollutants in stormwater, as well as minimizing channel and streambank erosion at discharge points.
- b) The soil type and range of soil particle sizes expected to be present on the site.

5.5.3.7. Other items needing control

- a) No solid materials, including building materials, shall be placed in waters of the state, except as authorized by a section 404 permit and/or Aquatic Resources Alteration Permit (ARAP). Litter, construction debris and construction chemicals exposed to stormwater shall be picked up prior to storm events or before being carried off the site by wind so that they do not become a pollutant source for stormwater discharges. EPSC materials (e.g., silt fence) should be removed or otherwise prevented from becoming a pollutant source for stormwater discharges.
- b) The SWPPP shall identify and provide the necessary EPSC measures for the installation of any waste disposal system, sanitary sewer or septic system. Permittees must also comply with applicable state and local waste disposal, sanitary sewer or septic system regulations as necessary.
- c) The SWPPP shall include a description of construction and waste materials expected to be stored on-site. The SWPPP shall also include a description of controls used to reduce pollution from materials stored on site. Controls may include storage practices to minimize exposure of the materials to stormwater or spill prevention and response.



5.5.3.8. Inspections

Operators shall ensure proper installation, maintenance, and overall effectiveness of erosion prevention and sediment controls (EPSCs) by performing weekly site inspections. Inspections must verify and document the functionality and performance of the EPSC measures described in the SWPPP. Initial inspections shall also indicate if all EPSCs have been installed as designed in the submitted SWPPP and EPSC plans; and, if not, measures that need to be taken so those EPSCs meet the design specifications in the field SWPPP and EPSC plans.

**Commented [DG14]:** The draft permit must state that the role of TDEC inspectors as enforcement agents.

5.5.3.9. Inspector qualifications

Weekly inspections can be performed by:

- a) a person with a valid certification from the "Level I - Fundamentals of Erosion Prevention and Sediment Control" course,
- b) a licensed professional engineer or landscape architect,
- c) a Certified Professional in Erosion and Sediment Control (CPESC), or
- d) has successfully completed the "Level II - Design Principles for Erosion Prevention and Sediment Control for Construction Sites" course.

An inspector performs and documents the required inspections, paying particular attention to time-sensitive permit requirements, such as stabilization and maintenance activities.

5.5.3.10. Schedule of inspections

- a) Inspections described in paragraphs b, c and d below, shall be performed at least once every calendar week. Inspections shall be performed at least 72 hours apart. Where sites or portions of construction sites have been temporarily stabilized, inspections only have to be conducted once per month until construction activity resumes. Inspection requirements do not apply to definable areas that have been finally stabilized. Changes to the inspection frequency and the justification for such request must be included in the records kept on site. For projects by the Tennessee Department of Transportation (TDOT) and the Tennessee Valley Authority (TVA), such request must be submitted to the division's Nashville Central Office. The division reserves the right to require more frequent inspections if deemed necessary to ensure compliance at a site.
- b) Qualified personnel, as defined in Subsection 5.5.3.9 (provided by the permittee or cooperatively by multiple permittees), shall inspect disturbed areas of the construction site that have not been finally stabilized, areas

- used for storage of materials that are exposed to precipitation, structural control measures, locations where vehicles enter or exit the site and each outfall.
- c) Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the site's drainage system. EPSC measures shall be observed to ensure that they are operating correctly.
  - d) Outfall points shall be inspected to determine whether EPSC measures are effectively preventing sediment discharges off-site or impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations shall be inspected. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.
  - e) Based on the results of the inspection, any inadequate control measures or control measures in disrepair shall be replaced, modified or repaired as necessary, before the next rain event; but in no case more than seven days after the need is identified.
  - f) Based on the results of the inspection, the site description identified in the SWPPP in accordance with Section 5.5.1 and pollution prevention measures identified in the SWPPP in accordance with Section 5.5.3 shall be revised as appropriate. Such revisions shall be made no later than seven days following the inspection. In addition, any modifications to pollution prevention measures shall be implemented as soon as practicable but no later than 14 days following the inspection.
  - g) All inspections shall be documented on the *Construction Stormwater Inspection Certification Form* provided in Appendix C of this permit. An alternative inspection form may be used as long as the form contents and the inspection certification language are equivalent to the division's form and the permittee has obtained a written approval from the division to use the alternative form. The form must contain the printed name and signature of the inspector and the certification must be executed by a person who meets the signatory requirements of Section 8.7.2. Inspection reports must be submitted to the division within 10 days of the request.
  - h) Inspectors shall accurately document site conditions in their inspection reports. Falsifying inspection records, or other documentation; or failure to complete inspection documentation shall result in a violation of this permit and any other applicable acts or rules.
  - i) The initial primary permittee (such as a developer) is no longer required to inspect portions of the site that are covered by a subsequent primary permittee (such as a home builder).

**Commented [DG15]:** The draft permit does not, but must, state how would TDEC know this to be able to utilize its enforcement powers.

5.5.3.11. Pollution prevention measures for non-stormwater discharges

The SWPPP must identify source(s) of all non-stormwater discharge(s) listed in Section 1.2.3 if it is to be combined with stormwater discharges associated with construction activity. The SWPPP shall identify and ensure the implementation of appropriate pollution prevention measures for the non-stormwater components of the discharge. Any non-stormwater must be discharged through stable discharge structures. Estimated volume of the non-stormwater components of the discharge must be included in the design of all impacted control measures.

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**PART 6**

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**6. SPECIAL CONDITIONS, MANAGEMENT PRACTICES, AND OTHER NON- NUMERIC LIMITATIONS****6.1. RELEASES IN EXCESS OF REPORTABLE QUANTITIES**

The discharge of hazardous substances or oil in the stormwater discharges from a facility shall be prevented or minimized in accordance with the applicable SWPPP for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR 117 and 40 CFR 302.

**6.2. SPILLS**

This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

**6.3. DISCHARGE COMPLIANCE WITH STATE WATER QUALITY STANDARDS Violation of water quality standards****6.3.1.**

This permit does not authorize stormwater or other discharges that would cause or contribute to a violation of a state water quality standard (Tennessee State Rules, Chapters 0400-40-03, 0400-40-04). Such discharges constitute a violation of this permit.

Where a discharge is already authorized under this permit and the division determines the discharge to cause or contribute to the violation of applicable state water quality standards, the division will notify the operator of such violations. The permittee shall take all necessary actions to ensure future discharges do not cause or contribute to the violation of a water quality standard and shall document these actions in the SWPPP.

**6.3.2. Discharge quality**

- a) The construction activity shall be carried out in such a manner that will prevent violations of water quality criteria as stated in the Tennessee Rules, Chapter 0400-40-03-.03. This includes, but is not limited to, the prevention of any discharge that causes a condition in which visible solids, bottom deposits or turbidity impair the usefulness of waters of the state for any of the uses designated for that water body by Tennessee Rules, Chapter 0400-40-04. Construction activity carried out in the manner required by

this permit shall be considered in compliance with the Tennessee Rules, Chapter 0400-40-03-.03.

- b) There shall be no distinctly visible solids, scum, foam, oily slick, or the formation of slimes, bottom deposits, or sludge banks of such size or character as may be detrimental to fish and aquatic life.
- c) The stormwater discharge must not contain total suspended solids, turbidity, or color in such amounts or character that will result in any objectionable appearance compared to the turbidity or color of the receiving water, considering the nature and location of the water.
- d) The stormwater discharge shall not contain pollutants in quantities that will be hazardous or otherwise detrimental to humans, livestock, wildlife, plant life, or fish and aquatic life in the receiving stream. This provision includes species covered under Subpart 1.3.
- e) Solids or other materials removed by any sediment control treatment devices must be disposed of in a manner that prevents its entrance into or pollution of any surface or subsurface waters.

#### 6.4. DISCHARGES INTO WATERS WITH UNAVAILABLE PARAMETERS OR EXCEPTIONAL TENNESSEE WATERS

##### 6.4.1. SWPPP/BMP Requirements

- a) Discharges that would cause measurable degradation of waters with unavailable parameters or that would cause more than de minimis degradation of Exceptional Tennessee Waters are not authorized by this permit (Subpart 1.3). To be eligible to obtain and maintain coverage under this permit, the operator must satisfy, at a minimum, the following additional requirements for discharges into waters with unavailable parameters for siltation and for discharges to Exceptional Tennessee Waters<sup>8</sup>. All other provisions of this general permit that apply to receiving waters with available parameters shall also apply.
- b) The SWPPP must certify that EPSC measures used at the site are designed to control stormwater runoff generated by a 5-year, 24-hour storm event (the design storm), at a minimum, either from total rainfall in the designated period or the equivalent intensity as specified on the following website [https://hdsc.nws.noaa.gov/hdsc/pfds/pfds\\_map\\_cont.html](https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html).

<sup>8</sup> or 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.

**Commented [DG16]:** Please explain why this qualifying statement is in a footnote and not in the text itself.

- c) The permittee shall perform inspections described in Section 5.5.3.8 at least twice every calendar week. Inspections shall be performed at least 72 hours apart.
- d) If the division finds that an operator is contributing to the impairment of a receiving stream despite complying with the SWPPP, the operator will be notified by the division in writing that the discharge is no longer eligible for coverage under the general permit. The operator may update the SWPPP and implement the necessary changes designed to eliminate further impairment of the receiving stream. If the permittee does not implement the SWPPP changes within seven days of receipt of notification, the permittee will be notified in writing that continued discharges must be covered by an individual permit (Subpart 8.11). To obtain the individual permit, the operator must file an individual permit application. The project must be stabilized immediately and remain stable until the SWPPP is updated and the individual permit is issued. Only discharges from earth disturbing activities necessary for stabilization are authorized to continue until the individual permit is issued.
- e) For an on-site outfall in a drainage area totaling five or more acres, a minimum sediment basin volume that will provide treatment for a calculated volume of runoff from a 5-year, 24-hour storm and runoff from each acre drained; or equivalent control measures as specified in the Tennessee Erosion and Sediment Control Handbook, shall be provided until final stabilization of the site.
- f) For an on-site outfall in a drainage area totaling 3.5 - 4.9 acres, a minimum sediment trap volume or engineering equivalent that will provide treatment for a calculated volume of runoff from a 5-year, 24-hour storm and runoff from each acre drained, is required until final stabilization of the site. A drainage area of 3.5 - 4.9 acres includes both disturbed and undisturbed portions of the site or areas adjacent to the site, all draining through the common outfall.

**Commented [DG17]:** This statement is nonsensical and must be corrected. If TDEC really means this then the use of "best methods practicable" has no meaning. If your best "practical" method will still result in pollution, then the SWPP and the GCP should be rejected. To promise the permittee that the best "practical" method will be good enough to get permitted is disingenuous and likely to create adverse reactions. Additionally, the draft permit does not, but must, specify TDEC would know. There is no requirement that the permittee notify TDEC if the control measures are not working. If they are acting in good faith, they are to modify their control measures and notify TDEC that they have modified their controls. The DO NOT have to notify TDEC is measures are failing so that TDEC could make the assessment that the project is "contribution to the impairment of the receiving stream"

#### 6.4.2. Water Quality Riparian Buffer Zone Requirements

Sites that contain, or are adjacent to, receiving waters with unavailable parameters for siltation or designated as Exceptional Tennessee Waters shall preserve a 60-foot natural water quality riparian buffer zone adjacent to the receiving stream. All other buffer zone requirements as stated in Section 4.1.2 will apply.

The natural water quality riparian buffer zone should be preserved between the top of stream bank and the disturbed construction area. The 60-foot criterion for

the width of the buffer can be established on an average width basis at a project, as long as the minimum width of the buffer is more than 30 feet at any measured location. If the construction site encompasses both sides of a stream, buffer averaging can be applied to both sides, but must be applied independently.

This requirement does not apply to an area that is being altered under the authorization of a valid Aquatic Resources Alteration Permit (ARAP), or equivalent permits issued by federal authorities. Additional natural buffer zone requirements may be established by the local MS4 program.

**Commented [DG18]:** This section of the draft permit must be clarified – its meaning is unclear. Does TDEC mean to say that if you move or alter a stream, you get rewarded by not having to honor the buffer requirements? Or does TDEC mean to say that since you have a permit to alter the stream, they would expect you to be working in the buffer and therefore the prohibition against working in the buffer is over-ridden by the ARAP permit. If that's what they mean they should be explicit that a) the exemption only applies for the section of stream covered by the permit (an ARAP for a stream crossing does not exempt the whole length of stream) and b) while the ARAP permit allows work within the buffer, it does not change the prohibition against building any new structures within the buffer zone.

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## **PART 7**

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### **7. RETENTION, ACCESSIBILITY AND SUBMISSION OF RECORDS**

#### **7.1. DOCUMENTS**

The primary permittee shall retain copies of SWPPPs, reports required by this permit, records of all data used to complete the [NOI](#) and the [NOT](#) for a period of at least three years from the date the [NOT](#) is submitted. This period may be extended by written request of the [director](#).

#### **7.2. ACCESSIBILITY AND RETENTION OF RECORDS**

The permittee shall retain a copy of the SWPPP and a copy of the permit at the construction site (or other location accessible to [the division](#)) from the date construction commences to the date of termination of permit coverage. Permittees with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location onsite for the use of all [operators](#) and those identified as having responsibilities under the plan whenever they are on the construction site.

##### **7.2.1. Posting Information at the Construction Site**

A notice shall be posted near the main entrance of the construction site visible to the public with the following information:

- a) a copy of the NOC with the NPDES permit tracking number for the construction project;
- b) a name or company name; E-mail address (if available); telephone number and address of the project site owner/[operator](#) or a local contact person; and
- c) the location of the SWPPP (Subpart 7.2).

The notice must be maintained in a legible condition. The notice shall be posted in a local public building if posting this information near a main entrance is infeasible due to safety concerns or if the site is not accessible to the public. If the construction project is a [linear construction project](#) (e.g., pipeline or highway), the notice must be placed in a publicly accessible location near where construction is actively underway and moved as necessary. This permit does not provide the public with any right to trespass on a construction site for any reason, including inspection of a site. This permit does not require permittees to allow members of the public access to a construction site.



The permittee shall also retain the following items in an appropriate location on-site:

- a) A rain gauge (or use a reference site for a record of daily precipitation) and accurate rainfall records;
- b) A copy of all required inspection reports; and
- c) Records of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated.

### 7.3. ELECTRONIC SUBMISSION OF DOCUMENTS

This permit requires the submission of forms developed by the director in order for a person to comply with certain requirements, including, but not limited to, making reports, submitting inspection findings, applying for permit coverage and requesting for termination of permit coverage. The director may make these forms available electronically and, if submitted electronically, then that electronic submission shall comply with the requirements of Chapter 0400-01-40. Electronic submission may be required when available, unless waived by the Commissioner in accordance with 40 C.F.R. § 127.15.

