STATE OF TENNESSEE
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

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

Stormwater Multi-Sector NPDES General Permit for Industrial Activities (TMSP)
Permit No. TNR050000

April 2, 2015

Administrative Record

The permit rationale (or fact sheet) dated December 15, 2014, sets forth the Division of Water Resources' (the division) basis for permit conditions to be applied statewide for the issuance of the new Tennessee National Pollutant Discharge Elimination System (NPDES) General Multi-Sector Permit for Discharges of Stormwater Associated with Industrial Activities (TMSP). The TMSP is intended to authorize stormwater discharges to waters of the State of Tennessee from industrial facilities.

The current TMSP expired on May 14, 2014. On December 15, 2014, the division issued Public Notice number MMXIV-022 (requesting public comments on the draft permit) as well as a public notice number NOPH14-017, which announced the public hearing. The public hearing was held pursuant to Rule 0400-40-5-.06 (8) at the following time and locations:

Location:	312 Rosa L. Parks Avenue William R. Snodgrass – Tennessee Tower Nashville Room, 3rd Floor
Date:	Thursday, January 29, 2015
Informational Session [1]:	12:00 Noon Central Time
Public Hearing:	1:00 PM Central Time

[1] The informational session had a question and answer format and included a presentation by TDEC staff on the proposed permit action.

In addition, the public hearing was available by video conference at the following Environmental Field Offices (EFOs):

Eastern Time Zone

EFO	Location	Phone No.
Chattanooga	540 McCallie Avenue, Suite 550	(423) 634-5745
Johnson City	2305 Silverdale Road	(423) 854-5400
Knoxville	3711 Middlebrook Pike	(865) 594-6035

Central Time Zone

EFO	Location	Phone No.
Jackson	1625 Hollywood Drive	(731) 512-1300
Cookeville	1221 South Willow Avenue	(931) 432-4015
Columbia	1421 Hampshire Pike	(931) 380-3371
Memphis	8383 Wolf Lake Drive, Bartlett	(901) 371-3000

Copy of the draft TMSP permit was made available in an electronic format on the division's web site at http://environment-online.state.tn.us:8080/pls/enf_reports/f?p=9034:34051:::NO:34051:P34051_PERMIT_NUMBER:TNR050000. The proposed NPDES permit was drafted in accordance with the provisions of the Federal Water Pollution Control Act, the Tennessee Water Quality Control Act, and other lawful standards and regulations. The division received comments through February 17, 2015. This Notice of Determination (NOD) serves as the division's response to questions, comments and issues that were raised at the hearing and/or submitted during the subsequent comment period.

Comments and Responses to Comments

Comments included in this NOD document were compiled based on their relevance to the permit content, intent and interpretation of the draft permit and governing rules. The division must consider all comments, but can address only comments relative to water quality or quantity in making final permit determinations (i.e. those under our regulatory jurisdiction). Therefore, comments that were not directly related to either water quality or quantity are a part of the permit file, but were not itemized in this NOD. Furthermore, comments that were similar in content were combined and addressed as a single entry. This NOD serves as the division's response to questions, comments and issues that were raised at the hearing and/or submitted during the subsequent comment period. It also presents TDEC's decision regarding the permits and the rationale for that decision.

Part/Section	**Comment**
General	All documents required to be available to the Director must also be made available to the public upon request.

Response:

All documents, except for those considered attorney-client privileged information, are available to the public on TDEC's Dataviewer or upon request to the division staff.

Part/Section	Comment
General	How were the parameters and corresponding "*cut-off concentrations*" from the Annual Storm Water Monitoring Report (Addendum D) selected? Was consideration given to background concentration of various pollutants (e.g. Magnesium) and to their MDLs? Parameters and corresponding "*cut-off concentrations*," when compared with data from **non-industrial** stormwater runoff, are not much different. In many states, "*cut-off concentrations*" are becoming permit limits in all but name. Background concentrations of various pollutants, even without any associated industrial activity being present, sometimes exceeds "*cut-off concentrations.*" Either the "*cut-off concentrations*" should be eliminated altogether, or replaced with values that are 2 (or more) times higher, so that fewer exceedances are reported.
Part/Section	**Comment**
General	In general, the TMSP's benchmarks are too high to ensure water quality protection.

