



Memorandum from the Office of the Inspector General

April 19, 2007

Kathryn J. Jackson, WT 11A-K

FINAL REPORT – INSPECTION 2006-5211 – SECTION 26a REQUIREMENTS

Attached is the subject final report for your review. As discussed with you on April 9, 2007, the subject report is being issued in presentation format. We have incorporated your informal comments to the proposed report. Please advise us of your planned actions in response to our findings within 60 days of the date of this report.

Information contained in this report may be subject to public disclosure. Please advise us of any sensitive information in this report that you recommend be withheld.

If you have any questions, please contact Michael A. Driver, Project Manager, at (423) 751-8158 or Gregory C. Jaynes, Deputy Assistant Inspector General, Inspections, at (423) 751-7821. We appreciate the courtesy and cooperation received from your staff during this review.

Ben R. Wagner
Assistant Inspector General
(Audits and Inspections)
ET 3C-K

GCJ:BJA

Attachment

cc (Attachment):

Bridgette K. Ellis, WT 11B-K
Nancy R. Greer, WT 11B-K
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OIG File No. 2006-5211



Section 26a Requirements

2006-5211

April 19, 2007



Agenda

- ◆ Summary
- ◆ Background
- ◆ Objectives and Scope
- ◆ Methodology
- ◆ Finding 1 – Adequacy of River System Operations & Environment (RSO&E) Guidelines
- ◆ Finding 2 – Adherence to RSO&E Guidelines
- ◆ Recommendations



Summary

We found:

- ◆ RSO&E has implemented permitting guidelines which, if followed, should ensure (1) that Tennessee Valley Authority (TVA) regulations (18 CFR Part 1304) pertaining to Section 26a of the TVA Act are followed and (2) consistent review and approval of Section 26a applications. However, documentation requirements supporting permitting decisions could be improved.
- ◆ That 37 of the 101 Reservoir Land Records (RSLR) reviewed had varying noncompliance issues and an additional 15 had RSLR data entry issues.



Background

- ◆ TVA regulations (18 CFR Part 1304) related to Section 26a of the TVA Act of 1933 (Section 26a) require that TVA's approval be obtained prior to the construction, operation, or maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public land or reservations along or in the Tennessee River or any of its tributaries.
 - Such obstructions may include boat docks, piers, boathouses, buoys, floats, boat launching ramps, fills, water intakes, devices for discharging effluent, bridges, aerial cables, culverts, pipelines, fish attractors, shoreline stabilization projects, channel excavations, and nonnavigable houseboats.
- ◆ TVA Environmental Stewardship and Policy (ES&P), RSO&E, issues permits pursuant to 18 CFR Part 1304 and has established guidelines for issuance of such permits.
- ◆ ES&P guidelines, which are designed to ensure the regulations are met, require that certain information be obtained in the permitting decision process. Information which may be required includes:
 - Completed application with a project description
 - Project plan/drawing
 - Site photograph
 - Location map
 - Environmental consultations and permits
 - Site plans
 - Discharge certifications



Background (continued)

- ◆ Information is maintained in (1) paper files kept by the RSO&E watershed teams and (2) RSO&E's Automated Land Information System (ALIS). ALIS stores information related to the 26a applications/permits per an RSLR.
- ◆ RSLRs are classified based on the application purpose as either:
 - Public – requests from agency and non-profit organizations.
 - Private – requests from individual or private owners.
 - Commercial – requests from for-profit entities.
 - Industrial – requests from entities producing goods.



Objectives and Scope

Objectives:

Determine whether RSO&E permitting policies and procedures (1) ensure reviews and approvals are conducted consistently and in accordance with applicable requirements and (2) are being followed.

Scope:

Our review included RSLRs established in ALIS during the period October 1, 2004, through July 31, 2006.



