

STATE

OF

TENNESSEE

(Rev. 2-8-21)

January 1, 2021

SPECIAL PROVISION

REGARDING

WATER QUALITY AND STORM WATER PERMITS

Description

This work consists of the conditions that apply to all construction activities on the project pursuant to the following:

1. Section 404 of the Federal Clean Water Act (33 U.S.C. §1344), and all implementing regulations, including without limitation regulations of the U.S. Army Corps of Engineers governing permits for discharges of dredged or fill material into waters of the United States in 33 CFR Part 323; and
2. The Tennessee Water Quality Control Act (T.C.A. §69-3-101, et seq.) and all implementing regulations, including without limitation the Rules of the Tennessee Department of Environment and Conservation governing NPDES permits in Chapter 400-40-10, and Aquatic Resource Alteration permits in Chapter 400-40-7; and
3. Section 26a of the TVA Act of 1933 as amended (49 Stat. 1079, 16 U. S. C. sec. 831y1.) and all implementing regulations, including without limitation the regulations of the Tennessee Valley Authority governing construction in the Tennessee River System in 18 C.F.R., Part 1304; and
4. The Tennessee Wildlife Resources Agency Reelfoot Lake Watershed Management permit program (T.C.A. section 70-5-1.), and all implementing regulations, including without limitation regulations authorizing any activity, practice, or project which has or is likely to have the effect of diverting surface or subsurface water from the Lake or have the effect of draining or otherwise removing water from Reelfoot Lake; and
5. Coast Guard Bridge Permit (USCG) (Section 9 of the Rivers and Harbors Appropriation Act of 1899) and all implementing regulations, including but not without limitation for projects which impact streams deemed navigable by the U.S. Coast Guard.

Responsibility

Assume all responsibilities of the permittee as indicated in the permit that relates to protection of the "waters of the United States" and/or "waters of the State of Tennessee."

Obtain any additional permits required by the Contractor for off-site waste and/or borrow areas and associated off project work areas.

Sign the Notice of Intent (NOI) form, provided by the Department, indicating acceptance of the stipulations contained in the permit. Submit the signed NOI to the TDOT HQ Construction Division by email within 10 calendar days after submittal of the contract proposal or the Department may at its discretion cancel the award with the Contractor forfeiting the bid bond.

Implement the provisions of the Water Quality (including, but not limited to, TDEC ARAP, USACE 404, TVA Section 26a, Coast Guard, TWRA) and Storm Water [including, but not limited to, National Pollution Discharge Elimination System (NPDES), Statewide Stormwater Management Plan (SSWMP)] Permits and requirements that pertain to construction activities.

Review of the permit provisions, including NPDES Permit provisions the site specific SWPPP, the contract plans, Standard Specifications and contract Special Provisions and find the permit requirements and erosion prevention and sediment control (EPSC) procedures to be reasonable, workable, and binding.

The Contractor shall not be released from the project site responsibilities under the NPDES permit provisions until the Notice of Termination (NOT) is submitted to TDEC by the TDOT Regional Operations Engineer. The NOT is a certification that the construction project is permanently stabilized, and all construction related discharges have ceased. This means that the use of EPSC measures to alleviate concerns of surface erosion and transport of sediment to surface water conveyances or to waters of the state is no longer necessary. Furthermore, it means that permanent controls, hard surfaces and/or vegetation, used on the project are deemed adequate to prevent erosion and sediment transport and no other potential sources of construction-related pollution are on the project.

The Contractor shall not be released from any warranty provided for EPSC plantings, including sod and trees. If the entire project is complete as outlined in **105.15** of the Standard Specifications, the tree plantings shall still be required to meet the requirements of **802** Standard Specifications.

NPDES Permit Required Action

Accompany the TDOT EPSC inspector or TDOT consultant on all EPSC inspections of the entire construction project including permitted locations and potentially impacted streams, and attend all QA/QC Project Assessments.

EPSC Inspections shall be conducted as required in the most current TN Construction General Permit.

EPSC inspections shall be performed on the schedule established in the TN Construction General Permit until the site is permanently stabilized to determine if the permit requirements are being met. Where sites or portion(s) of the construction project have been temporarily stabilized, the inspections only have to be conducted once per month until construction activity resumes. Written

notification of the intent to change the inspection frequency and the justification for such request must be submitted to the TDOT District Supervisor and the TDEC Central Office before proceeding.

A representative who holds a current TDEC “*Fundamentals of Erosion Prevention and Sediment Control Level I*” certification shall accompany the TDOT EPSC inspector on all required EPSC inspections. The project supervisor(s) shall also hold a current TDEC “*Fundamentals of Erosion Prevention and Sediment Control Level I*” certification. Proof of required personnel training for the individual(s) shall be provided to the TDOT District Supervisor prior to beginning of construction.