Response:

All parameters and corresponding "cut-off concentrations" in all versions of TMSPs were adopted from the EPA's multi-sector permit ("benchmark limits"). There has been at least 4 permit cycles to date, both in TN and on a federal level, where these parameters have been used as indicators of stormwater runoff quality. "Cut-off concentrations" have never been used to establish facility's compliance status, i.e., in lieu of effluent limitations. Parameters found on EPA's original list were selected based on various urban stormwater runoff studies. For a comprehensive list of such studies, visit http://water.epa.gov/polwaste/npdes/stormwater/ and an EPA docket number Docket ID: EPA-HQ-OW-2012-0803-0002. Again, "cut-off concentrations" are not limits and are not enforceable in a traditional sense of municipal or industrial wastewater discharges. A number of other comments and responses were with respect to cut-off concentrations and benchmark values – see below text for more information.

Part/Section	Comment
General	TDEC should protect Tennessee waters from polycyclic aromatic hydrocarbons ("PAHs") by prohibiting the use of any pavement sealant product containing coal tar at permitted industrial facilities as a narrative effluent limitation. Many outdoor surfaces at industrial facilities are paved. A large number of these paved surfaces are also "sealed." Many of these sealants are made from coal tar, a toxic by-product of the coal coking process. Coal tar pavement sealants frequently containing hundreds of times more PAHs than competing sealant products made from asphalt.

Response:

Pavement sealant products are used on many urban and suburban areas, as well as practically all asphalt paved surfaces across the nation. Use of pavement sealant products at facilities covered by the TMSP is a marginal fraction of an overall product use. A ban on pavement sealant products only at TMSP facilities would have no measurable impact on water quality given their ubiquitous application. In addition, pavement sealant products significantly extend a functional life of paved surfaces. Furthermore, in the permit writer's opinion, it is a dubious trade-off to ban the use pavement sealant products only for the same area to be completely repaved with fresh asphalt (as a typical alternative). However, the commenters make a good point that coal-tar based sealants contain much higher concentration of PAH's when compared to asphalt-based sealers. While prohibition of pavement sealant products at TMSP facilities exceeds the scope of this permit, the following recommendation will be placed in the general part of the permit (Section 4.5 - Additional SWPPP Requirements):

4.5.5. Use of Pavement Sealant Products

Use of asphalt-based instead of tar-based pavement sealant products is encouraged to minimize discharge of PAHs from industrial facilities. Additionally, painting is not recommended under wet weather conditions.

Part/Section	**Comment**
General	DWR should post NOIs, SWPPPs, NOCs, DMRs, and other key documents on its online permits dataviewer.

Response:

Every effort has been made to scan and upload every document DWR receives or generates while implementing this general permit. This includes not only TMSP-related documents, but also documents associated with all other regulated activities. DMRs, however, are not stored in our database, but many can be obtained using EPA's on-line tools. We intend to continue publishing documents on the Dataviewer, and convert to a paperless document management system.

Part/Section	**Comment**
General	The TMSP should exclude all discharges of pollutants to water bodies that are impaired as a result of that pollutant. Alternatively, the TMSP must require at least monthly monitoring and reporting of each pollutant of concern discharged to impaired waterbodies. Alternatively, if an industrial facility discharges a pollutant of concern to an impaired waterbody with an applicable TMDL, the TMSP must impose WQBELs, whether numeric or narrative, "*consistent with the assumptions and requirements of any available wasteload allocation*."

Response:

Several sections of the TMSP are dedicated to issues regarding protection of water quality standards. Applicants/facilities are separated based on new/existing status, unchanged or increased loading, presence or absence of TMDL for the receiving waterbody, and presence or absence of a pollutant of concern. All these scenarios and other applicable conditions are checked by our staff prior to issuance of the Notice of Coverage. We do not track every instance of communication between applicant and the agency; in other words, if the NOC cannot be issued based on the original NOI, steps are taken to upgrade and enhance the SWPPP and corresponding BMPs prior to an official permit coverage "denial." Consequently, without an extensive research of our files, documentation, emails and phone logs, we are unable to provide you with specific examples. However, all available information from our Watershed Management Unit and Planning and Standards Unit indicates that compliance with TMSP ensures protection of all water quality standards.

