

**RULES  
OF  
THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER RESOURCES**

**CHAPTER 0400-40-10  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMITS**

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**0400-40-10-.01 GENERAL.**

- (1) This chapter states the manner in which the Department may issue general permits in accordance with § 402 of the Clean Water Act (33 U.S.C. § 1342) and T.C.A. § 69-3-108.
- (2) Electronic reporting. This chapter requires the submission of forms developed by the Commissioner in order for a person to comply with certain requirements, including, but not limited to, making reports, submitting monitoring results, and applying for permits. The Commissioner may make these forms available electronically and, if submitted electronically, then that electronic submission shall comply with the requirements of Chapter 0400-01-40.

Electronic submission is required when available unless waived by the Commissioner in accordance with 40 C.F.R. § 127.15, which is hereby incorporated by reference as published in the July 1, 2022, edition of the Code of Federal Regulations.

**Authority:** T.C.A. §§ 4-5-201, et seq., and 69-3-101, et seq. **Administrative History:** Original rule filed September 17, 2013; effective December 16, 2013. Rule renumbered from 1200-04-10. Amendments filed February 14, 2022; effective May 15, 2022. Amendments filed December 20, 2023; effective March 19, 2024.

**0400-40-10-.02 DEFINITIONS.**

- (1) “Act” means the Tennessee Water Quality Control Act, as amended, T.C.A. §§ 69-3-101 et seq.
- (2) “Category of Sources” means either (1) Storm water point sources; or (2) A category of point sources other than storm water point sources, or a category of treatment works treating domestic sewage, if the sources all:
  - (a) Involve the same or substantially similar types of operations;
  - (b) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
  - (c) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;
  - (d) Require the same or similar monitoring; and
  - (e) In the opinion of the Director, are controlled more appropriately under a general permit than under individual permits.

(Rule 0400-40-10-.02, continued)

- (3) "General Permit" means a permit issued under the Act and this rule authorizing discharges from a category of sources within a geographical area.
- (4) "Geographical Area" means existing geographic or political boundaries such as:
  - (a) Designated planning areas under §§ 208 and 303 of the Federal Clean Water Act;
  - (b) Sewer districts or sewer authorities;
  - (c) City, County, or State political boundaries;
  - (d) State highway systems;
  - (e) Standard metropolitan statistical areas as defined by the Office of Management and Budget; or
  - (f) Any other appropriate division or combination of boundaries.
- (5) "Individual Permit" means a permit issued under the Act to a specified person to conduct a discharge at a specified location.
- (6) "Notice of Intent (NOI)" means a written notice by a discharger to the Director that he wishes his discharge to be authorized under a general permit.
- (7) Terminology not specifically defined herein shall be defined in accordance with the Tennessee Water Quality Control Act of 1977, T.C.A. §§ 69-3-101 et seq., and the rules adopted thereunder.

**Authority:** T.C.A. §§ 4-5-201, et seq., and 69-3-101, et seq. **Administrative History:** Original rule filed September 17, 2013; effective December 16, 2013. Rule renumbered from 1200-04-10. Amendments filed December 20, 2023; effective March 19, 2024.

#### **0400-40-10-.03 PERMITS.**

- (1) Purpose of a Permit:

A permit is a license to conduct an activity which is regulated under T.C.A. § 69-3-108 in strict compliance with the conditions and limitations contained within the permit. T.C.A. § 69-3-108 explicitly states when a permit is required and what activities shall be unlawful without a permit. In addition, T.C.A. § 69-3-108 states that under no circumstances shall the Commissioner issue a permit for an activity which would cause a condition of pollution, either by itself or in combination with others. No permit shall be issued which will violate any provision of §§ 301, 302, 303, 306, or 307 of the Federal Water Pollution Control Act, or of the Tennessee Water Quality Control Act of 1977, or otherwise result in a condition of pollution. Where the Commissioner finds that a category of activities or discharges would be appropriately regulated under a general permit, he may issue such a permit.

- (2) Administration.

- (a) General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of T.C.A. §§ 69-3-108(e) through (j).
- (b) Requiring an Individual Permit.

