



STATE OF TENNESSEE  
**DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

Division of Water Resources  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 11th Floor  
Nashville, Tennessee 37243

October 20, 2016

Josh Bushue  
ADM Grain Company  
4666 Faries Parkway  
Decatur, Illinois 62526

Subject: Aquatic Resource Alteration Permit  
§401 Water Quality Certification  
NRS16.099, McKeller Lake, Shelby County

Dear Mr. Bushue,

The Division has reviewed your application to perform navigation dredging at the ADM facility in Memphis. The water quality certification has been issued with an effective date of October 21, 2016 (enclosed).

The Division has reasonable assurance the activity as proposed and in accordance with all permit conditions herein will not violate applicable water quality standards. The attached permit (enclosed) authorizes the activity pursuant to *The Tennessee Water Quality Control Act of 1977* (T.C.A. §69-3-101 et seq.) and serves as §401 water quality certification (pursuant to the *Federal Clean Water Act* 33 U.S.C. 1341).

The state of Tennessee may modify, suspend or revoke this authorization or seek modification or revocation should the state determine that the activity results in more than an insignificant violation of applicable water quality standards or violation of the TWQCA. Failure to comply with permit terms may result in penalty in accordance with T.C.A. §69-3-115.

It is the responsibility of the permittee to read and understand all permit conditions before the project begins. If you need any additional information or clarification, please contact me at 615-532-0710 or by e-mail at [robert.d.baker@tn.gov](mailto:robert.d.baker@tn.gov).

Sincerely,

A handwritten signature in blue ink that reads "Robert Baker".

Robert Baker  
Natural Resources Unit

Enclosure

Cc: Robbie Sykes, U. S. Fish & Wildlife Service; Cookeville, TN.  
Kelly Laycock, U. S. Environmental Protection Agency; Atlanta, GA.  
Rob Todd, Tennessee Wildlife Resources Agency; Nashville, TN.  
Lew Hoffman, Div. Water Resources; Memphis Env. Field Office  
Miles Anderson, ADM; [miles.anderson@adm.com](mailto:miles.anderson@adm.com)



## NRS16.099

Pursuant to the *Tennessee Water Quality Control Act of 1977* (T.C.A. § 69-3-101 et seq.) and supporting regulations, a permit is required to alter the properties of waters of the state. Also, pursuant to §401 of the *Clean Water Act* (33 U.S.C. 1341), an applicant for a Federal license or permit which may result in a discharge into the waters of the U.S., shall provide the federal licensing or permitting agency a certification from the State in which the discharge will originate.

Accordingly, the Division of Water Resources requires reasonable assurance that the activity will not violate provisions of the *Tennessee Water Quality Control Act of 1977* (T.C.A. §69-3-101 et seq.) or provisions of §§301, 302, 303, 306 or 307 of the *Clean Water Act*.

Subject to conformance with accepted plans, specifications, and other information submitted in support of the application, the state of Tennessee hereby authorizes pursuant to 33 U.S.C. 1341 certifies and T.C.A. §69-3-101 et seq., the activity described below:

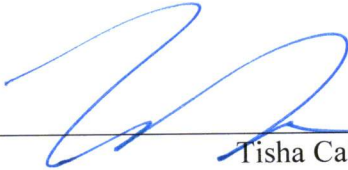
**PERMITTEE**           ADM Grain Company  
4666 Faries Parkway  
Decatur, Illinois 62526

**AUTHORIZED WORK:**   The authorized work includes navigation dredging at the applicant's port facility in McKeller Lake.

**LOCATION:** McKeller Lake, Shelby County Latitude N 35.0944 Longitude W -90.1046

**EFFECTIVE DATE:**                   October 21, 2016

**EXPIRATION DATE:**                 October 20, 2021

  
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Tisha Calabrese Benton  
Director, Division of Water Resources

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**PART I**

**Authorized Alterations**

Sediment is authorized to be dredged via hydraulic dredge from an area about 300 feet x 35 feet and a maximum depth of about 7 feet from the existing bottom elevation. The dredging would

occur at the applicant's port facility. Dredging is authorized to occur as needed for the 5-year duration of the permit. Dredged material is to be pumped to and deposited within a contained dredged material disposal site on Treasure Island nearby.

