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Sequence Number: 12-18-23  
Rule ID(s): 9986-9987  
File Date: 12/20/2023  
Effective Date: 3/19/2024

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission, or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Board of Water Quality, Oil, and Gas
<b>Division:</b>	Water Resources
<b>Contact Person:</b>	Karina Bynum
<b>Address:</b>	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11th Floor Nashville, Tennessee
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**Revision Type (check all that apply):**

☒ Amendment ☐ Content based on previous emergency rule filed on \_\_\_\_\_  
☐ New ☐ Content is identical to the emergency rule  
☐ Repeal

**Rule(s)** (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0400-40-05	Individual National Pollutant Discharge Elimination System (NPDES) Permits
Rule Number	Rule Title
0400-40-05-.15	Municipal Separate Storm Sewer Systems

Chapter Number	Chapter Title
0400-40-10	National Pollutant Discharge Elimination System General Permits
Rule Number	Rule Title
0400-40-10-.01	General
0400-40-10-.02	Definitions
0400-40-10-.03	Permits
0400-40-10-.04	Municipal Separate Storm Sewer Systems

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 0400-40-05  
Individual National Pollutant Discharge Elimination System (NPDES) Permits

Amendments

Subparagraph (c) of paragraph (2) of Rule 0400-40-05-.15 Municipal Separate Storm Sewer Systems is amended by deleting it in its entirety and substituting instead the following:

- (c) For the purposes of this paragraph, the water quality treatment design storm is a 1-year, 24-hour storm event as defined by Precipitation-Frequency Atlas of the United States. Atlas 14. Volume 2. Version 3.0. U.S. Department of Commerce. National Oceanic and Atmospheric Administration (NOAA), National Weather Service, Hydrometeorological Design Studies Center, Silver Springs, Maryland or its digital product equivalent. The water quality treatment volume (WQTV) is a portion of the runoff generated from impervious surfaces at a new development or redevelopment project by the design storm, as set forth below. SCMs must be designed, at a minimum, to achieve an overall treatment efficiency of 80% TSS removal from the WQTV. The quantity of the WQTV depends on the type of treatment provided, as established in the following table:

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

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

Chapter 0400-40-10  
National Pollutant Discharge Elimination System General Permits

Amendments

Paragraph (2) of Rule 0400-40-10-.01 General is amended by deleting it in its entirety and substituting instead the following:

- (2) Electronic reporting. This chapter requires the submission of forms developed by the Commissioner in order for a person to comply with certain requirements, including, but not limited to, making reports, submitting monitoring results, and applying for permits. The Commissioner may make these forms available electronically and, if submitted electronically, then that electronic submission shall comply with the requirements of Chapter 0400-01-40.

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

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

Paragraph (4) of Rule 0400-40-10-.02 Definitions is amended by deleting it in its entirety and substituting instead the following:

- (4) "Geographical Area" means existing geographic or political boundaries such as:
- (a) Designated planning areas under §§ 208 and 303 of the Federal Clean Water Act;
  - (b) Sewer districts or sewer authorities;
  - (c) City, County, or State political boundaries;
  - (d) State highway systems;
  - (e) Standard metropolitan statistical areas as defined by the Office of Management and Budget; or
  - (f) Any other appropriate division or combination of boundaries.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

Parts 1 and 2 of subparagraph (e) of paragraph (2) of Rule 0400-40-10-.03 Permits is amended by deleting them in their entirety and substituting instead the following:

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

- (ii) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
  - (iii) For a municipality, state, federal, or other public facility, by a:
    - (I) Principal executive officer (i.e., the chief executive officer of the agency, or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency); or
    - (II) Ranking elected official.
2. All reports or information submitted to the Commissioner shall be signed and certified by the persons identified in part 1 of this subparagraph or a duly authorized representative of that person. A person is a duly authorized representative only if:
- (i) The authorization is made in writing by the person identified in part 1 of this subparagraph;
  - (ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or regulated activity, or the authorization specifies an individual or position having overall responsibility for environmental matters for the company; and
  - (iii) The written authorization is submitted to the Commissioner.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

Subparagraph (c) of paragraph (2) of Rule 0400-40-10-.04 Municipal Separate Storm Sewer Systems is amended by deleting it in its entirety and substituting instead the following:

- (c) The water quality treatment design storm is a 1-year, 24-hour storm event as defined by Precipitation-Frequency Atlas of the United States. Atlas 14. Volume 2. Version 3.0. U.S. Department of Commerce. National Oceanic and Atmospheric Administration (NOAA), National Weather Service, Hydrometeorological Design Studies Center, Silver Springs, Maryland or its digital product equivalent. The water quality treatment volume (WQTV) is a portion of the runoff generated from impervious surfaces at a new development or redevelopment project by the design storm, as set forth below. SCMs must be designed, at a minimum, to achieve an overall treatment efficiency of 80% TSS removal from the WQTV. The quantity of the WQTV depends on the type of treatment provided, as established in the following table:

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biologically active filtration, with an underdrain	runoff generated from the first 1.25 inches of the design storm	To achieve biologically active filtration, SCMs must provide minimum of 12 inches of internal water storage.
sand or gravel filtration, settling ponds, extended detention ponds, and wet ponds	runoff generated from the first 2.5 inches of the design storm or the first 75% of the design storm, whichever is less	Examples include, but are not limited to, sand filters, permeable pavers, and underground gravel detention systems. Ponds must provide forebays comprising a minimum of 10% of the total design volume. Existing regional detention ponds are not subject to the forebay requirement.

hydrodynamic separation, baffle box settling, other flow-through manufactured treatment devices (MTDs), and treatment trains using MTDs	maximum runoff generated from the entire design storm	Flow-through MTDs must provide an overall treatment efficiency of at least 80% TSS reduction. Refer to subparagraph (2)(d) of this rule.
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Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

<b>Board Member</b>	<b>Aye</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	<b>Signature (if required)</b>
<b>Dr. Gary G. Bible</b> (Oil and Gas Industry)	X				
<b>Elaine Boyd</b> (Commissioner's Designee, Department of Environment and Conservation)	X				
<b>Mayor Kevin C. Davis</b> (Counties)				X	
<b>Dodd Galbreath</b> (Environmental Interests)	X				
<b>Brent Galloway</b> Oil or Gas Property Owner	X				
<b>Charlie R. Johnson</b> (Public-at-large)				X	
<b>Judy Manners</b> (Commissioner's Designee, Department of Health)	X				
<b>John McClurkan</b> (Commissioner's Designee, Department of Agriculture)	X				
<b>Frank McGinley</b> (Agricultural Interests)				X	
<b>Neal Whitten</b> (Manufacturing Industry)	X				
<b>Terry Wimberley</b> (Municipalities)	X				
<b>Vacant</b> (Small Generator of Water Pollution representing Automotive Interests)					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Water Quality, Oil, and Gas on 10/17/2023 and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/14/2023

Rulemaking Hearing(s) Conducted on: (add more dates). 09/06/2023

Date: October 17, 2023

Signature: 


Name of Officer: Jenny Dodd

Title of Officer: Technical Secretary

Agency/Board/Commission: Board of Water Quality, Oil, and Gas

Rule Chapter Number(s): 0400-40-05 and 0400-40-10

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

  
Jonathan Skrmetti  
Attorney General and Reporter

Dec. 18, 2023

Date

**Department of State Use Only**

Filed with the Department of State on: 12/20/2023

Effective on: 3/19/2024



Tre Hargett  
Secretary of State

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Dec 20 2023, 10:04 am

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## Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

1. Comment: A commenter expressed support for the elimination of the roof runoff exclusion from the water quality treatment volume, citing potential improvement in water quality.

Response: The Board appreciates this comment.

2. Comment: Please explain the change to Rule 0400-40-10-.02(4)(f) to delete “Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974).”

Response: This change is necessary due to changes in the census process and EPA rules. Specifically, it is necessary due to the Census Bureau’s March 24, 2022 publication of final program criteria that discontinued its practice of publishing the location of “urbanized areas” along with the 2020 Census and future censuses. EPA issued its final rule implementing this change in the MS4 program on June 7, 2023.

3. Comment: Please explain why “uncontaminated roof runoff” should be included in the water quality treatment volume.

Response: After adoption of the original rule, TDEC staff reviewed the roof runoff exception and promulgated guidance concerning implementation of that rule (DWR-NR-G-12 NPDES Municipal Separate Storm Sewer Systems (MS4) Permit Uncontaminated Roof Runoff Exclusion Guidance) on August 1, 2022. This guidance examined data concerning pollutants contained in roof runoff, as set forth in Table 1. Although most roof runoff has a lower pollutant loading than other sources of stormwater, pollutants are still present.

## Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

The type of small business potentially affected by this rule would be small-scale developers working in MS4 communities. However, the Board does not anticipate an impact on such entities.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

No additional administrative costs will result from adoption of this rule amendment.