"Additional Monitoring for Existing Discharges to Waters with Unavailable Parameters," found on page 7 of the TMSP, specifies that the "*permittee shall perform analytical monitoring for each outfall at least quarterly for any pollutant(s) for which the water has unavailable parameters where there is a reasonable potential for discharges to contain any or all of these pollutants*." Assuming that the facility is in compliance with the TMSP terms and conditions, we do not see how increasing monitoring frequency from quarterly to monthly would provide additional protection for receiving streams.

If a TMDL wasteload allocation or any other information indicates that the pollutant of concern requires a water-quality based effluent limit, the division will immediately take appropriate steps to protect the receiving stream. Such action may, but is not limited to, a requirement to obtain coverage under an individual NPDES permit (see page 21):

> "*If the division finds that a discharge is causing a violation of water quality standards or causing or contributing to the impairment of a known water with unavailable parameters or any water, and finds that the discharger is complying with SWPPP requirements of this permit, the discharger will be notified by the director in writing that the discharge is no longer eligible for coverage under the general permit and that continued discharges must be covered by an individual permit. To obtain the individual permit, the operator must file an individual NPDES permit application*."

Part/Section	**Comment**
General	Commenters request DWR exclude new or increased discharges to Exceptional Tennessee Waters above the level of de minimis from TMSP coverage.

Response:

A section of the TMSP (section 4.6) is dedicated to additional SWPPP requirements for discharges into waters with unavailable parameters or Exceptional Tennessee waters. It is our position that discharges authorized under TMSP (and other NPDES general permits) represent a class of de minimis discharges as long as the permittee is in compliance with the permit terms and conditions, without violating water quality criteria and being in compliance with the Antidegradation Statement. Application of BMPs, which are technology- based effluent limitations, ensures that sources effectively eliminate all but de minimis discharges of pollutants. If an individual facility does, in fact, cause water quality problems, a requirement to obtain coverage under an individual NPDES permit would be applicable (see previous comment).

Part/Section	**Comment**
General Comment / Definitions	Permittees are familiar with the phrase "*impaired waters*"; why did you change it to "*waters with unavailable parameters*"? It seems to be a move toward less intuitive permit language. If the change remains, you should include a definition in the Section 10 of the permit. Similarly, the phrase "*unavailable waters*" should be defined (use the definition from the Water Quality Standards). How does this relate to compliance with TMDLs?

Response:

The phrase "*unavailable waters*" was never used in the draft permit. A reference to or a definition for "*unavailable waters*" was not found in the TN Rule 0400-40-03 either.

The phrase "*impaired waters*" was not used in the most recent and applicable **Rules of the Tennessee Department of Environment and Conservation, Chapter 0400-40-03, General Water Quality Criteria** (commonly referred to as Water Quality Standards, referred to as TN Rule 0400-40-03 from hereon). The regulatory approach of using "*impaired waters*" was replaced with "*waters with unavailable parameters.*"

The draft TMSP does make 41 references to "*unavailable parameters.*" The phrase is used in the context of discussing proposed or existing discharges to "*waters with unavailable parameters.*" However, TN

Rule 0400-40-03, does not have a definition for "*unavailable parameters*," but in the section 0400-40-03-.06 (Antidegradation Statement) states, in part:

> *"(2) Waters with unavailable parameters*
>
> *Unavailable parameters exist where water quality is at, or fails to meet, the levels specified in water quality criteria in Rule 0400-40-03-.03. In the case of a criterion that is a single response variable or is derived from measurement of multiple responsible variables, the unavailable parameters shall be the agents causing water quality to be at or failing to meet the levels specified in criteria. For example, if the biological integrity criterion (derived from multiple response variables) is violated, the unavailable parameters shall be the pollutants causing the violation, not the response variables.*
>
> > *(a) In waters with unavailable parameters, new or increased discharges that would cause measurable degradation of the parameter that is unavailable shall not be authorized. Nor will discharges be authorized in such waters if they cause additional loadings of unavailable parameters that are bioaccumulative or that have criteria below current method detection levels."*

In summary, the TMSP is aligned with the most current and applicable TN Rule 0400-40-03 and corresponding definitions. The phrase "*waters with unavailable parameters*" was appropriately used in the TMSP. This change in regulatory language does not have any substantive bearing on the implementation of the Antidegradation Statement or potential compliance with TMDLs within this general permit.

