



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

Application Restrictions Statutes & Regulations

Tennessee

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Application Restrictions

STATE OF TENNESSEE

1) Tenn. Code Ann. §§ 69-3-102, 103, 107, 108; Tenn. Comp. R. & Regs. R. 0400-40-05-.14(10)(a)(1), (11)(b)(4)(ix), (14)(b), 0400-40-05-.02(75), 0400-40-05-.14(10)(a)(7)

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Tennessee Office of Legal Services.

1) Tenn. Code Ann. §§ 69-3-102, 103, 107, 108; Tenn. Comp. R. & Regs. R. 0400-40-05-.14(10)(a)(1), (11)(b)(4)(ix), (14)(b), 0400-40-05-.02(75), 0400-40-05-.14(10)(a)(7)

69-3-102. Declaration of policy and purpose.

(a) Recognizing that the waters of Tennessee are the property of the state and are held in public trust for the use of the people of the state, it is declared to be the public policy of Tennessee that the people of Tennessee, as beneficiaries of this trust, have a right to unpolluted waters. In the exercise of its public trust over the waters of the state, the government of Tennessee has an obligation to take all prudent steps to secure, protect, and preserve this right.

(b) It is further declared that the purpose of this part is to abate existing pollution of the waters of Tennessee, to reclaim polluted waters, to prevent the future pollution of the waters, and to plan for the future use of the waters so that the water resources of Tennessee might be used and enjoyed to the fullest extent consistent with the maintenance of unpolluted waters.

(c) Moreover, an additional purpose of this part is to enable the state to qualify for full participation in the national pollutant discharge elimination system (NPDES) established under § 402 of the Federal Water Pollution Control Act, Public Law 92-500, codified in 33 U.S.C. § 1342.

(d) Additionally, it is intended that all procedures in this part shall be in conformity with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

69-3-103. Part definitions. [See contingent amendment to subdivisions (4) and (19) and the Compiler's Notes.]

As used in this part, unless the context otherwise requires:

(1) "Administrator" means the administrator, or head by whatever name, of the United States environmental protection agency;

(2) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(A) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period; and

(B) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility;

(3) "Areawide waste treatment management plan" means a plan that has been approved by the administrator pursuant to § 208 of the Federal Water Pollution Control Act, Public Law 92-500, codified in 33 U.S.C. § 1288;

[Current version. See second version for contingent amendment and Compiler's Notes.]

(4) "Board" means the board of water quality, oil and gas, created in § 69-3-104; [Contingent amendment. See the Compiler's Notes.]

(4) "Board" means the Tennessee board of energy and natural resources, created by § 69-3-104;

(5) "Boat" means any vessel or watercraft moved by oars, paddles, sails or other power mechanism, inboard or outboard, or any vessel or structure floating upon the water whether or not capable of self-locomotion, including, but not limited to, houseboats, barges, docks, and similar floating objects;

(6) "Commissioner" means the commissioner of environment and conservation or the commissioner's duly authorized representative and, in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner;

(7) "Construction" means any placement, assembly, or installation of facilities or equipment, including contractual obligations to purchase such facilities or equipment, at the premises where such equipment will be used, including preparation work at such premises;

(8) "Department" means the department of environment and conservation;

(9) "Director" means the director of the division of water management of the department;

(10) "Discharge of a pollutant," "discharge of pollutants," and "discharge," when used without qualification, each refer to the addition of pollutants to waters from a source;

(11) "Division" means the division of water management;

(12) "Effluent limitation" means any restriction, established by the board or the commissioner, on quantities, rates and concentrations of chemical, physical, biological, and other constituents that are discharged into waters or adjacent to waters;

(13) "Forestry best management practices" means those land and water resource conservation measures that prevent, limit, or eliminate water pollution for forest resource management purposes, as provided in rules promulgated in this part in accordance with § 11-4-301(d)(18). Until those rules are effective, "forestry best management practices" will be those that have been developed by the division of forestry of the department of agriculture. The commissioner of agriculture shall specifically identify these interim forestry best management practices prior to September 1, 2000;

(14) "Industrial user" means those industries identified in the standard industrial classification manual, bureau of the budget, 1967, as amended and supplemented, under the category "Division D -- Manufacturing" and such other classes of significant waste producers as the board or commissioner deems appropriate;

(15) "Industrial wastes" means any liquid, solid, or gaseous substance, or combination thereof, or form of energy including heat, resulting from any process of industry, manufacture, trade, or business or from the development of any natural resource;

(16) "Liquid waste management system" means a waste management system that collects, stores, or land applies manure in a liquid, flowable form;

(17) "Local administrative officer" means the chief administrative officer of a pretreatment agency that has adopted and implemented an approved pretreatment program pursuant to this part and 33 U.S.C. § 1251 et seq. and 40 CFR 403.1 et seq.;

(18) "Local hearing authority" means the administrative board created pursuant to an approved pretreatment program that is responsible for the administration and enforcement of that program and §§ 69-3-123 -- 69-3-129;

[Current version. See second version for contingent amendment and Compiler's Notes.]

