



**TENNESSEE DEPARTMENT OF ENVIRONMENT & CONSERVATION**  
DIVISION OF WATER POLLUTION CONTROL  
401 CHURCH STREET  
7<sup>th</sup> FLOOR L & C ANNEX  
NASHVILLE, TENNESSEE 37243-1534

November 16, 2010

Mr. Mark Dewberry  
Chief Engineer  
Norfolk Southern Railway Company  
1200 Peachtree St.  
Atlanta, GA 30309

Subject: Aquatic Resource Alteration Permit **NRS 10.013**.

Dear Mr. Dewberry:

We have reviewed your application for the proposed stream alterations. Pursuant to the *Tennessee Water Quality Control Act of 1977* (T. C. A. § 69-3-101 et seq.) and supporting regulations, the Division of Water Pollution Control is required to determine whether the activity proposed will violate applicable water quality standards.

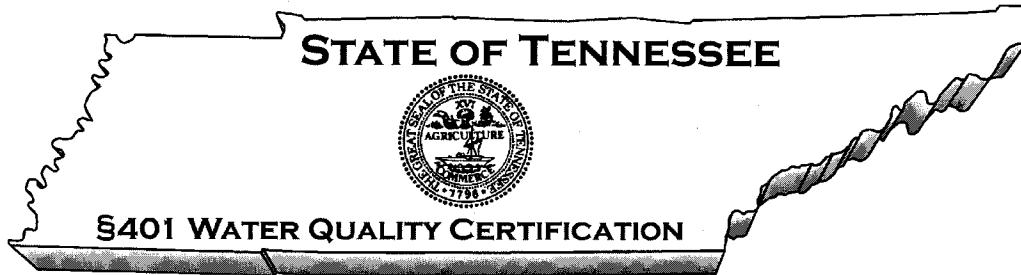
Subject to conformance with accepted plans, specifications and other information submitted in support of application NRS 10.013, the state of Tennessee hereby issues an aquatic resources alteration permit (enclosed). Failure to comply with the terms of this permit or other violations of the *Tennessee Water Control Act of 1977* is subject to penalty in accordance with T.C.A. § 69-3-115.

It is the responsibility of the permittee to ensure that all contractors involved with this project have read and understood the permit conditions before the project begins. If you need any additional information or clarification, please contact Brian Canada at 615-532-0660 or by e-mail at [brian.canada@tn.gov](mailto:brian.canada@tn.gov).

Sincerely,

Brian Canada  
Natural Resources Section

Cc: Memphis Environmental Field Office  
U.S. Army Corps of Engineers, Memphis District  
TSMP, Eric Chance  
file copy



NRS10.013

Pursuant to §401 of *The Federal Clean Water Act* (33 U.S.C. 1341), the State of Tennessee is required to certify whether the activity described below will violate applicable water quality standards. Accordingly, the Division of Water Pollution Control requires reasonable assurance that the activity will not violate provisions of *The Tennessee Water Quality Control Act of 1977* (T.C.A. §69-3-101 et seq.) or provisions of §§301, 302, 303, 306 or 307 of *The Clean Water Act*.

Subject to conformance with accepted plans, specifications and other information submitted in support of the application, pursuant to 33 U.S.C. 1341 the State of Tennessee hereby certifies the activity described below. This shall serve as authorization under T.C.A. §69-3-101 et seq.

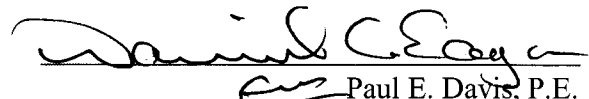
**PERMITTEE** Norfolk Southern Railway Company

**AUTHORIZED WORK:** Memphis Regional Intermodal Facility

**LOCATION:** Unnamed tributaries to Wolf River, approximately between SR-57 and US 72 in Fayette County N35.016852, W-89.577048

**EFFECTIVE DATE:** November 16, 2010

**EXPIRATION DATE:** November 15, 2015

  
Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

**Table of Contents**

<b>PART I</b>	<b>3</b>
SPECIAL CONDITIONS:.....	3
CHANNEL RELOCATION SEQUENCE AND IMPLEMENTATION NOTES FOR RELOCATED STREAM CHANNELS.....	4
GENERAL CONDITIONS: .....	4
<b>PART II</b>	<b>5</b>
MITIGATION REQUIREMENTS AND MONITORING PROCEDURES .....	5
Required Mitigation Activities.....	5
Monitoring Requirements and Procedures.....	5
Recording of Results .....	6
Submission of Monitoring Results.....	6
Records Retention .....	6
Falsifying Results and/or Reports .....	7
<b>PART III</b>	<b>7</b>
DUTY TO REAPPLY.....	7
PROPERTY RIGHTS .....	7
OTHER INFORMATION.....	7
CHANGES AFFECTING THE PERMIT .....	7
Transfer/Change of Ownership .....	7
Change of Mailing Address.....	8
NONCOMPLIANCE.....	8

