

From: [Crys Zinkiewicz](#)
To: [Water Permits](#)
Subject: [EXTERNAL] Construction Site Run Off Comment
Date: Friday, July 2, 2021 7:10:52 AM

Ask most any person if they want more flooding in Nashville. You know the answer!

But whatever developers build may be the only choice that Nashville natives and newcomers have. Likely, they will not know of the potential for flooding when they are looking at a lovely new home possibility. They will have trusted that the developers are under regulations meant to protect homeowners.

That why what you do at TDEC is so important. You can see the big picture and you have the power to care for the land, for the waterways, and for the residents, who tie up so much of their income and especially their hopes and dreams in their home buying. The government and its agencies are supposed to have the best interests at heart for both people and creation. Not greed nor short-sightedness.

Good development practices are feasible and possible, including avoiding runoff from construction sites and requiring permeable surfaces rather than concrete or asphalt in order to allow the rains to drain into the earth where they are a positive and nourishing force for good.

Please do not loosen regulations. Look for solutions that keep the trust of the people and that show good stewardship of the land that supports us all.

Please consider this as my public comment.

Grace and peace,

Crys Zinkiewicz

214 Mockingbird Road
Nashville, TN 37205

crysz1122@gmail.com
615-948-6220

West End United Methodist Church
Creation Care Committee, Chair

From: [Clare Bratten](#)
To: [Water Permits](#)
Subject: [EXTERNAL] Construction site run off comment
Date: Thursday, July 1, 2021 9:19:19 AM

I learned today that TDEC is loosening regulations on run off from construction sites in Tennessee. This is alarming given the increased frequency of flooding in our state and seems to imply a far too cozy relationship between state oversight and developers. I cannot fathom why the agency would agree to lessen regulations at a time when more and more construction is lessening the areas of unpaved land in developed areas and thereby decreasing the ability of local neighborhood yards to absorb rain water.

I urge you to not loosen regulations. If anything we need **more** regulations requiring **permeable surfaces**. My own neighborhood, Sylvan Park, has small lots which are being developed with oversized houses. The backyards and front yards that used to absorb rain are disappearing as the new expensive houses now take up almost the entire lot, so the run off from rains from these over developed lots will head to Richland Creek. I expect Richland Creek will once again become a raging river similar to 2010 flooding after a prolonged period of hard rain because there is far less land to absorb run off. Even with McCabe golf course near, when you walk the greenway along the creek after a big rain, you can see evidence of silt and debris surges from the creek after a hard rain. This will only get worse with your plan to loosen restrictions. Please consider this my public comment.

Sincerely,

L. Clare Bratten
4802 Nevada Ave.
Nashville, TN 37209

From: [Ann Ercelawn](#)
To: [Water Permits](#)
Subject: [EXTERNAL] Permit no 100000
Date: Thursday, July 1, 2021 6:20:41 PM

Greetings,

I oppose loosening the standards protecting our water supply. The proposed change benefiting developers is ill advised. Water is life!

Sincerely,

Ann Ercelawn

37205

From: [Judy Alexander](#)
To: [Water Permits](#)
Subject: [EXTERNAL] TNR100000
Date: Tuesday, June 29, 2021 3:39:13 PM

Please reconsider the permit changes for construction related stormwater. At this point in time our water resources need more protection not less. I live in an area that has had ongoing construction for almost 20 years and the creeks, streams and the Harpeth River are under great stress from the runoff of the construction sites. The amount of silt that runs down the streets and into the storm sewers after a small rain is incredible. After a heavy rain we have rivers of mud even though the construction areas have silt fencing. It is so bad that the contractors must scrape the streets and sidewalks.

ALL of this silt makes its way to our drinking water. It doesn't take long to compromise our streams and rivers but it takes years to clean them up and restore their health. I would ask you to please consider the future of our water for future generations and not change the construction permits. Thank you.

Judy Alexander
8006 Keats St.
Franklin TN 37064
judyalexandr@comcast.net
Sent from my iPad -Judy





July 2020
from the way (left) side

From: [Cindy](#)
To: [Water Permits](#)
Subject: [EXTERNAL] TNR100000
Date: Tuesday, June 29, 2021 2:51:55 PM

*** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. ***

I would like to submit the following comments on the proposed permit changes for consideration before you change the permitting requirements related to construction related stormwater runoff/pollution.

I am a TN native and have lived in Franklin, TN since 2007 in a very large subdivision, Westhaven. Over the years I have watched as the construction has increased from around 500 houses to currently around 2500 with total build out of 3500 units. I have witnessed the extreme disruption of Hatcher Spring Creek, its tributaries and numerous springs and wetlands due to clear cutting and grading for the expansion of the subdivision. The amount of sediment which runs directly into the streams and the stormwater drains is overwhelming and extremely destructive for all aquatic and plant life and also for humans and other animals as it works it's way into the West Harpeth River and then on to the Harpeth River. These rivers are very small and make up a huge portion of the surface water available in Williamson County which is the source used to support farming and all life on the county. Any relaxation of the existing inspections and permitting requirements will have a serious impact on the quality of all life supported by the surface waters of the state. Once this water is polluted with silt or sediment other life in the streams die off and the entire ecosystem is impacted with more erosion and soil loss.

Here are a couple of pictures of construction run off into a stream in my neighborhood after a heavy rain in 2020.





I do not understand the reason as stated in the rational that such a change is needed at a time when so much pollution of surface water is coming from construction which is increasing at an exponential rate all over the state. Please consider the long range impact on the waters of the state and nation as once they are polluted it takes a very long time for recovery.

I have always appreciated the work that has been conducted to protect surface water and bring water quality issues into public attention. As we move forward, I believe protection of surface water is essential for all life in Tennessee for future generations. We rely on this water in Tennessee for farming, drinking water and to support native aquatic species and many other plants and animals. Without clean water all life will suffer.

Cindy Whitt
305 White Moss Place
Franklin, TN 37064
615-202-5761
Cindy.whitt@comcast.net

Sent from my iPhone

Liz Campbell

From: Megan Wylie Potts <mjwylie08@gmail.com>
Sent: Monday, July 5, 2021 12:15 PM
To: Vojin Janjic
Subject: [EXTERNAL] Public comment: Continue stormwater permit

Hello,

I am writing to express my concern over the minimizing of oversight on large-scale construction sites. The interest of the community is served best by consistent oversight of large construction sites. In their drive to make a profit at each stage of development, we cannot expect that developers abide by environmental and conservation standards.

The community members who live near these large-scale construction sites will pay the price, and the developers will pocket the profit for the lax regulations proposed by Mr. Lee. The community loses, and big business and Bill Lee win. This has been and continues to be the theme of Mr. Lee's term.

Megan Potts
37922

Liz Campbell

From: Hardwig, John Robert <jhardwig@utk.edu>
Sent: Monday, July 5, 2021 8:26 AM
To: Vojin Janjic
Subject: [EXTERNAL] Gov. Lee's proposed stormwater proposal

Mr./Ms. Janjic:

I write to register my objection to Gov. Lee's proposed reduction of the inspections required for new building sites. Many Tennessee communities are already facing major difficulties handling stormwater run-off. And the run-off is polluting Tennessee streams and rivers.

The rationale provided by TDEC is very thin: "A TDEC official said the proposed revisions are "an effort to streamline the permitting process." C'mon, Gov, gimme a break -- the big holdups in permitting are not due to the required stormwater inspections.

Thanks for registering my objection.

John

John Hardwig
810 Oak Grove Lane
Knoxville, TN 37919

Liz Campbell

From: Laura Still <eunicehat865@gmail.com>
Sent: Monday, July 5, 2021 8:47 AM
To: Vojin Janjic
Subject: [EXTERNAL] Relaxing rules on storm water permitting

Dear Vojin Janjic,

I am concerned about the plan to allow developers to forego getting a storm water permit and relaxing the rules in general. Developers in this area have shown over and over that they care only about the potential profit in a project and aren't concerned about environmental impact. They need more oversight, not less.

Laura Still

Liz Campbell

From: Cindy Kendrick <cindy4hiking@gmail.com>
Sent: Monday, July 5, 2021 9:26 AM
To: Vojin Janjic
Subject: [EXTERNAL] Please don't reduce stormwater permitting for construction projects

Dear Vojin Janjic,

As a Knox County resident dependent on clean water and a recreational user of our state's beautiful streams, rivers, and lakes, I am gravely concerned about the state's proposal to reduce oversight of stormwater runoff from construction sites. Silt is, of course, a major pollutant in our waters, and our muddy streams and rivers bear witness to already inadequate controls. This pollutant renders our waters much less suitable and attractive for recreation, deadly for some key aquatic plants and animals, and more expensive to treat for residential and industrial use.

Across the state, community groups have worked hard for years to clean up local streams. In our county, for example, Beaver Creek water quality is laboriously being improved through education, private action, monitoring, cleanups, and more. Public access points have been built and a blue way is being created. Beaver Creek isn't as muddy and unappealing as it once was, but it is vulnerable every day to activities in its watershed. The hard-fought gains such as those at Beaver Creek can easily be lost without regulatory support and enforcement.

If a speedier permitting process is desired, adding TDEC staff seems a less costly and more effective path in the long run than reducing oversight in our watersheds. Construction projects, ever-attuned to reducing costs, will almost always be done with the minimum required, the minimum enforced. The public, including neighbors and others who use water downstream, should have the opportunity to comment on big projects.

The proposed rule changes would drag us backward in our struggle to clean up our waters. It may not meet required Clean Water Act standards. It may not effectively support local watershed protection requirements. While it may appease some business interests, it does not appear to be in the best interest of the citizens of our state. I urge TDEC to retain existing requirements and inspection schedules. We all depend on clean water. Disallowing and preventing polluting actions is vital to public welfare.

Sincerely,
Cindy Kendrick
Knoxville

Liz Campbell

From: Brady Watson <brady.watson22@gmail.com>
Sent: Monday, July 5, 2021 11:47 AM
To: Vojin Janjic
Subject: [EXTERNAL] stormwater permit changes

Hello,

Please do not relax rules for permitting and monitoring of stormwater runoff at construction sites. We need to keep these in place to protect our rivers and streams and should be strengthening these regulations, not weakening them.

thank you,

Brady

Liz Campbell

From: Linda Billman <linbillman@gmail.com>
Sent: Monday, July 5, 2021 8:03 AM
To: Vojin Janjic
Subject: [EXTERNAL] Construction site permitting

Tennessee's waterways are vital to our health and aquatic life, are one of our main industries - tourism, and are already under pressure from construction runoff. As climate change makes managing rainwater runoff more challenging and development increases the TDEC should have MORE not less oversight of developers. I oppose the proposed changes in the permitting and inspection process. Thank you - Linda Billman

--

Linda Billman
linbillman@gmail.com
865-719-1815

Liz Campbell

From: Doug Noonan <doug.noonan@franklin.tn.gov>
Sent: Tuesday, July 6, 2021 7:17 AM
To: Vojin Janjic
Subject: [EXTERNAL] Draft CGP comments

*** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. ***

Hello Vojin,

I hope you are doing well! Below are comments we have compiled for the draft CGP:

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

GUIDANCE

Construction activities that qualify to submit a non-engineer developed SWPPP may be determined by answering the following questions:

1. Does the construction site discharge to receiving waters with unavailable parameters for siltation or habitat alterations, or that are Exceptional Tennessee Waters⁵? Yes ☐ No ☐
2. Does the construction site have a common drainage totaling ten or more acres through a common outfall? Yes ☐ No ☐
3. Will the plans and specifications include the design of sediment basins or other sediment controls involving structural, hydraulic, hydrologic, or other engineering calculations? (CGP Section 3.1.1²) Yes ☐ No ☐

If any of the above questions were answered with a "Yes," then the site-specific SWPPP must contain a registered architect or engineer-designed component. If all of the above questions were answered with a "No," then the SWPPP may be developed by an individual who has a working knowledge of erosion prevention and sediment controls.

- 5.5.3.1(i) - Temporary EPSC measures removed during the day provide zero treatment during a rain event. Add language in bold. *EPSC measures must be in place and functional before earth moving operations begin and must be constructed and maintained throughout the construction period stages as appropriate. Temporary measures may be removed at the beginning of the workday but must be replaced at the end of the workday **and prior to any rain event**.* As written it creates a loop hole that

allows measures to be removed at the beginning of the workday and not replaced prior to a rain event, potentially allowing a discharge during the work day. This creates a challenge for MS4s to issue enforcement for discharges if the CGP allows measures to be removed during the day.

- 5.5.3.1(i) & 5.5.3.4 “Temporary measures” is presented to be defined, but is not defined under the definition section.
- 5.5.3.4 - Definitive time frames should be stated. Enforcement will be difficult given the time frames as stated in the draft.
- 5.5.3.4(b) - Definitive time frames should be stated. Enforcement will be difficult given the time frames as stated in the draft.
- 5.5.3.5 paragraph 5 - Provide clarification and/or further explanation for “alternative design procedure.” Working in this field, I have no idea what this means or what is required.
- 5.5.3.10 Inspections should be twice weekly as they were in the previous permit. Weekly inspections will lengthen the time failed measures will remain failing, thus increasing sediment discharges off site to Waters of the State and the local MS4 which we are responsible to maintain with tax dollars.
- 6.4.1(c) - Is the intent for discharges to waters with unavailable parameters to be inspected twice weekly or is this a typo? Inspections should be twice weekly regardless of impairment. If a site has a watershed that is split with one side draining to a stream with available parameters and the opposite side discharging to a stream with unavailable parameters, what is the inspection schedule? Does each side of the site have a different schedule? This is going to be hectic for all parties involved to keep track of. This will cost the developers and MS4s more time and money to keep track of.
- What was the rationale from the 2005 permit that was given when inspection requirements changed from once per week + after rain events to twice weekly? Please provide an explanation as to why this rationale is no longer valid.
- Site assessment section should be added back to the permit. Having a PE or a level II review what was installed to ensure it is functioning per the plans and per technical standards is extremely helpful.
- There appears to be some back and forth from “streams” and “stream and wetlands.” Language throughout the permit needs to be modified to remain consistent throughout.
- 6.4.1 – Section should mirror the previous permit requirements and include waters with unavailable parameters for habitat alterations. Definition of unavailable parameters should be updated as well.
- Review the use of the word “should,” it needs to be replaced with “shall or must” in most instances in this permit. This is a permit that sets requirements, telling a permittee they should do something leaves it as optional and provides no ground for enforcement. Telling them they shall or must do something, is enforceable. For example 2.1.3, *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.* Based on this wording it does not require them to sign on to coverage. Another example 4.1.2: *The water quality riparian buffer zone should be preserved between the top of stream bank and the disturbed construction area* & 6.4.2: *The natural water quality riparian buffer zone should be preserved between the top of stream bank and the disturbed construction area.* The use of “should” in both of these sections conflicts with the use of “shall” in the previous paragraphs.
- “Waters” definition should be modified to “waters or waters of the state” as in the previous permit. It shall be made clear this is defining waters of the state.
- 5.5.3.10(i) – Section should better reflect section 3.5.8.2(i) from the previous permit. The new permit fails to mention that subsequent primary permittees are required to conduct inspections. Ensure language is clear that subsequent primary permittees shall or must conduct inspections, not “should”.

Doug Noonan

**Water Quality Specialist
City of Franklin Engineering Dept.
109 Third Avenue South
Franklin, TN 37064
Office: 615-791-3218
Cell: 615-626-7702**

The information included in this email is not to be used for design or engineering purposes. An individual or organization must provide calculations and construction plans to the City and verify all information that is shared in this communication prior to construction. The City is not responsible for any errors or omissions contained herein.

Liz Campbell

From: Ann Strange <strangersrus@gmail.com>
Sent: Monday, July 5, 2021 1:53 PM
To: Vojin Janjic
Subject: [EXTERNAL] Do not relax rules for construction sites

I believe that TDEC currently does not enforce rules strictly enough for construction sites. You allow developers too much leniency when they break current rules. The permitting process is NOT onerous and is necessary to ensure the environment is not destroyed by runoff and destruction of land.

I think silt fences don't work very well, especially when runoff has already occurred to reach the fences! It is TDEC's job to permit and monitor environmental projects and it is NOT doing the job when it considers relaxing the permitting and monitoring processes.

Thank you,

Ann Strange
307 Lake Forest Drive
Knoxville, TN 37920

Liz Campbell

From: Oslo Cole <oslo.cole@gmail.com>
Sent: Monday, July 5, 2021 5:59 PM
To: Vojin Janjic
Subject: [EXTERNAL] Easing Inspection Rules...Now?

Vojin,

I was blown away and appalled when I read that the Lee administration is threatening to ease permitting and inspections for new construction. It seems almost as if the Lee admin is living in a different universe than the one that just witnessed the collapsing of a condo building last week that led to many deaths, injuries and untold horrors.

We should be discussing *tightening* permitting and inspections right now, not reducing them! I hope that the Lee administration will carefully reconsider these changes. Upon doing so it will realize why these inspection and permitting rules should NOT be scaled back at this time or any time in the short to mid-term.

Thank you for reading my comment.

Kindest regards,

Oslo Cole
Knoxville resident and homeowner

Liz Campbell

From: judy loest <jmcloest@gmail.com>
Sent: Wednesday, July 7, 2021 11:24 AM
To: Vojin Janjic
Subject: [EXTERNAL] Stormwater Permit Regulation

I strongly object to the proposed removal of a requirement for requiring a stormwater permit for any development that will disturb 50 acres of land or more. "Streamling" protective policies seems to be politics-speak for gutting...everything from voting rights, to gun permits, to, most disturbingly, environmental protections.

Oh, to live in a world where decision/policy makers rely on science and not the party line, which now seems to be mostly driven by greed.

Judy Loest
Knoxville

Liz Campbell

From: Barbara Rosensteel <brosensteel9@gmail.com>
Sent: Friday, July 9, 2021 8:56 AM
To: Vojin Janjic
Cc: Liz Campbell
Subject: [EXTERNAL] Comments on Proposed Rule Changes to the General NPDES Construction General Permit

To: Vojin Janjic
From:
Barbara Rosensteel, CPESC
10293 Rabbit Ridge Road
Baxter, TN 38544

Thank you for the opportunity to submit the following comments on the proposed rule changes for the General NPDES Permit for Discharges of Stormwater Associated with Construction Sites (Construction General Permit).

I am a Certified Professional in Erosion and Sediment Control (CPESC) and have both TDEC Level 1 and Level 2 EPSC certifications. I have been observing and conducting EPSC inspections on construction sites in Tennessee since 2012.

I am opposed to the proposed changes to the Construction General Permit.

These changes decrease rather than increase the environmental protection which is the Department's mandate. It is a certainty that these changes if enacted, along with the lack of enforcement of existing permits, will lead to even more environmental degradation.

I was concerned when the permit was changed in 2016 to omit the requirement for a site inspection after a rainfall. This is nonsensical because, as any Erosion Prevention and Sediment Control (EPSC) professional can tell you, during and after a rainfall is exactly when we want to inspect a site to see if the control measures are working as planned and to identify needed repairs.

Now in 2021, the proposal to reduce the inspection frequency to once per week instead of twice for sites under a certain acreage is a step backwards in resource protection. What if an inspection is done on Monday, then on Tuesday or Wednesday there is significant rain (intense and/or high volume). Any malfunctioning or damaged EPSC measures will not be identified until the following Monday. Much damage can be done to an aquatic resource with a failing EPSC control over 6 or 7 days. We cannot count on the construction manager and crews to see these things, much less repair them, as that is not their job or their area of expertise.

Unmanaged runoff from a 5-acre site can do as much damage to an aquatic resource as unmanaged runoff from a 51-acre site. The potential for degradation is NOT dependent on the size of the site but on the appropriate use and integrity of the erosion protection and sediment control measures - Which rely on inspections.

For example, I have photos of an under 5 acre site where EPSC measures were installed incorrectly and not maintained, resulting in soil pouring into a perennial headwater stream smothering the natural substrate. The twice-weekly inspection forms reported that the site was in compliance and that there were no deficiencies or failures and no water quality impacts. I have direct information and photos of a 10+ acre site that under the terms of the permit was required to have a sediment basin or equivalent. It did not, and had been pouring muddy water

and PAM directly into a stream every time it rained. I was dismayed when the TDEC representative told me (after seeing the site on a sunny day), that he didn't see anything going into the stream and that the site was in compliance.

Which brings me to my next point. TDEC exercises no oversight or inspections of construction sites and does so only when they receive a complaint from a member of the public. The entire permit is based on an honor system – That the permittee will police themselves and remain in compliance. Voluntary compliance with environmental regulations has never been shown to work, especially if there is no oversight and accountability.

TDEC will visit a site only in response to a complaint from the public. In my experience, when TDEC does these complaint-based site visits, the TDEC representative typically does not recognize, or ignores, when there is a permit violation, downplays the deficiencies, and gives the developer far too much time and leeway to fix the problem. The developers do not comply in the first place because they know will not be caught and, if caught, will face no penalties for non-compliance.

TDEC needs to have experienced staff with the proper credentials (i.e. CPESC; Level 2 certification) to conduct spot inspections of permitted sites, review for full compliance with the permit requirements, and to have the imprimatur from the Commissioner to issue Corrective Actions and Notices of Violation (NOV).

TDEC also needs to have a stronger certification program for EPSC inspectors. The current program certifies a person to conduct Level 1 EPSC inspections after less than 8 hours of “training” (with no field component) and passing a multiple-choice open-book exam. Many of the attendees are there because their employers sent them in order that they can have an employee to do the inspections, and do not have any prior experience or education in EPSC. Many of these inspectors have a clear conflict of interest because of their status as employees or contractors of the permittee and cannot be independent and impartial. How else to explain the completed and signed forms I have seen that indicated no deficiencies for a site where silt fences were collapsed and the stream was filled with sediments?

Non-point source sediment pollution is the largest pollutant in our streams and waterways. We should be doing more to prevent degradation, not less. Instead of weakening the rules, we need to make them stronger. But stronger rules are only as good as their enforcement. A priority for TDEC should be to strengthen the rules, conduct oversight and spot inspections for the Construction General Permit with EPSC professionals, and to enforce the rules.

To close, I oppose the proposed rule changes as they weaken rather than strengthen environmental protection, and oppose any further weakening of the rules for the Construction General Permit.

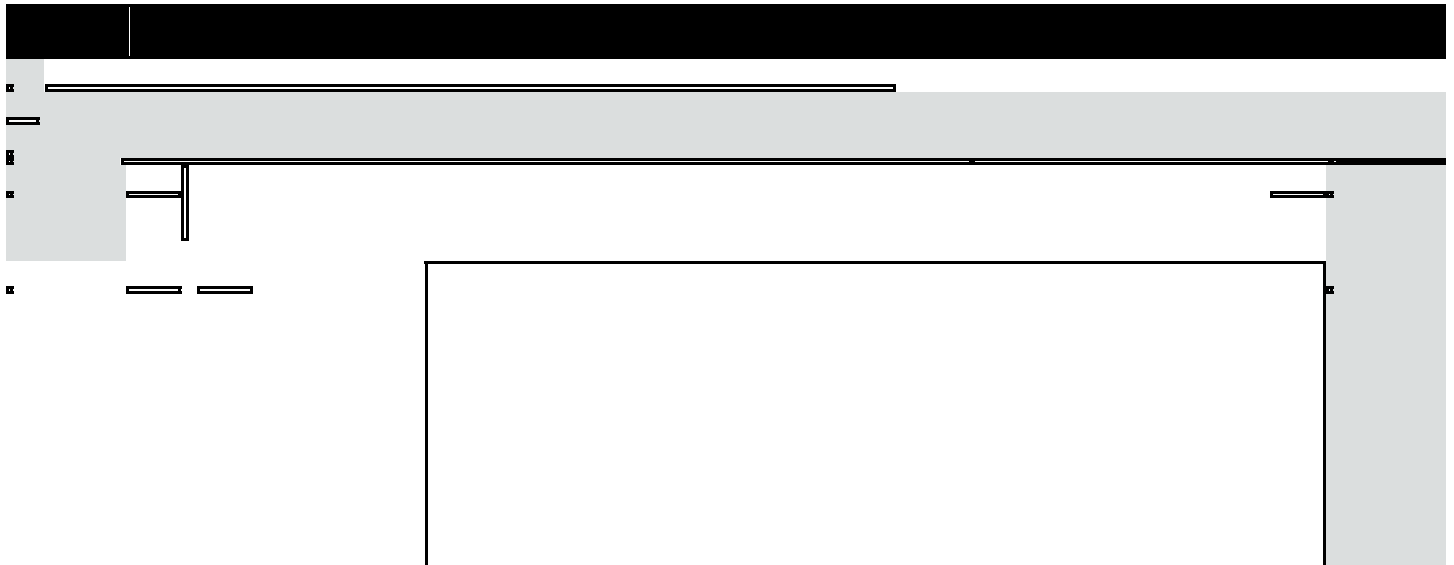
Liz Campbell

From: Jaclyn Mothupi
Sent: Wednesday, August 4, 2021 12:27 PM
To: Jonathon Burr; April Grippo; Jennifer Dodd; Vojin Janjic
Subject: Tennessee Waters Action Alert: Comments Due by End of Day Thursday 8/5

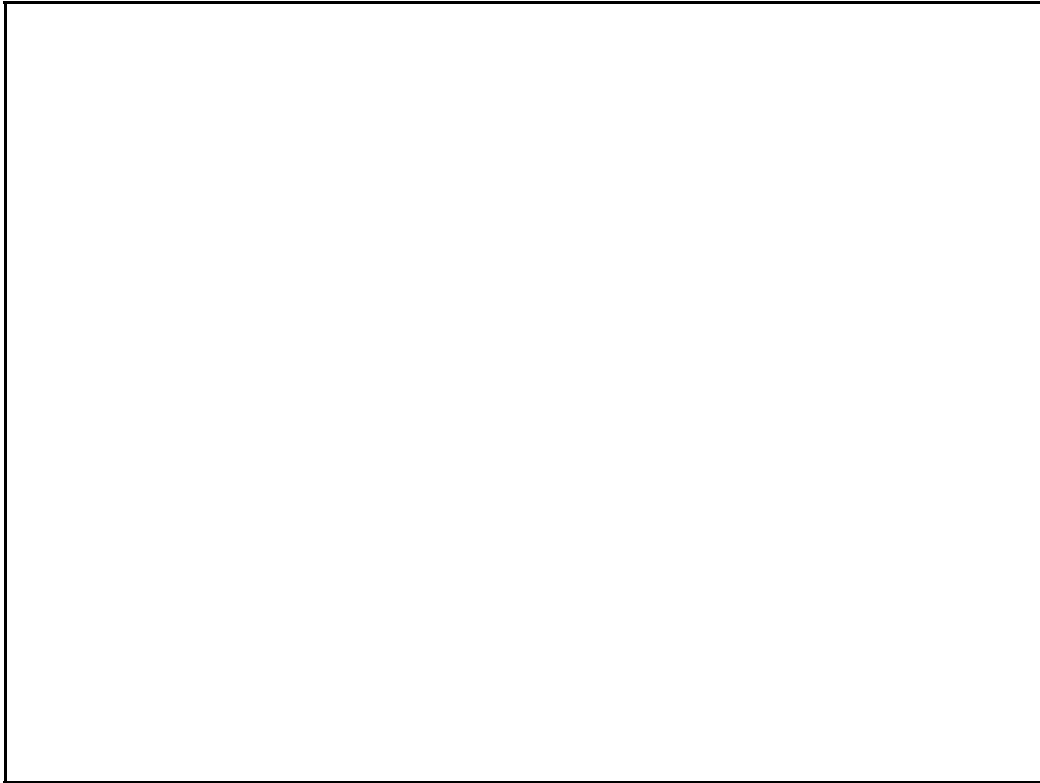
FYI, don't know if y'all are on TEC's list serv.

From: Tennessee Environmental Council <tec@tectn.org>
Sent: Wednesday, August 4, 2021 12:20 PM
To: Jaclyn Mothupi <Jaclyn.Mothupi@tn.gov>
Subject: [EXTERNAL] Tennessee Waters Action Alert: Comments Due by End of Day Thursday 8/5

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TDEC's Proposed Permit Change Will Weaken Our Water Quality



Dear Friend,

Will you take a minute to help maintain & improve Tennessee's water quality? We have a small window of time remaining for public comments to a **proposed change to our state's general water quality permit relating to construction projects**. Please take a moment to email your comments to vojin.janjic@tn.gov.

Here are some suggested talking points:

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Please make sure to state your name and where you live (town, city, or county).

For a detailed analysis of the problems with the renewed permit, please see the comments below drafted by a former director of Tennessee's water pollution control division (Paul Davis). And visit [TDEC's permit data viewer](#) for more information and a public record of this process.

Thank you for your quick response to this urgent need!

Detailed Analysis

Paul E. Davis, PE

pedh2o@gmail.com

July 20, 2021

By email to Mr. Vojin Janjić _at Vojin.Janjić@tn.gov.

Re: Second comment letter - General NPDES Permit for Storm Water Discharges Associated with Construction Activity

Permit Number: TNR100000

Following is my second set of comments for the public record on TDEC's Draft General NPDES Permit for Storm Water Discharges Associated with Construction Activity. I sent a first comment letter on July 8 before I saw the Updated CGP Rationale. This letter will repeat most of my earlier comments with some minor edits and add more based on the Updated CGP Rationale document.

To make this an easier read, I have italicized parts that are completely new.

I again appreciate this opportunity to participate and look forward to continuing discussions with agency staff and other interested persons after which I may have still further comments.

Despite the good work of engineers, designers and inspectors, the conscientious efforts of MS4 staff and the careful attention that some developers give to managing their sites, non-compliance resulting in water pollution remains all too common at construction sites across Tennessee, continuing the unhappy assessment in the State of Tennessee's November 2018 TNH2O document, "Urban watersheds are under intense pressure from land-use conversion, construction site runoff, and loss of headwater streams." I've seen dozens of these sites myself and I've been shown pictures of many more.

It's in view of the widespread impacts from construction site stormwater discharges and the resulting intense pressure that Tennessee waters are under that I make these comments.

1. The posted rationale is incomplete and misleading.

The permit "rationale," also called "fact sheet" or "statement of basis," is a requirement of federal rules for NPDES permit issuance. The rationale should explain in plain English how the agency has settled on what it's proposing to issue. For reissuances, the best would be if it explains how each change helps the agency better achieve its mission. At TDEC, that's "protecting and improving the quality of Tennessee's ... water through a responsible regulatory system" as set out on the agency's website.

I understand that a red-line version of the permit isn't practicable given the amount of restructuring that went into the 2021 draft. But the rationale document should identify each substantial change, edit, addition and deletion, and for each of those set out what the 2016 permit required, what's proposed in the 2021 draft and how the agency decided to make that change - including what purpose is being served.

The Updated CGP Rationale is an improvement over the version issued on May 11. But as I will set out

in new comments below, the updated rationale still fails in most cases to explain or justify the agency's proposal to reduce or remove protections of the present permit.

2. The 2021 draft would roll back TDEC's requirement that construction site operators conduct site assessments.

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

I'll attach here a couple of photos I use in my stormwater classes to illustrate the importance of having a design expert verify the implementation of controls. These pictures are from different sites but together they illustrate the point I want to make – that proper implementation of plans makes a big difference in effectiveness. In both of these cases, riprap is in the channel. Both installers left these sites as we see them. On the left, stone fully lines the channel so it seems well protected. The installation on the right is clearly ineffective and it's unlikely to have followed any competent plan. Had competent designers seen the installation they would have explained the problem to the contractor before the channel scoured as we see it. And they might also consider how instructions might be more clear in future plans.

Part 6.11 of the Updated CGP Rationale, Site Assessments, cites arguments from unidentified stakeholders that it's redundant for the permit to require that a design expert conduct within 30 days of commencement of construction a quality assurance assessment to verify the installation, functionality and performance of EPSC measures described in the SWPPP.

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

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

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

3. The 2021 draft proposes to cut in half construction site operators' responsibility to inspect most sites. Inspections regularly conducted and documented by trained individuals are proven to result in faster response to problems with stormwater controls and better protection of waters. I have heard no objection to the present two-per-week inspection frequency and TDEC has offered no explanation for cutting in half an inspection requirement that's been in effect for years.

TDEC's proposed schedule of inspections would allow inspections to be as much as eleven days apart – from Monday of one week until Friday of the next week. That's much more than the present maximum of four days. It could rain every day during that time as long as the 0.50 inches in 24 hours threshold isn't exceeded.

The following two photos illustrate why this is important: Both of these situations need to be corrected

sooner rather than later. Every bit of silt that was in those trenches in the picture on the left or is flowing into the catch basin in the picture on the right is now choking Tennessee waters. Every stormwater inspector in Tennessee could add dozens more to the examples I'm showing here. To protect Tennessee waters, TDEC needs to retain its twice-per-week inspection requirement.

The following two photos illustrate why this is important: Both of these situations need to be corrected sooner rather than later. Every bit of silt that was in those trenches in the picture on the left or is flowing into the catch basin in the picture on the right is now choking Tennessee waters. Every stormwater inspector in Tennessee could add dozens more to the examples I'm showing here. To protect Tennessee waters, TDEC needs to retain its twice-per-week inspection requirement.

Part 6.8 of the Updated CGP Rationale, Schedule of Inspections, says "some stakeholders" have asked TDEC to reduce operator inspections to be no more frequent than EPA's 2021 Draft Construction General Permit that requires inspections on the schedule of one per week plus following any 0.25-inch rainfall. Twice per week is said to bring more cost but not more protection. TDEC goes on to say that it's "unaware" of evidence of increased pollution resulting from longer periods between inspections.

In my nine years of conducting stormwater classes across the country, hundreds of MS4 staff, state staff, consultants and builders have consistently reported that compliance is directly related to inspection frequency. If inspections have any value in pollution control it's simply illogical to conclude that reducing inspections by half will not result in more pollution.

New pictures – the following two photographs were taken on Sunday, July 18, just as I was preparing this second comment letter. The person who sent these to me, or for that matter anyone in a developing part of Tennessee, can find stormwater control problems like these any day they care to look. Less frequent inspections would leave problems uncorrected for longer periods of time. If situations like these stay uncorrected for longer periods, more sediment will fill Tennessee streams.

4. In 5.5.3.4, Stabilization Practices, the new draft substitutes unclear requirements where the expiring permit is clear, specific and measurable.

The present permit requires that "[t]emporary or permanent soil stabilization at the construction site must be completed no later than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased."

In perhaps the most curious of TDEC's changes, the agency now proposes to substitute the phrase "within approximately 2 weeks" for "no later than 14 days."

That same section lists situations in which temporary stabilization measures are not required. Item b in that list reads, "Where construction activity on a portion of the site is temporarily ceased, but soil disturbing activities is planned to resume within 2-3 weeks."

NPDES permit authorities are instructed by a court ruling commonly called the "Remand Rule" to make requirements clear, specific and measurable. Common sense says the same. These changes take Tennessee's permit in the opposite direction. It's indefinite language, too awkward to measure or enforce, and unclear to permittees, contractors, the public, MS4 staff and TDEC's own staff. So these must be fixed.

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

For comparison, see Part 2.2.14 a, Stabilization Deadlines, in EPA's Proposed 2022 Construction

General Permit which happens to be on notice now. Similar language is in state permits I'm familiar with, except Pennsylvania's, where the time period is 4 rather than 14 days.

Part 6.7 of the Updated CGP Rationale, Stabilization Practices, says that TDEC proposes to reissue with imprecise requirements because "some stakeholders," not identified, object to inflexible application of permit requirements. In my decades of leadership of Tennessee's water pollution agency, I very rarely had any such complaints. Staff are entirely capable of applying discretion and common sense to their oversight of regulated activities. If there is a problem, it should be addressed by training rather than by issuing an ambiguous and unenforceable permit.

5. The 2021 draft deletes operators' responsibility to submit documents to MS4s and comply with sediment control and stormwater management measures required by MS4s.

TDEC's present general permit has this language at Part 3.5.6, Approved local government sediment and erosion control requirements: "Permittees must comply with any additional erosion prevention, sediment control and stormwater management measures required by a local municipality or permitted MS4 program."

Now, the new draft at Part 1.4.4, Submittal of Documents to Local Municipalities, proposes to reduce that to "permittees are encouraged to coordinate with the local MS4 authority prior to submitting an NOI to the division."

The 2021 rationale document acknowledges that "[l]anguage requiring applicants to submit info to MS4s and comply with local ordinance is proposed for deletion," asserting that "[l]ocal jurisdictions are expected to enforce their own ordinances" and information is "readily available" on TDEC's data and map viewers. So MS4s are on their own.

TDEC must require rather than simply encourage NPDES permittees to submit Notice of Coverage and Notice of Termination if the MS4 asks for them. I'm not aware that any construction site operator has ever objected to the present permit provisions for submitting information or that there has ever been a problem.

Whether they like it or not, MS4s are part of the NPDES regulatory program. They're required by state and federal rules to have programs and ordinances protecting urban waters from discharges to their stormwater systems. Tennessee's NPDES permit must protect its MS4s and their ability to enforce the ordinances they've been required to adopt. The 2016 language regarding compliance with local requirements, or equivalent, must be retained.

For comparison, see again EPA's draft 2022 general permit reissuance. It maintains present language requiring compliance with local requirements at parts related to treatment chemicals (2.2.13 d), disposal of recycle oil and oily wastes (2.3.1 e), storage, handling and disposal of hazardous or toxic waste (2.3.3 d. ii, iv, and vi), application of fertilizers (2.3.5 f), emergency spill notification (2.3.6), and disposal of PCB containing material (3.2 b).

At Part 7.3, EPA's draft requires that a current copy of the SWPPP be made available at the time of an on-site inspection or upon request by "EPA, a state, tribal or local agency approving stormwater management plans." And finally, Part 7.4.1 e requires that SWPPPs must be modified to "reflect any revisions to applicable federal, state, tribal, or local requirements that affect the stormwater controls implemented at the site."

Part 6.3 of the Updated CGP Rationale, MS4 Jurisdictions, says that TDEC dropped requirements that operators in MS4 areas comply with local rules on the basis that the agency doesn't have authority to maintain the requirements it issued in 2016.

Tennessee law gives the commissioner and by delegation the director, broad authority to exercise

general supervision, enforce laws, make agreements, require information, issue permits and more. If TDEC's counsel or the Tennessee Attorney General has issued a finding that the agency now lacks the authority it had in 2016 to require that operators comply with requirements that MS4s are compelled by TDEC to adopt, the agency should post that on Dataviewer as a document relevant to this reissuance.

Other states explicitly require that operators comply with local requirements. See for example Mississippi (Permit No. MSR10, Condition S-4," Compliance With Local Stormwater Ordinances"), Arkansas (Permit No. ARR150000, Part 1, Section B 9, "Applicable Federal, State or Local Requirements") and South Carolina (Permit No. SCR100000, 72-307. Specific Design Criteria, Minimum Standards and Specifications. A.5).

6. Tennessee's public reasonably expects to have access to plans for the protection of their waters, but the 2021 draft unaccountably drops the requirement that permittees make SWPPPs available to the public. TDEC's 2016 permit, Part 6.2, Accessibility and Retention of Records, says this: "The permittee shall retain a copy of the SWPPP and a copy of the permit at the construction site (or other local location accessible to the director and the public) from the date construction commences to the date of termination of permit coverage."

The corresponding section of the 2021 draft permit is Part 7.2. Now the parenthetical phrase says, "or other location accessible to the division." There's no discussion of the deletion of "public" in the rationale. Some provision for public access must be made.

This issue is cured if up-to-date versions of plans will be available on TDEC's site and if the site notice explains to readers how to access those plans. If that's the case it should be explained in the rationale.

The Updated CGP Rationale doesn't address this change.

7. Post-Construction Stormwater – a new comment.

Part 6.9 of the Updated CGP Rationale, Post-Construction Stormwater, says no reference will be made in the CGP to post-construction requirements because only MS4s regulate post-construction stormwater discharges. That reasoning needlessly removes protection from waters in developing areas.

Section 3.5.4 of the present permit, Stormwater management, rennumbers to 5.5.3.6 in the 2021 draft. The newer and much shorter version drops all mention of steps to be taken during the construction process to control pollutants after construction operations have been completed, including those for discharges to impaired waters where SWPPPs would no longer describe measures to control pollutants from increased impervious surfaces.

Even this sentence would be removed: "All permittees are encouraged to limit the amount of post-construction runoff voluntarily, if not required by local building regulations or local MS4 program requirements, to minimize in-stream channel erosion in the receiving stream."

The proposed change would boost the likelihood that waters in developing areas, particularly where there is not an effective MS4-operated post-construction control program, will be continually degraded. For projects within MS4s, the proposed change would increase the likelihood that operators will not have planned for the post-construction controls they're required to have in place at the termination of active construction. The reissued permit needs to maintain existing protections.

8. Good Government – a new comment

TDEC's Dataviewer system allows long-needed and much-appreciated ready public access to

documents, records, reports and more. So much that would have required an exhaustive search through paper files is now available in moments. That's good government.

Dataviewer's documents include those associated with permit issuance. For this permit, the URL is https://dataviewers.tdec.tn.gov/pls/enf_reports/f?p=9034:34051::::34051:P34051_PERMIT_NUMBER:TNR100000

Below is a screenshot of that page, showing the first ten items under the heading "Permit Documents," posted from April 10, 2017, to July 6, 2021. They include the 2021 draft as well as the original and updated versions of the rationale. The "Comments to draft permit" document, posted July 2, 2021, contains comments and photos from five concerned citizens submitted via email between June 29 and July 2.

What's missing from these Permit Documents are the challenges, claims, assertions and arguments of the unidentified "stakeholders" who, according to the rationale, have communicated with the department regarding this permit. Those citizens are entirely within their rights to raise concerns to the department. But their comments, and records of those communications, should, like the July 2 collection of emails, be on this page. Good government treats citizens equally.