(Rule 0400-40-10-.03, continued)

1. Notwithstanding the provisions of this rule, the Director may require any person to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take action under this rule. Cases where an individual NPDES permit may be required include the following:
  - (i) The discharger is not in compliance with the conditions of the general NPDES permit;
  - (ii) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works;
  - (iii) Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit;
  - (iv) A Water Quality Management plan containing requirements applicable to such point sources is approved;
  - (v) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
  - (vi) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general NPDES permit;
  - (vii) The discharge is a significant contributor of pollutants. In making this determination, the Director may consider the following factors:
    - (I) The location of the discharge with respect to waters of the State of Tennessee;
    - (II) The size of the discharge;
    - (III) The quantity and nature of the pollutants discharged to waters of the State of Tennessee; and
    - (IV) Other relevant factors.
2. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under T.C.A. subsection 69-3-108(a), with reasons supporting the request to the Director.
3. When an individual NPDES permit is issued to an owner or operator otherwise subject to a general NPDES permit, the applicability of the general permit to the individual NPDES permittee is terminated on the effective date of the individual permit.
4. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

(Rule 0400-40-10-.03, continued)

(c) Degree of Waste Treatment Required.

All pollutants shall receive such treatment or corrective action so as to insure compliance with the terms and conditions of the issued permit and with the following, whenever applicable:

1. Effluent limitations established by the EPA pursuant to §§ 301, 302, 306, 307, 308, 318, and 405 of the Federal CWA;
2. Criteria and standards for Best Management Practices established by EPA pursuant to Section 304(e) of the Federal CWA;
3. Notwithstanding parts 1. and 2. of this subparagraph, more stringent effluent limitations may be required as deemed necessary by the Director (i) to meet any existing Federal laws or regulations, or (ii) to insure compliance with any applicable State water quality standards, effluent limitations, treatment standards, or schedule of compliance;
4. Calculations and specifications of effluent limits and standards shall be made in accordance with the provisions of Federal Regulations, 40 CFR 122.45 (1995). [See paragraph (3) of this rule for text of cited Federal Regulations.]

(d) Notice of Intent (NOI).

1. Conditions for NOI to be covered by a general permit shall be established in the general permits and operate in lieu of application requirements. A general permit shall specify whether or not an NOI must be submitted for a facility to obtain coverage under the general permit.
2. A general permit shall specify the time period, after an NOI is submitted, or after the general permit is issued, when coverage under the general permit is effective.
3. An NOI shall be on forms as may be prescribed and furnished by the Director.

(e) Signatory Requirements.

1. Any NOI submitted to the Director shall be signed as follows:
  - (i) For a corporation, by a:
    - (I) Responsible corporate officer, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation;
    - (II) Manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions that govern the operation of the regulated facility to assure long term environmental compliance with environmental laws and regulations; or
    - (III) Person in a corporate position to whom signatory authority has been delegated by a corporate officer.

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- (ii) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
    - (iii) For a municipality, state, federal, or other public facility, by a:
      - (I) Principal executive officer (i.e., the chief executive officer of the agency, or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency); or
      - (II) Ranking elected official.
  - 2. All reports or information submitted to the Commissioner shall be signed and certified by the persons identified in part 1. of this subparagraph or a duly authorized representative of that person. A person is a duly authorized representative only if:
    - (i) The authorization is made in writing by the person identified in part 1. of this subparagraph;
    - (ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or regulated activity, or the authorization specifies an individual or position having overall responsibility for environmental matters for the company; and
    - (iii) The written authorization is submitted to the Commissioner.
  - 3. Any changes in the written authorization submitted to the Director under part 2. of this subparagraph which occur after the issuance of a permit shall be reported to the Director by submitting a copy of a new written authorization which meets the requirements of parts 1. and 2. of this subparagraph.
  - 4. Any person signing any document under parts 1. or 2. of this subparagraph shall make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document; and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."
- (f) Receipt and use of NOIs and data shall be in accordance with Rule 0400-40-01-.07.
- (g) Notice of NPDES General Permits.
- 1. The Director shall give public notice of his or her intent to issue a general permit:
    - (i) The notice shall set forth the means by which one may comment on the draft general permit and shall give the public a comment period of at least 30 days;
    - (ii) The Director shall consider all comments received from the public during the comment period;
    - (iii) When the general permit is issued, or when the decision is made not to issue the permit, the Director shall prepare and make available to the