The TDOT EPSC inspector shall document all deficiencies on the required current TDOT EPSC Inspection Report form. Sign the TDOT EPSC Inspection Report form and any supporting documentation indicating that there is agreement with the report, recommendations and repair schedule as stated in the documentation.

Make necessary maintenance and repairs relative to deficiencies in these permit conditions or requirements within 24 hours after an inspection identifies the maintenance or repair need, and/or as directed by the TDOT District Supervisor, unless conditions make a particular activity impracticable. Any such conditions that make immediate repairs impracticable shall be documented on the inspection report and provided to the TDOT District Supervisor, and be accompanied by an expected repair schedule based on forecasted weather conditions.

Review the site specific SWPPP that will be made available prior to or at the pre-construction conference, for any additional EPSC requirements. Sign and submit two copies of the SWPPP signature page provided by the Department in the site specific SWPPP. Submit for review and approval any changes/revisions to the SWPPP to prevent erosion and sediment transport at any time after contract execution. Rejection of any submittals by the Department does not relieve the liability for appropriate Best Management Practices (BMPs).

If at any time during this contract, the requirements for the Water Quality Permits and/or the Storm Water Permits for Construction Related Activities are changed/revised/updated, the Contractor shall be notified in writing by the Department of such requirements. Comply with the new requirements within 30 days of the Department notification.

If at any time that sedimentation is occurring or has occurred in streams impacted by the project, immediately notify the TDOT District Supervisor to evaluate the EPSC measures employed. A determination of the cause for sedimentation will be made by the Department. Immediately repair or replace defective EPSC measures and install, as applicable, additional or other EPSC measures with the goal of eliminating future sedimentation. Once a remediation plan is provided by the Department, within 24 hours after notification, begin the remediation as required. Based on the cause of sedimentation, the Department will determine if the cost of remediation will be performed at the Contractor’s expense.

Failure to Comply

In the event a Notice of Noncompliance, Notice of Violation, Notice of Deficiency, or Order is issued by any State or Federal Agency on this project, any required corrective action and all fines

will be the sole responsibility of the Contractor as outlined in **107.01** of the Standard Specifications.

Failure to comply or take immediate corrective actions required within 24 hours, unless documented conditions make a particular maintenance or repair activity impracticable immediately, shall be reason for the TDOT District Supervisor to suspend all other work on the Project, except EPSC and traffic control. The Department will apply non-refundable deductions of monies from the Contract per calendar day from monies due to the Contractor for any EPSC work on the Project. This deduction can be made for each location, as determined by the TDOT District Supervisor, for each calendar day that the deficiency is allowed to remain and charged as item description "*Failure to Comply with Permit Deduction*". A deduction shall be made from monies due the Contractor, not as a penalty, but as liquidated damages, as indicated in **108.09** of the Standard Specifications.

If the necessary corrections/adjustments are not done in a timely manner as required, the Department will implement the provisions of **209.07** and **109.08** of the Standard Specifications that provides for the Department making repairs and recovering the costs thereof from the Contractor.

The Department will not participate in any payment or reimbursement for fines and will not authorize time extensions due to delays in project progress for work stoppage, to remedy the violations stated within the NOV, required by the TDOT District Supervisor as stated in **105.01** of the Standard Specifications.

Spill Prevention, Control, and Countermeasure

To help prevent the discharge of oil into navigable waters, the U.S. Environmental Protection Agency (EPA) developed the Spill Prevention, Control, and Countermeasure (SPCC) Program. The SPCC Program is under the authority of Section 311 (j)(1)(C) of the Federal Water Pollution Control Act (Clean Water Act) in 1974. The rule may be found at Title 40, Code of Federal Regulations (CFR), Part 112. Additional information regarding the preparation and requirements of a SPCC Plan can be found at: <http://www.epa.gov/oem/content/spcc/>.

If applicable based upon the total aggregate capacity of aboveground oil storage, develop a site specific SPCC Plan per EPA requirements. This plan shall be provided to the TDOT District Supervisor as part of the required submittals during the project Pre-Construction Meeting or at which time the conditions on the project site meet the applicable criteria. Shall be responsible for obtaining any other necessary local, state, and federal permits as applicable. The SPCC Plan and/or permits shall be kept on-site.

Comply with all aspects of the site specific SPCC Plan including but not limited to performing any required inspections as directed by the SPCC Plan as well as implementing material and spill management practices per the project's SWPPP. In the event, where a release containing a hazardous substance in an amount equal to, or in excess of a reportable quantity established under either 40 CFR 117 or 40 CFR 302 occurs during a 24 hour period, immediately notify the TDOT District Supervisor.