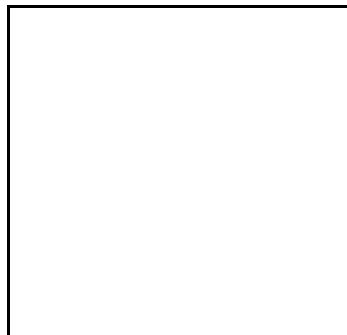
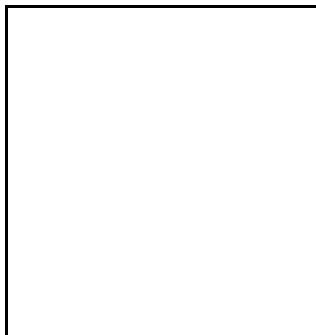
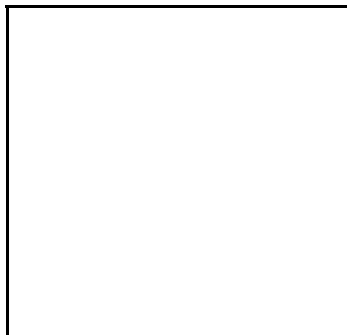
9. It's not too late!

Every member of TDEC's staff who has been identified as having contributed to the 2021 draft has made clear that they sincerely want to issue the best possible permit and are looking for public input. That's the spirit in which I'm sending these comments. I appreciate the staff's commitment to review and act on my comments as well as those from others concerned with restoring and maintaining Tennessee waters.

Paul E. Davis, PE

TDEC Retiree, 40+ years Tennessee state service
Water Pollution Control Director, 1988-2012
National Stormwater Center Instructor, 2012-Present
Tennessee Stormwater Association Member, 2014-Present

Thank you for helping to conserve and improve TN's environment with us! ~ *Tennessee Environmental Council Team*



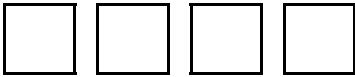


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This email was sent to jaclyn.mothupi@tn.gov.
To continue receiving our emails, add us to your address book.



Liz Campbell

From: Stella T. Hansen <stellafrances@gmail.com>
Sent: Wednesday, August 4, 2021 12:44 PM
To: Vojin Janjic
Subject: [EXTERNAL] water quality

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Thank you.

--

Stella Hansen 832-928-6713 (Cell) **Columbia, TN.**

Liz Campbell

From: Amy Sullivan <firecrackermedic@gmail.com>
Sent: Wednesday, August 4, 2021 12:27 PM
To: Vojin Janjic
Subject: [EXTERNAL] Water quality/construction

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Sincerely,

Amy Sullivan

Burns, TN

Liz Campbell

From: Lydia Brooker <lydiagbrooker@gmail.com>
Sent: Wednesday, August 4, 2021 12:27 PM
To: Vojin Janjic
Subject: [EXTERNAL] Don't Weaken Water Quality Controls

Greetings,

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Thanks for your time,

Lydia Brooker

Resident of Davidson County

Liz Campbell

From: Lynn Taylor <lynn@taylormadeplans.com>
Sent: Wednesday, August 4, 2021 12:28 PM
To: Vojin Janjic
Subject: [EXTERNAL] Permit Number: TNR100000 - protecting clean water in Tennessee
Importance: High

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Vojin,

Good afternoon! I live in East Nashville, Davidson County. My company provides Residential Design services. I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We do not need a weaker permit, as clean water is vital to our community and our well-being. Our water resource is so essential for us and future generations!

Best,

R. Lynn Taylor
Residential Designer
Taylor Made Plans
1906B Shelby Ave., 37206
615-650-8956 office
www.taylormadeplans.com
lynn@taylormadeplans.com

Liz Campbell

From: Amy Smart <froggazer@gmail.com>
Sent: Wednesday, August 4, 2021 12:32 PM
To: Vojin Janjic
Subject: [EXTERNAL] Possible changes to construction site water quality

Dear Mr. Janjic,

I understand that a more lenient approach in regards to construction site water run-off management has been proposed. At a time when construction is proceeding at an unprecedented pace in Tennessee, it is more important than ever to maintain, not weaken, protections for our water systems. Due to the very fact of the construction itself, more people than ever before will be needing usable water so it would be doubly ironic if the very construction that brought the population to the area were to ultimately render the area unusable!
Please do not allow any changes that would weaken our current water protections.

Thank you,
Amy Smart

Liz Campbell

From: David Duhl <davidduhl@comcast.net>
Sent: Monday, August 2, 2021 2:48 PM
To: Vojin Janjic
Subject: [EXTERNAL] Comments re: Proposed Revisions to General NPDES Permit for Storm Water Discharges Associated with Construction Activity Permit Number: TNR100000
Attachments: Rule Change Comments.docx

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Hi Vojin. Attached are my comments for the public record concerning proposed TNR100000 permit revisions.

I hope all is well with you.

David

Sent from [Mail](#) for Windows 10

Liz Campbell

From: gregdenton@comcast.net
Sent: Sunday, August 1, 2021 4:59 PM
To: Vojin Janjic
Subject: [EXTERNAL] Proposed Revisions to General NPDES Permit for Storm Water Discharges Associated with Construction Activity Permit Number: TNR100000

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

My name is Greg Denton and I am a retired citizen residing in Rutherford County. I am writing in opposition to the proposed relaxing of the construction stormwater permitting requirements in Tennessee.

For the entirety of my almost four-decade career as an environmental scientist, I studied water quality status and trends in Tennessee. During this time, I noted many positive developments. These positives included a significant reduction in the volume of toxic and oxygen demanding pollutants discharged from industries and municipalities, plus the restoration of multiple streams severely impacted by human activities. The use of environmental regulations to protect aquatic species with special status was another important accomplishment.

However, other pollution sources grew in magnitude during my tenure and more than offset other water quality progress. Currently, water quality impacts to Tennessee streams are dominated by the chronic removal of habitat, plus three pollutants: nutrients, pathogens, and sediment. It is about the latter that my comments are directed.

As a resident of Rutherford County for a half century, I have seen the impacts of sediment in local streams firsthand. Murfreesboro has a beautiful greenway system along the West Fork Stones River, where I regularly walk. But I am frequently dismayed at the amount of suspended sediment present in the river even after small rainfall events.

Silt and sedimentation have multiple impacts to water quality that are dramatically adverse to aquatic life and people. Silt carries other pollutants into streams, such as metals, nutrients and organic contaminants like PCBs. It impacts fish by smothering eggs, abrading gills, and preventing sight hunting by game fish. Sediment reduces the useful lifespans of reservoirs, clogs intake pipes, and impacts public water suppliers who must incur extra costs to make the water potable.

Additionally, sediment and silt impact recreational uses and commercial boating. Silt laden streams and lakes are unpleasant to wade, swim and boat in. Navigable waterways must be more frequently dredged at considerable public and environmental costs.

There are two main sources of excess sediment in Tennessee streams: agricultural activities and construction stormwater associated with development. The former is generally unregulated by permit, but the latter is not.

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.

Thank you for the opportunity to participate in this process. Please acknowledge that you received this.

Respectfully,

Greg Denton

Murfreesboro, TN 37129

Liz Campbell

From: JOE REESE <cindyreese@comcast.net>
Sent: Friday, July 30, 2021 2:36 PM
To: Vojin Janjic
Subject: [EXTERNAL] Discharge of Stormwater related to construction

Dear Mr. Janjic,

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

thank you,

Cindy Reese

Liz Campbell

From: Richard Jones <richard@midtnerosion.net>
Sent: Wednesday, July 28, 2021 10:52 AM
To: Vojin Janjic
Subject: Re: [EXTERNAL] Mid-TN Erosion and Sediment Control Inc. CGP Draft Comments

Vojin,

Sorry I was slow getting back.

I have not performed many site assessments on commercial projects. Similar to these would be the TDOT monthly EPSC. These do have an effect on the project since they are monthly and you are sure the team coming to the site is serious about the inspection.

However, I believe in practicality the typical site assessment does not add much to the job. Without being ugly or criticizing my peers, it appears to be more a check the box.

My thoughts:

The job has already started (which is good to see if BMPs are working).

Negative reports do not appear to have any real repercussions.

Sediment basins or traps are not really measured for adequacy (and this can be difficult to just visually notice inadequacies).

The assessor may have little field ability as to see inadequacies.

The design engineer may be the assessor and may be still tied to the developer close enough to not want to create a problem (better if it is an outside assessor-third party).

So in short I don't see where it has been as effective as was hoped in the permit.

Thanks for allowing me the input.

Sincerely,

Richard

On Wed, Jul 28, 2021 at 8:11 AM Vojin Janjic <Vojin.Janjic@tn.gov> wrote:

Mr. Jones:

We try not to take ourselves seriously, but do take our duties seriously. So, you can rest assured that every comment will be reviewed, discussed and responded to in the Notice of Determination. We appreciated yours, as it was succinct and based on a real-life experience(s).

I'll take you up on the offer and ask the following question: Do you have an opinion regarding "site assessment" requirement in the current general permit?

Thanks in advance for sharing your thoughts.



Vojin Janjic | Manager, Water-Based Systems

Division of Water Resources

William R. Snodgrass Tennessee Tower, 11th Floor

312 Rosa L. Parks Ave, Nashville, TN 37243

p. 615-532-0670

vojin.janjic@tn.gov

tn.gov/environment

We accept and encourage electronic document submittals.

Please tell us how you think we're doing by completing this survey: [TDEC Customer Satisfaction Survey](#)

From: Richard Jones <richard@midtnerosion.net>

Sent: Wednesday, July 28, 2021 7:05 AM

To: Vojin Janjic <Vojin.Janjic@tn.gov>

Cc: Liz Campbell <Liz.Campbell@tn.gov>

Subject: Re: [EXTERNAL] Mid-TN Erosion and Sediment Control Inc. CGP Draft Comments

Mr. Janjic,

I appreciate the quick response. It says to me you are serious about the permit revisions. I realize you have many sources, but I will offer myself as a long time civil designer, construction PM and inspector. Any thoughts you would want to bounce off an outside source to hear an honest opinion, I am available.

Sincerely,

Richard M. Jones, P.E

Mid -TN Erosion and Sediment Control, Inc.

658 Murfreesboro Pike

Nashville, TN 37210

615-255-9669 (office)

615-394-5285 (cell)

richard@midtnerosion.net | www.midtnerosion.net

On Tue, Jul 27, 2021 at 3:01 PM Vojin Janjic <Vojin.Janjic@tn.gov> wrote:

Mr. Jones:

Thanks for your comments. We'll review and respond.

Have a great day and stay safe!



Vojin Janjic | Manager, Water-Based Systems

Division of Water Resources

William R. Snodgrass Tennessee Tower, 11th Floor

312 Rosa L. Parks Ave, Nashville, TN 37243

p. 615-532-0670

vojin.janjic@tn.gov

tn.gov/environment

We accept and encourage electronic document submittals.

Please tell us how you think we're doing by completing this survey: [TDEC Customer Satisfaction Survey](#)

From: Richard Jones <richard@midtnerosion.net>
Sent: Tuesday, July 27, 2021 2:29 PM
To: Vojin Janjic <Vojin.Janjic@tn.gov>; Liz Campbell <Liz.Campbell@tn.gov>
Subject: [EXTERNAL] Mid-TN Erosion and Sediment Control Inc. CGP Draft Comments

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Mr. Janjic,

Thank you for the opportunity to comment on this proposed document.

Sincerely,

Richard M. Jones, P.E

Mid -TN Erosion and Sediment Control, Inc.

658 Murfreesboro Pike

Nashville, TN 37210

615-255-9669 (office)

615-394-5285 (cell)

richard@midtnerosion.net | www.midtnerosion.net

Liz Campbell

From: Christa, Studio Haus <christa@studiohaus.net>
Sent: Wednesday, August 4, 2021 1:44 PM
To: Vojin Janjic
Subject: [EXTERNAL] Concerns and comments regarding TDEC'S proposed water quality permit changes relating to construction projects

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Hello. I'm a native middle Tennessean who has resided in Davidson County since the early '90s. As a concerned citizen about the impact of the increased construction in Nashville, I write to add my comments by the deadline period regarding TDEC'S proposed water quality permit changes relating to construction projects.

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Thank you for your time and consideration.

Kind Regards,



Christa Schoenbrodt
Graphic Design, Illustration, Art
Direction
615.289.4114
www.studiohaus.net



Sent from my iPad

Liz Campbell

From: Ali Perkins <aliperkins23@gmail.com>
Sent: Wednesday, August 4, 2021 1:23 PM
To: Vojin Janjic
Subject: [EXTERNAL] Permit #TNR100000

Hi Vojin,

I am a Donelson resident and I take our water system and anything touching our fragile environment right now very personally. I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities. These construction activities are only going to increase as Nashville grows but we need to protect our water and the underlying ecosystems.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Thank you for your time!

Ali Perkins

Liz Campbell

From: Jennifer Adair <spinningpurple@gmail.com>
Sent: Wednesday, August 4, 2021 1:18 PM
To: Vojin Janjic
Subject: [EXTERNAL] Don't weaken water quality controls

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Jennifer Adair
City of Dickson
Dickson County

Liz Campbell

From: Heather <my_lame_screenname@yahoo.com>
Sent: Wednesday, August 4, 2021 1:14 PM
To: Vojin Janjic
Subject: [EXTERNAL] Permit #TNR100000

To whom it may concern:

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Thank you,

Heather Acosta
Kingsport, TN

Liz Campbell

From: Fanny Sung Whelan <fannyesung@gmail.com>
Sent: Wednesday, August 4, 2021 1:12 PM
To: Vojin Janjic
Subject: [EXTERNAL] Re: Renewal of Permit #TNR100000

Hello,

I absolutely oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities. I also support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Thank you for your time,

Fanny Sung Whelan

Nashville, TN

Liz Campbell

From: ShannonHSeaback <iwayama_1@yahoo.com>
Sent: Wednesday, August 4, 2021 1:08 PM
To: Vojin Janjic
Subject: [EXTERNAL] a concerned land owner in Riceville, TN: General NPDES Permit for Storm Water Discharges Associated with Construction Activity

To Whom it may concern,

Regarding General NPDES Permit for Storm Water Discharges Associated with Construction Activity:

I reside in Riceville, TN (McMinn county) and I oppose any changes that would further weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities. Without a doubt, the current situation is far from ideal. Further degradation of the controls that are already in place and lessening any current restrictions allowing more damage to occur is not the answer.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being throughout the State of Tennessee and for the bordering states.

Respectfully,
Shannon Seaback 04AUG2021

Liz Campbell

From: Kenneth Jobe <kl.jobe@gmail.com>
Sent: Wednesday, August 4, 2021 12:56 PM
To: Vojin Janjic
Subject: [EXTERNAL] Water Quality

Hello,

We should continue to require permits that protect Tennessee's water quality during any construction or development. These requirements should not be weakened.

Our land and water is compromised every day by folks who are concerned with making money with little consideration for either land or water. Some people take advantage of the commons at every opportunity. Permits should check this tendency so that the commons we all share are protected.

Kenneth Lynn Jobe
252-269-2576
Nashville, Tennessee

Liz Campbell

From: D G <galeander4@gmail.com>
Sent: Wednesday, August 4, 2021 12:53 PM
To: Vojin Janjic
Subject: [EXTERNAL] Water Quality

I urge you to do what you can to support the quality of our water in TN.

Sincerely,

Gale Anderson
Washington County

Liz Campbell

From: kathleen McA <knmvrn@hotmail.com>
Sent: Wednesday, August 4, 2021 12:50 PM
To: Vojin Janjic
Subject: [EXTERNAL] Protect water

Dear Sir,

I am a concerned citizen, Kathleen McAnally, Hamilton County.

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Thank you for the opportunity to comment.

Sincerely,

Kathleen McAnally

Hamilton County

Sent from my iPhone

Liz Campbell

From: Ena Reaves <ereaves@mauryk12.org>
Sent: Wednesday, August 4, 2021 2:21 PM
To: Vojin Janjic
Subject: [EXTERNAL] Clean Water

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. *****

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.
I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.



Ena Reaves, STEM Teacher, Battle Creek Elementary School

165 Battle Creek Way | Spring Hill, TN 37174

Phone: 931.388.8403 | Fax: 931.840.4410

Email: ereaves@mauryk12.org | Twitter: @BattleCreekClean

Web: https://www.mauryk12.org/schools/battle_creek_elementary_school

Sincerely, Mrs. Reaves

Liz Campbell

From: Colleen Whitver <gonceling@gmail.com>
Sent: Wednesday, August 4, 2021 2:17 PM
To: Vojin Janjic
Subject: [EXTERNAL] Water Quality Control

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. *****

We have lived in Nashville most of our lives.
We have been homeowners and taxpayers since 1970.
We oppose any changes that would weaken water quality controls in the permit renewal of Permit [#TNR100000](#) protecting clean water in Tennessee from construction activities.
We live near a creek that floods already. New construction is making our streets flood more often.
If a new permit is written, it should be at least as protective as the current one.
We don't need a weaker permit. We would prefer tighter control, not looser.
Clean water is vital to our community and our well-being.
Colleen and Harry Whitver
409 Brook Hollow Rd, Nashville, TN 37205

Liz Campbell

From: Juliana Ericson <juliana-art@comcast.net>
Sent: Wednesday, August 4, 2021 1:55 PM
To: Vojin Janjic
Subject: [EXTERNAL] Water quality permits

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. *****

Good day,

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

Thank you for your time and attention,
Juliana Ericson
6317 Percy Drive
Nashville, TN 37205



Juliana Ericson
615-212-5511

☀ Positivity & Conscious

BREATHWORK

<http://TheJoyfulLifeProject.com>

☀ doTERRA Essential Oils wholesale:

<https://bit.ly/2VxqKhX>

☀ LINKTREE: <https://bit.ly/2FRmdzh>

Liz Campbell

From: Herron, Olivia L. <herrono@apsu.edu>
Sent: Wednesday, August 4, 2021 1:46 PM
To: Vojin Janjic
Subject: [EXTERNAL] Opposing changes to permit #TNR100000

Good afternoon,

I am reaching out to express my concern regarding the proposition to weaken the construction permit process that protects Tennessee's water. I am a resident of Clarksville and work as the sustainability coordinator at Austin Peay. I personally and professionally advocate for preserving the waters our community relies on. The Tennessee River is already one of the most contaminated in the world in regards to micro plastics, and we must do everything in our power to prevent further contamination in our state from any source.

Thanks,
Olivia

Olivia Herron, M.En.

Sustainability Coordinator | Physical Plant
Chair | Sustainable Campus Fee Committee
Shasteen 139
Office: (931)221-6642
Pronouns: She/Her/Hers

Liz Campbell

From: Darlene Hamilton <darlene.hamilton@cummins.com>
Sent: Wednesday, August 4, 2021 1:44 PM
To: Vojin Janjic
Subject: [EXTERNAL] Water Quality Controls

Hello – One of the great things about Tennessee is it's abundant waterways that have not yet been totally polluted beyond human and animal use. Tennessee is still a beautiful state but allowing unchecked development will not keep it that way. Please do not take away what remains of Tennessee's natural resources by allowing construction companies to do as they please when over developing our state. Water controls need to either remain as they are or have their potency increased, not be diluted. Please think before taking any actions to reduce Tennessee water quality controls.

Thank You
Concerned Tennessee Citizen

Darlene Hamilton
801 Fonnice Drive
Nashville, TN 37207

Liz Campbell

From: Tess Fotidzis <tsf2m@mtmail.mtsu.edu>
Sent: Wednesday, August 4, 2021 5:06 PM
To: Vojin Janjic
Subject: [EXTERNAL] Water Quality Controls

To whom it may concern,

I strongly oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We do NOT need a weaker permit, as clean water is vital to our community and our well-being.

I have a young daughter whom I wish to protect from any harmful contaminants that would undoubtedly result from weakened water quality controls. Safe water is particularly important because even minuscule amounts (>90ppm) of heavy metal contaminants, such as lead—that are very common at construction sites—are toxic to children! There are NO safe levels of lead when it comes to young children, not to mention all the other toxins that often contaminate water supplies at construction site.

Safe water is important for keeping my family and other families safe, especially because we enjoy water sports, we often play in the garden with the water sprinkler, grow vegetables we eat, and obviously bathe in and drink water.

Please do the right thing by making sure to keep the people of Tennessee safe and strengthening water control protections, rather than weakening them.

Thank you for your right action,

Dr. Tess Fotidzis

Antioch, TN

Liz Campbell

From: dawn holliday <soitiswinter2016@gmail.com>
Sent: Wednesday, August 4, 2021 4:55 PM
To: Vojin Janjic
Subject: [EXTERNAL] Tn Water Quality

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

He{ r\$ s\$one}\$
Hezmwsr\$Syrx}\$

Liz Campbell

From: Carter-Stone, Laura J <laura.j.carter-stone@vanderbilt.edu>
Sent: Wednesday, August 4, 2021 4:44 PM
To: Vojin Janjic
Subject: [EXTERNAL] Regarding the renewal of Permit #TNR100000

Dear Mr. Janjić,

My name is Laura Carter-Stone, and I am a former public-school teacher and current PhD student at Vanderbilt's Peabody College of education. I currently live and work in Nashville, where I instruct future teachers (Vanderbilt Master's students). Protecting the rights of present and future Tennesseans to clean water is an essential part of ensuring a safe and ecologically- healthy community for generations to come.

For this reason, I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities. I support taking the time to renew a permit that is at least as protective as the current one. I oppose a weaker permit; clean water is vital to our community and our well-being.

I urge you to oppose any changes in the renewal of the Permit which would diminish water quality controls.

Thank you for your time and your work,
Laura

Liz Campbell

From: tam@tamstravel.com
Sent: Wednesday, August 4, 2021 3:51 PM
To: Vojin Janjic
Subject: [EXTERNAL] FW: Please Protect Our Water!

As a land owner in Tennessee, I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

Please do not allow permits to be less protective than they currently are. I live in an area where I get a lot of runoff from Highway 65. I am also in a developing area. On top of that, I work for an engineering firm that are leaders in Stormwater Management. Our stormwater designers are experts in analyzing site issues and dealing with problems that are PREVENTABLE.

Thank you,

Tamara Monaghan
717-275-6650

34383 Ardmore Ridge Rd
Ardmore TN 38449

Liz Campbell

From: Susan Shirey <susanwshirey@gmail.com>
Sent: Wednesday, August 4, 2021 3:46 PM
To: Vojin Janjic
Subject: [EXTERNAL] Opposition of weaken water quality!

Good Afternoon:

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Thank you for taking the time to read my comments.

Susan Shirey
Joelton, TN 37080
Davidson County

Liz Campbell

From: Allison Stillman <allee@allisonstillman.com>
Sent: Wednesday, August 4, 2021 3:34 PM
To: Vojin Janjic
Subject: [EXTERNAL] Clean water in TN

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. *****

Hello,

I am writing in regards to the proposed change to the TN water quality permit. Water is the most precious resource we have, and we need to do everything we can to protect water, not weaken safeguards.

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR 100000 protecting clean water in TN from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, clean water is vital to our community, our state and our people.

Construction companies are raking in the profits at people's expense, don't give them our water too.

The world would give anything for the precious water we have here in TN.

I live in Davidson County and love TN and the fresh water we have here.

Thank you!

Allison Stillman

Be the change you wish to see in the world, just BE love! 

An Alchemist of Love

<https://www.allisonstillman.com/>

Chapter Chair:

Climate Reality Project, Nashville Chapter

Join me on Social Media:

<https://www.facebook.com/alchemistallisonstillman/>

<https://www.linkedin.com/in/allison-stillman/>

<https://www.instagram.com/allisonstillman/>

<https://www.daocloud.com/pro/allison-stillman>

Liz Campbell

From: Debi Dunson <debidsn@gmail.com>
Sent: Wednesday, August 4, 2021 3:28 PM
To: Vojin Janjic
Subject: [EXTERNAL] Tennessee Waters: Permit Change Comment

I am a concerned scientist and Tennessean who is writing to comment on the proposed change to the general water quality permit relating to construction projects. I want to voice my strong opposition to any changes that would weaken water quality controls, specifically in the renewal of Permit #TNR100000, which controls protection of our water from construction activities.

Tennessee has been overwhelmed by construction activities over the last 4 years. I have seen firsthand what the building boom has done to the waterways in my hometown and beyond. I do volunteer work cleaning up the local creeks and most of the polluting debris that I remove is from construction. It is a tragedy for citizens, wildlife and visitors to our state. Particularly, our water supplies are tainted by the runoff and dumping from construction activities. I am a chemist, so I understand the toxicity of the chemicals that are leaching from the construction sites.

To reiterate my statement: do not weaken water quality controls when the permit is renewed. Please give careful consideration and, if you can, please strengthen the controls. At the very least, make sure that the new permit is at least as protective as the expiring one.

I thank you kindly for considering my comments:

Dr. Debra Dunson
Maury County
Spring Hill, Tennessee 37174

Liz Campbell

From: Jennifer Miller <catsbudha@yahoo.com>
Sent: Wednesday, August 4, 2021 3:06 PM
To: Vojin Janjic
Subject: [EXTERNAL] Tennessee Water Quality

Dear Mr Janjic,

I oppose changes that would weaken water quality controls in the permit renewal of Permit#TNR10000 protecting clean water in Tennessee from construction activities. We don't need a weaker permit for the convenience of construction companies who are capable of complying to a permit at least as protective as the current one. Please do what is right for citizens and all life dependent on clean water and don't weaken our protection.

Thank you,

Jennifer Miller
287 Southburn Dr
Hendersonville, TN 37075

615-524-9039

Liz Campbell

From: Kristen Mecha <klmecha@yahoo.com>
Sent: Wednesday, August 4, 2021 3:01 PM
To: Vojin Janjic
Subject: [EXTERNAL] Proposed change to our state's general water quality permit relating to construction projects

Mr. Vojin Janjić,

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I have reviewed the detailed analysis of the problems with the renewed permit and the comments drafted by a former director of Tennessee's water pollution control division (Paul Davis). I find his analysis and comments to be very compelling.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Lawrence Mecha
Jasper, TN

Liz Campbell

From: Beckett, Thomas <Thomas.Beckett@arcadis.com>
Sent: Wednesday, August 4, 2021 2:48 PM
To: Vojin Janjic
Cc: Woodson, Erin
Subject: [EXTERNAL] Proposed changes to water quality permit

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. *****

Hello,

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

In particular, I believe the reduction of inspection frequency would be major step backwards with regards to the protection of our Tennessee waters. I have been conducting EPSC inspections for over 17 years for the Tennessee Department of Transportation, as well as other large entities (such as CSX and Colonial Pipeline) and know firsthand the importance of maintaining regular, frequent communication with contractors during the construction process. The current requirement of twice per week inspections already has its own disadvantages with maintaining this communication and keeping up with the land disturbing activities that occur at a very rapid pace when using heavy/large equipment (dozers, excavators, etc.). Combine that with the frequency of intense rainfall that we often experience in this part of the country, and that equates to the constant need for adaptation to EPSC-related issues upon each follow-up inspection.

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

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

I would be happy to provide additional examples, but I believe the point has been made that a reduction in water quality protection is simply a bad decision.

Thank you for your time and consideration into the important matter,

Thomas Beckett
Resident of Hamilton County, Tennessee

Sent from [Mail](#) for Windows 10

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Liz Campbell

From: Alan Leiserson <aleiserson80@gmail.com>
Sent: Wednesday, August 4, 2021 2:32 PM
To: Vojin Janjic
Subject: [EXTERNAL] Comment on NPDES General Permit for Discharges Associated with Storm water

Hi Vojin,
I hope you are doing well.

It seems to me that many of the changes proposed would weaken protection for the waters of Tennessee. Because the rationale document does not adequately explain some of the changes, that increases my belief that the Department can't articulate a rationale for the changes other than the fact that the industry wants them.

One example is deleting the requirement for a design expert to conduct an assessment within 30 days of commencement of construction. This is a requirement that would both improve compliance at the one site, but also lead to better understanding by contractors in their future work. As such it is part of ongoing education that the Department should encourage.

The Division should not make any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Thanks for considering my concerns,

Alan Leiserson

Nashville, TN

Liz Campbell

From: dawn holliday <soitiswinter2016@gmail.com>
Sent: Wednesday, August 4, 2021 4:55 PM
To: Vojin Janjic
Subject: [EXTERNAL] Tn Water Quality

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

He{ r\$lspe}\$
Hezmwsr\$Syrx}\$

Liz Campbell

From: Carter-Stone, Laura J <laura.j.carter-stone@vanderbilt.edu>
Sent: Wednesday, August 4, 2021 4:44 PM
To: Vojin Janjic
Subject: [EXTERNAL] Regarding the renewal of Permit #TNR100000

Dear Mr. Janjić,

My name is Laura Carter-Stone, and I am a former public-school teacher and current PhD student at Vanderbilt's Peabody College of education. I currently live and work in Nashville, where I instruct future teachers (Vanderbilt Master's students). Protecting the rights of present and future Tennesseans to clean water is an essential part of ensuring a safe and ecologically- healthy community for generations to come.

For this reason, I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities. I support taking the time to renew a permit that is at least as protective as the current one. I oppose a weaker permit; clean water is vital to our community and our well-being.

I urge you to oppose any changes in the renewal of the Permit which would diminish water quality controls.

Thank you for your time and your work,
Laura

Liz Campbell

From: tam@tamstravel.com
Sent: Wednesday, August 4, 2021 3:51 PM
To: Vojin Janjic
Subject: [EXTERNAL] FW: Please Protect Our Water!

As a land owner in Tennessee, I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

Please do not allow permits to be less protective than they currently are. I live in an area where I get a lot of runoff from Highway 65. I am also in a developing area. On top of that, I work for an engineering firm that are leaders in Stormwater Management. Our stormwater designers are experts in analyzing site issues and dealing with problems that are PREVENTABLE.

Thank you,

Tamara Monaghan
717-275-6650

34383 Ardmore Ridge Rd
Ardmore TN 38449

Liz Campbell

From: Susan Shirey <susanwshirey@gmail.com>
Sent: Wednesday, August 4, 2021 3:46 PM
To: Vojin Janjic
Subject: [EXTERNAL] Opposition of weaken water quality!

Good Afternoon:

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Thank you for taking the time to read my comments.

Susan Shirey
Joelton, TN 37080
Davidson County

Liz Campbell

From: Allison Stillman <allee@allisonstillman.com>
Sent: Wednesday, August 4, 2021 3:34 PM
To: Vojin Janjic
Subject: [EXTERNAL] Clean water in TN

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. *****

Hello,

I am writing in regards to the proposed change to the TN water quality permit. Water is the most precious resource we have, and we need to do everything we can to protect water, not weaken safeguards.

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR 100000 protecting clean water in TN from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, clean water is vital to our community, our state and our people.

Construction companies are raking in the profits at people's expense, don't give them our water too.

The world would give anything for the precious water we have here in TN.

I live in Davidson County and love TN and the fresh water we have here.

Thank you!

Allison Stillman

Be the change you wish to see in the world, just BE love! 

An Alchemist of Love

<https://www.allisonstillman.com/>

Chapter Chair:

Climate Reality Project, Nashville Chapter

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<https://www.linkedin.com/in/allison-stillman/>

<https://www.instagram.com/allisonstillman/>

<https://www.daocloud.com/pro/allison-stillman>

Liz Campbell

From: Debi Dunson <debidsn@gmail.com>
Sent: Wednesday, August 4, 2021 3:28 PM
To: Vojin Janjic
Subject: [EXTERNAL] Tennessee Waters: Permit Change Comment

I am a concerned scientist and Tennessean who is writing to comment on the proposed change to the general water quality permit relating to construction projects. I want to voice my strong opposition to any changes that would weaken water quality controls, specifically in the renewal of Permit #TNR100000, which controls protection of our water from construction activities.

Tennessee has been overwhelmed by construction activities over the last 4 years. I have seen firsthand what the building boom has done to the waterways in my hometown and beyond. I do volunteer work cleaning up the local creeks and most of the polluting debris that I remove is from construction. It is a tragedy for citizens, wildlife and visitors to our state. Particularly, our water supplies are tainted by the runoff and dumping from construction activities. I am a chemist, so I understand the toxicity of the chemicals that are leaching from the construction sites.

To reiterate my statement: do not weaken water quality controls when the permit is renewed. Please give careful consideration and, if you can, please strengthen the controls. At the very least, make sure that the new permit is at least as protective as the expiring one.

I thank you kindly for considering my comments:

Dr. Debra Dunson
Maury County
Spring Hill, Tennessee 37174

Liz Campbell

From: Jennifer Miller <catsbudha@yahoo.com>
Sent: Wednesday, August 4, 2021 3:06 PM
To: Vojin Janjic
Subject: [EXTERNAL] Tennessee Water Quality

Dear Mr Janjic,

I oppose changes that would weaken water quality controls in the permit renewal of Permit#TNR10000 protecting clean water in Tennessee from construction activities. We don't need a weaker permit for the convenience of construction companies who are capable of complying to a permit at least as protective as the current one. Please do what is right for citizens and all life dependent on clean water and don't weaken our protection.

Thank you,

Jennifer Miller
287 Southburn Dr
Hendersonville, TN 37075

615-524-9039

Liz Campbell

From: Kristen Mecha <klmecha@yahoo.com>
Sent: Wednesday, August 4, 2021 3:01 PM
To: Vojin Janjic
Subject: [EXTERNAL] Proposed change to our state's general water quality permit relating to construction projects

Mr. Vojin Janjić,

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I have reviewed the detailed analysis of the problems with the renewed permit and the comments drafted by a former director of Tennessee's water pollution control division (Paul Davis). I find his analysis and comments to be very compelling.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Lawrence Mecha
Jasper, TN

Liz Campbell

From: Beckett, Thomas <Thomas.Beckett@arcadis.com>
Sent: Wednesday, August 4, 2021 2:48 PM
To: Vojin Janjic
Cc: Woodson, Erin
Subject: [EXTERNAL] Proposed changes to water quality permit

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. *****

Hello,

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

In particular, I believe the reduction of inspection frequency would be major step backwards with regards to the protection of our Tennessee waters. I have been conducting EPSC inspections for over 17 years for the Tennessee Department of Transportation, as well as other large entities (such as CSX and Colonial Pipeline) and know firsthand the importance of maintaining regular, frequent communication with contractors during the construction process. The current requirement of twice per week inspections already has its own disadvantages with maintaining this communication and keeping up with the land disturbing activities that occur at a very rapid pace when using heavy/large equipment (dozers, excavators, etc.). Combine that with the frequency of intense rainfall that we often experience in this part of the country, and that equates to the constant need for adaptation to EPSC-related issues upon each follow-up inspection.

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

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

I would be happy to provide additional examples, but I believe the point has been made that a reduction in water quality protection is simply a bad decision.

Thank you for your time and consideration into the important matter,

Thomas Beckett
Resident of Hamilton County, Tennessee

Sent from [Mail](#) for Windows 10

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Liz Campbell

From: Tess Fotidzis <tsf2m@mtmail.mtsu.edu>
Sent: Wednesday, August 4, 2021 5:06 PM
To: Vojin Janjic
Subject: [EXTERNAL] Water Quality Controls

To whom it may concern,

I strongly oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We do NOT need a weaker permit, as clean water is vital to our community and our well-being.

I have a young daughter whom I wish to protect from any harmful contaminants that would undoubtedly result from weakened water quality controls. Safe water is particularly important because even minuscule amounts (>90ppm) of heavy metal contaminants, such as lead—that are very common at construction sites—are toxic to children! There are NO safe levels of lead when it comes to young children, not to mention all the other toxins that often contaminate water supplies at construction site.

Safe water is important for keeping my family and other families safe, especially because we enjoy water sports, we often play in the garden with the water sprinkler, grow vegetables we eat, and obviously bathe in and drink water.

Please do the right thing by making sure to keep the people of Tennessee safe and strengthening water control protections, rather than weakening them.

Thank you for your right action,

Dr. Tess Fotidzis

Antioch, TN

Liz Campbell

From: Heidi Welch <welchart4@gmail.com>
Sent: Thursday, August 5, 2021 9:22 AM
To: Vojin Janjic
Cc: Heidi Welch
Subject: [EXTERNAL] Oppose #TNR100000

Dear to Whom It Concerns,

I am deeply concerned that a webinar I attended presented by Metro Davidson Water Services showed a map of more than 50% of TN creeks and streams under watch for severe contamination.

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Heidi Welch

Nashville, TN, Davidson County

--

Heidi Welch
welchart4@gmail.com

"We forget that the water cycle and the life cycle are one." – Jacques-Yves Cousteau

"But man is a part of nature, and his war against nature is inevitably a war against himself." -Rachel Carson

Liz Campbell

From: Lisa Lemza <lemzala@aol.com>
Sent: Thursday, August 5, 2021 7:13 AM
To: Vojin Janjic
Subject: [EXTERNAL] weakening water quality in construction permit renewals

Let me be very very clear: I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as the value of clean water is too obvious to delineate. As is the cost of cleaning up polluted water.

Lisa Lemza

Chattanooga, Tennessee (Hamilton County)

423.243-3530

Liz Campbell

From: Corey Chatis <chatisct@gmail.com>
Sent: Thursday, August 5, 2021 6:56 AM
To: Vojin Janjic
Subject: [EXTERNAL] permit renewal of Permit #TNR100000

Dear Mr. Vojin Janjić,

I am writing to comment on TDEC's Draft General NPDES Permit #TNR100000 for Storm Water Discharges Associated with Construction Activity. I oppose any changes that would weaken water quality controls in the permit renewal. I support taking the time to renew a permit that is at least as protective as the current one.

The 2021 draft would roll back TDEC's requirement that construction site operators conduct site assessments. Having an expert on-site who knows what was designed and how it's intended to work early on in the project is widely recognized to be one of the most effective protections in the present permit. For no stated reason, TDEC now proposes to eliminate that requirement for most previously covered construction sites. It makes no sense to remove this protection of 5- and 10-acre drainages simply because they're part of projects that are not planned to disturb more than 50 acres at any one time.

Part 6.11 of the Updated CGP Rationale, Site Assessments, cites arguments from unidentified stakeholders that it's redundant for the permit to require that a design expert conduct within 30 days of commencement of construction a quality assurance assessment to verify the installation, functionality and performance of EPSC measures described in the SWPPP. It's not redundant. The "initial inspection" mentioned at 5.5.3.8 is not required to be performed by a design expert. In fact, nowhere in the draft permit is the stormwater control plan designer, or any design expert, required to be physically present on the construction site.

The 2021 draft proposes to cut in half construction site operators' responsibility to inspect most sites. Inspections regularly conducted and documented by trained individuals are proven to result in faster response to problems with stormwater controls and better protection of waters. TDEC has offered no explanation for cutting in half an inspection requirement that's been in effect for years.

I appreciate the staff's commitment to review and act on my comments as well as those from others concerned with restoring and maintaining Tennessee waters. Thank you.

Corey Chatis
1306 Greenwood Ave, Nashville, TN 37206

Liz Campbell

From: Sherri Doro Reinsch <sdoro@nashvillezoo.org>
Sent: Thursday, August 5, 2021 6:23 AM
To: Vojin Janjic
Subject: [EXTERNAL] Permit #TNR100000

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Sherri Reinsch
Nashville TN

Liz Campbell

From: Rebecca Wierschem <rpoliwka@gmail.com>
Sent: Thursday, August 5, 2021 1:05 AM
To: Vojin Janjic
Subject: [EXTERNAL] General NPDES Permit for Storm Water Discharges Associated with Construction Activity

Dear Mr. Vojin Janjić,

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Thank you,

Dr. Rebecca Wierschem

Knoxville, TN

Liz Campbell

From: Hunter Oppenheimer <hunteropp@gmail.com>
Sent: Wednesday, August 4, 2021 10:08 PM
To: Vojin Janjic
Subject: [EXTERNAL] Permit #TNR100000

Please, do not pass any new ordinances or laws that would weaken the quality controls in our water quality in Tennessee.

If anything, at this time, we need stronger controls on what can be released into our waters.

Why would you allow construction or any other processes to destroy the quality of our water?

How could any short term profits supersede the need for clean water and clean environment for the people and wildlife of Tennessee?

It just doesn't make sense.

Respectfully,

Hunter Oppenheimer

Liz Campbell

From: Betsy garber <garberb@hotmail.com>
Sent: Wednesday, August 4, 2021 9:33 PM
To: Vojin Janjic
Subject: [EXTERNAL] Permit #TNR100000

Regarding the proposed permit change, I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities. I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being. Elizabeth Garber1327 Otter Creek RoadNashville, TN 37215

Liz Campbell

From: Wendy Williams <alternatewilliam@sbcglobal.net>
Sent: Wednesday, August 4, 2021 9:30 PM
To: Vojin Janjic
Subject: [EXTERNAL] Regarding proposed change to Tennessee's general water quality permit relating to construction projects

Water quality is one of my top concerns. I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being. Please keep the permit process robust.

Sincerely,

Wendy Williams

711 Hollyhill Road

Johnson City, TN 37604

Washington County, TN

Liz Campbell

From: Rosanne Lovely <rosannelovely@yahoo.com>
Sent: Wednesday, August 4, 2021 9:05 PM
To: Vojin Janjic
Subject: [EXTERNAL] I oppose any changes which would weaken water quality control in the permit renewal Permit#TNR100000 protecting clean water TN

Clean water is vital to our community and to our well being.

Rosanne Lovely
Nashville TN 37221

Sent from my iPad

Liz Campbell

From: Liza <lizajanea@gmail.com>
Sent: Wednesday, August 4, 2021 6:36 PM
To: Vojin Janjic
Subject: [EXTERNAL] Oppose #TRS100000

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

Sent from my iPhone

Liz Campbell

From: Kathy Brown <heargrassgrow@aol.com>
Sent: Wednesday, August 4, 2021 6:22 PM
To: Vojin Janjic
Subject: [EXTERNAL] Clean Water

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Kathy Brown

58 oakwood Ave

Summertown Tn 38483

Liz Campbell

From: Cindy <cindy.whitt@comcast.net>
Sent: Friday, August 6, 2021 8:57 AM
To: Vojin Janjic
Subject: [EXTERNAL] Re: Permit TNR100000

I forgot to add that the entire build out for the neighborhood will be 20 to 30 years so there will be construction for a very long time. If you could add this to my comment I would greatly appreciate it. Thanks for your service to the citizens of Tennessee.