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- public a set of responses to comments received during the comment period; and
  - (iv) The Director shall schedule at least one public hearing on the general permit, and give at least 30 days notice of the hearing, and receive comments for at least 10 days after the hearing.
2. Public notices in part 1. of this subparagraph shall be given by mailing a copy of the notice to the following persons:
- (i) EPA Region IV;
  - (ii) Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), NPDES, § 404, or sludge management permit;
  - (iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources, the Tennessee Valley Authority, the Advisory Council on Historic Preservation, and the Tennessee Historical Commission, including any affected States;
  - (iv) Any State agency responsible for plan development under CWA Section 208(b)(2), 208(b)(4) or 303(e) and the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service; and
  - (v) Persons on a mailing list developed by including on the list those who request in writing to be on the list; by soliciting persons for area lists from participants in past permit proceedings in that area; and by notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals.
3. Public notices in part 1. of this subparagraph shall be given by publication in a daily or weekly newspaper within the area described in the general permit coverage; in the case of statewide general permits, in daily newspapers in Memphis, Nashville, Chattanooga and Knoxville.
4. The Director shall provide notice of the proposed NPDES general permit action to facilities and activities it knows to be potentially affected by the general permit action, and also to known agencies, associations, and other umbrella organizations for those facilities or activities.
5. Public notices issued under this subparagraph shall contain the following minimum information:
- (i) Name and address of the Division and any section within the Division responsible for processing the permit action for which notice is being given;
  - (ii) A brief description of the activity addressed in the general permit, and the area of coverage of the permit;
  - (iii) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft general permit and rationale sheet;

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- (iv) A brief description of the procedures for comment, the time and place of the hearing, and other procedures by which the public may participate in the final permit decision; and
- (v) In addition to information described in subparts (i) through (iv) of this part, public notice of hearings shall contain reference to the date of previous public notices relating to the permit; date, time and place of the hearing; and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

- 6. In addition to the general public notice described in part 5. of this subparagraph, persons identified in subparts 2.(i) through (iv) of this subparagraph shall be mailed a copy of the draft permit and rationale sheet.

(h) Public Participation in NPDES General Permits.

- 1. The public may comment on conditions of draft general permits by written comment during the public notice and comment period, by written or oral comments at public hearings, and by written comment within 10 days of a public hearing.
- 2. As provided at subparagraph (2)(b) of this rule, any interested person may petition the Director to require an individual NPDES permit for an individual facility or activity otherwise covered under a general permit.

(i) Terms and Conditions of Permits.

General Permits issued shall be subject to the terms and conditions of paragraph (4) of Rule 0400-40-01-.05.

(j) Duration of Permits.

General Permits shall be issued for a fixed term, not to exceed 5 years, which shall be stated in the permit.

(3) Text of Cited Federal Regulations.

40 CFR § 122.45 Calculating NPDES permit conditions (applicable to State NPDES programs, see § 123.25).

- (a) Outfalls and discharge points. All permit effluent limitations, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under § 122.44(k) (BMPs where limitations are infeasible) and paragraph (i) of this section (limitations on internal waste streams).

(b) Production-based limitations.

- (1) In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow.
- (2) (i) Except in the case of POTWs or as provided in paragraph (b)(2)(ii) of this section, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or

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new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

- (ii) (A) (1) The Director may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

- (2) For the automotive manufacturing industry only, the Regional Administrator shall, and the State Director may establish a condition under paragraph (b)(2)(ii)(A)(1) of this section if the applicant satisfactorily demonstrates to the Director at the time the application is submitted that its actual production, as indicated in paragraph (b)(2)(i) of this section, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

- (B) If the Director establishes permit conditions under paragraph (b)(2)(ii)(A) of this section:

- (1) The permit shall require the permittee to notify the Director at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.
- (2) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Director under paragraph (b)(2)(ii)(B)(1) of this section, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.
- (3) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.



