TENNESSEE’S WETLANDS REGULATORY PROGRAM

Dan Eagar, Manager
Natural Resources Section
Division of Water Pollution Control
Tennessee Department of Environment and Conservation

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 as 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 the 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

Tennessee Wetland Mitigation Bank
MOA Summaries

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

SHADY VALLEY MITIGATION BANK
## ESTIMATE OF PERMITTED WETLAND IMPACTS

<table>
<thead>
<tr>
<th>Period Of Record</th>
<th>Wetland Acres Permitted</th>
<th>Wetland Acres Mitigated</th>
<th>Percent Mitigated At Banks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Memphis District Corps</td>
<td>1995: 2003</td>
<td>548.4</td>
<td>1,632.2</td>
</tr>
<tr>
<td>Nashville District Corps</td>
<td>1998: 2004</td>
<td>314</td>
<td>772</td>
</tr>
<tr>
<td>Estimated for Tennessee</td>
<td>1995: 2004</td>
<td>1,060</td>
<td>3,050</td>
</tr>
</tbody>
</table>

---

**THE END**