If the division notifies applicants by mail, E-mail, public notice or by making information available on the world wide web of electronic NOI forms (see NPDES Electronic Reporting), the operators may be required to use those electronic options to submit the NOI (Section 3.3.2)

In the event of large-scale emergencies and/or prolonged electronic reporting system outages, an episodic electronic reporting waiver may be granted by the Commissioner in accordance with 40 CFR § 127.15. A request for a deadline extension or episodic electronic reporting waiver should be submitted to DWRWater.Compliance@tn.gov, in compliance with the Federal NPDES Electronic Reporting Rule.

In the event that NPDES Electronic Reporting is not functioning, the permittee shall comply with reporting conditions by mailing reports with wet-ink original signatures shall to the following address:



**Tennessee General NPDES Permit No. TNR100000**  
**Stormwater Discharges from Construction Activities**

*STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION DIVISION  
OF WATER RESOURCES  
COMPLIANCE & ENFORCEMENT UNIT  
William R. Snodgrass - Tennessee Tower 312  
Rosa L. Parks Avenue, 11th Floor Nashville,  
Tennessee 37243-1102*

For purposes of determining compliance with this permit, data provided to the division electronically is legally equivalent to data submitted on signed and certified forms. A copy must be retained for the permittee's files.

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**PART 8**

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**8. STANDARD PERMIT CONDITIONS****8.1. DUTY TO COMPLY****8.1.1. Duty to Comply**

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Tennessee Water Quality Control Act (TWQCA) and is grounds for an enforcement action, permit termination, revocation and reissuance, modification; or for denial of a permit renewal application.

**8.1.2. Penalties**

Pursuant to T.C.A. § 69-3-115 of The Tennessee Water Quality Control Act of 1977, as amended:

- a) Any person who violates an effluent standard or limitation or a water quality standard established under this part (T.C.A. § 69-3-101, et. seq.); violates the terms or conditions of this permit; fails to complete a filing requirement; fails to allow or perform an entry, inspection, monitoring or reporting requirement; violates a final determination or order of the board, panel or commissioner; or violates any other provision of this part or any rule or regulation promulgated by the board, is subject to a civil penalty of up to ten thousand dollars (\$10,000) per day for each day during which the act or omission continues or occurs.
- b) Any person unlawfully polluting the waters of the state or violating or failing, neglecting, or refusing to comply with any of the provisions of this part (T.C.A. § 69-3-101, et. seq.) commits a Class C misdemeanor. Each day upon which such violation occurs constitutes a separate offense.
- c) Any person who willfully and knowingly falsifies any records, information, plans, specifications, or other data required by the board or the commissioner, or who willfully and knowingly pollutes the waters of the state, or willfully fails, neglects or refuses to comply with any of the provisions of this part (T.C.A. § 69-3-101, et. seq.) commits a Class E felony and shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000) or incarceration, or both.

**8.1.3. Civil and criminal liability**

Nothing in this permit shall be construed to relieve the discharger from civil or criminal penalties for noncompliance. Notwithstanding this permit, the discharger shall remain liable for any damages sustained by the State of Tennessee, including but not limited to fish kills and losses of aquatic life and/or wildlife, as a result of the discharge to any surface or subsurface waters. Additionally, notwithstanding this permit, it shall be the responsibility of the discharger to conduct stormwater discharge activities in a manner such that public or private nuisances or health hazards will not be created. Furthermore, nothing in this permit shall be construed to preclude the State of Tennessee from any legal action or relieve the discharger from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or the Federal Water Pollution Control Act.

**8.1.4. Liability Under State Law**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable local, state or federal law.

**8.2. CONTINUATION OF THE EXPIRED GENERAL PERMIT**

Permittees shall maintain coverage under this general permit until a new general permit is issued.

Operator(s) of an existing site permitted under the division's 2016 construction general permit shall maintain full compliance with the existing SWPPP. The existing SWPPP should be modified, if necessary, to meet requirements of this new general permit, and the SWPPP changes implemented no later than three months following the new permit effective date. The permittee shall make the updated SWPPP available for the division's review upon request.

**8.3. NEED TO HALT OR REDUCE ACTIVITY NOT A DEFENSE**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

**8.4. DUTY TO MITIGATE**

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

**8.5. DUTY TO PROVIDE INFORMATION**

The permittee shall furnish to the division or an authorized representative of the division, within a time specified by the division, any information that the division may request to determine compliance with this permit or other information relevant to the protection of the waters of the state. The permittee shall also furnish to the division, upon request, copies of records required to be kept by this permit.

**8.6. OTHER INFORMATION**

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the director, he or she shall promptly submit such facts or information.

**8.7. SIGNATORY REQUIREMENTS**

All NOIs, SWPPPs, NOTs, Construction Stormwater Inspection Certifications, Construction Stormwater Monitoring Report forms, reports, certifications or information either submitted to the director or the operator of a large or medium Municipal Separate Storm Sewer System (MS4) shall be signed as described in Sections 8.7.1 and 8.7.2 and dated.

**8.7.1. Signatory Requirements for an NOI<sup>9</sup>**

The NOI shall be signed as follows:

- a) For a corporation, by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
  - i. a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
  - ii. the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated site including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive

<sup>9</sup> As specified in 40 CFR 122.22(a)(1)-(3) [48 FR 14153, Apr. 1, 1983, as amended at 48 FR 39619, Sept. 1, 1983; 49 FR 38047, Sept. 29, 1984; 50 FR 6941, Feb. 19, 1985; 55 FR 48063, Nov. 16, 1990; 65 FR 30907, May 15, 2000]

measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

- b) For a general partnership, by each general partner in the general partnership,
- c) For a sole proprietorship, by the proprietor,
- d) For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:
  - i. the chief executive officer of the agency, or
  - ii. a senior executive officer having responsibility for the overall operations of a principle geographic unit of the agency (e.g., Regional Administrators of [EPA](#)).

NOTE: The division does not require specific assignments or delegations of authority to responsible corporate or municipal, state, federal, or other public agency officers. The division will presume that these officers have the requisite authority to sign permit applications unless the entity has notified the [director](#) to the contrary. Procedures governing authority to sign permit applications may provide for assignment or delegation to applicable positions rather than to specific individuals.

#### **8.7.2. Signatory Requirements for SWPPPs, Reports and Other Items**

SWPPPs, Construction Stormwater Inspection Certification forms, reports, certifications or other information submittals required by the permit and other information requested by [the division](#), including but not limited to Notice of Violation responses, shall be signed by a person described in Section 8.7.1, or by a duly authorized representative of that person.

#### **8.7.3. Duly Authorized Representative**

For a purpose of satisfying signatory requirements for reports (Section 8.7.2), a person is a duly authorized representative only if:

- a) the authorization is made in writing by a person described in Section 8.7.1;
- b) the authorization specifies an individual having responsibility for the overall operation of the regulated site or activity such as the position of

plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company; a duly authorized representative may thus be either a named individual or any individual occupying a named position; and

- c) the written authorization is submitted to the director or an appropriate EFO. The written authorization shall be a written document including the name of the newly authorized person or any individual occupying a named position as described in paragraph b) above, and the corresponding contact information (title, mailing address, phone number, fax number and E-mail address) for the authorized person or position. The written authorization shall be signed by the newly authorized person accepting responsibility and by the person described in Section 8.7.1 delegating the authority.

#### 8.7.4. Changes to Authorization

If an authorization under Sections 8.7.1 or 8.7.3 is no longer accurate because a different individual or position has responsibility as the primary or secondary permittee, but the company name (permittee name) remains the same, a new NOI and SWPPP certification shall be submitted and signed by the new party who meets signatory authority satisfying the requirements of Sections 8.7.1 or 8.7.3. The NOI shall include the new individual's information (title, mailing address, phone number, fax number and E-mail address), the existing tracking number and the project name.

#### 8.7.5. Signatory Requirements for Primary Permittees

Primary permittees required to sign an NOI and SWPPP because they meet the definition of an operator (Subpart 2.1) shall sign the following certification statement on the NOI and on the SWPPP:

*"I certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision. The submitted information is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. As specified in Tennessee Code Annotated Section 39-16- 702(a)(4), this declaration is made under penalty of perjury."*

**8.7.6. Signatory Requirements for Secondary Permittees**

Secondary permittees required to sign an [NOI](#) and SWPPP because they meet the definition of an [operator](#) but who are not primarily responsible for preparing an [NOI](#) and SWPPP, shall sign the following certification statement on the [NOI](#) and on the SWPPP:

*"I certify under penalty of law that I have reviewed this document, any attachments, and the SWPPP referenced above. Based on my inquiry of the construction site owner/developer identified above and/or my inquiry of the person directly responsible for assembling this NOI and SWPPP, I believe the information submitted is accurate. I am aware that this NOI, if approved, makes the above-described construction activity subject to NPDES permit number TNR100000, and that certain of my activities on-site are thereby regulated. I am aware that there are significant penalties, including the possibility of fine and imprisonment for knowing violations, and for failure to comply with these permit requirements. As specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury."*

**8.8. OIL AND HAZARDOUS SUBSTANCE LIABILITY**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to Section 311 of the Clean Water Act or Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ([CERCLA](#)).

**8.9. PROPERTY RIGHTS**

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges; nor does it authorize any injury to private property, any invasion of personal rights or any infringement of federal, state or local laws or regulations. The issuance of this permit does not authorize trespassing or [discharges](#) of [stormwater](#) or [non-stormwater](#) across private [property](#).

**8.10. SEVERABILITY**

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

**Commented [DG19]:** This sentence affirms that it is a violation to discharge stormwater onto another person's property. While it affirms the right to action by the injured party, it should say that such discharges would be considered a violation of the permit rather than leaving the burden of proof and legal costs to the adjoining landowner.



**8.11. INDIVIDUAL PERMITS****8.11.1. Required Individual Permit Coverage**

The director may require any person covered by this permit to apply for and obtain an individual NPDES permit to ensure adequate protection of designated uses of a receiving stream. Any interested person may petition the director in writing to take action under this paragraph but must include in their petition the justification for such an action. Where the director requires a discharger authorized to discharge under this permit to apply for an individual NPDES permit, the director shall notify the discharger in writing that an individual permit application is required. This notification will include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the discharger to file the application and a statement that coverage under this general permit shall terminate upon the effective date of an individual NPDES permit; or denial of coverage under an individual permit. An individual NPDES permit is required only when additional permit terms or conditions beyond those set forth herein are necessary to protect water quality. Criteria for the division to require an individual NPDES permit may include, but are not limited to:

- a) Due to unique site conditions the discharge may result in greater than de minimis degradation, or a threat to threatened or endangered aquatic or semi-aquatic species.
- b) The total acreage to be disturbed and/or total drainage area to an outfall may exceed the capability of standard EPSCs and other BMPs to prevent pollution to waters.
- c) Steep grades or erosive soil conditions warrant site-specific controls that exceed the conditions of the CGP.
- d) Other site-specific conditions, such as contaminated soils or publiclands.

The notification may require stabilization of the site and suspend coverage under this general permit until the individual permit is issued. Individual permit applications shall be submitted to the appropriate Environmental Field Office of the division as indicated in Subpart 3.4. The director may grant additional time to submit the application upon request of the applicant. If a discharger fails to submit in a timely manner an individual NPDES permit application as required by the director under this paragraph, then the applicability of this permit to the discharger will be terminated at the end of the day specified by the director for application submittal.

**Commented [DG20]:** The draft permit should also include the condition that when the best practicable method is not sufficient to prevent pollution.

If the decision to require an individual NPDES permit precedes the issuance of coverage under this general permit, earth disturbing activities cannot begin until the individual permit is issued.

**8.11.2. Permittee-Requested Individual Permit Coverage**

Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. Any discharger that knowingly cannot abide by the terms and conditions of this permit must apply for an individual permit. In such cases, the permittee shall submit an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the appropriate division's Environmental Field Office. The request may be granted by issuance of an individual permit, or alternative general permit, if the reasons cited by the permittee are adequate to support the request.

**8.11.3. General Permit Termination**

When an individual NPDES permit is issued to a discharger otherwise subject to this permit, or the discharger is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the discharger is terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is terminated on the date of such denial, unless otherwise specified by the director. Coverage under the Tennessee Multi-Sector General Permit for the Discharge of Stormwater from an Industrial Activity (TMSP) will not be considered as an alternative general permit under this section without being specified by the director.

**8.12. OTHER, NON-STORMWATER, PROGRAM REQUIREMENTS**

No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

**8.13. PROPER OPERATION AND MAINTENANCE**

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related equipment) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of SWPPPs.

Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee, when determined by the permittee or the division to be necessary to achieve compliance with the conditions of the permit.

**8.14. INSPECTION AND ENTRY**

The permittee shall allow authorized representatives of the Environmental Protection Agency, the director or an authorized representative of the commissioner of TDEC, or, in the case of a construction site which discharges through a municipal separate storm sewer, an authorized representative of the MS4 receiving the discharge, upon the presentation of credentials and other documents as may be required by law:

- a) to enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;
- b) to have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and
- c) to inspect any facilities or equipment, including monitoring and control equipment.

**8.15. PERMIT ACTIONS**

This permit may be issued, modified, revoked, reissued or terminated for cause in accordance with this permit and the applicable requirements of T.C.A. § 69-3-108. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

**Commented [DG21]:** There should be an equivalent section on inspection and entry in the General Permit section. Placing it in the Individual Permit section suggests that such inspection rights only apply under the Individual Permit.

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**PART 9**

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**9. REQUIREMENTS FOR TERMINATION OF COVERAGE****9.1. TERMINATION OF DEVELOPER AND BUILDER COVERAGE****9.1.1. Termination Process for Primary Permittees**

Primary permittees wishing to terminate coverage under this permit must submit a completed Notice of Termination (NOT) form provided in Appendix B of this permit (representative photo or video documentation of site stabilization is recommended). Primary permittees who abandon a site and fail to submit the NOT will be in violation of this permit. If the NOT was not submitted five years following the “estimated end date” (as identified on the NOI), the division can terminate the CGP coverage, unless the permittee specifically requests to maintain coverage. Signs notifying the public of the construction activity shall be in place until the NOT form has been submitted. Primary permittees may terminate permit coverage only if the conditions described below occur at the site:

- a) All earth-disturbing activities and, if applicable, construction support activities permitted under Section 1.2.2 at the site are complete and the following requirements are met:
  - i. For any areas that were disturbed during construction, are not covered by permanent structures and over which the permittee had control during the construction activities; the requirements for final vegetation or non-vegetative stabilization described in Subsection 5.5.3.4 are met;
  - ii. The permittee has removed and properly disposed of all construction materials, as well as waste and waste handling devices. The permittee has removed all equipment and vehicles that were used during construction, unless they are intended for long-term use following termination of permit coverage;
  - iii. The permittee has removed all stormwater controls that were installed and maintained during construction, except those that are intended for long-term use following termination of permit coverage;
  - iv. The permittee has identified who is responsible for ongoing maintenance of any stormwater controls left on the site for long-term use following termination of permit coverage, and
  - v. The groundcover achieves final stabilization.

- b) The permittee has transferred control of all areas of the site for which he is responsible (including, but not limited to, infrastructure, common areas, stormwater drainage structures, sediment control basin) under this permit to another operator, and that operator has submitted an NQI and obtained coverage under this permit.
- c) The permittee obtains coverage under an individual or alternative general NPDES permit.

