



Department of
**Environment &
Conservation**

Water and Solid Waste Permitting Crossovers

Division of Water Resources

Rivers and Harbors Act 1899

- Ruffe Act
- No discharge into navigable waterway without permit
- Controlling debris that obstructed navigation
- 1960s-USACE began to use the Act to control pollution.



Over the years



- Clean Water Act
- TN Water Quality Control Act
- RCRA-haz and non-haz solid waste
- Solid Waste Processing and Disposal

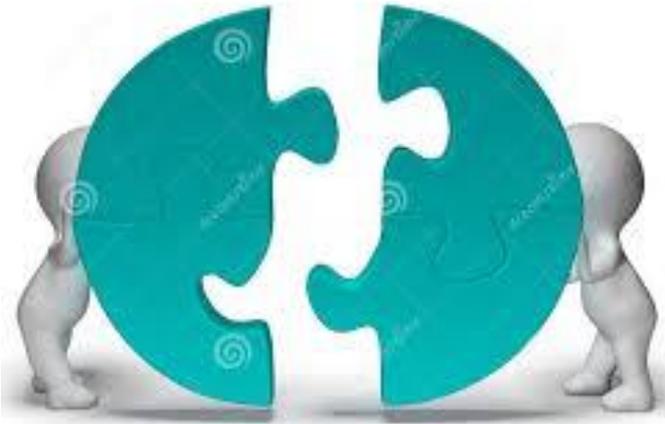
Bulk of Solid Waste Regulations



- Methane Management
- Erosion Control
- Groundwater protection

How does this fit with Division of Water Resources?