Sent from my iPhone

On Aug 5, 2021, at 4:43 PM, Cindy <cindy.whitt@comcast.net> wrote:

Sent from my iPhone

Begin forwarded message:

From: Cindy <cindy.whitt@comcast.net>
Date: August 5, 2021 at 3:37:25 PM CDT
To: water.permits@tn.gov
Subject: Permit TNR100000

I would like to offer a few additional comments about the proposed new permit requirements.

Construction Projects Long Term Impact

My observations of construction stormwater runoff are based on the last few years in the neighborhood where I live, which is zoned for approximately 3441 residential units and covers 1520 acres. A large area has been clear cut and graded over the past two years. Construction has been continual and stormwater runoff from the construction into the streams and storm sewers has been occurring after every heavy rain for this period of time. New areas are being added as the development continues. The only controls over this pollution of the waters of the state and nation are the permits and inspections required by the permit under review. The city, state and the citizens need these controls to ensure the waters are not polluted as development continues to encroach upon the waters of the state and the nation which are public goods. No reason has been provided to loosen the permitting and lower the frequency of the inspections.

Weather is Chaotic and More Extreme

At a presentation before the City of Franklin Board of Alderman and Planning Commission on July 22, 2022, the extreme and varied nature of the rain was discussed. CDMSmith presented the following examples of this extreme variation in rainfall amounts over Williamson County.

<image0.png>

<image1.png>

This data strongly supports keeping the frequent inspections and those after heavy rainfalls so that corrections may be made to limit future pollution of the public goods, clean water.

Please consider the future impact on the public waters and the damage which will occur as a result of any changes to the current requirements.

Cindy Whitt
305 White Moss Pl
Franklin, TN 37064

Sent from my iPhone

Liz Campbell

From: Brandon Southerland <bsoutherland@wqectn.com>
Sent: Tuesday, July 6, 2021 2:53 PM
To: Vojin Janjic
Subject: [EXTERNAL] TN General Permit Question

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. *****

Afternoon! My name is Brandon Southerland with Water Quality & Erosion Control of Tennessee. Jean has informed me that the Construction Stormwater Inspection Certification Form will be changing with the new permit.

I wanted to ask if we could reword Question #7 of the current report. As it is worded it only puts emphasis on wheel wash & not the entirety of the section 4.1.5.

If possible, I have an example below that would remove the emphasis on wheel washouts, and make it a general term (as 4.1.5 covers much more than wheel washing)

Example:

Have pollution prevention measures been installed, implemented, and maintained to minimize the discharge of pollutants on/from the site per section 4.1.5? If "No," describe below the measures to be implemented to address deficiencies.

I removed the wording on only wheel washing, as it covers much more than previously stated. It covers lunch trash, paint, construction materials, porta johns, etc.

Brandon Southerland-CECS Level 1.

Water Quality & Erosion Control of Tennessee

P.O. Box 60127

Nashville, TN 37206

Office: 615-292-4812

Cell: 931-588-7912

www.WQECTN.com

Liz Campbell

From: Kuo, Mary <Kuo.Mary@epa.gov>
Sent: Monday, August 9, 2021 9:19 AM
To: Vojin Janjic
Cc: Hesterlee, Craig
Subject: [EXTERNAL] TN's draft CGP

Good Morning, Vojin –

EPA has reviewed TDEC's draft 2021 construction general permit and offers the following comments and suggestions below. Please reach out to me if you have any questions or would like to discuss any of these items further.

Thanks, Mary

- TDEC could add more specific erosion prevention and sediment control and pollution prevention requirements to make the permit more clear, specific, measurable, and enforceable.
 - The EPSC section under Part 5.5.3. could include specific control measures to help describe how the permittee can address the non-numeric effluent limitations contained in Part 4.1.1. For example, “to minimize soil compaction,” the permittee could be required to restrict vehicle and equipment use in these locations.
 - Similarly, the pollution prevention measures under Part 5.5.3.11 could be expanded to include specific control measures to address various pollutant sources/activities and help meet the effluent limitations contained in Part 4.1.4. For instance, a specific measure to “minimize the discharge of pollutants from spills and leaks” could be to use drip pans and absorbents under or around leaky vehicles.
 - Another pollution prevention example is to “minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater” (Part 4.1.4.b.) by requiring the permittee to provide cover (e.g., plastic sheeting, temporary roofs) or a similarly effective means designed to minimize the discharge of pollutants from these sources.
- TDEC's proposed changes to implementing stabilization practices to “approximately 2 weeks” and “approximately one week” after the construction activity has temporarily or permanently ceased needs to be tightened. While EPA understands the rationale of providing more flexibility to allow for unforeseen circumstances, we are also pushing states to move towards more specific and measurable permit requirements. TDEC could instead keep the existing deadlines of “no later than 14 days” or “no later than 7 days” and include language so that additional time (but no more than a defined timeframe) could be allowed to accommodate certain site conditions, weather conditions, equipment failures, personal emergencies, etc., and that these issues would need to be documented
- TDEC could require that the construction site map or SWPPP narrative indicate downstream waters (and impairment status of downstream water), as well as designated points where vehicles will exit onto paved roads, locations where materials will be stockpiled, and other specific sources of pollutants likely to affect the quality of stormwater discharges from the construction site. For each pollutant-generating activity, the permittee could include in the SWPPP an inventory of pollutants associated with that activity, which could be discharged in stormwater from the site.
- Part 3.1.2.'s Existing Sites section states that “A modified SWPPP and a corresponding fee must be submitted by the permittee if needed to come into compliance with the requirements of the new permit.” Part 5.3.1.'s Existing Sites section states that “The current SWPPP should be modified, if necessary, to meet requirements of this new general permit, and the SWPPP changes implemented as soon as practicable but no later than three months following the new permit effective date.” First, there seems to be a corresponding fee associated with a modified SWPPP under

Part 3.1.2., providing less incentive to modify the SWPPP based on the new permit. Second, the permit should explicitly require the SWPPP be updated under the new permit, or at least that an evaluation be done to determine whether the SWPPP needs to be updated. Permittees would also be required to document (via certification, form, NOI, etc.) that they have gone through the new permit and determined whether their SWPPPs are in compliance with the requirements of the new permit.

- The draft permit seems to only be concerned with siltation impairments and requires identification of receiving waters with just siltation impairments. However, habitat alteration listings could be attributed to construction activities, and nutrients could also potentially leave a construction site, especially during site stabilization or when fertilizers area applied. If TN is choosing to look solely at siltation impairments, please include in the rationale why other parameters are not included.
- TDEC's revised rationale seeks input on the issue of complying with local ordinances. While EPA understands TDEC's perspective on this issue, having permittees develop their SWPPPs to meet local ordinances does not necessarily translate to TDEC needing to enforce conditions beyond what is in the permit. The permit could still include language that the SWPPP, EPSC, and management measures be designed in accordance with approved municipal stormwater ordinances to help facilitate compliance at the local level.

Mary Kuo
EPA Region 4, Water Division
NPDES Permitting Section
404.562.9847

Liz Campbell

From: Pamela Glaser <vattenjord@gmail.com>
Sent: Thursday, August 5, 2021 2:03 PM
To: Vojin Janjic
Subject: [EXTERNAL] Comments on Permit# TNR100000

Studies tell us that most water bodies in Hamilton County are considered impaired since they do not function for their designated use(s) or support life. And while our 2013 consent decree is a legally binding agreement between the U.S. Environmental Protection Agency (EPA) and the State (stipulates that the City must improve water quality to meet the current standards), many would argue that our area should adopt stricter regulations locally due to the abundant sensitive natural resources found in this Appalachian region. We need to be doing more in terms of regulating water quality, not lessening the permit and review process as suggested by TDEC's latest proposed revision. I am against changes that would weaken water quality controls through the permit renewal of TNR100000 and that lessen our ability to protect clean water in Tennessee from construction activities. I do support taking the time to renew a permit and find a solution that is at least as protective as the current version.

Despite government regulations and cleanup efforts by non-profit organizations, reports note that nearly 85% of the creeks and streams here are impaired. Pollutants in the impaired creeks and streams include siltation from construction sites and general erosion from roadside ditches that end up in the City's stormwater system. Discharges from the Municipal Separate Storm Sewer System (MS4), which collects and conveys stormwater into local water bodies, are also impairing local waterways. In fact, many of the pollutants can be traced back to water not being treated before entering the MS4 system due to inadequate facilities. Much of the impervious surfaces that carry polluted run-off into creeks and streams were built before the current water quality regulations went into effect, and our latest efforts to mitigate impacts have not resulted in the healthy streams and creeks that this community relies on. Hamilton County and other counties nearby depend on maintaining good water quality, not only for health reasons or for recreation purposes, but also economically as a tourism driven region that promotes the quality of the outdoor amenities located here. Potential impacts from growth include any substance such as fertilizers from farming and turf management, oil and antifreeze from vehicles, materials or chemicals used in industrial processes and construction along with unmanaged soil disturbance – these will eventually make their way into the water bodies of our watersheds. Although many "point source" pollutants of past decades from industrial sites are no longer a major issue, these "non-point source" pollutants (i.e., parking lot and street runoff, construction sites, etc.) have become more common. Since these non-point source infractions are more difficult to identify and regulate, it is good to reexamine the permitting process and study needed revisions. But we don't need a weaker permit, as clean water is so vital to our community and our well-being.

I believe we need controls in place to strengthen the following:

- Increase staffing and streamline the inspection process with adequate site visits and documentation.
- Engage design professionals and water quality engineers on the front end of the process to share advice and help with troubleshooting.
- Require the submittal of necessary documents as part of permitting.
- Improve enforcement with an efficient post construction follow-up process.

These suggestions are given in lieu of removing requirements or making changes to standards that only "encourage" compliance. I am asking that TDEC work more closely with individual communities before renewal is granted and also rethink what is needed at the base level of statewide regulations, versus

working with municipalities to create an additional a layer of customized regulations that address local conditions and water quality goals, which vary across the state.

Thank you,

Pamela Glaser
Soddy-Daisy
Hamilton County, TN

Liz Campbell

From: Adrienne Small <adrienne.small11@gmail.com>
Sent: Thursday, August 5, 2021 2:12 PM
To: Vojin Janjic
Subject: [EXTERNAL] comment on proposed change to water quality permit

Hello,

I am strongly opposed to any changes in water quality permitting that would weaken the water quality controls within our state of Tennessee. Clean water is extremely important to maintain a healthy human population as well and a healthy environment. Any steps taken that would ultimately decrease water quality within our state should be immediately abandoned. Strong environmental protection and stewardship are key values that should be continuously upheld and not allowed to be eroded by corporate interests.

Thanks,

Adrienne Small
Union City, TN

Liz Campbell

From: Lisa York <lisa.york@comcast.net>
Sent: Thursday, August 5, 2021 1:48 PM
To: Vojin Janjic
Subject: [EXTERNAL] Public Comment for TNR100000

Hello Mr. Janjic~

I saw on the news that TDEC is accepting Public Comment for TNR100000 (Storm Water Discharge from Construction Projects). I've been to TDEC's website and can Not find a link for Public Comment on this permit review. Please share Where citizens can share their thoughts and what the deadline for Public Comment is.

Thank you.
lisa york

Liz Campbell

From: phil mcdaniel <lowdogfarm@gmail.com>
Sent: Thursday, August 5, 2021 1:46 PM
To: Vojin Janjic
Subject: [EXTERNAL] Renewal of Permit TNR 1000000

I strongly oppose any changes that would weaken water quality controls in the Permit # TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew this permit so it is “at least” as protective as the current one. We do not need a weaker permit, as clean water is vital to our community as our well-being, and the plants and wildlife that are dependent on this god given asset.

Phil McDaniel

Fayetteville, Tennessee 37334

Liz Campbell

From: Gwendolyn Blanton <gwen@madstop.com>
Sent: Thursday, August 5, 2021 1:31 PM
To: Vojin Janjic
Subject: [EXTERNAL] Keep TN water cleaner

Dear Sir or Madam,

Construction activity in TN is already a huge source of water pollution (sediment in streams is called pollution).

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit - we need a stronger one. Clean water is vital to our well-being and to the vitality of our communities across the state.

These companies make tons of money by developing - do not cut them a break and make us pay for their water pollution.

Sincerely,

Dr. Gwendolyn E. Blanton

--

Gwendolyn Blanton
gwen@madstop.com

Liz Campbell

From: Meade, Elise <elise.a.meade@vumc.org>
Sent: Thursday, August 5, 2021 11:35 AM
To: Vojin Janjic
Subject: [EXTERNAL] Water

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.
I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

My friends and I live spending time in the beautiful rivers and man made lakes in Tennessee. They are the land's life blood, and everyone, rich and poor, needs clean water. Please step up and protect Tennessee, its land and its people.

I live in the Green Hills area of Nashville, in Davidson County, Tennessee.

Thank you for your commitment to doing the right thing, even when it is hard.

Elise Meade

Elise Meade, PT, DPT, NCS
Physical Therapist III
Pi Beta Phi Rehabilitation Institute
Vanderbilt University Medical Center
1215 21st Avenue South, Suite 9211
Nashville, TN 37232
(615) 936 - 2963

Liz Campbell

From: MaryJo Granthen-Dorsey
Sent: Thursday, August 5, 2021 10:45 AM
To: Vojin Janjic
Subject: Protect one of Tennessee's most valuable resources

Our waterways need protecting. Please take action to protect them from damage due to runoff from construction sites. I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.



MaryJo Granthen-Dorsey
Clerk II
Cumberland Mountain Bear Trace
407 Wild Plum Lane
Crossville TN 38572
(931) 707-1640
MaryJo.Granthen-Dorsey@tn.gov

Liz Campbell

From: Laura Van Sickle <lvansickle@outlook.com>
Sent: Tuesday, August 10, 2021 10:27 AM
To: Vojin Janjic
Cc: Kathleen Ervin
Subject: [EXTERNAL] permit renewal of Permit #TNR100000

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

My 100 -year old house has flooded twice now in the last 10 years - the most recent flooding was this year and my issue is that the 5-house subdivision 3 properties away is the cause of that flooding. I don't believe there is adequate storm water management on that property, but the developer isn't liable b/c we are past the 4 year expiration date on claims. the construction in and around our neighborhood is out of control, and as a result the health of Brown's Creek is in jeopardy.

Please do not allow construction activity to further denigrate our water system.

Laura Van Sickle
Davidson County
1019 Glendale Lane, Nashville 37204

Laura Van Sickle
1019 Glendale Lane | Nashville | TN | 37204



Mr. Vojin Janjic
TDEC-Division of Water Resources
312 Rosa Parks Ave
Nashville, TN 37243
vojin.janjic@tn.gov

July 27, 2021

Re: Comments on Proposed Permit TNR100000

Mr. Janjic,

As an industry supplier we appreciate the opportunity to comment on the proposed permit **TNR100000**. As a company, Mid-TN has been an erosion and sediment control installer for 17 years in the middle TN area. Additionally, Mid-TN provides inspection services for local contractors on commercial, residential and TDOT projects. As an industry leader, we have formed relationships with our clients (typically contractors) and with local municipality stormwater professionals through attempting to provide professional installation of BMPs and accurate reporting of deficiencies to keep all parties involved within permit compliance and protect the streams and water bodies of the State of Tennessee.

With this said, our greatest concern with the proposed permit is with section **5.5.3.10. Schedule of Inspections**. From our experience, we believe the reduction of twice weekly required inspections to once weekly will prove to be very detrimental to the corrections and needed additions of control measures. We also believe this will result in **increased sediment load on the waters of Tennessee** as well as resulting in contractors and municipalities operating outside of permit compliance. We specifically believe this will be the case on commercial sites (we believe it to be possible that individual residential sites could be adequately inspected on a once per week basis). Our experience for your consideration is as follows:

- Commercial sites are ever changing. We believe a once per week inspection requirement will lessen the ability for the sites to be properly inspected due to multiple grading changes taking place in land disturbance daily. We all understand there are failures and shortfalls in erosion protection installation and plans. These failures and shortfalls need to be addressed promptly to protect against sediment releases. With inspections reduced to once per week, sites will be more difficult to keep in compliance. The results will be **increased sediment runoff from the sites**.
- Erosion inspections bring a trained professional to the site to examine outfalls and existing conditions of sediment controls for adequacy. Inspections are proactive and not reactive. An adequate number of proactive inspections help protect the **waters of Tennessee**. We **believe the reduction in weekly inspections will reduce inspections to a reactionary level**.
- We find that local municipalities (including Metro Nashville) are limited on personnel to conduct stormwater inspections. Municipalities have come to depend on the twice weekly

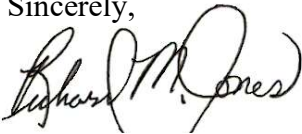
inspection process to assist in keeping sites compliant and to protect the waters of Tennessee. It is our belief that the required inspection process reduced to once per week will only exacerbate this already strained situation in local municipalities.

- Additionally, we believe the reduction in required weekly inspections will provide a signal (whether true or perceived) that sediment and erosion control is not as critical as presently regarded for the protection of Tennessee waters. We believe control measure repair and implementation will suffer and therefore the waters of Tennessee will also suffer.
- Site inspections are typically very reasonable in cost (a few hundred dollars per month) to ultimately help ensure protection of the waters of Tennessee. Everyone wants to eliminate unneeded expense. We however believe the minimal reduction of possible costs to owners on inspections to be outweighed by what we perceive as professionals to be expected degradation of the waters of Tennessee.

It is our request that you reconsider the reduction of twice weekly inspections to once weekly and retain the present inspection requirements.

Again, we appreciate the opportunity to comment on this important issue and we appreciate your honest consideration to our concerns.

Sincerely,



Richard M. Jones, P.E.

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August 5, 2021

Via E-mail: Vojin.Janjic@tn.gov ; water.permits@tn.gov

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RE: Proposed National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges of Stormwater Associated with Construction Activities

Dear Mr. Janjic:

The Southern Environmental Law Center (SELC), with Harpeth Conservancy, Obed Watershed Community Association, Protect Our Aquifer, Sowing Justice, and Tennessee Chapter Sierra Club, submits the following comments regarding the proposed issuance of the 2021 NPDES General Permit for Discharges of Stormwater Associated with Construction Activities (draft CGP), Permit Number TNR100000, by the Tennessee Department of Environment and Conservation (TDEC).

The draft CGP contains several changes from the 2016 NPDES General Permit for Discharges of Stormwater Associated with Construction Activities (2016 CGP) that result in a decrease in environmental protection, such as reduced inspection frequency and the inclusion of larger projects within general permit coverage. TDEC must reinstate the more protective provisions from the 2016 CGP in order to comply with the federal Clean Water Act's prohibition on backsliding, and to help prevent the pollution of Tennessee's waters. TDEC should also consider additional measures to prevent sedimentation and siltation pollution resulting from construction activities, such as a requirement for operators to open their stormwater pollution prevention plans (SWPPPs) to public comment.

We submit these comments to TDEC so that the draft CGP can be revised to provide greater protection for the waters of the state, for the benefit of the state's citizens. Stormwater runoff is a major threat to water quality across the nation, and Tennessee is no exception. Construction stormwater pollution contributes to urban flooding, increases the costs of treating drinking water, muddies the streams and rivers Tennesseans enjoy recreating and fishing in, and smothers the state's aquatic wildlife. Tennesseans have "a right to unpolluted waters," Tenn. Code Ann. 69-3-102, and TDEC may only issue permits that do not backslide in our progress towards achieving that right.

I. Background

Construction and development cause serious sediment and silt pollution, as stormwater from rainfall washes over the exposed ground and into nearby streets, storm sewer systems, and waterways. Stormwater runoff from construction sites contains not only sediment and silt but also nitrogen, phosphorus, metals, petroleum hydrocarbons, trash, debris, and other pollutants, as well as contributing to turbidity pollution.¹ Numerous studies show that construction sites can significantly increase pollutant discharges into surface waters, and there is often more stormwater runoff from construction sites than from agricultural, forested, and mature developed sites.² Due to the high concentration of sediment in construction site stormwater and the high volume of stormwater runoff, there is a significant amount of sediment that ends up leaving construction sites.³

1 U.S. E.P.A., Environmental Impact And Benefits Assessment For Final Effluent Guidelines And Standards for the Construction And Development Category, EPA-821-R-09-012 (Nov. 2009), https://www.epa.gov/sites/production/files/2015-06/documents/cd_envir-benefits-assessment_2009.pdf, (2009 Construction Stormwater ELGs EIA), 1-1.

2 Id. at 2-3.

3 Id.

4 Id. at 2-5.

5 Id. at 2-11.

6 Id.

7 Id. at 2-23.

8 See, e.g., DNA mapping begins a long road to recovery for endangered Tennessee fish, NEWS CHANNEL 9 (Apr. 11, 2018), <https://newschannel9.com/sports/outdoors/dna-mapping-begins-a-long-road-to-recovery-for-endangered-tennessee-fish> (noting that Cumberland Darter is threatened by, among other things, “habitat degradation caused by runoff-born sedimentation”); Amy Beth Miller, Building mussels: Fine-rayed pigtoe an endangered freshwater mollusk at home in Little River, THE DAILY TIMES (July 4, 2021), https://www.thedailytimes.com/news/building-mussels-fine-rayed-pigtoe-an-endangered-freshwater-mollusk-at-home-in-little-river/article_f65973f0-5bea-5b14-b263-4d43d9757076.html (explaining how erosion and water pollution have disrupted mussel habitat); Wildlife photographer captures incredible image of ‘hellbender’, NEWS CHANNEL 5 NASHVILLE (Oct. 19, 2018), <https://www.newschannel5.com/news/wildlife-photographer-captures-incredible-image-of-hellbender> (reporting that hellbenders are “at great risk of disappearing” due to habitat degradation, particularly as

When sediment discharge reaches surface waters, it can cause extensive damage. The negative effects of construction site stormwater discharges can last well beyond a single precipitation event or an individual construction site because the organic and inorganic material washed into the waterway can persist for long periods of time.⁴ Elevated sediment levels harm aquatic organisms, including plants, invertebrates, amphibians, and fish, by reducing photosynthetic activity, diminishing food availability, and burying habitat.⁵ The sediment causes organisms to relocate, become sick, or die, changing the overall composition of the aquatic community.⁶ Sediment impacts are especially harmful for threatened and endangered species because they are already at risk of irreversible decline.⁷ The extraordinary aquatic biodiversity in Tennessee is a natural treasure in our state, and water quality deterioration from sediment and silt puts that priceless treasure at risk.⁸

“increased sedimentation – resulting from silt, dirt and other pollutants running into streams – has smothered the rock environments on which hellbenders depend”).

9 2009 Construction Stormwater ELGs EIA, 2-25.

10 Id.

11 Id. at 2-26.

12 Id.

13 Id. at 2-27.

14 Id. at 2-27 to 2-28.

15 Id. at 2-29.

16 TDEC, Tennessee Erosion & Sediment Control Handbook: A Stormwater Planning and Design Manual for Construction Activities (Aug. 2012),

https://tnepsc.org/TDEC_EandS_Handbook_2012_Edition4/TDEC%20EandS%20Handbook%204th%20Edition.pdf (ESC Handbook), iii.

17 TDEC, 2014 305(b) Report: The Status of Water Quality in Tennessee (Dec. 2014),

https://www.tn.gov/content/dam/tn/agriculture/documents/landwaterstewardship/wr_wq_report-305b-2014.pdf (2014 305(b) Report), 47.

18 Id. at 58, 60.

Excess sediment also affects human uses of surface waters, preventing Tennesseans from fishing and recreating in many rivers and streams throughout the state and forcing localities and government agencies to spend money on dredging and treatment. Sediment reduces the navigable depth and width of channels, leading to navigational difficulties and problems like grounding and shipping delays.⁹ To keep navigable waterways passable, the U.S. Army Corps of Engineers spends an average of \$572 million (2008\$) per year to dredge the waterways.¹⁰ Construction site stormwater pollutants like sediment affect the quality and cost of providing drinking water,¹¹ and can also alter the taste and smell

of the water.¹²

Stormwater sediment pollution has negative effects on industrial water uses, “clogging intake systems at power plants and other industrial facilities” and increasing the rate at which hydraulic equipment wears out.¹³ Agricultural water uses can be impaired by sediment pollution; for example, irrigation water with excess sediment “can form a crust over a field, reducing water absorption, inhibiting soil aeration, and preventing emergence of seedlings,” as well as interfering with the proper functioning of irrigation equipment.¹⁴ Construction stormwater pollution also harms the recreational and commercial fishing industries, since it damages the overall aquatic ecosystem.¹⁵

According to TDEC, “[s]ilt is one of the most frequently cited pollutants in Tennessee waterways.”¹⁶ In 2014, sedimentation accounted for almost a quarter of the pollution in impaired rivers and streams in Tennessee.¹⁷ In that year, TDEC reported that over 18,170 lake or reservoir acres had been assessed as impaired by sediment and silt pollution, as well as over 6,200 miles of streams and rivers.¹⁸

“Unstabilized construction site discharge”¹⁹

“Untreated construction site dewatering”²⁰

“Muddy water from construction”²¹

“Poor stabilization during construction”²²

¹⁹ TDEC and the University of Tennessee Knoxville, Tennessee Erosion Prevention and Sediment Control Training Program for Construction Sites, <https://tnepsc.org/indexNew.asp>.

²⁰ Id.

²¹ Id.

²² 2014 305(b) Report, 71.

²³ Id. at 49.

²⁴ Id. at 49-50.

²⁵ Id. at 71.

²⁶ 2009 Construction Stormwater ELGs EIA, 2-28. See also U.S. E.P.A., Preliminary Data Summary of Urban Storm Water Best Management Practices, EPA-821-R-99-012 (August 1999), 4-2; 4-30, https://www.epa.gov/sites/production/files/2015-10/documents/usw_b.pdf.

As noted above, the accumulation of silt in waterways has substantial economic impacts, including increased water treatment costs, navigation impairments, and increased risk of flooding.²³ Many water properties are affected: siltation smothers the eggs and nests of fish, clogs the gills of aquatic wildlife, alters and degrades habitat, decreases oxygen in the water, accelerates eutrophication, and changes temperature patterns.²⁴ If construction sites are not properly stabilized, water quality in Tennessee is at risk.²⁵

Sedimentation and siltation from stormwater pollution, including construction stormwater runoff, also contributes to urban flooding, as sediment clogs up the storm drains for municipal storm sewer systems.²⁶ The natural capacity of streams, rivers, and reservoirs are decreased by sediment pollution, making overbank flow events more common and severe.sediment pollution, making overbank flow events more common and severe.sediment pollution, making overbank flow events more common and severe.sediment pollution, making overbank flow events more common and

which the previous permit was based have materially and substantially changed since the time the permit was issued,” how new information or technical mistakes justify a decreased standard of protection, or how these decreases in protection are otherwise permissible under federal law. 40 C.F.R. § 122.44(l). In the Second Rationale, TDEC states that inspection requirements in the draft CGP are based on Best Professional Judgment. Second Rationale, 4.

A more protective CGP will help protect Tennessee’s waters even as the state continues to grow. Current and future residents of Tennessee deserve to have access to clean and clear water that is safe for drinking, swimming, boating, and fishing. Water pollution causes economic injury to the community due to loss of tourism, decreased commercial fishing, and lower property values.³⁷ To maintain a strong and healthy community, it is critical to protect the state’s waters by strengthening the CGP requirements for construction activities.

II. Comments on back-sliding from the 2016 CGP to the draft CGP

The draft CGP contains several provisions that are less protective than the provisions in the 2016 CGP, in apparent violation of both state and federal law. These changes are described below. Under both the federal Clean Water Act and the Tennessee Water Quality Control Act, anti-backsliding requirements mandate that, with certain limited exceptions, limitations and conditions imposed in any new or reissued NPDES permit be at least as stringent as those in previous permits.³⁸ TDEC must either reinstate the more protective provisions from the 2016 CGP, or it must explain in its Rationale³⁹ how the modifications it proposes in the draft CGP fit into one of the exceptions to the anti-backsliding requirements, as detailed at 40 C.F.R. § 122.44(l) and Tenn. Comp. R. & Regs. 0400-40-05-.08(j).⁴⁰ If TDEC believes that the relaxed standards fall into the exceptions for water-quality based limits enumerated at 33 U.S.C.A. § 1313(d), again, TDEC must explain how, e.g., water quality standards will still be met even with the less protective standards.

In either case, TDEC must additionally demonstrate how the permit revisions will not lead to water quality standard violations. 33 U.S.C.A. § 1342(o)(3). Given the many examples cited above of ongoing water pollution issues caused by construction stormwater discharge, and the likely increased usage of the CGP as development intensifies, the burden must be on TDEC to explain how less protective standards—such as larger site sizes for general permits, fewer inspections, removal of site assessment requirements for most sites, and less detailed SWPPPs—will somehow ensure that water quality standards is sufficiently protected.

A. Permit coverage should not be extended to sites greater than 50 acres.

The draft CGP expands general permit coverage to sites that disturb more than 50 acres at one time, making it significantly less protective than the 2016 CGP. In the 2016 CGP, TDEC required construction to be phased to keep the total disturbed area less than 50 acres at any one time. 2016 CGP, Section 3.5.3.1(k). Section 5.5.3.2 of the draft CGP states “[c]onstruction should be phased to keep the total disturbed area less than 50 acres at any one time” (emphasis added). Projects that will disturb more than 50 acres at a time, which used to require an individual NPDES permit,⁴¹ would be allowed general permit coverage with this change, and avoid the more rigorous scrutiny and public participation requirements of individual permits. Instead of retaining the prohibition, the draft CGP added five requirements that apply when the permittee chooses to disturb more than 50 acres at one time—requirements that used to apply more broadly to projects covered by the CGP, as described below.

⁴¹ The 2016 only covered projects disturbing more than 50 acres at a time if those projects were for “linear construction,” such as roadways and pipelines, and only if certain other conditions were met. 2016 CGP, Section 3.5.3.1(k).

TDEC offers no real explanation for this decrease in protection. In the Second Rationale, TDEC acknowledges “that a construction-phasing acreage limit of some kind can be protective of water quality,” and goes on to state that “the limit of 50 acres is based on best professional judgment, not on any specific scientific or technical basis.” Second Rationale, 6.5. Specifically, the initial “50-acre limit was intended to encourage construction phasing, the quick stabilization of

disturbed areas, and reduce the number of storm events to which soils would likely be exposed.” Id. TDEC’s only justification for removing the 50-acre cap on general permit coverage is that it “has been challenged over the scientific, technical, and water-quality basis for implementation of a 50-acre limit,” and “[i]n practice, these individual permits have required significant resources from the Department and the permit applicant/permittee, without necessarily providing a greater benefit to water quality.” Id.

Although it may be more work for TDEC to process individual NPDES permits with the full public and notice process, that cannot be sufficient justification for jeopardizing water quality. Even if individual permit requirements do not “necessarily” provide greater benefits to water quality, they certainly provide more opportunity for public participation and careful planning, and often impose greater disclosure requirements on permit applicants. planning, and often impose greater disclosure requirements on permit applicants. planning, and often impose greater disclosure requirements on permit applicants.

42 See *Sierra Club v. ICG Hazard, LLC*, No. CIV. 11-148-GFVT, 2012 WL 4601012, at *9 (E.D. Ky. Sept. 28, 2012), aff’d, 781 F.3d 281 (6th Cir. 2015) (noting that with individual permits, “the discharger must disclose all chemicals, wastestreams, and processes” in order to receive permit shield protection, but that for general permits, “the permitting agency bears the burden for understanding the pollutants that might be discharged and writing the permit with appropriate limitations”).

43 See, e.g., Caresse Jackman, Homeowners across Middle Tennessee worry fast development is contributing to flooding, NEWS 4 NASHVILLE (Apr. 29, 2021), https://www.wsmv.com/call_4_action/homeowners-across-middle-tennessee-worry-fast-development-is-contributing-to-flooding/article_4a653168-a911-11eb-8c28-9f31ede03d73.html.

As described above, stormwater construction flooding is a major problem in Tennessee, and making it even easier to get the less protective general permit is a step in the wrong direction.⁴³ In allowing general permit coverage for larger projects, TDEC is going backwards to a less protective standard than what previously applied. General permit coverage should not be extended to sites greater than 50 acres given the increased potential for erosion and sedimentation.

B. Inspections should not be reduced from twice weekly to once weekly.

One requirement for the draft CGP’s expanded coverage to projects that disturb more than 50 acres is for twice weekly inspections—but in the 2016 CGP, twice weekly inspections are the baseline requirement for all projects. Subsection 3.5.8.1 of the 2016 CGP required certified individuals to conduct twice weekly inspections for all construction sites. The draft CGP drops that down to once weekly inspections. The only justification for this given in the Second Rationale is that the federal CGP only requires once-weekly site inspections. Second Rationale, 8.

The federal CGP does not set a ceiling on protection—it sets a floor. TDEC should use the federal CGP as a baseline, but then adapt to it to conditions in Tennessee. Given increasing severe rain events in the Southeast because of climate change, and the degree to which construction stormwater pollution is a problem throughout the state, a higher inspection frequency is fully justified; certainly, there is no reason to inspect even less frequently than the current standard. Many problems could arise within a week, making this change a major step backwards for water protection in Tennessee. For example, if a construction site fails to implement proper erosion prevention and sediment control practices and there is heavy or even moderate rainfall during the week, large amounts of sediment could flow into nearby waters before an inspector discovers the issue. To ensure problems are addressed and resolved as soon as possible, inspections should continue to be conducted twice weekly for all projects.

Additionally, the inspections should be more detailed. The draft CGP’s Inspection Report Form is overly simplistic. Draft CGP, Appendix C. It only requires the inspector to check boxes that indicate whether the Erosion Prevention and Sediment Controls are functioning correctly. If the inspector checks “no,” they are asked to describe it in the comment section, but no other guidance is given. Instead, the Inspection Report should ask targeted questions to ensure the inspector is conducting a thorough investigation and the permittee is following the correct procedures. “Yes” or “No” boxes fail to provide the necessary level of detail to ensure compliance with the CGP, as is necessary to ensure full protection.⁴⁴

44 For example, North Carolina’s general NPDES permit for discharge of construction stormwater, NCG25, requires

the inspector to include more detailed notes during inspection such as description of maintenance needs and indicators of stormwater pollution. Permit No. NCG250000, <https://files.nc.gov/ncdeq/Energy%20Mineral%20and%20Land%20Resources/Stormwater/NPDES%20General%20Permits/NCG250000-Permit-FINAL-20200925.pdf>, 18.

45 Specifically, the 2016 CGP required site assessments for sites with outfalls draining 10 or more acres (or 5 or more acres if draining to Exceptional Tennessee Waters or waters with unavailable parameters). 2016 CGP, Section 3.1.2. For a revised CGP, TDEC should automatically require site assessments for at least these sites.

C. TDEC should reinstate the requirement that sites disturbing less than 50 acres obtain a site assessment.

The draft CGP only requires site assessments for projects planning to disturb more than 50 acres at one time, per section 5.5.3.3. Previously, section 3.1.2 of the 2016 permit required site assessments for many smaller sites within 30 days of commencing construction.⁴⁵ TDEC offers no explanation for this decrease in oversight and protection. According to section 3.1.2 of the 2016 CGP, the purpose of the site assessment is to “verify the installation, functionality and performance of the EPSC measures described in the SWPPP.” Site assessments also “determine if construction, operation and maintenance accurately comply with permit requirements.” All of these factors are as relevant for a 45-acre site as a 50-acre one, and they create a baseline of protection by ensuring that the SWPPP is designed and implemented correctly.

Conducting site assessments is a crucial way to ensure the permittee is complying with the CGP. Without site assessments, it could take weeks or months to discover the SWPPP is inadequate. Despite the potential for serious damage to Tennessee’s waters, the Second Rationale’s only justification for eliminating this requirement for most sites is that “[s]takeholders have argued that the site assessment is a redundant and therefore unnecessary requirement.” Second Rationale, 9. These “stakeholders” are not specified, but are presumably the regulated community, who have every reason to want TDEC to make CGP compliance less difficult. Since construction stormwater pollution persists throughout the state, it is difficult to believe that a serious problem with the 2016 CGP was that it was overly protective. Stating that inspection requirements are “redundant” without further explanation is nonsensical; more inspections may be “redundant” in some sense, but they may still be necessary to ensure overall system reliability and make sure that serious problems are not missed.

Because conducting site assessments is not overly burdensome and inadequate SWPPPs can have an enormous environmental impact, TDEC must reinstate the 2016 CGP site assessment requirements in the draft CGP. Given the scope of the sediment pollution problem across our state, TDEC should also mandate that site assessment occur before construction begins, to ensure that the erosion prevention and sediment control measures outlined in the SWPPP are in place before any major rain event.

D. TDEC should retain requirements for the SWPPPs to include descriptions of post-construction stormwater control practices.

At Section 3.5.4, the 2016 CGP states that the SWPPP must include:

a description of any measures that will be installed during the construction process to control pollutants in stormwater discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements.

Additionally, for projects discharging to waters impaired for siltation or habitat alteration due to in-channel erosion, the SWPPP must include a description of the increase in impervious surface area after construction. 2016 CGP, Section 3.5.4. In the Notice of Determination for the 2016 CGP, TDEC explains these requirements by noting that 40 C.F.R. § 122.26(c)(1)(ii) requires SWPPPs to include, among other things, “[p]roposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of

applicable State or local erosion and sediment control requirements,” and “[a]n estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge.” 2016 CGP NOD, 15-16.

In the draft CGP, these references have been deleted. To justify this deletion, TDEC only states that “[p]ost-construction stormwater pollutants should not be regulated in the construction stormwater general permit, and the division cannot regulate stormwater volumes, only pollutants in stormwater.” Second Rationale, 8. As the federal regulations cited in the 2016 CCGP NOD have not changed, TDEC must explain why the federal regulations no longer require the SWPPP to include these elements.

E. TDEC should reinstate the requirement for operators to submit information to MS4s and comply with MS4 local ordinances.

The draft CGP eliminated the requirement for operators to submit information to municipal separate storm sewer systems (MS4s) and comply with MS4 local ordinances. The 2016 CGP required permittees to submit a copy of their notice of coverage under the CGP to their local MS4. 2016 CGP, Section 1.4.4. The Second Rationale for the draft CGP proposes this language for deletion, with the justification that “TDEC does not have the legal authority to enforce local ordinances under this permit.” Second Rationale, 6.3. 2016 CGP required permittees to submit a copy of their notice of coverage under the CGP to their local MS4. 2016 CGP, Section 1.4.4. The Second Rationale for the draft CGP proposes this language for deletion, with the justification that “TDEC does not have the legal authority to enforce local ordinances under this permit.” Second Rationale, 6.3. 2016 CGP required permittees to submit a copy of their notice of coverage under the CGP to their local MS4. 2016 CGP, Section 1.4.4. The Second Rationale for the draft CGP proposes this language for deletion, with the justification that “TDEC does not have the legal authority to enforce local ordinances under this permit.” Second Rationale, 6.3.

46 The First Rationale provided only the explanation that “[l]ocal jurisdictions are expected to enforce their own ordinances.” First Rationale, 5.3.

47 40 C.F.R. §§ 122.26(d)(2)(iv)(d) (for Phase I MS4s), 122.34(b)(4) (for Phase II MS4s).

Additionally, although it is true that local jurisdictions must enforce their own ordinances, TDEC has not proffered any explanation for why it has decided to make it more difficult for them to do so by not requiring permittees to comply with the very simple step of submitting information to their local MS4s. The requirement to submit information to MS4s is not onerous and it makes it easier for localities to ensure that operators are in compliance with permit conditions. EPA regulations require most MS4s to develop, implement, and enforce their own stormwater regulations to prevent water pollution,⁴⁷ and as the state agency responsible for protecting the waters of the state, TDEC should help, rather than hinder, their efforts. TDEC must continue to require operators to submit the documents to MS4s, and make compliance with local stormwater ordinances a condition of CGP compliance.

F. TDEC should retain the qualification requirements to prepare SWPPPs for sites disturbing five acres or less.

TDEC has also relaxed a requirement for SWPPPs to be prepared by individuals with stormwater qualifications when sites are less than five acres. Section 3.1.2 of the 2016 CGP required site assessments to be performed by individuals with one or more of the following qualifications: (a) a licensed professional engineer or landscape architect; (b) a certified professional in erosion and sediment control; or (c) a person who has successfully completed the “Level II Design Principles for Erosion Prevention and Sediment Control for Construction Sites” course. Section 5.2 of the draft CGP removed these qualification requirements for sites less than or equal to five acres of disturbance, instead providing optional templates for SWPPP preparation.

TDEC has not provided an explanation for this change, even though it would seem likely to lead to less competent preparation of SWPPPs for these sites. Requiring that SWPPPs be prepared by individuals who are knowledgeable about erosion control practices and engineering is a basic safeguard in ensuring that the plans will actually prevent water

pollution. For example, in the current version of EPA’s general construction stormwater permit, the provisions applying to New Mexico require that “[a]ll SWPPPs must be prepared in accordance with good engineering practices by qualified (e.g. CPESC certified, engineers with appropriate training) erosion control specialists...”to New Mexico require that “[a]ll SWPPPs must be prepared in accordance with good engineering practices by qualified (e.g. CPESC certified, engineers with appropriate training) erosion control specialists...”to New Mexico require that “[a]ll SWPPPs must be prepared in accordance with good engineering practices by qualified (e.g. CPESC certified, engineers with appropriate training) erosion control specialists...”to New Mexico require that “[a]ll SWPPPs must be prepared in accordance with good engineering practices by qualified (e.g. CPESC certified, engineers with appropriate training) erosion control specialists...”

