

**TENNESSEE BOARD OF WATER QUALITY, OIL, AND GAS
WEBEX VIDEO CONFERENCE
NASHVILLE, TENNESSEE**

**Summary of Action on Agenda Items of the
April 20th, 2021
Meeting of the Tennessee Board of Water Quality, Oil and Gas**

Members Present by Video Conference:

Neal Whitten, Elaine Boyd, Dodd Galbreath,
Gary Bible, Terry Wimberley, Brent Galloway,
Kevin Davis, Sam Marshall*, Judy Manners,
Charlie Johnson

*Sam Marshall was appointed as a temporary replacement for John McClurkan as the Commissioner designee for Department of Agriculture.

Members Present at TN Tower:

James W. Cameron

Members Not Present: N/A

Chair: James W. Cameron

Technical Secretary: Jennifer Dodd

Pursuant to Governor Lee's Executive Order this meeting was held via WebEx video conference. All members joined via conferencing video system. Due to previous technical difficulties, Chairman James W. Cameron attended in-person at Tennessee Tower in Nashville, along with Technical Secretary, TDEC Division of Water Resources Director, Jennifer Dodd. This meeting was recorded in full and is available on the Tennessee Water Quality, Oil & Gas Board website and by request.

- The meeting began with a roll call from the Board Members present.
 - o All 12 members were present.
 - Quorum established
 - It was established that Commissioner Charlie Hatcher of the Tennessee Department of Agriculture sent a letter indicating that Sam Marshall will be acting as Commissioner Designee, temporarily replacing John McClurkan for this meeting.
- Division of Water Resources Director, Jennifer Dodd, gave an opening statement. Ms. Dodd thanked everyone for joining and their patience with this technical format.
- Chairman Cameron then welcomed the new Board Members. Brent Galloway who filled a vacant position representing Oil & Gas Property Owner, and Dodd Galbreath who is replacing Monty C. Halcomb and representing environmental interests.
- Chairman called for a motion to approve the minutes of the October 2020 minutes.
 - o Elaine Boyd motioned to approve the minutes of October 2020.
 - o Seconded by Kevin Davis.
 - **Vote 9-0** with 3 votes of abstention from Mr. Galbreath, Mr. Galloway, and Mr. Johnson.
 - **Passed**
- General Public Comment Period

- General public comment period not pertaining to the rule updates/creation.
- Brian Paddock
 - Mr. Paddock discussed Senate 742, House Bill 90 – legislation for the State to take over complete regulation of coal mining in Tennessee. Discusses how the state could not properly manage the program. If primacy assumed again it will have no board oversight, only under commissioner authority. Will cost \$800,000-900,000 the first couple of years. Upwards of \$1million every year after that. Will be on the backs of the taxpayer.
- Kathy Hawes
 - Director of the Tennessee Clean Water Network. Expressed her good experience with TDEC staff. Discussed how resources are stretched thin and that we should educate untrained citizens to capitalize on the opportunity for all Tennesseans to help with clean water initiatives. Three top priorities to help with water quality in TN:
 - Planning and Development
 - Run away growth and strain on infrastructure.
 - Developers are not focused on environmental issues.
 - Wastewater Infrastructure
 - Stated concerns about overflows. Would like to participate in strategic plans on how to use stimulus funds on infrastructure.
 - Concern over distribution of funds from the revolving fund to only urban rather than including rural areas.
 - Decentralized Systems
 - TDEC needs to be allowed to regulate all systems.
 - Nutrients
 - Point or non-point definitions. Monitoring and training programs need to be strengthened. TDEC needs to step up. TDEC underutilizing: TMDL, need to develop one for nutrients. Water Quality Effluent Limits, help sewage treatment plants obtain the technology to help maintain the water quality standards of the water source they are discharging into.
- Sandra Kurtz
 - Wetlands – Clean Water Act was to meet no net loss of wetlands in the United States. TN officials has paid lip service to this for lack of rules or enforcement. The State is losing wetlands at an alarming rate due to unregulated development. Development of soccer field, hotels, and condos on 60 acres of once protected land. Lack of progress reports, staff not checking on issued permits. Only if an official complaint is filed with TDEC, will an official visit the site. Citizens are not permitted to monitor any progress on permits. Developments will flood low- and middle-income residential areas. Need of more wetlands to deal with

flooding from extreme weather events. We need an updated inventory of current wetlands in Tennessee.