- (3) A statement of the probable effect on impacted small businesses and consumers.

The Board does not anticipate an effect on small businesses. The Homebuilders Association represented to TDEC that developers already include roof runoff in their stormwater calculations. No MS4 community has adopted the roof runoff exception, so the only effect on small business would be on those who might have anticipated that their community would have adopted the exception in the future.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

This amendment represents the least cost method of complying with federal NPDES requirements. These rules originally resulted from a settlement of a permit appeal by the Homebuilders and NGOs – that settlement did not include an exemption for roof runoff.

- (5) A comparison of the proposed rule with any federal or state counterparts.

All NPDES-delegated states are required to operate a MS4 program. Tennessee is unique in that our statute requires us to promulgate post-construction requirements as rules rather than just issuing permits. Tennessee's post-construction stormwater requirements are comparable to those of other states, but they provide a wider range of options for compliance.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Under the federal NPDES program, small businesses may not be exempted from the requirements of this rule.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

These amended rules will not result in an increase in expenditures or a decrease in revenues for local governments.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rule changes the water quality treatment volume to include uncontaminated roof runoff. The amendments to Chapter 0400-40-10 also update definitions to conform to federal rules and to be consistent with definitions in Chapter 0400-10-05 for individual permits and to provide for electronic reporting.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tennessee Code Annotated section 69-3-108(s) requires the Board to promulgate rules to establish effluent limitations for post-construction stormwater. The federal Clean Water Act requires NPDES permits for MS4 communities. 33 U.S.C. § 1342(p). EPA has adopted regulations to implement the NPDES program. 40 C.F.R. parts 125 and 127.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Local governments with MS4 stormwater programs are most directly affected, because they hold the NPDES permits that are governed by this rulemaking. Developers are indirectly affected because they must comply with local stormwater regulations in MS4 communities. Tennesseans who use and enjoy waters of the state benefit from effective stormwater regulation to prevent pollution. These entities are either neutral or supportive of this rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

The Board is not aware of any opinions that directly relate to the rulemaking.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This rulemaking is not expected to affect state or local revenues.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Karina Bynum  
Division of Water Resources  
[Karina.Bynum@tn.gov](mailto:Karina.Bynum@tn.gov)

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Alli F. Williamson  
Legislative Liaison  
Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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Legislative Liaison  
Office of General Counsel

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.  
  
The rule amends the post-construction stormwater calculations to require stormwater authorities to include uncontaminated roof runoff as part of the volume calculations. This will result in a marginally higher volume of stormwater being treated before being discharged to waters of the state. The amendments also update definitions to conform to federal rules and to be consistent with definitions in Chapter 0400-40-05 for individual permits. This rulemaking is authorized by Tennessee Code Annotated section 69-3-108(s). After the rule becomes effective, TDEC will implement this action by amending the Phase II general NPDES permit for MS4 communities and by modifying individual MS4 permits.
- (2) A determination that the action is the least-cost method for achieving the stated purpose.  
  
This action is the least-cost method to comply with Tennessee Code Annotated section 69-3-108(s) and applicable federal requirements. The roof runoff amendment is consistent with existing local stormwater regulations statewide, so there is no cost associated with its adoption.
- (3) A comparison of the cost-benefit relation of the action to nonaction.  
  
This action imposes no additional costs. The benefit of the action is to bring state rules into compliance with federal requirements and to implement a settlement.
- (4) A determination that the action represents the most efficient allocation of public and private resources.  
  
This action represents the most efficient allocation of public and private resources.
- (5) A determination of the effect of the action on competition.  
  
The rule will not affect competition in the marketplace. Each state must impose post-construction stormwater requirements in their MS4 permits.
- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.  
  
This action will not affect the cost of living in MS4 communities in Tennessee.
- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.  
  
This action will not affect employment in MS4 communities in Tennessee.
- (8) The source of revenue to be used for the action.  
  
This action does not require additional revenue beyond resources already committed by MS4 communities and TDEC. Local revenues currently come from taxes and stormwater fees.
- (9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.  
  
No persons will be substantially affected by this action. MS4 communities are most directly affected, and none of them have adopted the roof runoff exception.