#### 9.1.2. NOT Review

The division may review NOTs for completeness and accuracy and, when necessary, investigate the proposed site for which the NOT was submitted. Coverage under the permit is terminated when the permit record is published on TDEC's DataViewer as "Inactive." Operators may be liable for discharges that occur from the site after termination.

The division retains the right to deny termination of coverage under this general permit upon receipt of the NOT. If the local Environmental Field Office has information indicating that the permit coverage is not eligible for termination, written notification will be provided within 30 days of receipt that permit coverage has not been terminated. The notification will include a summary of existing deficiencies. When the site meets the termination criteria, the NOT should be re-submitted.

If any permittee files for bankruptcy or the site is foreclosed on by the lender, the permittee should notify the division of the situation so that the division may assess the site to determine if permit coverage should be obtained by any other person or whether other action is needed.

## 9.2. TERMINATION OF BUILDER AND CONTRACTOR COVERAGE

### 9.2.1. Termination Process for Secondary Permittees

Secondary permittees must request termination of coverage under this permit by submitting a NOT when they are no longer an operator at the construction site. Secondary permittees receive coverage under this permit but are not normally mailed a NOC. Consequently, the division may, but is not required to, notify secondary permittees that their notice of termination has been received. If the division has reason to believe that the secondary permittee's NOT should not have been submitted, the division will deny the secondary permittee's NOT in writing, with specific reasons as to why the NOT should not have been submitted.

**9.3. NOT CERTIFICATION**

The NOT and the following certification must be signed in accordance with Subpart 8.7 of this permit:

*"I certify under penalty of law that either: (a) all stormwater discharges associated with construction activity from the portion of the identified facility where I was an operator have ceased or have been eliminated or (b) I am no longer an operator at the construction site. I understand that by submitting this notice of termination, I am no longer authorized to discharge stormwater associated with construction activity under this general permit, and that discharging pollutants in stormwater associated with construction activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act. As specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury."*

**9.4. WHERE TO SUBMIT A NOT?**

The NOT shall be submitted to the Environmental Field Office (EFO) which issued the NOC to the primary permittee. A list of counties and the corresponding EFOs is provided in Subpart 3.4. The appropriate permit tracking number must be clearly printed on the form.

## PART 10

### 10. DEFINITIONS, ACRONYMS AND RESOURCES

#### 10.1. DEFINITIONS

2-year 24-hour 5-year 24-hour	<b>2-year and 5-year design storm depths and intensities</b> The estimated design rainfall amounts, for any return period interval (i.e., 2-yr, 5-yr, 25-yr, etc.) in terms of either 24-hour depths or intensities for any duration, can be found by accessing the data available at <a href="https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html">https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html</a> . Other data sources may be acceptable with prior written approval by TDEC Division of Water Resources.
ARAP	<b>Aquatic Resource Alteration Permit</b> Persons who wish to make an alteration to a <u>stream</u> , river, lake or wetland must first obtain a water quality permit. Physical alterations to properties of waters of the state require an ARAP or a §401 Water Quality Certification (§401 certification). Examples of <u>stream</u> alterations that require a permit from the division include: <ul style="list-style-type: none"> <li>• Dredging, excavation, channel widening, or straightening</li> <li>• Bank sloping; stabilization</li> <li>• Channel relocation</li> <li>• Water diversions or withdrawals</li> <li>• Dams, weirs, dikes, levees or other similar structures</li> <li>• Flooding, excavating, draining and/or filling a wetland</li> <li>• Road and utility crossings</li> <li>• Structural fill</li> </ul> General ARAPs are developed and maintained by the division to provide a streamlined, expedited means of authorizing projects that singularly or cumulatively propose minor impacts to water resources.
BMP	<b>Best Management Practices</b> ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the discharge of pollutants to <u>waters</u> of the state. BMPs also include treatment requirements, operating procedures; and practices to control plant site runoff,

	spillage, leaks, sludge or waste disposal, or drainage from raw material storage.
borrow pit	<b>Borrow Pit</b> is an excavation from which erodible material (typically <u>soil</u> ) is removed to be fill for another site. There is no processing or separation of erodible material conducted at the site. Given the nature of activity and pollutants present at such excavation, a borrow pit is considered a construction activity for the purpose of this permit.
buffer zone	<b>Buffer Zone</b> or <b>Water Quality Riparian Buffer</b> is a permanent strip of natural perennial vegetation, adjacent to a <u>stream</u> , river, wetland, pond, or lake that contains dense vegetation made up of grass, shrubs, and/or trees. The purpose of a water quality riparian buffer is to maintain existing water quality by minimizing risk of any potential <u>sediments</u> , nutrients or other pollutants reaching adjacent surface waters and to further prevent negative water quality impacts by providing canopy over adjacent waters
clearing	<b>Clearing</b> refers to removal of vegetation and disturbance of <u>soil</u> prior to grading or excavation in anticipation of construction activities. Clearing may also refer to wide area land disturbance in anticipation of non-construction activities. Clearing, grading and excavation do not refer to clearing of vegetation along existing or new roadways, highways, dams or power lines for sight distance or other maintenance and/or safety concerns, or cold planning, milling, and/or removal of concrete and/or bituminous asphalt roadway pavement surfaces. The clearing of land for agricultural purposes is exempt from federal <u>stormwater</u> NPDES permitting in accordance with Section 401(1)(1) of the 1987 Water Quality Act and state <u>stormwater</u> NPDES permitting in accordance with the Tennessee Water Quality Control Act of 1977 ( <u>T.C.A. 69-3-101 et seq.</u> ).
commencement	<b>Commencement of construction:</b> the initial disturbance of <u>soils</u> associated with clearing, grading, excavating or other construction activities.
common plan	<b>Common plan of development or sale</b> is broadly defined as any announcement or documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer



	design) or physical demarcation (including boundary signs, lot stakes, surveyor markings) indicating construction activities may occur on a specific plot. A common plan of development or sale identifies a situation in which multiple areas of disturbance are occurring on contiguous areas. This applies because the activities may take place at different times, on different schedules, by different operators.
control measure	<b>Control measure</b> refers to any Best Management Practice (BMP) or other method used to prevent or reduce the discharge of pollutants to waters of the state.
CWA	<b>CWA</b> means the Clean Water Act of 1977 or the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.)
director	<b>Director</b> means the director, or authorized representative, of the Division of Water Resources of the State of Tennessee, Department of Environment and Conservation.
degradation	<b>Degradation</b> means the alteration of the properties of waters by the addition of pollutants, withdrawal of water, or removal of habitat, except those alterations of a short duration.
de minimis	<b>De Minimis</b> is degradation of a small magnitude, as provided in this paragraph: (a) <u>Discharges</u> and withdrawals: 1. Subject to the limitation in part 3 of this subparagraph, a single discharge other than those from new domestic wastewater sources will be considered de minimis if it uses less than five percent of the available assimilative capacity for the substance being discharged. 2. Subject to the limitation in part 3 of this subparagraph, a single water withdrawal will be considered de minimis if it removes less than five percent of the 7Q10 flow of the stream. 3. If more than one activity described in part 1 or 2 of this subparagraph has been authorized in a segment and the total of the authorized and proposed impacts uses no more than 10% of the assimilative capacity, or 7Q10 low flow, they are presumed to be de minimis. Where the total of the authorized and proposed impacts uses 10% of the assimilative

**Commented [DG22]:** The draft permit should not reference guidance about withdrawals. These are not permitted under a General Construction Permit.

	<p>capacity, or 7Q10 low flow, additional degradation may only be treated as de minimis if the Division finds on a scientific basis that the additional degradation has an insignificant effect on the <u>resource</u>.</p> <p>(b) Habitat alterations authorized by an Aquatic Resource Alteration Permit (ARAP) are de minimis if the Division finds that the impacts, individually and cumulatively, are offset by impact minimization and/or in-system mitigation, provided however, in Outstanding National Resource Waters (ONRWs) the mitigation must occur within the ONRW.</p>
discharge of a pollutant	<b>Discharge</b> or <b>discharge of a pollutant</b> refers to the addition of pollutants to waters from a source.
disturbed area	<b>Disturbed area</b> means the 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 area cannot be limited to only the portion of the total area that the site-wide owner/developer initially disturbs through the process of various land clearing activities or in the construction of roadways, sewers, drainfields, and water utilities, <u>stormwater</u> drainage structures, etc., to make the property marketable.
division	<b>Division</b> means the Division of Water Resources of the State of Tennessee, Department of Environment and Conservation
exceptional waters	<b>Exceptional Tennessee Waters</b> are surface waters designated by the division as having the characteristics set forth at Tennessee Rules, Chapter 0400-40-03-.06(4). Characteristics include waters within parks or refuges; scenic rivers; waters with threatened or endangered species; waters that provide specialized recreational opportunities; waters within areas designated as lands unsuitable for mining; waters with naturally reproducing trout; waters with exceptional biological diversity and other waters with outstanding ecological or recreational value.
final stabilization	<b>Final Stabilization</b> means that all <u>soil</u> disturbing activities at the site have been completed and one of the three following criteria is met:

**Commented [DG23]:** The draft permit must explicitly state that cumulative impacts will be considered, as is required by TCA 69-3-108(g) and 69-3-102 (a) & (b). If cumulative impacts along a stream are NOT considered, how can a 10% use of assimilative capacity be considered de minimis? In an area if a city or county where there may be multiple development in the same watershed under construction, siltation from multiple projects could have a significant impact on macroinvertebrates.

	<p>(1) A perennial, preferably native, vegetative cover with a uniform (i.e., evenly distributed, without large bare areas) density of at least 70 percent has been established on all unpaved areas and areas not covered by permanent structures, and all slopes and channels have been permanently stabilized against erosion.</p> <p>(2) Equivalent permanent stabilization measures such as the use of riprap; permanent geotextiles; hardened surface materials including concrete, asphalt, gabion baskets or Reno mattresses have been employed.</p> <p>(3) For construction projects on land used for agricultural or silvicultural purposes, final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural or silvicultural use.</p>
improved sinkhole	<p><b>Improved sinkhole</b> is a natural surface depression that has been altered in order to direct fluids into the hole opening. Improved sinkhole is a type of injection well regulated under the Underground Injection Control (UIC) program. Underground injection constitutes an intentional disposal of waste waters in natural depressions, open fractures and crevices, such as those commonly associated with weathering of limestone.</p>
Level 1	<p><b>Level 1 - Fundamentals of Erosion Prevention and Sediment Control</b> training and certification program administered by University of Tennessee Water Resources Research Center (<a href="https://tnepsc.org/index.asp">https://tnepsc.org/index.asp</a>). The Fundamentals course is a foundation-building course intended for individuals involved in land-disturbing activities covered by the Construction General Permit. The course aims to build a working knowledge of erosion and <u>sedimentation</u> processes and practices and is intended for: site inspectors, inspection and enforcement personnel from all levels of government, plan preparers and reviewers, and designers and engineers. Topics include: Construction General Permit and related SWPPP requirements; function, installation, limitations, inspection and maintenance of Best Management Practices; roles of local officials and state government agencies involved in the permitting process; and basic hydrologic and erosion processes. Upon successful completion of a Course Certification Exam, the participant receives a Level 1</p>

	<p>TNEPSC certificate. The Level 1 certificate is valid for three full years following the year that the certificate was issued. To meet the requirement for Level 1 certified staff, TDOT may develop and administer an approved equivalent Level1 training and certification program as provided in the TDOT individual <a href="#">MS4</a> Permit. The equivalent TDOT Level 1 certification is valid only for TDOT staff and for projects where TDOT is the primary site operator.</p>
Level 2	<p><b>Level 2 - Design Principles for Erosion Prevention and Sediment Control for Construction Sites</b> training and certification program administered by University of Tennessee Water Resources Research Center (<a href="https://tnepsc.org/index.asp">https://tnepsc.org/index.asp</a>). It is an advanced 2-day workshop designed for engineers and other professionals who have completed the prerequisite Level 1 course. The Level 2 Design workshop provides the general tools needed for developing an acceptable, working <a href="#">SWPPP</a>. Topics discussed in the course include: hydrologic methods for determining peak flows; principles of <a href="#">soil</a> erosion, scouring and <a href="#">sediment</a> transport processes, including practice examples for preventing erosion; and open channel principles and practices for designing a stable channel, including use and examples of riprap, blankets and matting, and vegetation; <a href="#">stormwater</a> control requirements and design; <a href="#">sedimentation</a> principles; and <a href="#">temporary sediment basin</a> design requirements, and detailed examples. The Level 2 Design workshop provides a Certificate of Completion after attending both days and successfully completing the take-home exam.</p>
linear project	<p><b>Linear Project</b> is a land disturbing activity as conducted by an underground/overhead utility or highway department, including, but not limited to, any cable line or wire for the transmission of electrical energy; any conveyance pipeline for transportation of gaseous or liquid substance; any cable line or wire for communications; or any other energy resource transmission ROW or utility infrastructure, e.g., roads and highways. Activities include the construction and installation of these utilities within a corridor. Linear project activities also include the construction of access roads, staging areas and borrow/spoil sites associated with the linear project. Land disturbance specific to the</p>

	development of residential and commercial subdivisions or high-rise structures is not considered a linear project.
measurable degradation	<b>Measurable Degradation</b> , as used in the context of <u>discharges</u> or withdrawals, means changes in parameters of waters that are of sufficient magnitude to be detectable by the best available instrumentation or laboratory analyses.
month	<b>Month</b> or <b>Monthly</b> refers to calendar months.
MS4	<p><b>"Municipal Separate Storm Sewer System"</b> or <b>"MS4"</b> is defined in 40 CFR §122.26(b)(8) to mean a conveyance or system of conveyances (e.g., roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) that are:</p> <ul style="list-style-type: none"> <li>a) owned and operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, <u>stormwater</u>, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that <u>discharges</u> to waters of the United States;</li> <li>b) designed or used for collecting or conveying <u>stormwater</u>;</li> <li>c) not a combined sewer; and</li> <li>d) not part of a Publicly Owned Treatment Works (POTW) as defined in 40 CFR §122.2.</li> </ul>
operator	<p><b>Operator</b> for the purpose of this permit and in the context of <u>stormwater</u> associated with construction activity, means any person (typically considered the primary permittee) associated with a construction project that meets either of the following two criteria:</p> <ul style="list-style-type: none"> <li>a) This person has operational or design control over construction plans and specifications, including the ability to make modifications to those plans and specifications. This person is typically the owner or developer of the project or a portion of the project</li> </ul>

	<p>(e.g., subsequent builder) or the person who is the current owner of the construction site.</p> <p>b) This person has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a <u>SWPPP</u> for the site or other permit conditions. This person is typically a contractor or a commercial builder who is hired by the primary permittee and is considered a secondary permittee.</p> <p>It is anticipated that at different phases of a construction project, different types of parties may satisfy the definition of “operator” (see Part 2 of this permit).</p>
point source	<p><b>Point source</b> means any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include introduction of pollutants from non-point source agricultural and silvicultural activities, including <u>stormwater</u> runoff from orchards, cultivated crops, pastures, range lands, forest lands or return flows from irrigated agriculture or agricultural <u>stormwater runoff</u>.</p>
pollutant	<p><b>Pollutant</b> means sewage, industrial wastes, or other wastes.</p>
QLP	<p><b>Qualifying State, Tribal, or local erosion and sediment control program</b> is one that includes, as defined in 40 CFR 122.44(s):</p> <ol style="list-style-type: none"> <li>Requirements for construction site operators to implement appropriate erosion and <u>sediment</u> control best management practices.</li> <li>Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.</li> <li>Requirements for construction site operators to develop and implement a <u>stormwater</u> pollution prevention plan. A stormwater pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved</li> </ol>

**Commented [DG24]:** The draft permit must be clarified. The initial use of this term in the General Permit also includes nonpoint flow from impervious surfaces and is therefore confusing.