- Anthony Wheeler
 - Signal Mountain. Worked with TDEC for the past 2 years on stormwater, sewage, acid mine drainage, and legacy coal. Grave concerns on what primacy means on Signal Mountain. Current moratorium to develop new systems to attached to the damaged sewage treatment systems. Please include in any planning group that will address these issues.
- OGC
 - Grant Ruhl from the Office of General Council.
 - Board manual: will be ready for the October meeting.
 - Discussed the conflict-of-interest form.
 - All board members have signed.
 - Mr. Ruhl discussed the Boards authority through Tenn. Code Ann. 69-3-110. Hearings.
- Mike Waller v. TDEC – APD Case No. 04.30-201682J – TDEC Case No. WPC 20-0036
 - Mr. Ruhl discussed the factual background of the permit, the motion to dismiss, and the initial order.
 - No questions about the permit were asked.
 - No comments were made about the order.
 - Neal Whitten “Motion to not take up and review Initial Order – Mike Waller ARAP”
 - Seconded by Gary Bible
 - **Vote 12-0**
 - **Passed**
- Volunteer Sand & Gravel
 - 118(a) Appeal – APD Case No. 04.30-202742J – TDEC Case NO. WPC 20-0040
 - Mr. Ruhl discussed the factual background, motion to dismiss, and initial order.
 - Summary Judgement – APD Case No 40.30-202S63J – TDEC Case No. WPC20-0070
 - Mr. Ruhl discussed the factual background, motion for summary judgement, and initial order.
 - Comments:
 - Michael Butler – Stated that TDEC does a great job of working through the process and does an exemplary handling the permits. However, in this case Mr. Butler stated that the process didn’t work. Tennessee Water Quality Control act allows for prevention of pollution and this is not considered during permitting process. Recent violations were preventable. Going forward how do we avoid this. Mr. Butler strongly disagreed with the denial of standing and asks the Board to consider what can be done to prevent pollution of the Duck River.
 - Katherine Diersen – Representative of Defenders of Wildlife. Reiterates Mr. Butlers comments. Explains how vital and unique the Duck River is

and how it's a source of drinking water for multiple communities in TN. Believes that TDECs permitting process can and should protect the venerable species that live in the Duck River. Also concerns about continuous flooding and degrading of the river's habitat. Strongly believes the permit should be revoked and that there should not be any more denial that Volunteer Sand and Gravel will not cause harm to the Duck River, and its surrounding communities.

- Jim Redwine - Believes the permit should be revoked. Believes that the department should consider future injury, and that current injury has occurred with flooding. States the Board has the authority to address future injury with TN Code Ann. 69-3-102B.

○ Party Response

- Chad Swallows – Strongly disagrees the comments made so far. States that he tested the waters and they were cleaner and that there was no plume of sediment. Mr. Swallows mentions how sand and gravel continues to be in multiple waterways in TN. And any storm will wash the sediment into their traps before it goes to the Duck River, therefore a net benefit.
- Daniel Lawrence – Program Manager for TDEC Mining Section. Discussed the March 28th flood event, 6.75in. over 24hr period. Mr. Lawrence discussed the color contrast that was caused during the flood event. A notice of violation was issued, Volunteer Sand and Gravel then provided samples and testing showing that the waters were cleaner.
- Stephanie Durman – OGC representative who litigated this case. Reminded the Board that the only question is for the Board to decide if they want to review this initial order. None of the parties involved are contesting this order and that the recent flooding concerns are compliance issues not permit issues. Therefore, not relevant to the initial order. Mentioning the requests to revoke the permit, Ms. Durman stated that only the Commissioner has the authority to revoke permits, and that question would not go to the Board. The Department respectfully asks that the Board deny reviewing the initial order for two reasons. None of the parties involved appealed, and the cases were correctly decided. Ms. Durman discussed the lack of violation, parties being the only one with standing in this case and they consider this matter over, and the limits of TDECs and citizens jurisdiction. This mine does not violate any water quality standards.
- Bill Penny – Represents Volunteer Sand and Gravel in this case. Mr. Penny discussed the lack of injury.

○ Questions for counsel

- Mr. Whitten asked about the procedure of a 118(a) complaint.
 - Ms. Durman answered.
- Dodd Galbreath asked if the NOV has been rescinded?

