

May 6, 2011

Mr. Wade Murphy
Tennessee Department of Environment & Conservation
Water Pollution Control
6th Floor L & C Annex
401 Church Street
Nashville, TN 37243-1534

Subject: Draft NPDES Permit TN0024198 (Cookeville WWTP)

Dear Mr. Murphy,

The Tennessee Clean Water Network submits these comments in response to the public notice regarding the draft NPDES permit for the Cookeville WWTP (TN0024198) in Putnam County. We appreciate the opportunity to provide these comments for your consideration and look forward to hearing from the Division.

1. The Division Must Develop Water Quality-Based Effluent Limits for Total Nitrogen and Total Phosphorus

Whenever a discharge of a pollutant has the reasonable potential to cause or contribute to an exceedance of a water quality standard, the CWA and the TWQCA require imposition of water quality-based effluent limitations (WQBELs) to ensure protection of water quality.¹ TDEC must set effluent limits to control all pollutants which may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above Tennessee water quality standards.² When feasible, these limits should be in numeric form.³ Therefore, TDEC must conduct a reasonable potential analysis and establish WQBELs for Total Nitrogen (TN) and Total Phosphorus (TP) in the Cookeville WWTP NPDES permit if necessary to prevent unlawful degradation of water quality in the Pigeon Roost Creek, which TDEC has listed pursuant to Section 303(d) of the CWA as impaired due to excess nutrients.

The limits for TP and TN imposed in this permit are neither technology-based effluent limits nor WQBELs, but are performance-based limits derived from monitoring data collected by the permittee between 1999 and 2003. The Permit Rationale notes the limits as “technologically

¹ 40 C.F.R. § 122.44(d); Tenn. Code Ann. § 69-3-108(g)(1); Tenn. Comp. R. & Regs. 1200-4-5.04(1)(g).

² 40 C.F.R. § 122.44(d); Tenn. Comp. R. & Regs. 1200-4-5.04(1)(g); *see also* 33 U.S.C. § 1323(a)(permitting agencies must set effluent limits that are stringent enough “to ensure the appropriate water quality of the receiving water body”); Tenn. Code Ann. § 69-3-108(g)(1).

³ *See* 40 C.F.R. § 122.44(d)(1)(k)(3); Tenn. Comp. R. & Regs. 1200-4-5-.08(1)(i)

achievable concentrations,” (page R-15) which means these limits fail to account for the conditions of the receiving stream or the discharge’s impacts to water quality, and are instead based solely on what the facility has historically been capable of meeting. In no way do these performance-based limits reflect the stringencies and protection of a WQBEL in accordance with the CWA and the TWQCA. The continued impairment of Pigeon Roost Creek for nutrients indicates these historic discharge levels are causing or contributing to water quality violations, and that the Cookeville WWTP’s nutrient discharges must be reduced to protect water quality.

2. The Proposed Total Nitrogen and Total Phosphorus Limits Violate Anti-backsliding

The loading limits imposed for TP and TN violate Tenn. Comp. R. & Regs. 1200-4-5-.08(1)(j) and 40 C.F.R. § 122.44(l) (2) because the limits are less stringent than those imposed in the previous permit. The draft permit proposes to remove concentration limits for TP and TN and increased the loading limits for both parameters. None of the exemptions noted in Tenn. Comp. R. & Regs. 1200-4-5-.08(1)(j)1-8 are applicable to this discharge. Moreover, contrary to the statement on page R-15 of the Permit Rationale, there is no applicable previously unavailable information that would justify application of the anti-backsliding exception in 40 C.F.R. § 122.44(l)(2)(B)(1).

40 C.F.R. § 122.44(l)(2)(B)(1) can not be applied to the reasoning for establishing these nutrient limits because nutrient WQBELs are required. The information about actual nutrient discharges is not relevant to the establishment of WQBELs, so this data would not “have justified the application of a less stringent effluent limitation at the time of permit issuance.”⁴

Should the Division decline to modify the permit based on the previous comments, the permit at a minimum must maintain the more stringent limits established in the previous permit to comply with the anti-backsliding requirements.

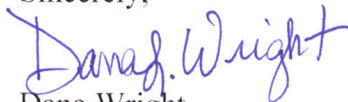
3. The appeal of the 2006 permit should have been resolved by the Water Quality Control long ago

This draft permit appears to be seeking to address issues raised by the Permittee in its appeal of the 2006 permit. Due to the Permittee’s appeal, those conditions were effectively stayed for the entire 5-year permit term instead of being resolved in a timely manner by the Water Quality Control Board (the Board). This approach to permittee appeals creates an incentive for permittees to appeal any permit conditions they do not like, and then to allow the appeal to languish indefinitely. Instead, time limits must be placed on the prosecution of permit appeals. Permit appeals must be heard by the Board as soon as feasible and should be dismissed if not prosecuted within a set amount of time. In this case, requirements in the permit applicable to nutrient limits and bypass language were never enforced.

⁴ 40 C.F.R. § 122.44(l)(2)(B)(1)

We appreciate the Division's consideration of these concerns and look forward to hearing from you regarding these issues. We specifically request the Division notify TCWN at the time the final permit and notice of decision are issued, either by emailing these documents to dana@tcwn.org or by mailing them to the above-listed address.

Sincerely,



Dana Wright

Director of Policy and Legislative Affairs

cc: Mr. Jim Shipley, City Manager, City of Cookeville
Ms. Connie Kagey, US EPA, Region 4