University of Arkansas Division of Agriculture

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Nutrient Management Plans
Statutes & Regulations

Tennessee

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Nutrient Management Plans

STATE OF TENNESSEE

1) Tenn. Code Ann. §§ 69-3-102, 103(2), (39), 107, 108, 141; Tenn. Comp. R. & Regs. R. 0400-40-05-.02(1), (3), (5), (8), (22), (65); 0400-40-05-.14(9), (10)

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(2), (39), 107, 108, 141; Tenn. Comp. R. & Regs. R. 0400-40-05-.02(1), (3), (5), (8), (22), (65); 0400-40-05-.14(9), (10)

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:

[. . .]

(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;

[. . .]

(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;

[. . .]

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.

69-3-141. Bill of rights for permit applicants.

(a) The general assembly finds and adopts as a matter of public policy, the following statements:

(1) The permitting process under this chapter should be a predictable, ordinary process for the benefit of the commissioner and permit applicants alike;

(2) As with all governmental regulatory activity, the permitting process under this chapter should be susceptible to easy public review and scrutiny;

(3) The permitting process under this chapter should afford applicants basic due process, including notice of application defects, timely review of applications, and prompt and meaningful administrative and judicial review of permitting decisions;

(4) The permitting process under this chapter should reflect an appropriate balance between enforcement of the state's environmental laws and the rights of persons seeking to comply voluntarily with those same laws, in order to safeguard our state's environment and develop our state's economy; and

(5) To further these goals, to protect the rights of applicants, and to promote efficient, effective resolution of permit applications by the commissioner, the general assembly enacts this bill of rights for permit applicants under this chapter.

(b) The commissioner shall afford each applicant for a permit under this chapter the following rights under this bill of rights for permit applicants:

(1) Permit applicants shall have the right to assistance from the department in understanding regulatory and permit requirements;

(2) Permit applicants shall have the right to know the projected fees for review of applications, and how any costs will be determined and billed;

(3) Permit applicants shall have the right to access, on the department's web site, complete and clearly written guidance documents, office of general counsel opinions, and department policies that explain the department's regulatory jurisdiction and requirements. The commissioner shall publish, on the

department's web site, a list of all information required in a permit application and the criteria used to determine whether the submitted information is adequate;

(4) Permit applicants shall have the right to timely completeness determinations for their applications. Permit applicants shall have the right to know exactly how their applications are incomplete and what further information is needed to make their applications complete. Absent extraordinary circumstances, the commissioner shall notify the applicant within thirty (30) days of any permit application deficiencies, or determine that the application is complete;

(5) Permit applicants shall have the right to a timely decision on their permit application. The following time limits shall apply:

(A) Aquatic resource alteration permits (ARAPs) shall be issued or denied within ninety (90) days of the date the department determines an application is complete. If a public hearing is scheduled in response to a request from interested parties, an additional ninety (90) days shall be added to the allowable time limit. The ninety-day time limit may be extended by written mutual agreement between the commissioner and the permit applicant;

(B) Applications for the reissuance of national pollutant discharge elimination system (NPDES) permits shall be issued or denied within one hundred eighty (180) days of the date the department determines an application is complete. If a public hearing is scheduled, in response to comments by interested parties, additional time is requested by the applicant, or additional time is requested by the EPA, an additional ninety (90) days shall be added to the allowable time limit;

(C) Applications for new or modified NPDES permits shall be issued or denied within three hundred sixty-five (365) days of the date the department determines an application is complete. If a public hearing is scheduled, in response to comments by interested parties or additional time is requested by the EPA, an additional ninety (90) days shall be added to the allowable time limit. No other extension shall be granted, except by written mutual agreement between the commissioner and the permit applicant;

(6) Permit applicants shall have the right to appeal to the board any permit review time limits that have been violated without good cause. Through this appeal, applicants may obtain a set date for a decision on their permit and, where the board finds good cause, appropriate relief, including, but not limited to, a refund of all application fees; and

(7) Permit applicants shall have the right to know who will be reviewing their application and the time required to complete the full review process.

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:

(1) "Act" means the Water Quality Control Act (TWQCA), T.C.A. §§ 69-3-101 et seq.

[. . .]

(3) An "Agricultural stormwater discharge" refers to a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO where the manure, litter, or process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in parts (10)(a)7. through 10. of Rule 0400-40-05-.14.

[. . .]

(5) An "Animal Feeding Operation" (AFO) is a facility that (1) stables, confines and feeds or maintains animals (other than aquatic animals) for a total of 45 days or more in any 12-month period and (2) does not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season over any portion of the facility. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

[. . .]

(8) "Animal Waste Management System" means any system used for the collection, storage, treatment, handling, transport, distribution, land application, or disposal of agricultural wastes, animal waste/wastewater, waste product, and dead animals generated by an AFO that meets or exceeds USDA-NRCS technical standards and guidelines.

