



Tennessee Department of Environment and Conservation
Division of Water Pollution Control
Mining Section
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January 28, 2011

NOTICE OF DETERMINATION

Application for a new NPDES permit to discharge treated wastewater and stormwater into Oostanaula Creek in McMinn County.

East Tennessee Materials, LLC
c/o Wayne Grant
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633 Chestnut Street, Suite 900
Chattanooga, TN 37450

East Tennessee Materials Quarry
NPDES Permit TN0069493 (New)
Calhoun, Tennessee
McMinn County

A public hearing was held on November 18, 2010, at the Calhoun Elementary School in Calhoun, Tennessee to consider public comments on this application for a new NPDES permit. The NPDES permit will cover discharges of treated wastewater and stormwater from a proposed new limestone quarry and processing facility. The facility will consist of 421 acres.

The proposed discharge will enter Oostanaula Creek near Mile 1.3 in McMinn County. This stream segment is included on the state of *Tennessee's Approved 2008 303 (d) List*. *E. coli* is the listed pollutant and pasture grazing is the listed source for the pollutant. The affected stream segment of Oostanaula Creek does not qualify as an Exceptional Tennessee Water (ETW) or Outstanding National Resource Water (ONRW).

Approximately 120 people attended the hearing for this permit application. This group included property owners, local residents, the news media, county public officials, company personnel, and other concerned citizens. Organizations and institutions represented included Citizens Against McMinn Rock Quarry, the Cedarstone Group, the local Adventist Home and School, and University of Tennessee Extension Service. Sixteen (16) people offered testimony during the hearing. An extended question and answer session preceded the comment phase. Division personnel remained after the close of the hearing and discussed individual concerns.

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Introductory remarks by the hearing officer included a summary of the proposed project, the hearing procedure, and decision process. During the 10 day comment period following the hearing the Division received numerous written comments, petitions, research literature, and e-mails. The comment period ended November 30, 2010.

Comments and Responses

Please note that a number of comments (both written and oral) are not included in this document because: 1) they were not directly related to the proposed project, 2) stated a belief, opinion, or request that did not specifically ask for a response, 3) required a response that would be speculative and without direct relationship to the project, 4) and requested information or involved matters subject to control or regulation by other government agencies. However, all comments received are part of the hearing record and were considered by the Division in making the determination for these NPDES permit application.

Subjects included in the comments or questions follow: (Several of the public comments that represent similar concerns and issues are grouped together under specific categories).

A. Stream Determination, Wetlands Delineation, and High Quality Waters

A-1) TDEC should conduct a jurisdictional resource determination of the proposed project site and fully consider requirements for alteration of waters of the state and watershed impacts, particularly on the eastern side of the property, and the potential wetlands in the vicinity of the sediment basin and the potential roadway.

A-2) TDEC's permit decision regarding this project should not continue until a complete wetlands delineation is conducted by the United States Army Corps of Engineers (USACE) using the newest guidelines. The applicant's wetlands study was conducted in September, 2008, and does not include updated information contained in the USACE 1987 Delineation Manual. The updated Manual includes a Regional Supplement for the Eastern Mountains and Piedmont Region covering east Tennessee and should be used for wetlands determinations in the project area.

A-3) TDEC should conduct a formal tier assessment on the streams on the eastern portion of the project area prior to approving the mining plan. Many of the streams in this area are potentially high-quality streams and would be more significant and in need of protection.

Response: The Division conducted a stream determination at the project site on June 22, 2010, as required by Tennessee's Antidegradation Policy for a proposed new discharge activity. We identified and documented two blue line streams in the project plans to be wet weather conveyances. One stream channel was documented to be a jurisdictional stream because of the presence of macroinvertebrates. The applicant subsequently revised the project plans by removing the stream from the NPDES permit boundary. Project activities will not be authorized in this area.

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Our stream assessment did not document the presence of jurisdictional wetlands in the project area. A reassessment of the project area conducted on December 16, 2010, confirmed the absence of jurisdictional wetlands. Documentation of our field assessments including completed data sheets regarding hydrology, geomorphology, soil type, vegetation, and biology indicators is available in the NPDES permit file. TDEC assessments are based on the United States Corps of Engineers (USACE) 1987 Wetlands Delineation Manual.

