

MEMORANDUM OF UNDERSTANDING BETWEEN
THE TENNESSEE VALLEY AUTHORITY AND
THE DEPARTMENT OF THE ARMY

8/25

I. PURPOSE

This Memorandum of Understanding (MOU) is a cooperative agreement between the Tennessee Valley Authority (TVA) and the Department of the Army (DA) in recognition of each agency's responsibilities for regulating the waters of the United States and their related responsibilities under the National Environmental Policy Act of 1969 (NEPA). This MOU is developed also to provide more responsive, efficient, and effective permit programs to better serve the public seeking approval of activities in these waters. It sets forth procedures for the coordinated processing of such applications and for the conduct of environmental, cultural resource, and endangered species reviews as required by each agency's individual procedures in connection with such permit programs.

II. AUTHORITIES

- A. Section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. 403).
- B. Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344).
- C. Section 26a of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831y-1).

III. LIMITS OF JURISDICTION TO BE ADMINISTERED
UNDER MOU PROCEDURES

This MOU applies to: (1) applications from the public relating to activities in the Tennessee River basin for which both a TVA permit and a Department of the Army permit are required, and (2) activities of TVA for which an application for a Department of the Army permit is requested or required. This MOU shall apply to all such applications received by either agency after the effective date hereof.

IV. APPLICATION FORM AND INSTRUCTION PACKAGE

For activities requiring joint Corps of Engineers (Corps) and TVA approvals, a joint permit application will be used to the fullest extent possible. The format of the joint application may vary among the various Corps districts subject to this MOU. TVA will be responsible for printing the joint application form and instruction package for activities proposed in the Nashville and Savannah Districts' area of jurisdiction.

V. PROCESSING PROCEDURES (GENERAL)

A. Applications may be received by either agency. TVA and/or Corps will review the information and provide to the other copies of applications as appropriate. In Virginia, TVA will forward all permit applications to the Virginia Marine Resources Commission (VMRC) which is the clearinghouse for all regulatory agencies. The receiving agency will notify the applicant that the application has been received and a copy will be furnished to the other agency for review and appropriate action.

B. If at any time during the processing period either agency determines that there is a need for a meeting with the applicant, that agency shall notify the other and provide it the opportunity to attend. This procedure will also apply to meetings with other agencies or other parties that may have an interest in the proposed activity. In appropriate cases, the agency receiving a request for a meeting may defer to the other agency to arrange and/or conduct the meeting (either with or without participation of the agency receiving the request), especially when issues under consideration are entirely or predominantly within the purview of the second agency.

C. All joint Corps/TVA public notices will be prepared, printed, and distributed by Corps. Such joint notices shall contain such statements as TVA and Corps may agree upon from time to time. In addition, the following statement will be included in all public notices: "It is not necessary to comment separately to TVA since copies of all comments will be sent to that agency and will become part of its record on the proposal. However, if comments are sent to TVA, they should be mailed to the Chief, Land Management Branch, Division of Land and Economic Resources, Norris, Tennessee 37828."

D. Copies of any comments on the proposal received by either agency will be provided the other.

E. When an area to be surveyed anywhere in the Tennessee River Valley for cultural resources is located either entirely on United States property in TVA custody and control or on both United States property in TVA custody and control and other property, TVA staff will be responsible for the survey unless otherwise agreed to by TVA and Corps. The appropriate staff will address any comments to the public notice related to cultural resources and determine if and to what extent a cultural resource survey will be conducted.

F. The lead agency/cooperating agency concept will be used in development of environmental assessments (EAs) or environmental impact statements (EISs) when mutually agreed that use of this concept would be in the best interest of both agencies and best serve the public interest.

1. A decision regarding joint preparation of EAs/EISs will be made within ten working days of receipt by Corps and TVA of joint permit applications. TVA will be lead agency whenever TVA is an applicant for a Corps permit and/or when United States property in TVA custody and control is involved. Corps will be lead agency in all other cases unless otherwise agreed to by TVA and Corps.

2. The lead agency involved in the preparation of an EA/EIS will provide the cooperating agency with an informal copy of the preliminary draft document for full review and appropriate input prior to development of a formal draft EA/EIS. The cooperating agency will furnish to the lead agency any available environmental information directly related to the regulatory matter involved.

3. A TVA/Corps interagency scoping meeting shall be held within 30 days from the date Corps receives the application if a preapplication meeting has not been held.

