Enclosure 2

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES
Davy Crockett Tower
500 James Parkway, 9th Floor
Nashville, Tennessee 37243-1102

December 17, 2025

Joshua Frost
Chief, Regulatory Division
U.S. Army Corps of Engineers
3701 Bell Road
Nashville, TN 37214

Subject: Section 401 Water Quality Certification
Reissuance of Nationwide Permits

Dear Mr. Frost,

The Tennessee Department of Environment and Conservation (TDEC) Division of Water Resources (the Division) acknowledges its responsibility for granting, denying, or waiving § 401 Water Quality Certifications for the U.S. Army Corps of Engineers (ACOE) § 404 Nationwide Permits (NWPs). As part of the NWP reissuance process, the State of Tennessee has comprehensively reviewed each of the NWPs proposed for reissuance (including any proposed modifications) and one newly proposed NWP. In this letter the Division provides a table outlining each proposed NWP and whether a § 401 WQC may be granted without conditions, granted with conditions, denied, or waived by the State.

Section 401 of The Clean Water Act (33 U.S.C. § 1341) requires an applicant for a federal permit that may result in a discharge to obtain a Water Quality Certification from the state so the discharge from a federally licensed or permitted activity complies with water quality requirements. Therefore, the State is required to certify whether an activity authorized by a proposed NWP resulting in a discharge into Waters of the United States (WOTUS) in Tennessee will comply with all applicable water quality standards and requirements.

Accordingly, the State requires reasonable assurance that all activities conducted under these NWPs will not violate provisions of the Tennessee Water Quality Control Act of 1977

(TWQCA) (T.C.A. § 69-3-101 et seq.) or §§ 301, 302, 303, 306 or 307 of The Clean Water Act (CWA).

The proposed NWPs were published in the Federal Register Vol. 90, No. 116 on 18 June 2025. This publication of the proposed NWPs in the Federal Register serves as the ACOE's application for Water Quality Certification under § 401 of the CWA for those NWPs that will result in a discharge to WOTUS in Tennessee.

The TWQCA requires state permits for activities that will alter the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state. Many activities that alter the physical properties of state waters are also regulated in WOTUS by Section §404 and may be federally regulated under the proposed NWPs. The State has issued statewide general permits pursuant to the TWQCA which authorizes types of activities that generally correspond with the types (but not necessarily the scope, methods, or regulatory limitations) of activities authorized by the NWPs. The State also authorizes additional activities under individual state water quality permits (Individual Aquatic Resource Alteration Permits). Coverages under these state general and individual permits dually serve as §401 water quality certifications for activities that meet the conditions of state permits.

The Division has developed procedural requirements for public notice and participation for permits under the TWQCA and Section §401 of the CWA and has compared its procedural and regulatory requirements with those of the ACOE. As a result of the Division's evaluation of the ACOE's §401 Water Quality Certifications against the State's Aquatic Resource Alteration Permit (ARAP) program, the Division has determined it is in the best interest of the regulated community, and the public, to retain the State's ability to determine the best regulatory framework to protect all aspects of water quality by retaining separate authorization programs. Therefore, the State will continue to review proposed activities and provide timely project-specific §401 Water Quality Certifications for activities that require a §404 authorization. However, for certain limited activities, the Division's statutory and procedural requirements can be met. The State has granted, or conditionally granted certification of some NWPs, including those represented by general permits for which the Division has already issued under the TWQCA where a notice of coverage is not required.

The State's decision to limit certification of the NWPs is based on specific water quality regulations that must be met, versus the broader range of activities that are potentially covered under the NWPs. For example, where there are clear limitations in scale of a discharge authorized under a specific NWP, those limits often exceed the established de minimis thresholds, or do not contain other necessary conditions that would render the associated degradation de minimis under the State's water quality regulations. The State's water quality standards require activities authorized on stream segments or waterbodies to meet specific criteria and maintain support of the classified uses designated for the subject water resource. lmpacts proposed for permit or certification must be reviewed on a case-by-case basis using the most recent water quality assessment and applicable parameters.

Additionally, the State's water quality standards require varying procedural requirements for various waters of the state. For example, if a waterbody is impaired for a designated use by a specific pollutant, the State cannot permit activities that cause further significant degradation of the unavailable parameter. Degradation of Exceptional Tennessee Waters (ETW) can only be authorized if there are no feasible alternatives to a proposed action and degradation is necessary to accommodate important economic or social development in the area and will not otherwise violate water quality criteria. Degradation is prohibited within Outstanding National Resource Waters (ONRW).

