

July 25, 2019

Vojin Janjić, Manager, Water Based Systems
Tennessee Division of Water Resources
William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243

Re: Proposed Revisions to Tennessee State Rule Chapter 0400-40-05

Dear Mr. Janjic:

The Tennessee Water Advisory Council (TNWAC), comprised of members from the Kentucky-Tennessee Water Environment Association (KY-TN WEA) and the Kentucky/Tennessee Section of the American Water Works Association (KY/TN AWWA), offers the following comments and recommendations on the proposed regulations for your consideration. We note that the Board of Water Quality, Oil and Gas is the governmental body that is responsible for promulgating these regulations which, as written, are limited to the implementation of the Tennessee Water Quality Control Act.

The regulations pertaining to overflows, releases and proper operation and maintenance of the collection system are open to considerable interpretation. In addition to the recommendation to delete all references to releases, it is recommended that the Division of Water Resources coordinate with the TNWAC to develop clear guidance on 1) what constitutes an overflow, 2) types of extreme weather events that impact POTW operations, and 3) what is considered proper operation and maintenance of the collection system.

0400-40-05-.02 Definitions

1. (12) "Board" Is this definition being deleted in anticipation of changes in the Tennessee Water Quality Control Act (TWQCA) pertaining to the Board of Water Quality, Oil and Gas? There are numerous references to the "Board," throughout the regulations and it is specifically identified as the "Board of Water Quality, Oil and Gas" in 0400-40-05-.12 Appeals (1). To avoid confusion and maintain consistency, the definition should be retained and modified as indicated below:

"Board" means the regulatory body established by the Tennessee Water Quality Control Act in T.C.A. 69-3-104 to carry out the provisions of T.C.A. 69-3-105.

2. Consider including the following definitions for combined sewer overflow and combined sewer systems as the non-compliance reporting requirements of 0400-40-05-.07 (2) (n) (n)(iv) refer to combined sewer overflows.

"Combined sewer overflow (CSO)" means a discharge from a combined sewer system (CSS) at a point prior to the Publicly Owned Treatment Works (POTW) Treatment Plant.

“Combined sewer system (CSS)” means a wastewater collection system owned by a municipality which conveys sanitary wastewaters (domestic, commercial and industrial wastewaters) and storm water through a single-pipe system to a POTW Treatment Plant.

3. (30), (77) and (99) “Dry Weather Overflow,” “Sanitary Sewer Overflow” and “Wet Weather Overflow” are defined as discharges [to waters] of sewage other than through the permitted outfall. We understand that inconsistencies exist as to how permittees report overflows and how TDEC staff enforce them. It is recommended that the Board instruct TDEC to work with the regulated community to develop clear, understandable guidance on what constitutes an overflow, what is the proper response and whether or not to establish a reporting threshold.
4. (31), (76) and (100) “Dry Weather Release,” “Release” and “Wet Weather Release” It is unclear as to the statutory basis for defining and regulating “releases.”
 - a. The regulations cite the Tennessee Water Quality Control Act (TWQCA) as the statute under which these regulations are promulgated. However, the TWQCA only grants TDEC the authority to regulate activities that are likely to impact waters. In addition, the TWQCA defines waters to include any water on the surface or below the ground. Releases, defined as a flow of sewage that does not reach waters – including those within buildings, are excluded from the scope of the TWQCA.
 - b. It is also unclear how a wet weather release would not enter waters given the TWQCA’s definition of waters and the likelihood that any released sewage would be transported by rainfall runoff to waters. In practice, how would the Board recommend that NPDES permittees, as well as TDEC staff, differentiate between a wet weather release and an overflow?

Due to the lack of statutory authority under the TWQCA to directly regulate “releases” all definitions and regulations pertaining to them be deleted. Note: any subsequent requests related to reporting of releases would become moot if the Board removes all regulations pertaining to “releases.”

5. Consider adding the following definitions from 40 CFR §403.3 (q) and (r) for Publicly Owned Treatment Works (POTW) and POTW Treatment Plant, respectively since POTW is referred to in the regulations and the terms POTW and POTW Treatment Plant are often confused.

Publicly Owned Treatment Works or POTW means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

POTW Treatment Plant means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

6. (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

7. (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 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).

8. (9) The provisions regarding issuance of permits to person(s) seems to indicate that the entities mentioned are no longer considered "persons" under the CWA. The provision should be revised to read as follows:

(9) The Commissioner shall issue permits only to a person or persons subject to the following:

(a) Corporations, limited liability companies, or limited liability partnerships must be in good standing with the Tennessee Secretary of State in order to be eligible for permit coverage and

(b) Out-of-state corporations, limited liability companies, or limited liability partnerships must be registered with the Tennessee Secretary of State in order to be eligible for permit coverage.

0400-40-05-.06 Notice and Public Participation.

