



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

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

May 6, 2019

Mr. Casey Ehorn
Acting Chief, Regulatory Branch
Nashville District, Corps of Engineers
3701 Bell Road
Nashville, Tennessee 37214-2260

SUBJECT: Section 401 Water Quality Certification
Programmatic General Permit, 18-PGP-01
Modification to Conditional Certifications

Dear Mr. Ehorn :

In a letter dated March 3, 2017, the Tennessee Department of Environment and Conservation (TDEC) acknowledged its responsibility for providing or withholding § 401 Water Quality Certifications for the Army Corps of Engineers (ACOE) § 404 Nationwide Permits (NWP). In that letter TDEC provided a detailed listing of conditional certifications for some of the ACOE's Nationwide 404 Permits (NWP), while certification for others was declined. Due to recent changes to the state's General Permits, the Department has determined modifications to our most recent §401 NWP certifications are required.

In addition, a Programmatic General Permit, 18-PGP-01, was issued by the Corps of Engineers Nashville District, in August 2018. This PGP authorized minor structures, fill and work in reservoirs managed by the Tennessee Valley Authority (TVA). We have reviewed the information contained in 18-PGP-01. We find a reasonable assurance that the activities authorized by 18-PGP-01 will be conducted in a manner which will not violate applicable water quality standards.

For the purpose of tracking cumulative impacts under Tennessee's regulations, the certification of 18-PGP-01 is conditioned upon the following:

1. The licensing or permitting agency shall maintain records of individual authorized impacts or activities, including dimensions or volumes as appropriate.
2. The licensing or permitting agency shall provide the Department with this data and information upon request.

To harmonize related state general permits with the Corps' 404 and TVA's 26a permitting requirements covered under this PGP, the state has revised five general permits covering a limited suite of shoreline development activities on TVA reservoirs. For these reasons this correspondence reflects revisions to the State's §401 Certifications in categories 1 and 2 as

follows. Conditional certification for categories 3 and 4 are withstanding.

§ 401 Certification category 1.

Tennessee certifies all Nationwide Permits for alterations of Waters of the United States that have been formally determined by the State to be a wet weather conveyance. These certifications are approved provided any § 404 activity is performed in accordance with the statutory terms and conditions in the Tennessee Code Annotated section 69-3-108(q).

§ 401 Certification category 2.

Most of the activities authorized by the state’s general permits require written notification to the Department along with written authorization. In some cases however, notification to the Department *is not* required and the activity may commence without written authorization. Where written authorization from the state is not required, the applicant for an analogous NWP would have no individual § 401 certification to provide. Therefore, to allow activities covered by certain general permits that do not require written authorization to qualify for NWP coverage without an individual § 401 certification, the Department hereby issues § 401 water quality certification for the following NWPs, for activities that meet the conditions of § 401 General Permit no-notification thresholds:

USACE General Permit	TDEC General Permit No-Notification Thresholds
NWP 3 (<i>Maintenance</i>)	<i>General Permit for Maintenance Activities</i> ¹ Activities that are limited to a cumulative maximum of 100 linear feet for the excavation of accumulated sediment or debris obstructing or impeding the function of an existing structure, and the placement of clean rock fill within 25 feet upstream and 25 feet downstream of existing structure.
NWP 6 (<i>Survey Activities</i>)	<i>General Permit for Surveying and Geotechnical Exploration</i> ¹ Authorizes activities such as core sampling, seismic exploration, soil sampling and soil surveys, and historic resource surveys, including the placement, use and removal of scientific equipment (staff gages, water monitoring devices, water quality testing devices, etc.).
NWP 12 (<i>Utility Line Activities</i>)	<i>General Permit for Utility Line Crossing</i> ¹ The construction, maintenance, repair, rehabilitation or replacement of utility line crossings is covered for a) activities utilizing non-invasive technologies such as pipe-bursting or slip-lining, b) up to 3 borehole crossings utilizing HDD, where no Federal or State-listed species are located within 1-mile of the project, c) utility lines suspended from culvert, bridge or similar structure
NWP 13 (<i>Bank Stabilization</i>) & 18-PGP-01	<i>General Permit for Bank Armoring and Vegetative Stabilization</i> ¹ Minor stabilization, not exceeding 50 linear feet on one or both banks, limited to one site per 1000 linear feet of a stream or reservoir shoreline. Riprap or other hard armoring bank stabilization techniques such as gabion baskets, individually or cumulatively, not exceeding 150 linear feet of shore lines; and following the natural contour of the shoreline; and not extending below the winter pool elevation, may be performed on specific TVA managed lakes ² . Vegetation 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 performed for an unlimited total length on specified TVA-managed lakes ²
NWP 14 (<i>Linear Transportation Projects</i>)	<i>General Permit for Construction and Removal of Minor Road Crossings</i> ¹ The total length of disturbance must be less than 25 linear feet for the construction or removal of a road crossing.