Finally, the federal NWP regulatory framework allows significant discretion to the ACOE's District Engineer to waive NWP permit limits on the scale of impact allowable, to decide what may constitute a "designated critical resource water", to add project-specific conditions to a NWP for a specific proposed activity, and to determine what type of mitigation may be required for a proposed activity. This flexibility produces uncertainty of the nature, scale, and resource impact of activities authorized by ACOE under NWPs in Tennessee. This uncertainty curtails the Division's ability to execute its role in providing §401 water quality certifications for all activities covered by an NWP that would also meet the State's water quality standards in a defensible manner. Per NWP general condition #25 (Water Quality), the only instance in which a state may require additional water quality management measures to ensure that the activities authorized by a NWP do not result in more than minimal degradation of water quality, is where the state has not previously certified compliance of a NWP with CWA Section §401.

Therefore, in the table provided below the State of Tennessee hereby provides the following certifications as granted, granted with conditions, denied without prejudice or waived, for NWPs in WOTUS within the state of Tennessee. Several of the proposed NWPs apply only to activities and waters covered under Section §10 of the Rivers and Harbors Act of 1899, and do not involve Section §404 permitting. Additionally, some NWPs pertain to activities in types of WOTUS that do not occur within the state of Tennessee. Accordingly, activities conducted under these NWPs do not, or will not require §401 water quality certifications from the State.

Regarding certifications granted with conditions, we have provided statements explaining why these conditions are necessary to assure that any discharge authorized under the general NWPs will comply with State water quality requirements; and a citation to federal, state, or tribal law that authorizes the conditions. Regarding denials, we have provided the State water quality requirements associated with discharges that could be authorized by the general NW permits, but will not comply with State requirements, and an explanatory statement. These statements, state water quality requirements, regulations, and legal citations for each certification granted with conditions or denied NWP are provided in Appendix A. The text for each legal citation is provided in Appendix B.

A summary table of the NWPs granted without conditions, granted with conditions, waived and denied is provided below.

Nationwide Permit	Tennessee §401 Proposed 2025 Water Quality Certification	Certification Conditions WQC Threshold
NWP 1- Aids to Navigation	Waived[1]	
NWP 2- Structures in Artificial Canals	Waived [1]	
NWP 3- Maintenance	Granted with Conditions	Granted maintenance activities are 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, maximum of 25 feet up and down stream of scour protection within the stream reach immediately adjacent to the structure.
NWP 4- Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	Granted without Conditions	
NWP 5- Scientific Measurement Devices	Granted without Conditions	
NWP 6-Survey Activities	Granted with Conditions	Surveys and Geotech Exploration GP have a limit of 0.10 acres of temporary wetland impact and 200 LF of temporary stream disturbance
NWP 7- Outfall Structures and Associated Intake Structures	Granted with Conditions	Granted with Conditions if: a. New intake structures and conveyance outfall systems are positioned and installed in a manner to prevent damage to the integrity of a stream channel, reservoir, lake, pond shoreline or wetland.

		b. Appropriate velocity/energy dissipation devices are installed as needed to intercept, deflect, scatter, or otherwise neutralize the erosive force of concentrated, flows from the constructed structure or system. c. Alterations resulting from the construction of headwalls, end walls, outlet protection, velocity/energy dissipation devices, and bank stabilization treatment necessary, and associated with, the installation of the intake structure or conveyance outfall system shall be limited to 25 feet. d. A maximum of 10 constructed intake structures or conveyance outfall systems per project.
NWP 8- Oil and Gas Structures on the Outer Continental Shelf	Waived	
NWP 9- Structures in Fleeting and Anchorage Areas	Waived [1]	
NWP 10- Mooring Buoys	Waived [1]	
NWP 11- Temporary Recreational Structures	Waived [1]	
NWP 12- Oil or Natural Gas Pipeline Activities	Granted with Conditions	All Methods a. Trenchless alignments with stream or wetland crossings across maximum of two counties. b. The alignment of new utility line crossings shall intersect the stream channel as close to 90 degrees as practicable and be no less than a 45-degree angle from the centerline of the stream. Large trees, steep banks,