The results of our stream determinations and wetlands assessment do not indicate the presence of jurisdictional waters in the project area. However, in response to public concerns and questions regarding the survey results we sent our assessment data to USACE for verification and confirmation. The Division conducted a joint site investigation with USACE on January 7, 2011, and did not find any jurisdictional wetlands within the permit boundary.

Based on the survey results and review of all the data, the segment of Oostanaula Creek affected by the proposed discharge does not qualify as Exceptional Tennessee Waters (ETWs) or Outstanding National Resource Waters (ONRWs). Details of the stream survey, including worksheets describing criteria for classification of high quality waters, are included in the NPDES permit file.

B. 303 (d) Status, Oostanaula Creek Watershed

B-1) The proposed quarry operation will adversely impact efforts of the Oostanaula Creek Watershed Restoration project to restore and protect this stream. The creek is included on the 303 d List for E. coli and sediment.

B-2) The quarry discharge will result in erosion and the addition of sediment in Oostanaula Creek.

Response: The NPDES permit will not authorize the discharge of *E. coli*. An EPA approved Total Maximum Daily Load (TMDL) has been developed for Pathogens in the Hiwassee River Watershed including the segment of Oostanaula Creek affected by the project. The proposed discharge will not affect or impede efforts to control this pollutant.

The segment of Oostanaula Creek designated as impaired because of sediment is located upstream and several miles from the project site and will not be affected by the proposed discharge.

B-3) Will discharge activity at the quarry cause other pollutants to be added to the 303 d list and limit recovery efforts for Oostanaula Creek?

Response: The pollutants limited by the NPDES permit are Total Suspended Solids and pH. No other wastewater characteristics are authorized by the permit nor anticipated.

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C. Drainage Control, Wastewater Treatment, Permit Limitations

C-1) How is water in the mine pit controlled and maintained? Will water be pumped and where does the pumped water go? Will mine water be used to wash stone? Where will the wash water go?

Response: According to the facility drainage plan, water in the mine pit will be directed to a pit sump for initial treatment. The pit sump water will be pumped through a pipe under Oostanaula Valley Road into a grassed channel that flows into a forebay area for primary treatment. After pretreatment in the forebay area, the water will flow into Sediment Basin 001 for additional treatment.

Mine water from the quarry pit and quarry sump will be used as process water to crush and wash stone. This water will flow by gravity into three in-ground settling tanks piped in series for treatment. The clean water flowing from the third tank will be recycled and pumped back to the wash plant for reuse. This treated process water will not be mixed with stormwater runoff.

C-2) The flow diagram shows the flow of water through the process and treatment units. The initial flow rate from the pit and quarry sump is described as 750 gpm. The diagram shows a decrease in rate of flow through the system from 750 gpm to 600 gpm, then to 150 gpm, with the outflow from the sediment basin listed at 150 gpm. Why the decrease in flow rate? Is the diagram correct?

Surface and stormwater runoff will collect in the mine pit and mine area. Flow decreases as the mine water is routed through the system with loss of water resulting from treatment (i.e., sumps, settling activity in sediment basins), primary and secondary crushing operations, and retention of water in the mined product and stockpiles. The mine will also use stormwater runoff for dust suppression along roadways and on permit areas without vegetative cover.

C-3) Particulates from processing operations (asphalt plant and cement plant) at the site will seep into Oostanaula Creek and the Hiwassee River.

Response: The applicant has revised the plan narrative and states in Section V1-1 "General Information" that these plants are not a part of the application or subject permit. The applicant understands that permit modification and/or additional permits will be required before an asphalt plant or concrete plant can be added on or near this site in the future. See letter from Division dated December 15, 2010, and response from applicant dated December 17, 2010.

C-4) The permit limitations of 40 mg/L should be made more stringent. The quarry discharge will result in the addition of sediment into Oostanaula Creek. Stricter limits are needed to keep discharges within margin of safety.