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- (c) Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as defined in 40 CFR Part 136 unless:
  - (1) An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or
  - (2) In establishing permit limitations on a case-by-case basis under § 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the CWA; or
  - (3) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).
- (d) Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:
  - (1) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and
  - (2) Average weekly and average monthly discharge limitations for POTWs.
- (e) Non-continuous discharges. Discharges which are not continuous, as defined in § 122.2, shall be particularly described and limited, considering the following factors, as appropriate:
  - (1) Frequency (for example, a batch discharge shall not occur more than once every 3 weeks);
  - (2) Total mass (for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);
  - (3) Maximum rate of discharge of pollutants during the discharge (for example, not to exceed 2 kilograms of zinc per minute); and
  - (4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (¼ kilogram) of zinc in any discharge).
- (f) Mass limitations.
  - (1) All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:
    - (i) For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;
    - (ii) When applicable standards and limitations are expressed in terms of other units of measurement; or
    - (iii) If in establishing permit limitations on a case-by-case basis under § 125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit

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conditions ensure that dilution will not be used as a substitute for treatment.

- (2) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.
- (g) Pollutants in intake water.
- (1) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:
    - (i) The applicable effluent limitations and standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis; or
    - (ii) The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.
  - (2) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.
  - (3) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.
  - (4) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Director may waive this requirement if he finds that no environmental degradation will result.
  - (5) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.
- (h) Internal waste streams.
- (1) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by § 122.44(i) shall also be applied to the internal waste streams.
  - (2) Limits on internal waste streams will be imposed only when the fact sheet under § 124.56 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible (for example, under 10 meters of water), the wastes at the point of discharge are so diluted as

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to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

- (i) Disposal of pollutants into wells, into POTWs or by land application. Permit limitations and standards shall be calculated as provided in § 122.50. (Information collection requirements in paragraph (b) were approved by the Office of Management and Budget under control number 2040-0077).

**Authority:** T.C.A. §§ 4-5-201, et seq., and 69-3-101, et seq. **Administrative History:** Original rule filed September 17, 2013; effective December 16, 2013. Rule renumbered from 1200-04-10. Amendments filed December 20, 2023; effective March 19, 2024.

#### **0400-40-10-.04 MUNICIPAL SEPARATE STORM SEWER SYSTEMS.**

Permits issued to entities that operate a municipal separate storm sewer system (MS4) shall include the following effluent limitations to manage post-construction stormwater at all new development and redevelopment projects that disturb one or more acres of land, or less than one acre if part of a larger common plan of development, and discharge into the permittee's MS4:

- (1) Permanent Stormwater Management Program.
  - (a) The permittee shall develop and implement a permanent stormwater management program to reduce pollutants in stormwater discharges through management practices, control techniques, and systems, design, and engineering practices implemented to the maximum extent practicable (MEP), as set forth herein.
  - (b) The permanent stormwater management program shall include plans review, site inspections, and a means to ensure that permanent stormwater control measures (SCMs) are adequately operated and maintained.
  - (c) The permittee must develop and implement, and modify as necessary, an ordinance or other regulatory mechanism to address permanent stormwater management at new development and redevelopment projects.
  - (d) The permittee must submit an implementation plan for its permanent stormwater management program not later than 90 days after the effective date of the first new or revised permit issued after the effective date of these rules. The implementation plan shall include a brief description of the main components of the permittee's permanent stormwater management program, which should include: codes and ordinance development and implementation; procedures for plans review and criteria for approval; procedures for conducting and tracking site inspections; and SCM operation and maintenance policies. The implementation plan shall also include a timeline to develop and implement the program. If the permittee has implemented a permanent stormwater management program that complies with all requirements of the new or revised permit, the permittee may submit an implementation plan explaining how its program complies and identifying any new or modified elements of its program. The schedule must indicate completion as soon as feasible but no later than 24 months from the effective date of the first permit issued after the effective date of these rules. Further, if implementation will take longer than 12 months, the plan must include interim milestones. Implementation plans must be submitted to the Division.
- (2) Permanent Stormwater Standards.
  - (a) The permanent stormwater management program must require new development and redevelopment projects to be designed to reduce pollutants to the MEP, as set forth

(Rule 0400-40-10-.04, continued)

herein. Compliance with permanent stormwater standards for new development and redevelopment projects is determined by designing and installing SCMs as established by this rule and complying with other requirements of this rule. For design purposes, total suspended solids (TSS) may be used as the indicator for the reduction of pollutants.