48 U.S. E.P.A., NPDES General Permit for Discharges from Construction Activities, Issued June 27, 2019 and Expires, Feb. 16, 2022, https://www.epa.gov/sites/production/files/2019-06/documents/final_2017_cgp_current_as_of_6-6-2019.pdf (2017 EPA CGP), Section 9.4.1.

49 In the Notice of Determination for the 2016 CGP, TDEC seems to acknowledge that expanding site assessment preparation requirements to allow people who have taken erosion prevention and sediment control courses, rather than only allowing professional engineers and landscape architects to do so, is already a permissive step to decrease burden on permittees. 2016 CGP Notice of Determination, 11.

50 In the 2016 Final MS4 General Permit Remand Rule, EPA codified the holding of *Env’t Def. Ctr., Inc. v. U.S. E.P.A.* by requiring that states choose between either fully setting out terms in the general MS4 permits or allowing public notice and comment on NOIs and stormwater management plans. <https://www.govinfo.gov/content/pkg/FR-2016-12-09/pdf/2016-28426.pdf>

III. Other comments on the draft CGP

A. Members of the public should have the opportunity to comment on SWPPPs.

The draft CGP fails to provide the public an opportunity to comment on the SWPPPs of individual projects covered by the CGP. Public participation is a critical component to achieving the goals of the Clean Water Act. 33 U.S.C. § 1251(e). The SWPPPs are the main mechanism by which the goals of the CGP are enacted, and each project covered by the CGP must submit its own SWPPP. Without an opportunity for comment, the public is prevented from providing valuable feedback to the operator and TDEC about whether a particular SWPPP in a particular location will be adequately protective.

Courts have held that public comment is required for plans required under similar permitting schemes. In *Waterkeeper All., Inc. v. U.S. E.P.A.*, 399 F.3d 486, 503–04 (2d Cir. 2005), for example, the Second Circuit held that a federal rule concerning confined animal feeding operation permits did not meet the Clean Water Act’s public participation requirements, in part because under the rule the public did not have the ability to scrutinize or comment on the nutrient management plans which set best management practices to prevent pollution. The court found that the rule “deprive[d] the public of its right to assist in the ‘development, revision, and enforcement of ... [an] effluent limitation,’” and from “calling for a hearing about—and then meaningfully commenting on—NPDES permits before they issue.” *Id.* (citing 33 U.S.C. § 1251(e)). See also *Env’t Def. Ctr., Inc. v. U.S. E.P.A.*, 344 F.3d 832, 853 (9th Cir. 2003) (noting that for general MS4 stormwater permits, an “NOI is a permit application that is, at least in some regards, functionally equivalent to a detailed application for an individualized permit,” and so there must be some provision for public notice and comment on the NOI).⁵⁰ Although this case does not involve a general permit for construction stormwater discharges, the principle that SWPPPs and best management practices can functionally constitute effluent limitations, thus triggering a need for public notice and comment, still applies.

The draft CGP provides an opportunity for the public to comment on the general permit, but it does not allow the public to meaningfully contribute to each SWPPP. The draft CGP should allow public comment on the SWPPP. At minimum, SWPPPs must be available for public review,⁵¹ and conditions and limits in the draft CGP should ensure that NOIs and SWPPPs are not the “functional equivalent” of permit applications. For example, restricting general permit coverage to

sites disturbing less than 50 acres at one time would require larger sites, which may have more particularized SWPPPs or the potential to cause more water pollution, to undergo the full public participation process mandated for individual NPDES permits.

51 Section 7.2 of the draft CGP requires permittees to maintain a copy of the SWPPP “at the construction site”, but does not specify that the SWPPP must be in a publicly accessible place; by contrast, the 2016 CGP required the SWPPP copy be located “at the construction site (or other local location accessible to the director and the public)”. 2016 CGP, Section 6.2. TDEC should revise this section to make sure that SWPPPs remain accessible to the public.

52 2017 EPA CGP, Table 1.

53 Id.

B. TDEC should require NOIs be submitted before construction begins.

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

The draft CGP must require individuals to submit NOIs prior to commencing construction. Under the draft CGP, there is little incentive to submit NOIs before starting construction. It is extremely difficult to obtain evidence of prior, unpermitted discharges—particularly since no agency would be aware of the site and inspecting for them—so it is unlikely the individual will face any penalties or fines after filing a late NOI.

Additionally, there are no submittal deadlines mentioned in the draft CGP. An individual may submit the NOI one week after construction begins, or six months after construction begins, without penalty. The EPA CGP contains a table that lists NOI submittal deadlines.⁵² For example, an operator of a new site must submit the NOI at least 14 calendar days before beginning construction, and the operator of an “emergency-related project” must submit the NOI no later than 30 calendar days after commencing construction.⁵³ It is recommended the draft CGP include a similar table for easy enforcement. TDEC must impose a fine or penalty for late NOIs to discourage future late submittals. CGP include a similar table for easy enforcement. TDEC must impose a fine or penalty for late NOIs to discourage future late submittals. CGP include a similar table for easy enforcement. TDEC must impose a fine or penalty for late NOIs to discourage future late submittals.

54 TDEC may impose administrative penalties for, among other things, the violation of “any other provision of this part or any rule or regulation promulgated by the board.” Tenn. Code Ann. § 69-3-115(a)(1)(H). TDEC regulations require that for general permits, “notices of intent shall be submitted in accordance with timeframes established in the applicable general permit.” Tenn. Comp. R. & Regs. 0400-40-05-.05(5). It is therefore within TDEC’s authority to impose fines on a permit applicant for failing to file a NOI within the timeframe established in the general permit.

55 *Waterkeeper Alliance, Inc. v. U.S. E.P.A.*, 399 F.3d 486, 499 (2d Cir. 2005).

56 TDEC’s duty to review NOIs and SWPPPs for compliance is even more pronounced since the proposed permit does not require permit applicants to inform MS4s of their construction plans. Under the draft CGP, TDEC refuses to facilitate the review of SWPPPs by MS4s by requiring applicants to submit information to those MS4s, and also denies its own obligation to review those SWPPPs itself. This creates an opportunity for seriously deficient plans to be implemented.

57 *Env’tl. Def. Ctr., Inc. v. U.S. E.P.A.*, 344 F.3d 832, 856 (9th Cir. 2003).

C. TDEC should review NOIs and SWPPPs to ensure they are in compliance with the permit conditions.

To obtain coverage, the permittee must submit a complete application, which includes the NOI, SWPPP, and application fee, at least 30 days prior to commencing construction. Pursuant to section 1.4.1 of the draft CGP, “[t]he division may review NOIs and SWPPPs for completeness and accuracy and, when deemed necessary, investigate the proposed project

for potential impacts to the waters of the state.” The Clean Water Act, 33 U.S.C.A. § 1342(b), allows states to distribute NPDES permits “only where, inter alia, the state permitting programs ‘apply, and insure compliance with, any applicable [effluent limitations and standards].’”⁵⁵ It is not enough that TDEC “may” review NOIs and SWPPPs—it “must” do so, to ensure that Tennessee waters are adequately protected from stormwater pollution.⁵⁶

The Ninth Circuit has stated that “[s]tormwater management programs that are designed by regulated parties must, in every instance, be subject to meaningful review by an appropriate regulating entity to ensure that each such program reduces the discharge of pollutants to the maximum extent practicable.”⁵⁷ The draft CGP itself seems to acknowledge this need for review; the limitation on coverage for discharges threatening water quality states that discharges “the director determines will cause or has the reasonable potential to cause or contribute to violations of water quality standards” are not authorized by the permit, thus contemplating some level of review. Draft CGP, Section 1.3(d).

TDEC must review every NOI and SWPPP to ensure compliance with the permit prior to issuing notices of coverage. Without a thorough analysis of NOIs and SWPPPs, TDEC may approve a deficient application resulting in environmental harm.

D. Permit limits based on water quality standards should be more specific.

The draft CGP includes requirements to ensure compliance with the federal effluent limitation guidelines (ELGs) for construction stormwater.⁵⁸ Because compliance with the ELGs alone would not be sufficient to attain or maintain water quality standards, the draft CGP also includes requirements related to state water quality standards.⁵⁹ Draft CGP, Section 6.3. However, the draft CGP’s requirements to ensure compliance with state water quality standards are not detailed enough to protect water quality. Section 6.3.1 states only that “[t]his permit does not authorize stormwater or other discharges that would cause or contribute to a violation of a state water quality standard”, and contains no actual guidance for permittees on how to make sure such discharges do not occur. Section 6.3.2 repeats state regulations on water quality standards, such as prohibitions on “distinctly visible solids” and on the discharge of suspended solids, turbidity, or color resulting in “objectional appearance.”

⁵⁸ These are described at 40 C.F.R. Part 450, and include, among other things, the requirement to develop erosion prevention and sediment controls and to design pollution prevention measures. Draft CGP, Section 4.1; section 5.

⁵⁹ The Second Rationale states that “[b]ecause the discharge of sediment to waters can cause pollution, the permit includes narrative water-quality based effluent limitations in addition to narrative technology-based effluent limitations.” Second Rationale, 4. See also 33 U.S.C. § 1311(b)(1)(C) (requiring establishment of “any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance”); 33 U.S.C. § 1342(a)(1) (requiring NPDES permits to meet “all applicable requirements” under 33 U.S.C. § 1311); 40 C.F.R. § 122.44(d)(1)(vii)(A) (requiring permitting authority to develop water quality based effluent limits that ensure compliance with water quality standards); Tenn. Code Ann. § 69-3-108(g) (“permits shall include... [t]he most stringent effluent limitations and schedules of compliance, either promulgated by the board, required to implement any applicable water quality standards”); Tenn. Comp. R. & Regs. 0400-40-05-.04(1)(g) (prohibiting discharges that “will cause or contribute to the violation of water quality standards”).

These water quality-based limits do not give permittees adequate guidance on how to avoid pollution. In *Natural Resources Defense Council v. U.S. E.P.A.*, the Second Circuit held that the EPA violated the Clean Water Act in issuing a general permit that contained overly vague water quality limits very similar to the limits in the draft CGP. 808 F.3d 556 (2d Cir. 2015). The EPA permit required permittees “to control discharges ‘as necessary to meet applicable water quality standards’ without giving specific guidance on the discharge limits.” *Id.* at 578. The court found that this standard was “insufficient to give a [permittee] guidance as to what is expected or to allow any permitting authority to determine whether a [permittee] is violating water quality standards,” and that EPA “fail[ed] to fulfill its duty to ‘regulat[e] in fact, not only in principle.’” *Id.* (citations omitted).

As currently written in the draft CGP, the water quality limits “in fact add nothing”, even though they are meant to supplement the federal ELGs. *Id.* Narrative water quality-based effluent limits, including best management practices, are permissible when “[n]umeric effluent limitations are infeasible,” 40 C.F.R. § 122.44(k)(3), but those limits must still

be specific and actionable.actionable.actionable.actionable.actionable.actionable.actionable.

60 See 808 F.3d at 578 (stating that “[e]ven if determining the proper standard is difficult, EPA cannot simply give up and refuse to issue more specific guidelines” and citing *Am. Paper Inst., Inc. v. U.S. E.P.A.*, 996 F.2d 346, 350 (D.C.Cir.1993) as “articulating that, even if creating permit limits is difficult, permit writers cannot just ‘thr[o]w up their hands and, contrary to the Act, simply ignore[] water quality standards including narrative criteria altogether when deciding upon permit limitations’”). TDEC has also not justified its reliance on best management practices or explained why numeric criteria are infeasible, simply stating without further explanation that “[t]he development of numeric effluent limitations has proven not to be feasible at the scale of this general permit.” Second Rationale, 4. If numeric criteria are indeed infeasible, TDEC must offer detail on why that is the case.

61 A general statement prohibiting discharges that violate water quality standards cannot be understood as a best management practice in itself, because it does not “ensure compliance” and “is neither a practice nor a procedure.” 808 F.3d at 579-580. The Second Rationale supports this understanding, as it describes “BMPs and buffers” as examples of permit requirements based on federal ELGs, and the “prohibition on objectionable color contrast” as an example of a permit requirement based on state water quality rules. Second Rationale, 5. If the best management practices in the draft CGP are meant to be both water quality-based limits and limits mandated by the federal ELGs, that is also not acceptable; it would make water quality-based limits entirely redundant, and TDEC has already determined that additional measures beyond the ELGs are necessary. *Id.*

62 For example, the requirements for SWPPPs to be designed to accommodate a 5-year, 24-hour storm event and enhanced riparian buffer zone requirements are good additions to help protect water quality, but TDEC still must demonstrate how it determined that compliance with these requirements will ensure that state water quality standards are not violated. Draft CGP, Section 6.4.

63 Although a “Construction Stormwater Monitoring Report Form” is mentioned in Section 8.7, no such form is given in the permit’s appendix, and instructions on how to use that form are not in the draft CGP itself. Inspection requirements to ensure that the SWPPP is being implemented correctly are not the same as monitoring requirements to ensure that water quality standards are not being violated; if TDEC means for the former to serve as the latter, it must justify that decision.

The insufficiency of the water quality-based limits in the draft CGP is even more striking when considering the apparent lack of any monitoring requirements to ensure compliance with those limits. Monitoring to “assure compliance with permit limitations” is required by 40 C.F.R. § 122.44(i), but the draft CGP does not contain information on how permittees are meant to monitor their operations for violations of effluent limits.⁶³ In addition to revising the water quality-based permit limits to make them specific and actionable, TDEC should also include monitoring requirements for those limits.monitoring requirements for those limits.monitoring requirements for those limits.monitoring requirements for those limits.monitoring requirements for those limits.

64 See, e.g., *Nat. Res. Def. Council, Inc. v. Cty. of Los Angeles*, 725 F.3d 1194, 1207 (9th Cir. 2013) (noting that as a general matter, “an NPDES permit is unlawful if a permittee is not required to effectively monitor its permit compliance”).

65 An example of a similar requirement is at Section 9.4.3.2.j of the 2017 EPA CGP, setting additional conditions for the Pueblo of Sandia: “The Pueblo of Sandia may require the permittee to perform water quality monitoring for pH, turbidity, and total suspended solids (TSS) during the permit term if the discharge is to a surface water leading to the Rio Grande for the protection of public health and the environment.”

66 See 2017 EPA CGP Permit, Section 2.2.1 (The EPA CGP requires a 50-foot undisturbed natural buffer zone).

E. Erosion prevention and sediment control requirements should be strengthened.

Section 4.1.2 of the draft CGP requires a 30-foot natural water quality riparian buffer for all streams and wetlands with available parameters adjacent to construction sites, to the maximum extent possible. The draft CGP should increase the required buffer to 50 feet so Tennessee’s CGP is as protective as the EPA’s CGP.⁶⁶ It is crucial to require buffer zones that are wide enough to protect the water because the buffers remove additional pollutants. At minimum, TDEC must remove the equivocal language allowing a less than 30-foot barrier if it is “not possible,” unless TDEC is able to articulate what circumstances would allow a smaller barrier to meet the water protection standards for a NPDES permits.

Additionally, the definition of a buffer must consider the ground cover and slope of the land. A 30-foot steep slope lacking in vegetative groundcover may not be an effective buffer, but a 30-foot buffer on flat land with tall grass may be effective. Considering the ground cover and slope when calculating the required buffer for each permit will ensure the permit adequately protects the water surrounding the site.

F. Electronic reporting requirements and the ban on cationic polymers are improvements in the draft CGP, and should remain in the final permit.

The draft CGP does include some improvements on the 2016 CGP, such as the electronic reporting requirement and the prohibition on cationic polymers, which represent important increases in protection for the waters of Tennessee. The electronic reporting requirement will streamline the reporting process, making the collection and processing of data timelier and more accurate, as well as increasing TDEC’s ability to share information with the public. The prohibition on cationic polymers is also a large step in the right direction, as these toxic chemicals contaminate the water and harm many aquatic organisms. These positive changes should be included in any final version of the CGP.

IV. Conclusion

Pollution from construction stormwater runoff is a massive and on-going problem in Tennessee, and there is reason to think it will only get worse. The draft CGP represents an unacceptable decrease in the level of oversight for construction activities, and the level of protection for Tennessee’s waters. TDEC should withdraw the draft CGP and redraft it, using the 2016 CGP as the minimum baseline for protections, and then submit that revision for public comment. If TDEC is not able to complete this before the current permit expires, it should extend the 2016 CGP for another year to allow time for careful consideration and public involvement.

Thank you for the opportunity to provide these comments.

Sincerely,

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RE: Proposed National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges of Stormwater Associated with Construction Activities

Dear Mr. Janjić:

The Southern Environmental Law Center (SELC), with Harpeth Conservancy, Obed Watershed Community Association, Protect Our Aquifer, Sowing Justice, and Tennessee Chapter Sierra Club, submits the following comments regarding the proposed issuance of the 2021 NPDES General Permit for Discharges of Stormwater Associated with Construction Activities (draft CGP), Permit Number TNR100000, by the Tennessee Department of Environment and Conservation (TDEC).

The draft CGP contains several changes from the 2016 NPDES General Permit for Discharges of Stormwater Associated with Construction Activities (2016 CGP) that result in a decrease in environmental protection, such as reduced inspection frequency and the inclusion of larger projects within general permit coverage. TDEC must reinstate the more protective provisions from the 2016 CGP in order to comply with the federal Clean Water Act's prohibition on backsliding, and to help prevent the pollution of Tennessee's waters. TDEC should also consider additional measures to prevent sedimentation and siltation pollution resulting from construction activities, such as a requirement for operators to open their stormwater pollution prevention plans (SWPPPs) to public comment.

We submit these comments to TDEC so that the draft CGP can be revised to provide greater protection for the waters of the state, for the benefit of the state's citizens. Stormwater runoff is a major threat to water quality across the nation, and Tennessee is no exception. Construction stormwater pollution contributes to urban flooding, increases the costs of treating drinking water, muddies the streams and rivers Tennesseans enjoy recreating and fishing in, and smothers the state's aquatic wildlife. Tennesseans have "a right to unpolluted waters," Tenn. Code Ann. 69-3-102, and TDEC may only issue permits that do not backslide in our progress towards achieving that right.

I. Background

Construction and development cause serious sediment and silt pollution, as stormwater from rainfall washes over the exposed ground and into nearby streets, storm sewer systems, and waterways. Stormwater runoff from construction sites contains not only sediment and silt but also nitrogen, phosphorus, metals, petroleum hydrocarbons, trash, debris, and other pollutants, as well as contributing to turbidity pollution.¹ Numerous studies show that construction sites can significantly increase pollutant discharges into surface waters, and there is often more stormwater runoff from construction sites than from agricultural, forested, and mature developed sites.² Due to the high concentration of sediment in construction site stormwater and the high volume of stormwater runoff, there is a significant amount of sediment that ends up leaving construction sites.³

When sediment discharge reaches surface waters, it can cause extensive damage. The negative effects of construction site stormwater discharges can last well beyond a single precipitation event or an individual construction site because the organic and inorganic material washed into the waterway can persist for long periods of time.⁴ Elevated sediment levels harm aquatic organisms, including plants, invertebrates, amphibians, and fish, by reducing photosynthetic activity, diminishing food availability, and burying habitat.⁵ The sediment causes organisms to relocate, become sick, or die, changing the overall composition of the aquatic community.⁶ Sediment impacts are especially harmful for threatened and endangered species because they are already at risk of irreversible decline.⁷ The extraordinary aquatic biodiversity in Tennessee is a natural treasure in our state, and water quality deterioration from sediment and silt puts that priceless treasure at risk.⁸

¹ U.S. E.P.A., *Environmental Impact And Benefits Assessment For Final Effluent Guidelines And Standards for the Construction And Development Category*, EPA-821-R-09-012 (Nov. 2009), https://www.epa.gov/sites/production/files/2015-06/documents/cd_envir-benefits-assessment_2009.pdf, (2009 Construction Stormwater ELGs EIA), 1-1.

² *Id.* at 2-3.

³ *Id.*

⁴ *Id.* at 2-5.

⁵ *Id.* at 2-11.

⁶ *Id.*

⁷ *Id.* at 2-23.

⁸ See, e.g., *DNA mapping begins a long road to recovery for endangered Tennessee fish*, NEWS CHANNEL 9 (Apr. 11, 2018), <https://newschannel9.com/sports/outdoors/dna-mapping-begins-a-long-road-to-recovery-for-endangered-tennessee-fish> (noting that Cumberland Darter is threatened by, among other things, “habitat degradation caused by runoff-born sedimentation”); Amy Beth Miller, *Building mussels: Fine-rayed pigtoe an endangered freshwater mollusk at home in Little River*, THE DAILY TIMES (July 4, 2021), https://www.thedailytimes.com/news/building-mussels-fine-rayed-pigtoe-an-endangered-freshwater-mollusk-at-home-in-little-river/article_f65973f0-5bea-5b14-b263-4d43d9757076.html (explaining how erosion and water pollution have disrupted mussel habitat); *Wildlife photographer captures incredible image of ‘hellbender’*, NEWS CHANNEL 5 NASHVILLE (Oct. 19, 2018), <https://www.newschannel5.com/news/wildlife-photographer-captures-incredible-image-of-hellbender> (reporting that hellbenders are “at great risk of disappearing” due to habitat degradation, particularly as

Excess sediment also affects human uses of surface waters, preventing Tennesseans from fishing and recreating in many rivers and streams throughout the state and forcing localities and government agencies to spend money on dredging and treatment. Sediment reduces the navigable depth and width of channels, leading to navigational difficulties and problems like grounding and shipping delays.⁹ To keep navigable waterways passable, the U.S. Army Corps of Engineers spends an average of \$572 million (2008\$) per year to dredge the waterways.¹⁰ Construction site stormwater pollutants like sediment affect the quality and cost of providing drinking water,¹¹ and can also alter the taste and smell of the water.¹²

Stormwater sediment pollution has negative effects on industrial water uses, “clogging intake systems at power plants and other industrial facilities” and increasing the rate at which hydraulic equipment wears out.¹³ Agricultural water uses can be impaired by sediment pollution; for example, irrigation water with excess sediment “can form a crust over a field, reducing water absorption, inhibiting soil aeration, and preventing emergence of seedlings,” as well as interfering with the proper functioning of irrigation equipment.¹⁴ Construction stormwater pollution also harms the recreational and commercial fishing industries, since it damages the overall aquatic ecosystem.¹⁵

According to TDEC, “[s]ilt is one of the most frequently cited pollutants in Tennessee waterways.”¹⁶ In 2014, sedimentation accounted for almost a quarter of the pollution in impaired rivers and streams in Tennessee.¹⁷ In that year, TDEC reported that over 18,170 lake or reservoir acres had been assessed as impaired by sediment and silt pollution, as well as over 6,200 miles of streams and rivers.¹⁸

“increased sedimentation – resulting from silt, dirt and other pollutants running into streams – has smothered the rock environments on which hellbenders depend”).

⁹ 2009 Construction Stormwater ELGs EIA, 2-25.

¹⁰ *Id.*

¹¹ *Id.* at 2-26.

¹² *Id.*

¹³ *Id.* at 2-27.

¹⁴ *Id.* at 2-27 to 2-28.

¹⁵ *Id.* at 2-29.

¹⁶ TDEC, *Tennessee Erosion & Sediment Control Handbook: A Stormwater Planning and Design Manual for Construction Activities* (Aug. 2012), https://tnepsc.org/TDEC_EandS_Handbook_2012_Edition4/TDEC%20EandS%20Handbook%204th%20Edition.pdf (ESC Handbook), iii.

¹⁷ TDEC, *2014 305(b) Report: The Status of Water Quality in Tennessee* (Dec. 2014), https://www.tn.gov/content/dam/tn/agriculture/documents/landwaterstewardship/wr_wq_report-305b-2014.pdf (2014 305(b) Report), 47.

¹⁸ *Id.* at 58, 60.



“Unstabilized construction site discharge”¹⁹



“Untreated construction site dewatering”²⁰



“Muddy water from construction”²¹



“Poor stabilization during construction”²²

As noted above, the accumulation of silt in waterways has substantial economic impacts, including increased water treatment costs, navigation impairments, and increased risk of flooding.²³ Many water properties are affected: siltation smothers the eggs and nests of fish, clogs the gills of aquatic wildlife, alters and degrades habitat, decreases oxygen in the water, accelerates eutrophication, and changes temperature patterns.²⁴ If construction sites are not properly stabilized, water quality in Tennessee is at risk.²⁵

Sedimentation and siltation from stormwater pollution, including construction stormwater runoff, also contributes to urban flooding, as sediment clogs up the storm drains for municipal storm sewer systems.²⁶ The natural capacity of streams, rivers, and reservoirs are decreased by

¹⁹ TDEC and the University of Tennessee Knoxville, *Tennessee Erosion Prevention and Sediment Control Training Program for Construction Sites*, <https://tnepsc.org/indexNew.asp>.

²⁰ *Id.*

²¹ *Id.*

²² 2014 305(b) Report, 71.

²³ *Id.* at 49.

²⁴ *Id.* at 49-50.

²⁵ *Id.* at 71.

²⁶ 2009 Construction Stormwater ELGs EIA, 2-28. See also U.S. E.P.A., *Preliminary Data Summary of Urban Storm Water Best Management Practices*, EPA-821-R-99-012 (August 1999), 4-2; 4-30, https://www.epa.gov/sites/production/files/2015-10/documents/usw_b.pdf.

sediment pollution, making overbank flow events more common and severe.²⁷ Stormwater sedimentation “can increase the severity of property damages to bridges, roads, farmland, and other private and public property from flooding,” and can make remediation of flood damage more expensive.²⁸ Unfortunately, the effects of climate change mean that extreme weather events causing flash flooding are only anticipated to increase in Tennessee, making urban flooding problems even worse.²⁹ There has already been an 18% increase in heavy rainfall days in the Southeast from 1986-2016 compared to 1901-1960.³⁰ Tennessee has already experienced numerous major flood events in recent years, causing enormous damage.³¹ Even during normal rain events, poor sediment control practices at construction sites can cause flooding and spread mud and debris across the land of nearby property owners.³²

The impacts on water quality resulting from construction stormwater will also increase as the state’s population and economy grow in size. Tennessee has experienced rapid growth and development in the past decade; in just one year, from July 1, 2018 to July 1, 2019, the population of Tennessee increased by almost 58,000 people.³³ The population is expected to increase exponentially within the next few decades, with a study from University of Tennessee’s Boyd Center for Business and Economic Research estimating that Tennessee’s population will grow by over 1 million people within the next twenty years.³⁴ Middle Tennessee is expected to experience the majority of the growth.³⁵ Tennesseans are already concerned that more intensive

²⁷ *Id.*

²⁸ *Id.*

²⁹ U.S. E.P.A., *What Climate Change Means for Tennessee*, EPA 430-F-16-044 (August 2016), <https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-tn.pdf>; Brittany Crocker, *The changing climate has made Knoxville hotter, wetter and more expensive*, KNOXVILLE NEWS SENTINEL (June 15, 2021), <https://www.knoxnews.com/story/weather/2021/06/16/buying-home-knoxville-rain-and-flooding-cause-damages/7383971002/>; Center for American Progress, *The Impacts of Climate Change and the Trump Administration’s Anti-Environmental Agenda in Tennessee* (May 1, 2020), <https://www.americanprogress.org/issues/green/reports/2020/05/01/484425/impacts-climate-change-trump-administrations-anti-environmental-agenda-tennessee/>.

³⁰ Tom Di Liberto, *Torrential spring rains lead to flash flooding around Nashville at end of March 2021*, NOAA CLIMATE.GOV (Mar. 30, 2021), <https://www.climate.gov/news-features/event-tracker/torrential-spring-rains-lead-flash-flooding-around-nashville-end-march>.

³¹ *Id.*; *With Flooding On The Rise, Tennessee Communities Confront The Costs Of Climate Change*, 90.3 WPLN News (June 10, 2021), <https://wpln.org/post/with-flooding-on-the-rise-tennessee-communities-confront-the-costs-of-climate-change/>.

³² *Neighbors concerned about runoff from construction site*, NEWS CHANNEL 5 NASHVILLE (Oct. 16, 2018), <https://www.newschannel5.com/news/neighbors-concerned-about-runoff-from-construction-site>.

³³ Adrian Mojica, *Five middle Tennessee counties seeing largest increases in population*, FOX 17 (May 21, 2020), <https://fox17.com/news/local/five-middle-tennessee-counties-seeing-largest-increases-in-population>.

³⁴ Adrian Mojica, *Study: Tennessee population to grow by over 1 million by 2040, half in midstate*, FOX 17 (Dec. 10, 2019), <https://fox17.com/news/local/study-tennessee-population-to-grow-by-over-1-million-by-2020-half-in-midstate>.

³⁵ *Id.*

development and more construction projects are causing flooding and pollution.³⁶ As people continue to relocate to Tennessee, construction will increase further; properly regulating construction activity is vital for the future of the state.

A more protective CGP will help protect Tennessee's waters even as the state continues to grow. Current and future residents of Tennessee deserve to have access to clean and clear water that is safe for drinking, swimming, boating, and fishing. Water pollution causes economic injury to the community due to loss of tourism, decreased commercial fishing, and lower property values.³⁷ To maintain a strong and healthy community, it is critical to protect the state's waters by strengthening the CGP requirements for construction activities.

II. Comments on back-sliding from the 2016 CGP to the draft CGP

The draft CGP contains several provisions that are less protective than the provisions in the 2016 CGP, in apparent violation of both state and federal law. These changes are described below. Under both the federal Clean Water Act and the Tennessee Water Quality Control Act, anti-backsliding requirements mandate that, with certain limited exceptions, limitations and conditions imposed in any new or reissued NPDES permit be at least as stringent as those in previous permits.³⁸ TDEC must either reinstate the more protective provisions from the 2016 CGP, or it must explain in its Rationale³⁹ how the modifications it proposes in the draft CGP fit into one of the exceptions to the anti-backsliding requirements, as detailed at 40 C.F.R. § 122.44(l) and Tenn. Comp. R. & Regs. 0400-40-05-.08(j).⁴⁰ If TDEC believes that the relaxed standards fall into the exceptions for water-quality based limits enumerated at 33 U.S.C.A. § 1313(d), again, TDEC must explain how, e.g., water quality standards will still be met even with the less protective standards.

³⁶ Caresse Jackman, *Homeowners across Middle Tennessee worry fast development is contributing to flooding*, NEWS 4 NASHVILLE (Apr. 29, 2021), https://www.wsmv.com/call_4_action/homeowners-across-middle-tennessee-worry-fast-development-is-contributing-to-flooding/article_4a653168-a911-11eb-8c28-9f31ede03d73.html; Don Dare, *Homeowner concerned with neighborhood water runoff*, WATE (May 11, 2021), <https://www.wate.com/investigations/homeowner-concerned-with-neighborhood-water-runoff/>.

³⁷ 2014 305(b) Report, 12.

³⁸ See 33 U.S.C.A. § 1342(o); 40 C.F.R. § 122.44(l)(1) (“[W]hen a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit...”); Tenn. Comp. R. & Regs. 0400-40-05-.08 (“When a permit is renewed or reissued, effluent limitations, standards or conditions shall be at least as stringent as the effluent limitations, standards, or conditions in the previous permit...”).

³⁹ Throughout this letter, the “First Rationale” refers to the Rationale for the draft CGP released by TDEC on May 11, 2021, and the “Second Rationale” to the Rationale for the draft CGP released on July 6, 2021.

⁴⁰ Specifically, for Best Professional Judgment permit requirements, TDEC must explain how “the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued,” how new information or technical mistakes justify a decreased standard of protection, or how these decreases in protection are otherwise permissible under federal law. 40 C.F.R. § 122.44(l). In the Second Rationale, TDEC states that inspection requirements in the draft CGP are based on Best Professional Judgment. Second Rationale, 4.

In either case, TDEC must additionally demonstrate how the permit revisions will not lead to water quality standard violations. 33 U.S.C.A. § 1342(o)(3). Given the many examples cited above of ongoing water pollution issues caused by construction stormwater discharge, and the likely increased usage of the CGP as development intensifies, the burden must be on TDEC to explain how less protective standards—such as larger site sizes for general permits, fewer inspections, removal of site assessment requirements for most sites, and less detailed SWPPPs—will somehow ensure that water quality standards is sufficiently protected.

A. Permit coverage should not be extended to sites greater than 50 acres.

The draft CGP expands general permit coverage to sites that disturb more than 50 acres at one time, making it significantly less protective than the 2016 CGP. In the 2016 CGP, TDEC required construction to be phased to keep the total disturbed area less than 50 acres at any one time. 2016 CGP, Section 3.5.3.1(k). Section 5.5.3.2 of the draft CGP states “[c]onstruction should be phased to keep the total disturbed area less than 50 acres at any one time” (emphasis added). Projects that will disturb more than 50 acres at a time, which used to require an individual NPDES permit,⁴¹ would be allowed general permit coverage with this change, and avoid the more rigorous scrutiny and public participation requirements of individual permits. Instead of retaining the prohibition, the draft CGP added five requirements that apply when the permittee chooses to disturb more than 50 acres at one time—requirements that used to apply more broadly to projects covered by the CGP, as described below.

TDEC offers no real explanation for this decrease in protection. In the Second Rationale, TDEC acknowledges “that a construction-phasing acreage limit of some kind can be protective of water quality,” and goes on to state that “the limit of 50 acres is based on best professional judgment, not on any specific scientific or technical basis.” Second Rationale, 6.5. Specifically, the initial “50-acre limit was intended to encourage construction phasing, the quick stabilization of disturbed areas, and reduce the number of storm events to which soils would likely be exposed.” *Id.* TDEC’s only justification for removing the 50-acre cap on general permit coverage is that it “has been challenged over the scientific, technical, and water-quality basis for implementation of a 50-acre limit,” and “[i]n practice, these individual permits have required significant resources from the Department and the permit applicant/permittee, without necessarily providing a greater benefit to water quality.” *Id.*

Although it may be more work for TDEC to process individual NPDES permits with the full public and notice process, that cannot be sufficient justification for jeopardizing water quality. Even if individual permit requirements do not “necessarily” provide greater benefits to water quality, they certainly provide more opportunity for public participation and careful

⁴¹ The 2016 only covered projects disturbing more than 50 acres at a time if those projects were for “linear construction,” such as roadways and pipelines, and only if certain other conditions were met. 2016 CGP, Section 3.5.3.1(k).

planning, and often impose greater disclosure requirements on permit applicants.⁴² Moreover, TDEC's reasoning that there must be an affirmative justification for requiring individual permits is backwards. The default is for individual NPDES permits, and general permits are only permissible when they won't threaten water quality. In developing permits, including general permits, TDEC is obligated to "determin[e] whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard." 40 C.F.R. § 122.44(d)(1). Restrictions such as the 50-acre limit help ensure that activities covered by the permit do not have the "reasonable potential" to harm water quality.

As described above, stormwater construction flooding is a major problem in Tennessee, and making it even easier to get the less protective general permit is a step in the wrong direction.⁴³ In allowing general permit coverage for larger projects, TDEC is going backwards to a less protective standard than what previously applied. General permit coverage should not be extended to sites greater than 50 acres given the increased potential for erosion and sedimentation.

B. Inspections should not be reduced from twice weekly to once weekly.

One requirement for the draft CGP's expanded coverage to projects that disturb more than 50 acres is for twice weekly inspections—but in the 2016 CGP, twice weekly inspections are the baseline requirement for all projects. Subsection 3.5.8.1 of the 2016 CGP required certified individuals to conduct twice weekly inspections for all construction sites. The draft CGP drops that down to once weekly inspections. The only justification for this given in the Second Rationale is that the federal CGP only requires once-weekly site inspections. Second Rationale, 8.

The federal CGP does not set a ceiling on protection—it sets a floor. TDEC should use the federal CGP as a baseline, but then adapt to it to conditions in Tennessee. Given increasing severe rain events in the Southeast because of climate change, and the degree to which construction stormwater pollution is a problem throughout the state, a higher inspection frequency is fully justified; certainly, there is no reason to inspect even less frequently than the current standard. Many problems could arise within a week, making this change a major step backwards for water protection in Tennessee. For example, if a construction site fails to implement proper erosion prevention and sediment control practices and there is heavy or even

⁴² See *Sierra Club v. ICG Hazard, LLC*, No. CIV. 11-148-GFVT, 2012 WL 4601012, at *9 (E.D. Ky. Sept. 28, 2012), *aff'd*, 781 F.3d 281 (6th Cir. 2015) (noting that with individual permits, "the discharger must disclose all chemicals, wastestreams, and processes" in order to receive permit shield protection, but that for general permits, "the permitting agency bears the burden for understanding the pollutants that might be discharged and writing the permit with appropriate limitations").

⁴³ See, e.g., Caresse Jackman, *Homeowners across Middle Tennessee worry fast development is contributing to flooding*, NEWS 4 NASHVILLE (Apr. 29, 2021), https://www.wsmv.com/call_4_action/homeowners-across-middle-tennessee-worry-fast-development-is-contributing-to-flooding/article_4a653168-a911-11eb-8c28-9f31ede03d73.html.

moderate rainfall during the week, large amounts of sediment could flow into nearby waters before an inspector discovers the issue. To ensure problems are addressed and resolved as soon as possible, inspections should continue to be conducted twice weekly for all projects.

Additionally, the inspections should be more detailed. The draft CGP's Inspection Report Form is overly simplistic. Draft CGP, Appendix C. It only requires the inspector to check boxes that indicate whether the Erosion Prevention and Sediment Controls are functioning correctly. If the inspector checks "no," they are asked to describe it in the comment section, but no other guidance is given. Instead, the Inspection Report should ask targeted questions to ensure the inspector is conducting a thorough investigation and the permittee is following the correct procedures. "Yes" or "No" boxes fail to provide the necessary level of detail to ensure compliance with the CGP, as is necessary to ensure full protection.⁴⁴

C. TDEC should reinstate the requirement that sites disturbing less than 50 acres obtain a site assessment.

The draft CGP only requires site assessments for projects planning to disturb more than 50 acres at one time, per section 5.5.3.3. Previously, section 3.1.2 of the 2016 permit required site assessments for many smaller sites within 30 days of commencing construction.⁴⁵ TDEC offers no explanation for this decrease in oversight and protection. According to section 3.1.2 of the 2016 CGP, the purpose of the site assessment is to "verify the installation, functionality and performance of the EPSC measures described in the SWPPP." Site assessments also "determine if construction, operation and maintenance accurately comply with permit requirements." All of these factors are as relevant for a 45-acre site as a 50-acre one, and they create a baseline of protection by ensuring that the SWPPP is designed and implemented correctly.

Conducting site assessments is a crucial way to ensure the permittee is complying with the CGP. Without site assessments, it could take weeks or months to discover the SWPPP is inadequate. Despite the potential for serious damage to Tennessee's waters, the Second Rationale's only justification for eliminating this requirement for most sites is that "[s]takeholders have argued that the site assessment is a redundant and therefore unnecessary requirement." Second Rationale, 9. These "stakeholders" are not specified, but are presumably the regulated community, who have every reason to want TDEC to make CGP compliance less difficult. Since construction stormwater pollution persists throughout the state, it is difficult to believe that a serious problem with the 2016 CGP was that it was overly protective. Stating that

⁴⁴ For example, North Carolina's general NPDES permit for discharge of construction stormwater, NCG25, requires the inspector to include more detailed notes during inspection such as description of maintenance needs and indicators of stormwater pollution. Permit No. NCG250000, <https://files.nc.gov/ncdeq/Energy%20Mineral%20and%20Land%20Resources/Stormwater/NPDES%20General%20Permits/NCG250000-Permit-FINAL-20200925.pdf>, 18.

⁴⁵ Specifically, the 2016 CGP required site assessments for sites with outfalls draining 10 or more acres (or 5 or more acres if draining to Exceptional Tennessee Waters or waters with unavailable parameters). 2016 CGP, Section 3.1.2. For a revised CGP, TDEC should automatically require site assessments for at least these sites.

inspection requirements are “redundant” without further explanation is nonsensical; more inspections may be “redundant” in some sense, but they may still be necessary to ensure overall system reliability and make sure that serious problems are not missed.

Because conducting site assessments is not overly burdensome and inadequate SWPPPs can have an enormous environmental impact, TDEC must reinstate the 2016 CGP site assessment requirements in the draft CGP. Given the scope of the sediment pollution problem across our state, TDEC should also mandate that site assessment occur before construction begins, to ensure that the erosion prevention and sediment control measures outlined in the SWPPP are in place before any major rain event.

D. TDEC should retain requirements for the SWPPPs to include descriptions of post-construction stormwater control practices.

At Section 3.5.4, the 2016 CGP states that the SWPPP must include:

a description of any measures that will be installed during the construction process to control pollutants in stormwater discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements.

Additionally, for projects discharging to waters impaired for siltation or habitat alteration due to in-channel erosion, the SWPPP must include a description of the increase in impervious surface area after construction. 2016 CGP, Section 3.5.4. In the Notice of Determination for the 2016 CGP, TDEC explains these requirements by noting that 40 C.F.R. § 122.26(c)(1)(ii) requires SWPPPs to include, among other things, “[p]roposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements,” and “[a]n estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge.” 2016 CGP NOD, 15-16.

In the draft CGP, these references have been deleted. To justify this deletion, TDEC only states that “[p]ost-construction stormwater pollutants should not be regulated in the construction stormwater general permit, and the division cannot regulate stormwater volumes, only pollutants in stormwater.” Second Rationale, 8. As the federal regulations cited in the 2016 CCGP NOD have not changed, TDEC must explain why the federal regulations no longer require the SWPPP to include these elements.

E. TDEC should reinstate the requirement for operators to submit information to MS4s and comply with MS4 local ordinances.

The draft CGP eliminated the requirement for operators to submit information to municipal separate storm sewer systems (MS4s) and comply with MS4 local ordinances. The

2016 CGP required permittees to submit a copy of their notice of coverage under the CGP to their local MS4. 2016 CGP, Section 1.4.4. The Second Rationale for the draft CGP proposes this language for deletion, with the justification that “TDEC does not have the legal authority to enforce local ordinances under this permit.” Second Rationale, 6.3.⁴⁶ TDEC may not have the legal authority to enforce local ordinances generally, but it certainly has the authority to include compliance with local laws as a condition of its NPDES permit. For example, the 2017 EPA CGP includes a requirement for permittees to “[c]omply with state/local requirements” as part of the mandatory erosion prevention and sediment control practices. 2017 EPA CGP, 2.2.13.d. TDEC has not given any explanation for why this approach—which it seemed to believe was legally valid in previous permits—is no longer acceptable.