The rationale for the draft permit describes the basis for the numeric standard of 40 mg/L. The standard is based on Best Professional Judgment (BPJ) determinations derived from a

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variety of sources, including EPA development documents, state regulations, monitoring data submitted by the crushed stone industry, and several years of field inspections and sampling of quarries by Division personnel. These limitations have proven to be protective of water quality and the designated uses for receiving streams.

C-5) Since this is a new discharge, the permit should have language for the permittee to submit a complete application Form 2C as required by 40 CFR Section 122.21 (k)(5)(vi) within 2 years of the effective date.

Response: As a proposed new discharge, the applicant submitted estimated data as required by EPA Form 2D. This application form describes follow-up requirements after the permittee begins discharge activities. The pollutants to be tested under the NPDES permit for this facility are Total Suspended Solids and pH. These are the only pollutants required for testing from discharges from the limestone quarry. These pollutants are monitored twice per month and the monitoring results reported quarterly on Discharge Monitoring Report (DMR) forms.

C-6) The permit rationale did not document whether the discharge will be intermittent. Based on the information submitted, it does not appear to be an intermittent discharge, thus assuming a continuous flow. TSS should also include a monthly average limit per regulations.

Discharges will be intermittent based on stormwater runoff. Discharge frequency will also be limited by use of stormwater runoff for dust suppression and for areas not vegetated. If a continuous discharge should develop at the quarry pit, permit modification would be required with the establishment of monthly average limits.

C-7) The draft permit states that stormwater discharges shall be monitored annually. More frequent monitoring of stormwater is necessary.

Commenter is referring to the stormwater provision in Part I, B of the draft NPDES permit. This is a standard provision of NPDES permits issued to limestone quarries. The provision does not apply to the proposed discharge because the permit plans indicate that all stormwater runoff (including access roads) will be routed to and adequately treated by approved wastewater structures for quarry discharges. Stormwater runoff that enters the quarry treatment system is considered mine wastewater and must be treated and meet effluent limits for Total Suspended Solids. See 40 CFR 436.20. The permit monitoring requirement for wastewater discharges is twice per month.

C-8) Tennessee Antidegradation Policy states that no new discharges or expansion of existing discharges are allowed that will result in measurable degradation of water quality. The project will discharge additional sediment.

The comment relates to Outstanding National Resource (ONRWs) which are designated by the Water Quality Control Board and are afforded the greatest level of protection.

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Oostanaula Creek is not designated as an ONRW nor is the stream classified as an Exceptional Tennessee Water (ETW). See TDEC Rule 1200-4-3-.06 (5).

C-9) The draft permit states that all pollution control equipment required to meet the conditions of the permit shall be installed. Will this project meet the requirement?

The Division has approved plans for drainage control and treatment for this proposed project. The treatment facilities must be constructed and operational prior to mining and initial discharge activity. The Division will enforce the requirements and conditions established in the NPDES permit. See NPDES permit Part I, C and Part III, 1, 2.

C-10) The permit application states that BMPs are to be used but the applicant does not list or describe which of these measures will be used to control and manage drainage.

Response: The permit application (Narrative, Page 10) includes a list of Best Management Practices (BMPs) to be used during site preparation activities. The list of BMPs to be used by the applicant include silt fences, compost-filled sediment tubes, diversion berms, ditches, swales, check dams, sediment traps, and sediment basins. The use of a specific measure or measures is typically site specific. Limitations and requirements of the NPDES permit must be met during site preparation and developmental activities.

The NPDES permit lists a broad range of acceptable BMPs that may be utilized as auxiliary or temporary erosion control measures. The permit also refers to the *Tennessee Erosion and Sediment Control Handbook, March 2002 Edition*, as an additional source of information for acceptable BMPs. See NPDES permit, Part II, A, (8).

The Division will require approval of specific BMPs to be employed by the company prior to placing fill material in the area on the south side of County Road 950.

D. Flooding Issues

D-1) The project will result in the filling of the Oostanaula floodplain. Has a no rise permit been obtained for the project? Has an engineering study been conducted? How was the base flow determined?

D-2) The area of the proposed quarry is a lowland close to the Hiwassee River. This area flooded in the spring of 2003. If and when it floods again, there very likely would be water pollution issues to arise. Further studies are in order to protect our environment.