Part/Section	**Comment**
General	Commenters request DWR exclude new or increased discharges to Exceptional Tennessee Waters above the level of de minimis from TMSP coverage. The TMSP Must Require Compliance with the Clean Water Act's BPT, BAT & BCT Requirements Commenters request that any facility discharging toxic or bioaccumulative pollutants in concentrations that exceed applicable water quality criteria be required to obtain an individual permit

Response:

A section of the TMSP (section 4.6) is dedicated to additional SWPPP requirements for discharges into waters with unavailable parameters or Exceptional Tennessee waters. It is our position that discharges authorized under TMSP (and other NPDES general permits) represent a class of de minimis discharges as long as the permittee is in compliance with the permit terms and conditions, without violating water quality criteria and being in compliance with the Antidegradation Statement. Application of BMPs, which are technology- based effluent limitations, ensures that sources effectively eliminate all but de minimis discharges of pollutants (including toxic or bioaccumulative pollutants). If an individual facility does, in fact, cause water quality problems, a requirement to obtain coverage under an individual NPDES permit would be applicable.

In the first paragraph in Section 4 (Stormwater Pollution Prevention Plan), the word "reduce" has been replaced with the word "minimize." In addition, the following sentence was added to the same paragraph:

> "*The term 'minimize' means reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically*

available and economically practicable and achievable in light of best industry practice."

Part/Section	**Comment**
Part I, Section 1.4	The last sentence in this section does not make sense: "*Exceptional Tennessee waters are sometimes referred to as Exceptional TN Waters or Outstanding Natural Resource Waters (ONRW).*" Please clarify or remove.

Response:

That sentence has been deleted from the final permit.

Part/Section	**Comment**
Part I, Section 5.2	Please clarify when permittee has to submit analytical results: 30 days after the analytical results are obtained, or by the March 31st of the following calendar year? Also add the reporting requirement to the Stormwater Monitoring Report form.

Response:

The permit states:

"*The form(s) shall be submitted 30 days after the sampling results are obtained, but no later than the March 31st of the following calendar year*."

This sentence will be further clarified by adding a phrase "*whichever comes first*" at the end.

For example, if the sampling results are obtained on May 1, the form must be submitted by June 1. If the sampling results are obtained by February 15, the form must be submitted by March 15. However, if the sampling results are obtained by March 15, the stormwater monitoring form must be submitted by March 31.

The above examples demonstrate that there is no additional regulatory requirement as a result of the proposed change. If anything, it has been our experience that permittees tend to forget to submit a stormwater monitoring form by March 31st of the following calendar year. This could be due to a fact that too much time may have passed since the analytical results were obtained. Additionally, permittees may have assumed that form was due on March 31st, instead of "not later than" March 31st.

Requirements for the reporting deadline have also been clarified in Appendix D: Annual Stormwater Monitoring Report.

Part/Section	Comment
Part I, Section 1.2.3	What is the relationship of language in section named "*Additional Monitoring for Existing Discharges*" to approved TMDL language in section 2, bottom of page 7? Section 5.2 of each or most of the sectors says submit monitoring report within 30 days after sample results are obtained. In the main body of the permit (section 1.2.3. right above 1.2.4), it says 45 days following sample collection. It would be helpful to have a consistent time requirement and measuring point for deadlines

Response:

In order to maintain coverage under the general permit, a permittee must receive a notification from the division of eligibility. Specifically, the notification of eligibility depends on requirements listed on page 7 (related to SWPPP updates and BMP implementation). Existing facilities that discharge a pollutant of concern into waters with unavailable parameters have additional responsibilities with respect to stormwater analytical monitoring. The language in the paragraph titled "*Additional Monitoring for Existing Discharges*" describes those requirements. A deadline for submitting stormwater runoff analytical results has been set to 30 days and made consistent throughout the TMSP.

