

**401 CHURCH STREET  
L & C ANNEX 6TH FLOOR  
NASHVILLE TN 37243-1534**

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 Construction Activities**

**Permit No. TNR100000**

June 16, 2005

**Administrative Record**

The permit rationale (or fact sheet) dated April 18, 2005, sets forth the Division of Water Pollution Control's (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 Storm Water Associated with Construction Activities (CGP). The CGP is intended to authorize storm water point source discharges to waters of the State of Tennessee from construction activities that result in the disturbance of one acre or more of total land area.

The current CGP will expire on May 31, 2005. On April 4, 2005, the division issued Public Notice #MMV-007, which announced the public hearings, which were conducted at the following dates and locations:

- Thursday, May 5, 2005, at 6 p.m. (CDT), in the Ruth Neff Conference Room on the 17th Floor of the L & C Tower, at 4th Ave. and Church Street in downtown Nashville, 37243-1534.
- Monday, May 9, 2005, at 6 p.m. (CDT), in Pennebaker Hall, Room 128, Tennessee Technological University, 1100 N. Dixie Avenue, Cookeville, TN 38501-5138.
- Tuesday, May 10, 2005, at 6 p.m. (CDT) in the Ruth Neff Conference Room on the 17th Floor of the L & C Tower, at 4th Ave. and Church Street in downtown Nashville, 37243-1534.
- Wednesday, May 11, 2005, at 6 p.m. (EDT) in the Visitor's Center, Sycamore State Park, 1651 West Elk Ave., Elizabethton, TN 37643-3725.

- Thursday, May 12, 2005, at 6 p.m. (EDT), in the Goins Auditorium, Pellissippi State Technical Community College, 10915 Hardin Valley Rd., Knoxville, TN 37933-0990.
- Monday, May 16, 2005, at 6 p.m. (CDT), in the TDOT Region 4 Auditorium, 300 Benchmark Place, Jackson, TN 38301-9693.
- Tuesday, May 17, 2005, at 1 p.m. (CDT), in Bartlett City Hall, 6400 Stage Rd., Bartlett, TN 38134-3739.
- Tuesday, May 17, 2005, at 6:30 p.m. (CDT), in the Stage Room at Singleton Community Center, 7266 Third Rd., Bartlett, TN 38135-1928.
- Thursday, May 19, 2005, at 6 p.m. (EDT), in the 1<sup>st</sup> Floor Auditorium of the State Office Building, 540 McCallie Avenue, Chattanooga, TN 37402-2089.

On April 18, 2005, the division issued Public Notice #MMV-008, which announced its intent to issue the CGP. Copy of the draft CGP permit was made available in an electronic format on the division's web site at [http://www.state.tn.us/environment/wpc/wpcppo/DraftNPDES\\_GP.php](http://www.state.tn.us/environment/wpc/wpcppo/DraftNPDES_GP.php). 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 June 13, 2005. 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 received and responses**

- 1. Comment:** **There were several comments about the permitting process including the length of the comment period, extending the comment period and whether or not there as a second public review for the permit comment period. Will everyone be able to see a final draft before the final permit?**

**Response:** According to Rule 1200-4-5-.06(11), interested parties may submit written comments whether either thirty (30) days of the public notice or such greater period as the commissioner allows. The comment period for this draft permit was ten (10) days after the last public hearing, held on May 19<sup>th</sup>, therefore the comment period closed on May 29, 2005. Because that date was on Sunday, the comment period was moved to the next business day, which was May 31<sup>st</sup>, with the Memorial Holiday on May 30<sup>th</sup>. The comment period was further extended to June 13, 2005 because of several interested parties asking for additional time to comment. The permit was revised based on comments received up to the end of business day on Monday, June 13, 2005. No additional comment period is scheduled following the preparation of the notice of determination. Permittees, applicants for permits and affected persons that disagree with provisions of the final permit may follow the procedure outlined in TDEC Rules, Chapter 1200-4-5-.06 - Appeals/Citizen Complaints/Declaratory Orders.

2. **Comment:** **Comments were submitted regarding the division's webpage, including the availability of information, access to manuals and a list of permit applicants.**

Response: A copy of the draft CGP and the permit rationale was made available on TDEC's web page:

[http://www.state.tn.us/environment/wpc/wpcppo/DraftNPDES\\_GP.php](http://www.state.tn.us/environment/wpc/wpcppo/DraftNPDES_GP.php)

Public notice for the public hearings and the draft permit were posted on TDEC's "Public Participation Opportunities" web page, located at:

<http://www.state.tn.us/environment/wpc/wpcppo/>

The Erosion and Sediment Control Handbook is available in Adobe Acrobat Reader format at the following web site:

[http://www.state.tn.us/environment/wpc/sed\\_ero\\_controlhandbook/](http://www.state.tn.us/environment/wpc/sed_ero_controlhandbook/)

The Erosion Prevention and Sediment Control course schedule is listed each quarter at the following web address:

<http://www.tnepsc.org/>.

Furthermore, the division plans to list the applicants for this permit on our webpage (<http://www.state.tn.us/environment/>) and/or in the division's Public Notice document.

3. **Comment:** **A number of concerns were expressed with regards to the submission requirements for the Storm Water Pollution Prevention Plans (SWPPP). Several permittees feel that it is not necessary to submit SWPPPs to the division for all sites as the SWPPP should be a working document and thus any copies the division would receive would likely be out of date. Alternatively, others requested that all applicants must submit and/or update the SWPPP immediately, and that immediate enforcement action should be taken against those that do not comply with this requirement.**

**Other concerns included that the division would not have time to review all SWPPPs received, some SWPPPs might be rather lengthy and would generate significant paperwork, and there is a problem with ensuring that Best Management Practices (BMPs) are compatible throughout a site given confidentiality concerns.**

Response: The division believes that a requirement to submit a SWPPP will improve implementation of site-specific BMPs and compliance with the new CGP. Although the SWPPP was required to be developed and implemented prior to commencement of construction activities at the site, under the previous permit, the compliance with this requirement was unsatisfactory. As part of the Notice of Intent (NOI), the SWPPP becomes an enforceable part of the coverage under the general permit. Any information or document submitted with the NOI (as well as

any other reporting requirements) to the state is available to the public under the Freedom of Information Act.

