



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES
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Rationale

General Aquatic Resource Alteration Permit for
Floating Cabins on Tennessee Valley Authority Reservoirs

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This document represents the rationale for creating a new *General Aquatic Resource Alteration Permits* (ARAP GP) for certification of existing floating cabins on Tennessee Valley Authority (TVA) Reservoirs by the Tennessee Department of Environment and Conservation, Division of Water Resources. The purpose of this proposed GP is to efficiently certify activities that require a section 26a permit issued by the TVA allowing existing floating cabins to remain on TVA reservoirs, provided they can comply with all pertaining regulations. This draft permit will be put onto Public Notice and available for comment. A Public Hearing will also be held to provide additional opportunity to inform the public and receive formal comments. All comments received will be reviewed.

The valid duration of a permit under the *Tennessee Water Quality Act of 1977* is five years. The Department must therefore re-issue or deny the general permit every five years. The subject general permits were issued on April 7, 2020. The final version of this *General Aquatic Resource Alteration Permit* will be issued for a remaining term up to April 7, 2025, to be concurrent with all other existing ARAP General Permits.

Background

Under the *Tennessee Water Quality Control Act of 1977*, T.C.A. §§ 69-3-101 to -148 (the “Act”) where the Commissioner finds that a category of activities or discharges would be appropriately regulated under a general permit, the Commissioner may use a general permit to authorize alterations to waters for specific categories of activities that are substantially similar in nature. In the case of Aquatic Resource Alteration Permits (ARAPs), for habitat impacts that do not result in appreciable permanent loss of resource values (and therefore will result in no more than *de minimis* degradation without mitigation), or water withdrawals that cause no more than *de minimis* degradation, a general permit may be issued.

Notices of coverage by the Division of activities that qualify under general permits also serve as a section 401 Water Quality Certification pursuant to the federal Clean Water Act. The Division is proposing a new General ARAP that authorizes certain structures to remain in place on TVA reservoirs that do not result in an appreciable permanent loss of resource values and will cause no more than *de minimis* degradation, as follows:

General Permit for Floating Cabins on Tennessee Valley Authority Reservoirs

On May 5, 2016, the TVA Board of Directors approved a policy that prohibits new floating cabins on TVA reservoirs and directed TVA to establish regulations for the management of existing floating cabins. On December 16, 2016, Congress passed the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN Act), which specified that TVA may prevent new floating cabins and shall approve the use of existing floating cabins if they remain in compliance with TVA regulations and a section 26a permit.

On September 10, 2021, TVA published its final rule for floating cabins -18 CFR Part 1304 (Federal Register /Vol. 86, No. 173 / Friday, September 10, 2021 / Rules and Regulations). Compliance with these regulations, which include health, safety, and environmental standards (including those for electrical safety, flotation, mooring, and wastewater discharge), is mandatory to receive approval under section 26a.

The regulations allow owners of existing floating cabins who desire to maintain their cabin on the reservoir until October 1, 2024 to apply for a section 26a permit. This was intended to give cabin owners ample time to upgrade their structures to meet all new regulatory requirements.

The goal of this new ARAP GP is to provide a streamlined and efficient permitting pathway for stakeholders, for activities the Division has reasonable assurance will represent no more than *de minimis* degradation individually and cumulatively under review of the TVA section 26a program and conformance to the terms and conditions of the TDEC General ARAP Permit.

Qualifications for proposed activities to be eligible for General Permit coverage

The commissioner must first determine that the category of activities or discharges would be appropriately regulated under a general permit, including that they represent specific categories of activities that are substantially similar in nature. For this new General Permit, the Division believes that it represents a discreet subset of activity that is relatively common in nature and has a limited array of potential water resource impacts for the covered activity. Therefore, the Division can create a set of permit conditions for this activity covered under the General Permit that can adequately regulate projects that may be eligible for coverage under the General Permit.

The Division has made a preliminary determination that this *General Aquatic Resource Alteration Permit* represents a very specific category of activity which is appropriate for a general permit.

Please note that limitations and exclusions from coverage in these general permits do not necessarily mean that an activity cannot be authorized. In most cases, these provisions simply mean that the proposed activity is of such a scale that the procedural and substantive provisions applicable to individual permits are necessary to ensure full public participation and protection of Tennessee's water resources.

***De minimis* degradation and appreciable permanent loss of water resource values**

The commissioner must also ensure that the category of activities to be authorized under a general permit will result in no more than a *de minimis* degradation of habitat (or effects from water withdrawals) individually and cumulatively and does not represent an appreciable permanent loss of water resource values. These thresholds for General ARAPs stem from the Act, T.C.A. § 69-3-108(1), the Antidegradation Statement, Rule 0400-40-03-.06, and the rules governing ARAPs, Rule 0400-40-07-.04(2). They necessarily limit the size, scope, nature, construction techniques, and eligible water resource types for activities eligible for coverage under a General Permit and are the reason for many of the general and specific conditions found in each General Permit.

Each General Permit has its own set of descriptions of activities eligible for coverage and specific conditions the Division believes will ensure the impact thresholds described above are not exceeded, and there are also several key general conditions found in most or all of these permits that also assist in providing this assurance.

This general permit is intended to authorize the continued presence of a limited number of floating cabins already in existence on TVA reservoirs and to ensure that those that remain comply with TDEC regulations pertaining to the discharge of wastewater. It is also designed to ensure an efficient permitting process between agencies and for applicants. TDEC worked with the TVA in the development of their floating cabin regulations to ensure the scope of activities eligible would be limited in scope and nature and would conform to certain key conditions.

Since any floating cabins authorized under this GP will not increase in numbers the Division has reasonable assurance that the proposed changes will not result in significant additional degradation, either individually or cumulatively, than the current circumstances allow. Furthermore, compliance with the new TVA regulations can be expected to result in improvements to public health and safety and reductions in wastewater discharges to TVA reservoirs.

In accordance with the Tennessee Antidegradation Statement (Rule 0400-40-03-.06), the Division has made the preliminary determination that activities authorized under this *General Aquatic Resource Alteration Permit* will result in no more than de minimis degradation of water quality and will not result in an appreciable permanent loss of resource values.