Part/Section	Comment
Part I, Section 4.1.5	The proposed permit states: *Operators of construction sites involving clearing, grading or excavation that results in an area of disturbance of one or more acres, and activities that result in the disturbance of less than one acre if it is part of a larger common plan of development or sale must obtain coverage under the Construction General Permit.* Will this apply to landfill construction that is conducted upgradient of an existing sediment basin constructed in compliance with the site's solid waste permit or will such construction continue to be regulated through the Division of Solid Waste Management in accordance with the MOU between the Division of Solid Waste Management and the Division of Water Resources?

Response:

The requirement and conditions under which soil disturbances must obtain coverage under CGP are unchanged from the previous permit. Similarly, the memorandum of agreement between two divisions has not been changed either. With respect to the construction activities, the MOA states, in part:

> "*Areas within the facility boundary which drain into storm water ponds designed to handle the 25-year, 24-hour rainfall event, as required by the DSWM rules, are not required to obtain NPDES permit coverage for those storm water discharges. […] Landfill operators must obtain CGP coverage with the DWPC for any disturbed areas greater than one acre within the landfill facility boundary which do not drain into the above ponds.*"

Part/Section	Comment
Part I, Section 4.1.5	Will the new Sector AF requirements for borrow areas pertain to operating landfills when those borrow operations are permitted through the Division of Solid Waste Management

Response:

See previous comment. If the borrow area drains into storm water ponds designed to handle the 25-year, 24-hour rainfall event, as required by the DSWM rules, NPDES permit coverage would not be required.

Part/Section	Comment
Part I, Section 4.2.2	A copy of the SWPPP should be submitted, not only available upon request.

Response:

A requirement to submit a SWPPP with the NOI was used in mid-nineties. The practice was discontinued in the subsequent TMSPs. Besides obvious issues of using file (or disc) space, there are other problems regarding this approach. SWPPPs are dynamic documents and are routinely updated. If a plan review and subsequent inspection were not performed immediately, the plan in our permit file is likely to be outdated. Consequently, in order to review a current version of the SWPPP, a new copy has to be requested, making the initial copy a waste of file (or disc) space. If an inspection is performed on an unannounced basis, a copy of the SWPPP is reviewed at the facility and requested to be submitted, if necessary.

However, this approach has merit for new facilities. A following highlighted sentence was added to Section 4.1.2 – New Facilities:

> "*Except as provided in sections 4.1.3, 4.1.4 and 4.1.5 (below), all new facilities shall prepare and implement their SWPPP prior to submitting the Notice of Intent.* ***A copy of the SWPPP shall be submitted with the Notice of Intent, preferably in electronic format (PDF)***."

Section 4.2.2 – Availability was modified to state:

> "***Except as provided in section 4.1.2 – New Facilities (above)****, the permittee shall make the NOC, SWPPP, annual site compliance inspection report, or other information available upon request to the division; […]*"

Part/Section	Comment
Part I, Section 4.6	On page 24, under part 4.6-Additional Stormwater Pollution Prevention Plan (SWPPP) requirements for discharges into waters with unavailable parameters or Exceptional Tennessee waters, a reference to part 7.7 (signatory requirements) should be made for the quarterly basis certification requirement of the monthly inspections

Response:

The following phrase was added to the reporting requirements of section 4.6: "*shall be signed in accordance with subpart* ***Error! Reference source not found.*** *(Signatory Requirements) of this permit.*"

Part/Section	**Comment**
Part I, Section 10.1	The proposed definition of **Benchmarks** in the new TMSP is the following (**emphasis** added): *"A **guideline** for facilities to measure their storm water monitoring results, so that if their sample results are above the established (benchmark **limits**) they will know to implement BMPs and modify their SWPPP to bring the results back below the established **limit**."* While "*guideline*" almost certainly is intended to mean a concentration threshold that is not a numeric effluent limitation, an exceedance of which would be a permit violation, the subsequent uses of the word "*limit*" somewhat vitiate the notion of a "*guideline*". The definition should specifically state that benchmarks are not numeric effluent limitations and also should not include the word "*limit*". This definition could be revised as follows: "*Guidelines that are not numeric effluent limitations for facilities to use to assess their stormwater monitoring results, so that if their annual sampling results are above the established guideline concentrations (i.e., benchmarks), the facilities will know to implement BMPs and modify their SWPPP to bring their results back to or below the established guideline concentrations.*"