The SWPPP is a dynamic document, required to be updated during the life of a construction project. However, it is not the division's intent, or a requirement in the new CGP to receive, review and/or approve any change or update in the SWPPPs. Requirements for modification(s) of the SWPPP are listed in section 3.4.1. of the new permit.

- 4. Comment:** **Several permittees expressed concern that updated SWPPPs should not be required for existing sites. They felt that it would cause significant financial burden to update the SWPPPs and updating should not be required for projects that will be completed in the next year. Alternately, some commenters felt that six months was too long to update SWPPPs.**

**Response:** The current SWPPP should be modified, if necessary, to meet requirements of this new general permit, and the SWPPP changes should be implemented no later than 12 months following the new permit effective date (June 17, 2005). The permittee shall make the updated SWPPP available for the division's review upon request. For additional information, see response to comment #3.

- 5. Comment:** **Several comments were received expressing concern that the permittee should not have to delay construction because they haven't heard back from the division. Specifically, the division should authorize discharge 30 days after the NOI was submitted if an NOC has not been received. Several comments were that the NOI should be due 30 days prior to beginning construction as this would agree with the expected timeframe to issue coverage.**

**Response:** The division does not anticipate any delays in NOC issuance if a complete NOI and an adequate site-specific SWPPP is submitted 30 days prior to commencement of construction activities at the site. The division will make every effort to process the Notice of Intent and to issue the Notice of Coverage (NOC) in an expedient manner. However, the permittee is not authorized to begin construction activities including clearing, grading or excavation until a NOC is issued.

- 6. Comment:** **Several comments were received concerning the required notice placement. Concern was expressed that in industrial areas there may not be a practical place, which is accessible to the public, to post the required notice. Therefore, an exemption should be allowed for places with no public access. Additionally, it was also stated that the permit should state that a failure to post this required information would result in revocation of permit and a requirement for reapplication.**

**Response:** The final permit language is very specific in regards to posting information at the construction site, as stated in section 3.3.2.:

*"The permittee shall post a notice near the main entrance of the construction site accessible to the public with the following information:*

- a) a copy of the notice of coverage (NOC) with the NPDES permit tracking number for the construction project;
- b) name, company name, E-mail address (if available), telephone number and address of the project site owner or a local contact person;
- c) a brief description of the project; and
- d) the location of the SWPPP if the site is inactive or does not have an on-site location to store the plan.

*The notice must be maintained in a legible condition. If posting this information near a main entrance is infeasible due to safety concerns, or not accessible to the public, the notice shall be posted in a local public building. If the construction project is a linear construction project (e.g., pipeline, highway, etc.), 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 that permittees allow members of the public access to a construction site.”*

Failure to post the notice constitutes non-compliance with a permit condition. Appropriate enforcement action will be assessed by the division’s Enforcement and Compliance Section in consultation with the Field Office personnel.

**7. Comment: Several comments were received that the engineer (PE) who prepared a SWPPP should be allowed to perform inspections without any additional inspector training.**

Response: The new permit will allow the individual who has prepared the SWPPP to also perform required site inspections.

**8. Comment: Several commenters asked why the inspection requirements were doubled, weekly inspections would be adequate, and said that the twice a week requirement could be interpreted as two inspections in the same day. Additionally, it was stated that the twice a week inspection requirements for impaired or high quality water seems unnecessary if it hasn’t rained.**

Response: The inspection requirements in the final permit were simplified and revised as following (subsection 3.5.8.2. Schedule of inspections):

*“a) Inspections described in paragraphs b, c, and d below, shall be performed at least twice every calendar week. 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 requirements do not apply to definable areas that have been finally stabilized, as described in subpart 3.1 above. Written notification of the intent to conduct only monthly inspections and the justification for such request must be submitted to the local Environmental Field Office, or the division’s Nashville*

*Central Office for projects of the Tennessee Department of Transportation (TDOT) and the Tennessee Valley Authority (TVA)."*

Since the inspection requirement is not associated with qualifying storm events, but based on the "twice every calendar week" schedule, it is impossible to make comparison. However, the logistics of the proposed simplified schedule should resolve some logistics problems encountered with anticipation of storm events and timing of previously required post-event inspections on weekends. Additional inspection requirements were required for discharges into impaired or high quality waters (see subsection 4.4.1.1.). While the previous permit required inspections to be performed "at least once per week," compliance problems observed during the previous permit term dictated the need for more frequent inspections for discharges into impaired or high quality waters. Overall, as a result of these changes, the division anticipates higher compliance rates and better protection of receiving waters.

- 9. Comment:** **Clarification is needed on the Inspection Report Form in Appendix C. Permittees felt that the form should not be required on all sites and the form is not adequate. Further, they felt that the permit does not require completion of the form for routine projects.**

Response: Permittees not discharging into impaired or high quality waters may, but are not required to, use the inspection form provided in Appendix C.

- 10. Comment:** **Permittees commented that the permit requirements for inspection of stabilized areas seemed to conflict. While section 3.1 allows stabilized areas to be marked in the SWPPP with no further inspection requirements section 3.5.8.2 a) requires monthly inspections and written notification sent to the division.**

Response: The final permit has been updated to remove discrepancy between subpart 3.1. and subsection 3.5.8.2. The final permit, paragraph 3.5.8.2.a), states:

*"Inspections requirements do not apply to definable areas that have been finally stabilized, as described in subpart 3.1 above."*