- Ms. Durman stated no. Mr. Lawrence explained the data received so far.
- Mr. Galbreath asked if there has been any previous NOV on this site?
 - Mr. Lawrence answered no.
- Mr. Galbreath asked Mr. Butler and Mr. Redwine to briefly elaborate on any further comment they have after hearing the Party response.
 - Mr. Butler and Mr. Redwine reiterated their original comments.
- J.W. Luna – Representative for Tate McNeilly – stated that his client did not appeal the final order. Mr. Luna congratulated Mr. Galbreath on his appointment. Mr. Luna went on to discuss his opinion on the legality of Section 118(a) citizens complaint and the duty of TDEC to protect against likely pollution. Mr. Luna continued to discuss the case and options for the commissioner to halt this permit.
- Mr. Swallows – Mr. Swallows made a comment stating that the McNeilly family will no longer own the property at the end of the month. And the results of a FEMA flood study.
- Ms. Durman – Stated that the parties involved in this matter have not appealed, and that the Board should not weigh the comments from Mr. Redwine and Mr. Butler in their decision due to the fact they have not appealed themselves and have no standing in this case.
- Judy Manners – One of the commenters stated that there was an ARAP issued after the fact? If that's the case, what was it for?
 - Ms. Durman and Mr. Lawrence answered, no.
- Ms. Manners – is the 26(a) permit required?
 - Ms. Durman explained that the 26(a) is a TVA program and that TDEC does not enforce that. It is between TVA and Volunteer.
- Ms. Manners – There was no federal permit required, that we are aware of, on this site?
 - Mr. Penny – That is correct
- Mr. Bible – asked Mr. Redwine and Mr. Butler, when they submitted that photo to the Board showing a possible color change, had they made any effort to determine what the photo was actually showing?
 - Mr. Butler – Explained that he was on site 2 days before the river crested. Mr. Butler explained that he witnessed the water movement.
- Elaine Boyd – Stated that the Board may have strayed away from the question, which is to formally review either of the two initial orders. Ms. Boyd continued stating that we have had a lot of discussion about validity, but our task is to determine if we want to review the initial orders. And given the information we have received and given that neither of those petitioners has requested we do so, I move that we do not take up and review the initial orders.

- Ms. Boyd “Motion to not take up and review Initial Order – Volunteer Sand and Gravel 118(a) – WPC 20-0040
 - Seconded by Brent Galloway
 - Chairman asks for any further discussion by the Board members before the vote.
 - Mr. Galloway stated that the Boards role is to be the peoples check on Government’s decisions related to the primary statutory interests of our water quality act. Mr. Galloway continued that he understands there might be slight legalities or standing issues but does the Board agree that there are issues that merit further evaluation and further input. This project has experienced a test with flooding and Mr. Galloway thinks it’s a good idea to reanalyze this.
 - Chairman Cameron reminded the Board of its authority and what would be provided to the Board should the Board take up and review the order.
 - **Vote: 9 – 2 Passed**
 - *Frank McGinley expressed trouble with his microphone, he stated via e-mail that he votes Aye.
- Ms. Boyd “Motion to not take up and review Initial Order – Volunteer Sand and Gravel NPDES Permit Appeal – WPC 20-0070
 - Seconded by Mr. Galloway
 - **Vote: 9 – 2 Passed**
 - *Frank McGinley expressed trouble with his microphone, he stated via e-mail at the time of the vote that he votes Aye.
- Chairman called for adjournment for lunch.
- Quorum Call
 - 11 members present
 - Quorum established
- Britton Dotson – Technical Fellow – Division of Water Resources
 - Rule Chapter 0400-40-06 Presentation
- Public Comment on 0400-40-06
 - Anthony Wheeler – Reiterated his earlier comments.
 - Jim Redwine – Made comments on the alternative sewer regulations
 - Charles Schneider – Made comments in support of this rule chapter.
- Board Deliberations
 - Mr. Galbreath asked about the representation that will be included in the work/stakeholder groups.
 - Sam Marshall asked about the definitions and permits of animal feeding operations.
- Ms. Manners “Motion to approve rule chapter 0400-40-06”

- Seconded by Mr. Bible
 - **Vote 11 – 0**
 - **Passed**
- Karina Bynum – Water Resource Engineer - Division of Water Resources
 - Rule Chapter 0400-40-10 Presentation on NPDES General Permits Municipal Separate Storm Sewer Systems
- Public Comment on 0400-40-10
 - Mr. Penny – Tennessee Home Builders Association supports this rule.
- Ms. Boyd – “Motion to approve rule chapter 0400-40-10”
 - Seconded by Mr. Bible
 - **Vote 11 – 0**
 - **Passed**
- April Grippo – Deputy Directory – Division of Water Resources
 - Rule Chapter 0400-40-05
- Public Comment on 0400-40-05
 - Malory Kirby – Tennessee Chamber of Commerce – Made a comment about subpart .07, that it is the Chambers position that any release that is not a violation should not have a requirement to be reported.
 - Ms. Grippo responded.
 - Gary Cohen – asked if the final versions reflected the packages that went before the Board.
 - Ms. Grippo confirmed that.
- Board Deliberations
 - Mr. Whitten asked about any modifications to e-reporting due to the requirement of reporting releases and overflows separately.
 - Ms. Grippo stated that will addressed when the permits are renewed.
 - Mr. Galbreath asked for a response on where we are with managing nutrients.
 - Ms. Dodd responded.
- Ms. Manners “Motion to approve rule chapter 0400-40-05”
 - Seconded by Terry Wimberley
 - **Vote 10 – 0**
 - **Passed**
- Ms. Boyd “Motion to Adjourn”
 - Mr. Galloway Seconded
- **Adjourned**