Response:

In the final permit, the word "*limit*" was replaced by the word "*value*." The definitions for Benchmarks now states:

> *"A **guideline** for facilities to measure their storm water monitoring results, so that if their sample results are above the established (benchmark **values**) they will know to implement BMPs and modify their SWPPP to bring the results back below the established **value**."*

Part/Section	**Comment**
Section 4.6 in every sector	Site compliance evaluation language may be unintentionally overbroad. The draft permit adds a phrase "*and potentially waters of the state*" with respect to performing visual inspections for any pollutants entering the drainage system. Since TMSP was not meant to address groundwater discharges, this phrase should be removed.

Response:

A number of TMSP facilities do have a discharge from a point source that eventually flows into groundwater through a natural sinkhole. Therefore, there is no justification to limit TMSP point source authorization only to surface water discharges.

Part/Section	Comment
Section 5 in every sector	Add language that would prevent permittees from being in a situation of perpetually updating their SWPPP because of benchmark exceedances, specifically for situations beyond their reasonable control or after all reasonable attempts were made to implement BMPs at the facility.

Response:

The following language was added to every sector that has monitoring requirements:

> *"In the event of a repeated benchmark exceedance, the permittee can, in consultation with the division, make a determination that no further pollutant reduction is technologically available, economically practicable and achievable in light of best industry practices. The permittee must document the rationale for concluding that no further pollutant reductions are achievable, and retain all records related to this documentation with the SWPPP."*

Part/Section	Comment
Sector F	Page 16 has table indicating SIC for industries and affected Sectors; for SIC 3365, page 16 indicates deleted from Sector F but page 232 for Sector F indicates SIC 3365 (aluminum foundries) is in Sector F.4; this then indicates a Table F.4 for monitoring SIC 336x group. Is 3365 deleted from Sector F or still included?

Response:

It is still included. Facilities operating under the SIC code 3365 are included in Sector F. Table on page 16 had SIC codes listed in ranges; in this case, range of numbers was displayed as 3363,-3369. A typo (coma) will be deleted from the table in the final permit to avoid any further confusion.

Part/Section	Comment
Sector L	Which landfills are subject to sampling for Total Recoverable Iron identified in Table L-2

Response:

Municipal Solid Waste Landfill areas closed in accordance with 40 CFR 258.60 requirements are exempt from sampling Total Recoverable Iron. Limitations (and corresponding exceptions) set forth in Table L-1 are only applicable to landfills subject to 40 CFR Part 445 Subpart B.

Part/Section	Comment
Sector L	Of the permitted landfills in the State of Tennessee, how many have obtained a Notice of Coverage with the TMSP, Sector L?

Response:

According to information obtained on the Division of Solid Waste Dataviewer (http://environment-online.state.tn.us:8080/pls/enf_reports/f?p=19035:34001), number of active permitted landfills by class/waste type is as following:

Class	Waste Description	Number of Active Landfills
I	**Municipal**	**35**
II	**Industrial**	**48**
III	**Farming, Landscaping and Clearing**	**57**
IV	**Demolition**	**11**

The Division of Water Resources database shows 77 facilities currently covered under Sector L. It should be noted that stormwater runoff from Class III and IV landfills does not require coverage under the TMSP. In addition, only Class II landfills receiving wastes from industrial activities that must obtain coverage under the TMSP are subject to permitting requirements.

Part/Section	**Comment**
Sector L	How does Tennessee define "*industrial activity*" as mentioned in Sector L?

Response:

Phrase "*industrial activity*" was only used in the context of "*stormwater runoff associated with industrial activity*." Consequently, it was not defined in the TMSP. The definition for the phrase "*stormwater runoff associated with industrial activity"* was the same as the definition used in the federal rule 40 CFR 122.26 (b)(14)(i)-(ix), (xi). Most sectors were based on a facility's Standard Industrial Classification (SIC) code. The definition can be found in the Section 10.1 – Definitions, page 37 of the TMSP.

Part/Section	**Comment**
Sector L	What is EPA's most recent determination, guidance, and/or draft documentation regarding the coverage of landfills through a mechanism such as Sector L?

