



**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

ENVIRONMENTAL DIVISION
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MEMORANDUM OF AGREEMENT

TO: Whitney Sullivan, Manager
Local Programs Development Office

FROM: Jim Ozment, Director 
Environmental Division

DATE: December 1, 2015

SUBJECT: Environmental Permits Section Concurrence for
Local Government Certification of Environmental Permit Process Completion for
Local Programs Development Projects

The Tennessee Department of Transportation (TDOT) Local Programs Development Office administers Local Government projects using federal funds from the Federal Highway Administration (FHWA). The Environmental Division agrees to provide concurrence that these projects have completed the environmental permit processes by concurring with the Local Government's certification that environmental permits are either not required or have been received as detailed below.

The Local Government shall obtain all environmental permits and assume all responsibilities of the permittee as indicated in the permit. Per the Local Government Guidance Manual (LGGM), copies of any required permits or notices of permit coverage must be submitted to the Environmental Division prior to advertising the project for construction. The Local Government should refer to the LGGM available through TDOT's Local Programs Development Office webpage for comprehensive program procedures for the use of Federal Highway Administration (FHWA) and State funds for transportation projects. Upon receiving appropriate certification from the Local Government or their consultant that all environmental permits have been obtained, the Ecology and Permits Office will issue a concurrence stating that the Local Government's certification is complete.

To obtain environmental permits, applicants must follow state and federal regulations and guidelines for permit applications. Please contact the TDOT Environmental Division's Environmental Permits Section or the regulatory agency with questions.

Tennessee Department of Environment and Conservation (TDEC) ARAP, United States Army Corps of Engineers (USACE) Section 404, Tennessee Valley Authority (TVA) Section 26a Permits

- To properly identify water resources (such as streams, wetlands, springs, ponds with a stream either entering or leaving it, seeps, etc.) that may be impacted by the project and thus will need permits, the project site must be thoroughly investigated by a qualified professional. 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 low area, for example, could be considered a stream or wetland by a qualified professional. A copy of the qualified professional's report must be supplied to the TDOT Environmental Division's Ecology Section with a PDF of half-size (11" x 17") plans showing the water resource features, present conditions, and the proposed project work. The Ecology Section will advise the Local Government in writing whether appropriate processes were followed in identifying water resources and endangered/threatened species. The final ecological process concurrence received from the Ecology Section shall be provided to the Environmental Permits Section when the Local Government certifies 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 professional for the purpose of determining environmental permit needs.
- 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 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, 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 USACE Nationwide Section 404 Permit regulations to determine whether a permit application 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 River watershed and proposes water resource impacts that would involve wetlands or perennial streams, or would impact TVA land, 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.

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 concurrence that permit requirements have been met for the project.

National Pollutant Discharge Elimination System (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 Storm Water General Permit (CGP). Land disturbance is defined in the CGP, 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 concurrence 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

Whenever a sinkhole is identified in or near the project impact area, a Class V Injection Well Permit must be obtained from TDEC. This requirement applies whether or not the sinkhole has an open throat, and whether or not the sinkhole is actually being filled or repaired by construction operations. Even inadvertent changes to the flow of surface waters to the sinkhole that may be caused by the project require a permit application. A PDF of the received 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 concurrence that permit requirements have been met for the project.

Does a Resurfacing or Paving Project Need a Water Quality or Storm Water Permit?

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

- The scope of the project consists of paving, resurfacing, shoulder, and/or guardrail work.

CC: Susannah Kniazewycz
John Hewitt