	<p>State, Tribal or local requirements, maintenance procedures, inspection procedures and identification of non-<u>stormwater</u> discharges.</p> <p>d) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.</p>
rainfall	<p>A <b>rainfall event</b> is defined as 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.</p>
registered engineer	<p><b>Registered Engineer</b> and <b>Registered Landscape Architect</b> An engineer or landscape architect certified and registered by the State Board of Architectural and Engineer Examiners pursuant to Section 62-202, Tennessee Code Annotated, to practice in Tennessee.</p>
runoff coefficient	<p><b>Runoff coefficient</b> means the fraction of total rainfall that will appear at the conveyance as runoff. Runoff coefficient is also defined as the ratio of the amount of water that is not absorbed by the surface to the total amount of water that falls during a rainstorm.</p>
sediment	<p><b>Sediment</b> means solid material, both inorganic (mineral) and organic, that is in suspension, is being transported; or has been moved from the site of origin by wind, water, gravity or ice as a product of erosion.</p>
sediment basin	<p><b>Sediment basin</b> A temporary basin consisting of an embankment constructed across a wet weather conveyance, an excavation that creates a basin or by a combination of both. A sediment basin typically consists of a forebay cell, dam, impoundment, permanent pool, primary spillway, secondary or emergency spillway and surface dewatering device. The size and shape of the basin depends on the location, size of drainage area, incoming runoff volume and peak flow, <u>soil</u> type and particle size, land cover, and receiving <u>stream</u> classification (i.e., waters with unavailable parameters, Exceptional TN Waters, or waters with available parameters).</p>
sedimentation	<p><b>Sedimentation</b> means the action or process of forming or depositing sediment.</p>

soil	<b>Soil or Topsoil</b> means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of plants.
steep slope	<b>Steep Slope or Steep Grade</b> means a natural or created slope of 35% grade or greater. Designers of sites with steep slopes must pay attention to <u>stormwater</u> management in the <u>SWPPP</u> to engineer runoff around or over a steep slope so as not to erode the slope. In addition, site managers should focus on erosion prevention on the slopes and stabilize the slopes as soon as practicable to prevent slope failure or sediment discharges from the project.
stormwater	<b>Stormwater</b> means rainfall runoff, snow melt runoff, and surface runoff and drainage.
stream	A <b>Stream</b> is a surface water that is not a wet weather conveyance. Therefore, as used in this permit, "stream" includes lakes, wetlands and other non-linear surface waters.
construction stormwater	<b>Stormwater associated with industrial activity</b> is defined in 40 CFR 122.26(b)(14) and incorporated here by reference. Most relevant to this permit is 40 CFR 122.26(b)(14)(x), which relates to construction activity including clearing, grading, filling and excavation activities, including borrow pits containing erodible material. Disturbance of soil for the purpose of crop production is exempt from permit requirements, but stormwater discharges from agriculture- related activities that involve construction of structures (e.g., barn construction, road construction, pond construction) are considered associated with industrial activity. Maintenance to the original line and grade, hydraulic capacity; or to the original purpose of the facility (e.g., re-clearing, minor excavation performed around an existing structure necessary for maintenance or repair and repaving of an existing road) is not considered a construction activity for the purpose of this permit.
discharge- related activities	<b>Stormwater discharge-related activities</b> means activities that cause, contribute to or result in point source stormwater pollutant discharges. These activities may include excavation, site development, grading and other surface disturbance activities; and activities to control



	stormwater including the siting, construction and operation of best management practices (BMPs).
SWPPP	<b>Stormwater Pollution Prevention Plan</b> is a written site- specific plan required by this permit that includes a narrative pollution prevention plan and graphical erosion and sediment control plan. In its basic form, the plan contains a site map, a description of construction activities that could introduce pollutants to stormwater runoff, a description of measures or practices to control these pollutants, and erosion and sediment control plans and specifications. It must be prepared and submitted before construction begins. In order to effectively reduce erosion and sedimentation impacts, Best Management Practices (BMPs) must be designed, installed and maintained during land disturbing activities. The SWPPP should be prepared in accordance with the <a href="#">Tennessee Erosion and Sediment Control Handbook</a> .
take	<b>Take</b> of an endangered species means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct.
the handbook	<b>Tennessee Erosion and Sediment Control Handbook</b> is a guidance issued by the Division of Water Resources for the purpose of developing Stormwater Pollution Prevention Plans and Erosion and Sediment Control Plans required by the TNCGP. The handbook is designed to provide information to planners, developers, engineers and contractors on the proper selection, installation and maintenance of BMPs. The handbook is intended for use during the design and construction of projects that require erosion and sediment controls to protect waters of the state.
temporary stabilization	<b>Temporary stabilization</b> is achieved when vegetation or non-erodible surface has been established on the area of disturbance and construction activity has temporarily ceased. Under certain conditions, temporary stabilization is required when construction activities temporarily cease. However, if future construction activity is planned, permit coverage continues.
TMDL	<b>Total maximum daily load (TMDL)</b> means the sum of the individual wasteload allocations for <a href="#">point sources</a> and load

	<p>allocations for nonpoint sources and natural background (40 CFR 130.2(l)). TMDL is a study that quantifies the amount of a pollutant in a <u>stream</u>, identifies the sources of the pollutant and recommends regulatory or other actions that may need to be taken in order for the <u>stream</u> to cease being polluted. TMDLs can also be described by the following equation:</p> <p>TMDL = sum of nonpoint sources (LA)+ sum of <u>point sources</u> (WLA)+ margin of safety</p> <p>A list of completed TMDLs that have been approved by EPA can be found at our web site: <a href="https://www.tn.gov/environment/program-areas/wr-water-resources/watershed-stewardship/tennessee-s-total-maximum-daily-load--tmdl-program.html">https://www.tn.gov/environment/program-areas/wr-water-resources/watershed-stewardship/tennessee-s-total-maximum-daily-load--tmdl-program.html</a></p>
treatment chemicals	<p><b>Treatment chemicals</b> are polymers, flocculants or other chemicals used to reduce turbidity in stormwater discharges by chemically bonding to suspended silts and other soil materials and causing them to bind together and settle out. Common examples of anionic treatment chemicals are chitosan and anionic PAM.</p>
turbidity	<p><b>Turbidity</b> is the cloudiness or haziness of a fluid caused by individual particles (suspended solids) that are generally invisible to the naked eye, similar to smoke in air.</p>
waste site	<p><b>Waste site</b> is an area where material from a construction site is disposed of. When the material is erodible, such as soil, the site must be treated as a construction site.</p>
waters	<p><b>Waters</b> means any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through, or border upon Tennessee or any portion thereof, except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.</p>
unavailable parameters	<p><b>Waters with unavailable parameters</b> means any segment of surface waters that has been identified by the division as failing to support one or more classified uses.</p> <p>For the purpose of this permit, pollutant of concern is siltation. Based on the most recent assessment</p>

	information available to staff, the division will notify applicants and permittees if their discharge is into, or is affecting, waters with unavailable parameters. Resources to be used in making this determination include biennial compilations of impaired waters, databases of assessment information, updated GIS coverages ( <a href="https://tdeconline.tn.gov/dwr/">https://tdeconline.tn.gov/dwr/</a> ), and the results of recent field surveys. GIS coverages of the streams and lakes not meeting water quality standards, plus the biennial list of waters with unavailable parameters, can be found at <a href="https://www.tn.gov/environment/program-areas/wr-water-resources/water-quality/water-quality-reports---publications.html">https://www.tn.gov/environment/program-areas/wr-water-resources/water-quality/water-quality-reports---publications.html</a> .
week	A <b>one-week period</b> is a synonym of a <b>calendar-week</b> ; typically, a period from Sunday through Saturday.
wet weather conveyance	<b>Wet weather conveyances</b> are man-made or natural watercourses, including natural watercourses that have been modified by channelization, that meet the following: a) The conveyance carries flow only in direct response to precipitation runoff in its immediate locality. b) The conveyance's channels are at all times above the ground water table. c) The flow carried by the conveyance is not suitable for drinking water supplies. d) Hydrological and biological analyses indicate that, due to naturally occurring ephemeral or low flow under normal weather conditions, there is not sufficient water to support fish or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two months. (Tennessee Rules, Chapter 0400-40-3-.04(3)).

**Commented [DG25]:** The lack of assessed stream miles continues to be a problem, particularly with headwaters streams. The CGP should require a stream assessment by a QST professional if the stream segment has not previously been assessed.

## 10.2. ACRONYMS AND ABBREVIATIONS

7Q10	7-day minimum, 10-year recurrence interval <a href="#">ARAP</a>
	Aquatic Resource Alteration Permit
<a href="#">BMP</a>	Best Management Practice
BPT	Best Practicable Control Technology Currently Available
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act

CFR	Code of Federal Regulations CGP Construction General Permit
<u>CWA</u>	Clean Water Act
<u>EFO</u>	Environmental Field Office
EPA	(U.S.) Environmental Protection Agency EPSC Erosion Prevention and Sediment Control <u>MS4</u> Municipal Separate Storm Sewer System NOC Notice of Coverage
NOI	Notice of Intent (to be covered by this permit) NOT Notice of Termination (see Part 9)
NPDES	National Pollutant Discharge Elimination System ONRW Outstanding National Resource Waters
<u>QLP</u>	Qualifying Local Program
<u>SWPPP</u>	Stormwater Pollution Prevention Plan
TDEC	Tennessee Department of Environment and Conservation TDOT Tennessee Department of Transportation
<u>TMDL</u>	Total Maximum Daily Load
TMSP	Tennessee Multi-Sector General Permit for the Discharge of Stormwater from an Industrial Activity
TVA	Tennessee Valley Authority
TWQCA	Tennessee Water Quality Control Act UIC Underground Injection Control USGS United States Geological Survey

### 10.3. RESOURCES, HYPERLINKS, AND WEB PAGES

Electronic Code of Federal Regulations (eCFR), Title 40 (40 CFR § 1 through § 1099)

<https://www.ecfr.gov/cgi-bin/text-idx?SID=75202eb5d09974cab585afeea981220b&mc=true&tpl=/ecfrbrowse/Title40/40chapter1.tpl>

Electronic Reporting (NetDMR) Waiver Request

[https://www.tn.gov/content/dam/tn/environment/water/documents/wr\\_ereporting\\_waiver.pdf](https://www.tn.gov/content/dam/tn/environment/water/documents/wr_ereporting_waiver.pdf)

Online Forms

[NPDES Electronic Reporting](#)

NPDES Compliance Inspection Manual (EPA)

<https://www.epa.gov/sites/production/files/2017-01/documents/npdesinspect.pdf>

NPDES Electronic Reporting Rule

<https://www.federalregister.gov/documents/2015/10/22/2015-24954/national-pollutant-discharge-elimination-system-npdes-electronic-reporting-rule>

Rules of the TN Department of Environment and Conservation, Chapter 0400-40

<https://publications.tnsosfiles.com/rules/0400/0400-40/0400-40.htm>

TDEC Water Quality Rules, Reports, and Publications

<https://www.tn.gov/environment/program-areas/wr-water-resources/water-quality/water-quality-reports---publications.html>

Technical Support Document for Water Quality-based Toxics Control (EPA)

<https://www3.epa.gov/npdes/pubs/owm0264.pdf>

Tennessee Water Resources Data and Map Viewers

<https://www.tn.gov/environment/program-areas/wr-water-resources/water-quality/water-resources-data-map-viewers.html>

USGS StreamStats

[https://www.usgs.gov/mission-areas/water-resources/science/streamstats-streamflow-statistics-and-spatial-analysis-tools?qt-science\\_center\\_objects=0#qt-science\\_center\\_objects](https://www.usgs.gov/mission-areas/water-resources/science/streamstats-streamflow-statistics-and-spatial-analysis-tools?qt-science_center_objects=0#qt-science_center_objects)

USGS SWToolbox

<https://www.usgs.gov/software/swtoolbox-software-information>

*(End of body of permit; appendices follow.)*

## **APPENDIX A – NOTICE OF INTENT FORM (NOI)**

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(See Next Page)



**TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION**  
Division of Water Resources  
William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 11<sup>th</sup> Floor, Nashville, TN 37243  
Toll Free Number: 1-888-891-8332 (TDEC)

**Notice of Intent (NOI) for General NPDES Permit for Stormwater Discharges from Construction Activities (TNR100000)**

<b>Site or Project Name:</b>		<b>NPDES Tracking Number: TNR</b>	
Street Address including city or zip code or Location:		Construction Start Date:	
Site Description:		Estimated End Date:	
		Latitude (dd.dddd):	
		Longitude (-dd.dddd):	
County(ies):	MS4 Jurisdiction (if applicable):	Acres Disturbed:	
		Total Acres:	
Are there any streams and/or wetlands on or adjacent to the construction site?			
If wetlands are located on-site and may be impacted, attach wetlands delineation report.			
If an Aquatic Resource Alteration Permit has been obtained for this site, what is the permit number? ARAP Number:			
Receiving waters:			
Include the SWPPP with the NOI <input type="checkbox"/> SWPPP Included		Include a site location map <input type="checkbox"/> Map Included <input type="checkbox"/>	

<b>Name of Site Owner or Developer (Site-Wide Permittee):</b> (correct legal name of person, company, or entity that has operational or design control over construction plans and specifications)			
For corporate entities only, provide the Tennessee Secretary of State (SOS) Control Number:			
Site Owner or Developer Contact Name: (individual responsible for site)		Title or Position: (the party who signs the certification below):	
Mailing Address:	City:	State:	Zip:
Phone: ( )	E-mail:		

Optional Contact Name:		Title or Position:	
Mailing Address:	City:	State:	Zip:
Phone: ( )	E-mail:		

<b>Owner or Developer Certification:</b> (must be signed by president, vice-president or equivalent, or ranking elected official) (Primary Permittee)		
I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.		
Owner or Developer Name: (print or type)	Signature:	Date:

<b>Contractor(s) Certification:</b> (must be signed by president, vice-president or equivalent, or ranking elected official) (Secondary Permittee)		
I certify under penalty of law that I have reviewed this document, any attachments, and the SWPPP referenced above. Based on my inquiry of the construction site owner/developer identified above and/or my inquiry of the person directly responsible for assembling this NOI and SWPPP, I believe the information submitted is accurate. I am aware that this NOI, if approved, makes the above-described construction activity subject to NPDES permit number TNR100000, and that certain of my activities on-site are thereby regulated. I am aware that there are significant penalties, including the possibility of fine and imprisonment for knowing violations, and for failure to comply with these permit requirements.		
Primary contractor name, address, and SOS control number (if applicable): (print or type)	Signature:	Date:
Primary contractor name, address, and SOS control number (if applicable): (print or type)	Signature:	Date:
Primary contractor name, address, and SOS control number (if applicable): (print or type)	Signature:	Date:



**Notice of Intent (NOI) for General NPDES Permit for Stormwater Discharges from Construction Activities (TNR100000)**

Purpose of this form A completed notice of intent (NOI) must be submitted to obtain coverage under the Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activity (permit). **Requesting coverage under this permit means that an applicant has obtained and examined a copy of this permit, and thereby acknowledges applicant's claim of ability to be in compliance with permit terms and conditions.** This permit is required for stormwater discharge(s) from construction activities including clearing, grading, filling and excavating (including borrow pits) of one or more acres of land. This form should be submitted at least 30 days prior to the commencement of land disturbing activities, or no later than 48 hours prior to when a new operator assumes operational control over site specifications or commences work at the site.