[. . .]

(22) A "concentrated animal feeding operation" (CAFO) is an AFO that either meets the large (Class I) CAFO size criteria of paragraph (2) of Rule 0400-40-05-.14, the medium (Class II) criteria of paragraph (3) of Rule 0400-40-05-.14, or has otherwise been designated as a CAFO by the Director.

[. . .]

(65) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

[. . .]

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[. . .]

(9) CAFOs shall have a nutrient management plan developed and approved and have all measures, structures, etc., in place to fully implement the plan upon the date of permit coverage.

(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;

2. Ensures adequate storage of manure, litter, and process wastewater including procedures to ensure proper operation and maintenance of the storage facilities;

3. Ensures proper management of mortalities (i.e., dead animals) so that they are not disposed of in a liquid manure, stormwater, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities as outlined in USDA-NRCS Conservation Practice Standard 316, October 2002 (or most recent) and/or the USDA-NRCS Animal Waste Handbook, and/or University of Tennessee Extension publications;

4. Ensures that clean water is diverted, as appropriate, from the production area;

5. Prevents direct contact of confined animals with waters of the state;

6. Ensures that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or stormwater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

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;

8. Provides for annual manure analysis for nitrogen and phosphorus content, following University of Tennessee Extension guidelines, and soil analysis at a minimum of once every 5 years for phosphorus content (the results of these analyses are to be used in determining application rates for manure, litter, and other process wastewater);

9. Establishes protocols to land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the

manure, litter, or process wastewater. Application rates for manure, litter, and other process wastewater applied to land under the ownership or operational control of the CAFO shall minimize phosphorus and nitrogen transport from the field to surface waters in compliance with technical standards for nutrient management that:

(i) Include a field-specific assessment of the potential for nitrogen and phosphorus transport from the field to surface waters, and address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters, that employs the Tennessee Phosphorus Index (a tool developed by the University of Tennessee Extension Service and the USDA-NRCS to assess the risk of phosphorus movement from the application area to waters of the state); and

(ii) Include appropriate flexibilities for any CAFO to implement nutrient management practices to comply with the technical standards, including consideration of multi-year phosphorus application on fields that do not have a high potential for phosphorus runoff to surface water, phased implementation of phosphorus-based nutrient management, and other components, in consideration of recommendations from the University of Tennessee Extension and as determined appropriate by the Director;

10. Provides for periodic inspection of equipment used for land application of manure, litter, and other process wastewater.

(b) Nutrient management plan terms

Any permit issued to a CAFO shall require compliance with the terms of the CAFO's site-specific nutrient management plan such that the plan is enforceable through the permit. The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined by the Director to be necessary to implement the nutrient management plan. For NPDES permits, the terms of the nutrient management plan, with respect to protocols that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, shall include the fields available for land application; field-specific rates of application properly developed through either the linear approach or the narrative approach; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application.

1. Linear approach

An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

(i) The terms include:

(I) Maximum application rates from manure, litter, and process wastewater for each year of permit coverage and for each crop identified in the nutrient management plan, in terms of total nitrogen and phosphorus, in pounds per acre, per year, for each field to be used for land application;

(II) The outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field as described in subpart (a)9.(i) of this paragraph;

(III) The crops to be planted in each field or any other uses of a field such as pasture or fallow fields; the realistic yield goal for each crop or use identified for each field;

(IV) The nitrogen and phosphorus recommendations as recommended by the University of Tennessee Extension for each crop or use identified for each field;

(V) Credits for all residual nitrogen in the field that will be plant available as recommended by the University of Tennessee Extension;

(VI) Consideration of multi-year phosphorus application in accordance with subpart (a)9.(ii) of this paragraph;

(VII) An accounting of all other additions of plant available nitrogen and phosphorus to the field;

(VIII) The form and source of manure, litter, and process wastewater to be land-applied;

(IX) The timing and method of land application; and

(X) The methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied as described in part (a)8. of this paragraph.

(ii) Large CAFOs that use this approach shall calculate the maximum amount of manure, litter, and process wastewater to be

land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application.

2. Narrative rate approach

An approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications:

(i) The terms include:

(I) Maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in terms of total nitrogen and phosphorus, in pounds per acre, for each field, and certain factors necessary to determine such amounts.

(II) The outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field as described in subpart (a)9.(i) of this paragraph;

(III) The crops to be planted in each field or any other uses such as pasture or fallow fields (including alternative crops identified in subpart (iii) of this part;

(IV) The realistic yield goal for each crop or use identified for each field; and

(V) The nitrogen and phosphorus recommendations as recommended by the University of Tennessee Extension for each crop or use identified for each field for each crop or use identified for each field.

