



WATER & WASTEWATER FACILITIES

City of Kingsport, Tennessee

The City of Kingsport, Tennessee submits the following comments to the proposed amendment to Rule 0400-40-05.

0400-40-05-.02 Definitions

1. (31) “Dry Weather Release” It is unclear as to the statutory basis for defining and regulating “releases.” This is especially true for a dry weather release, that doesn't reach waters of the state and is unlikely to ever reach waters. Recommend that this definition as well as all other regulations pertaining to releases be deleted. However, if this is retained, include the phrase "that results from improper O and M" as part of the definition.
2. (76) “Release” How is enforcement of releases authorized under the TWQCA? They specifically don't reach waters, otherwise they would be overflows. Does the Board contend that releases occur in locations from which it is likely that the discharged substance will move into waters? If so, it is unclear as to how building back-ups would be considered locations from which released sewage could potentially reach waters.
3. (93) “Washout” Suggest replacing the term, “aeration basin(s)” with “treatment plant” (or “activated sludge system” since the primary concern is a reduction in overall treatment effectiveness.

0400-40-05-.05 Permit Application, Issuance

4. (3) The provisions regarding applicants proposing a new or increased discharge of pollutants are unclear, redundant, pose an undue regulatory burden, are inconsistent with trends in national water policy, and are not fully supported by the TWQCA.
 - a. The Antidegradation Statement in 0400-40-03-.06 requires alternatives analysis for increased discharges above the de minimis level. The 2018 revisions to 400-40-03 list the following alternatives to discharge: connection to an existing collection system, land application, water reuse, water recycling, or other treatment alternatives to reduce the level of degradation. Do these regulations meet the requirements of T.C.A 69-3-108 (e)?

The proposed provision would apply to all increased discharges resulting in a regulatory burden for discharges that have little impact on water quality. Instead, this provision could refer specifically to the antidegradation requirements in 0400-40-03-.06 and still be consistent with T.C.A 69-3-108 (e)?
 - b. Reduction of inflow and infiltration can reduce wet weather flows to a certain extent, but it is unlikely that any such reduction would offset a growth-related increase in wastewater to be discharged.
 - c. The statement, “If reuse is proposed, this analysis shall consider potential impacts of flow reduction if reuse causes more than a five percent decrease in the 7Q10 flow of the receiving stream” is confusing and unnecessary given that the reuse being considered is to offset an increased discharge of pollutants, which nearly always is a volumetric increase as



WATER & WASTEWATER FACILITIES

City of Kingsport, Tennessee

well. For POTWs that discharge into effluent dominated waters, reuse is often necessary to manage nutrients. This provision would seem to subject such dischargers to mutually conflicting requirements.

- d. Would long-term continuous discharges that reduce their discharge volume for any reason be required to similarly justify their reductions? And if not, how would a volumetric reduction to offset the discharge of pollutants, present a greater potential for harm?
- e. Many states are encouraging reuse as a way to better manage water resources by replenishing aquifers that have been impacted by development both in terms of the water cycle and overuse. Reuse is often necessary as a way to manage nutrients within a watershed. For example, the State of Virginia is requiring reuse as a way to meet the requirements of the Chesapeake TMDL.
- f. T.C.A. 69-3-108 (b) establishes the parameters for regulating the alteration of waters of the state through permits. Withdrawal of state waters is considered an alteration of the waters' physical properties and is subject to regulation through a permit. However, a reduction in the volume discharged to state waters would not be considered an alteration since the water as it is discharged is not considered state waters.

For these reasons, this provision should be revised as follows:

Applicants proposing a new or increased discharge to surface waters shall be subject to the application requirements of Rule 0400-40-03-.06 (1) (b).