Effect of Noncompliance.....	8
Reporting of Noncompliance .....	8
Adverse Impact.....	9
LIABILITIES.....	9
Civil and Criminal Liability .....	9
Liability under State Law .....	9
APPENDIX I.....	11
Topographic Maps.....	11

## **PART I**

### **Special Conditions:**

- a. Stream 2: (At SR-57): Extend existing crossing by 19 ft. plus 15 ft. of bank stabilization.
- b. Stream 3: Install 310' of 48" culvert beneath lead track plus 101' of bank stabilization.
- c. Stream 4: Install 908' of rock fill of upmost portion of headwater stream to conduct groundwater along original course subsurface.
- d. Stream 5: 3,008' of encapsulation including elimination of an in stream pond plus 30 ft. of riprap stabilization.
- e. Stream 6: Construct 2 bridges: 1 @ 48' and the second @ 89'.
- f. Wetland 3: Permanent fill of 0.4 acre.
- g. Wetland 5: Permanent fill of 0.21 acre.
- h. Wetland 6: Permanent fill of 0.1 acre.
- i. Wetland 7: Permanent fill of 0.77 acre.
- j. Wetland 8: Permanent fill of 0.57 acre.
- k. Wetland 10: Permanent fill of 0.64 and temporary impact to 0.02 acre of wetlands.
- l. Pond 1 and 3 shall be filled.

- m. Pond 4 shall be filled/encapsulated to accommodate loop track with an equalization pipe beneath to allow flow to either side of the track..
- n. Best Management Practices (BMPs) shall be stringently implemented throughout the construction period to prevent sediments, oils, or other project-related pollutants from being discharged into Short Creek.
- o. Streambeds shall not be used as transportation routes for construction equipment. Temporary stream crossings shall be limited to one point in the construction area and EPSC measures shall be utilized where stream banks are disturbed.
- p. Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the state. All spills must be reported to the appropriate emergency management agency, and measures shall be taken immediately to prevent the pollution of waters of the state, including groundwater, should a spill occur.

**Channel Relocation Sequence and Implementation Notes for Relocated Stream Channels**

- a. The new stream channel shall be excavated and stabilized during low-flow period. Rip-rap, seeding and sod shall be installed immediately following channel completion. Trees shall be installed in the first planting season following channel excavation. Water shall be diverted into the new channel ONLY after it is completely stabilized, and only during a low-water period. Stabilized means that all specified rock and erosion control blanket or flexible channel liner is in place, and seeding and sod are in place and established.
- b. Sediment filter bags are to be used during construction of proposed channel relocation to limit sediment into the existing channel.

**General Conditions:**

- a. It is the responsibility of the applicant to convey all terms and conditions of this permit to all contractors. A copy of this permit, approved plans and any other documentation pertinent to the activities authorized by this permit shall be maintained on site at all times during periods of construction activity.
- b. Work shall not commence until the applicant has received the federal §404 permit from the U. S. Army Corps of Engineers, a §26a permit from the Tennessee Valley Authority or authorization under a Tennessee NPDES Storm Water Construction Permit where necessary. The applicant is responsible for obtaining these permits.
- c. The work shall be accomplished in conformance with the accepted plans, specifications, data and other information submitted in support of application NRS10.013 and the limitations, requirements and conditions set forth herein.
- d. All work shall be carried out in such a manner as will prevent violations of water quality criteria as stated in Rule 1200-4-3-.03 of the Rules of the Tennessee Department of Environment and Conservation. This includes, but is not limited to, the prevention of any discharge that causes a

condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of waters of the state for any of the uses designated by Rule 1200-4-4. These uses include fish and aquatic life (including trout streams and naturally reproducing trout streams), livestock watering and wildlife, recreation, irrigation, industrial water supply, domestic water supply, and navigation.

