



**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

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Memorandum

TO: Whitney Britt, Manager
Local Programs Development Office

FROM: Susannah J. Kniazewycz, Director *SK*
Environmental Division

DATE: March 8, 2018

SUBJECT: TDOT Concurrence with Local Government Environmental Permit Certification

Background

The Tennessee Department of Transportation (TDOT) Local Programs Development Office administers Local Government projects using Federal funds from the Federal Highway Administration (FHWA). TDOT's Environmental Division provides concurrence that these projects have completed the ecology and permit processes by concurring with the Local Government's certification that the project has been studied and permits are either not required, or have been obtained as discussed below.

Permit Applications

Local governments shall obtain all required environmental permits and assume all responsibilities of the permittee as indicated in the permits. PDF copies of any required permits or notices of permit coverage permits must be submitted to the Environmental Division prior to letting of the project. Upon receiving appropriate certification from the local agency or their consultant that all permit requirements have been fulfilled, the Environmental Permits Section must issue a concurrence stating that the local agency's certification is complete, before the project can be let to construction.

These guidelines are NOT all-inclusive. The local agency should review the Local Programs Guidelines Manual at https://www.tn.gov/content/dam/tn/tdot/programdevelopment/localprograms/documents-and-forms/LGG_Manual.pdf for more complete references to permit applications. Applicants must follow State and Federal regulations and guidelines for permit applications. Please contact the Environmental Division's Environmental Permits Section or the regulatory agency(ies) if you have questions.

TDEC ARAP, Corps of Engineers Section 404, TVA Section 26a Permits

- To properly identify water resources (such as a stream, wetland, spring, pond with a stream either entering or leaving it, seep, etc.) that may be impacted by the project and thus would need environmental permits, the project site must be thoroughly investigated by the local government's or their consultant's qualified biologist or other scientist with QHP (Qualified Hydrologic Professional)

certification from the Tennessee Department of Environment and Conservation (TDEC). This is because the current state-of-the-art in water resource identification can be quite subtle, and what appears to a lay person to be a simple roadside ditch or a low area, for example, could be considered a jurisdictional stream or wetland by a biologist/scientist/QHP.

A PDF copy of the biologist's Ecology Report must be emailed to the TDOT Environmental Division's Ecology Section at TDOT.Env.Ecology@tn.gov with a PDF of half-size (11" x 17") plans showing the water resource features (highlighted on the plans for easy identification), present conditions, and the proposed project work. The Ecology Section will advise the local government and/or its consultant by email whether appropriate processes were followed in identifying water resources and State or Federally-listed Endangered or Threatened species.

The final ecological process concurrence correspondence from the Ecology Section shall be emailed by the local government or its consultant to the Environmental Permits Section at TDOT.Env.PermitsLG@tn.gov as part of the local government's certification of completion of the permit process.

- Please note that NEPA documents, particularly Categorical Exclusions, do not serve as an indication of whether water quality or storm water permits will be required on a project. A NEPA document does not replace the need for a detailed site review by a qualified biologist/scientist/QHP for the purpose of determining permit needs.
- Please note that Endangered Species Act requirements now include Indiana bats and northern long eared bats, and must be coordinated with the US Fish and Wildlife Service whenever tree cutting is proposed for the project, and may involve surveys for these bats, which can only occur at a certain time of year.
- If any water resources (such as streams, wetlands, springs, ponds with a stream either entering or leaving them, seeps, etc.) would be impacted by the proposed project, whether it involves new work or maintenance/repair of existing facilities, the local government or its consultant shall review the Tennessee Department of Environment and Conservation's (TDEC) General Aquatic Resource Alteration Permit (ARAP) regulations to determine whether a permit application is required. (These permits will typically also be called a Section 401 Water Quality Certification under the Federal Clean Water Act.)
- If any water resources (such as streams, ephemeral streams, wetlands, springs, ponds with a stream either entering or leaving them, etc.) would be impacted by the proposed project, whether it involves new work or maintenance/repair of existing facilities, the local government or its consultant shall review the U.S. Army Corps of Engineers' (USACE) Nationwide Section 404 Permit regulations to determine whether a permit application (Pre-Construction Notice, or PCN) is required. Impacts to navigable waters may also be regulated by Section 10 of the Rivers and Harbors Act, and the local government shall review requirements under that Act to determine whether a permit application is required.