(19) "Member" means a member of the board of water quality, oil and gas;

[Contingent amendment. See the Compiler's Notes.]

(19) "Member" means a member of the Tennessee board of energy and natural resources;

(20) "Municipal separate storm sewer system" means a municipal separate storm sewer system as defined in the Clean Water Act, compiled in 33 U.S.C. § 1251 et seq., and the rules promulgated thereunder;

(21) "New source" means any source, the construction of which is commenced after the publication of state or federal regulations prescribing a standard of performance applicable to such source;

(22) "Obligate lotic aquatic organisms" means organisms that require flowing water for all or almost all of the aquatic phase of their life cycles;

(23) "Operator" as used in the context of silvicultural activities, means any person who conducts or exercises control over any silvicultural activities; provided, however, that the term "operator" does not include an owner if the silvicultural activities are being conducted by an independent contractor;

(24) "Other wastes" means any and all other substances or forms of energy, with the exception of sewage and industrial wastes, including, but not limited to, decayed wood, sand, garbage, silt, municipal refuse, sawdust, shavings, bark, lime, ashes, offal, oil, hazardous materials, tar, sludge, or other petroleum byproducts, radioactive material, chemicals, heated substances, dredged spoil, solid waste, incinerator residue, sewage sludge, munitions, biological materials, wrecked and discarded equipment, rock, and cellar dirt;

(25) "Owner" as used in the context of silvicultural activities, means any person or persons that own or lease land on which silvicultural activities occur or own timber on land on which silvicultural activities occur;

(26) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a source;

(27) "Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, state and federal agencies, municipalities or political subdivisions, or officers thereof, departments, agencies, or instrumentalities, or public or private corporations or officers thereof, organized or existing under the laws of this or any other state or country;

(28) "Pollutant" means sewage, industrial wastes, or other wastes;

(29) "Pollution" means such alteration of the physical, chemical, biological, bacteriological, or radiological properties of the waters of this state, including, but

not limited to, changes in temperature, taste, color, turbidity, or odor of the waters that will:

(A) Result or will likely result in harm, potential harm or detriment to the public health, safety, or welfare;

(B) Result or will likely result in harm, potential harm or detriment to the health of animals, birds, fish, or aquatic life;

(C) Render or will likely render the waters substantially less useful for domestic, municipal, industrial, agricultural, recreational, or other reasonable uses; or

(D) Leave or likely leave the waters in such condition as to violate any standards of water quality established by the board;

(30) "Pretreatment agency" means the owner of a publicly owned treatment works permitted pursuant to this part that is required by its permit to adopt and enforce an approved pretreatment program that complies with this part and 33 U.S.C. § 1251 et seq. and 40 CFR 403.1 et seq.;

(31) "Pretreatment program" means the rules, regulations, and/or ordinances of a pretreatment agency regulating the discharge and treatment of industrial waste that complies with this part and 33 U.S.C. § 1251 et seq. and 40 CFR 403.1 et seq.;

(32) "Qualified local program" means a municipal separate storm sewer system that has been approved as such by the department pursuant to this part;

(33) "Regional administrator" means the regional administrator of the United States environmental protection agency whose region includes Tennessee, or any person succeeding to the duties of this official;

(34) "Schedules of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, condition of a permit, other limitation, prohibition, standard, or regulation;

(35) "Sewage" means water-carried waste or discharges from human beings or animals, from residences, public or private buildings, or industrial establishments, or boats, together with such other wastes and ground, surface, storm, or other water as may be present;

(36) "Sewerage system" means the conduits, sewers, and all devices and appurtenances by means of which sewage and other waste is collected, pumped, treated, or disposed;

(37) "Silvicultural activities" means those forest management activities associated with the harvesting of timber and including, without limitation, the construction of roads and trails;