- e. Impacts to waters of the state other than those specifically addressed in the plans and this permit are prohibited. All streams, springs and wetlands shall be fully protected prior, during and after construction until the area is stabilized. Any questions, problems or concerns that arise regarding any stream, spring or wetland either before or during construction, shall be addressed to the Division of Water Pollution Control's Memphis Environmental Field Office (901-371-3000), or the permit coordinator in the division's Natural Resources Section (615-532-0660).
- f. Adverse impact to formally listed state or federal threatened or endangered species or their critical habitat is prohibited.
- g. This permit does not authorize adverse impacts to cultural, historical or archeological features or sites.

## **PART II**

### **Mitigation Requirements and Monitoring Procedures**

#### **Required Mitigation Activities**

The permittee must provide mitigation for the above referenced impacts. Impacts to wetlands shall be mitigated by debiting, at a 2:1 ratio, 4.5 acres from available credit at the Wolf River Wetland Mitigation Bank.

Impacts to 4,738' of stream shall be mitigated through payment (\$200/linear foot) of \$947,600.00 to the Tennessee In-lieu Fee Stream Mitigation Program.

#### **Monitoring Requirements and Procedures**

- a. Qualitative Habitat Assessment - The RBP (Rapid Bioassessment Protocols) Habitat Assessment score for the mitigation project must be greater than 75% of the median ecoregion reference score at the end of the monitoring period.
- b. Vegetation - A minimum of 200 stems per acre, comprised of both planted and desirable seedlings from natural regeneration shall remain growing at the end of the monitoring period. Vegetative species must be on approved native species planting list.
- c. Morphology - The monitored morphology success criteria values for the restored reach shall not deviate from the actual as-built values by more than 20% in any monitoring year.
- d. Stability - A Channel Stability Rating (CSR) of at least "Good" must be achieved during every monitoring year.

### **Recording of Results**

- a. For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:
  1. The exact place, date and time of sampling;
  2. The exact person(s) collecting samples;
  3. The dates and times the analyses were performed;
  4. The person(s) or laboratory who performed the analyses;
  5. The analytical techniques or methods used;
  6. The results of all required analyses;
  7. Narrative descriptions, photo-documentation, riparian vegetation surveys, channel morphology surveys, stability assessments, and hydrology surveys/documentation, and;
  8. A habitat assessment using EPA Rapid Bioassessment Protocol will be conducted and submitted in Year 5.
  
- b. In the event any portion or aspect of the mitigation project does not meet the specified success criteria based on reporting and/or additional visual observations in a monitoring year, the nature and cause(s) of the resulting condition shall be investigated and documented. If it is determined that corrective actions are not warranted at the time, the rationale for the decision shall be stated. Continued monitoring of the condition or area using more detailed methodology may be appropriate and must be documented. In instances where corrective actions are necessary, a plan shall be prepared that includes proposed actions, a time schedule for activities, and revised monitoring plan.

### **Submission of Monitoring Results**

- a. The permittee shall submit the following monitoring information on an annual basis, for a term of five years (5 years):
  
- b. All monitoring reports and information shall be submitted in report-form to the division's Natural Resources Section, located in the L&C Annex, 7th Floor, 401 Church Street, Nashville, Tennessee 37243. Copies shall also be provided to the appropriate Water Pollution Control Environmental Field Office, and the U.S. Army Corps of Engineers-Memphis District Office.
  
- c. The first monitoring report shall be due by October 31st of each monitoring year.

### **Records Retention**

All records and information resulting from the monitoring activities required by this permit including all records of analyses performed and calibration and maintenance of instrumentation shall be retained for a minimum of five (5) years, or longer, if requested by the Division of Water Pollution Control.

### **Falsifying Results and/or Reports**

Knowingly making any false statement on any report required by this permit or falsifying any result may result in the imposition of criminal penalties as provided for in Section 309 of the Federal Water Pollution Control Act, as amended, and in Section 69-3-115 of the Tennessee Water Quality Control Act.

## **PART III**

### **Duty to Reapply**

Permittee is not authorized to discharge after the expiration date of this permit. In order to receive authorization to discharge beyond the expiration date, the permittee shall submit such information and forms as are required to the Director of Water Pollution Control. Such applications must be properly signed and certified.

### **Property Rights**

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

### **Other Information**

If the permittee becomes aware that he/she failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, then he/she shall promptly submit such facts or information.