(ii) The terms include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied:

(I) Results of soil tests conducted in accordance with protocols identified in part (a)8. of this paragraph;

(II) Credits for all residual nitrogen in the field that will be plant available as recommended by the University of Tennessee;

(III) The amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied;

(IV) Consideration of multi-year phosphorus application in accordance with subpart (a)9.(ii) of this paragraph;

(V) Accounting for all other additions of plant available nitrogen and phosphorus to the field;

(VI) The form and source of manure, litter, and process wastewater;

(VII) The timing, except as described in subpart (iv) of this part and method of land application; and

(VIII) Volatilization of nitrogen and mineralization of organic nitrogen.

(iii) The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops shall be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan shall include realistic crop yield goals and the nitrogen and phosphorus recommendations as recommended by the University of Tennessee for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied shall be determined in accordance with the methodology described in items (ii)(I) through (VIII) of this part.

(iv) For CAFOs using this approach, the following projections shall be included in the nutrient management plan submitted to the director, but are not terms of the nutrient management plan: The CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and

process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

(v) CAFOs that use this approach shall calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in subpart (ii) of this part before land applying manure, litter and process wastewater and shall rely on the following data:

(I) A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by subpart (ii) of this part, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the Commissioner; and

(II) The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

(c) Changes to a nutrient management plan

1. Any NPDES permit issued to a CAFO shall require the following procedures when a CAFO owner or operator makes changes to the CAFO's nutrient management plan previously submitted to the Director:

(i) The CAFO owner or operator shall provide the Director with the most current version of the CAFO's nutrient management plan and identify changes from the previous version, except that the results of calculations made in accordance with the requirements of subparts (b)1.(ii) and (b)2.(v) of this paragraph are not considered to be changes to the nutrient management plan subject to the requirements of this paragraph.

(ii) The Director shall review the revised nutrient management plan to ensure that it meets the requirements of this paragraph and applicable effluent limitations and standards and shall determine whether the changes to the nutrient management plan include revision to the terms of the nutrient management plan as set forth in subparagraph (b) of this paragraph. If the terms of the nutrient management plan are not revised, the Director shall notify the CAFO owner or operator and upon such notification the CAFO

may implement the revised nutrient management plan. If the terms of the nutrient management plan are revised, the Director shall determine whether such changes are substantial changes as described in part 2. of this subparagraph.

(iii) If the Director determines that the changes to the terms of the nutrient management plan are not substantial, the Director shall make the revised nutrient management plan publicly available and include it in the permit record and inform the public of any changes to the terms of the nutrient management plan.

(iv) If the Director determines that the changes to the terms of the nutrient management plan are substantial, the Director shall notify the public and make the proposed changes and the information submitted by the CAFO owner or operator available for public review and comment. The process for public notice and participation shall follow the procedures applicable to draft permits set forth in Rule 0400-40-05-.06. The Director shall consider all significant comments received during the comment period and require the CAFO owner or operator to further revise the nutrient management plan if necessary. Once the Director approves the revised terms of the nutrient management plan, the Director shall issue a notice of determination that addresses all comments received and notifies the owner or operator and the public of the final decision concerning revisions to the nutrient management plan.

2. Substantial changes to the terms of a nutrient management plan incorporated as terms and conditions of a permit include, but are not limited to:

(i) Addition of new land application areas not previously included in the CAFO's nutrient management plan or in the terms of a nutrient management plan incorporated into an existing NPDES permit. If the CAFO owner or operator applies manure, litter, or process wastewater on the newly added land application area in accordance with existing field-specific permit terms applicable to the newly added land application area, such addition of new land would be a change to the new CAFO owner or operator's nutrient management plan but not a substantial change for purposes of this paragraph;

(ii) Any changes to the field-specific maximum annual rates for land application set in accordance with the linear approach or to the maximum amounts of nitrogen and phosphorus derived from

all sources for each crop set in accordance with the narrative approach;

(iii) Addition of any crop or other uses not included in the terms of the CAFO's nutrient management plan and corresponding field-specific rates of application; and

(iv) Changes to site-specific components of the CAFO's nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the state.

3. CAFOs covered by state permits are subject to the following procedures when the CAFO owner or operator makes changes to the CAFO's nutrient management plan previously submitted to the Director:

(i) The CAFO owner or operator shall provide the Director with the most current version of the CAFO's nutrient management plan and identify changes from the previous version.

(ii) The Director shall review the revised nutrient management plan to ensure that it meets the requirements of this paragraph and applicable effluent limitations and standards and shall determine whether the changes to the nutrient management plan include revisions to the terms of the nutrient management plan as set forth in subparagraph (b) of this paragraph. The Director shall advise the CAFO owner or operator whether or not the changes meet the requirements of this paragraph and applicable effluent limitations and standards and upon such notification the CAFO shall either make further revisions to the nutrient management plan or implement the revised nutrient management plan.

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