(38) "Source" means any activity, operation, construction, building, structure, facility, or installation from which there is or may be the discharge of pollutants;

(39) "Standard of performance" means a standard for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction that the commissioner determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants;

(40) "Stop work order" means an order issued by the commissioner of environment and conservation requiring the operator to immediately cease part or all silvicultural activities;

(41) "Stream" means a surface water that is not a wet weather conveyance;

(42) "Toxic effluent limitation" means an effluent limitation on those pollutants or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of available information, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in such organisms or their offspring;

(43) "Variance" means an authorization issued to a person by the commissioner that would allow that person to cause a water quality standard to be exceeded for a limited time period without changing the standard;

(44) "Watercourse" means a man-made or natural hydrologic feature with a defined linear channel that discretely conveys flowing water, as opposed to sheet-flow;

(45) "Waters" means any and all water, public or private, on or beneath the surface of the ground, that are contained within, flow through, or border upon Tennessee or any portion thereof, except those bodies of water confined to and retained within the limits of private property in single ownership that do not combine or effect a junction with natural surface or underground waters; and

(46) "Wet weather conveyance" means, notwithstanding any other law or rule to the contrary, man-made or natural watercourses, including natural watercourses that have been modified by channelization:

(A) That flow only in direct response to precipitation runoff in their immediate locality;

(B) Whose channels are at all times above the groundwater table;

(C) That are not suitable for drinking water supplies; and

(D) In which hydrological and biological analyses indicate that, under normal weather conditions, due to naturally occurring ephemeral or low flow there is not sufficient water to support fish, or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two (2) months.

69-3-107. Duties and authority of the commissioner.

In addition to any power, duty, or responsibility given to the commissioner under this part, the commissioner has the power, duty, and responsibility to:

(1) Exercise general supervision and control over the quality of all state waters, administer and enforce all laws relating to pollution of such waters, and administer and enforce this part, and all standards, policies, rules, and regulations promulgated under this part;

(2) Administer oaths, issue subpoenas, and compel the attendance of witnesses and production of necessary data for all purposes of this part;

(3) Bring suit in the name of the department for any violation of the provisions of this part, seeking any remedy provided in this part, and any other statutory or common law remedy available for the control, prevention, and abatement of pollution;

(4) Proceed against, as provided in this part, any owner or operator of any boat, located or operated on the waters of the state, that discharges or causes to be discharged any sewage, other wastes, or other substances into such waters in violation of this part or any rules or regulations promulgated under this part;

(5) Make inspections and investigations, carry on research, or take such other action as may be necessary to carry out this part;

(6) Enter or authorize the commissioner's agents to enter at all reasonable times upon any property other than dwelling places for the purpose of conducting investigations and studies or enforcing any of this part;

(7) Advise, consult, cooperate, contract, and make other binding agreements with the various agencies of the federal government and with state and local administrative and governmental agencies, colleges and universities, or with any other persons;

(A) In furtherance of this part, the commissioner may require any state or local agency to investigate and report on any matters involved in water quality control; provided, that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports; and

(B) The department has the authority, subject to approval by the governor, to enter into agreements with other states and the United States relative to prevention and control of pollution in interstate waters. This authority is not deemed to extend to the modification of any agreement with the state concluded by direct legislative act, but unless otherwise expressly provided, the department shall be the agency for the administration and enforcement of any such legislative agreement;

(8) Apply for, accept, administer, and utilize loans and grants from the federal government, state government, and from any other sources, public or private, for prevention, abatement, and control of pollution of the waters of the state. The department is the water quality control agency for the state for the purpose of any federal water pollution control act;

(9) Prepare, publish, and issue such printed pamphlets and bulletins as the department deems necessary for the dissemination of information to the public concerning its activities;

(10) Require the submission of such plans, specifications, technical reports, and other information as deemed necessary to carry out this part or to carry out the rules and regulations adopted pursuant to this part;

(11) Be the administrative agent for the board and panel to carry out this part;

(12) Make an annual report to the governor and the general assembly on the status of water quality, including a description of the plan, regulations in effect, and other pertinent information, together with any recommendations the commissioner may care to make;

(13) Delegate to the director of the division with responsibility for water quality control any of the powers, duties, and responsibilities of the commissioner under this part, except the commissioner's powers, duties and responsibility as chair of the board;