The appropriate permit application fee must accompany the NOI and is based on total acreage to be disturbed by an entire project, including any associated construction support activities (e.g., equipment staging yards, material storage areas, excavated material disposal areas, borrow or waste sites):

(i) Projects equal to or greater than 150 acres	\$10,000
(ii) Projects equal to or greater than 50 acres and less than 150 acres	\$6,000
(iii) Projects equal to or greater than 20 acres and less than 50 acres	\$3,000
(iv) Projects equal to or greater than 5 acres and less than 20 acres	\$1,000
(v) Projects equal to or greater than 1 acre and less than 5 acres	\$250
(vi) Projects seeking subsequent coverage under an actively covered larger common plan of development or sale	\$100

There is no fee for sites less than 1 acre. A separate annual maintenance fee is also required for construction activities that exceed 1 year under general permit coverage. Tennessee Rules, Chapter 0400-40-11-.02(b)(12)).

Who must submit the NOI form? Per Section 2 of the permit, all site operators must submit an NOI form. "Operator" for the purpose of this permit and in the context of stormwater associated with construction activity means any person associated with a construction project who meets either or both of the following two criteria: (1) The person has operational or design control over construction plans and specifications, including the ability to make modifications to those plans and specifications. This person is typically the owner or developer of the project or a portion of the project (e.g. subsequent builder), or the person that is the current landowner of the construction site. This person is considered the primary permittee; or (2) The person has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a SWPPP for the site or other permit conditions. This person is typically a contractor or a commercial builder who is hired by the primary permittee and is considered a secondary permittee.

Owners, developers and all contractors that meet the definition of the operator in subsection 2.2 of the permit shall apply for permit coverage on the same NOI, insofar as possible. After permit coverage has been granted to the primary permittee, any subsequent NOI submittals must include the site's previously assigned permit tracking number and the project name. The comprehensive site-specific SWPPP shall be prepared in accordance with the requirements of part 5 of the permit and must be submitted with the NOI unless the NOI being submitted is to only add a contractor (secondary permittee) to an existing coverage. Artificial entities (e.g., corporations or partnerships excluding entities not required to register) must submit the TN Secretary of State, Division of Business Services, control number. The Division reserves the right to deny coverage to artificial entities that are not properly registered and in good standing with the TN Secretary of State.

Notice of Coverage The division will review the NOI for completeness and accuracy and prepare a notice of coverage (NOC). Stormwater discharge from the construction site is authorized as of the effective date of the NOC.

Complete the form Type or print clearly, using ink and not markers or pencil. Answer each item or enter "NA," for not applicable, if a particular item does not fit the circumstances or characteristics of your construction site or activity. If you need additional space, attach a separate piece of paper to the NOI form. **The NOI will be considered incomplete without a permit fee, a map, and the SWPPP.**

Describe and locate the project Use the legal or official name of the construction site. If a construction site lacks street name or route number, give the most accurate geographic information available to describe the location (reference to

adjacent highways, roads and structures; e.g. intersection of state highways 70 and 100). Latitude and longitude (expressed in decimal degrees) of the center of the site can be located on USGS quadrangle maps. The maps can be obtained at the USGS World Wide Web site: <http://www.usgs.gov/>; latitude and longitude information can be found at numerous other web sites. Attach a copy of a portion of a 7.5 minute topographic map, a city map, or a county map showing location of site, with boundaries at least one mile outside the site boundaries. Provide estimated starting date of clearing activities and completion date of the project, and an estimate of the number of acres of the site on which soil will be disturbed, including borrow areas, fill areas, stockpiles and the total acres. For linear projects, give location at each end of the construction area.

Give name of the receiving waters Trace the route of stormwater runoff from the construction site and determine the name of the river(s), stream(s), creek(s), wetland(s), lake(s) or any other water course(s) into which the stormwater runoff drains. Note that the receiving water course may or may not be located on the construction site. If the first water body receiving construction site runoff is unnamed ("unnamed tributary"), determine the name of the water body that the unnamed tributary enters.

An ARAP may be required **If your work will disturb or cause alterations of a stream or wetland, you must obtain an appropriate Aquatic Resource Alteration Permit (ARAP).** If you have a question about the ARAP program, contact your local Environmental Field Office (EFO).

Submitting the form and obtaining more information Note that this form must be signed by the company President, Vice-President, or a ranking elected official in the case of a municipality, for details see subpart 2.5. For more information, contact your local EFO at the toll-free number 1-888-891-8332 (TDEC). Submit the completed NOI form (keep a copy for your records) to the appropriate EFO for the county(ies) where the construction activity is located, addressed to **Attention: Stormwater NOI Processing**.

EFO	Street Address	Zip Code	EFO	Street Address	Zip Code
Memphis	8383 Wolf Lake Drive, Bartlett	38133-4119	Cookeville	1221 South Willow Ave.	38506
Jackson	1625 Hollywood Drive	38305-4316	Chattanooga	1301 Riverfront Parkway, Suite 206	37402-2013
Nashville	711 R S Gass Boulevard	37243	Knoxville	3711 Middlebrook Pike	37921
Columbia	1421 Hampshire Pike	38401	Johnson City	2305 Silverdale Road	37601

## **APPENDIX B – NOTICE OF TERMINATION FORM (NOT)**

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(See Next Page)



**TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION (TDEC)**

Division of Water Resources (DWR)  
William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 11<sup>th</sup> Floor  
Nashville, Tennessee 37243  
1-888-891-TDEC (8332)

**Notice of Termination (NOT) for  
General NPDES Permit for Stormwater Discharges from Construction Activities (CGP)**

This form is required to be submitted when requesting termination of coverage from the CGP. The purpose of this form is to notify the TDEC that either all stormwater discharges associated with construction activity from the portion of the identified facility where you, as an operator, have ceased or have been eliminated; or you are no longer an operator at the construction site. Submission of this form shall in no way relieve the permittee of permit obligations required prior to submission of this form. Please submit this form to the local DWR Environmental Field Office (EFO) address (see table below). For more information, contact your local EFO at the toll-free number 1-888-891-8332 (TDEC).

<b>Site or Project Name:</b>	<b>NPDES Tracking Number: TNR</b>
Street Address or Location:	County(ies):

<b>Name of Permittee Requesting Termination of Coverage:</b>			
Permittee Contact Name:		Title or Position:	
Mailing Address:	City:	State:	Zip:
Phone: ( )	E-mail:		

**Check the reason(s) for termination of permit coverage: (check only one)**

<input type="checkbox"/>	Stormwater discharge associated with construction activity is no longer occurring and the permitted area has achieved Final Stabilization as defined in Part 10 of the CGP. (attach photo documentation)
<input type="checkbox"/>	You are no longer the operator at the construction site (i.e., termination of site-wide, primary or secondary permittee coverage).

**Certification and Signature:** (must be signed by president, vice-president or equivalent ranking elected official)

I certify under penalty of law that either: (a) all stormwater discharges associated with construction activity from the portion of the identified facility where I was an operator have ceased or have been eliminated or  
(b) I am no longer an operator at the construction site. I understand that by submitting this notice of termination, I am no longer authorized to discharge stormwater associated with construction activity under this general permit, and that discharging pollutants in stormwater associated with construction activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

For the purposes of this certification, elimination of stormwater discharges associated with construction activity means that all stormwater discharges associated with construction activities from the identified site that are authorized by a NPDES general permit have been eliminated from the portion of the construction site where the operator had control. Specifically, this means that all disturbed soils at the portion of the construction site where the operator had control have been finally stabilized, the temporary erosion and sediment control measures have been removed, and/or subsequent operators have obtained permit coverage for the site or portions of the site where the operator had control.

I certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision. The submitted information is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. As specified in Tennessee Code Annotated Section 39- 16-702(a)(4), this declaration is made under penalty of perjury.

Permittee name (print or type):	Signature:	Date:
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EFO	Address	EFO	Street Address
Memphis	8383 Wolf Lake Drive, Bartlett, TN 38133	Cookeville	1221 South Willow Ave., TN 38506
Jackson	1625 Hollywood Drive, TN 38305	Chattanooga	1301 Riverfront Parkway, Ste. 206, TN 37402
Nashville	711 R S Gass Boulevard, TN 37243	Knoxville	3711 Middlebrook Pike, TN 37921
Columbia	1421 Hampshire Pike, TN 38401	Johnson City	2305 Silverdale Road, TN 37601

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## APPENDIX C – INSPECTION REPORT FORM

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(See Next Page)



**TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION (TDEC)**  
Division of Water Resources (DWR)

William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 11<sup>th</sup> Floor,  
Nashville, Tennessee 37243  
1-888-891-8332 (TDEC)

**General NPDES Permit for Stormwater Discharges from Construction Activities (CGP)**  
**Construction Stormwater Inspection Certification (Inspection Form)**

<b>Site or Project Name:</b>		<b>NPDES Tracking Number: TNR</b>
Primary Permittee Name:		Date of Inspection:
Current approximate disturbed acreage:	Has rainfall been checked/documented daily? <input type="checkbox"/> Yes <input type="checkbox"/> No	Name of Inspector:
Current weather/site conditions:		Inspector's TNEPSC Certification Number:

**Please check the box if the following items are on-site:**

<input type="checkbox"/>	Notice of Coverage (NOC)
<input type="checkbox"/>	Stormwater Pollution Prevention Plan (SWPPP)
<input type="checkbox"/>	Weekly inspection documentation
<input type="checkbox"/>	Site contact information
<input type="checkbox"/>	Rain Gage
Off-site Reference Rain Gage Location	

**Best Management Practices (BMPs):**

**Are the Erosion Prevention and Sediment Controls (EPSCs) functioning correctly:**

If "No," describe below in Comment Section

1.	Are all applicable EPSCs installed and maintained per the SWPPP?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2.	Are EPSCs functioning correctly at all disturbed areas/material storage areas per section 4.1.5?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3.	Are EPSCs functioning correctly at outfall/discharge points such that there is no objectionable color contrast in the receiving stream, and no other water quality impacts per section 5.3.2?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4.	Are (EPSCs) functioning correctly at ingress/egress points such that there is no evidence of track out?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5.	If applicable, have discharges from dewatering activities been managed by appropriate controls per section 4.1.4? If "No," describe below the measure to be implemented to address deficiencies.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6.	If construction activity at any location on-site has temporarily/permanently ceased, was the area stabilized within 14 days per section 3.5.3.2? If "," describe below each location and measures taken to stabilize the area(s).	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7.	Have pollution prevention measures been installed, implemented, and maintained to minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters per section 4.1.5? If "No," describe below the measure to be implemented to address deficiencies.	<input type="checkbox"/> Yes	<input type="checkbox"/> No

**Commented [DG26]:** This inspection report is entirely visual inspection. How can the inspector know if the outfall has exceeded the 5% of assimilative capacity based on a single inspection? Also, if the stream is muddy from other sediment, how does the inspector determine if there is a color contrast. In other words, if the stream is already heavily full of sediment, is adding more is acceptable since it won't change the color?





## Construction Stormwater Inspection Certification Form (Inspection Form) Purpose of this

### form/ Instructions

An inspection, as described in section 3.5.8.2. of the General Permit for Stormwater Discharges from Construction Activities ("Permit"), shall be performed at the specified frequency and documented on this form. Inspections shall be performed at least 72 hours apart. Where sites or portion(s) of construction sites have been temporarily stabilized, or runoff is unlikely due to winter conditions (e.g., site covered with snow or ice), such inspection only has to be conducted once per month until thawing results in runoff or construction activity resumes.

Inspections can be performed by:

- a) a person with an valid certification from the "Fundamentals of Erosion Prevention and Sediment Control Level I" course,
- b) a licensed professional engineer or landscape architect,
- c) a Certified Professional in Erosion and Sediment Control (CPESC), or
- d) a person who has successfully completed the "Level II Design Principles for Erosion Prevention and Sediment Control for Construction Sites" course.

Qualified personnel, as defined in section 3.5.8.1 of the Permit (provided by the permittee or cooperatively by multiple permittees) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, locations where vehicles enter or exit the site, and each outfall.

Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the site's drainage system. Erosion prevention and sediment control measures shall be observed to ensure that they are operating correctly.

Outfall points (where discharges leave the site and/or enter waters of the state) shall be inspected to determine whether erosion prevention and sediment control measures are effective in preventing significant impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations shall be inspected. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

Based on the results of the inspection, any inadequate control measures or control measures in disrepair shall be replaced or modified, or repaired as necessary, before the next rain event if possible, but in no case more than 7 days after the need is identified.

Based on the results of the inspection, the site description identified in the SWPPP in accordance with section 3.5.1 of the Permit and pollution prevention measures identified in the SWPPP in accordance with section 3.5.2 of the Permit, shall be revised as appropriate, but in no case later than 7 days following the inspection. Such modifications shall provide for timely implementation of any changes to the SWPPP, but in no case later than 14 days following the inspection.

All inspections shall be documented on this Construction Stormwater Inspection Certification form. Alternative inspection forms may be used as long as the form contents and the inspection certification language are, at a minimum, equivalent to the division's form and the permittee has obtained a written approval from the division to use the alternative form. Inspection documentation will be maintained on site and made available to the division upon request. Inspection reports must be submitted to the division within 10 days of the request.

**Commented [DG27]:** If the control measures installed prove to be inadequate, the permit has been violated, and TDEC should be notified to determine if there has been more than de minimis damage to the receiving waters. There is no, but there should be a, requirement to quantify the inadequacy and applications should be given 7 days to "replace, modify or repair". If there is no report to TDEC, who ensures that the situation is corrected in a timely manner and pollution is not allowed to continue?

