TENNESSEE'S WETLANDS REGULATORY PROGRAM

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Tennessee Water Quality Control Act of 1977

- Recognizes that the waters of Tennessee are the property of the state and are held in public trust
- States that people have a right to unpolluted water
- Defines "waters" of the state
- Defines pollution
- Establishes the need for permits for the alteration of the physical, chemical, radiological, biological, or bacteriological properties of waters of the state

"Waters" means any and all waters, public or private, on or beneath the surface of the ground…except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.

WETLANDS

WETLANDS ARE AREAS THAT ARE INUNDATED OR SATURATED BY SURFACE OR GROUND WATER AT A FREQUENCY AND DURATION SUFFICIENT TO SUPPORT, AND THAT UNDER NORMAL CIRCUMSTANCES DO SUPPORT, A PREVALENCE OF VEGETATION TYPICALLY ADAPTED FOR LIFE IN SATURATED SOIL CONDITIONS (Rules of the Tennessee Water Quality Control Board Chapter 1200-4-7)

POLLUTION

"Pollution" means such alteration of…properties of the waters that will…result in harm to public health, safety, or welfare…or will result in harm, potential harm or detriment to the health of animals, birds, fish or aquatic life…

AQUATIC RESOURCE ALTERATION PERMIT (ARAP)

USED TO AUTHORIZE THE ALTERATION OF SURFACE WATERS (STREAMS AND WETLANDS) – TYPICALLY INVOLVING CONSTRUCTION ACTIVITY

TYPES OF PERMITS

- INDIVIDUAL - FEE AND PUBLIC NOTICE REQUIRED
- GENERAL – FOR ROUTINE ACTIVITIES WITH LIMITED IMPACT TO WATER RESOURCE - NO FEE OR PUBLIC NOTICE

GENERAL PERMITS

- BANK STABILIZATION
- EMERGENCY ROAD REPAIR
- LAUNCHING RAMPS AND PUBLIC ACCESS STRUCTURES
- ROAD CROSSINGS
- GRAVEL DREDGING
- STREAM RESTORATION
- UTILITY LINE CROSSINGS
- ALTERATION OF WET WEATHER CONVEYANCES
- SURVEYING AND GEOTECH. EXPLORATION
- MINOR DREDGING AND FILLING
- MAINTENANCE ACTIVITIES
- WETLANDS RESTORATION
- MINOR ALTERATIONS TO WETLANDS
- INTAKE AND OUTFALL STRUCTURES
- SEDIMENT REMOVAL FOR STREAM RESTORATION

SECTION 404 OF THE FEDERAL CLEAN WATER ACT

- IMPLEMENTED BY U.S. ARMY CORPS OF ENGINEERS
- PERMITTING TRIGGERED BY DEPOSITION OF DREDGED OR FILL MATERIAL
- CORPS CONDUCTS A BROAD PUBLIC INTEREST REVIEW
- STATE ISSUES §401 CERTIFICATION IF IT DETERMINES THE PROJECT WILL NOT VIOLATE STATE WATER QUALITY STANDARDS
- IF STATE ISSUES §401 CERTIFICATION, THEN A SEPARATE AQUATIC RESOURCE ALTERATION PERMIT IS NOT NEEDED
- CORPS AND STATE COORDINATE ON PERMIT PROCESSING
- NATIONWIDE OR GENERAL PERMITS SIMILAR TO STATE GENERAL PERMITS

STATE/FEDERAL DIFFERENCES

- Corps does not regulate "isolated wetlands" (SWANCC decision)
- §404 applies only to **discharge** of dredge or fill material into waters of the United States (Tulloch Rule)

EXEMPTIONS

- Management activities such beaver control which do not alter or adversely affect classified uses
- Normal farming, forestry and ranching activities such as plowing, seeding cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, unless there is a point source discharge

SEQUENCING
§404(b)(1) Guidelines

- Avoid
- Minimize
- Compensate
- No net loss of water resource value

FILLING OR DRAINING WETLANDS

- COMPENSATORY MITIGATION REQUIRED INCLUDING MONITORING
- REPLACEMENT RATIOS TYPICALLY START AT TWO TO ONE - DEPEND ON THE RESOURCE BEING LOST AND THE NATURE OF PROPOSED MITIGATION

TYPES OF COMPENSATORY MITIGATION

- RESTORATION
- ENHANCEMENT
- CREATION
- PRESERVATION
- COMBINATIONS

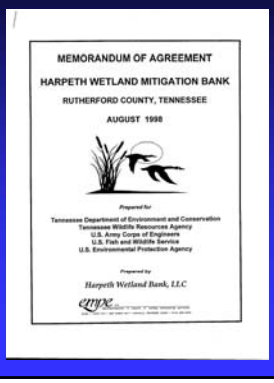
MITIGATION PREFERENCES

THESE FACTORS ARE CONSIDERED ALONG WITH MITIGATION TYPE

- Quality of the wetland
- On site/off site
- In kind/out of kind
- In watershed/out of watershed
- Mitigation bank, in service area
- Mitigation bank, out of service area

MITIGATION BANKS

- Six wetland mitigation banks
- Established by interagency Memorandum of Agreement
- Oversight by Mitigation Bank Review Team



MEMORANDUM OF AGREEMENT

HARPETH WETLAND MITIGATION BANK

RUTHERFORD COUNTY, TENNESSEE

AUGUST 1998

Prepared for

Tennessee Department of Environment and Conservation
Tennessee Wildlife Resources Agency
U.S. Army Corps of Engineers
U.S. Fish and Wildlife Service
U.S. Environmental Protection Agency

Prepared by

Harpeth Wetland Bank, LLC

Tennessee Wetland Mitigation Bank MOA Summaries

Bank Name	Sponsor	Approval Date	Credits	Pre-Credits
Coffee County	National Ecological Foundation	1996; Revised 1998	485	216
Wolf River	Wolf River Mitigation Bank, L.L.C.	1997; Revised 2001	139	69
Madison County	Tennessee Department of Transportation	1996	474.4	237.2
Obion River	Tennessee Department of Transportation	2002	367	183.5
Harpeth	Harpeth Wetland Bank, L.L.C.	1998	185.7	74
Shady Valley	Tennessee Nature Conservancy	1997; Revised 2002	120	30
Totals			1,771.1	809.7

SHADY VALLEY MITIGATION BANK

ESTIMATE OF PERMITTED WETLAND IMPACTS

	Period Of Record	Wetland Acres Permitted	Wetland Acres Mitigated	Percent Mitigated At Banks
Memphis District Corps	1995-2003	548.4	1,632.2	12% (199 ac.)
Nashville District Corps	1998-2004	314	772	63% (485 ac.)
Estimated for Tennessee	1995-2004	1,060	3,050	22% (648 ac.)

THE END