<p>NWP 36 (<i>Boat Ramps</i>) 18-PGP-01</p>	<p><i>General Permit for the Construction of Launching Ramps and Public Access Structures</i>¹ Stairs, small landings, hand-carried watercraft launch points, or other minor public/private access structures are covered if a) work does not involve heavy machinery or significant bank re-sloping, b) total width of fill or permanent disturbance is less than 6 feet, and c) use of concrete or grouted riprap is prohibited. Private boat ramps may be constructed on reservoirs managed by the TVA; boat ramps must not exceed 20 feet in width, the discharge into waters must not exceed 50 cubic yards, and all fill and excavation work shall be performed in the dry.</p>
<p>NWP 37 (<i>Emergency Watershed Protection and Rehabilitation</i>)</p>	<p><i>General Permit for Emergency Infrastructure Repair</i>¹ No advanced authorization is required where immediate repairs are necessary to protect human safety and welfare from immediate threats. Repair work is limited to 300 feet.</p>
<p>NWP 41 (<i>Reshaping of Existing Drainage Ditches</i>)</p>	<p><i>Tennessee Code Annotated Section 69-3-108(q)</i>. Alterations to WWCs do not require submittal of an application or written authorization provided the alteration follows the statutory terms and conditions in T.C.A. § 69-3-108(q).</p>

¹ Provided the work is performed in accordance with ARAP permit terms and conditions

² Specific TVA managed lakes include: Boone Lake, Cherokee Lake, Chickamauga Lake, Douglas Lake, Fort Loudoun Lake, Ft. Patrick Henry Lake, Kentucky Lake, Melton Hill Lake, Nickajack Lake, Norris Lake, Pickwick Lake, South Holston Lake, Tellico Lake, Tims Ford Lake, Watauga Lake, and Watts Bar Lake.

§ 401 Certification category 3.

Activities authorized under Nationwide Permits 18 (*Minor Discharges*) and NWP 19 (*Minor Dredging*) are certified in lentic waters (e.g. reservoirs or ponds) following the terms and conditions of the *General Aquatic Resource Alteration Permit for Minor Dredging and Filling*. Nationwide activities authorized under NWP 22 (*Removal of Vessels*) are certified provided the work is performed in accordance with permit terms and conditions of the *General ARAP for Minor Dredging and Filling*.

§ 401 Certification category 4.

Activities authorized under Nationwide Permit 38 (*Cleanup of Hazardous and Toxic Waste*) are certified for clean-up activities:

- a) undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, and
- b) are conducted entirely on-site and in accordance with permit exemption § 68-212-222, and meet the standards that would apply if such permits were required.

NWPs for activities and waters covered under Section 10 of the *Rivers and Harbors Act of 1899* (including NWPs 1, 2, 8, 9, 10, 11, 24, 28, and 35) do not require §401 water quality certifications from the State. For all other activities other than those addressed above, certification is denied as detailed in the March 3, 2017 certification letter. For other activities seeking coverage under the § 404 NWPs, the Department will continue to review applications for § 401 certifications using either individual permits or general permits as required by State statute and rule.

We understand that subsequent to your receipt of these limited conditional certifications, persons who qualify for the subject NWP's under the above conditions would no longer need to provide the Corps of Engineers or the Tennessee Valley Authority with an individual § 401 water quality certification.

The state's general permits expire April 6, 2020. The state reserves the right to modify or revoke this certification should the expiration or reissuance of general permits substantively affect its application. Thank you for your consideration. If I can be of assistance please contact me at (615) 532-0643.

Sincerely,



Jennifer Dodd, 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
Mr. Gregg Williams, Chief, Regulatory Branch, Corps of Engineers, Memphis District
Terrence Cheek, Senior Manager. Water Permits, Compliance and Monitoring Tennessee Valley Authority
Frank B. Edmondson, Director, TVA Natural Resources Tennessee Valley Authority
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