- If the project is in the Tennessee Valley watershed and proposes water resource impacts that would involve wetlands or perennial streams, or would impact Tennessee Valley Authority (TVA) land or easements, the local government or its consultant shall request either a "letter of no objection" or a Section 26a Permit for the proposed project, as required by TVA regulations. Any requirements by the TVA for offset of fills in flowage or storage easements must be provided and paid for by the local government.
- It is important that impacts to water resources must be avoided or minimized to the extent practicable during the project planning and design phases. Avoidance and minimization not only reduces permit requirements and their costs; it can help avoid or reduce the need for acquisition of compensatory mitigation for larger impacts, which can be very expensive and time-consuming. Mitigation can cause significant project delays, particularly if third-party mitigation credits are not available for purchase and the permittee must provide "Permittee-Responsible Mitigation." Please note that the local government must design, acquire, and pay for all mitigation required by regulatory agencies due to project impacts; and shall assume all responsibilities for this mitigation, including land acquisition, construction of the mitigation, multi-year monitoring for mitigation success, and correction of any failures.
- A PDF of all permits or other approvals, or statements of "no objection" or "no permits required" received by the local government from TDEC, USACE, and/or TVA, must be emailed to the Environmental Permits Section with a statement certifying that all permit conditions have been met, and a request for us to concur that permit requirements have been met for the project.

Please note: It typically takes 30 to 90 days from permit application submittal to the agency issuance of general water quality permits (e.g., ARAP, 404). If individual permits are required, they can take six months or more to receive, and usually require provisions for mitigation prior to receiving permits. Since all relevant permits must be obtained and certified prior to beginning the construction phase, please plan ahead for these time frames when scheduling the project.

For further information or questions, please email TDOT.Env.PermitsLG@tn.gov or contact the regulatory agencies involved.

NPDES Permit Coverage

If the project disturbs an acre or more of land, the local government must prepare a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to send to TDEC requesting coverage under the NPDES Construction Stormwater General Permit. Land disturbance is defined in the General Permit, and includes clearing, grubbing, grading, etc. A PDF of the NPDES Notice of Coverage (NOC) from TDEC must be emailed to the Environmental Permits Section with a statement certifying that all permit conditions have been met, and a request for us to concur that permit requirements have been met for the project.

Note: After the project is awarded to a construction contractor, that contractor must be added to the NOI, which is submitted to TDEC so the contractor can be added by TDEC to the NOC.

Class V Injection Well (Sinkhole) Permits

When a sinkhole is identified in or near the project impact area, a Class V Injection Well Permit may have to be obtained from TDEC. The local government or its consultant shall review the latest requirements from TDEC regarding sinkhole impacts to ensure that all applicable requirements have been met, because changes are currently being made to those requirements. Even inadvertent changes to the flow of surface waters to the sinkhole that may be caused by the project may require a permit application.

As with other permits discussed in this memo, a PDF of any required TDEC permit must be emailed to the Environmental Permits Section with a statement certifying that all permit conditions have been met, and a request for us to concur that permit requirements have been met for the project.

Does a Resurfacing, Paving, or Signing/Lighting Project Need a Water Quality or Storm Water Permit?

The typical resurfacing, signing, or lighting project does not need any environmental permits involving the Environmental Permits Section, as long as the following are true:

- The scope of the project consists only of paving, resurfacing, shoulder, and/or guardrail work; and signs or lighting that do not involve extensive placement of electrical supply or other conduits.
- All project activities in excess of the above must avoid impacts to streams, wetlands, and other water resources, as identified by a qualified biologist/scientist/QHP.
- No cross-drains or other culverts on streams or in wetlands are being replaced, extended, or repaired.
- No additional work (such as sinkhole filling or repair) is included in the project.
- Any resurfacing of bridge decks included in the project is accomplished as simple pavement placement with no milling or grinding of the deck surface; or if deck milling/grinding is done, it is only partial-depth in nature. If full-depth deck repairs are needed on a bridge that crosses a stream, permits may be required.
- The project construction does not disturb an acre or more of land. "Land disturbance" does not include stabilized materials underneath existing pavement that will be milled or ground down, unless the cutting goes all the way to soil or other material that is capable of eroding. If the project will disturb an acre or more of land, the local government or consultant will have to prepare a SWPPP and NOI to send to TDEC requesting coverage under the NPDES Construction Stormwater General Permit as discussed above. A PDF of the NPDES Notice of Coverage (NOC) from TDEC must be emailed to the Environmental Permits Section with a statement certifying that all permit conditions have been met, and a request for us to concur that permit requirements have been met for the project. As noted above, the construction contractor must be subsequently added to the NOI and NOC.

If all of these conditions are met for these types of projects, the local government must email a written statement to the Environmental Permits Section, stating that all required water quality and/or storm water permits have been obtained, or that no permits are required; the Environmental Permits Section will then concur by return email that permit requirements have been met for the project.

If all of these conditions are not met for the project, the relevant water quality or storm water quality permits that may be required shall be obtained by the local government as appropriate and emailed to the Environmental Permits Section.

For further information not found in this memo or the LGGM, please email TDOT.Env.PermitsLG@tn.gov.

cc: Carma H. Smith, TDOT Environmental Division
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