Trained certified inspectors shall complete inspection documentation to the best of their ability. Falsifying inspection records or other documentation or failure to complete inspection documentation shall result in a violation of this permit and any other applicable acts or rules.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>PATRICIA AND HARVEY</b>	)	
<b>THOMAS; SINDRA AND JAMES</b>	)	
<b>JONES; PAULA WALL; WILLIAM</b>	)	
<b>CARPENTER; ANN AND WILLIAM</b>	)	<b>No.</b> _____
<b>VANDERLINDEN; DEBORAH AND</b>	)	
<b>DAVID BRADLEY,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	<b>Jury Demand</b>
<b>v.</b>	)	
	)	
<b>CUMBERLAND ESTATES, LLC</b>	)	
	)	
<b>Defendant.</b>	)	

**COMPLAINT**

**I. INTRODUCTION**

This complaint alleges violations under the Federal Water Pollution Control Act, known as the Clean Water Act (“CWA”), caused by the discharge of pollution into waters of the United States by defendant, Cumberland Estates, LLC, in violation of a National Pollution Discharge Elimination System (“NPDES”) permit. Plaintiffs, Patricia and Harvey Thomas; Sindra and James Jones; Paula Wall; William Carpenter; Ann and William Vanderlinden; and Deborah and David Bradley (collectively the “Fernvale Community Group,” “the Community Group,” or “Plaintiffs”) allege that defendant own and are in the process of developing a residential subdivision called Cumberland Estates in Fernvale, Tennessee. During the development of Cumberland Estates subdivision, defendant constructed a wastewater detention pond in an existing stream without a permit. Moreover, wastewater discharges from that detention pond flow into a creek locally

known as “Rob’s Creek,” in the vicinity of Forest Glen Drive, which flows into the creek locally known as Mangrum Hollow Creek, which subsequently flows into Caney Fork Creek, and Caney Fork Creek eventually flows into the South Harpeth River. Plaintiffs further allege on information and belief that illegal discharges from the Cumberland Estates development began in or about August 2017 and have continued up to the present, and, absent action by defendant to comply with the CWA, will continue.

Defendant’s actions have had detrimental effects on, and pose and ongoing threat to, the water quality of downstream creeks and rivers, particularly Rob’s Creek, Mangrum Hollow Creek, Caney Fork Creek, and the South Harpeth River.

The CWA’s National Pollutant Discharge Elimination System, 33 U.S.C. § 1342 and 40 C.F.R. pt. 122, regulates discharges of pollution to surface waters. Cumberland Estates has failed to comply with the terms of the general NPDES construction Permit it is operating under that allows it to discharge wastewater from the Cumberland Estates development to downstream creeks and rivers. Because Cumberland Estates has not complied with the terms of the general NPDES permit, it is in violation of the CWA. 33 U.S.C. § 1311(a). Cumberland Estates has not applied for or been granted an individual NPDES permit.

By this complaint, the Fernvale Community Group seek a declaratory judgment that Cumberland Estates, LLC has and continues to be in violation of the CWA. The Fernvale Community Group additionally seek an injunction requiring Cumberland Estates, LLC to comply with the terms of the general NPDES permit, in part, to eliminate its illegal discharges. The Community Group further asks the court to require Cumberland Estates, LLC to apply for an individual NPDES permit with specific discharge limitations

and a permit under CWA section 404, and to comply with the terms of those permits. The Community Group also seek imposition of maximum civil penalties for defendant's longstanding and knowing violations of the CWA.

## **II. JURISDICTION AND VENUE**

This lawsuit is brought pursuant to the CWA, 33 U.S.C. §§ 1251, *et seq.* This Court has subject matter jurisdiction over the claims for relief set forth herein pursuant to 33 U.S.C. § 1365(a) (citizen suits to enforce effluent standards or limitations under the CWA), 28 U.S.C. § 1331 (actions arising under the laws of the United States), and 28 U.S.C. §§ 2001-02 (power to issue declaratory judgments in cases of actual controversy).

On September 30, 2019, the Community Group gave Cumberland Estates, LLC written notice of the violations set forth in this complaint, and of their intent to file suit on these CWA claims. Notice was also provided to the Tennessee Department of Environment and Conservation ("TDEC"), United States Environmental Protection Agency Headquarters, and EPA Region IV. 33 U.S.C. § 1365 (b)(1)(A).

More than sixty days have elapsed since service of the notice of intent to sue, as required by the CWA. 33 U.S.C. § 1365(b)(1)(A). Neither EPA nor TEDC has commenced or is diligently prosecuting a civil or criminal action in a court of the United States or the State of Tennessee or is otherwise adequately addressing the violations alleged by the Community Group in this complaint. 33 U.S.C. § 1365(b)(1)(B).

Venue properly lies in this judicial district by virtue of CWA section 505(c)(1), 33 U.S.C. § 1365(c)(1), because the source of the violation at issue is located within this judicial district.

Defendant has failed to comply with the terms of its NPDES permit for, among other things, as set forth more fully below, the ongoing discharges of wastewater and other pollutants from a stormwater detention pond on its property into nearby streams, creeks, and rivers and that defendant constructed in an existing natural stream without a required permit. These CWA violations will persist on until defendant complies with its Permit or is subject to and in compliance with an individual permit which is designed to be protective of downstream waters.

Defendant's illegal discharges began before defendant constructed the detention pond in an existing stream without a permit under Section 404 of the CWA. Moreover, since at least August, 2017, pollution has continued to travel from defendant's detention pond to downstream streams, creeks, and rivers in violation of the general NPDES construction permit. Because defendant continues to discharge wastewater and other pollutants in violation of the general NPDES construction permit and the CWA, the violations are likely to continue unless and until defendant complies with the terms of the NPDES permit and the CWA.

### **III. PARTIES**

#### **A. Plaintiffs**

Members of the Fernvale Community Group reside in the Hamlet of Fernvale, immediately adjacent to the City of Fairview, Tennessee, and utilizing the Fairview Post Office. Patricia and Harvey Thomas reside at 7491 Caney Fork Road. Sindra and James Jones reside at 7580 Caney Fork Road. Paula Wall and William Carpenter reside at 7555 Caney Fork Road. Ann and William Vanderlinden reside at 7520 Caney Fork Road. Deborah and David Bradley reside at 7450 Caney Fork Road. Rob's Creek, in which

defendant constructed its detention pond, runs through the Cumberland Estates development and then into Mangrum Hollow Creek. Mangrum Hollow Creek then runs into Caney Fork Creek, which eventually runs into the South Harpeth River.

Members of the Fernvale Community Group own and reside on property downstream of Cumberland Estates, through which the impacted creeks flow. They have an interest in the health and aesthetic quality of the waters at issue. The ability of members of the Community Group to use and enjoy their property and the creeks depends on the water's good quality. Defendant's illegal discharge of wastewater into the creeks downstream of its development have adversely affected and continue to adversely affect the environment, aesthetic, and recreational interests of the Fernvale Community Group. Unless the relief requested herein is granted, the members of the Fernvale Community Group will continue to be irreparably injured by defendant's illegal discharges, as detailed herein.

#### **B. Defendant**

Cumberland Estates, LLC is for-profit, residential property development company with its headquarters in Murfreesboro, Tennessee. The Cumberland Estates development is designed to be constructed in three phases consisting of roughly 230 single-family homes on 47.90 acres in Fairview, Williamson County, Tennessee.

Defendant has constructed multiple detention ponds on the Cumberland Estates property for the purpose of retaining and treating construction wastewater. Upon information and belief, the detention pond that has failed and is permitting pollution to enter downstream creeks was built in a stream and is about half the size that it should be

to adequately serve its purpose and to treat the quantity of wastewater generated by defendant in that portion of the development.

#### **IV. STATUTORY BACKGROUND**

##### **A. CLEAN WATER ACT**

In 1972, Congress enacted the Federal Water Pollution Control Act, known as the Clean Water Act, in order to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To further this central goal, section 301(a) of the CWA prohibits “the discharge of any pollutant” into the nations waters except when specifically authorized under the CWA. 33 U.S.C. § 1311(a).

The CWA defines the term “pollutant” broadly to include “dredged spoil, solid waste, incinerated residue, sewage, garbage sewage sludge, munitions, chemical wastes, biological material, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

The CWA specifies that “navigable waters” include “waters of the United States, including territorial seas.” 33 U.S.C. § 1362(7).

The CWA defines “point source” as “any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the issuance of NPDES permits to allow point sources to discharge limited quantities of pollutants into



surface water, where appropriate. The NPDES program is designed to protect the quality of surface waters. Without an NPDES permit, a point source may not discharge to waters of the United States without being subject to enforcement actions and fines. 33 U.S.C. §§ 1311(a), 1319; 40 C.F.R. § 19.4.

CWA section 402(b), 33 U.S.C. § 1342(b), gives the EPA Administrator authority to allow a state to administer its own NPDES program. In the State of Tennessee, EPA has delegated authority to TDEC to issue NPDES permits. *Id.*; 40 C.F.R. § 123.24. A state-issued NPDES permit can impose effluent limits and other provisions that are more stringent than the federal requirements for an NPDES permit, but all provisions must be at least as stringent as the federal requirements. 40 C.F.R. § 123.25(a); H.A.R. § 11-55-02(c). Discharges of pollution can be allowed to operate under a general permit, such as the one at issue here. This particular permit has no numeric limits on the discharge of pollution. Other NPDES permits, including some general and most individual permits, do contain such limitations.

Federal or state agencies administering the NPDES program are required to ensure compliance with a variety of CWA provisions- including water body use classifications and anti-degradation requirements- and ultimately make a determination whether a discharge permit will be issued or allowed under a permit and, if so, the quantities or concentrations of pollutants permitted in that discharge. Along with use classifications, states establish water quality criteria designed to protect the designated uses assigned to a particular body of water. 40 C.F.R. § 131.11(a). The criteria can be either narrative, which describe qualitative conditions, or numeric, which set quantitative conditions for

certain pollutants. *Id.*, § 131.11(b). The State of Tennessee has established narrative minimum water quality standards for each use classification.

The CWA and implementing regulations also set forth minimum requirements for states to establish an anti-degradation policy, which is intended to protect waters from activities that could lower water quality. 40 C.F.R. § 131.12(a). Tennessee’s anti-degradation statement states that, “It is the purpose of Tennessee’s standards to fully protect existing uses of all surface waters as established under the Act... Where the quality of Tennessee waters is better than the level necessary to support propagation of fish, shellfish, and wildlife, or recreation in and on the water, that quality will be maintained and protected” absent certain limited circumstances not present here. Tenn. R.&Reg. 0400-40-03.06(1)(a).

## **V. FACTS**

The Cumberland Estates development is subject to the “General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, Permit No. TNR100000” (“the Permit”).

In accordance with the Permit, defendant Cumberland Estates created a Stormwater Pollution Prevention Plan (the “SWPPP”). The SWPPP states that the topography of the development “can best be described as mountainous with steep slopes draining north to south.” At the south end of the property, defendant constructed a stormwater detention pond in an existing natural stream in an attempt to manage stormwater runoff from the construction of the Cumberland Estates development. Under the general NPDES construction permit, defendant Cumberland Estates may discharge treated stormwater from the detention pond so long as it does so in accordance with the

Permit. Upon information and belief, not only was the detention pond constructed in an existing stream, but the detention pond is also too small to properly treat the volume of stormwater that flows into it, and is thus unable to properly treat the water before it flows out of it and downstream further in Rob's Creek, the creek locally known as Mangrum Hollow Creek, Caney Fork Creek, and the South Harpeth River.

The Permit states: "operators of point source discharges of stormwater associated with construction activities into waters of the State of Tennessee, are authorized to discharge stormwater associated with construction activities in accordance with the following permit monitoring and reporting requirement, effluent limitations, and other provisions as set forth in parts 1 through 10 herein, from the subject outfalls to waters of the State of Tennessee."

Section 1.3, subparts (g) and (h) of the Permit specifically state that it does not authorize, "Discharges into Exceptional Tennessee Waters," or "Discharges not protective of aquatic threatened and endangered species, species deemed in need of management or special concern species." Cumberland Estates is in violation of this provision, as runoff from the development is impacting Rob's Creek, Mangrum Hollow Creek, Caney Fork Creek, and the South Harpeth River.

The Permit requires "Erosion prevention and sediment control." Permit, § 3.5.3. It states, "The construction-phase erosion prevention controls shall be designed to eliminate (or minimize if complete elimination is not possible) the dislodging and suspension of soil in water. Sediment controls shall be designed to retain mobilized sediment on site to the maximum extent practicable." Permit, § 3.5.3.1(a). Cumberland

Estates is in violation of this provision of the Permit insofar as the sediment controls are absent and/or do not retain sediment on site to the maximum extent practicable.

The Permit further requires that, “all [stormwater] control measures must be properly selected, installed and maintained,” and that “If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control.” Permit, § 3.5.3.1(b). Moreover, “If sediment escapes the permitted area, off-site accumulations that have not reached a stream must be removed at a frequency sufficient to minimize off-site impacts.” Permit, § 3.5.3.1(d). Defendant is in violation of this provision in that the pond was not properly installed and the sediment controls are insufficient and/or improperly maintained.

The Permit “does not authorize access to private property. Arrangements concerning the removal of sediment on adjoining property must be settled by the permittee and the adjoining landowner.” Id. Sediment escapes the development directly into Rob’s Creek downstream of the detention pond in violation of this provision of the Permit.

The Permit states that, “No solid materials, including building materials, shall be placed in waters of the state, except as authorized by a section 404 permit and/or Aquatic Resources Alteration Permit (ARAP).” Permit, § 3.5.5 (a). Dams that Cumberland Estates constructed below the detention pond are fill material, and thus its placement is a violation of the Permit. A number of those dams are shown here:



Cumberland Estates does not have a 404 permit allowing it to place solid materials into these waters. Additionally, the Permit requires that there be preserved a “30-foot natural

water quality riparian buffer adjacent to all streams at a construction site.” Permit, § 4.1.2. The development’s construction of its storm water collection pond in the path of a stream is in violation of this provision and the CWA.

Cumberland Estates is required under the Permit to, “Design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants.” Permit, § 4.1.1. The Permit states that, “At a minimum,” those controls “must be designed, installed, and maintained to: (1) Control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges;” and “(5) Minimize sediment discharges from the site.” *Id.* Cumberland Estates is in violation of this provision of the Permit because as the sediment controls are located in an existing stream, do not exist, and/or fail to minimize sediment discharges from the site.

The Permit states that, “The stormwater discharge must not cause an objectionable color contrast in the receiving stream.” Permit, § 5.3.2. As evidenced by the photographs below, showing that the runoff from the development is orange in contrast to the water flowing into tributaries to the receiving stream, Cumberland Estates is in violation of this provision of the Permit.





The Permit requires inspections of erosion controls to be performed twice weekly and records must be kept of those inspections. Permit, §§ 3.5.8.2 (a) and (g). Upon information and belief, defendant Cumberland Estates has failed to conduct inspections and/or failed to maintain the records required under this provision of the Permit.

On March 5, 2018 and July 2, 2018, TDEC issued Notices of Violations (“NOVs”) to Cumberland Estates, stating that Cumberland Estates was in violation of the discharge of pollution and that corrective action was needed.

Specifically, the March 5, 2018 NOV stated that the State had inspected the property and found violations of Cumberland Estates’ Permit, including “the absence of effective Erosion Prevention and Sediment Control (EPSC) measures and the discharge of sediment into waters of the state.”