9. (12) Consider rewording this provision as follows:

Interested persons may request in writing that the Commissioner hold a public hearing on any application. The request shall be filed as soon as practicable within the period allowed for public comment and shall indicate the interest of the party filing it and the water quality reasons why a hearing is warranted. If there is a significant public interest in having a hearing to address water quality concerns or Tennessee Water Quality Control Act Requirements, the Commissioner shall hold one in the geographical area of the proposed discharge. Instances of doubt should be resolved in favor of holding the hearing. Such hearing should be live-streamed and/or video-taped (when practical) for posting on TDEC website.

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

10. (2)(i) Signatory Requirement - Consider maintaining the inclusion of applications in these signatory requirements. Doing so is consistent with 40 CFR 122.22 and it should be noted that there is no specific signatory requirement in the application section.
11. (2) (m) 1. Sets out the prohibition of overflows for POTWs. The language goes on to prohibit releases due to improper operation and maintenance. In comment #4, we recommended that provisions related to releases be deleted since there does not appear to be a statutory basis for regulating releases under the TWQCA based on their potential to impact waters. Further, any provisions related operation and maintenance, including releases of sewage, should be included in 400-40-05-.07 (2) (c) Proper operation and maintenance as they are a possible indication of

improper operation and maintenance. However, any inclusion of such provisions would result in the following concerns:

- a. How would the department determine whether or not the system was being properly operated?
- b. Making this determination potentially poses an additional burden on department staff in addition to the regulated community.

In addition to the deletion of any provisions related to releases, we recommend that the Board instruct TDEC staff to work with the regulated community to develop clear guidance on what constitutes proper operation and maintenance of collection systems to support these regulations.

12. (2)(n) Twenty-Four Hour Reporting – This provision requires reporting of noncompliance that could pose a threat to human health or the environment and was revised to include all releases even those that are not prohibited.
 - a. Other than building back-ups, how would small releases that do not reach waters pose a threat to human health or the environment?
 - b. Since only releases due to improper O & M are prohibited other releases would not be violations. Therefore, 0400-40-05-.07 (2) (n) is inconsistent with 0400-40-05-.07 (2) (m).

We recommend that any reference to releases be deleted from this provision.

13. (2)(n) Twenty-Four Hour Reporting 2. (iv)
 - a. This provision is part of the reporting requirements for noncompliance that could cause a threat to human health or the environment, however it should be noted that permitted combined sewer overflows except for those that occur during dry weather are not violations. In Tennessee there are currently no known unpermitted CSOs. Additionally, bypasses that receive partial treatment such as primary clarification and disinfection may not pose a threat to human health and the environment and thus would not be subject to these reporting requirements.
 - b. For clarity, overflows, releases (if retained) and bypasses should be described separately.
 - c. Does “type of event” mean either overflow, bypass or release?

The following wording is consistent with 40 CFR § 122.1(l)(6)) and is recommended [note that (v) would only apply if provisions related to releases were retained in the regulations]:

iv) For POTWs or domestic wastewater treatment plants reporting any sanitary sewer overflows, the written report must include the overflow type (dry weather overflow or wet weather overflow), overflow structure (e.g., manhole, outfall, pump station), estimated volume (gallons), types of human health and environmental impacts, location (latitude and longitude), estimated duration (hours), and the name of receiving water.

(v) For POTWs or domestic wastewater treatment plants reporting any releases subject to this provision, the written report must include the release type (dry weather release or wet weather release), release setting (building back-up, manhole, pump station, etc.), the estimated volume (gallons), types of human health and environmental impacts, location (latitude and longitude), and estimated duration (hours).

(vi) For POTWs with combined sewer systems reporting dry-weather combined sewer overflows or unpermitted combined sewer overflows, the written report must include the authorized outfall number (if available), estimated volume (gallons), types of human health and environmental impacts, location (latitude and longitude), estimated duration (hours), and the name of receiving water.

(vii) For POTWs, domestic wastewater treatment plants or industrial dischargers reporting a bypass of treatment that poses a threat to human health or the environment, the written report must include the estimated volume (gallons), types of human health and environmental impacts, and estimated duration (hours).

(viii) No later than December 21, 2020, written reports required by this subpart shall be submitted electronically, unless electronic submission is waived in writing by the Commissioner in accordance with the provisions of 40 C.F.R. § 127.15 (2018).

14. (2) (o) Other non-compliance 1. See Comment 12. regarding reporting of releases not due to improper O & M as non-compliance.
15. (2) (o) 2. This provision refers to an “extreme weather event” however the regulations provide no indication of how such an event would be defined. Regulations and guidance associated with concentrated animal feeding operations describe catastrophic rainfall events as being in excess of the 25-year, 24-hour event and chronic rainfall events as a series of wet weather conditions that preclude dewatering waste lagoons. It is recommended that the Board instruct TDEC to work with the regulated community to develop guidance on extreme weather events

On behalf of the Tennessee Water Utility Council, we appreciate your consideration of these comments.

Sincerely,



Saya Ann Qualls, PE
Tennessee Government Affairs Chair
KY-TN WEA



Hal Balthrop, PE
Tennessee Water Utility Council Chair
KY/TN AWWA