### **Changes Affecting the Permit**

#### **Transfer/Change of Ownership**

- a. This permit may be transferred to another party, provided there are no activity or project modifications, no pending enforcement actions, or any other changes which might affect the permit conditions contained in the permit, by the permittee if:
- b. The permittee notifies the Director of the proposed transfer at least 30 days in advance of the proposed transfer date;
- c. The notice includes a written agreement between the existing and new permittees containing a specified date for transfer of permit responsibility, coverage, and contractual liability between them; and
- d. The Director does not notify the current permittee and the new permittee, within 30 days, of his intent to modify, revoke, reissue, or terminate the permit, or require that a new application be filed rather than agreeing to the transfer of the permit.

- e. The permittee must provide the following information to the division in their formal notice of intent to transfer ownership:
1. the permit number of the subject permit;
  2. the effective date of the proposed transfer;
  3. the name and address of the transferor;
  4. the name and address of the transferee;
  5. the names of the responsible parties for both the transferor and transferee;
  6. a statement that the transferee assumes responsibility for the subject permit;
  7. a statement that the transferor relinquishes responsibility for the subject permit;
  8. the signatures of the responsible parties for both the transferor and transferee, and;
  9. a statement regarding any proposed modifications to the permitted activities or project, its operations, or any other changes which might affect the permit conditions contained in the permit.

#### **Change of Mailing Address**

The permittee shall promptly provide to the Director written notice of any change of mailing address. In the absence of such notice the original address of the permittee will be assumed to be correct.

#### **Noncompliance**

##### **Effect of Noncompliance**

All discharges shall be consistent with the terms and conditions of this permit. Any permit noncompliance constitutes a violation of applicable State and Federal laws and is grounds for enforcement action, permit termination, permit modification, or denial of permit reissuance.

##### **Reporting of Noncompliance**

###### ***24-Hour Reporting***

- a. In the case of any noncompliance which could cause a threat to public drinking supplies, or any other discharge which could constitute a threat to human health or the environment, the required notice of non-compliance shall be provided to the Division of Water Pollution Control in the appropriate Environmental Field Office within 24-hours from the time the permittee becomes aware of the circumstances. (The Environmental Field Office should be contacted for names and phone numbers of environmental response personnel).
- b. A written submission must be provided within five (5) days of the time the permittee becomes aware of the circumstances unless this requirement is waived by the Director on a case-by-case basis. The permittee shall provide the Director with the following information:

1. A description of the discharge and cause of noncompliance;
2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
3. The steps being taken to reduce, eliminate, and prevent recurrence of the non-complying discharge.

### ***Scheduled Reporting***

For instances of noncompliance which are not reported under subparagraph a. above, the permittee shall report the noncompliance by contacting the permit coordinator, and provide all information concerning the steps taken or planned to reduce, eliminate, and prevent recurrence of the violation and the anticipated time the violation is expected to continue.

### **Adverse Impact**

The permittee shall take all reasonable steps to minimize any adverse impact to the waters of Tennessee resulting from noncompliance with this permit, including but not limited to, accelerated or additional monitoring as necessary to determine the nature and impact of the noncompliance. It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

## **Liabilities**

### **Civil and Criminal Liability**

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Notwithstanding this permit, the permittee shall remain liable for any damages sustained by the State of Tennessee, including but not limited to fish kills and losses of aquatic life and/or wildlife, as a result of the discharge of pollutants to any surface or subsurface waters. Additionally, notwithstanding this Permit, it shall be the responsibility of the permittee to conduct its discharge activities in a manner such that public or private nuisances or health hazards will not be created.

### **Liability under State Law**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or the Federal Water Pollution Control Act, as amended.

This permit does not preclude requirements of other federal, state or local laws. This permit also serves as a State of Tennessee Aquatic Resource Alteration Permit (ARAP) pursuant to the Tennessee Water Quality Control Act of 1977 (T.C.A. §69-3-101 et seq.).

The State of Tennessee may modify, suspend or revoke this permit or seek modification or revocation should the state determine that the activity results in more than an insignificant violation of applicable water quality standards or violation of the act. Failure to comply with permit terms may result in penalty in accordance with T.C.A. §69-3-115.

An appeal of this action may be made to the Water Quality Control Board. In order to appeal, a petition requesting a hearing before the Board must be filed within **THIRTY (30) DAYS** after receipt of the permit. In such petition, each contention should be stated in numbered paragraphs that describe how the proposed activity would be lawful and the action of the state is inappropriate. The petition must be prepared on 8½" x 11" paper, addressed to the Water Quality Control Board and filed in duplicate at the following address: Paul E. Davis, Director, Division of Water Pollution Control, 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Any hearing would be in accordance with T.C.A. §§69-3-110 and 4-5-301 et seq.

**APPENDIX I**

**Topographic Maps**