Additionally, although it is true that local jurisdictions must enforce their own ordinances, TDEC has not proffered any explanation for why it has decided to make it more difficult for them to do so by not requiring permittees to comply with the very simple step of submitting information to their local MS4s. The requirement to submit information to MS4s is not onerous and it makes it easier for localities to ensure that operators are in compliance with permit conditions. EPA regulations require most MS4s to develop, implement, and enforce their own stormwater regulations to prevent water pollution,⁴⁷ and as the state agency responsible for protecting the waters of the state, TDEC should help, rather than hinder, their efforts. TDEC must continue to require operators to submit the documents to MS4s, and make compliance with local stormwater ordinances a condition of CGP compliance.

F. TDEC should retain the qualification requirements to prepare SWPPPs for sites disturbing five acres or less.

TDEC has also relaxed a requirement for SWPPPs to be prepared by individuals with stormwater qualifications when sites are less than five acres. Section 3.1.2 of the 2016 CGP required site assessments to be performed by individuals with one or more of the following qualifications: (a) a licensed professional engineer or landscape architect; (b) a certified professional in erosion and sediment control; or (c) a person who has successfully completed the “Level II Design Principles for Erosion Prevention and Sediment Control for Construction Sites” course. Section 5.2 of the draft CGP removed these qualification requirements for sites less than or equal to five acres of disturbance, instead providing optional templates for SWPPP preparation.

TDEC has not provided an explanation for this change, even though it would seem likely to lead to less competent preparation of SWPPPs for these sites. Requiring that SWPPPs be prepared by individuals who are knowledgeable about erosion control practices and engineering is a basic safeguard in ensuring that the plans will actually prevent water pollution. For example, in the current version of EPA’s general construction stormwater permit, the provisions applying

⁴⁶ The First Rationale provided only the explanation that “[l]ocal jurisdictions are expected to enforce their own ordinances.” First Rationale, 5.3.

⁴⁷ 40 C.F.R. §§ 122.26(d)(2)(iv)(d) (for Phase I MS4s), 122.34(b)(4) (for Phase II MS4s).

to New Mexico require that “[a]ll SWPPPs must be prepared in accordance with good engineering practices by qualified (e.g. CPESC certified, engineers with appropriate training) erosion control specialists...”⁴⁸ Requiring experts to conduct inspections is not overly burdensome and is necessary to prevent stormwater pollution, so TDEC must reinstate this requirement for the draft CGP.⁴⁹

III. Other comments on the draft CGP

A. Members of the public should have the opportunity to comment on SWPPPs.

The draft CGP fails to provide the public an opportunity to comment on the SWPPPs of individual projects covered by the CGP. Public participation is a critical component to achieving the goals of the Clean Water Act. 33 U.S.C. § 1251(e). The SWPPPs are the main mechanism by which the goals of the CGP are enacted, and each project covered by the CGP must submit its own SWPPP. Without an opportunity for comment, the public is prevented from providing valuable feedback to the operator and TDEC about whether a particular SWPPP in a particular location will be adequately protective.

Courts have held that public comment is required for plans required under similar permitting schemes. In *Waterkeeper All., Inc. v. U.S. E.P.A.*, 399 F.3d 486, 503–04 (2d Cir. 2005), for example, the Second Circuit held that a federal rule concerning confined animal feeding operation permits did not meet the Clean Water Act’s public participation requirements, in part because under the rule the public did not have the ability to scrutinize or comment on the nutrient management plans which set best management practices to prevent pollution. The court found that the rule “deprive[d] the public of its right to assist in the ‘development, revision, and enforcement of ... [an] effluent limitation,’” and from “calling for a hearing about—and then meaningfully commenting on—NPDES permits before they issue.” *Id.* (citing 33 U.S.C. § 1251(e)). *See also Env’t Def. Ctr., Inc. v. U.S. E.P.A.*, 344 F.3d 832, 853 (9th Cir. 2003) (noting that for general MS4 stormwater permits, an “NOI is a permit application that is, at least in some regards, functionally equivalent to a detailed application for an individualized permit,” and so there must be some provision for public notice and comment on the NOI).⁵⁰ Although this case does not involve a general permit for construction stormwater discharges, the principle that

⁴⁸ U.S. E.P.A., *NPDES General Permit for Discharges from Construction Activities, Issued June 27, 2019 and Expires, Feb. 16, 2022*, https://www.epa.gov/sites/production/files/2019-06/documents/final_2017_cgp_current_as_of_6-6-2019.pdf (2017 EPA CGP), Section 9.4.1.

⁴⁹ In the Notice of Determination for the 2016 CGP, TDEC seems to acknowledge that expanding site assessment preparation requirements to allow people who have taken erosion prevention and sediment control courses, rather than only allowing professional engineers and landscape architects to do so, is already a permissive step to decrease burden on permittees. 2016 CGP Notice of Determination, 11.

⁵⁰ In the 2016 Final MS4 General Permit Remand Rule, EPA codified the holding of *Env’t Def. Ctr., Inc. v. U.S. E.P.A.* by requiring that states choose between either fully setting out terms in the general MS4 permits or allowing public notice and comment on NOIs and stormwater management plans. <https://www.govinfo.gov/content/pkg/FR-2016-12-09/pdf/2016-28426.pdf>

SWPPPs and best management practices can functionally constitute effluent limitations, thus triggering a need for public notice and comment, still applies.

The draft CGP provides an opportunity for the public to comment on the general permit, but it does not allow the public to meaningfully contribute to each SWPPP. The draft CGP should allow public comment on the SWPPP. At minimum, SWPPPs must be available for public review,⁵¹ and conditions and limits in the draft CGP should ensure that NOIs and SWPPPs are not the “functional equivalent” of permit applications. For example, restricting general permit coverage to sites disturbing less than 50 acres at one time would require larger sites, which may have more particularized SWPPPs or the potential to cause more water pollution, to undergo the full public participation process mandated for individual NPDES permits.

B. TDEC should require NOIs be submitted before construction begins.

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

The draft CGP must require individuals to submit NOIs prior to commencing construction. Under the draft CGP, there is little incentive to submit NOIs before starting construction. It is extremely difficult to obtain evidence of prior, unpermitted discharges—particularly since no agency would be aware of the site and inspecting for them—so it is unlikely the individual will face any penalties or fines after filing a late NOI.

Additionally, there are no submittal deadlines mentioned in the draft CGP. An individual may submit the NOI one week after construction begins, or six months after construction begins, without penalty. The EPA CGP contains a table that lists NOI submittal deadlines.⁵² For example, an operator of a new site must submit the NOI at least 14 calendar days before beginning construction, and the operator of an “emergency-related project” must submit the NOI no later than 30 calendar days after commencing construction.⁵³ It is recommended the draft

⁵¹ Section 7.2 of the draft CGP requires permittees to maintain a copy of the SWPPP “at the construction site”, but does not specify that the SWPPP must be in a publicly accessible place; by contrast, the 2016 CGP required the SWPPP copy be located “at the construction site (or other local location accessible to the director and the public)”. 2016 CGP, Section 6.2. TDEC should revise this section to make sure that SWPPPs remain accessible to the public.

⁵² 2017 EPA CGP, Table 1.

⁵³ *Id.*

CGP include a similar table for easy enforcement. TDEC must impose a fine or penalty for late NOIs to discourage future late submittals.⁵⁴

C. TDEC should review NOIs and SWPPPs to ensure they are in compliance with the permit conditions.

To obtain coverage, the permittee must submit a complete application, which includes the NOI, SWPPP, and application fee, at least 30 days prior to commencing construction. Pursuant to section 1.4.1 of the draft CGP, “[t]he division may review NOIs and SWPPPs for completeness and accuracy and, when deemed necessary, investigate the proposed project for potential impacts to the waters of the state.” The Clean Water Act, 33 U.S.C.A. § 1342(b), allows states to distribute NPDES permits “only where, inter alia, the state permitting programs ‘apply, and insure compliance with, any applicable [effluent limitations and standards].’”⁵⁵ It is not enough that TDEC “may” review NOIs and SWPPPs—it “must” do so, to ensure that Tennessee waters are adequately protected from stormwater pollution.⁵⁶

The Ninth Circuit has stated that “[s]tormwater management programs that are designed by regulated parties must, in every instance, be subject to meaningful review by an appropriate regulating entity to ensure that each such program reduces the discharge of pollutants to the maximum extent practicable.”⁵⁷ The draft CGP itself seems to acknowledge this need for review; the limitation on coverage for discharges threatening water quality states that discharges “the director determines will cause or has the reasonable potential to cause or contribute to violations of water quality standards” are not authorized by the permit, thus contemplating some level of review. Draft CGP, Section 1.3(d).

TDEC must review every NOI and SWPPP to ensure compliance with the permit prior to issuing notices of coverage. Without a thorough analysis of NOIs and SWPPPs, TDEC may approve a deficient application resulting in environmental harm.

⁵⁴ TDEC may impose administrative penalties for, among other things, the violation of “any other provision of this part or any rule or regulation promulgated by the board.” Tenn. Code Ann. § 69-3-115(a)(1)(H). TDEC regulations require that for general permits, “notices of intent shall be submitted in accordance with timeframes established in the applicable general permit.” Tenn. Comp. R. & Regs. 0400-40-05-.05(5). It is therefore within TDEC’s authority to impose fines on a permit applicant for failing to file a NOI within the timeframe established in the general permit.

⁵⁵ *Waterkeeper Alliance, Inc. v. U.S. E.P.A.*, 399 F.3d 486, 499 (2d Cir. 2005).

⁵⁶ TDEC’s duty to review NOIs and SWPPPs for compliance is even more pronounced since the proposed permit does not require permit applicants to inform MS4s of their construction plans. Under the draft CGP, TDEC refuses to facilitate the review of SWPPPs by MS4s by requiring applicants to submit information to those MS4s, and also denies its own obligation to review those SWPPPs itself. This creates an opportunity for seriously deficient plans to be implemented.

⁵⁷ *Env’tl. Def. Ctr., Inc. v. U.S. E.P.A.*, 344 F.3d 832, 856 (9th Cir. 2003).

D. Permit limits based on water quality standards should be more specific.

The draft CGP includes requirements to ensure compliance with the federal effluent limitation guidelines (ELGs) for construction stormwater.⁵⁸ Because compliance with the ELGs alone would not be sufficient to attain or maintain water quality standards, the draft CGP also includes requirements related to state water quality standards.⁵⁹ Draft CGP, Section 6.3. However, the draft CGP's requirements to ensure compliance with state water quality standards are not detailed enough to protect water quality. Section 6.3.1 states only that "[t]his permit does not authorize stormwater or other discharges that would cause or contribute to a violation of a state water quality standard", and contains no actual guidance for permittees on how to make sure such discharges do not occur. Section 6.3.2 repeats state regulations on water quality standards, such as prohibitions on "distinctly visible solids" and on the discharge of suspended solids, turbidity, or color resulting in "objectional appearance."

These water quality-based limits do not give permittees adequate guidance on how to avoid pollution. In *Natural Resources Defense Council v. U.S. E.P.A.*, the Second Circuit held that the EPA violated the Clean Water Act in issuing a general permit that contained overly vague water quality limits very similar to the limits in the draft CGP. 808 F.3d 556 (2d Cir. 2015). The EPA permit required permittees "to control discharges 'as necessary to meet applicable water quality standards' without giving specific guidance on the discharge limits." *Id.* at 578. The court found that this standard was "insufficient to give a [permittee] guidance as to what is expected or to allow any permitting authority to determine whether a [permittee] is violating water quality standards," and that EPA "fail[ed] to fulfill its duty to 'regulat[e] in fact, not only in principle.'" *Id.* (citations omitted).

As currently written in the draft CGP, the water quality limits "in fact add nothing", even though they are meant to supplement the federal ELGs. *Id.* Narrative water quality-based effluent limits, including best management practices, are permissible when "[n]umeric effluent limitations are infeasible," 40 C.F.R. § 122.44(k)(3), but those limits must still be specific and

⁵⁸ These are described at 40 C.F.R. Part 450, and include, among other things, the requirement to develop erosion prevention and sediment controls and to design pollution prevention measures. Draft CGP, Section 4.1; section 5.

⁵⁹ The Second Rationale states that "[b]ecause the discharge of sediment to waters can cause pollution, the permit includes narrative water-quality based effluent limitations in addition to narrative technology-based effluent limitations." Second Rationale, 4. *See also* 33 U.S.C. § 1311(b)(1)(C) (requiring establishment of "any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance"); 33 U.S.C. § 1342(a)(1) (requiring NPDES permits to meet "all applicable requirements" under 33 U.S.C. § 1311); 40 C.F.R. § 122.44(d)(1)(vii)(A) (requiring permitting authority to develop water quality based effluent limits that ensure compliance with water quality standards); Tenn. Code Ann. § 69-3-108(g) ("permits shall include... [t]he most stringent effluent limitations and schedules of compliance, either promulgated by the board, required to implement any applicable water quality standards"); Tenn. Comp. R. & Regs. 0400-40-05-.04(1)(g) (prohibiting discharges that "will cause or contribute to the violation of water quality standards").

actionable.⁶⁰ For example, TDEC could add additional best management practices to address water quality, as it does in the draft CGP for the special circumstances of discharges into waters with unavailable parameters or Exceptional Tennessee Waters.⁶¹ Draft CGP, Section 6.4. Although those practices still fall short, they offer more guidance than a generic prohibition on violating water quality standards.⁶² The lack of genuine water quality-based limits in the permit is not ameliorated by TDEC's ability to notify permittees when discharges "contribut[e] to the impairment of a receiving stream despite complying with the SWPPP," or to require permittees to update their SWPPP "to eliminate further impairment." Draft CGP, 6.4.1. "The point of a permit is to prevent discharges that violate water quality standards before they happen"; that TDEC can take "corrective actions" after the fact is "not reassuring." 808 F.3d at 580.

The insufficiency of the water quality-based limits in the draft CGP is even more striking when considering the apparent lack of any monitoring requirements to ensure compliance with those limits. Monitoring to "assure compliance with permit limitations" is required by 40 C.F.R. § 122.44(i), but the draft CGP does not contain information on how permittees are meant to monitor their operations for violations of effluent limits.⁶³ In addition to revising the water quality-based permit limits to make them specific and actionable, TDEC should also include

⁶⁰ See 808 F.3d at 578 (stating that "[e]ven if determining the proper standard is difficult, EPA cannot simply give up and refuse to issue more specific guidelines" and citing *Am. Paper Inst., Inc. v. U.S. E.P.A.*, 996 F.2d 346, 350 (D.C.Cir.1993) as "articulating that, even if creating permit limits is difficult, permit writers cannot just 'thr[o]w up their hands and, contrary to the Act, simply ignore[] water quality standards including narrative criteria altogether when deciding upon permit limitations'"). TDEC has also not justified its reliance on best management practices or explained why numeric criteria are infeasible, simply stating without further explanation that "[t]he development of numeric effluent limitations has proven not to be feasible at the scale of this general permit." Second Rationale, 4. If numeric criteria are indeed infeasible, TDEC must offer detail on why that is the case.

⁶¹ A general statement prohibiting discharges that violate water quality standards cannot be understood as a best management practice in itself, because it does not "ensure compliance" and "is neither a practice nor a procedure." 808 F.3d at 579-580. The Second Rationale supports this understanding, as it describes "BMPs and buffers" as examples of permit requirements based on federal ELGs, and the "prohibition on objectionable color contrast" as an example of a permit requirement based on state water quality rules. Second Rationale, 5. If the best management practices in the draft CGP are meant to be both water quality-based limits and limits mandated by the federal ELGs, that is also not acceptable; it would make water quality-based limits entirely redundant, and TDEC has already determined that additional measures beyond the ELGs are necessary. *Id.*

⁶² For example, the requirements for SWPPPs to be designed to accommodate a 5-year, 24-hour storm event and enhanced riparian buffer zone requirements are good additions to help protect water quality, but TDEC still must demonstrate how it determined that compliance with these requirements will ensure that state water quality standards are not violated. Draft CGP, Section 6.4.

⁶³ Although a "Construction Stormwater Monitoring Report Form" is mentioned in Section 8.7, no such form is given in the permit's appendix, and instructions on how to use that form are not in the draft CGP itself. Inspection requirements to ensure that the SWPPP is being implemented correctly are not the same as monitoring requirements to ensure that water quality standards are not being violated; if TDEC means for the former to serve as the latter, it must justify that decision.

monitoring requirements for those limits.⁶⁴ TDEC could, for example, require permittees that discharge to impaired waters or Exceptional Tennessee Waters to monitor and report for sediment or turbidity, and set a benchmark criteria that would trigger a need for the permittee to establish additional best management practices if the criteria were exceeded.⁶⁵

E. Erosion prevention and sediment control requirements should be strengthened.

Section 4.1.2 of the draft CGP requires a 30-foot natural water quality riparian buffer for all streams and wetlands with available parameters adjacent to construction sites, to the maximum extent possible. The draft CGP should increase the required buffer to 50 feet so Tennessee's CGP is as protective as the EPA's CGP.⁶⁶ It is crucial to require buffer zones that are wide enough to protect the water because the buffers remove additional pollutants. At minimum, TDEC must remove the equivocal language allowing a less than 30-foot barrier if it is "not possible," unless TDEC is able to articulate what circumstances would allow a smaller barrier to meet the water protection standards for a NPDES permits.

Additionally, the definition of a buffer must consider the ground cover and slope of the land. A 30-foot steep slope lacking in vegetative groundcover may not be an effective buffer, but a 30-foot buffer on flat land with tall grass may be effective. Considering the ground cover and slope when calculating the required buffer for each permit will ensure the permit adequately protects the water surrounding the site.

F. Electronic reporting requirements and the ban on cationic polymers are improvements in the draft CGP, and should remain in the final permit.

The draft CGP does include some improvements on the 2016 CGP, such as the electronic reporting requirement and the prohibition on cationic polymers, which represent important increases in protection for the waters of Tennessee. The electronic reporting requirement will streamline the reporting process, making the collection and processing of data timelier and more accurate, as well as increasing TDEC's ability to share information with the public. The prohibition on cationic polymers is also a large step in the right direction, as these toxic chemicals contaminate the water and harm many aquatic organisms. These positive changes should be included in any final version of the CGP.

⁶⁴ See, e.g., *Nat. Res. Def. Council, Inc. v. Cty. of Los Angeles*, 725 F.3d 1194, 1207 (9th Cir. 2013) (noting that as a general matter, "an NPDES permit is unlawful if a permittee is not required to effectively monitor its permit compliance").

⁶⁵ An example of a similar requirement is at Section 9.4.3.2.j of the 2017 EPA CGP, setting additional conditions for the Pueblo of Sandia: "The Pueblo of Sandia may require the permittee to perform water quality monitoring for pH, turbidity, and total suspended solids (TSS) during the permit term if the discharge is to a surface water leading to the Rio Grande for the protection of public health and the environment."

⁶⁶ See 2017 EPA CGP Permit, Section 2.2.1 (The EPA CGP requires a 50-foot undisturbed natural buffer zone).

IV. Conclusion

Pollution from construction stormwater runoff is a massive and on-going problem in Tennessee, and there is reason to think it will only get worse. The draft CGP represents an unacceptable decrease in the level of oversight for construction activities, and the level of protection for Tennessee's waters. TDEC should withdraw the draft CGP and redraft it, using the 2016 CGP as the minimum baseline for protections, and then submit that revision for public comment. If TDEC is not able to complete this before the current permit expires, it should extend the 2016 CGP for another year to allow time for careful consideration and public involvement.

Thank you for the opportunity to provide these comments.

Sincerely,



Chelsea Bowling
Amanda Garcia

James M. Redwine, Esq.
Harpeth Conservancy

Dennis Gregg
Obed Watershed Community Association

Sarah Houston
Protect Our Aquifer

Marquita Bradshaw
Sowing Justice

Axel C. Ringe
Tennessee Chapter Sierra Club

cc: Jennifer Dodd, jennifer.dodd@tn.gov.

Sent via Vojin.Janjic@tn.gov

July 29, 2021

Tennessee Department of Environment and Conservation
Nashville, Tennessee

**RE: RESPONSE COMMENTS – GENERAL NPDES PERMIT FOR STORMWATER
DISCHARGES**

Permit Number: TNR100000

Mr. Janjic:

In response to your request for public comments concerning the proposed revisions to the General Permit for Stormwater Discharges, I would like to offer the following comment.

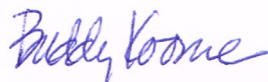
Based on the information provided by your office, it is my opinion the proposed changes to the General Permit for Stormwater Discharges from Construction Sites will weaken the protection of water quality of streams and rivers in Tennessee.

This is based on the changes to the General Permit regarding the required reduction of site assessments, reduction of reduction of inspections, and limiting oversight by MS4 in which construction would take place.

I am also concerned about the impact of reduced oversight of construction projects to raw water supplies to drinking water systems due to increased sediment loading. These systems will face increased treatment challenges and higher costs as a result of poorer water quality within the source water. The utility customers should not be responsible for these costs.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,



Gene C (Buddy) Koonce, Jr., P.E.

Cc: Ms. Jennifer Dodd, Division of Water Resources, TDEC
U.S. Environmental Protection Agency, Region IV

Sent via Vojin.Janjic@tn.gov

July 29, 2021

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Nashville, Tennessee

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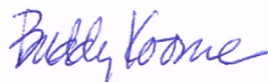
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If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,



Gene C (Buddy) Koonce, Jr., P.E.

Cc: Ms. Jennifer Dodd, Division of Water Resources, TDEC
U.S. Environmental Protection Agency, Region IV

July 30, 2021

Mr. Vojin Janjic
Tennessee Department of Environment and Conservation
Division of Water Resources
William R. Snodgrass Tennessee Tower, 11th Floor
312 Rosa L. Parks Avenue
Nashville, TN 37243-1534
Delivered via email to Water.Permits@tn.gov

Dear Mr. Janjic:

Subject: Comments on the Draft Tennessee General Permit No. TNR100000
Stormwater Discharges Associated with Construction Activities

Civil & Environmental Consultants, Inc. appreciates this opportunity to provide comments on the Draft Tennessee General Permit No. TNR100000 Stormwater Discharges Associates with Construction Activities hereon after referred to as the Construction General Permit (CGP). The comments provided below apply to the section of the draft CGP specified.

General:

Consider replacement of the word “Should” with “Shall” depending on circumstance. “Should” indicates uncertainty whereas “Shall” enforces a requirement.

Section 5.2 Qualification Requirements

No specified certifications are required for sites less than or equal to 5 acres (current permit requires “working knowledge” at a minimum); however, the *SWPPP Template for Sites not Requiring Engineer Design* expects the SWPPP developer to understand the effects of site topography and soil type on the necessary Best Management Practices to maintain compliance with the permit. For example, site-specific characteristics can be quantified via the Revised Universal Soil Loss Equation (RUSLE), an empirical equation.

The referenced template requires that the SWPPP developer quantify the increase in impervious area and in accordance with Section 5.5.3.6 Stormwater Management of the draft CGP:

“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.”

Please consider how a SWPPP Developer with no specified qualifications will quantify and “design” a SWPPP in accordance with this requirement when stormwater management involves hydrologic and hydraulic calculations.

July 30, 2021

Please consider that although site disturbance may be less than 5 acres, these sites may still be subject to large drainage area due to run-on particularly for those sites that are located in the lower portion of a watershed. Accurate assessment and management of the total drainage area to a project outfall is critical for the success of best management practices. The lack of required qualifications for SWPPP preparers for sites less than 5 acres appears to inaccurately assume that these sites may not be subject to a change in drainage patterns and require an evaluation of stormwater management.

*“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”*

Please consider that the inclusion of “changes in topography and drainage” implies that any site that proposes grade changes will require a signed and sealed set of plans, is this the intent?

Section 5.5.2 SWPPP and EPSC plans

Please revise the word “should” from the sentence below to provide clarification on if staged EPSC plans are required. Consider allowing for staged EPSC plans to be provided on the same sheet, while still requiring staged EPSC plans.

*“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”*

Please provide justification to support that commercial sites less than 5 acres do not benefit from a multi-staged EPSC plan and refer to comments provided on Section 5.2 for potential complexity associated with less than 5 acre sites.

Please note that the *SWPPP Template for Sites not Requiring Engineering Design* Part IV references different stages of EPSC plans in accordance with Section 3.5.2 of the CGP. This template will need to be revised in accordance with the final version of the 2021 CGP.

EPSC Inspection Frequency:

Section 5.5.3.3. Projects Exceeding 50 acres of Disturbance requires inspections to be performed twice per week and following any rainfall event of more than 0.5 inches in 24 hours.

Section 5.5.3.9 Inspections requires inspections to be performed weekly (once every calendar week at least 72 hours apart).

Section 6.4.1. Discharges into Waters with Unavailable Parameters or Exceptional Tennessee Waters Sub-Section 6.4.1.c. requires inspections to be performed at least twice every calendar week at least 72 hours apart.

Three different EPSC inspection frequencies depending on disturbed acreage and/or receiving waters may cause confusion.

Does water quality data collected for populating the 303(d) list (for waters impaired due to siltation) and/or MS4 responsible analytical and non-analytical stream monitoring reports support the reduced inspection frequency from the current permit for projects less than 50 acres that discharge to fully supporting waters? As in, has the number of stream miles for waters impaired due to siltation decreased between 2016 and 2021? What percentage of sites with currently active Notice of Coverages would be allowed to reduce inspection frequency upon issuance of the new permit?

Will the requirements for Section 5.5.3.3. be based on the “Acres Disturbed” as provided on the NOI? If a site’s projected acres disturbed will exceed 50 acres; however, the permittee intends to implement construction phasing keeping the disturbed area less than 50 acres as any one time, will this requirement be applicable? Establishing a set foundation for when this requirement applies will allow for both application reviewers and regulatory enforcers to better assess the applicable inspection frequency.

Please define “discharges into” in Section 6.4.1.a. for clarification on when the increased inspection frequency will be required. For example, does “discharges into” mean that a project outfall discharges *directly* into Waters with Unavailable Parameters or Exceptional Tennessee Waters or within a HUC-12 of Waters with Unavailable Parameters or Exceptional Tennessee Waters? Additionally, please define “proximity to” per footnote #8. The requested definition(s) will provide clarification on when this additional inspection frequency is required.

Section 5.5.3.3.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”.

Please clarify whether the 24 hours refers to the timeframe in which the inspection must be performed or the duration of the rainfall event. If the latter, please define the timeframe within which a post-rainfall inspection must occur.

Section 5.5.3.3.c. Site Assessments

Please consider including the site assessment template developed for the TDEC Level 2 Recertification course as an appendix. This will minimize questions to TDEC on report format and content.

CEC’s experience is that MS4s and TDEC EFOs have requested site assessments as a first step in an enforcement action – it has been a valuable tool. CEC has performed a number of these site assessments both on behalf of MS4 regulators and permittees. Having the design professional assess the BMPs at the high risk outfalls within the first 30 days of disturbance helps protect water quality. Site Assessments performed by CEC have been well received and enabled for a higher

July 30, 2021

level of evaluation of field conditions in comparison to the EPSC plans. For example, CEC has observed the detention pond outlet structure in place versus the appropriate sediment basin outlet structure. This observation during the site assessment has allowed for communication with the permittee and the EPSC inspector regarding the intent of sediment basins to address water quality during construction and detention basins to function post-construction to address water quantity.

Section 5.5.3.4. Stabilization Practices

Please eliminate the word “approximately” from the following sentence:

*“Temporary or permanent soil stabilization at the construction site must be completed within **approximately** 2 weeks after the construction activity....”*

The use of the word “approximately” is vague. “Approximately” interpreted by a regulator may be different than the interpretation by a permittee. Specifying a definitive number of days, ex. 14, enables consistent enforcement and assessment of compliance with this requirement.

Please feel free to contact us at 615-333-7797 should you have any questions regarding our comments.

Sincerely,

CIVIL & ENVIRONMENTAL CONSULTANTS, INC.



Janette L. Wolf, P.E., CPESC, CPSWQ
Senior Project Manager



Steven E. Casey, P.E., CPESC
Vice President



Memorandum

To: Vojin Janjic

From: Town of Farragut

Date: August 3, 2021

Subject: Comments Submitted on Proposed Permit TNR100000

Staff from the Town of Farragut reviewed the Proposed Permit TNR100000. The comments provided below are submitted for TDEC review and consideration. Should you have any questions or wish to discuss these comments with town staff, please do not hesitate to contact us.

- **2.1 Types of Operators**

More thorough definitions of these operators is a welcome improvement.

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

Requiring ARAP coverage to be obtained, as opposed to applied for, prior to issuance of the NOC for the CGP is a welcome improvement. This ensures that any issues related to ARAP-related projects are addressed prior to allowing construction to begin on site.

- **Section 5.5.3.3 Projects Exceeding 50 acres of Disturbance**

Allowing projects to exceed 50 acres of disturbance at once under the general permit will likely increase enforcement-related issues within the jurisdiction.

- Requiring an individual permit to disturb greater than 50 acres at one time is likely a deterrent to some owners/developers, which limits the number of sites under development that disturb greater than 50 acres at once. Removing that barrier may result in a higher number of sites disturbing more than 50 acres at once.
- A greater risk to water quality is likely when more than 50 acres is disturbed at once especially when experiencing more frequent, high intense rain events that may exceed design storms. The potential damage to a stream from a severe storm is much worse if 80 acres is disturbed rather than 40.
- Sites with large areas of disturbance present a greater risk to water quality when the site drains to waters with unavailable parameters. Should TDEC proceed with allowing disturbances 50 acres or greater under the general permit, then TDEC should consider allowing that amount of disturbance only for sites draining to

waters with available parameters and requiring sites draining to waters with unavailable parameters to obtain an individual permit for disturbances over 50 acres at once.

- Site assessment is required within 30 days of construction commencing. Does this assessment recur until all EPSC are properly installed? The language does not specify that. The current CGP states “If structural BMPs (or equivalent EPSC measures) are not constructed or construction is in progress at the time of the site assessment, a follow-up monthly assessment(s) are required until the BMPs are constructed per the SWPPP.”

- **5.5.1 (j) SWPPP Narrative**

Why was habitat alteration due to in-stream erosion removed from this section? While not directly linked to construction, the stream still has sediment-related unavailable parameters and should still be protected from additional siltation from construction operations.

- **5.5.3.4 Stabilization practices**

Introducing vague timelines for stabilization practices to be initiated makes for challenging enforcement. Specific time frames, such as “within 14 days” are easier to enforce. Conflicts between stakeholders and regulators should be worked out on a case-by-case basis rather than as language in the general permit, which has a statewide impact.

- **5.5.3.8 and 5.5.3.10 Inspections and Schedule of Inspections**

EPSC measures are only effective if well managed past the initial installation. A lot can happen at a construction site within one week, including unintentional damage to EPSC measures. Continuing twice weekly inspections at sites draining to streams with available parameters is preferable because identifying and repairing/replacing damaged EPSCs is crucial to the protection of ALL waterways. Conducting an inspection only once per week increases the likelihood that failed or failing EPSC measures will be missed and/or be identified too late to make repairs before a rain event.

If the Department decides to maintain the requirement as a once per week inspection, it is preferred that:

1. The language be changed to state “every 7 days” rather than weekly. This would prevent longer intervals between inspections as the current draft language

would allow. (Monday one week and Friday the following week – 10+ days between inspections).

2. For sites that discharge to both waters with available AND unavailable parameters, twice weekly inspections should be required site wide to reduce confusion among inspectors and regulators.

- **7.3 Electronic Submission of Documents**

Typo in this section – 4th chapter, 3rd line, second word “shall” is not needed.

- **Quality Assurance Site Assessments**

Site assessments should be added back to sites <50 acres of disturbance. Site assessments require a higher level of certification and is beneficial as a preventative action rather than reactive should the BMP fail due to improper installation. They are especially important on sites draining to waters with unavailable parameters and will be beneficial to MS4 site inspectors given that proper installation of the BMPs will be confirmed by a PE, LA, CPESC or Level 2 certified professional.



August 4, 2021

Via email to Mr. Vojin Janjic (vojin.janjic@tn.gov)

To: Vojin Janjic, Manager, TDEC Division of Water Resources

From: Denise Paige, TML Government Relations Staff

RE: TDEC NPDES General Permit for Discharges of Stormwater Associated with Construction Activities (Permit TNR 100000)

The TN Municipal League (TML) welcomes the opportunity to provide comments on the proposed changes to TDEC's General NPDES Permit for Stormwater Discharges Associated with Construction Activity (CGP). TML is a voluntary, cooperative organization established by the cities and towns of the state for the purpose of mutual assistance and improvement. Our primary function is to work with the Tennessee General Assembly and departments of the state to promote legislation and policies that are beneficial to municipalities, and to oppose legislation and policies that would harm municipalities.

Our organization represents the 345 incorporated municipalities in the state, and many of our members are in the somewhat unique position of viewing stormwater regulation from two perspectives — as enforcers of local water quality objectives and also as regulated dischargers. Cities and towns are committed to helping the state achieve its water quality goals, and we want to continue our partnership with the state to adopt stormwater regulations that balance stormwater quality objectives with the operational and economic realities of stormwater management in the public and private sectors. While we recognize and value the work that the staff of the TDEC Division of Water Resources staff has done to make improvements to the CGP, we also have concerns about the proposed changes.

Despite strong efforts of stakeholders involved in developing property, water pollution from construction sites continues to be a major problem in the state. As you are aware, stormwater discharges from these sites can flow into nearby streams and rivers and often create silt deposits that negatively impact aquatic life and water quality and result in reduced passage in waterways.

Mr. Vojin Janjic
Page 2
August 4, 2021

The Division proposes to delete the provision of the permit requiring applicants to submit information to Municipal Separate Storm Sewer Systems (MS4s) and comply with local ordinances; to delete the prohibition on conducting more than 50 acres of disturbance at one time (projects involving the disturbance of more than 50 acres of land will be subject to additional rules); and to reduce the frequency of regular inspections. We are concerned that these proposed changes could weaken our enforcement efforts, result in delayed detection of (and responses to) problems at these sites, and increase drinking water costs for removing sediment.

We appreciate the Division's efforts to make information about permits easier to find and to modernize the process by allowing electronic notices of intent. We realize the Division faces challenges in the area of legal enforcement of local ordinances and welcome the opportunity to work with TDEC to craft language that maintains the current state support of local enforcement efforts.

Local governments are committed to working with the TDEC to create a better permit that will achieve water quality benefits for all Tennesseans. We thank you for your consideration of our input in this matter. Please feel free to contact us if you have any questions.



August 4, 2021

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Mr. Vojin Janjic
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August 4, 2021

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SIERRA CLUB

Sierra Club
Tennessee Chapter
3712 Ringgold Road, #156,
Chattanooga, TN 37412-1638

August 5, 2021

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

Sent via email

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

Dear Mr. Janjic:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

/s/

Axel C. Ringe

Water Quality Chair

Tennessee Chapter Sierra Club

onxyfarm@bellsouth.net

865-387-7398



SIERRA CLUB

Sierra Club
Tennessee Chapter
3712 Ringgold Road, #156,
Chattanooga, TN 37412-1638

August 5, 2021

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

Sent via email

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

Dear Mr. Janjic:

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

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

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

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

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

unacceptable. We will not go into detailed line by line critiques of the draft CGP. The comments above concerning the provisions outlined in the Rationale should be adequate to convey our position that the permit should be strengthened, not weakened. The problem of construction stormwater runoff pollution is great, and growing, even under the conditions of the 2016 permit. To suggest weakening what is already an ineffective permit is simply unacceptable. We also agree with and support the comments submitted by the Southern Environmental Law Center, Harpeth Conservancy, Paul Davis, and Greg Denton.

The second Rationale makes several references to unnamed stakeholders, specifically in sections 6.7 and 6.8. We want to inform and remind TDEC that the Sierra Club and other environmental organizations, such as referenced above, as well as the public, are also stakeholders in the quality of Tennessee waters. For TDEC to hold private discussions with unnamed “stakeholders” apart from the legally mandated public participation process required in the crafting of this draft permit seems unethical if not illegal.

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

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

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

~~soil particles into receiving streams.~~ convenience or level of effort of the applicant or TDEC permit writers.

~~Site assessments should be required for every permitted site, not just sites of over 50 acres. Even one acre of disturbed soil that is lacking in stormwater protection practices is capable of washing unacceptable amounts of soil particles into receiving streams.~~ Likewise reducing inspection requirements for most permitted sites from 2/week to once per week allows an unacceptable level of leeway for sloppy site management to result in pollution of receiving streams. The bulk of sediment eroding from a site can move very quickly with respect to a flood event and the existing requirement of monitoring 2/week is already minimal with respect to detecting sediment flows. Reducing the frequency of required sampling to once a week will effectively decrease the identification of problems and result in more degradation to water quality.

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

Section 6.8. It is acknowledged by everyone that construction projects have been ~~increasing,~~ and increasing and will continue to increase as Tennessee’s population grows. ~~—~~ Construction stormwater runoff already constitutes the majority of pollution of Tennessee’s waters. In Tennessee, over 6,000 miles of streams and over 18,000 acres of lakes are primarily polluted by sediment. Reducing the schedule of inspections by qualified individuals is not the way to fulfill the mandate of Tennessee’s Water Quality Control Act to abate existing pollution and prevent future pollution.

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

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

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

~~We will not go into detailed line by line critiques of the draft CGP. The comments above concerning the provisions outlined in the Rationale should be adequate to convey our position that the permit should be strengthened, not weakened. The problem of construction stormwater runoff pollution is great, and growing, even under the conditions of the 2016 permit. To suggest weakening what is already an ineffective permit is simply unacceptable.~~ In light of our concerns,

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

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

Sincerely,

Axel C. Ringe
Water Quality Chair
Tennessee Chapter Sierra Club
onxyfarm@bellsouth.net
865-387-7398

From: Donnie Culver <dculver@rendevco.net>
Sent: Thursday, July 22, 2021 3:26 PM
To: Water Permits
Subject: [EXTERNAL] 2021 CGP Comments

July 22, 2021

Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower, 11th Floor
312 Rosa L. Parks Ave, Nashville, TN 37243

Re: 2021 CGP Comments

Good afternoon,

I am submitting these comments, to hopefully assist with the upcoming CGP of 2021. For background, we take on the role of a developer, and primary permittee, in most cases. In watching the transformations of CGPs, over the past 15-20 years, I have noticed areas that could possibly streamline some steps. Hopefully, this will lead to some ease on TDEC resources, and allow more “quality over quantity” in the actions that only TDEC personnel can perform.

Inspections- It is my opinion, that inspections are somewhat of a muscle memory item. The fewer done, the more accuracy will possibly fall out of habit. On the flip side of that, reducing the overall number may cause more attention to what the inspector is actually doing, and give you a proper inspection. I understand there are some that wish to reduce the number of inspections. Each site having 104 inspections in one year does seem excessive sometimes. Especially in situations where there is a primary and secondary coverage. In cases of a developer keeping the primary coverage, but sold to one builder, we inspect twice-weekly along with the builder. Most cases, the builder receives coverage, and we terminate due to having no control of the site, but I am specifically addressing when we stay on for maintenance of a sediment basin, or something of that nature. Would it be possible for the primary to perform a Level 2 assessment each month? In that assessment, the Level 2 would review any builder’s weekly inspections, as well as the current conditions and dewatering notes/dates. This would help keep a project self-policing in a way.

Mentioning Level 2 assessments, I read one set of comments that references the removal of the assessment. If this is the case, I feel it is a mistake. That assessment is an item that helps in reducing the need for TDEC resources at most sites. The Level 2 assessment has been a useful tool in communicating with TDEC on projects, outside of sediment basins as well. We (developers) can order assessments when something is not functioning as designed. There is nothing wrong with making sure that a project is getting off on the right foot, and a Level 2 assessment helps with that. In fact, if a Level 1 inspection shows non-compliance for more than 3 inspections in a row, it is possible that a Level 2 assessment can get them back on track. If the goal is to truly maintain compliance, removing the inspections that have more insight may be counter-productive to it. In fact, just the requirement of a Level 2 assessment to accompany an NOT on the larger projects, would help TDEC field offices have records that someone with higher training saw this site, and made a statement that it met the qualifications to terminate. This reduces TDEC personnel to more of a random check, which also pushes liability on the permittee and inspectors (QA & QC). Two Level 2 assessments per project will not be asking for something excessive. Especially if we are going to once-weekly on the Level 1 inspections.

Of course, those suggestions only apply to the companies that do this every day. The larger developers and builders usually have inspections as part of the job. The smaller builders that are sporadic in location, will rarely have an inspection at all. I noticed that the NOT suggested photos or video to accompany it. Will TDEC consider requiring the latest Level 1 inspection for those single coverage situations? I have personally witnessed a builder such as this, who did not even know a certified inspector. If it is required in the NOT, that type of builder will have to find one, or take the Level 1 class themselves. Again, this is not something that creates a great burden on a builder. Inspection is almost an industry of its own now, and the Level 1 class is very common-sense.

If it is TDEC's desire to reduce inspections to once-weekly, I ask they consider a way to encourage that the ones being performed are quality inspections.

Inspection form- Can TDEC consider adding an "N/A" option to Items #5 and #7. Not every site has/needs these answered in a Yes or No. However, the pdf will only allow you to fill one out and cannot take it away altogether if you have checked either.

NOTs- I have mentioned these above, but wanted to again to make a point that submitting Level 2 assessments with the primary and Level 1 inspections with the individual (single) project will ease TDEC resources, but help ensure some compliance.

I appreciate the effort that you will put into reading/considering my comments. If there are any follow-up questions or insight you require, please feel free to email them in a reply of my submittal.

