

procedures when approving individual vegetative management plans.

The student group recommended that all grandfathered metal drum flotation devices be required to be replaced within a reasonable period of time. TVA agrees that metal drums are undesirable as flotation devices. That is why TVA prohibits them unless they were properly installed before the date on which TVA first issued the prohibition. As noted in the comment, any flotation devices (including grandfathered metal drums) must be replaced if TVA determines them to no longer be serviceable. Any drum that appears likely to cause an environmental problem would be considered unserviceable. TVA considers this to be adequate protection. It would be unnecessarily restrictive to require removal of previously approved flotation that continues to be serviceable.

The student group also requested consideration of a number of issues related to the access corridors allowed by the rules. TVA believes that matters related to access corridors were carefully and adequately considered during the SMP EIS. This rule, which implements the SMP provisions regarding access, reflects TVA's best judgment as to how TVA can best protect shoreline and aquatic resources while at the same time allowing reasonable access to the water.

In addition to the comments received in response to the September 20, 2000, **Federal Register** notice, TVA also received comments from a number of government agencies in response to the EA TVA prepared for the portions of the rule not covered by TVA's SMP EIS. The major points raised by these comments are discussed below.

The Wildlife Resources Division of the Georgia Department of Natural Resources offered several positive comments. The Department also recommended that the variance provisions be modified to define the "minor" variations that could be approved, and to reserve the approval of variances to the TVA Board or the Vice President, Resource Stewardship. It also suggested that variance applications should be required to contain documentation on the affected biotic communities, adequate mitigation to offset any environmental costs of the variance, and why development options short of a variance would not achieve the applicant's goal. TVA appreciates these comments and recommendations. TVA does not consider it feasible, however, to define in advance all of the minor variations that might be appropriate in specific circumstances.

With respect to approval authority, the Vice President, Resource Stewardship, will monitor whether delegated authority is impropvidently exercised. Regarding variance applications, TVA has decided not to change the proposed rule to specify the documentation that should be included with such applications. Rather, TVA will require information to support variance requests on a case-by-case basis depending upon the particular circumstances. The documentation suggested by the Department, among other things, is the type of information that will be required.

The Alabama Historical Commission, the Tennessee Historical Commission, and the Virginia Department of Historic Resources commented that the draft EA did not mention historic properties or TVA's responsibilities under the National Historic Preservation Act of 1966. TVA is careful to fulfill its responsibilities with respect to historic properties and cultural resources as it processes applications for water-use facility permits. Sections 1304.2(c)(1)(v) and 1304.2(c)(2)(vi) address this requirement.

The Kentucky Natural Resources and Environmental Protection Cabinet pointed out that any bank stabilization or stream disturbance requires a § 401 water quality certification by the Division of Water and a § 404 dredge or fill permit from the U.S. Army Corps of Engineers. TVA concurs, and this is referenced in § 1304.2(c) of the rule.

The U.S. Department of Interior, Fish and Wildlife Service (F&WS) raised issues over TVA's policy regarding development within floodplains and its policy on flood control storage capacity. Specifically the F&WS expressed concerns about the destruction of habitat associated with fills and dredging to offset loss of flood storage capacity caused by fills. These issues were discussed in a meeting between TVA and F&WS representatives in April 2001. TVA has reviewed very few of these actions in recent years. These included two fills for access to islands on Douglas Reservoir, removal of material to compensate for a retaining wall and backfill on Fort Loudoun Reservoir, and a project to offset fill from a Hamilton County school on Chickamauga Reservoir. Based on the small number of these requests received, it does not appear that these actions have had a cumulative adverse effect on shallow-water aquatic habitat in the past. For future proposals, TVA would ensure through its review process that the actions do not adversely affect shallow-water aquatic habitat or unique or unusual aquatic habitats. Removal of

material from the flood control storage zone will not take place in shallow-water aquatic habitat or other unique or unusual aquatic habitat, unless there is mitigation to avoid, minimize, rectify, reduce, or compensate for the ecological values affected.

Because the proposed regulations deal with activities in floodplains, the Virginia Department of Environmental Quality and the Virginia Department of Conservation and Recreation recommended consultation with the Federal Emergency Management Agency (FEMA). As a Federal agency, TVA complies with the requirements of Executive Order (E.O.) 11988 in conducting activities and programs affecting land use, including planning, regulating, and licensing (including 26a permitting activities). Section 3(a) of E.O. 11988 States:

The regulations and procedures established under section 2(d) of this Order shall, at a minimum, require the construction of federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program (NFIP). They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

TVA applies this standard not only to its own facilities, but also to facilities permitted by TVA. Therefore, by fulfilling the requirements of E.O. 11988, TVA complies with the NFIP. Thus, further consultation with FEMA is not necessary.

The Virginia Department of Environmental Quality suggested that pump-out stations be required at commercial marinas. Section 1304.403 establishes design and operating requirements for new pump-out stations, but TVA has decided not to require all commercial marinas to have pump-out stations. TVA also has decided not to require retrofitting of existing pump-out facilities. Generally, with respect to matters related to water pollution, TVA defers to other regulatory agencies having appropriate authority to promulgate and enforce clean water regulations. In addition to these rules, however, TVA has implemented a Clean Marina Initiative program to encourage good sanitation management at commercial marinas, and TVA has developed cooperative relationships with State and Federal agencies having jurisdiction over enforcement of marine sanitation requirements. TVA will continue to consider ways to improve marina sanitation.