- 11. Comment:** Concerns were expressed regarding inspection requirements before and following a rainfall event. It was stated that weekend inspections may be difficult due to availability of inspectors and potentially hazardous conditions on sites, especially for linear projects. It was proposed that inspections should be required within 72-hours of a rainfall. It was also stated that the permittee may not always own the property and thus must obtain authorization for inspection and entry from the property owner before an inspection could be performed and some projects may require inspections that take more than one day to complete. Additionally, the division was requested to require inspections following a 2-year 24-hour storm (either by rainfall or duration).
- Response: The permit has been revised to include two inspections per week, at least seventy-two hours apart. See comment #7.
- 12. Comment:** Clarification was requested for determining an “anticipated storm event” and determining what “significant impacts to receiving waters” are.
- Response: See comments #7 and 10 regarding an “anticipated storm event.” Any activity causing a discharge of pollutants in amounts that would cause an impairment (partial or total) of designated uses or degradation of a receiving water would be considered a significant impact.
- 13. Comment:** The division was requested to require the submission of quarterly inspection reports either to the local Environmental Field Office (EFO) or the Qualifying Local Program (QLP).
- Response: The division has carefully considered benefits of submittal requirement as requested. Based on the previous experience in submittal and review of quarterly reports, there was no evidence that report submittal helped increase permit compliance rate or ensured protection of receiving waters. However, a record of quarterly inspections is required to be included in a permittee’s SWPPP, and submitted to division’s EFOs upon request.
- 14. Comment:** Why was a section addressing employee training like the one found in the Tennessee Storm Water Multi-Sector General Permit for Industrial Activities not included in this permit?
- Response: The training identified in the Tennessee Storm Water Multi-Sector Permit is more appropriate for permanent facilities, where standard operating procedures and/or personnel are more constant over longer time periods. The construction site activities are transient in nature, with a higher turnover of personnel. Although this concept may be suggested to some permittees and considered for a future construction general permit, it was determined not to be a requirement in the new CGP.

**15. Comment: Several permittees expressed concern with what should be done with the sediment pond when the construction project is finished.**

Response: The decision on what should be done with a sediment pond once the construction project is finished is a site-specific, case-by-case decision for permittees. All permittees are encouraged to limit the amount of post construction runoff, if not required by local building regulations, in order to minimize in-stream channel erosion in the receiving stream.

For projects discharging to waters considered impaired by sediment or habitat alteration due to in-channel erosion, the SWPPP shall include a description of measures that will be installed during the construction process to control pollutants and any increase in the volume of storm water discharges that will occur after construction operations have been completed. Additional measures installed to dissipate the volume and energy of the storm water runoff to pre-development levels may be included in the SWPPP.

This permit only addresses the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction activities have been completed, the site has undergone final stabilization, and permit coverage has been terminated.

**16. Comment: Several comments were received regarding sizing of sediment basins, including comments requesting clarification of when this requirement applied. A major concern was that the size of basin that would be required could render some sites undevelopable or drive up development costs. Another comment stated that clarification was needed on the allowance of diverting uncontaminated water from the site. Concern was also expressed for this requirement, with regard to linear projects, in that it appears that any drainage area of 10 acres requires a basin, regardless of whether the drainage flows across the disturbed area of the site.**

Response: A temporary (or permanent) sediment basin is typically the most effective method for sediment control at the construction site. The division is aware of a multitude of sites and scenarios encountered during construction activities, and as a result, did not mandate construction of a sediment basin. For example, subsection 3.5.3.3. Structural practices, states, in part (emphasis added):

*“For an outfall in a drainage area of a total of 10 or more acres, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from a 2 year, 24 hour storm and runoff from each acre drained, or equivalent control measures, shall be provided until final stabilization of the site.”*

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.

**17. Comment: Concern was expressed that sediment basins are under-designed. In addition, a comment was made that for basins which provide wet storage,**



**installation of a visual marker would not be helpful unless the basin was required to be dewatered.**

Response: The sizing requirement for sediment basins was based on the division's experience and compliance history of construction sites covered under the previous permit, availability of storm data and EPA recommendations. However, pond installation was not mandated by the previous, nor is it in the new permit (see comment #16). A depth marker is considered desirable for the proper operation and maintenance of a sediment basin in that it provides a means to visually determine the need for sediment cleanout.

**18. Comment: Section 3.5.6 (Approved local government sediment and erosion control requirements) in the draft permit required that "The SWPPP must include any additional erosion prevention, sediment controls and storm water management measures required by a local MS4 program or municipality. Permittees should comply with any such requirements during the term of the permit." The comment was submitted that such requirement is burdensome for permittees, and hampers the ability of permittees to quickly address potential problems at the site to comply with local requirements. Although that compliance with local MS4 program should be mandated, not all requirements should be included in the SWPPP.**

Response: We agree that inclusion of all local program requirements is likely to generate more paperwork both for the permittee and TDEC staff, increase review time for SWPPPs, delay commencement of construction activities and the permittee's response time in addressing potential issues, all without achieving any measurable effects in quality of discharged storm water runoff. As a result, the following language will be included in the final version of the CGP, Section 3.5.6:

*"Permittees should comply with any additional erosion prevention, sediment controls and storm water management measures required by a local [MS4](#) program or municipality. This provision does not apply to provisions of master plans, comprehensive plans, non-enforceable guidelines or technical guidance documents that are not identified in a specific local government plan or permit that is issued for the construction site."*

**19. Comment: Several comments stated there is a real concern about the wait-period once the subdivision is finished before the first lot can be built.**

Response: There is no mandated "wait-period" included in the new permit. Construction activities can proceed uninterrupted as long as operators at the site have valid permit coverage and are in compliance with permit conditions.

**20. Comment: Several comments were received regarding the requirement for a registered engineer (PE) or landscape architect (LA) to certify SWPPPs. Some permittees felt that the current requirement of certifying storm water calculations was sufficient. Others thought the new requirement would be a burden for projects in rural areas, with regards to the availability of qualified PEs and LAs. Many permittees agreed that this requirement was**

**too restrictive and other professionals should be included, such as Certified Professionals in Erosion and Sediment Control (CPESCs) and Environmental Professionals (as defined by EPA). Another concern was that the projects should be evaluated based on the information contained in the SWPPP/NOI and not on who prepared them. One suggestion was to allow anyone who has completed the Level 2 class to certify SWPPPs.**

Response: Section 3.1.1. Registered engineer or landscape architect requirement, was revised in the final permit, as following:

*“The narrative portion of the SWPPP may be prepared by an individual that has a working knowledge of erosion prevention and sediment controls, such as a Certified Professional in Erosion and Sediment Control (CPESC). For SWPPPs that include preparation of plans and specifications for any building or structure, including the design of sediment basins or other sediment controls involving structural, hydraulic, hydrologic or other engineering calculations, those SWPPPs shall be prepared by a licensed professional engineer or landscape architect in accordance with the Tennessee Code Annotated, Title 62, Chapter 2 (see part 8 below) and the rules of the Tennessee Architectural and Engineering Examiners Board. Engineering design of sediment basins and other sediment controls must be included in SWPPPs for construction sites involving disturbance of 10 or more acres. This requirement is in addition to any requirements of Title 62, Chapter 2 and the rules promulgated thereunder, including without limitation, any definition of the scope of practice of engineering or landscape architecture.”*

**21. Comment: The inspector certification requirement received several comments in agreement with this change. Concern was expressed, however, that 24 months to come into compliance with this requirement was too lenient and that the training courses should have a greater availability. It was also felt that inspectors should be required to have knowledge and understanding of the laws and regulations that are the basis for the permit.**

**A few permittees felt that a better explanation of other acceptable courses, for example the National Stormwater Center in Stuart, FL teaches two courses that are said to meet or exceed the requirements of the required course, should be acceptable for the inspector certification requirement and that links for such courses should be available on the TDEC webpage.**

**Proof of inspector training should be available upon request and should not be required to be submitted with the SWPPP. Additionally, renewal, training and re-certification requirements should be added.**

**Several permittees asked if SWPPPs can be changed/updated upon recommendation by an inspector, and if so, will the SWPPP have to be recertified by an engineer.**

Response: Subsection 3.5.8.1. Inspector training and certification, was revised in the final permit, as follows:

*“Inspectors must have successfully completed the “Fundamentals of Erosion Prevention and Sediment Control” course, or an equivalent course, for individuals involved in land-disturbing activities which provides a working knowledge of erosion prevention and sediment controls. An engineer or a landscape architect (see section 3.1.1 above) that prepared the drainage and structure design portion of the SWPPP may also conduct the required inspections. This requirement goes in effect 24 months following the new permit effective date (June 17, 2005). A copy of the certification or training record for inspector certification should be kept on site.”*

**22. Comment: Several permittees asked if SWPPPs can be changed/updated upon recommendation by an inspector, and if so, will the SWPPP have to be recertified by an engineer.**

The permittee must modify and update the SWPPP according to requirements in section 3.4.1. SWPPP modifications:

*“a) whenever there is a change in the scope of the project, which 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 inspections or investigations by site operators, local, state or federal officials indicate the SWPPP is proving ineffective in eliminating or significantly minimizing pollutants from sources identified under section 3.5.2 below of this permit, or is otherwise not achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity;*

*c) to identify any new operator (typically contractor and/or subcontractor) as needed to reflect operational or design control that will implement a measure of the SWPPP (see subparts 2.1 and 2.2 above for further description of which operators must be identified); and*

*d) to include measures necessary to prevent a negative impact to legally protected state or federally listed fauna or flora (or species proposed for such protection). Amendments to the SWPPP may be reviewed by the division, a local MS4, the EPA or an authorized regulatory agency.”*

If any of the above modifications of the SWPPP would include preparation of plans and specifications for any building or structure, including the design of sediment basins or other sediment controls involving structural, hydraulic, hydrologic or other engineering calculations, the SWPPP shall be updated by a licensed professional engineer or landscape architect in accordance with the Tennessee Code Annotated, Title 62, Chapter 2 and the rules of the Tennessee Architectural and Engineering Examiners Board.

- 23. Comment:** Several permittees expressed concern with the provision requiring SWPPPs to be updated and implemented within 180 days and felt this should be a case-by-case basis. In particular, concern was expressed that this would cause major changes to previously permitted sites and could cause the entire site to have to be redesigned (i.e., buffer requirement).

Response: Section 3.2.1. Existing site, was revised in the final permit, as following:

*“Operator(s) of an existing site presently permitted under division’s previous 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 12 months following the new permit effective date. The permittee shall make the updated SWPPP available for the division’s review upon request.”*

- 24. Comment:** Concern was expressed that 21 days, instead of 7 days, should be allowed for any necessary modifications to the SWPPP, following an inspection; alternately, 21 days should be allowed for structural modifications and 7 days for any other modifications. Alternately, a few comments were received that supported the requirement that all modifications should be made within 7 days.

Response: The section of the permit dealing with necessary modifications to the SWPPP, following an inspection of the site, will remain unchanged in the final permit.

- 25. Comment:** The fact that erosion controls can be turned over to a Property Owners Association should be mentioned in the permit.

Response: A Property Owners Association can be recognized as a permittee at the site, if the association satisfies the criteria of being an operator of the site (see subpart 2.1.- Who Must Submit an NOI?), and if the association obtained coverage under the permit by submitting a complete NOI and a site-specific SWPPP to the division.

- 26. Comment:** The buffer zone requirement for sediment impaired and high quality waters received many comments. Permittees felt that clarification was needed on how the buffer zone is measured and on how far upstream of impaired and high quality waters the requirement applies. It also was mentioned that it should be clearly stated that water quality buffers are not sediment control measures and should not be relied upon as primary sediment control measures. Many permittees feel that the 60-foot requirement is excessive. On-the-other-hand, several commenters felt this requirement was too lenient and should not only be wider, but should be required on all streams and unnamed tributaries. The question also came up as to whether this was required on Tier III streams. Permittees also stated that the ability to get a variance should be allowed in certain cases and mitigation should be allowed if the requirement cannot be achieved due to site constraints.