The NOV noted that, “The site’s sediment basin was not property installed. As a result, sediment had discharged into the receiving stream.” It further stated that, “Disturbed areas have EPSC measures that are absent or ineffective.” Finally, the NOV stated that, “Copies of the EPSC plan sheets, twice weekly inspection reports, and the required site assessment were not on-site.” TDEC required Cumberland Estates to take corrective measures to resolve these problems. The July 2, 2018 NOV stated that, “The site’s sediment basin has not been properly maintained, resulting in insufficiently treated stormwater discharges with significant sediment deposits along the channel. These sediment deposits are orange in color and are a striking contrast to the soil of the surrounding bank. The deposits extend several thousand feet downstream.” Again, TDEC required Cumberland Estates to take corrective measures to resolve these problems. Cumberland Estates subsequently implemented certain stormwater control measures. Those measures have not resolved the pollution coming from the development into downstream creeks, and the pollution continues today. Most recently, on July 12, 2020, members of the Community Group documented pollution and sediment flowing out of the detention pond and into the downstream waters:





Accordingly, Cumberland Estates continues to be in violation of the Permit. Runoff from the development is in violation of federal and state law by, among other things, degrading otherwise pristine water quality of downstream creeks, including Rob's Creek, Mangrum Hollow Creek, Caney Fork Creek, and the South Harpeth River. Moreover, defendant is in violation of the CWA because it constructed its stormwater detention pond in the flow of Rob's Creek, a water of the United States.

#### **Clean Water Act Violations**

##### ***Unpermitted Discharge of Pollutants***

The Clean Water Act prohibits the discharge of pollutants to waters of the United States except in compliance with a NPDES permit issued pursuant to § 402 of the Act. *See* 33 U.S.C. §§ 1311(a), 1342(a). The streams degraded by discharges from the development are jurisdictional waters of the United States under the Clean Water Act. Sand and dirt are the primary components of sediment, and are specifically listed as pollutants under the Clean Water Act. *See* 33 U.S.C. § 1362(6).

Each discrete conveyances of sediment to waters of the United States is a point source subject to regulation under the Clean Water Act. The regulatory definition of discharge of a pollution from a point source expressly includes, “additions of pollutants into waters of the United States from . . . surface runoff which is collected or channeled by man.” 40 CFR 122.2.

In addition to the ongoing violation of the Clean Water Act caused by the construction of the detention pond in Rob’s Creek, defendant has been in violation of the CWA due to the runoff from the detention pond starting as early as August 26, 2017 through July 12, 2020, including, but not limited to, on February 10, 2018, March 5, 2018, March 6, 2019, July 5, 2019, July 7, 2019, November 4, 2019, January 3, 2020, and January 18, 2020.

***Unpermitted Discharge of Dredge and Fill Material***

Sections 401 and 404 of the Clean Water Act require a permit from the Corps of Engineers prior to the discharge of dredge or fill materials into waters of the United States. 33 U.S.C. §§ 1311, 1344. Cumberland Estates is causing the discharge of dredged or fill material into waters of the United States. These discharges exceed incidental fallback. 65 Fed. Reg. at 50109-50111 (August 16, 2000).

Discharge of fill material is ongoing due to the placement of the detention pond in Rob’s Creek and also occurs when the stormwater detention pond carries sediment and dirt from the development and discharges it into the impacted streams. Discharge of fill includes the addition of any material to a water of the United States which has the effect of “[r]eplacing any portion of a water of the United States with dry land.” See 33 C.F.R. § 323.2(e) and (f). Examples of fill material include “rock, sand, soil, clay.” See 33 C.F.R.

§ 323.2(e). The deposition of dirt and sediment in and from the stormwater detention pond is a discharge regulated by the Clean Water Act.

Eyewitness accounts and photographs such as those included here confirm that the discharge from the stormwater collection pond runs orange with mud on days of significant rain. The muddy, construction-related material is carried downstream where it is redeposited in the stream bed. This redeposit is the discharge of dredged material under the Clean Water Act.

These discharges of dredged and fill material occurred and occurs without permits or authorization in violation of Sections 401 and 404 of the Clean Water Act.

#### **State Water Quality Law Violations**

Cumberland Estates development is causing violations of Tennessee water quality standards. TDEC classifies water bodies according to the uses they support and mandates minimum water quality standards necessary to sustain those uses.

Caney Fork Creek is subject to multiple use classifications, and thus the most stringent standards apply. *See* Tenn. Comp. R. & Regs. 0400-40-03-.02 (5). For waters classified for supporting fish and aquatic life, like Caney Fork Creek, Tennessee's regulations provide that "[t]here shall be no turbidity or color in such amounts or of such character that will materially affect fish and aquatic life." *See* Tenn. Comp. R. & Regs. 0400-40-03-.03 (3)(d). Similarly, for recreational waters, the regulations provide that "[t]here shall be no turbidity or color in such amounts or character that will result in any objectionable appearance to the water, considering the nature and location of the water." *See* Tenn. Comp. R. & Regs. 0400-40-03-.03 (4)(d).

The development is causing the Rob's Creek, Mangrum Hollow Creek, and Caney Fork Creek to violate each of these standards. Turbidity and TSS measurements collected on July 5 and 7, 2019 and on January 3, 2020 on behalf of the Fernvale Community Group demonstrate that turbidity routinely exceeds applicable standards. This excessive turbidity is materially affecting fish and aquatic life and recreation. In addition, eyewitness and photographic accounts, like those photographs included here, show that the impacted waters run orange with mud and sediment causing an objectionable appearance.

Continued degradation of water quality and aquatic habitat in the otherwise pristine unnamed creek known as Rob's Creek, Mangrum Hollow Creek, and Caney Fork Creek attributable to the development is also a violation of the Tennessee anti-degradation policy. *See* Tenn. Comp. R. & Regs. 0400-40-03-.06. Finally, the continued sedimentation of these creeks violates a requirement under Tennessee law that, "[n]o pollution, including...any deleterious...substance of activity, shall be...allowed to run into, wash into or take place in any waters, either private or public, in a manner injurious to fish life or other aquatic organisms, or that could be injurious to fish life or other aquatic organisms, or that could be injurious the propagation of fish, or that results in the destruction of habitat for fish and aquatic life. *See* Tenn. Code Ann. § 70-4-206. Cumberland Estates' runoff is causing it to be in violation of these provisions.

#### **CLAIM FOR RELIEF**

##### **(Failure to Comply with the Terms of an NPDES Permit and the CWA)**

Plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs of this Complaint.

Defendant has violated and is violating the CWA section 402, 33 U.S.C. § 1342, and implementing federal and state regulations, 40 C.F.R. § 122.21(c)(1), and Tenn. Comp. R. & Regs. 0400-40-03-.02; 0400-40-03-.03(3) & (4); 0400-40-03-.06 as set forth in detail above.

Defendant is subject to civil penalties under CWA section 309(d), 33 U.S.C. § 1319(d), up to \$37,500 per day for every violation occurring thereafter. 40 C.F.R. §19.4, tbl. 1. These violations will continue unless and until defendant complies with the terms of its NPDES permit. 33 U.S.C. § 1311(a); id. § 1342.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Enter a declaratory judgment that defendant has violated and is violating the CWA by constructing a detention pond in a water of the United States and/or by discharging wastewater and other pollutants from its detention pond at the Cumberland Estates development into waters of the United States in violation of the Construction General NPDES permit.
2. Issue appropriate injunctive relief requiring defendant to immediately comply with the terms of the NPDES permit to prevent further illegal discharges of pollutants, require defendant to remove the detention pond from its current location in the flow of Rob's Creek and/or obtain a 404 permit allowing it to be placed in that location and/or require defendant to apply for a specific NPDES permit that quantitatively limits the amount of pollution that it is allowed to discharge.

3. Impose civil penalties for defendant's illegal, unpermitted discharges in the amount of \$37,500 per day for every violation occurring thereafter, through the date of judgment herein, pursuant to 33 U.S.C. § 1319(d) and 40 C.F.R. § 19.4, tbl. 1.
4. Retain continuing jurisdiction to review defendant's compliance with all judgments entered herein,
5. Issue such additional judicial determinations and orders that are necessary to effectuate the foregoing requests for relief.
6. Award plaintiffs the costs of this litigation, including reasonable attorney and expert witness fees, pursuant to CWA section 505(d), 33 U.S.C. § 1365(d).
7. Issue such other and further relief as the Court deems just and appropriate.

DATED this the 20<sup>th</sup> of July, 2020.

*/s/ Elizabeth A. Alexander*

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

DEC 23 2015

Ms. Shari Meghreblian, Ph.D.  
Deputy Commissioner  
Bureau of Environment  
Tennessee Department of Environment  
and Conservation  
312 Rosa L. Parks Avenue  
Nashville, Tennessee 37243

Dear Ms. Meghreblian:

The Environmental Protection Agency is aware of concerns expressed by stakeholders in Tennessee with regard to certain National Pollutant Discharge Elimination System (NPDES) permit requirements developed by TDEC in its Municipal Separate Storm Sewer System (MS4) permits. Specifically, we understand that some stakeholders have raised objections to including runoff reduction requirements for new development and redevelopment activities in Tennessee, asserting that the EPA and state permitting authorities lack legal authority to include such conditions. At your request, I would like to take this opportunity to respond to those concerns and make clear the legal basis for such permit requirements. In particular, I will address four specific issues: (1) the legal basis for runoff reduction requirements; (2) the assertion that the Clean Water Act (CWA) only addresses discharges *from* as opposed to *into* an MS4 system; (3) the assertion that a retention requirement exceeds NPDES authority because it regulates "flow" rather than pollutants; and (4) the assertion that *Virginia Department of Transportation v. EPA*, precludes the use of stormwater retention requirements or stormwater flow reduction practices.

The existing TDEC permit condition at issue requires permitted MS4s to control stormwater discharges by managing on-site, at a minimum, the first inch of every rainfall event preceded by 72 hours of no measurable precipitation. This first inch of rainfall must be 100% managed with no stormwater runoff being discharged to surface waters. Green infrastructure measures that infiltrate, evapotranspire, or harvest and use precipitation on site are an increasingly popular method of stormwater management to achieve such retention requirements. The permit also includes a number of flexibilities in connection with these requirements. For example, the permit incentivizes certain types of redevelopment by relaxing the stormwater retention requirement for high density, mixed-use, or transit-oriented development. In addition, there are flexibilities whereby sites that cannot fully accomplish the stormwater retention requirement on-site may propose off-site mitigation or payment into a fund for stormwater projects.



## **(1) The legal basis for runoff reduction requirements**

Section 402(p)(3)(B)(iii) of the CWA provides that MS4 permits “shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.” The permit condition at issue is a “management practice” and/or a “control technique.” Further, the statute authorizes “such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.” The retention requirement in the permit has a clear connection with the reduction of pollutant discharge. There is a strong factual and scientific basis for finding that such retention best management practices have beneficial water quality and pollutant reduction impacts.<sup>1</sup> Moreover, the existence and successful implementation of such requirements in many jurisdictions indicates that such measures are generally “practicable” to implement.<sup>2</sup> Indeed, there are jurisdictions in Tennessee that are successfully implementing the retention requirement. Therefore, we believe the permit conditions developed by TDEC fit squarely within the scope of the CWA’s NPDES permitting authority.

In addition to the statutory requirement that MS4 permits require controls to reduce the discharge of pollutants to the maximum extent practicable, NPDES regulations implementing the statute require that such controls include measures to address pollutants discharged from developed and redeveloped sites following construction. For example, regulations applicable to Phase 1 (large and medium) MS4s require “controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment.” 40 CFR § 122.26(d)(2)(iv)(A)(2). This regulation further provides that the requirement for a program to control pollution from new development and significant redevelopment must “address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed.” Similarly, the regulations applicable to Phase 2 (small) MS4s require the development and implementation of “a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre.” 40 CFR § 122.34(b)(5). The stormwater retention requirement for new and redeveloped sites that TDEC has included in its MS4 permits is the type of control that is contemplated by these regulations.

## **(2) The assertion that the CWA only addresses discharges *from* as opposed to *into* an MS4 system**

We understand that some concerns have been raised with regard to controls on discharges of pollutants *into* the MS4 instead of controls which address discharges of pollutants *from* the MS4. Section 402(p)(3)(B) plainly contemplates controls *into* the MS4 as an effective way to control what the MS4 discharges, as opposed to end-of-pipe limits. For example, section 402(p)(3)(B)(ii) requires that MS4

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<sup>1</sup> The National Research Council issued a 2009 report (Urban Stormwater Management in the United States) evaluating EPA’s stormwater management program. See <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=12465>.

<sup>2</sup> At least 17 states and the District of Columbia have already implemented retention performance requirements for newly developed and redeveloped sites, and the EPA believes that retention requirements are well within the MEP framework. Those states include VT, NJ, NY, DE, MD, PA, WV, FL, SC, WI, MT, CA, AK, OR, WA, MA, NH, and DC. For additional information, see Summary of State Stormwater Standards (EPA, 2011) at [http://www3.epa.gov/npdes/pubs/sw\\_state\\_summary\\_standards.pdf](http://www3.epa.gov/npdes/pubs/sw_state_summary_standards.pdf) and Post-Construction Performance Standards & Water Quality-Based Requirements (EPA, 2014) at [http://www.epa.gov/sites/production/files/2015-11/documents/sw\\_ms4\\_compendium.pdf](http://www.epa.gov/sites/production/files/2015-11/documents/sw_ms4_compendium.pdf).



permits “shall include requirements to effectively prohibit non-stormwater discharges *into the storm sewers*.” Section 402(p)(3)(B)(iii) includes the requirement that MS4 permits “shall require controls to reduce the discharge of pollutants to the maximum extent practicable including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator deems appropriate . . . .” Pollution prevention (as opposed to end-of-pipe treatment) is a well-established practice, control technique or other provision to control such pollutants. In implementing this authority, the preamble to the Phase 2 stormwater rule refers to studies and investigations indicating that “prior planning and designing for the minimization of pollutants in storm water discharges is the most cost-effective approach to storm water quality management. Reducing pollutant concentrations in the storm water after the discharge enters a storm sewer system is often more expensive and less efficient than preventing or reducing pollutants at the source.” 64 Fed. Reg. 68722, at 68759 (Dec. 8, 1999). Further the preamble states “the requirement for small MS4 operators to develop a program to address discharges resulting from new development and redevelopment is essentially a pollution prevention measure.” 64 Fed. Reg. 68722, at 68761 (Dec. 8, 1999). Post-construction measures, such as the retention requirement, are cost-effective pollution prevention measures to reduce pollutants entering an MS4.