D-3) The community does not participate in the FEMA Flood Insurance program. How will our property be protected from flooding? Citizens cannot purchase flood insurance. Flood maps have been revised resulting in confusion and conflicting information regarding the identity of flood prone areas.

Response: Flood related issues are not covered under the NPDES permit program. The permit plans for the proposed mine water treatment structure meets the recommended design

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specification to control for a 10-year/24-hour storm event. The emergency spillway is designed for the peak flow from a 25-year storm event.

The applicant did include a FEMA map (Flood Insurance Rate Map) #4707C0286D, September 28, 2007, showing the floodplain of Oostanaula Creek at the site of the proposed project. The 100-year flood elevation for the area of the proposed treatment pond is 698 feet. The plans state that the company will not locate equipment below this elevation.

Participation in the FEMA flood management and National Flood Insurance Program is a local issue to be determined by local communities.

E. Groundwater Issues/Blasting Impacts

E-1) The quarry will impound groundwater, wells will dry up from water extraction caused by the quarry, well water will be depleted, residue from quarry activities will enter the groundwater, and contamination of groundwater caused by carbon dioxide from machinery and equipment, washing of quarry vehicles, salination, oil and arsenic particulates from processing plants at the site.

E-2) Property owner and resident near the project site is concerned that her water well and only source of drinking water will be adversely impacted from quarry activities.

Response: The NPDES permit does not authorize discharges to the groundwater nor regulate blasting activities. NPDES does require permit applicants (EPA Form 1) to identify drinking water wells located within ¼ mile of the facility that are known to the applicant or identified in the public record. The company complied with this requirement by submitting data from TDEC, Division of Water Supply, listing groundwater users owners, depth of wells, and well usage within ½ mile of the permit boundary.

The well survey did not indicate any private wells to be located within ¼ mile of the project. Well location maps (Calhoun, Tennessee Quadrangle Map) were submitted showing the closest private well to be 0.26 miles from the proposed permit boundary. The applicant also indicated that groundwater was not encountered in the exploratory borings that were made in preparation for the quarry.

E-3 Noise and vibrations from blasting at the quarry will create seismic vibrations and possibly affect wells and building foundations. At least 4 deep wells have been lost in the last 10 years due to the frailty of the aquifer.

E-4 A water tank for the Calhoun-Charleston Utility District is located on a ridge near the proposed quarry operation. What affect will blasting at the quarry have on the water tank? The utility will be required to conduct frequent inspections and maintenance operations as a result of the quarry. The costs for this activity will be passed on to local utility customers resulting in increased water bills

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Response: The public utility water tank is located approximately one mile from the quarry pit and upstream of site drainage and treatment facilities. The company will offer pre-blast surveys where needed and must adhere to all state and federal regulations relating to blasting activities.

Blasting activities are regulated by the Tennessee Division of Commerce and Insurance, Fire Prevention Division, Tennessee State Fire Marshall's Office, 500 James Robertson Parkway, 3rd Floor, Davy Crockett Tower, Nashville, TN 37243-1163, Telephone (615) 741-7190. The East Regional Office is located at 531 Henley Street, Suite 719, Knoxville, TN 37902-2898, Telephone (865) 594-6165.

F. Public Participation

How will we know if the facility is expanded? The sign posted at the site was inadequate and difficult to read.

Response: Proposals to modify the permit by additions of acreage, treatment facilities, monitoring points, or processing must include new or revised applications, public notice and comment, and opportunity for public hearing, if requested. The applicant met regulatory requirements by posting a sign near the point of entry to the proposed facility and within view of a public road. The date of the sign posting met the minimum 30 days following submittal of the application. See TDEC Rule 1200-4-5-.06.

G. Hydrogeology, Geophysical, and Related Studies

G-1) Because of the eastward downward slope of subsurface geology, the proposed operation will result in the loss of base flow hydrology to at least two streams on the site by eliminating a portion of the watershed discharging to these features. Although stream buffers have been proposed, plans illustrate that the stream channels will lose at least some portion of base flow hydrology by the mining operation.

