

to eliminate deeded rights to construct a water-use facility on TVA land. This is not correct. TVA is not seeking to eliminate any deeded rights. Rather, TVA is specifically defining the categories of TVA-owned land where private, residential water-use facilities will be considered. TVA-owned land subject to deed provisions for ingress and egress is one such general category. Thus, the rule recognizes that deeded rights of ingress and egress may imply a right to build a water-use facility in some cases (but not where the applicable real estate documents specifically exclude the erection of structures), and it generally allows water-use facilities in such cases. It must be recognized, however, that the exercise of such rights is subject to TVA approval under section 26a of the TVA Act if a proposed facility would be an obstruction in the Tennessee River system, and TVA may deny or require modifications to any permit application.

Some commenters suggested that § 1304.211 should be revised to make it more clear that certain pre-existing lawns could continue to be mowed even though such activities were previously conducted without a permit. TVA agrees, and the section has been revised to provide the requested clarification.

A comment objected to the requirement to apply for and obtain a permit before engaging in vegetation management on TVA-owned land. The final rule retains this requirement as a reasonable means for TVA to monitor vegetation management activities by private parties on TVA-owned land. There also were objections to a number of other rule provisions implementing TVA's SMP for vegetation management. TVA believes the SMP vegetation management provisions were well considered after substantial public input and comment received in connection with the SMP environmental impact statement (EIS), and that no information developed during this rulemaking provides any basis for changing those provisions. Specifically, TVA does not agree with the suggestion that an unreasonable fire hazard risk is created by requiring the forest floor to remain undisturbed.

In response to a commenter's question as to how certain plants may be eradicated if herbicides are not allowed, both the proposed and final rules allow for the use of herbicides in accordance with an approved plan. TVA has not identified the pesticides considered to be "restricted use" because the classification of pesticides as restricted use is the responsibility of other regulatory authorities.

There was an objection to TVA's considering the potential effect of a proposed dock on boater access into a cove. This, however, is the kind of navigation issue specifically committed to TVA's discretion under section 26a of the TVA Act.

It was argued in one comment that the requirement to obtain a permit in order to locate a septic tank on TVA flowage easement property was unfair because it would require existing septic system owners to relocate, and it was suggested that a grandfather clause should be included for existing owners. The final rule has been revised to delete septic tank permitting requirements and specifications. Except in the case of approved, nonnavigable houseboats, toilets and sinks are not allowed on water-use facilities. TVA will continue to address matters related to septic tanks on flowage easements on a case-by-case basis in accordance with the terms of particular flowage easements. TVA intends to use its land management authority to prohibit septic tanks and drainfields on TVA land below the maximum shoreline contour.

In response to comments that the rule does not discuss the permitting fee and that there should not be a permitting fee, TVA refers to the TVA administrative cost recovery regulations, which are separately codified at 18 CFR part 1310 (2003). TVA establishes standard charges that are approximately equal to TVA's actual average administrative costs for the category of action.

A comment objected to the requirement to number structures. TVA has decided to delete this requirement.

A comment stated that the entire section related to flowage easement property should be deleted because it is an improper attempt to assert TVA authority over property it does not own. TVA disagrees. TVA's authority over flowage easement property is derived both from section 26a of the TVA Act and from the language of the various documents establishing TVA's flowage easement rights. TVA recognizes, however, that its rights as a property owner are in some circumstances broader than its authority over flowage easement property. This distinction is the basis for having separate rule sections governing these two types of property.

Two groups with an expressed interest in protecting the Norris Reservoir watershed provided comments to the effect that the proposed rule should be revised to provide for better enforcement of houseboat sewage rules and other environmental regulations. TVA

appreciates these comments and expresses its general agreement with many of the groups' stated aims. Some of the requested actions, however, may exceed TVA's authority and the scope of this rule. TVA is not the primary environmental regulator on TVA reservoirs. TVA has, however, included a number of provisions directly addressing many of the concerns raised by the commenters (*e.g.*, §§ 1304.401, 1304.402, and 1304.403). TVA also has undertaken a number of other activities in addition to this rulemaking (such as the Clean Marina Initiative and the development of cooperative relationships with State and Federal agencies having jurisdiction over enforcement of marine sanitation requirements) to address environmental issues such as those raised by the commenters.

A commenter writing on behalf of the Melton Hill Lake Association raised several specific issues. First, the commenter described the vegetation management provisions as a method for TVA to deny dock permits when there are no other reasons to deny one. TVA disagrees. The vegetation management provisions, which only apply to TVA-owned land, reflect TVA's best judgment as to how the vegetation on reservoir-related TVA land should be managed. They are designed to accommodate the construction of water-use facilities on TVA-owned residential access shoreline. There may, of course, be specific cases where the presence of wetlands, threatened or endangered plants, or other vegetation-related sensitive resources might provide a basis for denying a permit or requiring mitigation measures or adoption of other vegetation management requirements.

Second, the commenter generally praised the provisions related to shoreline stabilization, wastewater outfalls, and septic systems. With respect to shoreline stabilization, however, it was suggested that appropriate techniques for particular reservoirs should be independently evaluated to account for specific circumstances. TVA agrees and intends to consider specific requests for approval of shoreline stabilization activities on a case-by-case basis. The commenter requested additional action with respect to livestock animals being allowed in the water. TVA appreciates the commenter's concern, but this issue is beyond the scope of this rule.

Third, the commenter described TVA's discussion of the Regulatory Flexibility Act in the preamble to the proposed rule as legalese, misleading, and not reflective of actual economic