



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

June 23, 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
Certification of Regional General Permit 20-02

Dear Mr. Tillinger:

The Tennessee Department of Environment and Conservation (TDEC) acknowledges its responsibility for providing or withholding § 401 Water Quality Certifications for the Army Corps of Engineers (ACOE) § 404 Nationwide Permits (NWP) and Regional General Permits (RGP). In this letter TDEC has provided a detailed listing of conditional certifications for the RGP 20-02. RGP 20-02 would authorize structures or fills designed to permanently or temporarily isolate or limit the spread of populations of exotic invasive aquatic species for resource management purposes.

Section 401 of *The Clean Water Act* (33 U.S.C. § 1341) requires an applicant for a federal permit that results in a discharge of dredge or fill material 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 to state waters will meet all applicable water quality standards. Accordingly, the Department requires reasonable assurance that all activities conducted under these NWPs 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 RGP 20-02 was public noticed on April 6, 2020. The public notice served as ACOE'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. Recently the Division has reissued state General Aquatic Resource Alteration Permits (ARAP GPs), which also serve as Section 401 certifications. The division has reviewed these GPs to determine to what extent these permit terms and conditions could conditionally cover some of the proposed activities under RGP 20-02.

The RGP does not specify permit limits or the scale of impact allowable for those activities intended for coverage. The broad terms and conditions produces uncertainty of the exact nature, scale and resource impact of activities that may be authorized by the RGP in the

State of Tennessee, and therefore in most cases prohibits TDEC from carrying out its responsibility of providing a §401 water quality certification that all activities potentially covered by the RGP will meet the State's water quality standards in a defensible manner, and will conform to the state Rules and regulations for the ARAP permitting process.

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 RGP20-02. 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

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

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 the RGP would have no individual §401 certification to provide. Therefore, in order to allow activities covered by certain general permits that do not require written authorization to qualify for RGP 20-02 coverage without an individual §401 certification, the Department hereby issues §401 water quality certification for activities that meet the conditions of §401 General Permit no-notification thresholds:

- a) The placement of Aids to Navigation installed in accordance with the requirements of the United States Coast Guard (33CFR, Ch.1(C) 66)
- b) The installation of support pilings, anchors or similar structures for a private dock or boathouse in lakes, ponds or reservoirs
- c) A temporary road crossing associated with ongoing construction activities where the total length of disturbance along the stream channel needed to temporarily install, and remove any fill or structure associated with the crossing is less than 25 feet
- d) Maintenance activities limited to the excavation of accumulated sediments and debris obstructing or impeding the function of an existing structure, for a cumulative maximum of 100 linear feet immediately above and/or below the structure, including removal of displaced riprap, and/or the placement of riprap within 25 feet upstream and 25 feet downstream of existing structures
- e) Scientific surveys and geotechnical exploration in stream and wetland following the terms and conditions of the General Aquatic Resource Alteration Permit for Surveying and Geotechnical Exploration
- f) Bank stabilization activities where the length of the stream or reservoir bank to be treated does not exceed a total length of 50 feet on one or both banks (limited to one site per 1000 linear feet of stream or reservoir bank).

§401 Certification category 3

Activities previously receiving conditional certification related to the Programmatic General Permit, 18-PGP-01 do not required notification or written authorized from the division and are limited to the following:

- a. *General Aquatic Resource Alteration Permit for Bank Armoring and Vegetative Stabilization:* Shoreline stabilization activities located within Kentucky Lake, Pickwick Lake, Tims Ford Lake, Fort Loudoun Lake, Watts Bar Lake, Douglas Lake, Norris Lake, Cherokee Lake, South Holston Lake, Ft. Patrick Henry Lake, Boone Lake, Watauga Lake, Chickamauga Lake, Tellico Lake, Melton Hill Lake, or Nickajack Lake managed by the Tennessee Valley Authority may be performed without submittal of an application or written authorization from the division prior to the commencement of work, provided the work is performed in accordance with the preceding permit limits, and each of 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. Work shall not commence until proper authorization under a 26a permit from the TVA is obtained.
- b. *General Aquatic resource Alteration Permit for construction of Public Access Structures and Boat Ramps:* Boat ramps may be constructed in Kentucky Lake, Pickwick Lake, Tims Ford Lake, Fort Loudoun Lake, Watts Bar Lake, Douglas Lake, Norris Lake, Cherokee Lake, South Holston Lake, Ft. Patrick Henry Lake, Boone Lake, Watauga Lake, Chickamauga Lake, Tellico Lake, Melton Hill Lake, and Nickajack Lake managed by the Tennessee Valley Authority without submittal of an application or written authorization from the division prior to the commencement of work, provided the work is performed in accordance with the preceding permit limits, and following additional limitations: a. The boat ramp and associated stabilization materials must not exceed 20 feet in width, b. The discharge into stream and wetlands must not exceed 50 cubic yards, c. All fill and excavation work shall be performed in the dry, and d. Work shall not commence until proper authorization under a 26a permit from the TVA is obtained. Small access structures such as stairs, small landings, or hand-carried watercraft launch points may be constructed without submittal of an application or written authorization from the division prior to the commencement of work, provided the work is performed in accordance with the preceding permit terms and conditions, and the following additional limitations: a. Work may not involve heavy machinery or significant bank re-sloping. b. Total width of fill or permanent bank disturbance may not exceed six feet. Public access structures subject to ADA requirements may have a total width of fill or permanent bank disturbance up to 12 feet. c. Use of concrete or grouted riprap is prohibited.

- c. *General Aquatic Resource Alteration Permit for Minor Dredging in Reservoirs, Lakes and Ponds:* Minor dredging activities located within Kentucky Lake, Pickwick Lake, Tims Ford Lake, Fort Loudoun Lake, Watts Bar Lake, Douglas Lake, Norris Lake, Cherokee Lake, South Holston Lake, Ft. Patrick Henry Lake, Boone Lake, Watauga Lake, Chickamauga Lake, Tellico Lake, Melton Hill Lake, or Nickajack Lake managed by the Tennessee Valley Authority may be performed without submittal of an application or written authorization from the division prior to the commencement of work, provided the work is performed in accordance with the preceding permit limits, and following additional limitations: 1. excavation shall not exceed 150 cubic yards below the normal full pool elevation of reservoirs; 2. excavation shall only be performed working in the dry when the reservoir is below full pool elevation, between the reservoir shoreline and water surface of the lake, and, 3. excavated material shall be disposed of in a confined upland disposal site located above the 100- year floodplain. 4. work shall not commence until proper authorization under a 26a permit from the TVA is obtained.

§401 Certification category 4

The Division additionally certifies the RGP for activities that involve the modification of *existing* barriers to aquatic organism passage, provided the activity does not result in the impairment of waters of the state and do not result in an appreciable permanent loss of resource value. Activities occurring in known or likely habitat of state listed threatened, endangered, deemed in need of management, or species of special concern may not be authorized without prior coordination with the Tennessee Wildlife Resources Agency (TWRA) and TDEC Division of Natural Areas (DNA) to determine if any special conditions are required to avoid and/or minimize harm to the listed species or their habitat. Modifications do not include replacing or altering an existing structure that may result in channel adjustments upstream or downstream of the structure. The modification of existing structures may not result in additional disruption or impoundment of stream flow. The alteration of existing structures greater or equal to 20 feet high or hold 30 acre-foot or more of water must obtain approval from the Tennessee Division of Water Resources, Safe Dams Section.

The Division recommends further coordination and study of activities intended for coverage under the RGP. This conditional certification does not exclude the division from developing a general permit analogous to the RGP, or modifying this conditional certification in the future. We understand that subsequent to your receipt of these limited conditional certifications, persons who qualify for the subject RGP 20-02 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 Division appreciates the opportunity to provide this conditional Section 401 Water Quality Certification for Regional General Permit 20-02. 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 coordination with the Corps and other resource agencies if a state general permit for the management of exotic invasive aquatic species is prepared.

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
Ryan Evans, Nashville District Corps of Engineers, Regulatory Division