



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Division of Water Resources
7th Floor Life and Casualty Annex
401 Church Street
Nashville, Tennessee 37243

April 17, 2012

Ms. Tammy Turley
Chief, Regulatory Branch
Nashville District, Corps of Engineers
3701 Bell Road
Nashville, Tennessee 37214-2260

**SUBJECT: §401 Water Quality Certification
Reissuance of Nationwide Permits**

Dear Ms. Turley:

Pursuant to §401 of *The Clean Water Act* (33 U.S.C. §1341), the state of Tennessee is required to certify whether the activities authorized by the proposed nationwide general permits (NWP) will violate applicable water quality standards. Accordingly, the Division requires reasonable assurance that activities conducted under the NWP will not violate provisions of *The Tennessee Water Quality Control Act of 1977* (T.C.A. § 69-3-101 et seq.) or of §§ 301, 302, 303, 306 or 307 of *The Clean Water Act*.

The proposed NWP were published in the *Federal Register* Vol. 77, No. 34 / Tuesday, February 21, 2012. This publication of the final NWP in the *Federal Register* serves as the Corps' application for water quality certification under §401 of the *CWA* for those NWP that will result in a discharge in Tennessee.

The Tennessee Water Quality Control Act of 1977 requires permits for activities that are also regulated by §404 and authorized by the proposed NWP. Tennessee has issued general permits pursuant to that *Act* which authorize activities that generally correspond with the activities authorized by the NWP.

The division has looked at procedural requirements of its water quality permits, both individual permits and general permits, and including §401 water quality certifications. Evolving policy, case law, and new mandates have changed the complexion of both the state's and the Corps' regulatory programs. We find it unworkable to apply in one motion all legal, procedural, and substantive standards to the myriad of discharges associated with activities conducted under the NWP.

For these reasons, the state of Tennessee hereby denies §401 water quality certification for the nationwide general permits in waters of the United States within the state of Tennessee, with the exceptions that follow below. Certification is denied without prejudice. We are prepared, however, to take timely action using either individual permits or general permits on applications for §401 certifications that are required on an individual basis for coverage under the NWP.

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Most of the state's general permits require written notification to the division along with written authorization. In some cases, though, notification to the division *is not* required and the activity may commence without written authorization. Where written authorization is not required, the applicant for the NWP consequently would have no individual certification to provide. Therefore, in order to allow persons covered by certain general permits that do not require written authorization to qualify for NWP coverage without individual certification, the division hereby issues §401 water quality certification for the following NWPs:

- 13. Bank Stabilization
- 25. Structural Discharges
- 36. Boat Ramps

Effective Date April 17, 2012

Expiration Date April 16, 2017

Conditions:

1. The activity must be located within water resource development project lands and waters, including flowage easement, managed by the Tennessee Valley Authority or the U. S. Army Corps of Engineers.
2. Rip rap activities under NWP 13 shall be limited to 500 linear feet.

We understand that subsequent to your receipt of this certification, persons who qualify for the subject NWPs under the above conditions would no longer need to provide the Corps of Engineers or the Tennessee Valley Authority with an individual certification.

The state's general permits expire June 30, 2015. 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 532-0708.

Sincerely,



Daniel C. Eagar
Manager, Natural Resources Section

Cc: Mary Jennings, U.S. Fish and Wildlife Service, Cookeville, TN
Rob Todd, Tenn. Wildlife Resources Agency, Nashville, TN
Todd Bowers, U.S. Environmental Protection Agency, Atlanta, GA

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