Methodology

Methodology:

To achieve our objectives, we:

- ◆ Gained an understanding of the Section 26a permitting process by:
 - Reviewing Section 26a, 18 CFR Part 1304, and RSO&E guidelines.
 - Interviewing ES&P personnel.
- ◆ Conducted a walkdown of the permitting process with ES&P personnel to determine (1) whether the actual process and key control activities mirror those outlined in the guidelines and (2) if any additional control activities or mitigating controls exist.
- ◆ Used information obtained in the walkdown and review of RSO&E guidelines to assess whether the prescribed processes and documentation requirements ensure consistent decisions.
- ◆ Selected a judgmental sample from the 5,292 RSLRs established in ALIS during our review period to assess compliance with TVA regulations and RSO&E guidelines. The population and number selected from each classification are described in the following table.

	Private	Public	Industrial	Commercial	No Stated Purpose
Population	4,316	687	26	115	148
Sample	51	20	5	10	15



Methodology (continued)

- For the 101 RSLRs selected, we reviewed supporting documentation to determine:
 - ◆ If the applications were completed in accordance with the RSO&E, Section 26a Entry Process Guideline. Specifically, the application must:
 - Include a proposal drawing.
 - Be signed by the applicant.
 - State the appropriate fee.
 - ◆ We also reviewed the fee amount to determine if the correct fees were applied.
 - Include maps of the proposed location.
 - ◆ If field reviews were conducted/documented as required by the guidelines. The need for a field review is governed by criteria identified in the Section 26a Residential Permitting Process Guideline; or the Section 26a Environmental and Programmatic Review Process Guideline.
 - ◆ If Environmental Reviews were conducted as required by the guidelines.
 - ◆ If modifications to plans were included/documented as required by the guidelines.



Finding 1 – Adequacy of RSO&E Guidelines

- ◆ We found that RSO&E guidelines, if followed, should ensure (1) the application review and approval processes conducted by the watershed teams are consistent and (2) compliance with applicable requirements.
- ◆ However, the guideline documentation requirements which support permitting decisions could be improved.
 - All applications, regardless of purpose, begin with the Section 26a Entry Process. Then, based on the level of environmental review required, either Section 26a Residential Permitting or Section 26a Environmental and Programmatic Review Process is followed. RSO&E guidelines identify specific process steps to be conducted in the:
 - ◆ Section 26a Entry Process
 - Preliminary review of 26a applications and approval of administrative transfers of ownership
 - ◆ Section 26a Residential Permitting Process
 - Review and approval or denial of all on-reservoir, residential, Category I, and Category II permit applications¹
 - ◆ Section 26a Environmental and Programmatic Review
 - Review of all applications requiring the completion of Categorical Exclusion Checklist or other project-specific environmental documentation (EA/EIS)

¹ Examples of Category I and Category II items include docks, piers, non-navigable houseboats, boat launching ramps, and land-based shelters for storage of recreational watercraft boats and accessories. Examples of Category III items include fills greater than 10 cubic yards, excavations for channels and harbors greater than 150 cubic yards, and any action not listed as a Category I or Category II.



Finding 1 – Adequacy of RSO&E Guidelines (continued)

- The processes require the employee processing the application to follow TVA regulations in determining the size, floatation, electrical cutoff, etc., for submitted applications.
- Opportunities for improvement in documentation of ES&P Section 26a reviews and decisions include:
 - ◆ The Residential Permitting Process and Environmental and Programmatic Review Process require that documentation be scanned and attached to the RSLR which is created to track the applications/permits in ALIS. However:
 - The Residential Permitting Process does not require the Field Inspection Checklist (FIC)² to be scanned and attached to the RSLR in ALIS, whereas the Environmental and Programmatic Review does require the attachment.
 - ◆ While there is little difference between an FIC, which is currently required by the guidelines, and SIC, we found that the SIC is currently being used.
 - Neither the Residential Permitting Process nor the Environmental and Programmatic Review Process require the approval/permit or the conditions to be scanned and attached to the RSLR.
 - There is no process in place requiring the Letter of No Objection, which states that the activities requested within or along the Tennessee River or its tributaries do not constitute construction of an obstruction, to be attached to the RSLR.
 - ◆ The Residential Permitting Process and Environmental and Programmatic Review Process do not require documentation supporting why a field review is not needed.

