TDEC Construction Stormwater & ARAP Permit Requirements for NRCS Conservation Practices

This fact sheet was developed with agreement between the Tennessee Department of Environment and Conservation (TDEC), USDA Natural Resources Conservation Service (NRCS), the Tennessee Department of Agriculture (TDA) and the Tennessee Association of Conservation Districts (TACD) to inform and assist respective field staff and Soil Conservation District (SCD) employees in their efforts to accurately assist landowners on what types of activities may require a Construction Stormwater Permit (CGP) or an Aquatic Resource Alteration Permit (ARAP) and activities that are exempt from permit coverage (or are exempt if performed under the Practice Standards as stated in the TN-NRCS Field Office Technical Guide (FOTG)). This fact sheet does not attempt to deny or limit a landowner's exemption under state law, but landowners are encouraged to seek agency or professional guidance prior to performing activities that may impact state regulated waters.

Background:

The Tennessee Water Quality Control Act of 1977 authorizes TDEC to administer the federal National Pollutant Discharge Elimination System (NPDES) program.

The NPDES program was developed to address the various sources of water pollution through a permit process which requires the implementation of Best Management Practices (BMPs) to reduce the discharge of pollutants to our creeks, rivers and lakes.

Agricultural impacts to water quality can include the withdrawal of water, soil disturbing activities, use of pesticides, herbicides, and soil amendments such as fertilizer.

If proper soil conservation management practices are not used, agricultural lands can contribute to water pollution through the discharge of sediment, nutrients, and pathogens.

Although the Act[1] generally exempts agricultural and forestry related activities from needing a permit, there are some activities that may still require a permit.

This fact sheet allows NRCS, SCDs, TDA, and TDEC to properly advise landowners (permittees) on what types of conservation practice activities may require coverage under a CGP or an ARAP, and what types of activities are exempt from permit coverage.

1. When NRCS Conservation Practice Standards[2] are adhered to, and the activities are associated with the prevention or reduction of soil erosion and sedimentation on agricultural and forest lands, the following practices are exempt from needing a CGP provided they do not result in a point source discharge:

- (412) Grassed waterways
- (362) Diversions
- (600) Terraces
- (393) Filter strips
- (410) Grade stabilization structures
- (638) Water and sediment control basins
- (468) Lined waterways
- (560) Access roads
- (325) High Tunnel Systems
- (342) Critical Area Planting
- (394) Firebreaks
- (575) Animal Trails and Walkways
- Wetland Reserve Easement Program Practices

Each number in parentheses corresponds with that specific NRCS Conservation Practice Standard.

Please check with the local NRCS and SCD offices, or TDEC Environmental Field Offices with any questions or concerns regarding agricultural conservation practices that disturb one or more acres of land and do not meet the exemption criteria above.

[1] T.C.A. §69-3-120(g) states that Nothing whatsoever in this part shall be so construed as applying to any agricultural or forestry activity or the activities necessary to the conduct and operations thereof or to any lands devoted to the production of any agricultural or forestry products, unless there is a point source discharge from a discernable, confined, and discrete water conveyance.

[2] USDA-NRCS has developed a suite of practices to aid farmers and landowners with conservation. NRCS' priority is to ensure productive lands in harmony with a healthy environment. A list and copies of NRCS Conservation Practice Standards may be found on NRCS' electronic FOTG website at the following website:

www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/technical/cp/ncps/?cid=nrcs143_026849

Tennessee Department of Environment & Conservation Division of Water Resources William R. Snodgrass Tennessee Tower, 500 James Robertson Pkwy, 9th Floor, Nashville, Tennessee 37243 1-888-891-8332 www.tn.gov/environment/section/wr-water-resources

USDA Natural Resources Conservation Service 675 U.S. Courthouse 801 Broadway Nashville, TN 37203 (615) 277-2531
www.tn.nrcs.usda.gov/ *NRCS is an equal opportunity employer, provider, and lender*

Tennessee Department of Agriculture Ellington Agricultural Center P.O. Box 40627 Nashville, TN 37204
(615) 837-5225 www.tn.gov/agriculture/topic/water

Tennessee Association of Conservation Districts (423) 737-7667 www.tnacd.org

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2. What agricultural activities need coverage under a CGP?

Construction of actual structures (e.g., barns, ponds, houses, roads other than access roads (560), transfer, storage and/or treatment facilities) and related spoil piles, that disturb one acre or more of soil are considered associated with industrial activity and coverage under a construction permit for stormwater discharges is required. Disturbance of soil for the purpose of crop production is exempt from permit requirements.

3. *If the landowner is enrolled in a federal and/or state financial assistance program and abides by NRCS Conservation Practice standards, do they still need to obtain coverage under a CGP?*

Even if NRCS Conservation practices are installed according to the NRCS FOTG, the landowner (permittee) will still need to obtain coverage under a NPDES CGP permit for land disturbances greater than one acre and associated with the construction of an actual structure (e.g., barns, ponds, houses, roads other than access roads (560), transfer, storage and/or treatment facilities).

4. Will the landowner need to pay a fee for coverage under the CGP and/or ARAP?

Yes. Fees are paid at the time of application submittal.

Projects necessitating ARAP coverage will be assessed a fee. For personal residences or family farms the fee for permit coverage is $50 for both general and individual permits.

Projects necessitating CGP coverage will be assessed a fee as follows:

CGP Project Size	Fee
1-5 Acres	$250
5-20 Acres	$1,000
20-50 Acres	$3,000
50-150 Acres	$6,000
150 + Acres	$10,000

Annual maintenance fees are required for CGP and ARAP permitted projects that exceed one year. Further information on related fee schedules may be found at the following website:

www.tennessee.gov/environment/topic/permit-water

5. The following NRCS Practices do not require an ARAP permit application or written approval from TDEC if done in accordance with terms and conditions of the TDEC General Permit for Stream and Wetland Habitat Enhancement:

- (395) Stream Habitat Improvement and Management
- (659) Wetland Enhancement

6. The following NRCS Practices require notification to TDEC and may need coverage under an ARAP due to site specific conditions:

- (348) Dam Diversion
- (378) Pond (if located in or adjacent to a stream, river, wetland, or lake)
- (396) Aquatic Organism Passage
- (398) Fish Raceway or Tank
- (402) Dam
- (436) Clearing & Snagging (unless only removing downed woody debris or trash by hand, winch or heavy equipment (operated from outside of channel), or selective tree cutting without root removal)
- (574) Spring Development (only if building an impoundment, cofferdam, or reservoir)
- (580) Streambank and Shoreline Protection (unless the length of affected stream is less than 50ft per 1,000 feet of bank, and is not a State Scenic River or ORNW)
- (582) Open Channel (if in a stream)
- (584) Channel Bed Stabilization
- (657) Wetland Restoration (if placing fill in or altering hydrology of an existing wetland or stream)

All other NRCS Practices are exempt from obtaining coverage under an ARAP if installed in accordance with a NRCS Conservation Practice Standard, provided the practice does not impound flow, fill wetland, or directly impact streams or wetlands.

For further information on the ARAP program can be found at the following link: www.tn.gov/environment/article/permit-water-aquatic-resource-alteration-permit

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