

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

**General National Pollutant Discharge Elimination System (NPDES)
Permit for Discharges of Storm Water Associated
with Small Municipal Separate Stormwater Systems**

Permit No. TNS000000

Friday, March 22, 2024

1. ADMINISTRATIVE RECORD

The permit rationale (or fact sheet) dated March 22, 2024, sets forth the Division of Water Resources' (the Division's) basis for permit conditions to be applied statewide for the issuance of the new Tennessee National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges of Stormwater Associated with Small Municipal Separate Storm Water Systems (MS4). The MS4 permit is intended to authorize storm water point source discharges to waters of the State of Tennessee from municipal stormwater source including those from non-traditional sources such as universities and military installations.

The current MS4 permit expired on August 31, 2027. On January 9, 2024, the division issued Public Notice NOPH24-001 per TN Rules, Chapter 0400-40-05-.06 (8), which announced the public hearing, which was conducted at the following date and location:

Location:	312 Rosa L. Parks Avenue William R. Snodgrass – Tennessee Tower Multi-Media Room 3rd Floor
Date:	Tuesday, April 26, 2022
Informational Session:	11:00 AM Central Time
Public Hearing:	11:30 AM Central Time

Interested persons were able to attend by phone or via computer, as call-in and login information were provided as well.

On January 9, 2024, the division issued Public Notice #MMXXIV-001, which included the draft permit rationale (fact sheet). The public comment period that concluded on February 28, 2024. The draft MS4 permit and rationale (fact sheet document) were made available in an electronic format on the division's web site at https://prod-dataviewers.tdec.tn.gov/dataviewers/f?p=2005:34051:15955566874216:::34051:P34051:PERMIT_NUMBER:TNS000000

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

A third party permit appeal was received by the Division in a letter dated August 30, 2022. That appeal resulted in a settlement agreement that was reached on December 5, 2022. To effectuate that settlement agreement, the Division entered the rulemaking process for Rule 0400-40-05 and Rule 0400-40-10. These rules will become effective March 19, 2024.

Additionally, on July 12, 2023, a revision to 40 CFR § 122.32 became effective. The changes are described in the Federal Register

The changes to EPA's regulations are limited to clarifying that the designation criteria for small municipal separate storm sewer systems (MS4s), which have been used since the promulgation of the regulations in 1999, will remain the same. These clarifications are necessary due to the Census Bureau's recent decision to discontinue its practice of publishing the location of "urbanized areas" along with the 2020 Census and future censuses. The clarifications in this final rule replace the term "urbanized area" in the Phase II regulations with the phrase "urban areas with a population of at least 50,000," which is the Census Bureau's longstanding definition of the term urbanized areas. This change allows NPDES permitting authorities to use 2020 Census and future Census data in a manner that is consistent with existing longstanding regulatory practice.

NPDES Small MS4 Urbanized Area Clarification 88 Fed. Reg. 37994, June 12, 2023, codified in 40 CFR Parts 122 and 123

This replacement of the term "Urbanized Area" with its definition does not alter the MS4 program implementation requirement for either New or Existing MS4 programs.

This Notice of Determination (NOD) serves as the division's response to questions, comments, and issues that were raised at the hearing and/or submitted during the subsequent comment period.

2. COMMENTS AND RESPONSES

Compared to the 2022 Small MS4 General Permit draft, the Division received only a few comments/questions during the public comment period and public hearing. Similar comments are grouped together in this NOD. Comments are also edited for clarity and brevity.

Comment 1:

The Division received a comment in support of the changes per the settlement agreement.

Comment 2:

A suggestion was received to refer to the September 1, 2022, date in the permit where milestone or due dates are tied to the effective date of the permit.



Response 2:

The Division agrees and has updated the final permit to explicitly refer to September 1, 2022, instead of the effective date of the permit where applicable. Please note that the language was not changed in subpart 4.2.5. so that it continues to align with the rule language. A footnote was added in this subpart that states “The effective date of the first new or revised permit issued after the effective date of Tennessee Rule 0400-40-10-.04 was September 1, 2022.” Additionally, for Newly permitted MS4 Jurisdictions, the language was changed to reference the Notice of Coverage.

Comment 3:

It was noted that in some cases the replacement of the term “Urbanized Area” with the definition didn’t fit well with the phrasing of the sentence.

Response 3:

The Division acknowledge the awkward phrasing the replacement of “Urbanized Area” with the definition has caused. However, this is a critical element of the federal rules and alteration of the language would be problematic. The Division did make a few revisions without altering the definition to improve phrasing.

Comment 4:

It doesn’t seem clear if the term "urban area" means only areas that are not incorporated. And, as there are reported to be census maps that could be referenced to better define this, I think the maps should be specifically mentioned in the text and a link included for the same.

Response 4:

An Urban Area could include both incorporated and unincorporated areas. The United States Census Bureau (Census Bureau) determines how to define an urban area every census. The boundaries of an Urban Area is not necessarily restricted to political boundaries e.g. city limits or county lines. The Federal Rules define “Urban Area” as a narrative statement. The permit must be consistent with Federal Rules.

The Division is in the process of evaluating the designation of new MS4s based on the 2020 Census and reevaluating any waivers previously issued. The Division will notify directly any MS4s (new or existing) that are affected by the 2020 Census results.

Additional Clarifications

1. The expiration date of the permit will **not** change.
2. All milestone or due dates remain in place as required by the August 1, 2022, permit.
3. The Notice of Determination issued with the August 1, 2022, permit is incorporated herein as applicable.
4. Small MS4 permittees who have obtained coverage under the August 1, 2022, permit will continue to be covered under the modified permit. No additional NOI submissions or updates are necessary.”

5. Counties that have chosen "Urbanized Area Only" will receive direct notification from the Division regarding the 2020 urban area designations. Furthermore, EPA staff have confirmed with the Division that areas previously designated as an Urbanized Area or Urban Area will retain their designation.

3. DETERMINATION

The division's decision on this matter is to issue a General NPDES Permit for Discharges Associated with Small Municipal Separate Storm Sewer Systems, Permit No. TNS000000.