**How do buffer zone requirements apply to utility line crossings, etc.? What is the requirement for the relocation of a channel? ARAP allowances need to**

**be clarified. How do you put a road across a stream with respect to a buffer zone?**

Response:

The division carefully considered various scenarios in which buffer zone requirement may impose an unnecessary burden for permittees. As a result, circumstances under which equivalent BMP control measures may be used in lieu of the buffer zone, when justifiable, were included in the final permit. As a result, section 4.4.2. Buffer zone requirements for discharges into impaired or high quality waters of the new permit has been significantly changed, and is included here in its entirety:

*“4.4.2. Buffer zone requirements for discharges into impaired or high quality waters*

*A 60-foot natural riparian buffer zone adjacent to the receiving stream designated as impaired or high quality waters shall be preserved, to the maximum extent practicable, during construction activities at the site. The water quality buffer zone is required to protect waters of the state (e.g., perennial and intermittent streams, rivers, lakes, wetlands) located within or immediately adjacent to the boundaries of the project, as identified on a 7.5-minute USGS quadrangle map, or as determined by the director. Buffer zones are not sediment control measures and should not be relied upon as primary sediment control measures. Rehabilitation and enhancement of a natural buffer zone is allowed, if necessary, for improvement of its effectiveness of protection of the waters of the state. The buffer zone requirement only applies to new construction sites, as described in section 2.4.2 above.*

*The riparian buffer zone should be established between the top of stream bank and the disturbed construction area. The 60-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 25 feet at any measured location.*

*Every attempt should be made for construction activities not to take place within the buffer zone. BMPs providing equivalent protection to a receiving stream as a natural riparian zone may be used at a construction site. Such equivalent BMPs shall be designed to be as effective in reduction of sediment in storm water runoff as a natural riparian zone. 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 include, but are not limited to: sewer line construction, roadway construction, utility line or equipment installation, greenway construction, construction of a permanent outfall or a velocity dissipating structure, etc.*

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

*4.4.3. Pre-Approved Sites*

*Construction activity at sites that have been pre-approved before the issuance date of this permit (June 16, 2005) are exempt from the design storm requirements of section 4.4.1e) above and the buffer requirements of section 4.4.2 above. 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 dated, written approval by the local, state or federal agency with authority to approve such design drawings for construction.”*

**27. Comment:** Several comments stated that the buffer requirement could cause conflict as there is not a standard buffer requirement throughout MS4s. Also, clarification was requested on whether a MS4 buffer requirement would take precedence over the requirement of the CGP.

Response: Similar to the way other state and local ordinances are implemented, the most restrictive of the applicable buffer zone requirements shall be required.

**28. Comment:** This buffer requirement caused concern with respect to its effect on property value and construction project costs. The question was also raised of how prospective landowners will become aware of this new restriction.

Response: It is not the division’s intent or a permit requirement to regulate use of any property following the stabilization of a construction site. Therefore, prospective property owners will have no restrictions on buffer zones once the site is stabilized and permit coverage terminated. Establishment of a buffer zone requirement was introduced solely as an additional protection measure for impaired and high quality streams.

**29. Comment:** Several permittees commented that the division should notify the permittee when terminations are approved or terminations should be automatically approved within 30 days of receipt of NOT, provided the permittee retains proof of delivery. Alternately, the division should only have to notify permittees if termination of coverage is denied. In addition, several comments asked for clarification of when termination may be requested: i.e., after all roads are built or upon reaching a certain percentage of stabilization.

Response: The division does not intend to “approve” termination of coverage. Since permittees will have to certify on the NOT form that all construction activities are complete, and the site is stabilized, the division will accept such certification by acknowledging a receipt of the NOT. Therefore, a portion of the section 7.1.1. Termination of site coverage, was revised in the final permit, as following:

*“The division will review NOTs for completeness and accuracy and, when necessary, investigate the proposed site for which the NOT was submitted. Upon completing the NOT review, the division will:*

- a) prepare and transmit a notification that a NOT form was received;*
- b) notify the applicant of needed changes to their NOT submittal; or*
- c) deny a request for termination of coverage under this general permit.*

*The division retains the right to deny termination of coverage under this general permit upon receipt of the NOT. If the EFO has information indicating that the permit coverage is not eligible for termination, written notification will be provided that permit coverage has not been terminated. The notification will include a summary of existing deficiencies.”*

- 30. Comment:** **Several comments and questions were received regarding operators roles. Permittees stated that the initial permittee should be able to transfer responsibility upon transfer of the property and that if new lot owners have coverage under the permit then initial permittees should be allowed to terminate coverage. It was also asked if the main permittee needs to say if the secondary permittee may submit a NOT.**

Response: Transfer of responsibility was addressed in section 2.2.1. of the final permit (emphasis added), which states, in part:

*“An owner/developer’s responsibility to comply with requirements of this permit extends until:*

- a) permit coverage is terminated in accordance with requirements of part 7 below; or*
- b) operational or design control of the entire site (including, but not limited to, infrastructure, common areas, storm water drainage structures, sediment treatment basin, etc.) is **transferred** to one or more new owner(s)/operator(s).”*

- 31. Comment:** **Clarification was requested on how regional sediment basins will be handled if multiple lots in a subdivision are served by one regional sediment basin and several of those lots are still under active construction, with all other infrastructure stabilized.**

Response: Use and maintenance of such regional basins should be addressed in the initial, comprehensive SWPPP. The comprehensive SWPPP developed and submitted by the initial permittee (typically owner/developer) must assign responsibilities to various operators (typically contractors) and coordinate all BMPs at the construction site. Assignment and coordination can be done by name or by job title.

- 32. Comment:** **The 3600 ft<sup>3</sup>/acre criteria was developed for the 2-year, 24 hour storm. There needs to be an equivalent criteria developed for the 5-year, 24-hour storm.**

Response: The 3600 ft<sup>3</sup>/acre criteria was developed for situations when only runoff from disturbed areas was taken into account for sediment pond sizing calculations. Since the new permit requires that all storm water runoff (disturbed and undisturbed areas) be taken into account, the 3600 ft<sup>3</sup>/acre criteria was removed from the new permit. Therefore, equivalent criteria for the 5-year, 24-hour storm will not be included in the new permit.

**33. Comment:** **Several permittees requested that a number of definitions to be added, or edited.**

Response: All requested clarifications were made in the final permit. The following definitions were added:

*“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.*

*“Qualifying State, Tribal, or local erosion and sediment control program” is one that includes, as defined in 40 CFR 122.44(s):*

*(i) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;*

*(ii) 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;*

*(iii) Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved State, Tribal or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges); and*

*(iv) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.”*

**34. Comment:** **Who is responsible when there is pollution?**

Response: Permittees are held responsible if they are determined to cause a condition of pollution in a receiving stream.