- Series of MOAs
- Water pollution control
- NPDES
- Groundwater

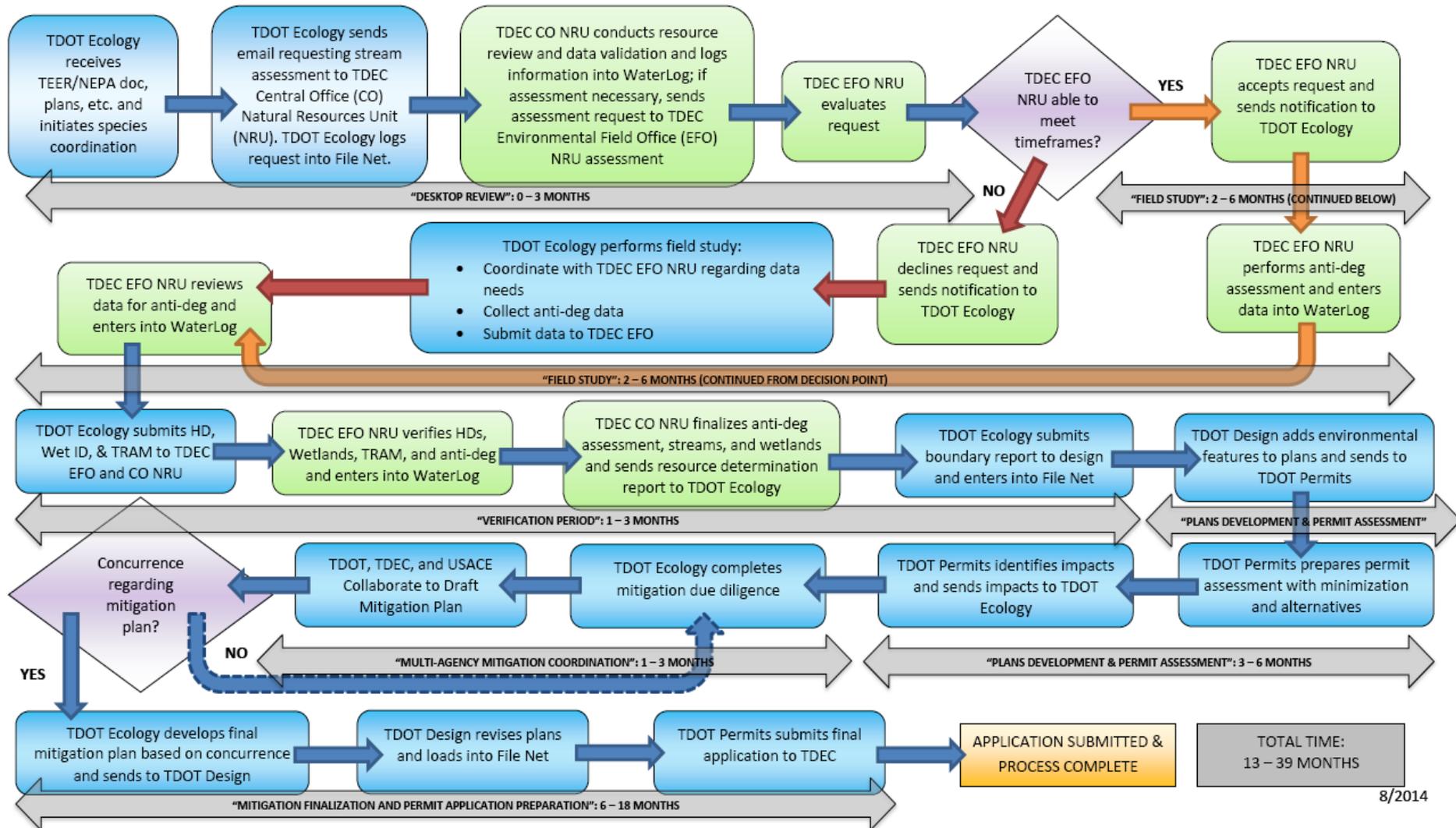


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DWR-DSWM MOA

- Both Divisions mutually understand, agree and approve:
- Division of Solid Waste Management is recognized as the program having authority over the regulation of solid waste facilities
- primary objective is the construction, operation and maintenance of facilities
- Must be done in a manner as to avoid the pollution of waters of the State.
- In order to achieve this objective, certain activities of DSWM shall be coordinated with DWR, in a manner which fosters teamwork and communication between the two Divisions.

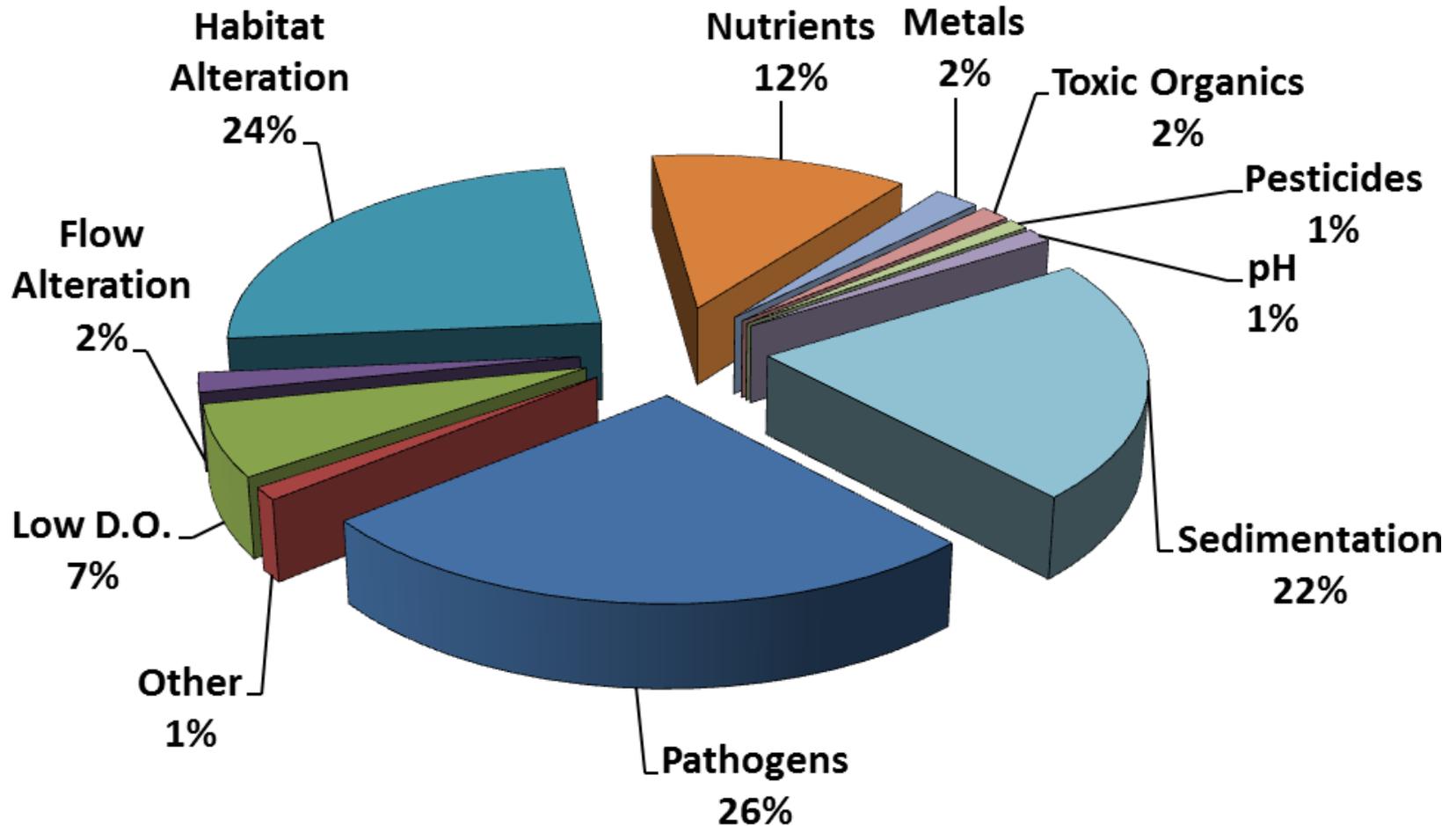
Where Is My Permit?



Purpose of 401 Water Quality Certification?

- 69-3-102(a) Recognizing that the waters of Tennessee are the property of the state and are held in public trust for the use of the people of the state, it is declared to be the public policy of Tennessee that the people of Tennessee, as beneficiaries of this trust, **have a right to unpolluted waters**. 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.
- 69-3-102(b) It is further declared that the 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.