### **(3) The assertion that a retention requirement exceeds NPDES authority because it regulates “flow”**

We understand there is opposition to the permit requirements, contending that a retention requirement exceeds NPDES authority because it seeks to regulate “flow” rather than pollutants, and only pollutants may be controlled by an NPDES permit. The purpose of a retention requirement in an NPDES MS4 permit is to reduce pollutant discharge to the maximum extent practicable in accordance with the statute and regulations. As noted above, Section 402(p)(3)(B)(iii) of the CWA lists a variety of ways for MS4 permits to regulate the discharge of pollutants in stormwater. Further, the EPA noted in the Phase 2 stormwater rule preamble with respect to the post-construction minimum control measure: “In many cases, consideration of the increased flow rate, velocity and energy of storm water discharges following development unavoidably must be taken into consideration in order to reduce the discharge of pollutants, to meet water quality permit conditions and to prevent degradation of receiving streams.” 64 Fed. Reg. 68722, at 68761 (Dec. 8, 1999).

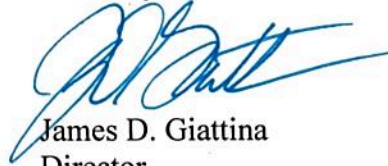
### **(4) The assertion that *Virginia Department of Transportation v. EPA* precludes the use of stormwater retention requirements**

Some stakeholders cite to a case involving the section of the CWA authorizing Total Maximum Daily Loads (TMDLs) as support for the argument that the CWA does not authorize stormwater retention requirements or any kind of stormwater flow reduction requirement in NPDES MS4 permits. That case, *Virginia Department of Transportation v. EPA*, 2013 U.S. Dist. LEXIS 981 (E.D.Va. Jan 3, 2013), struck down a TMDL that expressed a load allocation and wasteload allocations for sediment in terms of stormwater flow rate based on the EPA’s view that the flow rate from storm events served as a surrogate for sediment pollutant loads. The court held that this was not authorized because the statutory section authorizing TMDLs, CWA Section 303(d)(1)(C), specifically requires the setting of a TMDL “for those pollutants which the Administrator identifies . . . as suitable for such calculation.” Since the court’s decision turned on the specific language of Section 303(d)(1)(C), it has no bearing on the EPA’s authority to regulate “stormwater discharges,” as expressly required under CWA Section 402(p)(6), or to require various types of controls under CWA Section 402(p)(3)(B)(iii). For more explanation on the EPA’s authority to require retention requirements in MS4 permits, see the EPA’s briefs before EPA’s

Environmental Appeals Board defending two EPA-issued permits to MS4s at Department of Defense facilities in Regions 8 and 10.<sup>3</sup>

If you should have any questions, or would like to discuss this letter further, please contact me at (404) 562-9470, or have your staff contact Ms. Mary Kuo at (404) 562-9847.

Sincerely,



James D. Giattina

Director

Water Protection Division

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[http://yosemite.epa.gov/oa/eab\\_web\\_docket.nsf/Filings%20By%20Appeal%20Number/4CEBE347DDC7341485257C4300509261/\\$File/2013-12-13%20FINAL%20Buckley%20Response%20Brief.pdf](http://yosemite.epa.gov/oa/eab_web_docket.nsf/Filings%20By%20Appeal%20Number/4CEBE347DDC7341485257C4300509261/$File/2013-12-13%20FINAL%20Buckley%20Response%20Brief.pdf) (Buckley Air Force Base Municipal Separate Storm Sewer System);

[http://yosemite.epa.gov/oa/eab\\_web\\_docket.nsf/Filings%20By%20Appeal%20Number/F5E7F66427F9D63E85257C62005086DF/\\$File/Region%2010%20Response%20Brief%20\(FILED\).pdf](http://yosemite.epa.gov/oa/eab_web_docket.nsf/Filings%20By%20Appeal%20Number/F5E7F66427F9D63E85257C62005086DF/$File/Region%2010%20Response%20Brief%20(FILED).pdf) (Joint Base Lewis McChord Municipal Separate Storm Sewer System)

**From:** [Jim Redwine](#)  
**To:** [Denard Mickens](#)  
**Cc:** [Melanie Vanderloop](#); [TDEC Public.Records.Request](#)  
**Subject:** RE: [EXTERNAL] Public Records Request  
**Date:** Monday, July 19, 2021 9:57:00 AM  
**Attachments:** [image002.png](#)  
[image004.png](#)

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Mr. Mickens, thanks for your reply and your commitment to fully respond to my lawful request. Without waiving any rights under the TN Open Records Act or other law, for now, please send those items that are most readily identifiable as responsive to my request. TDEC has recently reissued a rationale for the May 11 draft CGP permit and in the rationale cites several contacts from “stakeholders,” as I previously noted. Those communications from and with stakeholders are squarely within the boundaries of my lawful request and, without narrowing my lawful request, I ask that you send those “stakeholder” communications now. I’ll be happy to discuss.

Thank you,

Jim Redwine



**James M. Redwine, Esq.**

Senior Policy Advisor

**Harpeth Conservancy**

[215 Jamestown Park, Suite 101](#)

[Brentwood, TN 37027](#)

o) 615-790-9767 m) 225-281-4089

[HarpethConservancy.org](#)



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**From:** Denard Mickens <Denard.Mickens@tn.gov>  
**Sent:** Thursday, July 15, 2021 3:08 PM  
**To:** Jim Redwine <jimredwine@harpethriver.org>  
**Cc:** Melanie Vanderloop <Melanie.Vanderloop@tn.gov>; [TDEC Public.Records.Request](#)  
<[TDEC.Public.Records.Request@tn.gov](#)>  
**Subject:** RE: [EXTERNAL] Public Records Request

Good afternoon, Mr. Redwine,

I hope you are well.

My name is Denard Mickens and I am one of the attorneys here at TDEC. I work with Melanie to help respond to requests for public records.

As you know, public records requests in Tennessee are controlled by state law, specifically T.C.A. 10-7-501 et seq. Particularly applicable to this current request is T.C.A. 10-7-503(a)(4) which reads that “This section shall not be construed as requiring a governmental entity to *sort through files to compile information* or to create or recreate a record that does not exist. *Any request for inspection or copying of a public record shall be sufficiently detailed to enable the governmental entity to identify the specific records for inspection and copying*” (emphasis added).

As Ms. Vanderloop has already pointed out, terms that you have used in your request here, such as “includes but is not limited to” do not provide a sufficient level of detail to ensure that we are fully responsive to your request. As another example, asking for “all records of meetings with contractors, homebuilders, developers, landowners, permittees” requires the Department to determine whether any particular person with whom the Department interacts fits one of these criteria. In other words, state law does not require that the Department parse your request or intuit your intent in order to make sure that we have not missed any responsive records. Public records requests are not discovery.

Having said that, we will work with you to produce all of the non-privileged documents that are responsive to your revised request(s). We will utilize the search terms and custodians that you have identified below as a starting point. Once we have produced the documents and you have paid the production costs, if any, to the extent that there are more responsive, non-privileged documents that can be identified with sufficient detail, we will produce those documents to you as well, subject to the same responsiveness, timeframe, and cost analysis mentioned above.

If you have further questions or concerns, please feel free to contact me directly any time and I will be happy to discuss further. My information is below.

Thanks,

-Denard Mickens



**B. Denard Mickens** | Senior Associate Counsel  
Office of General Counsel  
Tennessee Tower, 2<sup>nd</sup> Floor  
312 Rosa L. Parks Ave., Nashville, TN 37243  
p. 615-532-0143  
[denard.mickens@tn.gov](mailto:denard.mickens@tn.gov)  
[tn.gov/environment/](http://tn.gov/environment/)

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**From:** Jim Redwine <[jimredwine@harpethriver.org](mailto:jimredwine@harpethriver.org)>

**Sent:** Thursday, July 15, 2021 1:22 PM

**To:** TDEC Public.Records.Request <[TDEC.Public.Records.Request@tn.gov](mailto:TDEC.Public.Records.Request@tn.gov)>; Melanie Vanderloop <[Melanie.Vanderloop@tn.gov](mailto:Melanie.Vanderloop@tn.gov)>

**Subject:** RE: [EXTERNAL] Public Records Request

Ms. Vanderloop, thanks for your email of July 6, 2021. This is in response to it, and I offer it to you without waiving any rights under the TN Open Records Act (TORA) or other state or federal law. I appreciate your suggestions, but it is up to TDEC to comply with TORA and supply responsive documents.

First, I have reviewed the information on the Data Viewer, and it does not satisfy my request. In particular, the July 6, 2021 rationale (highlighted copy attached), makes reference in numerous places to "some stakeholders." See sections 6.7, 6.8, and 6.11, for example. Your response to our records request, should, at a minimum, disclose all relevant records regarding "some stakeholders," including communications with those stakeholders, and resulting TDEC work, and the like.

Second, among the custodians whose records you should search are DC Greg Young, Jennifer Dodd, Vojin Janjic, Jonathan Burr, and Wade Murphy.

Third, search terms that you should consider include a combination of the permit and /or something like the following: "site assessment"; inspection; MS4; "50 acres"; suggestion; comment; revision.

Again, the burden of complying with TORA is on TDEC, and the suggestions offered in this email are without prejudice to TDEC's duties to supply responsive records, and our rights under TORA and other state and federal law.

We look forward to hearing further from you.

Thanks,

Jim Redwine

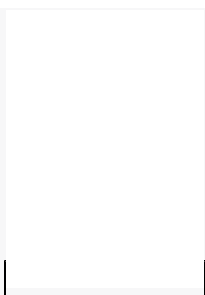
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**James M. Redwine, Esq.**

Senior Policy Advisor

**Harpeth Conservancy**

[215 Jamestown Park, Suite 101](#)



[Brentwood, TN 37027](#)

o) 615-790-9767 m) 225-281-4089

[HarpethConservancy.org](#)



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**From:** TDEC Public.Records.Request <[TDEC.Public.Records.Request@tn.gov](mailto:TDEC.Public.Records.Request@tn.gov)>

**Sent:** Tuesday, July 6, 2021 11:30 AM

**To:** Jim Redwine <[jimredwine@harpethriver.org](mailto:jimredwine@harpethriver.org)>

**Subject:** RE: [EXTERNAL] Public Records Request

Mr. Redwine,

I received your below request for records. In order to process your request and identify responsive records with particularity, I will need you to provide some additional information.

For items 1 and 6, you can access the requested information via the DWR dataviewer, [https://dataviewers.tdec.tn.gov/pls/enf\\_reports/f?p=9034:34051::::34051:P34051\\_PERMIT\\_NUMBER:TNR100000](https://dataviewers.tdec.tn.gov/pls/enf_reports/f?p=9034:34051::::34051:P34051_PERMIT_NUMBER:TNR100000) . There are additional documents available on the dataviewer that may include some of the records you have requested below. There are over 76 records, including emails, in the dataviewer.

For records requests regarding emails or notes, please provide the names of those custodians who you believe possess relevant records as well as the search terms, besides the permit number, that you would like me to utilize in our record gathering efforts.

Due to the timeframe listed in your request, I anticipate any responsive records will need to be produced in separate batches, so any additional clarity or narrowing of the request that you can provide may help to speed production.

Thank you,

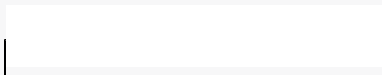
A handwritten signature in blue ink that reads "Melanie V.".



**Melanie VanderLoop** | Executive Administrative Assistant  
Office of the Commissioner  
Tennessee Tower, 2<sup>nd</sup> Floor  
312 Rosa L. Parks Ave., Nashville, TN 37243  
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[melanie.vanderloop@tn.gov](mailto:melanie.vanderloop@tn.gov)  
[tn.gov/environment](http://tn.gov/environment)  
[tnstateparks.com](http://tnstateparks.com)

**From:** [noreply@formstack.com](mailto:noreply@formstack.com) <[noreply@formstack.com](mailto:noreply@formstack.com)>  
**Sent:** Monday, June 28, 2021 4:25 PM  
**To:** TDEC Public.Records.Request <[TDEC.Public.Records.Request@tn.gov](mailto:TDEC.Public.Records.Request@tn.gov)>  
**Subject:** [EXTERNAL] Public Records Request

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**Formstack Submission For: [Public Records Request \(RDA SW35\)](#)**

Submitted at 06/28/21 5:24 PM

<b>Requestor's Name:</b>	James Redwine
<b>Phone:</b>	(225) 281-4089
<b>Requestor's E-mail:</b>	<a href="mailto:jimredwine@harpethriver.org">jimredwine@harpethriver.org</a>
<b>Is this request for information related to anticipated or existing litigation?:</b>	No
<b>Is the requestor a Tennessee citizen?:</b>	Yes

<b>Request::</b>	Records Inspection
If costs for copies are assessed, the requestor has a right to receive an estimate. Do you wish to waive your right to an estimate and agree to pay copying and production costs in an amount not to exceed the amount entered by the requestor below?:	No
<b>If yes, then initial below:</b>	
<b>Dollar amount to not exceed:</b>	
<b>Delivery Preference::</b>	Electronic
<p>Harpeth Conservancy and other members of the Tennessee Water Groups request the right to inspect and potentially copy all of the following records:</p> <p>Please note that in each category below, our request includes but is not limited to the records requested and all meeting and/or telephone call notes in whatever format, internal memos and e-mails, correspondence and e-mails among TDEC staff, and correspondence and e-mails between TDEC and any third party, in each case relating to the records requested. Further, a “record” includes not only the records or document comprising, containing, or constituting such record or document, but also all</p>	



**Provide a detailed description of the record(s) requested, including: (1) type of record; (2) timeframe or dates for the records sought; and (3) subject matter or key words related to the records. Under the TPRA, record requests must be sufficiently detailed to enable a governmental entity to identify the specific records sought. As such, your record request must provide enough detail to enable the records custodian responding to the request to identify the specific records you are seeking.:**

records or documents reflecting or referring to such record or document.

The "Permit" means TNR100000.

The time frame for records requested is from 2016 to the present.

- 1) All records regarding comments or complaints on the costs or burdens of compliance with the Permit.
- 2) All communications from or to contractors, homebuilders, developers, landowners, permittees, other governmental agencies, members and / or employees of the Tennessee General Assembly, and / or other interested parties regarding costs or burdens of compliance with the Permit.
- 3) All communications from or to contractors, homebuilders, developers, landowners, permittees, or other governmental agencies regarding requests for changes to the Permit.
- 4) All other records regarding requests for changes to the Permit.
- 5) All records regarding analysis of the costs or burdens of compliance with the Permit.
- 6) All drafts of the Permit.
- 7) All internal memoranda

discussing costs or burdens of compliance with the Permit.

8) All internal memoranda discussing requests for changes to the Permit.

9) All records of meetings with contractors, homebuilders, developers, landowners, permittees, other governmental agencies, members and / or employees of the Tennessee General Assembly, and /or other interested parties regarding the Permit.

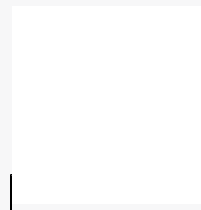
10) All records supporting TDEC's conclusion in in Part 3 of Permit rationale, that silt is "one of the primary pollutants in Tennessee waterways."

11) All records regarding TDEC's plans to ameliorate the conditions noted in Part 3 of Permit rationale, stating that silt is "one of the primary pollutants in Tennessee waterways."

**If site specific, choose the county:**

**If needed, upload any supporting documents or maps. :**

**Signature of Requestor:**



[Direct Link to Image](#)

**Date/Time:**

Jun 28, 2021 04:21 PM

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