- (b) SCMs must be designed to provide full treatment capacity within 72 hours following the end of the preceding rain event for the life of the new development or redevelopment project. The permittee shall identify a suite of SCMs to be used in various situations. Information relevant to identified SCMs should be made readily available. Application of innovative SCMs is encouraged. If the permittee decides to significantly limit the number of SCM options, it must be documented in the stormwater management program how the performance standards of this rule can be met with the limited set of control measures that are allowed.
- (c) The water quality treatment design storm is a 1-year, 24-hour storm event as defined by Precipitation-Frequency Atlas of the United States. Atlas 14. Volume 2. Version 3.0. U.S. Department of Commerce. National Oceanic and Atmospheric Administration (NOAA), National Weather Service, Hydrometeorological Design Studies Center, Silver Springs, Maryland or its digital product equivalent. The water quality treatment volume (WQTV) is a portion of the runoff generated from impervious surfaces at a new development or redevelopment project by the design storm, as set forth below. SCMs must be designed, at a minimum, to achieve an overall treatment efficiency of 80% TSS removal from the WQTV. The quantity of the WQTV depends on the type of treatment provided, as established in the following table:

Water Quality Treatment Volume and the Corresponding SCM Treatment Type for the 1-year, 24-hour Design Storm		
SCM Treatment Type	WQTV	Notes
infiltration, evaporation, transpiration, and/or reuse	runoff generated from the first 1 inch of the design storm	Examples include, but are not limited to, bioretention, stormwater wetlands, and infiltration systems.
biologically active filtration, with an underdrain	runoff generated from the first 1.25 inches of the design storm	To achieve biologically active filtration, SCMs must provide minimum of 12 inches of internal water storage.
sand or gravel filtration, settling ponds, extended detention ponds, and wet ponds	runoff generated from the first 2.5 inches of the design storm or the first 75% of the design storm, whichever is less	Examples include, but are not limited to, sand filters, permeable pavers, and underground gravel detention systems. Ponds must provide forebays comprising a minimum of 10% of the total design volume. Existing regional detention ponds are not subject to the forebay requirement.
hydrodynamic separation, baffle box settling, other flow-through manufactured treatment devices (MTDs), and treatment trains using MTDs	maximum runoff generated from the entire design storm	Flow-through MTDs must provide an overall treatment efficiency of at least 80% TSS reduction. Refer to subparagraph (2)(d) of this rule.

- (d) Treatment Train Calculations.
  - 1. Treatment trains using MTDs.

(Rule 0400-40-10-.04, continued)

Treatment trains using MTDs must provide an overall treatment efficiency of at least 80% TSS reduction utilizing the following formula:

The calculation:

$$R = A + B - (A \times B) / 100$$

Where:

R = total TSS percent removal from application of both SCMs,  
A = the TSS percent removal rate applicable to the first SCM, and  
B = the TSS percent removal rate applicable to the second SCM.

TSS removal rates for MTD must be evaluated using industry-wide standards.  
TSS removal rates for other SCMs must be from published reference literature.

2. Treatment trains not using MTDs.

Treatment trains using infiltration, evaporation, transpiration, reuse, or biologically active filtration followed by sand or gravel filtration, settling ponds, extended detention ponds or wet ponds may subtract the treated WQTV of the upstream SCMs from the WQTV of the downstream SCMs.

- (e) The permittee may also develop a mitigation program and/or system of payment into a public stormwater fund as described in paragraph (3) of this rule.
- (f) The permanent stormwater management program may allow for a reduction of the WQTV for a new development or redevelopment project up to 20% for any one of the following conditions, and up to a total maximum of 50% for a combination of the following conditions:
  - 1. Redevelopment projects (including, but not limited to, brownfield redevelopment);
  - 2. Vertical density (floor to area ratio of at least 2, or at least 18 units per acre); and
  - 3. Incentives as identified by the permittee, submitted to the Division and approved by the Division in writing, and documented as part of the stormwater management program.