- (14) Issue permits and variances pursuant to § 69-3-108;
- (15) Inspect waters of the state where good cause is shown that the public health is threatened by pollutants in the waters, and, upon verification by the commissioner, post or cause to be posted such signs as required to give notice to the public of the potential or actual dangers of specific uses of such waters or restrictions of uses of such waters;
- (16) Assess civil penalties in accordance with § 69-3-115;
- (17) Apply this part against any person who discharges into a publicly owned treatment works who is causing a violation of this part, or who is in violation of applicable pretreatment standards;
- (18) Impose such restrictions, including an immediate cessation of connections and line extensions, upon the expansion of any sewerage or wastewater system as are necessary to mitigate or prevent violations of this part;
- (19) Prepare a written report on stream bank erosion in Tennessee to be delivered to each member of the general assembly by January 15, 2000. Such report shall contain the following:
 - (A) An examination of the causes of stream bank erosion;
 - (B) The effectiveness of existing and new methods of bank protection;
 - (C) An assessment of stream bank erosion in Tennessee; and
 - (D) Any other matter the commissioner deems relevant to stream bank erosion that may be of concern to the general assembly;
- (20) Conduct, or cause to be conducted, demonstration projects, to the extent of available funds, of methods of bank stabilization and debris removal in streams in western Middle Tennessee to be done as soon as is practicable and a report shall be made to the general assembly after the performance of the chosen techniques has been observed through at least a full year;
- (21) Conduct, or cause to be conducted, a study or project comparing different techniques for stream bank stabilization and debris removal in streams in western Middle Tennessee to be done as soon as possible, either in conjunction with the project mentioned in subdivision (20), or separately;
- (22) Develop a program of public education regarding simple, practical and affordable techniques for cleaning debris from streams and for stabilizing stream banks, including field examples of activities permissible without permits and activities that may be accomplished if permits are obtained;

(23) Produce a video by not later than January 1, 1999, that shows the above examples, explains the requirements of the law and rules for these activities, including the process of applying for a permit, and tells who to call for further assistance, which shall be distributed at no cost to public libraries and agricultural extension services;

(24) Perform a thorough and ongoing study of, and prepare recommendations regarding options for, the protection of watersheds and the control of sources of pollution, in order to assure the future quality of potable drinking water supplies throughout the state. The department is authorized to use information and studies from state, federal, and local governments and other sources of reliable scientific data. Initial findings and recommendations shall be presented to the governor and the general assembly no later than February 1, 2007, and annually thereafter; and

(25) Develop and submit to the board for comment proposed guidance that provides:

(A) Instructions, examples and definitions based upon scientifically based principles for consistently and accurately making hydrologic determinations; and

(B) Minimum qualifications for staff who are responsible for making or reviewing wet weather conveyance determinations.

69-3-108. Permits.

(a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (l), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

(1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;

(2) The construction, installation, modification, or operation of any treatment works, or part thereof, or any extension or addition thereto;

(3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;

(4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

(5) The construction or use of any new outlet for the discharge of any wastes into the waters of the state;

(6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

(7)

(A) The construction, installation, or operation of a liquid waste management system supporting an animal feeding operation that stables or confines as many as, or more than, the numbers of animals specified by federal law defining a large concentrated animal feeding operation;

(B) A state operating permit issued pursuant to this subdivision (b)(7) shall be enforceable only in regards to submission and maintenance of a current approved nutrient management plan;

(C) Animal feeding operations that are not required under this subdivision (b)(7) to have a permit may apply for and be issued a state operating permit. An animal feeding operation issued a state operating permit pursuant to this subdivision (b)(7) is required to conduct such operations in accordance with the permit;

(8) The discharge of sewage, industrial wastes, or other wastes into a well or a location where it is likely that the discharged substance will move into a well, or the underground placement of fluids and other substances that do or may affect the waters of the state;

(9) The diversion of water through a flume for the purpose of generation of electric power by a utility; or

(10)

(A) Animal feeding operations that are required under the federal Clean Water Act (33 U.S.C. § 1251 et seq.), to have a permit for concentrated

animal feeding operations. Such operations must be conducted in accordance with the conditions of a valid national pollutant discharge elimination system (NPDES) permit;

(B) Animal feeding operations that are not required under the federal Clean Water Act to have a permit for concentrated animal feeding operations may apply for and, if eligible under federal law, be issued a NPDES permit. An animal feeding operation issued a NPDES permit pursuant to this subdivision (b)(10)(B) is required to conduct such operations in accordance with the permit.