Relative Impacts of Pollution in Impaired Rivers and Streams



TDECs Division of Water Resources Rules

- TN Water Quality Control Act
- Water Quality Standards
 - WQ Criteria [0400-40-03]
 - Classified Uses [0400-40-04]
 - **Antidegradation Statement [0400-40-03(.06)]**
- Aquatic Resource Alteration Permits
 - ARAPs as 401 certification
 - General Permits and Individual Permits

General Water Quality Criteria

- Uses by which surface waters are classified include:
 - Domestic Water Supply
 - Industrial Water Supply
 - **Fish and Aquatic Life**
 - Recreation
 - Livestock Watering and Wildlife
 - Irrigation
 - Navigation

Numerous criteria, by which the ability of the waters to support their use are assessed, are identified for each of the primary uses.

General Water Quality Criteria

- The criteria to be considered when assessing the ability of a water to support Fish and Aquatic Life use include:
 - Dissolved Oxygen
 - pH
 - Solids, Floating Materials and Deposits
 - Turbidity, Total Suspended Solids or Color
 - Temperature
 - Taste or Odor
 - Toxic Substances
 - Other Pollutants
 - Iron
 - Ammonia
 - Nutrients
 - Coliform
 - Biological Integrity
 - **Habitat**
 - Flow

How do I get my permit?

- Exercise general supervision and control over the quality of all state waters, administer and enforce all laws relating to pollution of such waters, and administer and enforce this part, and all standards, policies, rules, and regulations promulgated under this part.
- Issue permits and variances pursuant to 69-3-108.
 - NPDES Permits
 - State Operating Permits
 - Underground Injection Control Permits
 - Construction Stormwater Permits
 - Concentrated Animal Feeding Operations
 - Municipal Pretreatment Programs
 - Mining
 - **Aquatic Resource Alteration Permits**

Aquatic Resource Alteration

- Aquatic Resource Alteration Permit (ARAP)
 - Authorizes the alteration of properties of waters of the State.
 - These alterations are authorized in the form of general permits and individual permits.
 - These activities include, but are not limited to:
 - The discharge of dredge or fill material
 - Dredging
 - **Stream channel modifications**
 - Water withdrawals
 - **Wetlands alterations including drainage**
 - **Other construction activities which result in the alteration of the waters of the State.**



Q North Shelby Landfill, Old Millingt...

Google earth



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Types of Permits

- Individual Permits – are utilized under the following circumstances
 - Projects requiring special conditions
 - Projects necessitating substantive review
 - Projects with significant public interest
 - Projects necessitating offsetting mitigation
- General Permits – all work done in conformance with permit terms and conditions
 - Authorized to implement the activity without prior notice
 - Authorization requires notification prior to implementing the activity
 - Authorization requires notification and approval prior to implementing the activity

General Permits are developed through the public notice process and cannot be modified without due process.

ARAPs serve as 401 certification where appropriate in support of Clean Water Act

Avoidance, Minimization, Alternatives, Mitigation

- All things must be considered in the course of permit issuance consideration.
 - Can the project be avoided?
 - Can the impact of the project be minimized?
 - Are there alternatives approaches to the project?
 - What is the social and/or economic justification?
 - If avoidance, minimization or alternative approach selection do not result in “no net loss”, what mitigation is proposed to offset the loss?

Antidegradation

- **Degradation vs de minimis**
 - Individually and cumulatively
- Avoidance, minimization
- Alternatives analysis
- Status of resource
 - Available, unavailable, ETW, ONRW
- Mitigation options
 - How to mitigate to de minimis
 - IN-SYSTEM



Mitigation and Resource Status

- “Available Conditions”
 - Options are open for banks and in-lieu-fee mitigation programs
- “Unavailable Conditions”
 - In-system mitigation...*or*
 - Due Diligence....*so that*
 - Out-of-system mitigation (at a higher ratio)
- Exceptional TN Waters
 - In-system....*and...Socio-economic justification...or*
 - State issues Notice of Determination for degradation of exceptional water resource

Timeline Expectations

- Pre-Application: 30 - 90 days
 - Resource identification and delineation review = 30 days
 - Anti-deg assessment (by TDEC) = 45 days
 - Mitigation consultation = varies substantially based on amount, location and provider.
- Post-Application: 90 – 150 days
 - 30 days to review for completeness
 - 2-3 weeks to construct public notice
 - 30 days for public notice
 - 45 days for public hearing process (can be concurrent with public notice)
 - 3 weeks post public hearing to author NOD and take final permit action

Dual Track Permitting

- DSWM – hydrogeologic investigation
- DSWM & DWR – joint site visit to review aquatic resources, geology and potential impacts to waters of the state
- DWR is required to provide DSWM a site inventory outlining all streams, wetlands, wwcs, ponds
- DSWM rules:
 - Disposal facility fill area buffer must be 200 feet from waters
 - NO facility can be located in a wetland
 - But applicants can apply for 401/404 that supersede DSWM rules



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Concurrent and Complimentary Process for Water Resource Protection