(3) Stormwater Mitigation and Public Stormwater Fund.

- (a) A permittee may choose to develop an offsite mitigation program or payment in lieu into a public stormwater fund, or both, to offset the portion of the WQTV that cannot be treated on site to the MEP. The program must ensure that off-site stormwater mitigation will be accomplished within the same USGS 12-digit hydrologic unit code watershed as the new development or redevelopment project, if practicable, and will treat a minimum of 1.5 times the portion of the WQTV not treated on site. The permittee may identify priority areas within the watershed in which stormwater mitigation projects are to be completed. The program must have a mitigation project approval procedure, and all projects must meet all requirements in this permit. Procedures and requirements in the offsite mitigation and payment in lieu programs should be documented as part of the stormwater management program and available for review.

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- (b) If the permittee allows payment into a public stormwater fund, the permittee assumes responsibility to provide the required mitigation projects. The public stormwater fund should be used to fund public mitigation projects. The payment amount into a public stormwater fund must be sufficient to design, install, and maintain the stormwater mitigation measures.

(4) Water Quality Riparian Buffers.

Permittees shall develop and implement a set of requirements to establish, protect, and maintain permanent water quality riparian buffers to provide additional water quality treatment in riparian areas of new development and redevelopment projects that contain streams, including wetlands, ponds, and lakes. Riparian buffers must meet the following minimum standards:

- (a) Stormwater discharges should enter the water quality riparian buffer as sheet flow, not as concentrated flow, where site conditions allow.
- (b) Water quality riparian buffers must have the following minimum widths, unless site-specific conditions necessitate alternative widths, as described in subparagraph (d) of this paragraph:

	Average buffer width (feet)	Minimum buffer width (feet)	Notes
Waters with available parameters for siltation or habitat alteration or unassessed waters	30	15	The criteria 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 the required minimum width at any measured location. If the new development or redevelopment site encompasses both sides of a stream, buffer averaging can be applied to both sides, but must be applied independently.
Exceptional Tennessee Waters or waters with unavailable parameters for siltation or habitat alteration	60	30	

The predominant vegetation within the minimum buffer width area should be trees. The remaining riparian buffers may be composed of herbaceous cover or infiltration-based SCMs.

- (c) Permittees may establish permissible land uses or activities within the buffer, such as biking and walking trails, infiltration-based SCMs, selective landscaping, habitat improvement, road and utility crossings, or other limited uses as determined by the permittee. The permittee must have a process to review proposed activities within buffers to ensure the pollutant removal function of the buffer will be retained. Trails constructed within the buffer should prevent or minimize the generation of pollutants. If trails are constructed from impervious materials, runoff must either be directed to infiltration-based SCMs or the buffer width must be increased by the width of the trail.
- (d) Permittees may authorize alternative buffer widths for new development and redevelopment projects where averaged water quality riparian buffers cannot be fully implemented on-site. In order to allow alternative widths, the permittee must develop and apply criteria for determining the circumstances under which required buffer widths cannot be achieved based on the type of project, existing land use, and physical

(Rule 0400-40-10-.04, continued)

conditions that restrict the use of water quality riparian buffers. Any such procedures and criteria for alternative buffer widths must ensure that implementing full buffer widths would be impracticable and that the maximum practicable buffer widths are required. Procedures and criteria for alternative buffer widths must be submitted to the Division, approved by the Division in writing, and documented as a part of the stormwater management program.