**35. Comment:** **Much of construction runoff is a non-point source discharge. To better clarify the division’s position on water pollution from construction sites, the permit should authorize “point source and non-point source discharges of storm water from construction activities.”**

Response: The NPDES permitting program is limited to point source discharges to the waters of the United States. Therefore, a separate definition of a non-point source for the purpose of this permit is unnecessary. A point-source is defined in TDEC Rules, Chapter 1200-4-5-.02 Definitions (definition number 66 on page 5).

**36. Comment:** **Several comments were received encouraging the quick transfer of permit authority to Qualifying Local Programs (QLPs). A list of QLPs with contact**



**information should be listed on the division's web page. Clarification was requested on what the requirements (including non-construction related requirements) for QLPs are and what an MS4 must do to become qualified (i.e., Can an MS4 become a QLP if it is not permitted through the NPDES Phase I or II programs?). Comments were also received that there should be a standardization of rules governing QLPs. It was recommended that a stakeholder group made up of representatives from MS4s, TDEC, and other interested parties be convened to work through the details of the Qualifying Local Program requirements. Furthermore, several comments were submitted requesting a public advisory committee/task force/working group be set up to offer suggestions and input on the new NPDES permit regulations.**

Response: The division is committed to a quick transfer of permitting authority to QLPs. However, the criteria and procedures for approval of QLPs do not have to be incorporated in this general permit. The division intends to review all programs that express interest into quick transition into the qualifying program, and will work on a case-by-case basis with all MS4 programs in assisting them to achieve the QLP status. The division will also take the initiative in forming a task force made up of representatives from all interested parties to work through the details of the QLP requirements and on the new NPDES permit regulations.

**37. Comment: Why are improved sinkholes or injection wells allowed to be permitted (Section 1.2.1)?**

Response: The CGP does not authorize discharges into improve sinkholes or injection wells. A separate permit for such discharges is required, as stated in section 1.2.1. Storm water discharges associated with construction activities:

*“Any discharge of storm water or other fluid to an improved sinkhole or other injection well, as defined, must be authorized by permit or rule as a Class V underground injection well under the provisions of TDEC Rules, Chapter 1200-4-6.”*

**38. Comment: Does the term “commercial builder” in Section 2.2.2 include builders of residential and non-residential structures?**

Response: Yes, it does. In reference to commercial builders, the permit describes construction of a structure at a site, which can be residential or non-residential in nature (emphasis added):

*“The commercial builder who purchases one or more lots from an owner/developer (initial permittee) for the purpose of constructing and selling a structure (e.g., residential house, non-residential structure, commercial building, industrial facility, etc.) and has design or operational control over construction plans and specifications becomes a primary permittee for that portion of the site.”*

**39. Comment: Section 5.9 of the Permit Rationale is confusing. It appears that multiple operators at one site would be assigned new and unique permit numbers. It**

**seems logical that these permit numbers should be unique yet related in a manner that can easily relate the operators back to the overall development site. Another question was: How will new tracking numbers be assigned for new site owners?**

Response: Section 1.5.2. - Permit tracking numbers of the new permit has been modified to read (emphasis added):

*“Construction sites covered under this permit will be assigned permit tracking numbers in the sequence TNR100001, TNR100002, etc. Previously assigned permit tracking numbers will be retained for operators of existing sites, presently permitted under the construction general permit (see section 2.4.1 below). An operator of a new construction site will be assigned a new permit tracking number (see section 2.4.2 below).*

*If a new operator (see section 2.4.3 below) assumes ownership and operational control of an entire permitted construction site, the previously assigned tracking number may be retained. If a new operator assumes ownership and operational control of a portion of a construction site, a new tracking number **may** be assigned. If a new operator is a new contractor added to an existing permitted construction site, the previously assigned tracking number will be retained.”*

**40. Comment: The permit should be modified to prohibit late NOIs, and submittal of late NOIs should result in immediate enforcement actions by the division (including fines levied for each day of late submittal). Further, stringent enforcement measures should be in place to deal with substantively improper, incomplete, or inaccurate implementation of SWPPP or permit requirements (including enforcement action, with permit revocation and fines levied; if resubmission is filed, the fee will be due and payable again with the resubmittal). Section 6.6 should be edited to reflect that no more than 3 business days should be given to correct information or fines will be levied. No more than 3 failures to submit allowed within any given year or fines will be levied.**

Response: Failure to submit a complete and/or timely NOI, and improper, incomplete, or inaccurate implementation of SWPPP or permit requirements all constitute non-compliance with permit conditions. Appropriate enforcement action will be assessed by the division’s Enforcement and Compliance Section in consultation with the Field Office personnel.

**41. Comment: Several permittees commented that the conditions stating how this permit works in conjunction with the ARAP permit need clarified (i.e. variance on buffer zone requirement with proper ARAP permit, projects that require construction within the mandated buffer zone, etc.). ARAP permits should not be allowed unless absolutely necessary. How many ARAPs were applied for and how many were approved last year in Tennessee?**

Response: A relationship between the CGP and ARAP often exists at construction sites. The division’s personnel closely coordinate review and issuance of notices of coverage under the CGP and individual or general ARAP permits. During the

2004 calendar year, 698 applications for ARAPs were received. The division issued 608 ARAP permits in the same time period.

- 42. Comment:** **Section 3.5.3.3. Second paragraph, lines 4-5. – This should be changed to “treatment will be used to keep sediment from being discharged,” particularly in east Tennessee which has a large amount of red clay soil.**

Response: A consideration for physical or chemical treatment of storm water runoff at construction sites is allowed, but will not be mandated by the division. It is the division’s position that erosion prevention coupled with sediment control, using the appropriate BMPs, is the best approach for effective protection of receiving streams.

- 43. Comment:** **Is consideration given to storm intensity?**

Response: Storm intensity is the measure of the quantity of rain falling during a specified period of time. Storm water ponds and other structures designed for control of runoff at the construction site must have adequate capacity during the entire flow period (discharge) of the design storm (5-year, 24-hour storm for impaired and high quality streams, and 2-year, 24-hour storm for other streams). If the intensity of a storm is such that a design storm occurs in a time period shorter than 24 hours, the permit requirements are considered to be met. 24-hour rainfall amounts by return period vary across the state and are summarized in the table in Part 8 of the permit (Definitions).