		rock outcroppings etc., should be avoided c. Manholes must be a minimum of 50 feet from top of stream banks. Trenchless Construction (horizontal directional drilling or auger boring (a.k.a. jack and bore) methods) are subject to the following limitations: a. The entry and exit locations for horizontal directional drilling are at least 50 feet from the stream bank or wetland margin; b. The entry pit for auger boring is at least 20 feet from the stream bank or wetland margin; Open Trench Construction Methods are subject to the following limitations: a. A maximum of 5 utility crossings utilizing open trench construction methods. c. Stream bank armoring at open cut crossings allowed to maximum of 40 linear feet of stream bank. d. Trench plugs shall be placed throughout any utility trench constructed across, or running parallel within 50 feet of a stream channel or wetland margin. e. Trench plug location and spacing: i. Trench plugs must be located at each end of a stream or wetland crossing. ii. Trench plugs must have a bedding of compacted, cohesive soils or impervious materials (such as concrete, bentonite, or controlled low strength materials (a.k.a. flowable fill). iii. Trench plugs must have lower permeability than the surrounding native soil. iv. One trench plug must be located between manholes and located near

		the upstream manhole.
NWP 13- Bank Stabilization	Granted with Conditions	**Soil Repair Method Using Soil Bioengineering Stabilization Practices** Repairs to an eroding bank or shoreline that utilize soil bioengineering stabilization practices are granted, provided that the treatment area is limited to 1,000 linear feet per bank (shoreline) of the same stream or reservoir. **Repair Method Using Hard Armor Stabilization Practices** a) Activities are granted if using hard armor treatment for maximum of 300 linear feet of one stream bank, or maximum of 200 linear feet per bank if the treatment includes both banks of the same stream; b) Activities are granted if using hard armor treatment for maximum of 1000 linear feet of reservoir shoreline. **Repair Method Using In-Stream Practice** a) Activities certified for the use of in-stream structures with maximum of five (5) per stream. b) Activities certified where the in-stream structure keyed into a bank extends a maximum of 1/3 the width of the stream channel. Unlimited vegetative stabilization treatment alterations located within certain Tennessee Valley Authority (TVA) or United States Army Corps of Engineered (ACOE) managed reservoirs are granted.
NWP 14- Linear Transportation	Granted with Conditions	A temporary road crossing associated with ongoing construction activities

Projects		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 is granted. Activities are granted for linear stream channel alterations necessary to construct or remove crossings with a maximum total length of 200 feet of an individual stream (entire reach of a single tributary) for the entire project.
NWP 15- U.S. Coast Guard Approved Bridges	Denied	
NWP 16- Return Water from Upland Contained Disposal Areas	Denied	
NWP 17- Hydropower Projects	Denied	
NWP 18- Minor Discharges	Denied	
NWP 19- Minor Dredging	Granted with Conditions	Granted with no notification limited to dredging activities located within certain reservoirs managed by the Tennessee Valley Authority and the U.S. Corps of Engineers' Nashville District shall not exceed 150 cubic yards below the normal full pool elevation of the TVA reservoirs and shall not exceed 25 cubic yards within the USACE reservoirs. The excavation shall only be performed working in the dry when the reservoir is below full pool elevation, between the reservoir shoreline and the water surface of the lake, and; excavated material shall be disposed in a confined upland disposal site located above the 100-year floodplain. Work shall not commence

		until proper authorization under a 26a from the TVA or a Shoreline Use Permit from the USACE Natural Resource Manager is obtained, as applicable. Activities in lakes, ponds and reservoirs are granted with permit notification when excavation below the ordinary highwater mark located within the reservoirs managed by the Tennessee Valley Authority (TVA) and the U.S. Army Corps of Engineers (USCACE) with an excavation maximum of 500 cubic yards of material along no more than 200 linear feet of shoreline.
NWP 20- Response Operations for Oil or Hazardous Substances	Granted with Conditions	**County Highway or Road Repair** Up to four hundred feet (400') of immediate repairs necessary to protect human safety and welfare, and compliant with rules and regulations promulgated by the Board of Water Quality, Oil and Gas (Board) are granted. **Emergency Infrastructure Repair** Emergency activities are granted if: a. repair work is a maximum of 300 linear feet of steam reach. b. repair work is a maximum of 0.10 acres of wetland. c. repair work is limited to that necessary to remedy the immediate emergency, and to restore pre-emergency stream channel or wetland conditions where feasible.
NWP 21- Surface Coal Mining Operations	Denied	
NWP 22- Removal of Vessels	Granted without Conditions	