**Special Conditions:**

1. Dredged material shall be pumped to and deposited within the contained dredged material disposal site specified in the application on Treasure Island nearby.
2. The permittee shall submit as-built drawings of record that reflect the "as-constructed" condition of all authorized alterations to waters of the state.
  - a. The drawings shall include sufficient information, including photographic documentation, to demonstrate conformance with the approved plans, specifications, and special conditions of this permit.
  - b. The report shall be submitted within 90 days of each completed dredging event that occurs during the valid duration of the permit.
  - c. The report may be submitted via email to [water.permits@tn.gov](mailto:water.permits@tn.gov) or to the following address:

Division of Water Resources  
Natural Resources Unit  
William R. Snodgrass - Tennessee Tower  
312 Rosa L. Parks Avenue, 11th Floor  
Nashville, Tennessee 37243-1102

**General Conditions:**

1. It is the responsibility of the permittee to convey all terms and conditions of this permit to all contractors. A copy of this permit, approved plans and any other documentation pertinent to the activities authorized by this permit shall be maintained on site at all times during periods of construction activity.
2. The work shall be accomplished in conformance with the accepted plans, specifications, data and other information submitted in support of the application and the limitations, requirements and conditions set forth herein.
3. Work shall not commence until the permittee has received the federal §404 permit from the U. S. Army Corps of Engineers, a §26a permit from the Tennessee Valley Authority or authorization under a Tennessee NPDES Storm Water Construction Permit where necessary. The permittee is responsible for obtaining these permits.
4. Best Management Practices (BMPs) shall be stringently implemented throughout the construction period to prevent sediments, oils, or other project-related pollutants from being discharged.
5. Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the state. All spills must be reported to the appropriate emergency management agency, and measures shall be taken immediately to prevent the pollution of waters of the state, including groundwater, should a spill occur.

6. Temporary or permanent soil stabilization shall be accomplished within 15 days after final grading or other earth work. Permanent stabilization with perennial vegetation or other permanently stable, non-eroding surface shall replace any temporary measures as soon as practicable. Vegetative species must be on approved native species planting list, (*Landscaping with Natives*; [http://www.tneppc.org/pages/landscaping#native\\_plants](http://www.tneppc.org/pages/landscaping#native_plants)).
7. All work shall be carried out in such a manner as will prevent violations of water quality criteria as stated in Rule 0400-4-3-.03 of the Rules of the Tennessee Department of Environment and Conservation. This includes, but is not limited to, the prevention of any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impair the usefulness of waters of the state for any of the uses designated by Rule 0400-4-4. These uses include fish and aquatic life (including trout streams and naturally reproducing trout streams), livestock watering and wildlife, recreation, irrigation, industrial water supply, domestic water supply, and navigation.
8. Adverse impact to formally listed state or federal threatened or endangered species or their critical habitat is prohibited.
9. This permit does not authorize adverse impacts to cultural, historical or archeological features or sites.

## PART II

### **Records Retention**

All records and information resulting from the monitoring activities required by this permit including all records of analyses performed and calibration and maintenance of instrumentation shall be retained for a minimum of five (5) years, or longer, if requested by the Division of Water Resources.

### **Falsifying Results and/or Reports**

Knowingly making any false statement on any report required by this permit or falsifying any result may result in the imposition of criminal penalties as provided for in Section 309 of the *Federal Water Pollution Control Act*, as amended, and in Section 69-3-115 of *The Tennessee Water Quality Control Act of 1977*.

### **Duty to Reapply**

Permittee is not authorized to discharge or conduct an activity that alters the properties of waters of the state after the expiration date of this permit. In order to receive authorization to discharge or to conduct an activity that alters the properties of waters of the state beyond the expiration date, the permittee shall submit such information and forms as are required to the director of the Division of Water Resources. Such applications must be properly signed and certified.

If any portion of the permitted activities, including the authorized impacts to water resources, compensatory mitigation requirements, or post-project monitoring is not completed before the expiration date of this permit the permittee must apply for permit extension or re-issuance. The permittee shall submit such information and forms as are required to the director of the Division of Water Resources at least ninety (90) days prior to its expiration date. Such applications must be properly signed and certified.

### **Property Rights**

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

### **Other Permits**

This permit does not preclude requirements of other federal, state or local laws. This permit also serves as a state of Tennessee aquatic resource alteration permit (ARAP) pursuant to the *Tennessee Water Quality Control Act of 1977* (T.C.A. §69-3-101 et seq.).

### **Other Information**

If the permittee becomes aware that he/she failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the director, then he/she shall promptly submit such facts or information.