Response:

The latest EPA position can be found in fact sheet documents that accompany federal multi-sector permit. These fact sheets can be found at: http://water.epa.gov/polwaste/npdes/stormwater/Industrial-Fact-Sheet-Series-for-Activities-Covered-by-EPAs-MSGP.cfm. This 2013 draft federal permit is substantively the same as the 2008 permit. The last significant change in Sector L requirements was following promulgation of effluent limitation guidelines for landfills point source category (January 1998).

Part/Section	Comment
Sector N	PCB monitoring requirements proposed for sector N were not adequately justified. USEPA concluded that, being hydrophobic, PCBs tend to adhere to the soil matrix, and are therefore not readily transported via stormwater runoff. In addition, precision and accuracy of PCB analysis cannot support a benchmark monitoring requirement of 0.000028 mg/L.
Part/Section	**Comment**
Sector N	Newly proposed conditional benchmark for polychlorinated biphenyls (PCBs) for Sector N facilities should be withdrawn and not included in the Final TMSP for reasons of impracticality; however, should it be included in the Final TMSP, it should not apply arbitrarily to all Sector N facilities. Therefore, at most, such a conditional PCB benchmark would be appropriate only for Sector N facilities with identifiable potential sources of PCBs. For instance, as non-exhaustive counterexamples, paper, tire, and glass recycling facilities, which are included in Sector N, should not be required to monitor for PCBs at all based on the nature of their industrial activities (i.e., recycling operations).
Part/Section	**Comment**
Sector N	Commenters request that PCB monitoring be required at all Sector N facilities regardless of the level of TSS discharge, and that any facility discharging reportable concentrations of PCBs be required to obtain an individual permit.

Response:

In the light of conflicting comments received as a result of proposed PCB monitoring and cut-off concentrations in the draft permit, the final permit will include the PCB monitoring requirements based on following considerations:

- Common consumer products facilities (including paper, newspaper, glass, cardboard, plastic containers, aluminum and tin cans) are not likely to store or process materials that contain PCBs
- Facilities engaged in dismantling or wrecking used motor vehicles for parts recycling or resale and for scrap are not likely to store or process materials that contain PCBs
- Logistics of sampling for PCBs when linked to the TSS concentration in the stormwater runoff are prohibitively complicated for the same sapling event
- Detection of PCBs per se should not be an automatic trigger for requiring a facility to obtain coverage under an individual NPDES permit
- Results of PCB monitoring will be evaluated on a case-by-case basis, so the proposed cut-off concentration will be replaced with “Report” concentration

Part/Section	Comment
Sector S	The Sector S stops at 5.3 Reporting. The other sector permits go beyond 5.3 so this makes me think the copy is missing a few requirements. If this is correct, why is there is no requirement for quarterly visual inspections? It seems like this requirement would be the minimum control expected from any facility with a TMSP.

Response:

The commenter is correct to point that visual inspections were inadvertently omitted from the draft permit. The visual inspection requirements are consistent for all sectors and are included in the final TMSP.

Part/Section	Comment
Sector AE, Section 3.4.3.2	In the section on Preventive Maintenance, page 3, the following language should remain in the sector: "*(e.g., cleaning oil/water separators, catch basins)*" since the sector deals with facilities not covered under Sectors A thru AC

Response:

The proposed language was added to the Preventive Maintenance paragraph.

Part/Section	Comment
Sector AF, Section 3.2.3.2	The following language should be added to the section on Preventive Maintenance, page 3: "(*e.g., repairing silt fences, cleaning check dams and sediment basins*)" since the sector deals with borrow pits, soil harvesting sites and spoil piles.

Response:

The proposed language was added to the Preventive Maintenance paragraph.

Part/Section	Comment
Sector AF, Section 3.2.3.4	A reference in this section should be made to the inspection requirements in part 3.2.3.7.4-Sediment and Erosion Control, page 5.

Response:

A reference to inspection of EPSC controls was added to this section.