(c) Any person operating or planning to operate a sewerage system shall file an application with the commissioner for a permit or, when necessary, for modification of such person's existing permit. Unless a person holds a valid permit, it is unlawful to operate a sewerage system.

(d) Nothing in this section shall be construed to require any person discharging into a septic tank connected only to a subsurface drainfield, or any person constructing or operating a sanitary landfill between March 25, 1980, and March 24, 1982, except in a county having a population of not less than sixty thousand two hundred fifty (60,250) nor more than sixty thousand three hundred fifty (60,350), according to the 1970 federal census or any subsequent federal census, as defined and regulated by §§ 68-211-101 -- 68-211-115, to secure a permit; provided, that the exemption provided in this subsection (d) shall not exempt such person from any other provision of this part; and provided further, that any such person who is exempt from obtaining a permit for constructing or operating a sanitary landfill between March 25, 1980, and March 24, 1982, shall not thereafter be required to obtain such permit.

(e) Applicants for permits that would authorize a new or expanded wastewater discharge into surface waters shall include in the application consideration of alternatives, including, but not limited to, land application and beneficial reuse of the wastewater.

(f) With regard to permits for activities related to the surface mining of coal:

(1) No permit shall be issued that would allow removal of coal from the earth from its original location by surface mining methods or surface access points to underground mining within one hundred feet (100') of the ordinary high water mark of any stream or allow overburden or waste materials from removal of coal from the earth by surface mining of coal to be disposed of within one hundred feet (100') of the ordinary high water mark of a stream; provided, however, that a permit may be issued or renewed for stream crossings, including, but not limited to, rail crossings, utilities crossings, pipeline crossings, minor road crossings, for operations to improve the quality of stream segments previously disturbed by mining and for activities related to and incidental to the removal of coal from its original location, such as transportation, storage, coal preparation and processing, loading and shipping operations within one hundred feet (100') of the ordinary

high water mark of a stream if necessary due to site specific conditions that do not cause the loss of stream function and do not cause a discharge of pollutants in violation of water quality criteria. Nothing in this subdivision (f)(1) shall apply to placement of material from coal preparation and processing plants;

(2) Without limiting the applicability of this section, if the commissioner determines that surface coal mining at a particular site will violate water quality standards because acid mine drainage from the site will not be amenable to treatment with proven technology both during the permit period or subsequent to completion of mining activities, the permit shall be denied.

(g) The commissioner may grant permits authorizing the discharges or activities described in subsection (b), including, but not limited to, land application of wastewater, but in granting such permits shall impose such conditions, including effluent standards and conditions and terms of periodic review, as are necessary to accomplish the purposes of this part, and as are not inconsistent with the regulations promulgated by the board. Under no circumstances shall the commissioner issue a permit for an activity that would cause a condition of pollution either by itself or in combination with others. In addition the permits shall include:

(1) The most stringent effluent limitations and schedules of compliance, either promulgated by the board, required to implement any applicable water quality standards, necessary to comply with an areawide waste treatment plan, or necessary to comply with other state or federal laws or regulations;

(2) A definite term, not to exceed five (5) years, for which the permit is valid. This term shall be subject to provisions for modification, revocation or suspension of the permit;

(3) Monitoring, recording, reporting, and inspection requirements; and

(4) In the case of permits authorizing discharges from publicly owned treatment works, terms and conditions requiring the permittee to enforce user and cost recovery charges, pretreatment standards, and toxic effluent limitations applicable to industrial users discharging into the treatment works.

(h) The commissioner may revoke, suspend, or modify any permit for cause, including:

(1) Violation of any terms or conditions of the permit or of any provision of this part;

(2) Obtaining the permit by misrepresentation or failing to disclose fully all relevant facts; or

(3) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(i) No permit under subsection (g) or (h) for the construction of any new outlet or for construction activities involved in the development of natural resources, for the construction of a new waste treatment system or for the modification or extension of an existing waste treatment system shall be issued by the commissioner until the plans have first been submitted to and approved by the commissioner. No such approval shall be construed as creating a presumption of correct operation nor as warranting by the commissioner that the approved facilities will reach the designated goals. If an environmental impact statement is required for any permit, the commissioner may require the applicant to pay for its preparation. Any such impact statement must also include and address economic and social impact.

(j) Any permit procedure or other action required by or undertaken in accordance with this section or part shall be conducted in accordance with title 13, chapter 18, when the permit or action involves a major energy project, as defined in § 13-18-102.