### **Changes Affecting the Permit**

#### **Transfer/Change of Ownership**

1. This permit may be transferred to another party, provided there are no activity or project modifications, no pending enforcement actions, or any other changes which might affect the permit conditions contained in the permit, by the permittee if:
  - a. The permittee notifies the Director of the proposed transfer at least 30 days in advance of the proposed transfer date;
  - b. The notice includes a written agreement between the existing and new permittees containing a specified date for transfer of permit responsibility, coverage, and contractual liability between them; and
  - c. The Director does not notify the current permittee and the new permittee, within 30 days, of his or her intent to modify, revoke, reissue, or terminate the permit, or require that a new application be filed rather than agreeing to the transfer of the permit.
2. The permittee must provide the following information to the division in their formal notice of intent to transfer ownership:
  - a. the permit number of the subject permit;
  - b. the effective date of the proposed transfer;
  - c. the name and address of the transferor;
  - d. the name and address of the transferee;
  - e. the names of the responsible parties for both the transferor and transferee;
  - f. a statement that the transferee assumes responsibility for the subject permit;
  - g. a statement that the transferor relinquishes responsibility for the subject permit;
  - h. the signatures of the responsible parties for both the transferor and transferee, and;

- i. a statement regarding any proposed modifications to the permitted activities or project, its operations, or any other changes which might affect the permit conditions contained in the permit.

### **Change of Mailing Address**

The permittee shall promptly provide to the director written notice of any change of mailing address. In the absence of such notice the original address of the permittee will be assumed to be correct.

## **Noncompliance**

### **Effect of Noncompliance**

All discharges shall be consistent with the terms and conditions of this permit. Any permit noncompliance constitutes a violation of applicable state and federal laws and is grounds for enforcement action, permit termination, permit modification, or denial of permit reissuance.

### **Reporting of Noncompliance**

#### **24-Hour Reporting**

1. In the case of any noncompliance which could cause a threat to public drinking supplies, or any other discharge which could constitute a threat to human health or the environment, the required notice of non-compliance shall be provided to the Division of Water Resources in the appropriate Environmental Field Office within 24-hours from the time the permittee becomes aware of the circumstances. (The Environmental Field Office should be contacted for names and phone numbers of environmental response personnel).
2. A written submission must be provided within five (5) days of the time the permittee becomes aware of the circumstances unless this requirement is waived by the director on a case-by-case basis. The permittee shall provide the director with the following information:
  - a. A description of the discharge and cause of noncompliance;
  - b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
  - c. The steps being taken to reduce, eliminate, and prevent recurrence of the non-complying discharge.

#### **Scheduled Reporting**

For instances of noncompliance which are not reported under subparagraph a. above, the permittee shall report the noncompliance by contacting the permit coordinator, and provide all information concerning the steps taken or planned to reduce, eliminate, and prevent recurrence of the violation and the anticipated time the violation is expected to continue.

### **Adverse Impact**

The permittee shall take all reasonable steps to minimize any adverse impact to the waters of Tennessee resulting from noncompliance with this permit, including but not limited to, accelerated or additional monitoring as necessary to determine the nature and impact of the noncompliance. It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

### **Liabilities**

#### **Civil and Criminal Liability**

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Notwithstanding this permit, the permittee shall remain liable for any damages sustained by the state of Tennessee, including but not limited to fish kills and losses of aquatic life and/or wildlife, as a result of the discharge of pollutants to any surface or subsurface waters. Additionally, notwithstanding this Permit, it shall be the responsibility of the permittee to conduct its discharge activities in a manner such that public or private nuisances or health hazards will not be created.

#### **Liability under State Law**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or the *Federal Water Pollution Control Act*, as amended.

### **Reopener:**

This permit may be modified, suspended, or revoked for cause, including:

1. Violation of any of the terms or conditions of this permit or of T.C.A. § 69-3-101 et. seq.;
2. Obtaining the permit by misrepresentation or failing to disclose fully all relevant facts;
3. A change in any condition that requires either a temporary or permanent change in the conditions of this permit.

### **Appeal:**

An appeal of this action may be made as provided in T.C.A. §69-3-105(i) and Rule 0400-04-05-.12 by submitting a petition for appeal:

1. The petition must be filed within THIRTY (30) DAYS after public notice of the issuance of the permit.
2. The petition must specify the provisions subject to appeal and the basis for the appeal.
3. The petition should be addressed to the technical secretary of the Tennessee Board of Water Quality, Oil and Gas at the following address: Ms. Tisha Benton, Director, Division of Water Resources, William R. Snodgrass - Tennessee Tower, 312 Rosa L.



Parks Avenue, 11th Floor, Nashville, Tennessee 37243-1534. Any hearing would be in accordance with T.C.A. §§69-3-110 and 4-5-301 et seq.

## APPENDIX I

### Topographic Maps