NWP 23- Approved Categorical Exclusions	Denied	
NWP 24- Indian Tribe or State Administered Section 404 Programs	Waived	
NWP 25- Structural Discharges	Granted with Conditions	This Nationwide permit is conditionally granted for the placement of Aids to Navigation installed in accordance with the requirements of the United States Coast Guard (33CFR, Ch.1(C) 66), and the installation of support pilings, anchors or similar structures for a private dock or boathouse in lakes, ponds or reservoirs
NWP 27- Aquatic Habitat Restoration, Establishment, and Enhancement Activities	Granted with Conditions	Alterations related to the enhancement, restoration, and creation of streams are limited by the following parameters: a. A maximum of 5 in-stream structures b. In-stream structures which are keyed into a bank cannot extend past 1/3 the width of the stream channel c. Disturbance is limited to 1,000 LF per stream channel Alterations related to the enhancement, restoration, and creation of wetlands are limited by the following parameters: a. Impacts shall not exceed 2 acres, including temporary impacts, unless wetlands are documented to have low resource value.
NWP 28- Modification of Existing Marinas	Waived [1]	

NWP 29- Residential Developments	Denied	
NWP 30- Moist Soil Management for Wildlife	Denied	
NWP 31- Maintenance of Existing Flood Control Facilities	Denied	
NWP 32- Completed Enforcement Activities	Denied	
NWP 33- Temporary Construction, Access, and Dewatering	Denied	
NWP 34- Cranberry Production Activities	Denied	
NWP 35- Maintenance Dredging of Existing Basins	Waived [1]	
NWP 36- Boat Ramps	Granted with Conditions	Granted in certain reservoirs managed by the Tennessee Valley Authority and the USACE Nashville District provided the activities are performed with the following limitations: a. the boat ramp and associated stabilization materials must not exceed 20 feet in width; b. any discharge into stream or wetland must not exceed 50 cubic yards; c. all fill and excavation work shall be performed in the dry season Work shall not commence until proper authorization under a 26a from the TVA or a Shoreline Use Permit from the USACE Natural Resource Manager is obtained, as applicable. Small access structures such as stairs,

		small landing or hand-carried watercraft launch points are certified with the following limitations: a. Work may not involve heavy machinery or significant bank re-shaping; 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. The use of concrete or grouted riprap is prohibited
NWP 37- Emergency Watershed Protection and Rehabilitation	Granted with Conditions	Emergency activities are granted if: a. repair work is a maximum of 300 linear feet of steam reach. b. repair work is a maximum of 0.10 acres of wetland. c. repair work is limited to that necessary to remedy the immediate emergency, and to restore pre-emergency stream channel or wetland conditions where feasible.
NWP 38 - Cleanup of Hazardous and Toxic Waste	Waived	
NWP 39 - Commercial and Institutional Developments	Denied	
NWP 40- Agricultural Activities	Denied	
NWP 41- Reshaping Existing Drainage Ditches	Granted with Conditions	The alteration of wet weather conveyances is granted.
NWP 42- Recreational Facilities	Denied	
NWP 43-	Denied	

Stormwater Management Facilities		
NWP 44- Mining Activities	Denied	
NWP 45- Repair of Uplands Damaged by Discrete Events	Denied	
NWP 46- Discharges in Ditches	Granted with Conditions	The alteration of wet weather conveyances is granted.
NWP 48- Commercial Shellfish Mariculture Activities	Waived	
NWP 49- Coal Remining Activities	Denied	
NWP 50- Underground Coal Mining Activities	Denied	
NWP 51- Land-Based Renewable Energy Generation Facilities	Denied	
NWP 52- Water-Based Renewable Energy Generation Pilot Projects	Denied	
NWP 53- Removal of Low-head Dams	Denied	
NWP 54- Living Shorelines	Waived	
NWP 55 – Seaweed Mariculture Activities	Waived	
NWP 57- Electrical Utility Line and Telecommunications Activities	Granted with conditions	All Methods a. Trenchless alignments with stream or wetland crossings across maximum of two counties. b. The alignment of new utility line crossings shall intersect the stream channel as close to 90 degrees as practicable and be no less than a 45-

		degree angle from the centerline of the stream. Large trees, steep banks, rock outcroppings etc., should be avoided c. Manholes must be a minimum of 50 feet from top of stream banks. Trenchless Construction (horizontal directional drilling or auger boring (a.k.a. jack and bore) methods) are subject to the following limitations: a. The entry and exit locations for horizontal directional drilling are at least 50 feet from the stream bank or wetland margin; b. The entry pit for auger boring is at least 20 feet from the stream bank or wetland margin; Open Trench Construction Methods are subject to the following limitations: a. A maximum of 5 utility crossings utilizing open trench construction methods. c. Stream bank armoring at open cut crossings allowed to maximum of 40 linear feet of stream bank. d. Trench plugs shall be placed throughout any utility trench constructed across, or running parallel within 50 feet of a stream channel or wetland margin. e. Trench plug location and spacing: i. Trench plugs must be located at each end of a stream or wetland crossing. ii. Trench plugs must have a bedding of compacted, cohesive soils or impervious materials (such as concrete, bentonite, or controlled low strength materials (a.k.a. flowable fill).