- 44. Comment:** **Linear infrastructure activities should be addressed in a separate permit due to the higher impact development projects on which this permit concentrates.**

Response: The division will consider if a separate NPDES General Permit for Construction Activities for Linear Projects may be a more appropriate and effective way to address some concerns raised by various groups. As a result, the division will initiate a work group that will consider this proposal.

- 45. Comment:** **Section 3.5.1.c. - Reword "estimates of the total construction site and the total area of the site..." to promote clarity. Some sites may contain hundreds of acres with construction on only a portion of the acreage.**

Response: Paragraph 3.5.1.c) has been reworded as following:

*“Each plan shall provide a description of pollutant sources and other information as indicated below: [...]*

*c) 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;”*

- 46. Comment:** **The use of borrow area as an example of support activities (Section 1.2.2) should be deleted. The wording seems to require that the activity causing the development of borrow areas must be covered under this permit. This may**

**not always be the case such as for landfill covers or small landscaping projects not exceeding the acreage threshold.**

Response: If a borrow pit is a support activity primarily related to a construction site that is covered under this general permit, it can be authorized under a single notice of coverage. If a borrow pit, containing erodible material, is not related to any permitted construction site and exceeds the acreage threshold, a coverage under this general permit must be obtained.

**47. Comment: A list of high quality waters should be made available on the division's website.**

Response: A list of high quality waters can be obtained from the division upon request. The division will make every effort to publish and update the list of impaired and high quality waters on its web site.

**48. Comment: All new construction projects should be inspected prior to issuing an NOC to ensure that unpermitted discharges have not begun.**

Response: This could occur on some sites, but it is unlikely that division's personnel would have the time to do this for all sites.

**49. Comment: Several comments were received on the contents of the NOI form: the topographic map should reference all bodies of water, stream determination should be defined, the NOI should ask if wetlands will be impacted – not if they have been delineated. Instead of referencing contractors the form should reference operators, verbal authorization references should be removed, and certification instructions should refer the applicant to the permit for complete details.**

Response: All proposed changes were made on the final version of the NOI. The certification instructions were kept in its draft, summarized form.

**50. Comment: The NOC should be sent to the contact person as well as the owner.**

Response: The NOC will be sent to the primary permittee, as indicated on the NOI. The division will make a reasonable effort to notify the contact person, as well as any other involved parties of the NOC issuance.

**51. Comment: The last paragraph in Section 3.5.2 should be revised to read "The SWPPP must include erosion control drawings showing the approximate location of each control measure along with a description of the timing during the construction process for implementing each measure (e.g., prior to the start of earth disturbance, as the slopes are altered and after major grading is finished)."**

Response: The proposed language was included in the final permit.

**52. Comment: Several comments were received requesting clarification on how Total Maximum Daily Load (TMDL) requirements would apply in this permit.**

**Specifically, permittees asked if Qualifying Local Programs (QLPs) would be approved within TMDL watersheds and if so, if conditions for the QLP would be added to address the TMDL. In addition, permittees felt that if a TMDL were established for siltation then all projects discharging to the impaired streams should be required to obtain coverage under an individual permit and comply with the established waste load allocations. Permittees also requested that a list of streams with established TMDLs be available on the division's website.**

Response: A list of approved and proposed TMDLs, and correspondingly a list of affected streams, can be found at the division's web site located at: <http://www.state.tn.us/environment/wpc/tmdl/>. Regardless of whether the division has authorized a QLP as a permitting authority, compliance with approved TMDLs must be attained. If a permittee can demonstrate that established TMDL waste load allocations can be achieved by implementation of BMPs as outlined in the SWPPP, individual permit coverage is not mandatory.

**53. Comment: The additional SWPPP requirements for discharges into impaired or high quality waters (Section 4.4.1.) should also apply to Tier I streams in order to help prevent these streams from becoming impaired.**

Response: The permit does not authorize discharge of pollutants that would cause a condition of pollution or a permanent degradation of Tier I streams. Non-compliance(s) with permit condition(s) will be assessed by the division's Enforcement and Compliance Section in consultation with the Field Office personnel. Appropriate enforcement actions will be taken to protect receiving waters from degradation.

**54. Comment: The CGP should be renewed every two years to help allow for more public input.**

Response: There is no apparent advantage to changing the standard 5-year duration of permit coverage.. The disadvantages of such action would be an unnecessary regulatory burden on the permittees and inefficient use of state's resources and personnel. The division has been, and plans to be, open to comments, discussions, and, if warranted, a modification of this, or any other general permit. The CGP will be issued for a period of 5 years.

**55. Comment: The requirement for providing percent slope calculations in item d (Section 3.5.1) is excessive. This requirement could be particularly onerous for "small" projects (i.e. <5 acres) that do not need precise surveyed elevations to properly develop a construction site. We recommend replacing "calculation" with "an estimation." Using estimated slope values in this section are also consistent with the requirement for "approximate slope" in part g of this section.**

Response: The word "calculation" has been replaced with a word "estimation" in the final version of the permit.