- (e) Water quality riparian buffer widths are measured from the top of bank also referred to as the “ordinary high-water mark.”
  - (f) Ordinances and local requirements adopted prior to November 13, 2018, and that mandate minimum 30-foot water quality riparian buffers for drainage areas less than one square mile, and minimum 60-foot water quality riparian buffers for drainage areas of greater than one square mile (with provisions for buffer averaging down to a minimum 30-foot width), are deemed to satisfy the conditions of this paragraph.
- (5) Codes and Ordinances Review and Update.
- (a) Within one year of obtaining initial permit coverage, newly permitted programs shall review local codes and ordinances using the EPA Water Quality Scorecard. A completed copy of the Scorecard shall be submitted with the subsequent annual report. Permittees who have completed and submitted the Scorecard in the past are not required to repeat this review.
  - (b) Newly permitted programs shall update codes and ordinances or other legal instruments as necessary to comply with the permit within 24 months of coverage under this permit. Current permittees shall continue to implement the existing permanent stormwater management program and update legal instruments according to the compliance schedule in subparagraph (1)(d) of this rule.
- (6) Development Project Plan Review, Approval, and Enforcement.
- The permittee shall develop and implement project plan review, approval, and enforcement procedures applicable, at a minimum, to all new development and redevelopment projects, which shall include:
- (a) Procedures for review and approval of site plans, including inter-departmental consultations and a re-submittal process when modifications to the project require changes to an approved site design plan;
  - (b) A plans review process that requires SCMs to be properly designed, installed, and maintained to meet the performance standards established in this rule. The process must also include incentives adopted by the permittee as authorized by paragraph (2) of this rule, if any, along with water quality buffers as required by paragraph (4) of this rule; and
  - (c) A verification process to document that SCMs have been installed per design specifications within 90 days of installation. Verification shall include submission of as-built plans to the permittee, permittee inspection, or inspection by a qualified design professional. The verification process shall include enforcement procedures to bring noncompliant projects into compliance, which shall be detailed in the enforcement response plan.
- (7) Maintenance of Permanent Stormwater Control Measure Assets.

(Rule 0400-40-10-.04, continued)

- (a) Permanent SCMs, including SCMs used at mitigation projects, must be installed, implemented, and maintained to meet the performance standards of paragraph (2) of this rule, and provide full treatment capacity within 72 hours following the end of the preceding rain event.
  - (b) The permittee must develop and implement a program to require implementation of appropriate SCM maintenance procedures to sustain pollutant reduction efficiency for the life of the new development or redevelopment project. All procedures, reports, and documentation must be maintained as part of the stormwater management program. The program must include at a minimum:
    - 1. The development and documentation of maintenance and inspection procedures and frequencies for approved SCMs, which shall require all SCMs to be inspected at least once every five years by the permittee, a licensed professional engineer, a licensed landscape architect, or other qualified professional familiar with applicable SCM design and maintenance requirements;
    - 2. The development and documentation of the procedure the permittee will use to verify that SCMs are being inspected and maintained including any written reports from the responsible party;
    - 3. A clear, documented, legally binding agreement assigning SCM maintenance responsibility to the owner/operator, a third party, or the permittee as appropriate. For SCMs designed to manage stormwater from multiple properties, appropriate deed restrictions shall be recorded; and
    - 4. An allowance or agreement for permittee personnel to access the SCMs for inspections and provide for enforcement action for failure to maintain SCMs according to agreement.
- (8) Inventory and Tracking of Permanent Stormwater Control Measure Assets.
- (a) Existing permittees must continue to implement and maintain a system to inventory and track the status of all public and private SCMs installed on new development and redevelopment projects. New permittees must implement the system within 24 months of coverage.
  - (b) The inventory and tracking system must be a searchable database, either paper or electronic, that retrieves SCM information by location or other similar identification. The system must be made available to the Division or to members of the public upon request. Other than the basic information of location and project identification, the system should include information and records the permittee will use to demonstrate that SCMs are properly maintained, including but not limited to:
    - 1. A brief description of the type of SCM and basic design characteristics;
    - 2. The responsible party contact information;
    - 3. Inspection schedules (both permittee and responsible party);
    - 4. A brief description of or reference to maintenance procedures and frequency;
    - 5. Photographs of the installed SCMs; and
    - 6. Maintenance and inspection records.



(Rule 0400-40-10-.04, continued)

**Authority:** T.C.A. §§ 4-5-201, et seq., and 69-3-101, et seq. **Administrative History:** New rule filed February 14, 2022; effective May 15, 2022. Amendments filed December 20, 2023; effective March 19, 2024.