Response: The two streams located within the project boundary were documented to be wet weather conveyances. These conveyances did not exhibit flow, substrate flow, groundwater connections, seeps, springs, wetlands indicators, or presence of aquatic life. The jurisdictional stream identified in the area is not included in the revised permit boundary.

G-2) Has a geophysical survey or hydrogeologic survey of the project been conducted? These studies are necessary to determine the project's impact on subsurface waters, karst topography, sinkholes, fracturing, dewatering, and groundwater recharge capacity. A dye test would provide the information needed to trace hydrogeologic features of the area.

G-3) The quarry will create catastrophic hydrologic and geologic conditions in the area. Dewatering activities create voids, disrupt groundwater flow, cause sinkholes, and disturb natural hydrologic features. Flood conditions will be enhanced with additional water and surface runoff from the quarry. The project is near the Hiwassee River and pit excavation in karst topography may cause river water to flood the quarry.

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G-4) Groundwater systems in limestone geologic formations are extensive and unpredictable. To what extent has TDEC researched, mapped, tested and analyzed groundwater hydrology? Precise information is necessary to assess risk of subsidence, groundwater contamination, and impacts on the Hiwassee River, wells and drinking water intakes.

Response: NPDES program requirements for this permit do not require hydrogeological or geophysical studies of the affected area. The NPDES permit authorizes discharges to surface waters. EPA Form 1 requires applicants to provide a map or maps of the area extending to at least one mile beyond the project showing the legal boundaries of the facility, the location and serial number of existing or proposed intake and discharge structures, all springs and surface water bodies in the area, plus all drinking water wells within ¼ mile of the facility which are identified in the public record or otherwise known to the applicant. EPA considers these items as relevant to an understanding of the geological and hydrological consequences of a discharge in the affected area.

H. Application Requirements and Concerns

H-1) The alternatives analysis is unclear and needs to be reviewed and analyzed by TDEC. Commenter specifically mentioned Parts 3, 4, and 5 as needing additional review.

Response: The information submitted by the applicant is appropriate and complies with EPA and state guidelines for completing antidegradation policy requirements. The applicant listed and described the feasibility of several alternatives for the project that are protective of water quality. The sediment basin is sized for the volume of runoff expected from a 10-year/24-hour storm event, process water will be recycled and reused, and a quarry pit sump and pretreatment (forebay) area will be installed. Parts IV and V include economic and social considerations of the project such as the costs of pollution control equipment, number of jobs created, salaries, and tax revenues. See TDEC *Rule 1200-4-3-.06*.

EPA guidance documents for alternatives analysis are available at www.epa.gov/waterscience/standards/econworkbook/chapter5.html.

H-2) Is the description of business of Section XII of EPA Form 1 complete? The description does not include asphalt or concrete plants.

See Response to Comment C-3.

H-3) The facility should be classified as a major discharger. The application indicates that the facility will be expanded in the future.

Response: TDEC rules define “major facility” as a municipal or domestic wastewater treatment plant with a design capacity of 1 million gallons per day or greater or any other facility or activity classified as such by the Commissioner of the Department of Environment and Conservation. The proposed limestone quarry does not meet the criteria for a major discharger. See definitions in TDEC *Rule 1200-4-5-.02*.

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Facility expansion will require permit modification, plans revision, public notice and public participation requirements.

H-4) The receiving water is listed as Oostanaula Creek. The creek enters the Hiwassee River below the quarry site. The river should also be listed as a receiving water for the discharge.

Response: The discharge will enter Oostanaula Creek at approximate 1.3 mile upstream of the Hiwassee River. Oostanaula Creek receives the discharge and is properly identified as required by EPA Form 2D, Item 1.

H-5) Have the requirements of the Endangered Species Act been followed? Has TDEC considered impacts on the Hellbender Salamander?

H-6) Debris from the quarry discharge activity will enter the Oostanaula Creek which merges into the Hiwassee River approximately one mile downstream of the quarry operation. This activity will affect the habitat of the hellbender salamander that calls the Hiwassee River home.

Response: We consider impacts on threatened or endangered species as part of our antidegradation review requirements for proposed new discharge activities. Our review of available TDEC data does not indicate the presence of state or federally-listed threatened or endangered aquatic species in the area near the proposed discharge activity. The affected stream reach of the receiving stream is not listed for federally-designated critical habitat.