Thank You,

Donnie Culver

From: Lenora Bell <ljb0122@gmail.com>
Sent: Wednesday, August 4, 2021 3:18 PM
To: Water Permits
Subject: [EXTERNAL] Attn: Public Notice Coordinator

I am strongly opposed to relaxing storm water standards and this reflects my own first hand experience with three incidences of flood water impacting my personal property within 20 years, the most recent and most impactful being March 27/28, 2021. I lost my car, HVAC system, fences, water heater, washer, dryer, freezer, and generator.

The damage to my home was limited to the garage and the crawl space which were filled with mud and filth. Drywall had to be ripped out of the garage.

Then comes the cleanup, drying out, and sanitizing.

My neighbor's Cadillac was nose down up a tree (which was seen on National and International news) and two storage sheds washed into the creek behind that house and the third huge one sitting on the driveway where the car had been.

Four automobiles on my block were totaled and several HVAC systems in just one block.

This is costly to clean up, dry out and replace. Count the stress and interruption to our lives not including the thousands and thousands of dollars.

If anything is changed it should be changed the restrictions should be more stringent because when structures are built in questionable areas the water has to go somewhere and sometimes with tragic consequences and loss of life. Five people drowned in my neighborhood in the most recent flooding.

Consider also the possibility of increased flood insurance premiums.

I plead with you do not become complacent when it comes to relaxing storm water standards.

Sincerely,
Lenora Bell
Nashville, TN

Sent from my iPad

From: Warren Garrett <wgarrett@goodlettsville.gov>
Sent: Monday, July 26, 2021 6:06 AM
To: Water Permits
Subject: [EXTERNAL] CGP Proposal Comments
Attachments: CGP Comments 7.26.2021.pdf

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Mr. Vojin Janji?,

Please see attached comments in regards to the proposed changes of the CGP. We appreciate your time and consideration.

Respectfully,

Warren Garrett
Stormwater Coordinator
City of Goodlettsville / Community Development Services
318 N. Main Street
Goodlettsville, TN 37072
TNEPSC L2
TNSA President 2020
wgarrett@goodlettsville.gov
Phone 615-851-3462

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From: Lydia Brooker <lydiagbrooker@gmail.com>
Sent: Wednesday, August 4, 2021 12:27 PM
To: Vojin Janjic
Subject: [EXTERNAL] Don't Weaken Water Quality Controls

Greetings,

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Thanks for your time,
Lydia Brooker
Resident of Davidson County

From: Jason Walters <jasonw@boyle.com>
Sent: Friday, July 9, 2021 11:18 AM
To: Water Permits
Subject: [EXTERNAL] General NPDES Permit for Stormwater Discharges from Construction Activities

*** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. ***

Background... A developer of subdivision (mass grading and stabilization, installation of infrastructure, platting of lots) may or may not be a home builder. In many cases once the subdivision is properly constructed will sell lots to individuals or homebuilders to construct homes. Depending on the market for lot sales, a developer may own fully stabilized lots for years. Based on how the CGP is enforced, a developer cannot get a Notice of Termination (NOT) accepted until they pretty much no longer on any lots in the subdivision, even if those lots are ALL stabilized per the CGP. This is quite onerous to developers.

Why... Under the CGP until a NOT is accepted there is an annual maintenance fee that the developer must keep paying, even if the subdivision is fully stabilized. This is because a NOT won't be accepted by TDEC because the developer owns lots. There needs to be more distinguishing between a developer and a homebuilder. Being a homebuilder is required to get their own Notice of Coverage (NOC) separate from the developer's NOC for the lot they own and are building on, I would request that a change be made to the CGP to allow a developer to obtain a NOT once their construction has ceased and the site is stabilized. It seems quite wrong to tie a developer's NOC to a homebuilder's NOC as a developer does not typically control what the homebuilder does or does not do.

If a change to the acceptance of the Notice of Termination will not be made, a change to the annual maintenance fee should be considered to allow a developer that is not going to use their Notice of Coverage to build houses to no longer pay an annual maintenance fee. IF the developer is also a homebuilder, I would have no issue with them keeping their NOC open and paying the annual maintenance fee. The current annual maintenance fee structure unfairly penalizes a developer for completing a subdivision and stabilizing it by continuing to make them pay an annual maintenance fee only because TDEC will not accept their NOT because they own fully stabilized lots in a subdivision. Depending on the market for lot sales, this may unfairly cost a developer thousands of dollars as they have to keep their Notice of Coverage open for years.

Thank you for your consideration.

Thanks,

Jason

From: Lynn Taylor <lynn@taylormadeplans.com>
Sent: Wednesday, August 4, 2021 12:28 PM
To: Vojin Janjic
Subject: [EXTERNAL] Permit Number: TNR100000 - protecting clean water in Tennessee

Importance: High

*** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. ***
Vojin,

Good afternoon! I live in East Nashville, Davidson County. My company provides Residential Design services. I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We do not need a weaker permit, as clean water is vital to our community and our well-being. Our water resource is so essential for us and future generations!

Best,

R. Lynn Taylor
Residential Designer
Taylor Made Plans
1906B Shelby Ave., 37206
615-650-8956 office
www.taylormadeplans.com
lynn@taylormadeplans.com

From: Cindy <cindy.whitt@comcast.net>
Sent: Thursday, August 5, 2021 3:37 PM
To: Water Permits
Subject: [EXTERNAL] Permit TNR100000

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I would like to offer a few additional comments about the proposed new permit requirements.

Construction Projects Long Term Impact

My observations of construction stormwater runoff are based on the last few years in the neighborhood where I live, which is zoned for approximately 3441 residential units and covers 1520 acres. A large area has been clear cut and graded over the past two years. Construction has been continual and stormwater runoff from the construction into the streams and storm sewers has been occurring after every heavy rain for this period of time. New areas are being added as the development continues. The only controls over this pollution of the waters of the state and nation are the permits and inspections required by the permit under review. The city, state and the citizens need these controls to ensure the waters are not polluted as development continues to encroach upon the waters of the state and the nation which are public goods. No reason has been provided to loosen the permitting and lower the frequency of the inspections.

Weather is Chaotic and More Extreme

At a presentation before the City of Franklin Board of Alderman and Planning Commission on July 22, 2022, the extreme and varied nature of the rain was discussed. CDMSmith presented the following examples of this extreme variation in rainfall amounts over Williamson County.

This data strongly supports keeping the frequent inspections and those after heavy rainfalls so that corrections may be made to limit future pollution of the public goods, clean water.

Please consider the future impact on the public waters and the damage which will occur as a result of any changes to the current requirements.

Cindy Whitt
305 White Moss Pl
Franklin, TN 37064

Sent from my iPhone

From: Leah Langley <langleyleah@gmail.com>
Sent: Saturday, July 31, 2021 12:38 PM
To: Water Permits
Subject: [EXTERNAL] Please do not relax storm water standards

Hi,

I am writing to request that you all do not relax stormwater standards. I drive by houses every day that are still impacted by the flood that occurred in March 2021. As I pass by these homes and see that they are still vacant because the home owners are still unable to move back in, I'm constantly wondering what could've been done to prevent this and protect their homes. For that reason, I think you all should be moving towards finding ways to better protect Nashvillians, not the opposite. Please consider.

Best
Leah

From: Amy Smart <froggazer@gmail.com>
Sent: Wednesday, August 4, 2021 12:32 PM
To: Vojin Janjic
Subject: [EXTERNAL] Possible changes to construction site water quality

Dear Mr. Janjic,

I understand that a more lenient approach in regards to construction site water run-off management has been proposed. At a time when construction is proceeding at an unprecedented pace in Tennessee, it is more important than ever to maintain, not weaken, protections for our water systems. Due to the very fact of the construction itself, more people than ever before will be needing usable water so it would be doubly ironic if the very construction that brought the population to the area were to ultimately render the area unusable!

Please do not allow any changes that would weaken our current water protections.

Thank you,
Amy Smart

From: A. Lucas <amlu9@protonmail.com>
Sent: Saturday, July 31, 2021 1:41 PM
To: Water Permits
Cc: Tim Jennette; Jaclyn Mothupi; Luxen, Emily; beth.joslin.roth@capitol.tn.gov
Subject: [EXTERNAL] Public Notice Number MMXXI-027

*** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. ***

I am writing to make a public comment on the above numbered permit application #MMXXI-027. I staunchly oppose granting this permit and I hereby formally request a public hearing on this matter.

Myself and several residents in the Edmondson Pike corridor of Nashville were flooded as a result of the storms that hit our area in March, 2021. A major factor in much of the flooding was the failure of the stormwater management system, hence why so many of us outside the nearby Seven Mile flood plain were affected. I read last night that the state is considering changing the stormwater permitting system for builders in this area: <https://www.newschannel5.com/news/environmental-group-sounds-alarm-over-proposed-changes-to-stormwater-regulations>

Considering relaxing ANY regulations for stormwater management, at a time when residents' homes are literally on the verge of collapse, is unthinkable. A recent local news piece covers just the tip of the iceberg of what we are dealing with: <https://www.newschannel5.com/news/erosion-threatens-homes-in-south-nashville-as-neighbors-look-for-solutions>

It is astounding to me that businesses would call these stormwater regulations "cumbersome" when we taxpayers have been so heavily burdened by displacement, high rebuilding costs, and major disruptions to our quality of life. I am happy to share with you my experience of the inordinate amount of time and effort it has taken to repair the damage to our home and property, the hours of lost income due to being self-employed, and the work it required to apply for FEMA disaster assistance and other aid to help with costs not covered by either our flood insurance or our homeowner's insurance. "Cumbersome" does not even begin to describe it.

ALL permits regarding stormwater management should be halted in flood-affected areas of Nashville until we can have TDEC and/or the U.S. Army Corps of Engineers (or other governmental agency) properly assess the situation and identify how the stormwater management failures can be remediated.

The information on the notice said that the public hearing request should be directed to the "Director of the Division of Water Resources", but that person's name and contact information were not included. If I have not directed this email to the correct person, please forward this to them or provide me with that person's name and contact information. If you have any questions, or need any further information in order to fulfill my request for a public hearing, please let me know. My contact information is below.

Many thanks,
Amanda Lucas
615-498-0241
amlu9@protonmail.com

From: Amy Sullivan <firecrackermedic@gmail.com>
Sent: Wednesday, August 4, 2021 12:27 PM
To: Vojin Janjic
Subject: [EXTERNAL] Water quality/construction

I oppose any changes that would weaken water quality controls in the permit renewal of Permit #TNR100000 protecting clean water in Tennessee from construction activities.

I support taking the time to renew a permit that is at least as protective as the current one. We don't need a weaker permit, as clean water is vital to our community and our well-being.

Sincerely,
Amy Sullivan
Burns, TN

From: JOE REESE <cindyreese@comcast.net>
Sent: Friday, July 30, 2021 2:36 PM
To: Vojin Janjic <Vojin.Janjic@tn.gov>
Subject: [EXTERNAL] Discharge of Stormwater related to construction

Dear Mr. Janjic,

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

thank you,

Cindy Reese

From: gregdenton@comcast.net <gregdenton@comcast.net>
Sent: Sunday, August 1, 2021 4:59 PM
To: Vojin Janjic <Vojin.Janjic@tn.gov>
Subject: [EXTERNAL] Proposed Revisions to General NPDES Permit for Storm Water Discharges Associated with Construction Activity Permit Number: TNR100000

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

My name is Greg Denton and I am a retired citizen residing in Rutherford County. I am writing in opposition to the proposed relaxing of the construction stormwater permitting requirements in Tennessee.

For the entirety of my almost four-decade career as an environmental scientist, I studied water quality status and trends in Tennessee. During this time, I noted many positive developments. These positives included a significant reduction in the volume of toxic and oxygen demanding pollutants discharged from industries and municipalities, plus the restoration of multiple streams severely impacted by human activities. The use of environmental regulations to protect aquatic species with special status was another important accomplishment.

However, other pollution sources grew in magnitude during my tenure and more than offset other water quality progress. Currently, water quality impacts to Tennessee streams are dominated by the chronic removal of habitat, plus three pollutants: nutrients, pathogens, and sediment. It is about the latter that my comments are directed.

As a resident of Rutherford County for a half century, I have seen the impacts of sediment in local streams firsthand. Murfreesboro has a beautiful greenway system along the West Fork Stones River, where I regularly walk. But I am frequently dismayed at the amount of suspended sediment present in the river even after small rainfall events.

Silt and sedimentation have multiple impacts to water quality that are dramatically adverse to aquatic life and people. Silt carries other pollutants into streams, such as metals, nutrients and organic contaminants like PCBs. It impacts fish by smothering eggs, abrading gills, and preventing sight hunting by game fish. Sediment reduces the useful lifespans of reservoirs, clogs intake pipes, and impacts public water suppliers who must incur extra costs to make the water potable.

Additionally, sediment and silt impact recreational uses and commercial boating. Silt laden streams and lakes are unpleasant to wade, swim and boat in. Navigable waterways must be more frequently dredged at considerable public and environmental costs.

There are two main sources of excess sediment in Tennessee streams: agricultural activities and construction stormwater associated with development. The former is generally unregulated by permit, but the latter is not.

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.

Thank you for the opportunity to participate in this process. Please acknowledge that you received this.

Respectfully,

Greg Denton
Murfreesboro, TN 37129



August 5, 2021

BY E-MAIL

Tennessee Department of Environment & Conservation
Division of Water Resources
William R. Snodgrass – TN Tower
312 Rosa Parks Avenue – 11th 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 5,¹ 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.²

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.

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

² 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,³ but also that Tennessee is deliberately retreating from measures to protect its waters, in violation of statutory mandates.⁴

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

⁴ 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”⁵ (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.⁶

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.⁷

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.⁸

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....⁹

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.

⁵ https://www3.epa.gov/npdes/pubs/EPA_SW_TMDL_Memo.pdf (accessed August 5, 2021).

⁶ 2014 Memo, page 2.

⁷ *Id.*

⁸ 2014 Memo, page 3.

⁹ 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.¹⁰

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,¹¹ 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.¹² 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.

¹⁰ 2014 Memo, page 7.

¹¹ See the quoted language from the 2014 Memo, page 2.

¹² 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.¹³

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,¹⁴ to comply with its statutory duties regarding the issuance of permits.¹⁵

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.¹⁶ 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.¹⁷ 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").¹⁸ 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").¹⁹ 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.²⁰ Indeed, the law does not allow TDEC

¹³ 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).

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

¹⁵ 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)

¹⁶ 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."

¹⁷ 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)

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

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

²⁰ 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.²¹ 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.²²

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.²³

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

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

Among the numeric standards that the Permit must contain are those for turbidity.²⁶ 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;...²⁷

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

²¹ 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).

²² 40 C.F.R. § 130.2(h).

²³ See 40 C.F.R. § 130.2 (g) & (h).

²⁴ 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.)

²⁵ 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.)

²⁶ See also the discussion of other applicable WQS in section 4 of these comments.

²⁷ <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.²⁸

North Carolina imposes numeric limits at least in trout waters.²⁹

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.³⁰ The NPDES permit must also specify the monitoring necessary to determine compliance with effluent limitations.³¹ 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.

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

²⁹ https://files.nc.gov/ncdeq/documents/files/StandardsTable_06102019.xlsx (accessed August 5, 2021).

³⁰ See 40 C.F.R. §§ 124.8, 124.9 & 124.18.

³¹ 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.³²

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.

³² 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

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

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 state¹; or

¹ "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 species², 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 fee³ 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,

² 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.

³ 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.

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.



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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.

PART 2

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 structure⁴ 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;

⁴ 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.

PART 3

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.

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.

PART 4

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).⁵ 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.

⁵ 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. 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.⁶
- k) Identification if those receiving waters are Exceptional Tennessee Waters.⁷
- 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.

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

⁷ 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.

PART 6

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 Waters⁸. 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.

⁸ 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.

PART 7

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.

PART 8

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 NOI⁹

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

⁹ 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.

PART 9

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	2-year and 5-year design storm depths and intensities 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 https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html . Other data sources may be acceptable with prior written approval by TDEC Division of Water Resources.
ARAP	Aquatic Resource Alteration Permit 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: • Dredging, excavation, channel widening, or straightening • Bank sloping; stabilization • Channel relocation • Water diversions or withdrawals • Dams, weirs, dikes, levees or other similar structures • Flooding, excavating, draining and/or filling a wetland • Road and utility crossings • Structural fill 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	Best Management Practices ("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	Borrow Pit 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	Buffer Zone or Water Quality Riparian Buffer 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	Clearing 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	Commencement of construction: the initial disturbance of <u>soils</u> associated with clearing, grading, excavating or other construction activities.
common plan	Common plan of development or sale 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	Control measure 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	CWA means the Clean Water Act of 1977 or the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.)
director	Director means the director, or authorized representative, of the Division of Water Resources of the State of Tennessee, Department of Environment and Conservation.
degradation	Degradation 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	De Minimis 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.

	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>. (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.
discharge of a pollutant	Discharge or discharge of a pollutant refers to the addition of pollutants to waters from a source.
disturbed area	Disturbed area 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	Division means the Division of Water Resources of the State of Tennessee, Department of Environment and Conservation
exceptional waters	Exceptional Tennessee Waters 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	Final Stabilization 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.

	(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. (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. (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.
improved sinkhole	Improved sinkhole 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.
Level 1	Level 1 - Fundamentals of Erosion Prevention and Sediment Control training and certification program administered by University of Tennessee Water Resources Research Center (https://tnepsc.org/index.asp). 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

	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 MS4 Permit. The equivalent TDOT Level 1 certification is valid only for TDOT staff and for projects where TDOT is the primary site operator.
Level 2	Level 2 - Design Principles for Erosion Prevention and Sediment Control for Construction Sites training and certification program administered by University of Tennessee Water Resources Research Center (https://tnepsc.org/index.asp). 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 SWPPP. Topics discussed in the course include: hydrologic methods for determining peak flows; principles of soil erosion, scouring and sediment 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; stormwater control requirements and design; sedimentation principles; and temporary sediment basin 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.
linear project	Linear Project 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

	development of residential and commercial subdivisions or high-rise structures is not considered a linear project.
measurable degradation	Measurable Degradation , 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	Month or Monthly refers to calendar months.
MS4	"Municipal Separate Storm Sewer System" or "MS4" 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: 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; b) designed or used for collecting or conveying <u>stormwater</u>; c) not a combined sewer; and d) not part of a Publicly Owned Treatment Works (POTW) as defined in 40 CFR §122.2.
operator	Operator 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: 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

	(e.g., subsequent builder) or the person who is the current owner of the construction site. 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. 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).
point source	Point source 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>.
pollutant	Pollutant means sewage, industrial wastes, or other wastes.
QLP	Qualifying State, Tribal, or local erosion and sediment control program is one that includes, as defined in 40 CFR 122.44(s): - Requirements for construction site operators to implement appropriate erosion and <u>sediment</u> control best management practices. - 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. - 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

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.

	State, Tribal or local requirements, maintenance procedures, inspection procedures and identification of non-<u>stormwater</u> discharges. d) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.
rainfall	A rainfall event 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.
registered engineer	Registered Engineer and Registered Landscape Architect 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.
runoff coefficient	Runoff coefficient 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.
sediment	Sediment 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.
sediment basin	Sediment basin 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).
sedimentation	Sedimentation means the action or process of forming or depositing sediment.

soil	Soil or Topsoil 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	Steep Slope or Steep Grade 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	Stormwater means rainfall runoff, snow melt runoff, and surface runoff and drainage.
stream	A Stream is a surface water that is not a wet weather conveyance. Therefore, as used in this permit, "stream" includes lakes, wetlands and other non-linear surface waters.
construction stormwater	Stormwater associated with industrial activity 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	Stormwater discharge-related activities 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	Stormwater Pollution Prevention Plan 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 Tennessee Erosion and Sediment Control Handbook .
take	Take 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	Tennessee Erosion and Sediment Control Handbook 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	Temporary stabilization 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	Total maximum daily load (TMDL) means the sum of the individual wasteload allocations for point sources and load

	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: TMDL = sum of nonpoint sources (LA)+ sum of <u>point sources</u> (WLA)+ margin of safety A list of completed TMDLs that have been approved by EPA can be found at our web site: https://www.tn.gov/environment/program-areas/wr-water-resources/watershed-stewardship/tennessee-s-total-maximum-daily-load--tmdl-program.html
treatment chemicals	Treatment chemicals 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.
turbidity	Turbidity 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.
waste site	Waste site 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.
waters	Waters 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.
unavailable parameters	Waters with unavailable parameters means any segment of surface waters that has been identified by the division as failing to support one or more classified uses. For the purpose of this permit, pollutant of concern is siltation. Based on the most recent assessment

	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 (https://tdeconline.tn.gov/dwr/), 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 https://www.tn.gov/environment/program-areas/wr-water-resources/water-quality/water-quality-reports---publications.html .
week	A one-week period is a synonym of a calendar-week ; typically, a period from Sunday through Saturday.
wet weather conveyance	Wet weather conveyances 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 ARAP
	Aquatic Resource Alteration Permit
BMP	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

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

USGS SWToolbox

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

(End of body of permit; appendices follow.)

APPENDIX A – NOTICE OF INTENT FORM (NOI)

(See Next Page)



TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Water Resources
William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 11th 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)

Site or Project Name:		NPDES Tracking Number: TNR	
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 ☐ SWPPP Included		Include a site location map ☐ Map Included ☐	

Name of Site Owner or Developer (Site-Wide Permittee): (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:		

Owner or Developer Certification: (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:

Contractor(s) Certification: (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)

(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, 11th 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).

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

Name of Permittee Requesting Termination of Coverage:			
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)

☐	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)
☐	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

APPENDIX C – INSPECTION REPORT FORM

(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, 11th 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)

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

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

☐	Notice of Coverage (NOC)
☐	Stormwater Pollution Prevention Plan (SWPPP)
☐	Weekly inspection documentation
☐	Site contact information
☐	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?	☐ Yes	☐ No
2.	Are EPSCs functioning correctly at all disturbed areas/material storage areas per section 4.1.5?	☐ Yes	☐ 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?	☐ Yes	☐ No
4.	Are (EPSCs) functioning correctly at ingress/egress points such that there is no evidence of track out?	☐ Yes	☐ 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.	☐ Yes	☐ 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).	☐ Yes	☐ 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.	☐ Yes	☐ 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**

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

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 20th of July, 2020.

/s/ Elizabeth A. Alexander

Elizabeth A. Alexander, BPR No. 19273
Alexander Law
4235 Hillsboro Pike, Suite 300
Nashville, TN 37215
Telephone: (415) 860-4020
Email: beth@alexanderlaw.us

Counsel for the Fernvale Community Group



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.¹ Moreover, the existence and successful implementation of such requirements in many jurisdictions indicates that such measures are generally “practicable” to implement.² 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

¹ 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>.

² 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 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.

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).

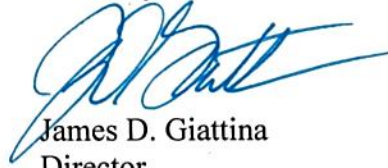
(4) The assertion that *Virginia Department of Transportation v. EPA* precludes the use of stormwater retention requirements

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 10.³

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

3

[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](#)

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](#)



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
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312 Rosa L. Parks Ave., Nashville, TN 37243
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From: Jim Redwine <jimredwine@harpethriver.org>

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

To: TDEC Public.Records.Request <TDEC.Public.Records.Request@tn.gov>; Melanie Vanderloop <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,

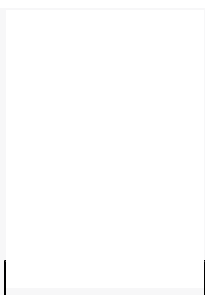
Jim Redwine

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[HarpethConservancy.org](#)



From: TDEC Public.Records.Request <TDEC.Public.Records.Request@tn.gov>

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

To: Jim Redwine <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 . 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.

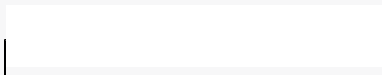
Thank you,



Melanie VanderLoop | Executive Administrative Assistant
Office of the Commissioner
Tennessee Tower, 2nd Floor
312 Rosa L. Parks Ave., Nashville, TN 37243
p. 615-532-5281
melanie.vanderloop@tn.gov
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tnstateparks.com

From: noreply@formstack.com <noreply@formstack.com>
Sent: Monday, June 28, 2021 4:25 PM
To: TDEC Public.Records.Request <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

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

Request::	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
If yes, then initial below:	
Dollar amount to not exceed:	
Delivery Preference::	Electronic
Harpeth Conservancy and other members of the Tennessee Water Groups request the right to inspect and potentially copy all of the following records: 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	

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.

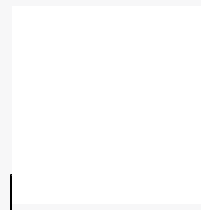
10) All records supporting TDEC's conclusion in in Part 3 of Permit rationale, that silt is "one of the primary pollutants in Tennessee waterways."

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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Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038

I



Home Builders Association of Tennessee
213 Fifth Avenue North, Suite 200
Nashville, TN 37219

Office (615) 777-1700
www.hbat.org

August 4, 2021

Ms. Jennifer Dodd
Director
Division of Water Resources
Tennessee Tower, 11th Floor
312 Rosa L. Parks Avenue
Nashville, TN 37243

Vojin Janjic
Manager, Water-Based Systems
Division of Water Resources
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Nashville, TN 37243

Electronic Delivery

Division of Water Resources,

These comments are submitted on behalf of the Home Builders Association of Tennessee (HBAT), we are pleased to submit the following comments on the draft 2021 Construction General Stormwater Permit. We appreciate the opportunity to comment.

Re: Draft General Permit (GP) for Discharges of Stormwater Associated with Construction Activities
Permit Number TNR100000

Permittees with Design Control

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

Stormwater Pollution Prevention Plans (SWPPPs)

- 2) Define “Comprehensive SWPPP.” Starting on Page 2, Section 1.2.2.e the term “*comprehensive SWPPP*” is used 9 times throughout the draft GP. However, the draft GP does not include a definition of a comprehensive SWPPP. To be consistent with industry standards and avoid confusing the regulated community, the draft GP should include a definition of a “*comprehensive SWPPP*” including how it is different from the initial SWPPP (Section 1.4.2).

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

Therefore, we recommend that Section 2.2.2 of the draft CGP be modified as shown: *“All permittees must implement their portions of a comprehensive SWPPP; or, the primary permittee must implement the SWPPP they developed that addresses only their portion of the project in accordance with Section 1.4.2.”*

- 4) Remove the Requirement for Existing Sites to Submit Their Modified SWPPPs. Section 3.1.2 of the draft GP states: *“A modified SWPPP and a corresponding fee must be submitted by the permittee if needed to come into compliance with the requirements of the new permit.”* As all permittees with existing GP coverage, who wish to maintain coverage, will have to be modify their SWPPPs in some manner (e.g. changes to inspection frequency, etc.), the Division is inviting the submittal of modified SWPPPs from all existing projects statewide. This is not only an unnecessary burden for the regulated community, but also the Division.

We recommend that the following sentence be **deleted** from Section 3.1.2 of the draft GP: *“~~A modified SWPPP and a corresponding fee must be submitted by the permittee if needed to come into compliance with the requirements of the new permit.~~”*

Additionally, we have concern that the Division is creating a narrow timeline to reissue approvals. Section 5.3.1 of the draft GP states: *“The current SWPPP should be modified, if necessary, to meet requirements of this new general permit, and the SWPPP changes implemented as soon as practicable but no later than three months following the new permit effective date. The permittee shall make the updated SWPPP available for the division’s review upon request.”* Is the division certain that 90 days will be enough time to approve all the resubmittals in a timely fashion?

- 5) Clarification on Documenting SWPPP Modifications. Section 5.4.1 of the draft GP states: *“The permittee must modify, update and re-sign the SWPPP if any of the following conditions apply...”*. Subsection items a) through f) in Section 5.4.1 list the triggers that would prompt a SWPPP modification or amendment. It is industry practice that when completing a SWPPP modification or amendment it is to be documented in the SWPPP typically via a SWPPP modification/amendment form. These forms are then signed by either the permittee or an individual that has been delegated signing authority as a duly authorized representative.

The draft GP is not clear as to what the phrase *“...re-sign the SWPPP...”* implies. Does it mean the signing of an amendment/modification form, or that the permittee needs to re-certify the SWPPP? We recommend Section 5.4.1 of the draft GP be modified as shown: *“When the following conditions apply, ~~the permittee~~ or a duly authorized representative of the permittee must modify, ~~update and re-sign~~ the SWPPP, ~~if any of the following conditions apply...~~ and document and certify the modification in the SWPPP:”*

Notice of Intent (NOI)

- 6) Include a Timeframe to Approve a Notice of Intent Application. The draft GP has weakened the timeframe that the Division will inform the applicant that their application was approved and a Notice of Coverage (NOC) is issued. Section 1.4.1 states: *“Absent extraordinary circumstances, NOCs [Notice of Coverage] should be issued within 30 days of NOI submittal...”* Under the previous 2016 GP, the Division was more succinct with their approval timeframe (Section 2.6.3) which stated: *“...the Division shall, within 30 days: a) issue an NOC to the initial site-wide primary operator for the construction site...”*

The very nature of land acquisition and construction operations is variable, and as such do not lend themselves to ill-defined or extended timeframes. Additionally, Section 3.1.3 of the draft GP also states *“The land disturbing activities shall not start until a NOC is prepared and written approval by the division staff is obtained...”*

We recommend that the draft GP continue affording the regulated community the opportunity to receive permit coverage within 30 days and that Section 1.4.1 be modified as follows: *“Absent extraordinary circumstances, NOCs ~~should~~ shall be issued within 30 days of NOI submittal...”*

- 7) Clarify the Language Regarding Permit Tracking Numbers. The explanation given in the draft GP regarding the issuance of permit tracking numbers is confusing and conflicting. Section 1.5.1 states: *“Construction sites covered under this permit will be assigned permit tracking numbers...”*, and *“Assigning a permit tracking number by the division to a proposed discharge from a construction site does not confirm or imply an authorization to discharge under this permit.”* It seems that the spirit of Section 1.5.1 is to inform applicants that a permit tracking number may be assigned to the application prior to the issuance of the Notice of Coverage (NOC), and in doing so, authorization to discharge under the GP has not yet been granted by the Division. We recommend that Section 1.5.1 of the draft GP be modified as follows: *“Assigning a permit tracking number by the division to an application for a proposed discharge from a construction site does not confirm or imply an authorization to discharge under this permit.”*
- 8) Define “Supplemental NOI” and update NOI form. Starting on Page 13, Section 2.2.1 the term *“supplemental NOI”* is used 4 times in the draft GP. However, the draft GP does not include a definition of a supplemental NOI. The example NOI form included in Appendix A of the draft GP does not include any notation or instructions for the applicant(s) on how to express to the Division the submittal of a supplemental NOI. To be consistent and avoid confusing the regulated community, the draft GP should include a definition of a *“supplemental NOI”*, and include a way for the applicants to identify on the NOI (e.g. checkbox) that the submittal is a supplemental NOI.
- 9) Clarify Which Notice of Intent (NOI) is to be Submitted by a Secondary Permittee. The draft GP states that a contractor is considered a Secondary Permittee. Section 2.1.3 states *“The contractor should sign the NOI and SWPPP associated with the construction project at which they will be an operator, and submit an NOI to the division indicating their intent to be added to the existing site coverage as an operator.”* What is not clearly evident is which NOI the contractor should be submitting to the Division; the NOI of the Primary Permittee for whom the contractor works for, or a separate NOI completed by the contractor. We recommend that the Section 2.1.3 of the draft

GP be modified to clearly describe which NOI needs to be submitted by a contractor to become an operator onsite.

- 10) Eliminate Post-Rainfall Event Inspections for Projects Exceeding 50 Acres of Disturbance At One Time. Section 5.5.3.3.b of the draft GP proposes an inspection frequency specific to projects that exceed 50 acres of disturbance at one time of “*twice per week and following any rainfall event of more than 0.5 inches in 24 hours, rather than weekly.*” The proposed requirement to conduct an inspection twice per week and after any 0.5-inch or greater rainfall event is excessive and unnecessarily burdensome for both the permittee and inspector with no direct benefit to the environment. Depending on seasonal conditions and weather patterns, permittees subject to this additional requirement could encounter scenarios where projects will require an inspection as often as seven days per week.

Also, without additional language qualifying that the post-rain inspections are to occur during ‘*normal business hours*’, these unscheduled, weather-driven inspections have the potential to cause a lapse in response time for items identified on a weekend or holiday, despite the excessive inspection frequency. Has the Division performed an analysis that provides evidence that more inspections will facilitate more timely repairs on larger construction sites? Having inspections occur on scheduled, routine days allows permittees the ability to ensure that BMP maintenance contractors are available at the construction site the next day following each inspection for expedient and timely response to items identified by the inspector.

Most permittees use third-party inspectors to conduct the required operator inspections. Having a routine inspection frequency that does not include post-rainfall event inspections allows these third-party inspection firms to accurately forecast the amount of inspections that a project will require and offer a standard price to permittees. Replacing this consistency with an increased and unpredictable inspection frequency will result in an additional financial burden on the regulated community. Did the Division conduct an impact analysis on this increased cost to the regulated community? Additionally, under the conditions of the current permit, third-party inspection firms are able to stagger their inspection dates in such a way that they are able to maximize the time spent inspecting each construction site. Post-rainfall event inspections would cause these firms to have to inspect all of their client’s projects subject to this proposed frequency in a single day, reducing the time available to conduct a thorough inspection.

Therefore, we recommend that Section 5.5.3.3.b be modified as follows: “*Operator inspections as described in Subsection 5.5.3.8 shall be conducted twice per week ~~and following any rainfall event of more than 0.5 inches in 24 hours,~~ rather than weekly.*”

Additional Comments

- 11) Include a More Complete List of Non-Stormwater Discharges Authorized by the General Permit. In order for the draft GP to better align with construction operations as well as the authorized non-stormwater discharges promulgated by the United States Environmental Protection Agency’s Construction General Permit (Section 1.2.2), we recommend that Section 1.2.3 of the draft GP be modified as follows:

- “a) Dewatering of collected stormwater and ground water.
- b) Waters used to wash dust and soils from vehicles and equipment where detergents are not used and detention and/or filtering is provided before the water leaves site. Wash removal of process materials such as oil, asphalt or concrete is not authorized.
- c) Water used to control dust in accordance with Section 3.5.5 below.
- d) Potable water sources, including waterline flushings, from which chlorine has been removed to the maximum extent practicable.
- e) Routine external building washdown that does not use detergents or other chemicals.
- f) Uncontaminated groundwater or spring water.
- g) Foundation or footing drains where flows are not contaminated with pollutants (e.g., process materials such as solvents, heavy metals, etc.).
- h) Discharges from emergency fire-fighting activities.
- i) Fire hydrant flushings.
- j) Landscape irrigation.
- k) Pavement wash waters, provided spills or leaks of toxic or hazardous substances have not occurred (unless all spill material has been removed) and where soaps, solvents, and detergents are not used.
- l) Uncontaminated air conditioning or compressor condensate.”

- 12) Define “Best Practicable Control Technology Currently Available.” Section 4.1 introduces the term “best practicable control technology (BPT) currently available”; however, the draft GP does not include a definition or examples of a best practicable control technology currently available. To be consistent and avoid confusing the regulated community, the draft GP should include a definition of a “best practicable control technology (BPT) currently available”, including how it differs from a best management practice (BMP) already defined in Section 10.1.
- 13) Change the General Criteria and Requirements for Sediment Controls. Section 5.5.3.1.a of the draft GP states: “Sediment controls shall be designed to retain mobilized sediment on site to the maximum extent practicable.” The draft GP’s use of the term ‘retain’ is unnecessarily burdensome and unachievable for the permittees. Sediment controls identified in the Tennessee Erosion & Sediment Control Handbook, August 2012 (BMP Manual) are designed for a known storm event (e.g. 2-year, 5-year, etc.). A sediment control that is installed and maintained in accordance with the BMP Manual and is ‘performing’ during its design storm event will still release sediment offsite, albeit at a greatly reduced rate. The goal of the regulation is to control mobilized sediment.

For example, a sediment basin installed to meet the design criteria of 134 yd³/acre of drainage that uses a floating skimmer device to dewater the dry volume of the basin from the water surface rather than from below the surface, will still be releasing suspended sediment from the basin and the site. Additionally, silt fence installed along the perimeter of a construction site will not capture all soil types such as silts and clays due to the nature of the apparent opening size of the geotextile (i.e. #30 to #70 standard sieve for silt fence fabric without backing).

Therefore, to require the permittees to “...retain mobilized sediment on site to the maximum extent practicable.” is an unachievable standard that will intentionally cause the permittees to be in noncompliance with the GP. We recommend that Section 5.5.3.1.a of the draft GP be modified

as follows: “Sediment controls shall be designed ~~to retain mobilized sediment on site to the maximum extent practicable~~ to minimize the discharge of pollutants in stormwater from the construction activity.”

- 14) Change the Design Criteria and Requirements for Sediment Basins. Section 5.5.3.5, Page 34 states: “*The discharge structure from a sediment basin must be designed to retain sediment during lower flows.*” The draft GP’s requirement to “...retain sediment during lower flows” from a sediment basin is poorly defined and an unachievable standard. As previously mentioned in Comment 13 above, a sediment basin installed to meet the design criteria of 134 yd³/acre of drainage that uses a floating skimmer device to dewater the dry volume of the basin from the water surface rather than from below the surface, will still be releasing suspended sediment from the basin and the site.

Additionally, it is not clear what is meant by the term “lower flows”. Does this mean lower flow rates (ft/sec) or flows from smaller rain events (e.g. less than 0.5 inches)? The BMP Manual requires a sediment basin to have a permanent pool. Any rain event causing runoff to enter into the sediment basin will raise the water level in the basin above the permanent pool elevation and result in a discharge offsite; either through a skimmer device or a perforated vertical pipe. These two types of dewatering devices can reduce, but not prevent, the discharge of sediment from the sediment basin.

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

- 15) Remove the Requirement to Include Non-Stormwater Components of Discharge in Control Measure Design. Section 5.5.3.11 of the draft CGP proposes that the “*Estimated volume of the non-stormwater components of the discharge must be included in the design of all impacted control measures.*” The proposed requirement for the permittee to attempt to quantify the volume of infrequent, unplanned, and unanticipated flows such as foundation/footing drains, uncontaminated groundwater or spring water is impractical, burdensome, and unfeasible. In plain terms it is an engineer’s nightmare to qualify and quantify any and all unforeseen non-stormwater components, it would be practical to cite parameter for these calculations. Additionally, other non-stormwater discharges (e.g. water line flushings, dewatering of collected stormwater and groundwater, water used to control dust) are infrequent and equally burdensome to attempt to quantify during the design stage of a project.

For example, in residential construction, many portions of a project (e.g. closed individual residential lots, amenity areas, common spaces) are removed from the permittee’s area of control throughout the life of the project. When these areas are sold and deeded to the subsequent property owners, the permittee can no longer exercise control over the volume or type of non-stormwater discharge generated at each individual property.

Therefore, we recommend the following sentence be **deleted** from Section 5.5.3.11 of the draft CGP: ~~*“Estimated volume of the non-stormwater components of the discharge must be included in the design of all impacted control measures.”*~~

- 16) Add Electronic Maintenance of Inspection Reports. Section 7.2.1.b of the draft GP states: *“The permittee shall also retain the following items in an appropriate location onsite...b) a copy of all required inspection reports;”* The draft GP is inhibiting the permittees’ evolution into more efficient inspection report technologies; and, the requirement that the inspection reports be retained in hard copy form is an unnecessary burden on the permittees and provides no apparent benefit to water quality or the environment. The use of electronic inspection reporting technologies affords the permittees greater efficiencies in conducting, managing, and retaining the completed inspection reports. Additionally, keeping inspection reports electronic reduces paper consumption and the need for onsite storage of all the inspection reports conducted throughout the life of the development while covered under the GP.

Electronic inspection reporting technologies allows for bona fide e-signatures for signing and certifying the reports; provides greater transparency to the permittees; and, can be made available upon request in a timely manner via numerous types of electronic devices (e.g. laptops, tablets, smartphones, etc.).

Therefore, to better align with current industry practices and available technologies available to the permittees, we recommend that Section 7.2.1.b of the draft GP be modified as shown: *“The permittee shall also retain the following items in an appropriate location onsite...b) a copy of all required inspection reports, or the required inspection reports be electronically accessible through the permittees environmental system so that the documents can be made available at the time of an onsite inspection or upon request by the Division;”*

- 17) Remove the Requirement to Provide Contact Information for Duly Authorized Representatives. Section 8.7.3.b states: *“...a duly authorized representative may thus be either be a named individual or any individual occupying a named position”*. Section 8.7.3.c then states: *“The written authorization shall be a written document including the name of the newly authorized person or any individual occupying a named position as described in paragraph b) above, and the corresponding contact information (title, mailing address, phone number, fax number and E-mail address) for the authorized person or position.”* The requirement to include contact information on the written authorization delegating a duly authorized representative(s) is an unnecessary paperwork burden to the regulated community, is information contained elsewhere in the SWPPP, and provides no apparent benefit to water quality or the environment.

Section 8.7.3.b affords the permittee the ability to delegate a duly authorized representative (DAR) to any individual occupying a named position, rather than delegating a DAR by a named individual. This streamlines the written authorization process for the permittees when there may be several individuals onsite that occupy the delegated named position; and, relieves the permittees of the paperwork burden of writing and resubmitting a delegation letter each time a named individual changes.