		iii. Trench plugs must have lower permeability than the surrounding native soil. iv. One trench plug must be located between manholes and located near the upstream manhole.
NWP 58- Utility Line Activities for Water and Other Substances	Granted with Conditions	All Methods a. Trenchless alignments with stream or wetland crossings across maximum of two counties. b. The alignment of new utility line crossings shall intersect the stream channel as close to 90 degrees as practicable and be no less than a 45-degree angle from the centerline of the stream. Large trees, steep banks, rock outcroppings etc., should be avoided c. Manholes must be a minimum of 50 feet from top of stream banks. Trenchless Construction (horizontal directional drilling or auger boring (a.k.a. jack and bore) methods) are subject to the following limitations: a. The entry and exit locations for horizontal directional drilling are at least 50 feet from the stream bank or wetland margin; b. The entry pit for auger boring is at least 20 feet from the stream bank or wetland margin; Open Trench Construction Methods are subject to the following limitations: a. A maximum of 5 utility crossings utilizing open trench construction methods. c. Stream bank armoring at open cut crossings allowed to maximum of 40

		linear feet of stream bank. d. Trench plugs shall be placed throughout any utility trench constructed across, or running parallel within 50 feet of a stream channel or wetland margin. e. Trench plug location and spacing: i. Trench plugs must be located at each end of a stream or wetland crossing. ii. Trench plugs must have a bedding of compacted, cohesive soils or impervious materials (such as concrete, bentonite, or controlled low strength materials (a.k.a. flowable fill). iii. Trench plugs must have lower permeability than the surrounding native soil. iv. One trench plug must be located between manholes and located near the upstream manhole.
NWP 59- Water Reclamation and Reuse Facilities	Denied	
NWP A – Activities to Improve Passage of Fish and Other Aquatic Organisms	Granted	

Regarding NWP certifications granted, or granted with conditions according to the provided table, the State of Tennessee finds it can certify that a discharge from a Federally licensed or permitted activity conducted under the NWPs, and meeting these conditions where applicable, will comply with water quality requirements, will not violate water quality standards, will not result in more than de minimis degradation, and do not otherwise compromise procedural requirements of our regulations. We understand that subsequent to your receipt of these granted, or conditionally granted certifications, persons who qualify for the subject NWPs under the above conditions would no longer need to provide the ACOE or the Tennessee Valley Authority with a request for an individual § 401 water quality certification.

For all other activities seeking coverage under the § 404 NWPs, the State of Tennessee hereby denies granting certification, without prejudice, in WOTUS within the state of Tennessee. We understand that this will in no way preclude the USACE's ability to provide § 404 authorizations through use of NWPs, once they have received a § 401 certification from the state.

The State remains prepared to take timely action on requests for § 401 certifications through our state water quality permitting program on a project-by-project basis.

The Division appreciates the opportunity to provide comment and collaborate with the Nashville and Memphis ACOE Districts throughout the NWP reissuance process. The Division looks forward to further regulatory coordination with the ACOE.

Sincerely,

April Grippo, Director
TDEC Division of Water Resources

Cc: Robbie Sykes, USFWS, Cookeville, TN, robbie_sykes@fws.gov
Josh Campbell, Chief of Biodiversity, TWRA, Nashville, TN, Josh.Campbell@tn.gov
Ashley Monroe, U.S. Environmental Protection Agency, monroe.ashley@epa.gov
Gregg Williams, Chief, Regulatory Branch, USACE Memphis District, gregg.w.williams@usace.army.mil
Josh Frost, Chief, Regulatory Branch, USACE, Nashville District, Joshua.W.Frost@usace.army.mil
Susan Jacks, Tennessee Valley Authority (TVA), srjacks@tva.gov
Britta Lees, Tennessee Valley Authority (TVA), bpdimick@tva.gov

[1] NWPs for activities with no discharges and waters covered under Section 10 of the Rivers and Harbors Act of 1899 do not require §401 water quality certifications from the State