

SOUTHERN ENVIRONMENTAL LAW CENTER

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May 24, 2021

VIA E-mail to Stephanie.Durman@tn.gov

Stephanie Durman
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RE: Reply to TDEC's Denial of Request to Terminate or Revoke Volunteer Sand & Gravel NPDES Permit TN0082236 for Cause

Dear Ms. Durman:

On April 16, 2021, the Southern Environmental Law Center ("SELC"), Harpeth Conservancy, Hurricane Mills Mining Opposition, Tennessee Scenic Rivers Association, Tennessee Clean Water Network, Tennessee Chapter Sierra Club, and Defenders of Wildlife ("Conservation Groups") asked the Tennessee Department of Environment and Conservation ("TDEC" or "the Department") to terminate or revoke National Pollutant Discharge Elimination System ("NPDES") Permit TN0082236, issued to Volunteer Sand and Gravel, LLC ("Volunteer Sand and Gravel" or "the company") for discharges at its sand and gravel mine sited adjacent to the Duck River.¹ We made this request based on the company's failure to comply with the conditions of its permit, failure to include relevant information in its initial permit application, and because the permitted activity endangers the environment and can only be regulated to acceptable levels by permit modification or termination.

On May 11, 2021, TDEC denied our request.² The Department provided three reasons: (1) Conservation Groups provided insufficient evidence that Volunteer violated the biological integrity standard during the March/April 2021 flood event; (2) the mine will result in less soil

¹ Letter from Amanda Garcia, SELC, to David Salyers, TDEC (April 16, 2021) [Revocation Request].

² Letter from Stephanie A. Durman, TDEC, to Amanda Garcia, SELC (May 11, 2021) [TDEC Denial Letter].

loss than the previous agricultural use, therefore there is no environmental harm; and (3) Volunteer was not required to disclose the flood study to TDEC.

We are providing this response because TDEC's letter denying our request mischaracterizes our argument regarding narrative water quality standards and continues to ignore flood-related harm.

I. The Volunteer mine is likely to continue violating narrative water quality standards.

TDEC objected that we presented insufficient evidence that Volunteer had violated the biological integrity standard during the March/April 2021 flood event.³ However, we did not assert or try to prove that Volunteer violated the biological integrity standard in this flood event. Rather, we referenced the attached photographs and TDEC's *own finding* of a violation of the objectionable color contrast standard to highlight the fact that the circumstances on the site during this flood confirm what we argued in our comments on the draft permit: this site will regularly discharge in flood events and is likely to violate narrative water quality standards in the future, including the objectionable color contrast and biological integrity standards.⁴

II. TDEC has not analyzed flood-related sedimentation.

TDEC denies that the mine endangers the environment, but the Department has never analyzed our central concern: flood-related sedimentation. To the best of our knowledge, and based on our review of the soil loss calculations TDEC has disclosed,⁵ the soil loss calculations do not include soil loss from the mine related to flooding. In fact, we raised this issue in our comments on the permit,⁶ and TDEC has never addressed it directly. Instead, TDEC concluded

³ "Your letter appears to assume, without evidence, that discharges from the facility during the March 2021 storms and flood event resulted in 'materials in concentrations sufficient to be hazardous or otherwise detrimental to humans, livestock, wildlife, plant life, or fish and aquatic life in the receiving stream.'" TDEC Denial Letter at 1.

⁴ "Given Volunteer Sand and Gravel's violation of its NPDES permit, the high likelihood that a future similar flood event and violations of narrative water quality standards will occur, and the biological importance of the site's downstream waters, TDEC should immediately terminate or revoke the company's NPDES permit." Revocation Request at 3.

⁵ See TDEC, Post Mine Soil Loss Worksheet and TDEC, RUSLE2 Worksheet Erosion Calculation Record, attached to SELC et al. Comments on NPDES Permit TN0082236 at 10 (May 8, 2020).

⁶ "Yet the Department's analysis does not appear to account for discharges related to site-specific flooding." SELC et al. Comments on NPDES Permit TN0082236 at 10 (May 8, 2020).

that the mine's "normal operations," defined to *exclude* regular flooding, would cause "no measurable degradation of the receiving stream."⁷

In addition, the fact that a non-point source activity (farming) has caused sedimentation in the past does not absolve TDEC from the responsibility to evaluate whether a new point source activity that requires a permit (mining) threatens the biological integrity of the Duck River or will otherwise cause a condition of pollution.⁸

III. The flood study is "relevant information" the applicant was required to disclose.

TDEC insists that the April 2019 flood study Volunteer withheld was "not a requirement of the NPDES permit application process."⁹ This conclusion ignores federal and state regulations. The flood study is "relevant information" within the meaning of the federal regulation governing termination,¹⁰ whether or not that specific study is a "requirement" of the NPDES permitting process. A company that applies for a permit for flood-related discharges¹¹ should "disclose fully all relevant facts" related to how frequently and severely it expects the site to flood. The flood study was directly relevant to Volunteer's NPDES application because the study showed that the wastewater treatment system TDEC ultimately permitted—the slurry pit—would offer no treatment capacity whatsoever during frequent flooding events.

⁷ NPDES Permit TN0082236, Notice of Determination at 8 (July 1, 2020).

⁸ *See, e.g.*, Tenn. Code § 69-3-108(g)(2) ("Under no circumstances shall the commissioner issue a permit for an activity that would cause a condition of pollution either by itself or in combination with others."); *see also id.* § 69-3-102(a) ("In the exercise of its public trust over the waters of the state, the government of Tennessee has an obligation to take all prudent steps to secure, protect, and preserve this right [to unpolluted waters]"); *id.* § 69-3-102(b) ("...[T]he purpose of this part is to abate existing pollution of the waters of Tennessee, to reclaim polluted waters, to prevent the future pollution of the waters, and to plan for the future use of the waters so that the water resources of Tennessee might be used and enjoyed to the fullest extent consistent with the maintenance of unpolluted waters").

⁹ TDEC Denial Letter at 2.

¹⁰ *See* 40 C.F.R. §§ 122.62, 122.64 (authorizing TDEC to terminate or revoke a permit based on "[t]he permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts").

¹¹ *See* Volunteer Sand & Gravel NPDES Application at 3 (submitted Jan. 16, 2020) ("[D]ischarge from the Facility during normal operations is not expected. If the Duck River reaches flood stage, the site may be inundated with flood waters, causing a discharge of water from the active quarry."); NPDES Permit TN0082236 at R-2 (No discharge from the facility is expected unless the Duck River overflows and inundates the mine.).

Despite TDEC's misinterpretation of our request and of its own obligations to protect Tennesseans' water, the problem is clear. A mining operation in a flood plain next to a biologically rich river sought a permit for flood-related discharges. It withheld information about those discharges. TDEC has not yet evaluated the impacts of those discharges, despite finding that Volunteer has already violated its permit. We therefore maintain that TDEC should terminate or revoke NPDES Permit TN008223 in order to protect water quality and the biological integrity of the Duck River.

Sincerely,



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