The spirit of the signatory requirements of Section 8.7 of the draft GP, adapted from 40 CFR § 122.22, is to delegate signing authority to a DAR to sign certain documents required by the program. It is not to provide contact information for the DAR, which may be listed on the jobsite posting and is included in the SWPPP. We recommend the following be **deleted** from Section 8.7.3.c of the draft CGP: *“The written authorization shall be a written document including the name 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.~~”*

18) **Notice of Termination Clarification**

Development companies use various business models to develop land. Increasingly, many developers are specializing in the development phase of projects to create new housing lots, and the company will not construct homes within the project. Instead, this developer will work with the planning commission, develop the property to accommodate separate housing lots (mass grading, etc.), install infrastructure, plat individual lots, and stabilize the housing lots. Once the lots in the subdivision are stabilized and ready for housing construction the developer will sell developed lots to home builders for their construction phase. In this scenario a developer has completed construction of development, and lots have achieved final stabilization. The developer should be eligible to file a notification of termination, as his only remaining business activity is the real estate transaction phase of their business model by selling developed lots.

We seek clarification on the notice of termination (NOT) eligibility. Several developers have noted in the past they were not granted a NOT until they had sold nearly all the developed lots. Having to maintain permits coverage for fully stabilized lots is burdensome. Depending on economic conditions and the market for lot sales, a developer may own a portion of fully stabilized lots for years. These vegetative lots do not require routine inspections and are not a cause for concern.

If the developer is granted a notice of termination in a development with developed lots, the subsequent property owner (often a building contractor) will be required to obtain their own permits to begin the next phase of construction.

The requirements of coverage termination in Section 9.1.1(a) include certification that the disturbance from construction has ceased, proper removal of all construction related materials and wastes, removed temporary stormwater controls, identified the responsible party for permanent stormwater controls, and groundcover to achieve final stabilization.

Typographical Comments

19) Change Section 1.4 to state: “...and thereby acknowledges the...”

20) Change Section 1.4.2, second paragraph to state “...updated or amended if...”

Identification of Coverage and Liability

21) Co-Permittees and Joint and Severable Liability. The second paragraph of Section 2.1.1 of the Draft TCGP states as follows:

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

Joint and several liability and “co-permittee” status should be removed from the draft TCGP for several reasons.

The Clean Water Act DOES NOT require separate operators who are distinct separate entities to be co-permittees or provide for joint and several liability for violations of an NPDES permit. Further, the EPA’s current Stormwater Construction General Permit (“EPA CGP”) issued in 2017 does not include a requirement for operators in the same development to be co-permittees or jointly and severally liable for violations of the NPDES permit.¹

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

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

Joint and several liability is unnecessary and unreasonable given that each operator on a construction site will apply for authorization to discharge under the TGCP individually, i.e., through NOIs. Also, joint and several liability is inconsistent with the EPA CGP language regarding group or individual SWPPPs. The EPA CGP states as follows: “Regardless of whether there is a group SWPPP or multiple individual SWPPPs, each operator is responsible for compliance with the permit’s terms and conditions.” See the EPA CGP, Part 7.1, Footnote No.

¹ The current EPA CGP can be found here: <https://www.epa.gov/npdes/epas-2017-construction-general-permit-cgp-and-related-documents>

53. Previous references to joint and several liability were removed from the final version of the EPA CGP, effective June 27, 2019.²

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

Based on the foregoing, we respectfully request that the second paragraph of section 2.1.1 be modified to read as follows (changes in the text are in redline and strikeout below):

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

Respectfully submitted,



Charles Schneider

CEO

Home Builders Association of Tennessee

615-777-1700

² EPA modified this language in response to petitions for judicial review of the permit filed by both the National Association of Home Builders and the Chesapeake Bay Foundation, *National Ass'n of Home Builders v. EPA*, Case No. 17-1039 & *Chesapeake Bay Foundation v. EPA*, Case No. 17-1136 (D.C. Cir. 2017). See Excerpt of changes between original 2017 CGP and final modified 2017 CGP, available at: <https://www.epa.gov/npdes/epas-2017-construction-general-permit-cgp-and-related-documents>.



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Electronic Delivery

Division of Water Resources,

These comments are submitted on behalf of the Home Builders Association of Tennessee (HBAT), we are pleased to submit the following comments on the draft 2021 Construction General Stormwater Permit. We appreciate the opportunity to comment.

Re: Draft General Permit (GP) for Discharges of Stormwater Associated with Construction Activities
Permit Number TNR100000

Permittees with Design Control

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

Stormwater Pollution Prevention Plans (SWPPPs)

- 2) Define “Comprehensive SWPPP.” Starting on Page 2, Section 1.2.2.e the term “*comprehensive SWPPP*” is used 9 times throughout the draft GP. However, the draft GP does not include a definition of a comprehensive SWPPP. To be consistent with industry standards and avoid confusing the regulated community, the draft GP should include a definition of a “*comprehensive SWPPP*” including how it is different from the initial SWPPP (Section 1.4.2).

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

Therefore, we recommend that Section 2.2.2 of the draft CGP be modified as shown: *“All permittees must implement their portions of a comprehensive SWPPP; or, the primary permittee must implement the SWPPP they developed that addresses only their portion of the project in accordance with Section 1.4.2.”*

- 4) Remove the Requirement for Existing Sites to Submit Their Modified SWPPPs. Section 3.1.2 of the draft GP states: *“A modified SWPPP and a corresponding fee must be submitted by the permittee if needed to come into compliance with the requirements of the new permit.”* As all permittees with existing GP coverage, who wish to maintain coverage, will have to be modify their SWPPPs in some manner (e.g. changes to inspection frequency, etc.), the Division is inviting the submittal of modified SWPPPs from all existing projects statewide. This is not only an unnecessary burden for the regulated community, but also the Division.

We recommend that the following sentence be **deleted** from Section 3.1.2 of the draft GP: *~~“A modified SWPPP and a corresponding fee must be submitted by the permittee if needed to come into compliance with the requirements of the new permit.”~~*

Additionally, we have concern that the Division is creating a narrow timeline to reissue approvals. Section 5.3.1 of the draft GP states: *“The current SWPPP should be modified, if necessary, to meet requirements of this new general permit, and the SWPPP changes implemented as soon as practicable but no later than three months following the new permit effective date. The permittee shall make the updated SWPPP available for the division’s review upon request.”* Is the division certain that 90 days will be enough time to approve all the resubmittals in a timely fashion?

- 5) Clarification on Documenting SWPPP Modifications. Section 5.4.1 of the draft GP states: *“The permittee must modify, update and re-sign the SWPPP if any of the following conditions apply...”*. Subsection items a) through f) in Section 5.4.1 list the triggers that would prompt a SWPPP modification or amendment. It is industry practice that when completing a SWPPP modification or amendment it is to be documented in the SWPPP typically via a SWPPP modification/amendment form. These forms are then signed by either the permittee or an individual that has been delegated signing authority as a duly authorized representative.

The draft GP is not clear as to what the phrase *“...re-sign the SWPPP...”* implies. Does it mean the signing of an amendment/modification form, or that the permittee needs to re-certify the SWPPP? We recommend Section 5.4.1 of the draft GP be modified as shown: *“When the following conditions apply, ~~the permittee~~ or a duly authorized representative of the permittee must modify, ~~update and re-sign~~ the SWPPP, ~~if any of the following conditions apply...~~ and document and certify the modification in the SWPPP:”*

Notice of Intent (NOI)

- 6) Include a Timeframe to Approve a Notice of Intent Application. The draft GP has weakened the timeframe that the Division will inform the applicant that their application was approved and a Notice of Coverage (NOC) is issued. Section 1.4.1 states: *“Absent extraordinary circumstances, NOCs [Notice of Coverage] should be issued within 30 days of NOI submittal...”* Under the previous 2016 GP, the Division was more succinct with their approval timeframe (Section 2.6.3) which stated: *“...the Division shall, within 30 days: a) issue an NOC to the initial site-wide primary operator for the construction site...”*

The very nature of land acquisition and construction operations is variable, and as such do not lend themselves to ill-defined or extended timeframes. Additionally, Section 3.1.3 of the draft GP also states *“The land disturbing activities shall not start until a NOC is prepared and written approval by the division staff is obtained...”*

We recommend that the draft GP continue affording the regulated community the opportunity to receive permit coverage within 30 days and that Section 1.4.1 be modified as follows: *“Absent extraordinary circumstances, NOCs ~~should~~ shall be issued within 30 days of NOI submittal...”*

- 7) Clarify the Language Regarding Permit Tracking Numbers. The explanation given in the draft GP regarding the issuance of permit tracking numbers is confusing and conflicting. Section 1.5.1 states: *“Construction sites covered under this permit will be assigned permit tracking numbers...”*, and *“Assigning a permit tracking number by the division to a proposed discharge from a construction site does not confirm or imply an authorization to discharge under this permit.”* It seems that the spirit of Section 1.5.1 is to inform applicants that a permit tracking number may be assigned to the application prior to the issuance of the Notice of Coverage (NOC), and in doing so, authorization to discharge under the GP has not yet been granted by the Division. We recommend that Section 1.5.1 of the draft GP be modified as follows: *“Assigning a permit tracking number by the division to an application for a proposed discharge from a construction site does not confirm or imply an authorization to discharge under this permit.”*
- 8) Define “Supplemental NOI” and update NOI form. Starting on Page 13, Section 2.2.1 the term *“supplemental NOI”* is used 4 times in the draft GP. However, the draft GP does not include a definition of a supplemental NOI. The example NOI form included in Appendix A of the draft GP does not include any notation or instructions for the applicant(s) on how to express to the Division the submittal of a supplemental NOI. To be consistent and avoid confusing the regulated community, the draft GP should include a definition of a *“supplemental NOI”*, and include a way for the applicants to identify on the NOI (e.g. checkbox) that the submittal is a supplemental NOI.
- 9) Clarify Which Notice of Intent (NOI) is to be Submitted by a Secondary Permittee. The draft GP states that a contractor is considered a Secondary Permittee. Section 2.1.3 states *“The contractor should sign the NOI and SWPPP associated with the construction project at which they will be an operator, and submit an NOI to the division indicating their intent to be added to the existing site coverage as an operator.”* What is not clearly evident is which NOI the contractor should be submitting to the Division; the NOI of the Primary Permittee for whom the contractor works for, or a separate NOI completed by the contractor. We recommend that the Section 2.1.3 of the draft

GP be modified to clearly describe which NOI needs to be submitted by a contractor to become an operator onsite.

- 10) Eliminate Post-Rainfall Event Inspections for Projects Exceeding 50 Acres of Disturbance At One Time. Section 5.5.3.3.b of the draft GP proposes an inspection frequency specific to projects that exceed 50 acres of disturbance at one time of “*twice per week and following any rainfall event of more than 0.5 inches in 24 hours, rather than weekly.*” The proposed requirement to conduct an inspection twice per week and after any 0.5-inch or greater rainfall event is excessive and unnecessarily burdensome for both the permittee and inspector with no direct benefit to the environment. Depending on seasonal conditions and weather patterns, permittees subject to this additional requirement could encounter scenarios where projects will require an inspection as often as seven days per week.

Also, without additional language qualifying that the post-rain inspections are to occur during ‘*normal business hours*’, these unscheduled, weather-driven inspections have the potential to cause a lapse in response time for items identified on a weekend or holiday, despite the excessive inspection frequency. Has the Division performed an analysis that provides evidence that more inspections will facilitate more timely repairs on larger construction sites? Having inspections occur on scheduled, routine days allows permittees the ability to ensure that BMP maintenance contractors are available at the construction site the next day following each inspection for expedient and timely response to items identified by the inspector.

Most permittees use third-party inspectors to conduct the required operator inspections. Having a routine inspection frequency that does not include post-rainfall event inspections allows these third-party inspection firms to accurately forecast the amount of inspections that a project will require and offer a standard price to permittees. Replacing this consistency with an increased and unpredictable inspection frequency will result in an additional financial burden on the regulated community. Did the Division conduct an impact analysis on this increased cost to the regulated community? Additionally, under the conditions of the current permit, third-party inspection firms are able to stagger their inspection dates in such a way that they are able to maximize the time spent inspecting each construction site. Post-rainfall event inspections would cause these firms to have to inspect all of their client’s projects subject to this proposed frequency in a single day, reducing the time available to conduct a thorough inspection.

Therefore, we recommend that Section 5.5.3.3.b be modified as follows: “*Operator inspections as described in Subsection 5.5.3.8 shall be conducted twice per week ~~and following any rainfall event of more than 0.5 inches in 24 hours,~~ rather than weekly.*”

Additional Comments

- 11) Include a More Complete List of Non-Stormwater Discharges Authorized by the General Permit. In order for the draft GP to better align with construction operations as well as the authorized non-stormwater discharges promulgated by the United States Environmental Protection Agency’s Construction General Permit (Section 1.2.2), we recommend that Section 1.2.3 of the draft GP be modified as follows:

- “a) Dewatering of collected stormwater and ground water.*
- b) Waters used to wash dust and soils from vehicles and equipment where detergents are not used and detention and/or filtering is provided before the water leaves site. Wash removal of process materials such as oil, asphalt or concrete is not authorized.*
- c) Water used to control dust in accordance with Section 3.5.5 below.*
- d) Potable water sources, including waterline flushings, from which chlorine has been removed to the maximum extent practicable.*
- e) Routine external building washdown that does not use detergents or other chemicals.*
- f) Uncontaminated groundwater or spring water.*
- g) Foundation or footing drains where flows are not contaminated with pollutants (e.g., process materials such as solvents, heavy metals, etc.).*
- h) Discharges from emergency fire-fighting activities.*
- i) Fire hydrant flushings.*
- j) Landscape irrigation.*
- k) Pavement wash waters, provided spills or leaks of toxic or hazardous substances have not occurred (unless all spill material has been removed) and where soaps, solvents, and detergents are not used.*
- l) Uncontaminated air conditioning or compressor condensate.”*

- 12) Define “Best Practicable Control Technology Currently Available.” Section 4.1 introduces the term “*best practicable control technology (BPT) currently available*”; however, the draft GP does not include a definition or examples of a best practicable control technology currently available. To be consistent and avoid confusing the regulated community, the draft GP should include a definition of a “*best practicable control technology (BPT) currently available*”, including how it differs from a best management practice (BMP) already defined in Section 10.1.
- 13) Change the General Criteria and Requirements for Sediment Controls. Section 5.5.3.1.a of the draft GP states: “*Sediment controls shall be designed to retain mobilized sediment on site to the maximum extent practicable.*” The draft GP’s use of the term ‘retain’ is unnecessarily burdensome and unachievable for the permittees. Sediment controls identified in the Tennessee Erosion & Sediment Control Handbook, August 2012 (BMP Manual) are designed for a known storm event (e.g. 2-year, 5-year, etc.). A sediment control that is installed and maintained in accordance with the BMP Manual and is ‘performing’ during its design storm event will still release sediment offsite, albeit at a greatly reduced rate. The goal of the regulation is to control mobilized sediment.

For example, a sediment basin installed to meet the design criteria of 134 yd³/acre of drainage that uses a floating skimmer device to dewater the dry volume of the basin from the water surface rather than from below the surface, will still be releasing suspended sediment from the basin and the site. Additionally, silt fence installed along the perimeter of a construction site will not capture all soil types such as silts and clays due to the nature of the apparent opening size of the geotextile (i.e. #30 to #70 standard sieve for silt fence fabric without backing).

Therefore, to require the permittees to “*...retain mobilized sediment on site to the maximum extent practicable.*” is an unachievable standard that will intentionally cause the permittees to be in noncompliance with the GP. We recommend that Section 5.5.3.1.a of the draft GP be modified

as follows: “Sediment controls shall be designed ~~to retain mobilized sediment on site to the maximum extent practicable~~ to minimize the discharge of pollutants in stormwater from the construction activity.”

- 14) Change the Design Criteria and Requirements for Sediment Basins. Section 5.5.3.5, Page 34 states: “*The discharge structure from a sediment basin must be designed to retain sediment during lower flows.*” The draft GP’s requirement to “...retain sediment during lower flows” from a sediment basin is poorly defined and an unachievable standard. As previously mentioned in Comment 13 above, a sediment basin installed to meet the design criteria of 134 yd³/acre of drainage that uses a floating skimmer device to dewater the dry volume of the basin from the water surface rather than from below the surface, will still be releasing suspended sediment from the basin and the site.

Additionally, it is not clear what is meant by the term “lower flows”. Does this mean lower flow rates (ft/sec) or flows from smaller rain events (e.g. less than 0.5 inches)? The BMP Manual requires a sediment basin to have a permanent pool. Any rain event causing runoff to enter into the sediment basin will raise the water level in the basin above the permanent pool elevation and result in a discharge offsite; either through a skimmer device or a perforated vertical pipe. These two types of dewatering devices can reduce, but not prevent, the discharge of sediment from the sediment basin.

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

- 15) Remove the Requirement to Include Non-Stormwater Components of Discharge in Control Measure Design. Section 5.5.3.11 of the draft CGP proposes that the “*Estimated volume of the non-stormwater components of the discharge must be included in the design of all impacted control measures.*” The proposed requirement for the permittee to attempt to quantify the volume of infrequent, unplanned, and unanticipated flows such as foundation/footing drains, uncontaminated groundwater or spring water is impractical, burdensome, and unfeasible. In plain terms it is an engineer’s nightmare to qualify and quantify any and all unforeseen non-stormwater components, it would be practical to cite parameter for these calculations. Additionally, other non-stormwater discharges (e.g. water line flushings, dewatering of collected stormwater and groundwater, water used to control dust) are infrequent and equally burdensome to attempt to quantify during the design stage of a project.

For example, in residential construction, many portions of a project (e.g. closed individual residential lots, amenity areas, common spaces) are removed from the permittee’s area of control throughout the life of the project. When these areas are sold and deeded to the subsequent property owners, the permittee can no longer exercise control over the volume or type of non-stormwater discharge generated at each individual property.

Therefore, we recommend the following sentence be **deleted** from Section 5.5.3.11 of the draft CGP: ~~*“Estimated volume of the non-stormwater components of the discharge must be included in the design of all impacted control measures.”*~~

- 16) Add Electronic Maintenance of Inspection Reports. Section 7.2.1.b of the draft GP states: *“The permittee shall also retain the following items in an appropriate location onsite...b) a copy of all required inspection reports;”* The draft GP is inhibiting the permittees’ evolution into more efficient inspection report technologies; and, the requirement that the inspection reports be retained in hard copy form is an unnecessary burden on the permittees and provides no apparent benefit to water quality or the environment. The use of electronic inspection reporting technologies affords the permittees greater efficiencies in conducting, managing, and retaining the completed inspection reports. Additionally, keeping inspection reports electronic reduces paper consumption and the need for onsite storage of all the inspection reports conducted throughout the life of the development while covered under the GP.

Electronic inspection reporting technologies allows for bona fide e-signatures for signing and certifying the reports; provides greater transparency to the permittees; and, can be made available upon request in a timely manner via numerous types of electronic devices (e.g. laptops, tablets, smartphones, etc.).

Therefore, to better align with current industry practices and available technologies available to the permittees, we recommend that Section 7.2.1.b of the draft GP be modified as shown: *“The permittee shall also retain the following items in an appropriate location onsite...b) a copy of all required inspection reports, or the required inspection reports be electronically accessible through the permittees environmental system so that the documents can be made available at the time of an onsite inspection or upon request by the Division;”*

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Joint and several liability and “co-permittee” status should be removed from the draft TCGP for several reasons.

The Clean Water Act DOES NOT require separate operators who are distinct separate entities to be co-permittees or provide for joint and several liability for violations of an NPDES permit. Further, the EPA’s current Stormwater Construction General Permit (“EPA CGP”) issued in 2017 does not include a requirement for operators in the same development to be co-permittees or jointly and severally liable for violations of the NPDES permit.¹

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

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

Joint and several liability is unnecessary and unreasonable given that each operator on a construction site will apply for authorization to discharge under the TGCP individually, i.e., through NOIs. Also, joint and several liability is inconsistent with the EPA CGP language regarding group or individual SWPPPs. The EPA CGP states as follows: “Regardless of whether there is a group SWPPP or multiple individual SWPPPs, each operator is responsible for compliance with the permit’s terms and conditions.” See the EPA CGP, Part 7.1, Footnote No.

¹ The current EPA CGP can be found here: <https://www.epa.gov/npdes/epas-2017-construction-general-permit-cgp-and-related-documents>

53. Previous references to joint and several liability were removed from the final version of the EPA CGP, effective June 27, 2019.²

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

Based on the foregoing, we respectfully request that the second paragraph of section 2.1.1 be modified to read as follows (changes in the text are in redline and strikeout below):

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

Respectfully submitted,



Charles Schneider

CEO

Home Builders Association of Tennessee

615-777-1700

² EPA modified this language in response to petitions for judicial review of the permit filed by both the National Association of Home Builders and the Chesapeake Bay Foundation, *National Ass'n of Home Builders v. EPA*, Case No. 17-1039 & *Chesapeake Bay Foundation v. EPA*, Case No. 17-1136 (D.C. Cir. 2017). See Excerpt of changes between original 2017 CGP and final modified 2017 CGP, available at: <https://www.epa.gov/npdes/epas-2017-construction-general-permit-cgp-and-related-documents>.

On behalf of Tennessee Conservation Voters

August 2, 2021

Re: comments regarding General NPDES Permit for Storm Water Discharges Associated with Construction Activity, Permit Number: TNR100000

Dear Mr. Janjic:

I am the board president for the Tennessee Conservation Voters. TCV is a 501c4 nonprofit which monitors, reports on and advocates regarding a variety of environmental and sustainability concerns, including water stewardship and oversight. We offer these brief comments regarding TDEC's Draft General NPDES Permit for Storm Water Discharges Associated with Construction Activity. We fear that this newly proposed permit would significantly reduce protections from construction site runoff.

Our members use and enjoy waters across the state for water supply, swimming, boating, fishing and more. We urge and expect that the regulation and oversight of the Tennessee Department of Environment and Conservation will continue to place public safety first for us and future generations.

We're writing to register concerns about TDEC's proposed General NPDES Permit for Storm Water Discharges Associated with Construction Activity, Permit Number TNR 100000. We believe the draft permit would result in more pollution of Tennessee waters, and we urge TDEC to retain the protections of the existing permit.

Our members see the muddy water and silt-filled streams that result from poorly controlled construction projects. They understand that proposed changes to the existing permit—including requirements for site assessments by experts, timely site stabilization, frequent inspections, post-construction controls, and support for local stormwater programs—would all reduce protections, taking this permit in the wrong direction.

In addition to the relaxations being proposed, Tennessee Conservation Voters strongly objects to the process for reissuing this permit. As stated in the rationale document, unidentified "stakeholders" have asked for relaxations and TDEC has issued a draft that accommodates those asks without ever providing the source or content of the requests. That's simply not acceptable; Tennessee state government needs to operate in daylight. Any proposal to relax environmental protection needs to have a reasonable basis

and the discussion needs to be complete and transparent.

We appreciate this opportunity to comment and trust that the department will insist on protection of Tennessee's treasured waters. Thank you.

Sincerely,

A picture containing text
Description automatically generated



On behalf of Tennessee Conservation Voters

August 2, 2021

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We appreciate this opportunity to comment and trust that the department will insist on protection of Tennessee's treasured waters. Thank you.

Sincerely,

August 5, 2021

Paul E. Davis, PE
pedh2o@gmail.com

By email to Mr. Vojin Janjić _at Vojin.Janjic@tn.gov.

Re: General NPDES Permit for Storm Water Discharges Associated with Construction Activity
Permit Number: [TNR100000](#)

I've sent comments on July 8 and again on July 20. This comment is sent August 5, 2021, the announced last day of the extended comment period.

The draft permit now on notice will replace the present General NPDES Permit for Storm Water Discharges Associated with Construction Activity, which is set to expire on September 30, 2021. I know that TDEC needs to maintain a current general permit for construction activities. I know also that TDEC has received a number of comments that will need to be carefully considered before a new permit can issue.

In order to meet both of those objectives, I suggest that TDEC reissue the present General NPDES Permit for Storm Water Discharges Associated with Construction Activity for a period of one year.

The agency has precedent in issuing a short term extension. The [Tennessee Storm Water Multi-Sector General Permit for Industrial Activities \(MSGP\)](#) was reissued just over a year ago for a period two years to allow review EPA's anticipated MSGP prior to proposing any changes to Tennessee's permit. That was a good reason then and the impending deadline is a good reason now.

Thanks.

A handwritten signature in blue ink that reads "Paul E. Davis". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Paul E. Davis, PE
TDEC Retiree, 40+ years Tennessee state service
Water Pollution Control Director, 1988-2012
National Stormwater Center Instructor, 2012-Present
Tennessee Stormwater Association Member, 2014-Present

July 8, 2021

Paul E. Davis, PE
pedh2o@gmail.com

By email to Mr. Vojin Janjić _at Vojin.Janjic@tn.gov.

Re: General NPDES Permit for Storm Water Discharges Associated with Construction Activity
Permit Number: [TNR100000](#)

Following are my comments for the public record on TDEC's Draft General NPDES Permit for Storm Water Discharges Associated with Construction Activity. I appreciate this opportunity to participate and look forward to continuing discussions with agency staff and other interested persons after which I may have further comments.

Despite the good work of engineers, designers and inspectors, the conscientious efforts of MS4 staff and the careful attention that some developers give to managing their sites, non-compliance resulting in water pollution remains all too common at construction sites across Tennessee, continuing the unhappy assessment in the State of Tennessee's November 2018 [TNH2O](#) document, "Urban watersheds are under intense pressure from land use conversion, construction site runoff, and loss of headwater streams." I've seen dozens of these sites myself and I've been shown pictures of many more.



Construction site discharge in Williamson County. Photos by Paul Davis.

It's in view of the widespread impacts from construction site stormwater discharges and the resulting intense pressure that Tennessee waters are under that I make these comments:

1. The posted rationale is incomplete and misleading.

The permit "rationale," also called "fact sheet" or "statement of basis," is a requirement of federal rules for NPDES permit issuance. The rationale should explain in plain English how the agency has settled on what it's proposing to issue. For reissuances, best would be if it explains how each change helps the agency better achieve its mission. At TDEC that's "protecting and improving the quality of Tennessee's ... water through a responsible regulatory system" as set out on the agency's website.

The rationale presently on notice simply doesn't address or explain most of the important changes from the 2016 permit, including but not limited to those I will discuss more specifically here. I've heard directly from TDEC staff on a group call with TNSA that the agency agrees the rationale that was issued is insufficient and I appreciate that TDEC now intends to revise and reissue that rationale. The public needs its full opportunity to review the proposed draft reissuance, so the full public comment period will have to start afresh when the draft and rationale are reissued.

I understand that a red-line version of the permit doesn't make sense given the amount of restructuring that went into the 2021 draft. But the rationale document should identify each substantial change, edit, addition and deletion and for each of those set out what the 2016 permit required, what's proposed in the 2021 draft and how the agency decided to make that change - including what purpose is being served.

2. The 2021 draft would roll back TDEC's requirement that construction site operators conduct site assessments.

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

I'll attach here a couple of photos I use in my stormwater classes to illustrate the importance of having a design expert verify implementation of controls. These pictures are from different sites but together they illustrate the point I want to make – that proper implementation of plans makes a big difference in effectiveness. In both of these cases riprap is in the channel. Both installers left these sites as we see them. On the left, stone fully lines the channel so it seems well protected. The installation on the right is clearly ineffective and it's unlikely to have followed any competent plan. Had a competent designer seen the installation he or she would have explained the problem to the contractor before the channel scoured as we see it. And they might also consider how instructions might be more clear in future plans.



3. The 2021 draft proposes to cut in half construction site operators' responsibility to inspect most sites.

Inspections regularly conducted and documented by trained individuals are proven to result in faster response to problems with stormwater controls and result in better protection of waters. I have heard no objection to the present 2-per-week inspection frequency and TDEC has offered no explanation for cutting in half an inspection requirement that's been in effect for years.

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

The following photos illustrate why this is important: Both of these situations need to be corrected sooner rather than later. Every bit of silt that was in those trenches in the picture on the left or is flowing into the catch basin in the picture on the right is now choking Tennessee waters. Every stormwater inspector in Tennessee could add dozens more to the examples I'm showing here.



To protect Tennessee waters, TDEC needs to retain its 2-per-week inspection requirement.

4. In 5.5.3.4, Stabilization Practices, the new draft substitutes unclear requirements where the expiring permit is clear, specific and measurable.

The present permit requires that "Temporary or permanent soil stabilization at the construction site must be completed no later than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased."

In perhaps the most curious of TDEC's changes, the agency now proposes to substitute the phrase "within approximately 2 weeks" for "no later than 14 days."

That same section lists situations in which temporary stabilization measures are not required. Item b in that list says “Where construction activity on a portion of the site is temporarily ceased, but soil disturbing activities is planned to resume within 2-3 weeks.”

NPDES permit authorities are instructed by a court ruling commonly called the “Remand Rule” to make requirements clear, specific and measurable. Common sense says the same. These changes take Tennessee’s permit in the opposite direction. It’s indefinite language, too awkward to measure or enforce, and unclear to permittees, contractors, the public, MS4 staff and TDEC’s own staff. So these must be fixed.

And finally, it’s well accepted that minimizing exposure of disturbed areas is one of the best strategies for minimizing sediment releases to waters. Therefore the word “should” needs to be replaced with “must” in the sentence “Stabilization measures ~~should~~ must be initiated as soon as possible in portions of the site where construction activities have temporarily or permanently ceased.”

For comparison, see Part 2.2.14 a, Stabilization Deadlines, in EPA’s [Proposed 2022 Construction General Permit](#) which happens to be on notice now. Similar language is in state permits I’m familiar with, except Pennsylvania’s, where the time period is 4 rather than 14 days.

5. The 2021 draft deletes operators’ responsibility to submit documents to MS4s and comply with sediment control and stormwater management measures required by MS4s.

TDEC’s present general permit has this language at Part 3.5.6, Approved local government sediment and erosion control requirements: “Permittees must comply with any additional erosion prevention, sediment control and stormwater management measures required by a local municipality or permitted MS4 program.”

Now, in Part 1.4.4 of the 2021 draft, Submittal of Documents to Local Municipalities, proposes to reduce that to “permittees are encouraged to coordinate with the local MS4 authority prior to submitting an NOI to the division”

The 2021 rationale document explains it this way at Part 5.3: “Language requiring applicants to submit info to MS4s and comply with local ordinance is proposed for deletion.” It goes on to say “Local jurisdictions are expected to enforce their own ordinances” and information is “readily available” on TDEC’s data and map viewers. So MS4s are on their own.

TDEC must require rather than simply encourage NPDES permittees to submit Notice of Coverage and Notice of Termination if the MS4 asks for them. I’m not aware that any construction site operator has ever objected to the present permit provisions for submitting information or that there has ever been a problem. But protecting MS4 rights to information that they must have to administer their part of the NPDES program in an enforceable permit should be maintained.

Whether they like it or not, MS4s are part of the NPDES regulatory program. They’re required by state and federal rules to have programs and ordinances protecting urban waters from discharges to their stormwater systems. Tennessee’s NPDES permit must protect its MS4s and

their ability to enforce the ordinances they've been required to adopt. The 2016 language regarding compliance with local requirements, or equivalent, must be retained.

For comparison, see again EPA's draft 2022 general permit reissuance which maintains its present language requiring compliance with local requirements at parts related to treatment chemicals (2.2.13 d), disposal of recycle oil and oily wastes (2.3.1 e), storage, handling and disposal of hazardous or toxic waste (2.3.3 d. ii, iv, and vi), application of fertilizers (2.3.5 f), emergency spill notification (2.3.6), and disposal of PCB-containing material (3.2 b).

At Part 7.3, EPA's draft requires that a current copy of the SWPPP be made available at the time of an on-site inspection or upon request by "EPA, a state, tribal or local agency approving stormwater management plans." And finally, Part 7.4.1 e requires that SWPPPs must be modified to "reflect any revisions to applicable federal, state, tribal, or local requirements that affect the stormwater controls implemented at the site."

6. Tennessee's public reasonably expects to have access to plans for protection of their waters, but the 2021 draft unaccountably drops the requirement that permittees make SWPPPs available to public.

TDEC's 2016 permit, Part 6.2, Accessibility and Retention of Records, says this: "The permittee shall retain a copy of the SWPPP and a copy of the permit at the construction site (or other local location accessible to the director and the public) from the date construction commences to the date of termination of permit coverage."

The corresponding section of the 2021 draft permit is Part 7.2. Now the parenthetical phrase says "or other location accessible to the division." There's no discussion of the deletion of "public" in the rationale. Some provision for public access must be made.

This issue is cured if up-to-date versions of plans will be available on TDEC's site and if the site notice explains to readers how to access those plans. If that's the case it should be explained in the rationale.

7. It's not too late!

Every member of TDEC's staff who has been identified as having contributed to the 2021 draft has made clear that they sincerely want to issue the best possible permit and are looking for public input. That's the spirit in which I'm sending these comments. I appreciate the staff's commitment to review and act on my comments as well as those from others concerned with restoring and maintaining Tennessee waters.

Paul E. Davis, PE
TDEC Retiree, 40+ years service
Water Pollution Control Director, 1988-2012
National Stormwater Center Instructor, 2012-Present
Tennessee Stormwater Association Member, 2014-Present



Paul E. Davis, PE
pedh2o@gmail.com

July 20, 2021

By email to Mr. Vojin Janjić _at Vojin.Janjic@tn.gov.

Re: Second comment letter - General NPDES Permit for Storm Water Discharges Associated with Construction Activity

Permit Number: [TNR100000](#)

Following is my second set of comments for the public record on TDEC's Draft General NPDES Permit for Storm Water Discharges Associated with Construction Activity. I sent a first comment letter on July 8 before I saw the Updated CGP Rationale. This letter will repeat most of my earlier comments with some minor edits and add more based on the Updated CGP Rationale document.

To make this an easier read, I have italicized parts that are completely new.

I again appreciate this opportunity to participate and look forward to continuing discussions with agency staff and other interested persons after which I may have still further comments.

Despite the good work of engineers, designers and inspectors, the conscientious efforts of MS4 staff and the careful attention that some developers give to managing their sites, non-compliance resulting in water pollution remains all too common at construction sites across Tennessee, continuing the unhappy assessment in the State of Tennessee's November 2018 [TNH2O](#) document, "Urban watersheds are under intense pressure from land use conversion, construction site runoff, and loss of headwater streams." I've seen dozens of these sites myself and I've been shown pictures of many more.



Construction site discharge in Williamson County. Photos by Paul Davis.

It's in view of the widespread impacts from construction site stormwater discharges and the resulting intense pressure that Tennessee waters are under that I make these comments.

1. The posted rationale is incomplete and misleading.

The permit “rationale,” also called “fact sheet” or “statement of basis,” is a requirement of federal rules for NPDES permit issuance. The rationale should explain in plain English how the agency has settled on what it’s proposing to issue. For reissuances, best would be if it explains how each change helps the agency better achieve its mission. At TDEC, that’s “protecting and improving the quality of Tennessee’s ... water through a responsible regulatory system” as set out on the agency’s website.

I understand that a red-line version of the permit **isn’t practicable** given the amount of restructuring that went into the 2021 draft. But the rationale document should identify each substantial change, edit, addition and deletion, and for each of those set out what the 2016 permit required, what’s proposed in the 2021 draft and how the agency decided to make that change - including what purpose is being served.

The Updated CGP Rationale is an improvement over the version issued on May 11. But as I will set out in new comments below, the updated rationale still fails in most cases to explain or justify the agency’s proposal to reduce or remove protections of the present permit.

2. The 2021 draft would roll back TDEC’s requirement that construction site operators conduct site assessments.

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

I’ll attach here a couple of photos I use in my stormwater classes to illustrate the importance of having a design expert verify implementation of controls. These pictures are from different sites but together they illustrate the point I want to make – that proper implementation of plans makes a big difference in effectiveness. In both of these cases riprap is in the channel. Both installers left these sites as we see them. On the left, stone fully lines the channel so it seems well protected. The installation on the right is clearly ineffective and it’s unlikely to have followed any competent plan. Had competent designers seen the installation **they** would have explained the problem to the contractor before the channel scoured as we see it. And they might also consider how instructions might be more clear in future plans.



riprap is not extended far enough up the slope and not shaped correctly, causing scour.

Part 6.11 of the Updated CGP Rationale, Site Assessments, cites arguments from unidentified stakeholders that it's redundant for the permit to require that a design expert conduct within 30 days of commencement of construction a quality assurance assessment to verify the installation, functionality and performance of EPSC measures described in the SWPPP.

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

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

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

3. The 2021 draft proposes to cut in half construction site operators' responsibility to inspect most sites.

Inspections regularly conducted and documented by trained individuals are proven to result in faster response to problems with stormwater controls and better protection of waters. I have heard no objection to the present two-per-week inspection frequency and TDEC has offered no explanation for cutting in half an inspection requirement that's been in effect for years.

TDEC's proposed schedule of inspections would allow inspections to be as much as eleven days apart – from Monday of one week until Friday of the next week. That's much more than the present maximum of four days. It could rain every day during that time as long as the 0.50 inches in 24 hours threshold isn't exceeded.

The following two photos illustrate why this is important: Both of these situations need to be corrected sooner rather than later. Every bit of silt that was in those trenches in the picture on the left or is flowing into the catch basin in the picture on the right is now choking Tennessee waters. Every stormwater inspector in Tennessee could add dozens more to the examples I'm showing here. To protect Tennessee waters, TDEC needs to retain its twice-per-week inspection requirement.



Part 6.8 of the Updated CGP Rationale, Schedule of Inspections, says “some stakeholders” have asked TDEC to reduce operator inspections to be no more frequent than EPA’s 2021 Draft Construction General Permit that requires inspections on the schedule of one per week plus following any 0.25 inch rainfall. Twice per week is said to bring more cost but not more protection. TDEC goes on to say that it’s “unaware” of evidence of increased pollution resulting from longer periods between inspections.

In my nine years of conducting stormwater classes across the country, hundreds of MS4 staff, state staff, consultants and builders have consistently reported that compliance is directly related to inspection frequency. If inspections have any value in pollution control it’s simply illogical to conclude that reducing inspections by half will not result in more pollution.

***New pictures** – the following two photographs were taken on Sunday, July 18, just as I was preparing this second comment letter. The person who sent these to me, or for that matter anyone in a developing part of Tennessee, can find stormwater control problems like these any day they care to look. Less frequent inspections would leave problems uncorrected for longer periods of time. If situations like these stay uncorrected for longer periods, more sediment will fill Tennessee streams.*



4. In 5.5.3.4, Stabilization Practices, the new draft substitutes unclear requirements where the expiring permit is clear, specific and measurable.

The present permit requires that “[t]emporary or permanent soil stabilization at the construction site must be completed no later than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.”

In perhaps the most curious of TDEC’s changes, the agency now proposes to substitute the phrase “within approximately 2 weeks” for “no later than 14 days.”

That same section lists situations in which temporary stabilization measures are not required. Item b in that list reads, “Where construction activity on a portion of the site is temporarily ceased, but soil disturbing activities is planned to resume within 2-3 weeks.”

NPDES permit authorities are instructed by a court ruling commonly called the “Remand Rule” to make requirements clear, specific and measurable. Common sense says the same. These changes take Tennessee’s permit in the opposite direction. It’s indefinite language, too awkward to measure or enforce, and unclear to permittees, contractors, the public, MS4 staff and TDEC’s own staff. So these must be fixed.

And finally, it's well accepted that minimizing exposure of disturbed areas is one of the best strategies for minimizing sediment releases to waters. Therefore, the word "should" needs to be replaced with "must" in the sentence "Stabilization measures ~~should~~ must be initiated as soon as possible in portions of the site where construction activities have temporarily or permanently ceased."

For comparison, see [Part 2.2.14 a, Stabilization Deadlines](#), in EPA's [Proposed 2022 Construction General Permit](#) which happens to be on notice now. Similar language is in state permits I'm familiar with, except Pennsylvania's, where the time period is 4 rather than 14 days.

Part 6.7 of the Updated CGP Rationale, Stabilization Practices, says that TDEC proposes to reissue with imprecise requirements because "some stakeholders," not identified, object to inflexible application of permit requirements. In my decades of leadership of Tennessee's water pollution agency, I very rarely had any such complaints. Staff are entirely capable of applying discretion and common sense to their oversight of regulated activities. If there is a problem, it should be addressed by training rather than by issuing an ambiguous and unenforceable permit.

5. The 2021 draft deletes operators' responsibility to submit documents to MS4s and comply with sediment control and stormwater management measures required by MS4s.

TDEC's present general permit has this language at [Part 3.5.6, Approved local government sediment and erosion control requirements](#): "Permittees must comply with any additional erosion prevention, sediment control and stormwater management measures required by a local municipality or permitted MS4 program."

Now, the new draft at [Part 1.4.4, Submittal of Documents to Local Municipalities](#), proposes to reduce that to "permittees are encouraged to coordinate with the local MS4 authority prior to submitting an NOI to the division."

The 2021 rationale document acknowledges that "[l]anguage requiring applicants to submit info to MS4s and comply with local ordinance is proposed for deletion," asserting that "[l]ocal jurisdictions are expected to enforce their own ordinances" and information is "readily available" on TDEC's data and map viewers. So MS4s are on their own.

TDEC must require rather than simply encourage NPDES permittees to submit Notice of Coverage and Notice of Termination if the MS4 asks for them. I'm not aware that any construction site operator has ever objected to the present permit provisions for submitting information or that there has ever been a problem.

Whether they like it or not, MS4s are part of the NPDES regulatory program. They're required by state and federal rules to have programs and ordinances protecting urban waters from discharges to their stormwater systems. Tennessee's NPDES permit must protect its MS4s and their ability to enforce the ordinances they've been required to adopt. The 2016 language regarding compliance with local requirements, or equivalent, must be retained.

For comparison, see again EPA's draft 2022 general permit reissuance. It maintains present language requiring compliance with local requirements at parts related to treatment chemicals (2.2.13 d), disposal of recycle oil and oily wastes (2.3.1 e), storage, handling and disposal of hazardous or toxic waste (2.3.3 d. ii, iv, and vi), application of fertilizers (2.3.5 f), emergency spill notification (2.3.6), and disposal of PCB-containing material (3.2 b).