0400-40-05-.07 Terms and Conditions of Permits

- 5. 0400-40-05-.07(2)(m)(l), As previously mentioned in comments #1 and #2, there does not appear to be a statutory basis for regulating releases under the TWQCA based on their potential to impact waters. This provision states that releases caused by improper operation and maintenance, which is to be determined by the Department based on the totality of the circumstances, are prohibited. If the Department is going to make this determination, the rules should provide objective criteria that will be used to make such determinations and describe the procedure the Department will follow to make the determination. We would note that the rules currently provide a requirement in 0400-40-05-.07(2)(c) that requires proper operation and maintenance that contains some guidance, but without some written criteria the regulated community does not have sufficient information to assure the determination is not arbitrary and capricious.
- 6. (2)(n) Other than building back-ups, how would small releases that do not reach waters pose a threat to human health or the environment? This provision seems to contradict the previous provision that states that releases not due to improper O & M are not violations.
- 7. (2)(n)1.(iv), 0400-40-05-.07(2)(o)1., and 0400-40-05-.07(2)(o)2. – “Sanitary sewer overflows” and “releases,” and any prohibitions thereof, are *not* “Effluent Limitations.” See Rules 0400-40-05-.08 0400-40-05-.02(32). The reporting required by the proposed amendment should not allow a numeric effluent limit for such incidents, and NPDES permits should not assign any “Qualifier Value Unit” including “< 0” for such incidents.

In addition, because reporting of “sanitary sewer overflows” and “releases” are not effluent limitations, reports of these should not be part of monthly discharge monitoring reports. At a

City Of Kingsport Comments on Propose Rule 0400 40 05.docx



WATER & WASTEWATER FACILITIES

City of Kingsport, Tennessee

minimum, a “release” as defined in the proposed amendment should not be included on the NPDES discharge monitoring reports because a “release” is not a discharge, is not violation of the TWQCA and cannot be a violation of an NPDES permit issued thereunder.

Further, the proposed amendment should include a reasonable volumetric threshold for reporting “sanitary sewer overflows” and “releases” that do not cause a threat to human health or the environment. Other states in U.S. EPA Region 4 have volumetric reporting thresholds, such as the 500 gallon threshold in South Carolina for all sanitary sewer overflows and 1,000 gallons in North Carolina for what the proposed amendment defines as a “release.”

Subchapter 0400-40-05-.12.

8. Paragraph 0400-40-05-.12(1) provides that "Permittees, applicants for permits, and aggrieved persons meeting the criteria of paragraph (3) of this rule who disagree with the denial, terms, or conditions of a permit. . . "can appeal the decision to the Board. Paragraph (3) deletes permittees and applicants from the requirement of submitting comments during the public comment period, given testimony at a public hearing on the permit or attended a public hearing. As currently drafted, it is not clear whether permittees and applicants have to comply with any of the provisions in paragraph (3); however, the language in paragraph (1) states they have to comply with the criteria. Assuming the proposed rules intended to clarify that permittees and applicants for permits need not comment, we would recommend Paragraph (1) be changed as follows:

Permittees and applicants for permits who disagree with the denial, terms, or conditions of a permit may seek review of the Commissioner's decision by the Board of Water Quality, Oil and Gas (the Board) pursuant to T.C.A. § 69-3-105(i) and § 69-3-110. Aggrieved persons may likewise seek review of the Commissioner's decision provided they meet the requirements of paragraph (3) of this rule.

9. The amendment requires a petitioner to state a claim for relief based on an alleged violation of the Act or rules promulgated thereunder. However, many claims for appeal are based on activities that the petitioner believes are inconsistent or contrary to the express or implied requirements of the act or rules rather than a *violation* of the Act or rules. Moreover, Tenn. Code Ann. § 96-3-105(i) does not restrict appeals to relief based on alleged violations of the Act or rules. It clearly states the appeal must be based on "any of the issues that were provided to the commissioner in writing during the public comment period or in testimony at a formal public hearing on the permit application." While the proposed change attempts to address frivolous appeals it is overly restricted and the requirement to appeal on an alleged violation of the Act or rules should be removed or restated in accordance with Rule 11, Tn. R. Civ. Procedures.