Our determination is reviewed by the U. S. Fish and Wildlife Service (USFWS) and the Tennessee Wildlife Resources Agency (TWRA). These agencies did not comment on our public notice announcing the proposed discharge activity. See Antidegradation Policy Worksheet in the NPDES permit file for Exceptional Tennessee Waters.

The NPDES permit regulates the discharge of Total Suspended Solids and pH. Debris and other pollutants are not authorized nor anticipated.

H-7) Will the applicant post a bond against damage to water wells, flooding, or other discharge activity. Is a bond required of the applicant?

Response: We do not have statutory authorization to require limestone quarries to post a performance bond.

H-8) The applicant must follow the requirements for reclamation and site stabilization contained in the Tennessee Mineral Surface Mining Law of 1972.

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Response: Limestone quarry facilities are not covered under the *Tennessee Mineral Mining Law of 1972*. However, the NPDES permit will not be terminated until the site is stabilized and decommissioned to assure protection of water quality. Until the permit is terminated, all discharges must comply with the permit terms and conditions.

H-8) TDEC should conduct an Environmental Impact Statement (EIS) for this project.

Response: Permit issuance by NPDES approved states are specifically excluded as actions requiring EIS consideration. *40 CFR 122.29 (c) (ii)*. Tennessee is an approved state for NPDES permit issuance.

I. Archaeology

A significant archaeological site is documented adjacent to the proposed quarry and that surface collections and observations in the area of the quarry indicate that past occupation by Cherokee and earlier Native Americans is likely. Has TDEC assessed the probability of disturbing artifacts and remains, and appropriately notified tribal representatives?

Response: The Division does not have the authority to regulate archeological sites or require that an archeology survey be conducted. We did contact the Tennessee Division of Archaeology regarding the project area. The agency also received a copy of the public notice for the permit application. The agency's review of archaeological site files for the project area did not find any prehistoric or historic sites recorded.

We have notified the permit applicant of the potential of archeological resources located in the project area and sent the applicant a copy of the Archeological Commission's response to our public notice.

DECISION

The scope of our authority is defined by statute and associated rules describing the NPDES program. An NPDES permit was drafted for this site, which is standard procedure for mining related discharges. We have reviewed the plans, the alternatives analysis, conducted the required antidegradation survey and analysis, including stream determinations and wetlands assessments. We considered available data regarding 303 (d) stream listings, Exceptional Tennessee Waters (ETWs), and information concerning federal and state listed endangered or threatened aquatic species present, and responded to the oral and written comments contained in the hearing record.

Public participation requirements included review by associated government agencies including the United States Fish and Wildlife Service (USFWS), the Tennessee Fish and Wildlife Resources Agency (TWRA), U.S. Army Corps of Engineers (USACE), and the Tennessee Division of Archaeology.

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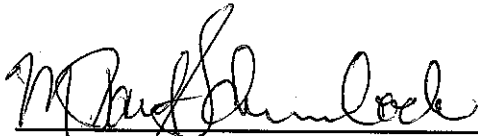
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Based on our review and analysis, we have determined that the NPDES permit is protective of water quality and the designated uses of the receiving stream. The USACE conducted an independent review and confirmed our assessment that the project area does not include the presence of jurisdictional wetlands. However, a final NPDES permit will not be issued pending review by the USACE and EPA of our decision regarding this application.

The final NPDES permit will require the operator to conduct the facility's wastewater treatment and discharge activities in a manner such that pollution will not occur. Permit compliance will be monitored and enforced by the Division.

The Division will require an Aquatic Resource Alteration Permit (ARAP) and mitigation measures for any proposed alteration affecting waters of the state. Additions to the facility such as asphalt or concrete plants will require appropriate permitting, supporting plans, and public participation requirements.

Citizens have the right of third party appeal of permit decisions in accordance with the requirements of *The Tennessee Water Quality Control Act of 1977, TCA 69-3-105 (i)*.



Paul E. Davis, Director
Division of Water Pollution Control

1-28-2011

Date