At Part 7.3, EPA's draft requires that a current copy of the SWPPP be made available at the time of an on-site inspection or upon request by "EPA, a state, tribal or local agency approving stormwater management plans." And finally, Part 7.4.1 e requires that SWPPPs must be modified to "reflect any revisions to applicable federal, state, tribal, or local requirements that affect the stormwater controls implemented at the site."

Part 6.3 of the Updated CGP Rationale, MS4 Jurisdictions, says that TDEC dropped requirements that operators in MS4 areas comply with local rules on the basis that the agency doesn't have authority to maintain the requirements it issued in 2016.

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

Other states explicitly require that operators comply with local requirements. See for example Mississippi (Permit No. MSR10, Condition S-4, "Compliance With Local Stormwater Ordinances"), Arkansas (Permit No. ARR150000, Part 1, Section B 9, "Applicable Federal, State or Local Requirements") and South Carolina (Permit No. SCR100000, 72-307. Specific Design Criteria, Minimum Standards and Specifications. A.5).

6. Tennessee's public reasonably expects to have access to plans for protection of their waters, but the 2021 draft unaccountably drops the requirement that permittees make SWPPPs available to the public. TDEC's 2016 permit, Part 6.2, Accessibility and Retention of Records, says this: "The permittee shall retain a copy of the SWPPP and a copy of the permit at the construction site (or other local location accessible to the director and the public) from the date construction commences to the date of termination of permit coverage."

The corresponding section of the 2021 draft permit is Part 7.2. Now the parenthetical phrase says, "or other location accessible to the division." There's no discussion of the deletion of "public" in the rationale. Some provision for public access must be made.

This issue is cured if up-to-date versions of plans will be available on TDEC's site and if the site notice explains to readers how to access those plans. If that's the case it should be explained in the rationale.

The Updated CGP Rationale doesn't address this change.

7. Post-Construction Stormwater – a new comment.

Part 6.9 of the Updated CGP Rationale, Post-Construction Stormwater, says no reference will be made in the CGP to post-construction requirements because only MS4s regulate post-construction stormwater discharges. That reasoning needlessly removes protection from waters in developing areas.

Section 3.5.4 of the present permit, Stormwater management, rennumbers to 5.5.3.6 in the 2021 draft. The newer and much shorter version drops all mention of steps to be taken during the construction process to control pollutants after construction operations have been completed, including those for discharges to impaired waters where SWPPPs would no longer describe measures to control pollutants from increased impervious surfaces.

Even this sentence would be removed: “All permittees are encouraged to limit the amount of post construction runoff voluntarily, if not required by local building regulations or local MS4 program requirements, to minimize in-stream channel erosion in the receiving stream.”

The proposed change would boost the likelihood that waters in developing areas, particularly where there is not an effective MS4-operated post-construction control program, will be continually degraded. For projects within MS4s, the proposed change would increase the likelihood that operators will not have planned for the post-construction controls they’re required to have in place at termination of active construction. The reissued permit needs to maintain existing protections.

8. Good Government – a new comment

TDEC’s Dataviewer system allows long-needed and much-appreciated ready public access to documents, records, reports and more. So much that would have required an exhaustive search through paper files is now available in moments. That’s good government.

Dataviewer’s documents include those associated with permit issuance. For this permit, the URL is https://dataviewers.tdec.tn.gov/pls/enf_reports/f?p=9034:34051::::34051:P34051_PERMIT_NUMBER:TNR100000

Below is a screen shot of that page, showing the first ten items under the heading "Permit Documents," posted from April 10, 2017, to July 6, 2021. They include the 2021 draft as well as the original and updated versions of the rationale. The "Comments to draft permit" document, posted July 2, 2021, contains comments and photos from five concerned citizens submitted via email between June 29 and July 2.

What’s missing from these Permit Documents are the challenges, claims, assertions and arguments of the unidentified “stakeholders” who, according to the rationale, have communicated with the department regarding this permit. Those citizens are entirely within their rights to raise concerns to the department. But their comments, and records of those communications, should, like the July 2 collection of emails, be on this page. Good government treats citizens equally.

The screenshot displays the TDEC Dataviewer interface. At the top is the TDEC logo and navigation tabs: Permits, Documents, Permit Appeals, Moratoriums, Complaints, Inspections, Eng. Plans, Hydrologic Det., Exceptional Waters, and Ambient Monitoring. Below the tabs is a search bar with fields for Site ID, Parent Site, Location, City, and County. The search results show a permit for 'State of Tennessee' at '600 Dr. M.L.K. Jr Blvd' in 'Nashville' with a 'Statewide' location.

The 'Permit Information' section on the left includes details for permit TNR100000: Permittee Name 'General NPDES Permit for Storm Water Discharges Associated with Construction Activity', Project Name 'CGP', Permit Type 'CGP', Status 'New', and Permit Rating 'M'. It also lists key dates: Application Received (11-MAY-2021), Application Complete (11-MAY-2021), Public Notice Date (06-JUL-2021), Issuance Date (30-SEP-2016), Effective Date (01-OCT-2016), and Expiration Date (30-SEP-2021).

The 'Permit Documents' section on the right shows a list of documents with columns for View, File Type, Description, Document Date, and Return to Compliance. The first ten documents listed are:

View	File Type	Description	Document Date	Return to Compliance
	Rationale	Updated CGP Rationale July 2021	06-JUL-2021	-
	Email	Comments to draft permit	02-JUL-2021	-
	Public Hearing Document	Public Hearing PowerPoint	28-JUN-2021	-
	Rationale	2021 CGP rationale	11-MAY-2021	-
	Draft Permit	2021 CGP Draft permit	11-MAY-2021	-
	Letter	D.R. Horton Site Inspection Report Form Equivalency ltr - 5FEB21	05-FEB-2021	-
	Letter	Krogers Inspection Report Form Equivalency ltr - 22JAN21	22-JAN-2021	-
	Letter	Lenner BMP Inspection Report Form Equivalency ltr - 2NOV20	02-NOV-2020	-
	Letter	Pratt and Associates Monthly Inspection Report Form Equivalency ltr - 3-16-18	16-MAR-2018	-
	Letter	PulteGroup TN Division Site Inspection Report Form Equivalency ltr - 4-10-17	10-APR-2017	-

At the bottom right of the document list, it says 'row(s) 1 - 10 of 78' and a 'Next' button.

9. It's not too late!

Every member of TDEC's staff who has been identified as having contributed to the 2021 draft has made clear that they sincerely want to issue the best possible permit and are looking for public input. That's the spirit in which I'm sending these comments. I appreciate the staff's commitment to review and act on my comments as well as those from others concerned with restoring and maintaining Tennessee waters.

A handwritten signature in blue ink that reads "Paul E. Davis". The signature is written in a cursive, flowing style.

Paul E. Davis, PE

TDEC Retiree, 40+ years Tennessee state service

Water Pollution Control Director, 1988-2012

National Stormwater Center Instructor, 2012-Present

Tennessee Stormwater Association Member, 2014-Present



July 7, 2021

William R. Snodgrass - Tennessee Tower, 11th Floor
TDEC Division of Water Resources
Attention: Vonjin Janjic
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243-1102

Dear Mr. Janjic:

Pulte Group (Pulte) complies with Construction General Permits (CGPs) in twenty-nine states and we have operations in approximately fifty metro markets. We developed a National Stormwater Quality Program and work diligently to understand and implement regulatory requirements at the Federal, State and local level. We worked to craft meaningful feedback on the Tennessee Department of Environment and Conservation (TDEC) proposed TNR100000 General National Pollutant Discharge Elimination System Permit (permit) for stormwater discharges associated with construction activities. Our comments reflect our experience specifically within the USEPA's Regions 4 and 5 States where we operate.

Electronic NOIs and Reporting: The draft permit proposes the use of NPDES electronic reporting. Pulte supports the use of paperless electronic submittals on a web-based system similar to that of the United States Environmental Protection Agency (USEPA) Central Data Exchange (CDX) for not only Notice of Intent (NOI) submittals, but also for changes of information/modifications to existing permits, and Notices of Termination. To further support USEPA's eRule, Pulte requests that an electronic payment option be available, thus eliminating the need for a cover letter and check to be mailed to a TDEC field office.

Modification of an Existing Permit: Please incorporate an optional NOI Change of Information (COI) option in the proposed permit, similar to that found in 1.4.4 of the Federal Construction General Permit (CGP) and provided in the USEPA CDX, which allows a permittee to make changes to an existing permit throughout the life the site; including address changes, new contractors, new personnel contact information, **increase and decreases in area coverage** (including transfer, sale, and permanent stabilization of individual residential lots), additional discharges to Waters of the United States, or other modifications.

Pulte understands and supports an additional fee if a COI results in an increase of the total acreage of disturbance and the existing fee structure is exceeded, and that 'rolling' area of total of disturbance is prohibited. However, Pulte recommends the "10% or 5

370 Mallory Station Road, Suite 500
Franklin, TN 37067



acres" limit on the increase in acreage of disturbance be removed from the proposed permit, as we are unaware of any technical criteria used to establish this numerical limit.

Prohibition on Large Site Disturbances: Pulte supports the removal of the "50-acre disturbance limit" from the permit for sites where construction site storm water runoff **does not** drain directly to a known Exceptional Tennessee Waters, Outstanding Nation Resources Waters, or Waters with Unavailable Parameters, as attempting to apply a numerical limit to the amount of soil disturbance occurring at one time at a site is considered arbitrary, and does not take into account site specific characteristics such as soil type(s), topography, construction duration, construction schedule, receiving waters, cut-and-fill balance, structural and non-structural best management practices (BMPs), etc. Additionally, 4.1.1 of the proposed permit thoroughly addresses erosion prevention and sediment controls, similar to that found in the Federal CGP. Pulte recommends 5.5.3.2 of the proposed permit be revised to:

*Construction phasing is required on all sites regardless of size as an effective practice for minimizing erosion and limiting sedimentation. It is **recommended** that construction 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. of the proposed permit exceeds construction phasing requirements set forth in the Federal CGP. Pulte recommends exemption of a permitted site from 5.5.3.3, unless the site's construction site storm water runoff drains directly to a known Exceptional Tennessee Waters, Outstanding Nation Resources Waters, or Waters with Unavailable Parameters.

Pulte recommends 5.5.3.3.b of the proposed permit be revised to the following text:

Operator inspections as described in Subsection 5.5.3.8 shall be completed at least once every seven calendar days and within 24 hours of the end of a rain event, or by the end of the following business or workday, that is 0.5 inches or greater.

Cationic Polymers: Pulte supports the prohibition of cationic polymers for the use of soil erosion and sediment control.

Stormwater Pollution Prevention Plan Updates: Pulte understands that a site presently permitted under the 2016 construction general permit shall be granted coverage under the new general permit and permit coverage will be extended automatically without notification to TDEC or an additional fee being assessed. The draft permit does not clearly state whether existing Stormwater Pollution Prevention Plans (SWPPP) are



required to be updated in accordance with the proposed permit and resubmitted to TDEC. 3.1.2 of the proposed permit states:

A modified SWPPP and a corresponding fee must be submitted by the permittee if needed to come into compliance with the requirements of the new permit.

Please clarify what constitutes a resubmittal to TDEC (changes in inspection frequency, removal of "50-acre disturbance limit", etc.). Please include the following language taken from the 2016 permit (or similar) in the proposed permit:

Operators of an existing site presently permitted under TDEC'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 no later than six months following the new permit effective date. The permittee shall make the updated SWPPP available for TDEC review upon request.

Qualification Requirements: 5.2 of the proposed permit states:

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.

Pulte recommends that TDEC not exclusively limit the qualifications of a SWPPP preparer to that of one professional organization such as a CPESC, rather follow the definition of a "Qualified Person" as defined by the Federal CGP as various professional organizations and certifications exist throughout the industry. Pulte recommends the above-mentioned permit text be replaced with the following text for consistency with the Federal CGP and that of the 2016 permit:

*The narrative portion of the SWPPP shall be prepared by an individual who has a working knowledge of erosion prevention and sediment controls, such as **(but not limited to)** a 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.*

Pulte recommends the Federal CGP definition of a "Qualified Person" be included in 10.1 Definitions of the proposed permit.



Pulte supports the existing Qualification Requirements set forth in 5.4.1.b of the 2016 permit pertaining the preparation of a SWPPP for a site that discharges to a known Exceptional Tennessee Waters or Waters with Unavailable Parameters.

Inspections: Pulte supports the reduction in site inspection frequency, as the proposed inspection frequency better reflects the Federal CGP and neighboring state's storm water compliance programs. However, please clarify the intent of the proposed permit language is to require inspections one day a week, or once every 7 calendar days. "Weekly" insinuates an inspection can be completed on a Monday, and not again completed until Friday of the following week, thus allowing for 11 calendar days between inspections.

The draft permit does not clearly address unsafe site conditions and extreme weather systems. Permittees are challenged to remain compliant during extreme weather events, national disasters and pandemics. Our intent is to comply, but sites could be inaccessible and inactive due to weather extremes. Extreme weather systems result in storm water runoff events that cannot be managed by temporary soil erosion, sediment control, and storm water BMPs, even when adequate BMPs are properly installed and maintained. Compliance with the draft permit and local ordinances cannot be maintained during extreme runoff events. Pulte recommends language similar to that of a Region 7 CGP be included in the proposed permit:

Areas inaccessible due to flooding or other unsafe site conditions shall be inspected within 72 hours of being accessible.

Please include a forgiveness clause or waiver that can be applied by permittees when good cause exists, such as an act of God, labor strike, or flood (per the USEPA NPDES Permit Writers' Manual, 2010).

Please remove sentence 2 from 5.5.3.10 as the twice weekly inspection requirement is anticipated to be not applicable.

General Comment: The proposed permit does not require public utility companies (gas, electric, phone, cable tv, water, etc.) to comply with the general conditions of a construction site's permit or a permittee's SWPPP, when the permittee is an entity other than the public utility company. Public utility companies do not consider themselves a contractor, nor does the construction industry as public utility companies operate independent of the permittees construction schedule, compliance program, and financial budget. In most instances, permittees do not have operational control over the actions of a public utility company; however, permittees currently assume the compliance risk associated with a public utility company's activities, and the financial hardship associated with best BMP installation, maintenance, and inspection. A standalone permittee should not be held liable for the actions of an entity which they do not have "operational control"



over, as defined by the Federal CGP, when those action occur within the limits of permitted site.

The proposed permit does not deter public utility companies from violating a permittees SWPPP or damaging permittee owned best BMPs, nor does it require utility companies to install or maintain their own BMPs (i.e. track out controls). Please include language in the proposed permit that either specifically binds public utility companies to a permittee's SWPPP and compliance program, requires utility companies to obtain a separate permit as part of a larger common plan of development, or clearly protects a permittee from compliance violations committed by public utilities on the permittee's site.

Pulte appreciates the opportunity to provide comments. If the team at Pulte could be of assistance or if you and your staff have questions, please do not hesitate to contact me at (847) 812-8387.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Boyer", with a stylized flourish extending to the right.

Jason Boyer
Vice President of Construction Operations – Tennessee Division
370 Mallory Station Road Suite 500
Franklin Tn, 37174
Cell 847-812-8387
Jason.boyer@pulte.com

Cc: Dave Cumming, PE – Pulte Homes of Tennessee
Casey Perry, CMS4S – Christopher B. Burke Engineering, Ltd.

From: Barbara Rosensteel <brosensteel9@gmail.com>

Sent: Friday, July 9, 2021 8:56 AM

To: Vojin Janjic <Vojin.Janjic@tn.gov>

Cc: Liz Campbell <Liz.Campbell@tn.gov>

Subject: [EXTERNAL] Comments on Proposed Rule Changes to the General NPDES Construction General Permit

To: Vojin Janjic

From:

Barbara Rosensteel, CPESC

10293 Rabbit Ridge Road

Baxter, TN 38544

Thank you for the opportunity to submit the following comments on the proposed rule changes for the General NPDES Permit for Discharges of Stormwater Associated with Construction Sites (Construction General Permit).

I am a Certified Professional in Erosion and Sediment Control (CPESC) and have both TDEC Level 1 and Level 2 EPSC certifications. I have been observing and conducting EPSC inspections on construction sites in Tennessee since 2012.

I am opposed to the proposed changes to the Construction General Permit.

These changes decrease rather than increase the environmental protection which is the Department's mandate. It is a certainty that these changes if enacted, along with the lack of enforcement of existing permits, will lead to even more environmental degradation.

I was concerned when the permit was changed in 2016 to omit the requirement for a site inspection after a rainfall. This is nonsensical because, as any Erosion Prevention and Sediment Control (EPSC) professional can tell you, during and after a rainfall is exactly when we want to inspect a site to see if the control measures are working as planned and to identify needed repairs.

Now in 2021, the proposal to reduce the inspection frequency to once per week instead of twice for sites under a certain acreage is a step backwards in resource protection. What if an inspection is done on Monday, then on Tuesday or Wednesday there is significant rain (intense and/or high volume). Any malfunctioning or damaged EPSC measures will not be identified until the following Monday. Much damage can be done to an aquatic resource with a failing EPSC control over 6 or 7 days. We cannot count on the construction manager and crews to see these things, much less repair them, as that is not their job or their area of expertise.

Unmanaged runoff from a 5-acre site can do as much damage to an aquatic resource as unmanaged runoff from a 51-acre site. The potential for degradation is NOT dependent on the size of the site but on the appropriate use and integrity of the erosion protection and sediment control measures - Which rely on inspections.

For example, I have photos of an under 5 acre site where EPSC measures were installed incorrectly and not maintained, resulting soil pouring into a perennial headwater stream smothering the natural substrate. The twice-weekly inspection forms reported that the site was in compliance and that there were no deficiencies or failures and no water quality impacts. I have direct information and photos of a 10+ acre site that under the terms of the permit was required to have a sediment basin or equivalent. It did not, and had been pouring muddy water and PAM directly into a stream every time it rained. I was dismayed when the TDEC representative told me (after seeing the site on a sunny day), that he didn't see anything going into the stream and that the site was in compliance.

Which brings me to my next point. TDEC exercises no oversight or inspections of construction sites and does so only when they receive a complaint from a member of the public. The entire

permit is based on an honor system – That the permittee will police themselves and remain in compliance. Voluntary compliance with environmental regulations has never been shown to work, especially if there is no oversight and accountability.

TDEC will visit a site only in response to a complaint from the public. In my experience, when TDEC does these complaint-based site visits, the TDEC representative typically does not recognize, or ignores, when there is a permit violation, downplays the deficiencies, and gives the developer far too much time and leeway to fix the problem. The developers do not comply in the first place because they know will not be caught and, if caught, will face no penalties for non-compliance.

TDEC needs to have experienced staff with the proper credentials (i.e. CPESC; Level 2 certification) to conduct spot inspections of permitted sites, review for full compliance with the permit requirements, and to have the imprimatur from the Commissioner to issue Corrective Actions and Notices of Violation (NOV).

TDEC also needs to have a stronger certification program for EPSC inspectors. The current program certifies a person to conduct Level 1 EPSC inspections after less than 8 hours of “training” (with no field component) and passing a multiple-choice open-book exam. Many of the attendees are there because their employers sent them in order that they can have an employee to do the inspections, and do not have any prior experience or education in EPSC. Many of these inspectors have a clear conflict of interest because of their status as employees or contractors of the permittee and cannot be independent and impartial. How else to explain the completed and signed forms I have seen that indicated no deficiencies for a site where silt fences were collapsed and the stream was filled with sediments?

Non-point source sediment pollution is the largest pollutant in our streams and waterways. We should be doing more to prevent degradation, not less. Instead of weakening the rules, we need to make them stronger. But stronger rules are only as good as their enforcement. A priority for TDEC should be to strengthen the rules, conduct oversight and spot inspections for the Construction General Permit with EPSC professionals, and to enforce the rules.

To close, I oppose the proposed rule changes as they weaken rather than strengthen environmental protection, and oppose any further weakening of the rules for the Construction General Permit.

From: Ann Strange <strangersrus@gmail.com>
Sent: Monday, July 5, 2021 1:53 PM
To: Vojin Janjic <Vojin.Janjic@tn.gov>
Subject: [EXTERNAL] Do not relax rules for construction sites

I believe that TDEC currently does not enforce rules strictly enough for construction sites. You allow developers too much leniency when they break current rules. The permitting process is NOT onerous and is necessary to ensure the environment is not destroyed by runoff and destruction of land.

I think silt fences don't work very well, especially when runoff has already occurred to reach the fences! It is TDEC's job to permit and monitor environmental projects and it is NOT doing the job when it considers relaxing the permitting and monitoring processes.

Thank you,

Ann Strange
307 Lake Forest Drive
Knoxville, TN 37920

From: Cindy Kendrick <cindy4hiking@gmail.com>

Sent: Monday, July 5, 2021 9:26 AM

To: Vojin Janjic <Vojin.Janjic@tn.gov>

Subject: [EXTERNAL] Please don't reduce stormwater permitting for construction projects

Dear Vojin Janjic,

As a Knox County resident dependent on clean water and a recreational user of our state's beautiful streams, rivers, and lakes, I am gravely concerned about the state's proposal to reduce oversight of stormwater runoff from construction sites. Silt is, of course, a major pollutant in our waters, and our muddy streams and rivers bear witness to already inadequate controls. This pollutant renders our waters much less suitable and attractive for recreation, deadly for some key aquatic plants and animals, and more expensive to treat for residential and industrial use.

Across the state, community groups have worked hard for years to clean up local streams. In our county, for example, Beaver Creek water quality is laboriously being improved through education, private action, monitoring, cleanups, and more. Public access points have been built and a blue way is being created. Beaver Creek isn't as muddy and unappealing as it once was, but it is vulnerable every day to activities in its watershed. The hard-fought gains such as those at Beaver Creek can easily be lost without regulatory support and enforcement.

If a speedier permitting process is desired, adding TDEC staff seems a less costly and more effective path in the long run than reducing oversight in our watersheds. Construction projects, ever-attuned to reducing costs, will almost always be done with the minimum required, the minimum enforced. The public, including neighbors and others who use water downstream, should have the opportunity to comment on big projects.

The proposed rule changes would drag us backward in our struggle to clean up our waters. It may not meet required Clean Water Act standards. It may not effectively support local watershed protection requirements. While it may appease some business interests, it does not appear to be in the best interest of the citizens of our state. I urge TDEC to retain existing requirements and inspection schedules. We all depend on clean water. Disallowing and preventing polluting actions is vital to public welfare.

Sincerely,
Cindy Kendrick
Knoxville

From: Laura Still <eunicehat865@gmail.com>
Sent: Monday, July 5, 2021 8:47 AM
To: Vojin Janjic <Vojin.Janjic@tn.gov>
Subject: [EXTERNAL] Relaxing rules on storm water permitting

Dear Vojin Janjic,

I am concerned about the plan to allow developers to forego getting a storm water permit and relaxing the rules in general. Developers in this area have shown over and over that they care only about the potential profit in a project and aren't concerned about environmental impact. They need more oversight, not less.

Laura Still

From: Brady Watson <brady.watson22@gmail.com>
Sent: Monday, July 5, 2021 11:47 AM
To: Vojin Janjic <Vojin.Janjic@tn.gov>
Subject: [EXTERNAL] stormwater permit changes

Hello,

Please do not relax rules for permitting and monitoring of stormwater runoff at construction sites. We need to keep these in place to protect our rivers and streams and should be strengthening these regulations, not weakening them.

thank you,

Brady

From: judy loest <jmcloest@gmail.com>
Sent: Wednesday, July 7, 2021 11:24 AM
To: Vojin Janjic <Vojin.Janjic@tn.gov>
Subject: [EXTERNAL] Stormwater Permit Regulation

I strongly object to the proposed removal of a requirement for requiring a stormwater permit for any development that will disturb 50 acres of land or more. "Streamling" protective policies seems to be politics-speak for gutting...everything from voting rights, to gun permits, to, most disturbingly, environmental protections.

Oh, to live in a world where decision/policy makers rely on science and not the party line, which now seems to be mostly driven by greed.

Judy Loest
Knoxville

From: Hardwig, John Robert <jhardwig@utk.edu>
Sent: Monday, July 5, 2021 8:26 AM
To: Vojin Janjic <Vojin.Janjic@tn.gov>
Subject: [EXTERNAL] Gov. Lee's proposed stormwater proposal

Mr./Ms. Janjic:

I write to register my objection to Gov. Lee's proposed reduction of the inspections required for new building sites. Many Tennessee communities are already facing major difficulties handling stormwater run-off. And the run-off is polluting Tennessee streams and rivers.

The rationale provided by TDEC is very thin: "A TDEC official said the proposed revisions are "an effort to streamline the permitting process." C'mon, Gov, gimme a break -- the big holdups in permitting are not due to the required stormwater inspections.

Thanks for registering my objection.

John

John Hardwig
810 Oak Grove Lane
Knoxville, TN 37919

From: Linda Billman <linbillman@gmail.com> Sent: Monday, July 5, 2021 8:03 AM To: Vojin Janjic <Vojin.Janjic@tn.gov> Subject: [EXTERNAL] Construction site permitting

Tennessee's waterways are vital to our health and aquatic life, are one of our main industries tourism, and are already under pressure from construction runoff. As climate change makes managing rainwater runoff more challenging and development increases the TDEC should have

MORE not less oversight of developers. I oppose the proposed changes in the permitting and inspection process. Thank you -Linda Billman

Linda Billman

linbillman@gmail.com

865-719-1815

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

I am writing in opposition to the proposed new construction stormwater permit revision (Proposed Revisions to General NPDES Permit for Storm Water Discharges Associated with Construction Activity Permit Number: TNR100000). Every Tennessean understands that sediment from stormwater is a problem in the state; some even know it's the leading cause of pollution. As with all permits, stormwater management should be as stringent as necessary to fulfill the goals of the Tennessee Water Quality Control Act (TCA 69-3-102, The Act). The Act states in plain English that "...the public policy of Tennessee that the people of Tennessee...have a right to unpolluted waters and that the government of Tennessee has an obligation to take all prudent steps to secure, protect, and preserve this right." This bears repeating: "The government of Tennessee has an obligation to take all prudent steps to secure, protect, and preserve this right [of unpolluted waters]." The Act goes on to make clear that TDEC has an obligation to—among other things—prevent the future pollution of the waters. Proposed changes to the existing permit to set a fifty-acre individual permit threshold and to limit inspections run contrary to the Act that has served Tennesseans well for several decades.

Tennesseans expect to see the words of the Act mean something. I oppose this rule change which would have the effect of limiting TDEC's tools to address runoff sediment from construction sites.

David Duhl
Citizen

Sent via Vojin.Janjic@tn.gov

July 24, 2021

Tennessee Department of Environment and Conservation
Nashville, Tennessee

**RE: RESPONSE COMMENTS – GENERAL NPDES PERMIT FOR STORMWATER
DISCHARGES**

Permit Number: TNR100000

Mr. Janjic:

In response to your request for public comments concerning the proposed revisions to the General Permit for Stormwater Discharges, Tennessee Scenic Rivers Association offers the following.

The Tennessee Scenic Rivers Association (TSRA) is a paddling organization based in Nashville, Tennessee. Protecting clean water and free-flowing rivers in Tennessee is one of TSRA's core missions. We represent approximately 600 members interested in paddling rivers, cleaning up waterways, and generally protecting this vital resource within our state.

Our organization is keenly interested of development pressures impacting waters of the state. It is our organization's opinion the proposed changes to the General Permit for Stormwater Discharges from Construction Sites will negatively impact the water quality of streams and rivers in Tennessee.

Below are our comments:

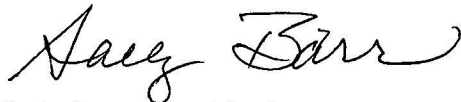
1. The reduction in site assessments by the operator will result in poor construction practices. Since there will be less oversight of the construction of a development, the operator will obviously feel less need to properly protect the site from discharge of sediment and construction materials. In addition, the deletion of site assessments for sites less than fifty (50) acres appears to be particularly troublesome. As a practical matter, there would be no oversight of construction practices by the regulators for sites less than fifty acres.
2. The reduction of operator inspections from twice per week to once per week weakens the permit requirement. There should be no change from the 2016 permit conditions for this requirement.

3. The rollback of the operator's responsibility to submit reports to MS4s and comply with MS4 rules and regulations. There should be no change from the 2016 permit conditions for this requirement.

We appreciate your consideration of our comments. If you have any questions or need additional information, please do not hesitate to contact us.

Sincerely,

TENNESSEE SCENIC RIVERS ASSOCIATION

A handwritten signature in cursive script, appearing to read "Sally Barr".

Sally Barr, President

Cc: Ms. Jennifer Dodd, Division of Water Resources, TDEC
U.S. Environmental Protection Agency, Region IV
Donnie Safer, TSRA
Daniel Boone, TSRA

Sent via Vojin.Janjic@tn.gov

July 24, 2021

Tennessee Department of Environment and Conservation
Nashville, Tennessee

**RE: RESPONSE COMMENTS – GENERAL NPDES PERMIT FOR STORMWATER
DISCHARGES**

Permit Number: TNR100000

Mr. Janjic:

In response to your request for public comments concerning the proposed revisions to the General Permit for Stormwater Discharges, Tennessee Scenic Rivers Association offers the following.

The Tennessee Scenic Rivers Association (TSRA) is a paddling organization based in Nashville, Tennessee. Protecting clean water and free-flowing rivers in Tennessee is one of TSRA's core missions. We represent approximately 600 members interested in paddling rivers, cleaning up waterways, and generally protecting this vital resource within our state.

Our organization is keenly interested of development pressures impacting waters of the state. It is our organization's opinion the proposed changes to the General Permit for Stormwater Discharges from Construction Sites will negatively impact the water quality of streams and rivers in Tennessee.

Below are our comments:

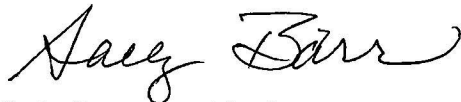
1. The reduction in site assessments by the operator will result in poor construction practices. Since there will be less oversight of the construction of a development, the operator will obviously feel less need to properly protect the site from discharge of sediment and construction materials. In addition, the deletion of site assessments for sites less than fifty (50) acres appears to be particularly troublesome. As a practical matter, there would be no oversight of construction practices by the regulators for sites less than fifty acres.
2. The reduction of operator inspections from twice per week to once per week weakens the permit requirement. There should be no change from the 2016 permit conditions for this requirement.

3. The rollback of the operator's responsibility to submit reports to MS4s and comply with MS4 rules and regulations. There should be no change from the 2016 permit conditions for this requirement.

We appreciate your consideration of our comments. If you have any questions or need additional information, please do not hesitate to contact us.

Sincerely,

TENNESSEE SCENIC RIVERS ASSOCIATION

A handwritten signature in cursive script, appearing to read "Sally Barr".

Sally Barr, President

Cc: Ms. Jennifer Dodd, Division of Water Resources, TDEC
U.S. Environmental Protection Agency, Region IV
Donnie Safer, TSRA
Daniel Boone, TSRA



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August 5, 2021

RE: TEC Comments regarding TNR100000 permit renewal

To Whom It May Concern:

Tennessee Environmental Council (TEC) opposes the proposed weakening of the "General NPDES Permit for Storm Water Discharges Associated with Construction Activity, Permit Number TNR100000." Our reasons for opposing these changes include the following:

- 1) Clean water is vital to the continued well-being of Tennessee residents and the ongoing economic prosperity of our state. The proposed changes endanger both of these essential qualities that make Tennessee an appealing place to live, work and enjoy.
- 2) TDEC itself, in Part 3 of the Rationale document, recognizes silt as "one of the primary pollutants in Tennessee waterways." It's undeniable that construction site stormwater discharges are a major source of pollution in developing parts of our state.
- 3) Silt pollution results in increased cost to Tennessee's public water supplies, impairment of habitat for fish and aquatic life, and degraded opportunities for boating and swimming.
- 4) No compelling rationale has been offered for weakening the current permit and the process for making these changes has not been transparent. Stakeholders advocating for these permit changes and their arguments have not been disclosed to the public. In the interest of transparency and sound public involvement in this important process, the public deserves to know what stakeholders are proposing the weakened permit criteria.

Feel free to contact me if you have any questions about TEC's comments and position on this important matter.

Sincerely,

Jeffrey Barrie, CEO

jeff@tectn.org

Tennessee Environmental Council

One Vantage Way, Suite E-250, Nashville, TN 37228 www.tectn.org tec@tectn.org 615-248-6500

Board of Directors: Erika Godwin-Saad (Chair) | Jimmie Welch III (Secretary) | Lloyd Baker (Treasurer) | Corey Chatis
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August 5, 2021

TDEC – Division of Water Resources
William R. Snodgrass TN Tower, 11th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1534

ATTN: Mr. Vojin Janjic

Subject: **Draft TNCGP Comments**
TNR100000
Tennessee

Dear Mr. Janjic:

GEOservices, LLC (GEOservices) appreciates the opportunity to provide comments for the new Tennessee Construction General Permit (TNCGP). There are several changes to the TNCGP that will affect our private sector environmental consulting business, and we are glad to be able to offer our concerns, knowing this will go into the official public record.

COMMENTS

1) Twice Weekly Inspections

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

2) Quality Assurance Site Assessment (QASA)

The QASA requirement in the expiring permit held engineers to their designs, and helped ensure EPSC measures were installed properly. The engineer/consultant would be sure to have the project move forward correctly, which would make contractors and permittees more likely to succeed in

keeping sediment from migrating away from work areas. Removing the QASA requirement will only reduce compliance, and will very likely increase the probability of permittees and contractors becoming found in non-compliance sometime in the project.

3) PE Stamp Requirement

The new TNCGP language in Section 5.2 that allows for sites greater than five acres of disturbance to have a Storm Water Pollution Prevention Plan (SWPPP) be developed by various specialists is inappropriate. SWPPPs that have technical information related to the discharge of construction stormwater should be developed by a Professional Engineer (PE), licensed to work in the State of Tennessee. While a Certified Professional in Erosion Control, or Level II Certification provides a lot of background in sediment migration and water dynamics, there is no better option than requiring a licensed PE to develop the SWPPP.

GEOServices appreciates the opportunity to provide you with the comments for the Draft TNCGP. If you have any questions or comments, please contact us at (865) 539-8242.

Respectfully submitted,
GEOServices, LLC



Jason Mann, PE, TN-QHP
Environmental Project Manager



Memorandum

To: Vojin Janjic

From: Tennessee Stormwater Association Membership

Date: August 5, 2021

Subject: Compilation of TNSA Member Comments Submitted on Proposed Permit TNR100000

The TNSA Policy Committee solicited review comments from TNSA members on the Proposed Permit TNR100000. The comments received are provided below and are submitted here on behalf of our large and diverse membership. Should you have any questions or wish to discuss these comments with TNSA, please do not hesitate to contact us.

- ❖ Rationale Sheet does not explain why many changes were made. Please elaborate and explain the permit changes. This should be a requirement to issue a permit. (comment was sent before updated rationale was posted)
- ❖ 2.1.3 The term 'should' is used throughout the permit. Definitive language in certain areas needs to be 'shall' and not 'should'
- ❖ 5.2 SWPPP template, Attachment A, is unavailable
- ❖ Consider making it more definitive as to what kind of site SWPPP can be submitted with fewer requirements. Commercial sites need a more detailed SWPPP.
- ❖ Language needs to be consistent with DWR–NR–G–02 Construction Stormwater – 05172019 Guidance regarding construction stormwater general permit coverage involving sites with Non-Engineer Design SWPPPs. The document states under “GUIDANCE” that if any of the questions were answered yes then SWPPP must contain a registered architect or engineer designed component. Number one from this section, “Does the construction site discharge to receiving waters with unavailable parameters for siltation or habitat alterations, or that are Exceptional Tennessee Waters?” fails to be captured/reflected in the language of Section 5.2.
- ❖ 5.5.3.1(i) - Temporary EPSC measures removed during the day provide zero treatment during a rain event. Add language in bold. *EPSC measures must be in*

*place and functional before earth moving operations begin and must be constructed and maintained throughout the construction period stages as appropriate. Temporary measures may be removed at the beginning of the workday but must be replaced at the end of the workday **and prior to any rain event.***

- ❖ 5.5.3.1(i) & 5.5.3.4 “Temporary measures” is presented to be defined, but is not defined under the definition section.
- ❖ 5.5.3.4 - Definitive time frames should be stated. Enforcement will be difficult given the time frames as stated in the draft.
- ❖ 5.5.3.4(b) - Definitive time frames should be stated. Enforcement will be difficult given the time frames as stated in the draft.
- ❖ 5.5.3.5 Paragraph 5 - Provide clarification and/or explanation for “alternative design procedure.”
- ❖ 5.5.3.10 Schedule of Inspections – Available Parameter Streams
 - 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.
The industry is use to twice weekly inspections. I.E. – (If available parameter sites go to once a week inspections then technically the site could go 11 days without inspection, which could mean a site is only inspected 3 times a month. BMPs are knocked down daily and non-priority sites need these inspections in order to make sure the site stays healthy and in compliance. Small municipalities may not have inspections set up monthly so you would end up with very little oversight.)
- ❖ 6.4.1(c) - Is the intent for discharges to waters with unavailable parameters to be inspected twice weekly or is this a typo? Inspections should be twice weekly regardless of impairment.
- ❖ Site assessment section should be added back to the permit for < 50ac. – I.E. – (The certification level is different for the individual inspecting the site as a Level 1 EPSC for the twice-weekly and the requirements for the site assessment as a Level 2 EPSC, LA, or PE)
- ❖ A site assessment form added to the permit as an attachment would be very helpful.

- ❖ There appears to be some back and forth from “streams” and “stream and wetlands.” Language throughout the permit needs to be modified to remain consistent throughout.
- ❖ 6.4.1 – Section should mirror the previous permit requirements and include waters with unavailable parameters for habitat alterations. Definition of unavailable parameters should be updated as well.



August 3, 2021

Mr. Vojin Janjic
Tennessee Division of Water Resources
William R. Snodgrass Tennessee Tower, 11th Floor 312
Rosa L. Parks Avenue Nashville, TN 37243-1534

Re: NPDES General Permit for Discharges of Stormwater Associated with Construction Activities, Permit Number: TNR100000

By email to Mr. Vojin Janjić _at Vojin.Janjic@tn.gov

Dear Mr. Janjic,

The Tennessee Wildlife Federation appreciates an opportunity to provide comments on TDEC's Draft NPDES General Permit for Discharges of Stormwater Associated with Construction Activities. Our organization served as a primary author of the TN H2O Natural Resources recommendations. At the time that this report was written, TDEC's 303(d) list (the then most current listing of impaired waters) showed that, "42% of assessed rivers and streams were listed as impaired for fish and aquatic life, 51 percent were impaired for recreational uses, and about 33 percent of reservoirs were impaired for their designated recreational uses." According to the 2014 305(b) report, "Pollutants such as sediment/silt, habitat alteration, pathogens, and nutrients are the leading causes of impairment in Tennessee streams and rivers."

As development occurs increasingly statewide, it's imperative that it's done in a way that is most protective of our state's precious natural resources. We strongly oppose any weakening of requirements and environmental protections afforded by the current NPDES General Permit for Discharges of Stormwater Associated with Construction Activities that will lead to increases in habitat degradation and sedimentation. Specifically, the Federation offers the following comments as our primary concerns:

- The 2021 draft would roll back TDEC's requirement that construction site operators conduct site assessments (on sites less than 50 acres disturbed at any one time, except in cases where there is drainage to waters with unavailable parameters or exceptional Tennessee Waters). In Tennessee, the water quality of streams are threatened by habitat degradation, nutrients, pathogens and sediment. Development is a primary source of sedimentation. Given this, it's especially unclear as to why there would be a lessening of requirements for construction site operators on previously protected sites when sedimentation is so clearly a major threat and problem for our state's waterways. The department has provided no data or justification for the need for this change, and therefore we ask that it be removed from consideration. It would be helpful for the department to better describe the current problem that the existing requirement is creating, or provide information that it is ineffective, so that a meaningful discussion may be had as to how best to address any concerns.

- The 2021 draft permit proposes to significantly cut construction site operators' responsibility to inspect most sites. As previously mentioned, sediment is a major contributor to Tennessee's water quality impairments under the current permit, it is not reasonable to think that this change will result in adequate protection of water of the state. By cutting the schedule from 2 times a week in half, we believe it leaves streams unnecessarily vulnerable. Again, we welcome any information, data or examples of why this existing requirement is problematic or ineffective, as none have been given. If we can better understand the need for this change, we are happy to discuss alternative approaches should they be needed.
- The 2021 draft deletes operators' responsibility to submit documents to MS4s and comply with sediment control and stormwater management measures required by MS4s. TDEC proposes changing the language in Part 3.5.6, Approved local government sediment and erosion control requirements: "Permittees must comply with any additional erosion prevention, sediment control and stormwater management measures required by a local municipality or permitted MS4 program." This is now addressed as a reduced requirement, in Part 1.4.4 of the 2021 draft, Submittal of Documents to Local Municipalities, to "permittees are encouraged to coordinate with the local MS4 authority prior to submitting an NOI to the division." MS4s are an integral part of the NPDES regulatory program and having access to critical information from the permittees is of paramount importance. Again, it is unclear as to why this change is needed, as no evidence to any problem or lack of effectiveness of this requirement has been provided. We would like to better understand why this change is being sought.
- TDEC should continue to require that Stormwater Pollution Prevention Plans (SWPPPs) are made readily available to the public who have a right to know how waters in the public trust will be protected. While TDEC is requiring that permittees retain a copy of the SWPPP and the location of the SWPPP be publicly visible at the construction site, up to date plans should be made available on TDEC's website, so that all public stakeholders statewide can easily access them.

To protect the integrity of Tennessee's watershed health for water supply, fish and wildlife to the fullest extent, we urge that TDEC do all that the agency can to strengthen, not weaken, the NPDES General Permit for Discharges of Stormwater Associated with Construction Activities. We would request a face to face meeting to better understand the reasons behind these changes, and the rationale as to how they will protect waters of the state.

Sincerely,



Michael Butler
CEO