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DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES
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Rationale regarding the issuance of two *General Aquatic Resource Alteration Permits* for wetland impacts

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This rationale explains the basis for the proposed two *General Aquatic Resource Alteration Permits*. The accompanying public notice explains how to access the draft permits, how to comment, and how to participate in the public hearing. The final *General Aquatic Resource Alteration Permits* will be issued for a five-year term.

I. Background

Under the *Tennessee Water Quality Control Act of 1977*, T.C.A. §§ 69-3-101 to -148 (the “Act”) when the Commissioner finds that a category of activities would be appropriately regulated under a general permit, the Commissioner may issue a General Permit. 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 under General Permits also serve as a section 401 Water Quality Certification pursuant to the federal Clean Water Act for activities in waters of the United States.

The Division is proposing issuance of two general ARAPs follows:

GARAP	
Permits	Proposed title changes and other notable changes
011 Minor Alterations to Non-isolated Wetlands	Allows for impacts up 0.10 moderate quality wetlands and 0.25 of low quality wetlands

020	Minor Alterations to Isolated Wetlands	Guidance follow rule changes established in HB0541/SB0670
	All Permits	Revised to include a permit number.
	All Permits	Revised to include the same general conditions.
	All Permits	Changed the term Special Conditions to Specific Conditions.
	All Permits	Added Definitions, Acronym, and Resource section.

The maximum duration of a permit under the Act is five years. The Department must therefore renew, modify, or revoke the existing general permits every five years.

II. **Qualifications for proposed activities to be eligible for General Permit coverage**

The Division must first make a determination that the category of activities or discharges would be appropriately regulated under a General Permit, including that the activities are substantially similar in nature. The Division continues to believe that the activities authorized by the existing General Permits are relatively common in nature and have a limited array of construction techniques and potential water resource impacts for each covered activity. Therefore, the Division can impose a set of permit conditions for each subset of activities covered under a General Permit that can adequately regulate the various eligible projects.

The Division has had many years of experience with reviewing proposed activities, providing notice of coverage, and evaluating outcomes for projects covered under these existing General Permits. Most have been in place in one form or another for decades, and the evolution of the specific language in these permits has been informed by that experience, including the revisions proposed for this cycle of renewal. The specific descriptions of activities intended to be covered under each General Permit, combined with the various conditional limitations as to the size, scope, nature, construction techniques, and eligible water resource types found in each General Permit ensure that activities covered represent specific categories of activities that are substantially similar in nature and will result in only *de minimis* degradation individually and cumulatively.

The Division has made a preliminary determination that both of *General Aquatic Resource Alteration Permits* proposed for issuance represent specific categories of activities that are substantially similar in nature and are 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.

III. ***De minimis* degradation and appreciable permanent loss of 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 *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 Antidegradation Statement, Rule 0400-40-03-.06, and the rules governing ARAPs, Rule 0400-40-07-.04(2). These thresholds 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.

Through this renewal cycle, the Division is proposing to standardize the general limitations and general conditions that apply to all permits. These provisions establish consistent, protective, and reasonable standards to protect the state's water resources. The proposed revisions to these general conditions reflect the need for clarification or minor language modification, based on the experience and suggestions of both Division staff and the regulated community over the last several years.

Some examples of general provisions that will ensure authorized activities will not exceed a *de minimis* degradation or result in an appreciable permanent loss of resource values:

- Exclusion of alterations that require an Individual Permit;
- Exclusion of alterations that result in an appreciable permanent loss of water resource values; and
- Requirement that the amount of fill, stream channel, bank modifications, or other impacts associated with the activity shall be limited to the minimum necessary to accomplish the project purpose. The permittee shall utilize the least impactful practicable method of construction.

The last item above is included to ensure that impacts authorized by General Permits are no more extensive than necessary, which addresses the "impact minimization" component of the definition of *de minimis* degradation. Rule 0400-40-03-.04(4)(b).

Other provisions ensure that secondary effects of proposed alterations do not result in additional impacts that would exceed the intended General Permit thresholds. These are based on known risks from common alterations if not addressed, such as exclusion of:

- Blasting of subsurface bedrock in, or within 50 feet of, a stream or wetland;
- Alterations that directly impair surface water flow into or out of any wetland area; and
- Alterations that disrupt the movement of fish or other aquatic life upon project completion.

Because the determination of the degree of degradation and resource loss can be a function of the inherent resource value of the affected wetland, some provisions address resource quality, such as exclusion of:

- Alterations located in a component of the National Wild and Scenic River System or waters designated as Outstanding National Resource Waters, except those projects for alterations specifically designed to improve aquatic organism passage at existing crossings;
- Alterations that are likely to jeopardize the continued existence of listed or proposed threatened or endangered aquatic species, or their critical habitat, under the Endangered Species Act (ESA), or other applicable state law or rule;
- Alterations that will cause a prohibited “take” of federally listed aquatic species (as defined under Section 3 of the ESA and 50 C.F.R. § 17.3) unless such take is authorized under Sections 7 or 10 of the ESA; and
- Alterations that will cause a prohibited “take” of state listed aquatic species, unless such take is authorized under the provisions of T.C.A. § 70-8-106(e).

An additional requirement of the Act is that no permit authorized by the Division can result in a condition of pollution, as reflected by the following general condition:

All activities must be carried out in such a manner as will prevent violations of water quality criteria as stated in TDEC Rule Chapter 0400-40-03, or impairment of the uses of waters of the state as designated by Rule Chapter 0400-40-04.

In addition to general conditions, each general ARAP, also contains special conditions that more precisely govern the specific activity types to be authorized through each permit. Similar to the general conditions, any proposed revisions to these special conditions reflect the need for clarification or more specific restrictions to ensure compliance with the Act, the Antidegradation Statement, and the ARAP rules, based on the experience and suggestions of both Division staff and the regulated community over the last several years.

The General Permits have an upper limit on the cumulative scale or number of impacts than can be authorized and still give the Division reasonable assurance that they will represent no greater than *de minimis* degradation and no appreciable permanent loss of resource values. Many also have regulatory conditions that address the construction techniques (which can directly affect the degree of impact), and the resource value of specific waters than can be altered under the General Permit. Key special conditions or other provisions in each of the General Permits that are intended to ensure activities covered result in no more than *de minimis* degradation include:

Minor Alterations to Non-isolated Wetlands: To ensure there is no appreciable permanent loss of resource values, individually or cumulatively, this permit has different impact

thresholds for wetlands of differing quality. Alterations of up to a total of 0.10 acres of wetlands representing moderate resource value may be authorized. Up to a total of 0.25 acres of wetlands that are degraded and of low resource value, may be authorized. These thresholds apply within a common plan of development in the same HUC-12 watershed once per five years. Activities that impact high resource value wetlands, including but not limited to rare wetland types, Exceptional Tennessee Waters, and wetlands located in a component of the National Wild and Scenic River System or Outstanding Natural Resource Waters are not covered.

Minor Alterations to Isolated Wetlands: This permit is to be align with HB0541/SB0670 that will be in effect on July 1st, 2025. All provisions of this permit meet the conditions set forth by these changes to rules governing isolated wetlands.

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