4. In those cases where applicants consult with TVA or Corps prior to submission of a formal permit application, TVA and Corps will obtain as much information as possible from applicants in an effort to reduce requests for additional information and to complete as much of the environmental review as possible prior to the receipt of the formal application.

5. The target date for completion of the formal draft EA will be 50 days from receipt of the application. Unless otherwise extended under various criteria related to permit application processing or environmental review requirements, EAs will be finalized within 90 days after Corps receipt of the complete joint application. Unless otherwise agreed, the lead agency will conduct any biological assessments and coordinate all determinations of impacts on threatened or endangered species.

G. If a decision is made to conduct a joint public hearing or meeting concerning a particular application the following procedures will be adhered to:

1. The dates of public hearings/meetings and deadlines for public responses will normally be agreed upon by TVA and Corps before being set.

2. When both agencies decide that a public hearing/meeting should be held, a joint hearing/meeting should be held whenever possible. Joint TVA/Corps public hearings/meetings will be co-chaired. In addition, the record of the hearing/meeting (transcript) will be recorded and prepared by the agency determining the need for a hearing/meeting unless otherwise agreed to by the agencies. The other agency will be furnished a copy of the final transcript.

3. If other than a joint hearing or meeting is held, it will be chaired by the agency that determined a need for the hearing or meeting, and the transcript will be prepared by the same and provided to the other agency. Opportunity will be given the other agency to attend the hearing/meeting.

H. When processing procedures are completed, the following steps should be followed:

1. Each agency will coordinate via telephone with the other to determine agency positions on issuance, conditional issuance, or denial. In those cases where one agency has met all of its processing requirements and expects to grant approval for the activity, but the other agency has not completed its review, the agency having completed its procedures may take appropriate action on the permit request provided it includes a statement in its approval,

authorization, or permit, that such approval, authorization, or permit shall not take effect unless and until approval of the other agency is received and that no construction shall commence until such time.

2. Upon issuance of a Corps permit or TVA Section 26a approval, each agency will furnish the other a copy of the letter transmitting the approval.

I. Each agency, upon making a determination either to take legal action or to process applications for previously unauthorized activities, shall notify the other agency, either orally or in writing, of its determination. After-the-fact applications to Corps for unauthorized activities will be handled by Corps in accordance with 33 CFR Part 326. Applications to TVA for approval of plans for unauthorized activities will be handled by TVA in accordance with its customary procedures for such matters. Once after-the-fact applications are accepted for processing, the procedures outlined above will be followed.

VI. INSPECTIONS

- A. Each agency will advise the other when a permitted activity is found to be in noncompliance with approved plans.
- B. Joint inspections of permitted activities will be conducted when necessary.

VII. PROCESSING PROCEDURES FOR TVA APPLICATIONS FOR CORPS PERMITS

Corps will be given early notice when TVA intends to perform work in waters of the United States for which Corps approval pursuant to Section 404 of the CWA is requested or required, or when TVA proposes to conduct work outside the Tennessee River basin, for which Corps approval pursuant to Section 10 of the RHA is required. This will allow TVA and Corps to more effectively meet their NEPA responsibilities. This notification will be provided well in advance of any work by TVA (i.e., site preparation, development of land-based facilities dependent on activities for which Corps approval will be requested, etc.). Public notices for TVA work will normally be issued while EAS/EISs are being prepared to allow inclusion of comments received and opportunity to address comments in these documents. Corps will strive to conclude its decision making process as soon as possible after completion of appropriate environmental documents. Delays in the decision process may result when it becomes necessary to refer the application to higher authority for a final decision or when issuance of a required water quality certification is delayed. In this regard, adequate processing time should be allowed to prevent irreversible commitments, destruction of resources, and delays in contract and construction scheduling.

VIII. REGIONAL PERMITTING

Each Corps district will identify those categories of activities that qualify for regional permits (RPs). Candidates for RPs will be processed in accordance with standard processing procedures. RPs will be conditioned so that the activity will not be authorized until TVA approval in accordance with Section 26a of the TVA Act, if required, is obtained.

IX. TERMINATION

Either party shall have the right to terminate the MOU at any time, effective on receipt of a written notice to the other.

X. EFFECTIVE DATE

TVA and DA hereby adopt this MOU to be effective as of the latest signature date shown herein:

TENNESSEE VALLEY AUTHORITY

BY *[Signature]*

Date AUG 12 1985

Title General Manager

OGC
GAS

DEPARTMENT OF THE ARMY

BY *[Signature]*

Date May 28, 1985

Title Acting Assistant Secretary of the Army (Civil Works)