(k) Nothing in this section shall be construed to limit or circumscribe the authority of the commissioner to issue emergency orders as specified in § 69-3-109.

(l) Where the commissioner finds that a category of activities or discharges would be appropriately regulated under a general permit, the commissioner may issue such a permit. Any person conducting activities in the category covered by a general permit shall not be required to file individual applications for permits except as provided in specific requirements of the general permit. Any person conducting activities covered under a general permit may be required by the commissioner to file an application for any individual permit. Upon the issuance of an individual permit to a person with a general permit, the applicability of the general permit to that permitted activity or discharge shall be terminated. Any person who holds an individual permit for an activity or discharge covered under the provisions of a general permit may request that the individual permit be revoked. Upon such revocation, the activity or discharge shall become subject to the provisions of the general permit.

(m) Notwithstanding subsection (g), upon application by a person who discharges into groundwaters of the state and who is subject to a permit issued pursuant to the Hazardous Waste Management Act, compiled in title 68, chapter 212, the commissioner may issue variances from the applicable water quality standards, criteria, or classification for groundwater; provided, that:

(1) The waters to which the variance applies are not used as a current source of drinking water and such use is not reasonably anticipated for the term of the variance and a reasonable time thereafter;

(2) The applicant demonstrates that such discharges will not pose a substantial present or potential hazard to human health or the environment as defined in Tenn. Comp. R. & Reg. 1200-01-11-.06(6)(e)(2) (reserved) in effect on April 1,

1988, and will not impair any actual, current uses other than those affected by the variance;

(3) Variances will be effective for a specific term, not to exceed the effective term of the permit;

(4) The variance is consistent with the Federal Water Pollution Control Act, compiled in 33 U.S.C. § 1251 et seq., and the federal Safe Drinking Water Act, compiled in 42 U.S.C. § 300f et seq.; and

(5) The variance provided for under this subsection (m) shall be applied for and issued in accordance with procedures regarding the issuance of permits as required by regulations issued under this chapter.

(n)

(1) A chief administrative officer of a county highway department does not violate this chapter by repairing or causing the repair of up to four hundred feet (400') of highway or road in an emergency situation, if immediate repairs are necessary to protect human safety and welfare, and if such repairs comply with rules and regulations promulgated by the board that regulate the manner in which the repairs are made. Such officer need not obtain a permit prior to making such repairs under such circumstances.

(2) As soon as practicable, the chief administrative officer of a county highway department shall notify the commissioner by telephone that an emergency has arisen and that such chief administrative officer intends to make repairs in response to such emergency. The giving of such notice shall not be construed to authorize the commissioner to terminate such repairs.

(3) Within ten (10) days of the completion of any highway or road repair made pursuant to this subsection (n), the chief administrative officer of the county highway department ordering such repair shall notify the commissioner, in writing, of the action taken and the nature of the emergency necessitating such immediate repair.

(o) The following activities do not require a permit under this section:

(1) The removal of downed trees by dragging or winching and without grading or reshaping of the stream channel;

(2) The placement of downed trees on stream banks for erosion protection; and

(3) The planting of vegetation on stream banks.

(p) Unless the applicant agrees otherwise, when an individual landowner applies for a permit for debris removal or stream bank stabilization activities, the commissioner shall either issue or deny the permit or take action scheduling a public hearing on the application within sixty (60) days of receipt of a complete application; provided further, however, that the staff of the division will communicate orally or in writing to the applicant within fifteen (15) days of receipt of any such application.

(q)

(1) The alteration of a wet weather conveyance, as defined in § 69-3-103, by any activity is permitted by this subsection (q) and shall require no notice or approval; provided, that it is done in accordance with all of the following conditions:

(A) The activity may not result in the discharge of waste or other substances that may be harmful to humans or wildlife;

(B) Material may not be placed in a location or manner so as to impair surface water flow into or out of any wetland area;

(C)

(i) Sediment shall be prevented from entering other waters of the state;

(ii) Erosion and sediment controls shall be designed according to the size and slope of disturbed or drainage areas to detain runoff and trap sediment and shall be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices;

(iii) Erosion and sediment control measures shall be in place and functional before earth moving operations begin, and shall be constructed and maintained throughout the construction period. Temporary measures may be removed at the beginning of the work day, but shall be replaced at the end of the work day;

(iv) Checkdams shall be utilized where runoff is concentrated. Clean rock, log, sandbag or straw bale checkdams shall be properly constructed to detain runoff and trap sediment. Checkdams or other erosion control devices are not to be constructed in stream. Clean rock can be of various type and size, depending on the application. Clean rock shall not contain fines, soils or other wastes or contaminants; and

(D) Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the state.

