



STATE OF TENNESSEE  
**DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

Division of Water Resources  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 11th Floor  
Nashville, Tennessee 37243

August 5, 2020

Todd N. Tillinger, P.E.  
Chief, Regulatory Division  
U. S. Army Corps of Engineers  
3701 Bell Road  
Nashville, TN 37214

**SUBJECT:** Section 401 Water Quality Certification  
Conditional Certification of Regional General Permit 20-RGP-01

Dear Mr. Tillinger:

The Tennessee Department of Environment and Conservation (TDEC) acknowledges its responsibility for providing or withholding § 401 Water Quality Certifications for the U. S. Army Corps of Engineers (USACE) § 404 Nationwide Permits (NWP) and Regional General Permits (RGP). In this letter TDEC has provided a detailed listing of conditional certifications for 20-RGP-01. 20-RGP-01 would authorize minor structures, fill, dredging and work in or affecting specific reservoirs managed by the US Army Corps of Engineers – Nashville District within Tennessee and Kentucky.

The proposed permit 20-RGP-01 aims to improve internal agency efficiency within the Corps' Nashville District by reducing the scope of certain minor impacts to navigable waters within Corps reservoir boundaries that currently require review for Section 10 and/or Section 404 authorization by the Regulatory Division in addition to review and authorization by the reservoir's Natural Resource Manager.

Section 401 of *The Clean Water Act* (33 U.S.C. § 1341) requires an applicant for a federal permit that results in a discharge to obtain a water quality certification from the state that there is a reasonable assurance that the discharge will not violate applicable water quality standards. Therefore, the state of Tennessee is required to certify whether or not any activity authorized by a proposed Regional General Permit that results in a discharge into Waters of the United States in Tennessee will meet all applicable water quality standards.

Accordingly, the Department requires reasonable assurance that all activities conducted under these RGPs will not violate provisions of *The Tennessee Water Quality Control Act of 1977* (T.C.A. § 69-3-101 et seq.) or §§ 301, 302, 303, 306 or 307 of *The Clean Water Act (CWA)*.

The proposed 20-RGP-01 was placed on public notice on June 5, 2020, and a specific request for state 401 certification was sent to TDEC on June 12, 2020. The public notice served as USACE's application for water quality certification under § 401 of the CWA for activities authorized by the RGP that will result in a discharge to Waters of the United States in Tennessee.

The RGP specifies certain permit limits or the scale of impact allowable for those activities intended for coverage. The activities included are associated with construction and modification of private docks, minor dredging for small boat access, and shoreline stabilization. The locations applicable to this RGP include the Old Hickory, Barkley, Cheatham, Center Hill, Cordell Hull, Dale Hollow, and J. Percy Priest reservoirs in Tennessee that are managed by the USACE Nashville District, with specific types of allowable activities varying with the specific reservoir.

Based on our review, the terms and conditions related to the exact nature, scale and resource impact of activities that may be authorized by the RGP in the State of Tennessee, require TDEC to provide a conditional certification for a subset of the potential activities covered. This is to ensure TDEC can consistently and defensibly carry out its responsibility of certifying under §401 that all activities will meet the State's water quality standards in a defensible manner, will conform to the State's Rules and regulations for the ARAP permitting process, and will align with the existing ARAP General Permits in a manner that reduces regulatory confusion.

The Division has determined the State will continue to review proposed activities and provide project-specific §401 water quality certification for a subset of activities that may be proposed and authorized by 20-RGP-01. However, for the conditional certifications below, the Division finds that it can certify the activities conducted under the RGP meeting these conditions will not violate water quality standards.

***§401 Certification category 1 - Wet Weather Conveyances***

Tennessee certifies the RGP for alterations of Waters of the United States that have been formally determined by the State to be a wet weather conveyance, per Rule 0400-40-03-.05. These certifications are approved provided any §404 activity is performed in accordance with the terms and conditions listed in the Tennessee Water Quality Control Act §69-3- 108(q).

***§401 Certification category 2 - Private Docks***

Tennessee certifies the RGP for the installation of support pilings, spud poles, anchors or similar structures for the construction, modification, maintenance, or replacement of fixed floating private docks or boathouses in lakes, ponds or reservoirs, as described and conditioned in the RGP.

***§401 Certification category 3 - Minor Dredging***

Tennessee certifies the RGP for minor dredging activities associated with the construction and maintenance of small boat access to permitted dock facilities, provided that the cumulative total of dredging does not exceed 25 cubic yards, the work is conducted during the winter drawdown working in the dry, and excavated material is disposed of in a confined upland disposal site located above the 100- year floodplain, as described and conditioned in the RGP.

***§401 Certification category 4 - Shoreline Stabilization***

Tennessee certifies the RGP for shoreline stabilization activities necessary for erosion control, with the following limitations:

- I. Riprap or other hard armoring stabilization, individually or cumulatively, shall not exceed 150 linear feet of shoreline.
- II. Riprap shall follow the natural contour of the shoreline.
- III. Riprap shall not extend below the winter pool elevation.

- IV. The placement of riprap shall not interfere with an NPDES-permitted facility's ability to comply with the Seep Action Plan component of their permit.
- V. Vegetative stabilization techniques, including live vegetative plantings, live stakes, branch packing, live fascines, vegetated soil lifts, brush mattresses, tree revetments, and coconut fiber coir rolls may be authorized for an unlimited total length
- VI. All other restrictions on applicable locations and other conditions of the RGP are met.

The Division appreciates the opportunity to provide this conditional Section 401 Water Quality Certification for Regional General Permit 20-01. For other activities seeking coverage under the RGP, we remain prepared to take timely action on applications for §401 certifications using either individual permits or general permits on an individual basis. The Division looks forward to further regulatory coordination with the ACOE.

Sincerely,



April Grippo  
Deputy Director, Division of Water Resources

Cc: Robbie Sykes, U.S. Fish and Wildlife Service, Cookeville, TN  
Rob Todd, Tenn. Wildlife Resources Agency, Nashville, TN  
Ashley Monroe, U.S. Environmental Protection Agency, Atlanta, GA  
Aurora Scott, Nashville District Corps of Engineers, Regulatory Division