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<b>Agency/Board/Commission:</b>	Board of Water Quality, Oil, and Gas
<b>Division:</b>	Water Resources
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Chapter Number	Chapter Title
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Chapter 0400-40-05  
Individual National Pollutant Discharge Elimination System (NPDES) Permits

Amendments

Subparagraph (c) of paragraph (2) of Rule 0400-40-05-.15 Municipal Separate Storm Sewer Systems is amended by deleting it in its entirety and substituting instead the following:

- (c) For the purposes of this paragraph, the water quality treatment design storm is a 1-year, 24-hour storm event as defined by Precipitation-Frequency Atlas of the United States. Atlas 14. Volume 2. Version 3.0. U.S. Department of Commerce. National Oceanic and Atmospheric Administration (NOAA), National Weather Service, Hydrometeorological Design Studies Center, Silver Springs, Maryland or its digital product equivalent. The water quality treatment volume (WQTV) is a portion of the runoff generated from impervious surfaces at a new development or redevelopment project by the design storm, as set forth below. ~~Uncontaminated roof runoff may be excluded from the WQTV.~~ SCMs must be designed, at a minimum, to achieve an overall treatment efficiency of 80% TSS removal from the WQTV. The quantity of the WQTV depends on the type of treatment provided, as established in the following table:

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Alternative permanent stormwater standards that provide equal or equivalent reduction of pollutants to the above may be submitted to the Division for approval.		

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

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National Pollutant Discharge Elimination System General Permits

Amendments

Paragraph (2) of Rule 0400-40-10-.01 General is amended by deleting it in its entirety and substituting instead the following:

- (2) Electronic reporting. This chapter requires the submission of forms developed by the Commissioner in order for a person to comply with certain requirements, including, but not limited to, making reports, submitting monitoring results, and applying for permits. The Commissioner may make these forms available electronically and, if submitted electronically, then that electronic submission shall comply with the requirements of Chapter 0400-01-40.

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

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- (4) "Geographical Area" means existing geographic or political boundaries such as:
- (a) Designated planning areas under §§ 208 and 303 of the Federal Clean Water Act;
  - (b) Sewer districts or sewer authorities;
  - (c) City, County, or State political boundaries;
  - (d) State highway systems;
  - (e) Standard metropolitan statistical areas as defined by the Office of Management and Budget; or
  - ~~(f) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or~~
  - ~~(g)~~(f) Any other appropriate division or combination of boundaries.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

Parts 1 and 2 of subparagraph (e) of paragraph (2) of Rule 0400-40-10-.03 Permits is amended by deleting them in their entirety and substituting instead the following:

- (e) Signatory Requirements.
- 1. Any NOI submitted to the Director shall be signed as follows:
    - (i) For a corporation, by a:
      - ~~(I) responsible~~ Responsible corporate officer. ~~For the purpose of this subpart, a responsible corporate officer means: (I) A~~ a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; ~~or~~
      - (II) ~~The manager~~ Manager of one or more manufacturing, production, or operating facilities, ~~employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or~~

~~delegated to the manager in accordance with corporate procedures provided, the manager is authorized to make management decisions that govern the operation of the regulated facility to assure long term environmental compliance with environmental laws and regulations; or~~

~~(III) Person in a corporate position to whom signatory authority has been delegated by a corporate officer.~~

(ii) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; ~~or~~

(iii) For a municipality, ~~State, Federal~~ state, federal, or other public facility; by ~~either~~ a:

~~(I) principal~~ Principal executive officer ~~or ranking elected official. For purposes of this subpart, a principal executive officer of a Federal agency includes: (I) The chief (i.e., the chief executive officer of the agency, or (II) A senior executive officer; a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency); or~~

~~(II) Ranking elected official.~~

2. All reports ~~required by the permit~~ or information submitted to the ~~Director~~ Commissioner shall be signed and certified by ~~a person designated~~ the persons identified in part 1- of this subparagraph or a duly authorized representative of ~~such that~~ person; A person is a duly authorized representative only if:

~~(i)(i)~~ The authorization is made in writing by the person ~~designated under~~ identified in part 1- of this subparagraph; ~~and~~

~~(i)(ii)~~ ~~The representative so authorized is responsible~~ The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility from which the discharge originated, e.g., a plant manager, superintendent or person of equivalent responsibility or regulated activity, or the authorization specifies an individual or position having overall responsibility for environmental matters for the company; and

(iii) The written authorization is submitted to the ~~Director~~ Commissioner.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

Subparagraph (c) of paragraph (2) of Rule 0400-40-10-.04 Municipal Separate Storm Sewer Systems is amended by deleting it in its entirety and substituting instead the following:

- (c) The water quality treatment design storm is a 1-year, 24-hour storm event as defined by Precipitation-Frequency Atlas of the United States. Atlas 14. Volume 2. Version 3.0. U.S. Department of Commerce. National Oceanic and Atmospheric Administration (NOAA), National Weather Service, Hydrometeorological Design Studies Center, Silver Springs, Maryland or its digital product equivalent. The water quality treatment volume (WQTV) is a portion of the runoff generated from impervious surfaces at a new development or redevelopment project by the design storm, as set forth below. ~~Uncontaminated roof runoff may be excluded from the WQTV.~~ SCMs must be designed, at a minimum, to achieve an overall treatment efficiency of 80% TSS removal from the WQTV. The quantity of the WQTV depends on the type of treatment provided, as established in the following table:

Water Quality Treatment Volume and the Corresponding SCM Treatment Type for the 1-year, 24-hour design storm		
SCM Treatment Type	WQTV	Notes
infiltration, evaporation, transpiration, and/or reuse	runoff generated from the first 1 inch of the design storm	Examples include, but are not limited to, bioretention, stormwater wetlands, and infiltration systems.

biologically active filtration, with an underdrain	runoff generated from the first 1.25 inches of the design storm	To achieve biologically active filtration, SCMs must provide minimum of 12 inches of internal water storage.
sand or gravel filtration, settling ponds, extended detention ponds, and wet ponds	runoff generated from the first 2.5 inches of the design storm or the first 75% of the design storm, whichever is less	Examples include, but are not limited to, sand filters, permeable pavers, and underground gravel detention systems. Ponds must provide forebays comprising a minimum of 10% of the total design volume. Existing regional detention ponds are not subject to the forebay requirement.
hydrodynamic separation, baffle box settling, other flow-through manufactured treatment devices (MTDs), and treatment trains using MTDs	maximum runoff generated from the entire design storm	Flow-through MTDs must provide an overall treatment efficiency of at least 80% TSS reduction. Refer to subparagraph (2)(d) of this rule.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

<b>Board Member</b>	<b>Aye</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	<b>Signature (if required)</b>
<b>Dr. Gary G. Bible</b> (Oil and Gas Industry)	X				
<b>Elaine Boyd</b> (Commissioner's Designee, Department of Environment and Conservation)	X				
<b>Mayor Kevin C. Davis</b> (Counties)				X	
<b>Dodd Galbreath</b> (Environmental Interests)	X				
<b>Brent Galloway</b> Oil or Gas Property Owner	X				
<b>Charlie R. Johnson</b> (Public-at-large)				X	
<b>Judy Manners</b> (Commissioner's Designee, Department of Health)	X				
<b>John McClurkan</b> (Commissioner's Designee, Department of Agriculture)	X				
<b>Frank McGinley</b> (Agricultural Interests)				X	
<b>Neal Whitten</b> (Manufacturing Industry)	X				
<b>Terry Wimberley</b> (Municipalities)	X				
<b>Vacant</b> (Small Generator of Water Pollution representing Automotive Interests)					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Water Quality, Oil, and Gas on 10/17/2023, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/14/2023

Rulemaking Hearing(s) Conducted on: (add more dates). 09/06/2023

Date: October 17, 2023

Signature: \_\_\_\_\_

Name of Officer: Jenny Dodd

Title of Officer: Technical Secretary

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Agency/Board/Commission: Board of Water Quality, Oil, and Gas

Rule Chapter Number(s): 0400-40-05 and 0400-40-10

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

\_\_\_\_\_  
Jonathan Skrmetti  
Attorney General and Reporter

\_\_\_\_\_  
Date

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

Effective on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State

## Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

1. Comment: A commenter expressed support for the elimination of the roof runoff exclusion from the water quality treatment volume, citing potential improvement in water quality.

Response: The Board appreciates this comment.

2. Comment: Please explain the change to Rule 0400-40-10-.02(4)(f) to delete “Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974).”

Response: This change is necessary due to changes in the census process and EPA rules. Specifically, it is necessary due to the Census Bureau’s March 24, 2022 publication of final program criteria that discontinued its practice of publishing the location of “urbanized areas” along with the 2020 Census and future censuses. EPA issued its final rule implementing this change in the MS4 program on June 7, 2023.

3. Comment: Please explain why “uncontaminated roof runoff” should be included in the water quality treatment volume.

Response: After adoption of the original rule, TDEC staff reviewed the roof runoff exception and promulgated guidance concerning implementation of that rule (DWR-NR-G-12 NPDES Municipal Separate Storm Sewer Systems (MS4) Permit Uncontaminated Roof Runoff Exclusion Guidance) on August 1, 2022. This guidance examined data concerning pollutants contained in roof runoff, as set forth in Table 1. Although most roof runoff has a lower pollutant loading than other sources of stormwater, pollutants are still present.

## Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

The type of small business potentially affected by this rule would be small-scale developers working in MS4 communities. However, the Board does not anticipate an impact on such entities.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

No additional administrative costs will result from adoption of this rule amendment.

- (3) A statement of the probable effect on impacted small businesses and consumers.

The Board does not anticipate an effect on small businesses. The Homebuilders Association represented to TDEC that developers already include roof runoff in their stormwater calculations. No MS4 community has adopted the roof runoff exception, so the only effect on small business would be on those who might have anticipated that their community would have adopted the exception in the future.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

This amendment represents the least cost method of complying with federal NPDES requirements. These rules originally resulted from a settlement of a permit appeal by the Homebuilders and NGOs – that settlement did not include an exemption for roof runoff.

- (5) A comparison of the proposed rule with any federal or state counterparts.

All NPDES-delegated states are required to operate a MS4 program. Tennessee is unique in that our statute requires us to promulgate post-construction requirements as rules rather than just issuing permits. Tennessee's post-construction stormwater requirements are comparable to those of other states, but they provide a wider range of options for compliance.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Under the federal NPDES program, small businesses may not be exempted from the requirements of this rule.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

These amended rules will not result in an increase in expenditures or a decrease in revenues for local governments.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rule changes the water quality treatment volume to include uncontaminated roof runoff. The amendments to Chapter 0400-40-10 also update definitions to conform to federal rules and to be consistent with definitions in Chapter 0400-10-05 for individual permits and to provide for electronic reporting.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tennessee Code Annotated section 69-3-108(s) requires the Board to promulgate rules to establish effluent limitations for post-construction stormwater. The federal Clean Water Act requires NPDES permits for MS4 communities. 33 U.S.C. § 1342(p). EPA has adopted regulations to implement the NPDES program. 40 C.F.R. parts 125 and 127.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Local governments with MS4 stormwater programs are most directly affected, because they hold the NPDES permits that are governed by this rulemaking. Developers are indirectly affected because they must comply with local stormwater regulations in MS4 communities. Tennesseans who use and enjoy waters of the state benefit from effective stormwater regulation to prevent pollution. These entities are either neutral or supportive of this rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

The Board is not aware of any opinions that directly relate to the rulemaking.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This rulemaking is not expected to affect state or local revenues.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Karina Bynum  
Division of Water Resources  
[Karina.Bynum@tn.gov](mailto:Karina.Bynum@tn.gov)

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Alli F. Williamson  
Legislative Liaison  
Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Alli F. Williamson  
Legislative Liaison  
Office of General Counsel

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.  
  
The rule amends the post-construction stormwater calculations to require stormwater authorities to include uncontaminated roof runoff as part of the volume calculations. This will result in a marginally higher volume of stormwater being treated before being discharged to waters of the state. The amendments also update definitions to conform to federal rules and to be consistent with definitions in Chapter 0400-40-05 for individual permits. This rulemaking is authorized by Tennessee Code Annotated section 69-3-108(s). After the rule becomes effective, TDEC will implement this action by amending the Phase II general NPDES permit for MS4 communities and by modifying individual MS4 permits.
- (2) A determination that the action is the least-cost method for achieving the stated purpose.  
  
This action is the least-cost method to comply with Tennessee Code Annotated section 69-3-108(s) and applicable federal requirements. The roof runoff amendment is consistent with existing local stormwater regulations statewide, so there is no cost associated with its adoption.
- (3) A comparison of the cost-benefit relation of the action to nonaction.  
  
This action imposes no additional costs. The benefit of the action is to bring state rules into compliance with federal requirements and to implement a settlement.
- (4) A determination that the action represents the most efficient allocation of public and private resources.  
  
This action represents the most efficient allocation of public and private resources.
- (5) A determination of the effect of the action on competition.  
  
The rule will not affect competition in the marketplace. Each state must impose post-construction stormwater requirements in their MS4 permits.
- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.  
  
This action will not affect the cost of living in MS4 communities in Tennessee.
- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.  
  
This action will not affect employment in MS4 communities in Tennessee.
- (8) The source of revenue to be used for the action.  
  
This action does not require additional revenue beyond resources already committed by MS4 communities and TDEC. Local revenues currently come from taxes and stormwater fees.
- (9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.  
  
No persons will be substantially affected by this action. MS4 communities are most directly affected, and none of them have adopted the roof runoff exception.