² The FIC/Site Information Checklist (SIC) is used as an Environmental Review to analyze the site compatibility, navigation restrictions, and location of the site requested for a 26a permit.



Finding 1 – Adequacy of RSO&E Guidelines (continued)

- ◆ The processes do not require any documentation to show that the issuance of a Shoreline Management Policy³ (SMP) waiver is appropriate. This waiver allows the land in question not to conform to the standards established in the SMP.
- ◆ ES&P management that assisted in our review generally agreed with our observations.

Additional Information:

The fee structure for submitting an application is to be set pursuant to 18 CFR 1310.3 at a rate to recover TVA's administrative costs but does not appear to have been revised since 1998. In our opinion, RSO&E management should periodically review the fee structure to ensure proper cost recovery.

³ The SMP, which was issued in 1999, is used to establish a Valley-wide policy that would improve the protection of shoreline and aquatic resources while allowing reasonable access to the water.



Finding 2 – Adherence to RSO&E Guidelines

- ◆ We found that 37 of the 101 RSLR reviewed had varying noncompliance issues. The noncompliance issues were as follows:

<u>Control Test</u>	<u>Test Results</u>
<p>Determine if supporting documentation was maintained in ALIS and hard copy file as required by the Environmental and Programmatic Review Process. Supporting documentation required by the process includes a completed application, drawings, and maps.</p>	<ul style="list-style-type: none"> • Two RSLRs had no documentation in ALIS, and one of these permits had only partial, required documentation in the hard copy file. • Five RSLRs lacked the application, drawings, and/or maps in the hard copy file. One permit did not have the application in ALIS. • Four RSLRs had no documentation but, according to ES&P, were incorrectly entered as new permits when they should have been addendums to existing permits. ES&P stated that ALIS would be updated to accurately reflect them as addendums.
<p>Determine if the FIC/SIC was in ALIS and the hard copy file as required by the Environmental and Programmatic Review Process.</p>	<ul style="list-style-type: none"> • Twenty-five RSLRs did not have the FIC/SIC attached in ALIS or included in the hard copy file. • One RSLR had the FIC/SIC attached in ALIS but not included in the hard copy file. • Six RSLRs did not have the FIC/SIC attached in ALIS.



Finding 2 – Adherence to RSO&E Guidelines (continued)

<u>Control Test</u>	<u>Test Results</u>
Determine if an Environmental Review was conducted. According to TVA management, an Environmental Review is always required when TVA takes a permitting action.	We found no documentation indicating that an Environmental Review was conducted for two of the RSLRs requiring such a review.
Determine if modifications were made to the plans where required by the FIC/SIC.	No modified plans were found for one RSLR as required by the FIC/SIC.
Determine if the correct fee was applied.	Six RSLRs had an incorrect fee listed.

Additional Information:

Our review found that in the sample population of 5,292 RSLRs, there were 148 with no purpose listed. Of the 148 RSLRs, 15 were included in our sample.



Recommendations

The Executive Vice President of RSO&E should consider:

- ◆ Requiring the employee processing the application to scan and attach to the RSLR all of the original documents kept on file.
- ◆ Revising the guidelines to require (1) consistent use of either the FIC or the SIC and (2) documented justification for not conducting a field review.
- ◆ Requiring documentation to support any SMP waiver.
- ◆ Providing additional training to the applicable personnel on the processes and procedures.

ES&P management that assisted in our review advised that they plan to "Initiate a PER, in accordance with the Corrective Action Program to identify probable solutions, such as:

- Revised guidelines to clarify proper record management and SMP waiver documentation.
- Refresher training on processing Section 26a applications.
- Enhancement of Section 26a electronic data system."