Part/Section	Comment
Sector AF, Section 3.2.3.7.2	In the paragraph for Sources of non-stormwater, page 5, reference to the list of EFOs needs to be made to part 3.3-List of the Division's Environmental Field Offices (EFOs) and Counties on page 16 of the draft permit

Response:

A full reference to the list of division's EFOs was added to this paragraph..

Part/Section	Comment
Sector AF, Section 5.1	Analytical Monitoring Requirements, page 7; should the monitoring periods, sample type, sampling waiver, representative discharge, alternative certification, and reporting language be included before the Quarterly Visual Examination of Stormwater Quality language?

Response:

This standard language was inadvertently omitted in the draft permit, and was added to the final version of the TMSP.

Part/Section	Comment
Sector AF	With respect to sampling requirements for Sector AF, on page 1 of the draft permit, the table says "No", but Section 5 says that monitoring for TSS is required. Is monitoring required or not?

Response:

Sector AF does have sampling requirements for TSS. The permit is consistent in defining such requirement both on page 1 as well as in the section 5 of the Sector AF.

Part/Section	Comment
Appendix A, Notice of Intent (NOI)	The proposed NOI should be enhanced to require details regarding the receiving stream assessment information, threatened and endangered species and whether there is an applicable TMDL. Also, latitude and longitude of each outfall should be tabulated and presented on the map.

Response:

Details regarding receiving stream information are already required on the NOI form. Our personnel routinely checks for information regarding the receiving stream assessment information, threatened and endangered species and whether there is an applicable TMDL. It appears that collecting such information from the applicant, only to have it always double-checked by our staff, is an unnecessary paperwork burden. With respect to the location of outfalls, the draft permit stated:

> *"Storm water runoff from facility enters following stream(s) and/or lake(s): (for each outfall, give names and stream miles)*

Given the tools available to our customers, it is likely that it's easier to locate latitude and longitude information for facility outfalls than is to identify correct receiving stream miles. Consequently, the NOI form was edited to state:

> *"Stormwater runoff enters following stream(s) and/or lake(s): (for each outfall, give names and latitude/longitude)*

Part/Section	Comment
Appendix A, Notice of Intent (NOI)	DWR should provide a 30-day opportunity for concerned citizens to review and comment upon NOIs and proposed SWPPPs prior to DWR's issuance of a NOC. If aquatic T & E species, or their designated critical habitat, are present downstream from the discharge, DWR should affirmatively notify the U.S. Fish and Wildlife Service and the Tennessee Wildlife Resource Agency by providing a copy of the NOI and SWPPP and allowing 30 days for the agencies to comment before DWR issues the NOC

Response:

Providing such comment period would be contrary to existing statutory requirements defined in the Tennessee Statute §69-3-141. - *Bill of rights for permit applicants*. The statute states, in part (emphasis added):

> *"(4) Permit applicants shall have the right to timely completeness determinations for their applications. Permit applicants shall have the right to know exactly how their applications are incomplete and what further information is needed to make their*

applications complete. ***Absent extraordinary circumstances, the commissioner shall notify the applicant within thirty (30) days of any permit application deficiencies, or determine that the application is complete.****"*

Impacted local residents, municipalities, and watershed organizations already have a way to see all NOIs (not only TMSP) and individual permit applications received by the division on the statewide basis. Our online database, Dataviewer, can be easily filtered, sorted and grouped to display such information. In addition to the information published on the web, the U.S. Fish and Wildlife Service and the Tennessee Wildlife Resource Agency are routinely updated by our division with reports summarizing proposed industrial and construction activities in the state. We will consider adding a dedicated report (or a web page) that will further enhance our transparency.

Determination

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

The division appreciates the input from all commenters, and used those comments to further strengthen the permit and explain areas of concern. Additionally, final permit has been modified to address typographical errors and clarifications. The division does not consider any of these typographical errors and clarifications to be of a substantial nature which in any way removes, weakens, or diminishes permit requirements.

The division's decision on this matter is to issue a General NPDES Permit for Stormwater Discharges Associated with Industrial Activity, Permit No. TNR050000.

Please contact Ms. Elizabeth Rorie at 615-532-1172 or *Elizabeth.Rorie@tn.gov* to request additional copies of this NOD. A copy may also be found on TDEC's Dataviewer.

DATE: 4-14-15

Tisha Calabrese Benton
Director