All spills shall be reported to the appropriate emergency management agency and to the division. In the event of a spill, measures shall be taken immediately to prevent pollution of waters of the state, including groundwater.

(2) There shall be no additional conditions upon a person's activity within a wet weather conveyance. This subdivision (q)(2) does not apply to national pollutant discharge elimination system (NPDES) permits.

(r) A person desiring to alter a specific water of the state may request a determination from the commissioner that it is a wet weather conveyance and submit a report from a qualified hydrologic professional in support of the request. If the report contains all information that is required in rules promulgated by the board, and in accordance with department procedures and guidance, and is certified by a qualified hydrologic professional to be true, accurate and complete and, if submitted after promulgation of the rules required by § 69-3-105(l), contains all information that is required in those rules, then the determination made in the report shall be presumed to be correct, unless the commissioner notifies the person, in writing, within thirty (30) days of submittal of the report, that the commissioner has affirmatively determined that there is a significant question about whether the water of the state in question is a stream or a wet weather conveyance and states the reasons for that determination. In that event, the commissioner must, within thirty (30) days following the initial notification, determine whether the water of the state in question is a stream or a wet weather conveyance and notify the person in writing of that decision and the reasons for that determination. A person may appeal a determination by the commissioner that the specific water is a stream by filing a petition for appeal with the board within thirty (30) days of receiving the commissioner's decision. For purposes of this subsection (r), a qualified hydrologic professional is a person holding a bachelor's degree in biology, geology, ecology, engineering or related sciences, having at least five (5) years of relevant experience in making hydrologic determinations and who has been certified as a hydrologic professional pursuant to rules promulgated by the board.

(s) Any national pollutant discharge elimination system (NPDES) permit issued pursuant to this section to a local governmental entity administering a municipal separate storm sewer system shall not impose post-construction storm water requirements, except to the extent necessary to comply with the minimum requirements of federal law. Any such NPDES permit that includes numeric or narrative effluent limitations to manage post-construction storm water shall allow the local governmental entity administering a municipal separate storm sewer system discretion in selecting measures to meet any such effluent limitations. These numeric or narrative effluent limitations to manage post-construction stormwater shall be adopted by the board as rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(t) This state shall not require any local governmental entity that administers a municipal separate storm sewer system under a national pollutant discharge elimination system (NPDES) permit issued pursuant to this section to impose control measures for post-

construction storm water that exceed the minimum requirements of federal law. Any local governmental entity that adopts control measures that exceed the minimum requirements of federal law must do so by ordinance or resolution, as appropriate, by the local legislative body upon a majority vote. This subsection (t) shall not apply to any ordinance or resolution in effect on April 23, 2016, but shall not preclude a local governmental entity that administers a municipal separate storm sewer system from making changes consistent with subsection (s) and this subsection (t). When a local governmental entity seeks coverage under any future version of the NPDES permit after April 23, 2016, such ordinance or resolution shall comply with subsection (s) and this subsection (t). The local government entity shall provide in writing the control measures that exceed federal minimum requirements to the local legislative body at least thirty (30) days in advance of a vote in order to provide for a public comment period.

(u)

(1) Notwithstanding any other law, a person who has contracted for the right to store water in a reservoir owned by the U.S. Army Corps of Engineers shall have exclusive rights to any return flows generated directly or indirectly to that reservoir by the person. The rights conferred by this subsection (u) shall be subject to any regulatory requirements imposed by the commissioner and to the availability to the person of unused storage capacity within the reservoir to store such return flows.

(2) As used in this subsection (u), "return flow" means water that is discharged directly or indirectly to a reservoir from a water reclamation facility.

(v)

(1) Compliance with a national pollutant discharge elimination system (NPDES) permit issued under this section shall be deemed compliance for purposes of §§ 69-3-109; 69-3-114(a); 69-3-114(b) with respect to this part or any rule, regulation, or standard of water quality promulgated by the board; 69-3-115; 69-3-116; 69-3-117; and 69-3-118(a), except for any standard imposed under Section 307 of the Federal Water Pollution Control Act for a toxic pollutant injurious to human health.