- 56. Comment:** **Do all calculations have to be included in the SWPPP or just the results?**
- Response: The permittee may submit only the results of calculations in the SWPPP, but must submit the calculations to the division upon request.
- 57. Comment:** **Are three sets of Erosion Prevention and Sediment Control (EPSC) plans required or can they be combined?**
- Response: EPSC plans can be combined.
- 58. Comment:** **Sections 4.4.1.a) and e) indicate that a higher design standard (5 year, 24 hour storm event) must be applied to erosion prevention and sediment control (EPSC) measures that discharge “loadings of a pollutant that is identified as causing or contributing to an impairment of a water body on the impaired waters list or which would cause degradation to waters”. EPSC measures are designed specifically to address the control of sediment migration. Those streams that are impaired due to hydro-modification or bacteria do not receive the same benefit from a higher EPSC standard as those impaired by sediment. It is recommended that only those sites that are impaired due to sediment/siltation/TSS should have a higher EPSC design standard applied.**
- Response: Although siltation is expected to be a pollutant of concern in majority of cases, the division has an obligation to provide an equivalent protection for all impaired streams from all pollutants of concern. However, if a pollutant of concern for which the receiving stream is listed as impaired for is not present in the discharge, the higher design standard should not apply.
- 59. Comment:** **Will wheel-wash runoff be allowed for trucks leaving the construction site and is chemical treatment of stormwater authorized?**
- Response: The wheel-wash runoff should not have any pollutants in addition to those already present and expected at the construction site. Therefore, as long as no chemicals or surfactants are used, wheel-wash runoff would be identical in nature to storm water runoff associated with construction activities, and can be discharged from the site.
- 60. Comment:** **For large projects under a tight construction schedule, it may not be possible to delay the start of subsequent construction phases until an entire phase is stabilized. Therefore, the last sentence of Section 3.5.3.1. k) should be deleted and replaced with “No more than 50 acres of active soil disturbance is allowed at any time during the construction project.”**
- Response: Paragraph k) was changed and reads as follows:
- Construction must be phased for projects in which over 50 acres of soil will be disturbed. Areas of the completed phase must be stabilized within 15 days (see subsection 3.5.3.2 below). No more than 50 acres of active soil disturbance is allowed at any time during the construction project.*

- 61. Comment:** The words “any increase in” should be added prior to the phrase “the volume of storm water discharges that will occur after construction operations have been completed” in Section 3.5.4. Clarification is also needed on what predevelopment levels are being referenced as there is no mention of flow.
- Response: Words “any increase in” were added to Section 3.5.4.
- 62. Comment:** Stabilized construction entrances may not always be required and thus the words “as needed” should be added to Section 3.5.5 b.
- Response: Words “as needed” were added to Section 3.5.5 b.
- 63. Comment:** Is co-mingling of stormwater runoff with other permitted discharges okay?
- Response: Discharges of storm water or wastewater authorized by and in compliance with a different NPDES permit (other than this permit) may be mixed with discharges authorized by this permit.
- 64. Comment:** Several permittees clarified that Section 5.2 should require records to be kept for three years, not one year. And a copy of the permit should be kept with the SWPPP.
- Response: A copy of the permit is required to be kept with the SWPPP. The records are required to be kept for 3 years.
- 65. Comment:** Since sediment is Tennessee’s number one pollutant, permits should only be granted if the project will have no impact to Tennessee’s waters. All other projects need to apply for an individual permit. It was further said that all applicants under the CGP should instead be required to obtain coverage under an individual permit.
- Response: Given the number and nature of construction sites that were granted coverage under the previous general permit, it would not be feasible to issue 8000+ individual permits. Such approach would not only severely limit, but possibly bring construction activities at the state to a standstill. The final general permit contains a provision for the director can require a site to obtain an individual permit (section 6.12.1.).
- 66. Comment:** Is electronic submission of NOI, NOT, reports, etc. allowed?
- Response: The provision for electronic submission of forms and reports is included in the new permit, but at this time, the division can only accept original signed copies of said documents.
- 67. Comment:** Several comments received stated that numeric limits should be included in the permit, especially sediment oxygen demand.
- Response: The current permit requires erosion prevention and sediment control measures through implementation of BMPs at construction sites. Quantification of

sediment loading protective of receiving stream designated uses, should be established in the future through development of appropriate TMDLs. Subsequently, and based on the waste load allocations established in those TMDLs, the division will incorporate appropriate effluent limitations in future individual and general permits. These limitations may include, but are not limited to, sediment oxygen demand.

**68. Comment: The process followed for this general permit, public notice followed by public hearings and a comment period, resemble the rulemaking process in part, but does not include notification in the TAR (Tennessee Administrative Register) or action by the Board. It also creates a set of NPDES activities that are treated differently and thus this is a rule, not a general permit. It also puts onerous requirements on the regulated community without having gone through the rulemaking process. This should be adopted as a rule.**

Response: The WQC Act (Water Quality Control Act) differentiates between rules and permits. Compare §69-3-105 with §69-3-108. So does the UAPA (Unified Administration Procedures Act). See the definitions of license and rule in §4-5-102. The WQC Act also distinguishes individual and general permits. In its discussion of general permits in §69-3-108(j) it states that the general permit may be used when the commissioner has determined that it is appropriate to regulate a category of activities or discharges in that manner. It goes on to state that the general permit may require some form of application for persons conducting the activity. It also addresses some instances of overlap between individual permits and general permits.

It is clear from reading that subsection of the Act that general permits will always create a subset of the universe of activities required by the Act to have a permit. That is always the case and it is not enough to turn a general permit into a rule. Both permits and rules set requirements. The fact that there are requirements created by one of them does not help distinguish which category it fits in. Nor is the fact that there is some resemblance between the processes for creation of a general permit and a rule sufficient to transform one into the other.

Although it is true that a general permit is closer to a rule in some respects than an individual permit is, because it will authorize a number of activities rather than one activity, it is still a permit rather than a rule because it authorizes the category of activities to be done in accordance with certain conditions. Rules, on the other hand, set the general requirements, including the process of permit issuance and the criteria for issuance. This permit authorizes construction activities to be done in accordance with its terms. It should also be noted that someone proposing to engage in construction activity may apply for an individual permit in lieu of seeking coverage under the general permit, and in certain situations, the Commissioner may require one. See section 6.12.

Since this is a permit rather than a rule, publication in the TAR is not required and the Commissioner rather than the Board is given the authority to issue it.



**69. Comment: If a construction project will also be covered under a separate NPDES storm water permit, CGP fees should not be required. In addition, the fee table and explanation should be included in the permit as well as the NOI.**

Response: The instruction portion of the NOI form, which itself is a part of the permit, does include a schedule of fees for this CGP.

**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 intends to initiate task force groups for Qualifying Local Programs and stakeholders interested in further revisions and possible modification of this new permit, if necessary. Finally, the division proposes will consider the development of a separate general permit for storm water runoff associated with construction activities for linear projects.

The division's decision on this matter is to issue a General NPDES Permit for Storm Water Discharges Associated with Construction Activity, Permit No. TNR100000.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Edward M. Polk, Jr., P.E.  
Manager, Permit Section

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