(2) Compliance includes the discharge of pollutants for which no standard or limit is set forth in the permit if:

(A) The permit holder complies with applicable reporting and disclosure requirements under this part; and

(B) The discharge of pollutants is disclosed to the department in such a manner that the discharge is within the reasonable contemplation of the department at the time of issuance of the final permit.

0400-40-05-.14 ANIMAL FEEDING OPERATIONS

[. . .]

(10) CAFO Nutrient Management Plan (NMP) Requirements

(a) Any permit issued to a CAFO shall include a requirement to develop, submit for state approval, implement, and keep on site a site-specific nutrient management plan that:

1. Includes best management practices and procedures necessary to implement applicable effluent limitations and standards;

[. . .]

(11) CAFO Recordkeeping and Reporting Requirements

Any permit issued to a CAFO shall include:

[. . .]

(b) Recordkeeping for third-party waste transfers

A requirement that prior to transferring manure, litter, or process wastewater to a 3rd party, all CAFOs shall provide the recipient of the manure, litter, or process wastewater with the most current nutrient analysis (consistent with 40 CFR Part 412 and approved by the University of Tennessee Extension). Large CAFOs shall ensure that the 3rd party signs an agreement for the removal of manure, litter, or process wastewater for all transfers of manure, litter, or process wastewater. All other CAFOs shall ensure that the 3rd party signs an agreement for the removal of manure, litter, or process wastewater only if the CAFO transfers more than 100 tons of manure, litter, or process wastewater. The agreement for the removal of manure, litter, or process wastewater shall be retained for 5 years and shall include the following information, at a minimum:

[. . .]

4. The following best management practice recommendations:

[. . .]

(ix) Do not apply manure, litter, or process wastewater when the ground is frozen, flooded, saturated, or on steep slopes subject to flooding, erosion, or rapid runoff.

[. . .]

(14) No CAFO liquid waste management system shall be constructed, modified, repaired, or placed into operation after April 13, 2006, unless it is designed, constructed, operated, and maintained in accordance with final design plans and specifications which meet or exceed standards in the USDA-NRCS Field Office Technical Guide and other guidelines as accepted by the Departments of Environment and Conservation or Agriculture. Specifically, plans shall contain the following:

[. . .]

(b) Information to be used in the design of the open manure storage structure including, but not limited to, minimum storage for rainy seasons, minimum capacity for chronic rainfall events, the prohibition of land application to frozen, saturated, or snow-covered ground, the dewatering schedules set in the CAFO's Nutrient Management Plan, additional storage capacity for any manure intended to be transferred to another recipient at a later time, and any other factors that would affect the sizing of the open manure storage structure.

[. . .]

0400-40-05-.02 DEFINITIONS

All terminology not specifically defined herein shall be defined in accordance with the Water Quality Control Act, T.C.A. §§ 69-3-101 et seq. When used in Rules 0400-40-05-.01 through .14, the following terms have the meanings given below unless otherwise specified:

[. . .]

(75) "Setback" means a specified distance from surface waters or potential conduits to surface waters where manure, litter, and process wastewater may not be land applied. Examples of conduits to surface waters include but are not limited to: open tile line intake structures, sinkholes, and wells.

[. . .]

0400-40-05-.14 ANIMAL FEEDING OPERATIONS

(10) CAFO Nutrient Management Plan (NMP) Requirements

(a) Any permit issued to a CAFO shall include a requirement to develop, submit for state approval, implement, and keep on site a site-specific nutrient management plan that:

[. . .]

7. Identifies appropriate site specific conservation practices to be implemented, including, as appropriate, buffers or equivalent practices, to control runoff of pollutants to waters of the state (these practices shall meet minimum standards set in the USDA-NRCS Field Office Practice Standard and/or the USDA-NRCS Animal Waste Handbook), as follows:

(i) Manure, litter, and process wastewater shall be applied no closer than 100 feet to any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters unless:

(I) The CAFO substitutes the 100-foot setback with a 35-foot wide vegetated buffer or by leaving in place a 60-foot natural riparian buffer, where applications of manure, litter, or process wastewater are prohibited; or

(II) The CAFO demonstrates that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback;

(ii) Manure, litter, and process wastewater shall be applied no closer than 100 feet for any potable well, public or private, or as recommended by the University of Tennessee Extension; and

(iii) For new CAFOs that are located adjacent to exceptional Tennessee waters and outstanding national resource waters (as identified by the Department), leave in place a minimum 60-foot natural riparian buffer between the stream and the land application area;

[. . .]