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**U S Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to Public Notice No.

199700048-3

Issuance Date:

September 9, 2008

Stream:

n/a

Expiration Date:

September 9, 2013

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street, Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

**REGIONAL PERMIT FOR STREAM RESTORATION AND MANAGEMENT BY
INDIVIDUAL LANDOWNERS WITHIN THE
HUNTINGTON AND PITTSBURGH DISTRICTS
IN THE STATE OF WEST VIRGINIA**

TO WHOM IT MAY CONCERN: In accordance with Title 33 CFR 325.5(c)(1) as published on November 13, 1986, in the Federal Register, Volume 51, Number 219, the District Engineer, U.S. Army Engineers, Huntington District has issued a regional permit to individual landowners that will authorize certain stream restoration and management activities, pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

This regional permit authorizes a similar set of activities usually associated with stream repair, including (1) excavation; (2) reduction of sand and gravel bars; (3) bank stabilization; (4) channel restorations; and (5) maintenance of approved work. This regional permit applies to work on all streams within the Huntington and Pittsburgh Districts in West Virginia, except those excluded by the attached special and general permit conditions.

A copy of the required State 401 Water Quality Certification is attached.

Individuals interested in using this regional permit for work in stream(s) on their property must contact one of the West Virginia Conservation Districts to request technical assistance in developing a stream management plan. Representatives from federal and state agencies, listed in Special Condition "A" will be a part of a review team that will provide assistance to the landowner in development of the management plan. A completed plan will be forwarded to the Corps of Engineers for a final decision as to whether the proposed work meets the criteria for the regional permit. A verification letter from the Corps of Engineers is required before restoration and/or maintenance activities may commence.

The landowner is responsible for performance of the work in accordance with the individual stream management plan developed by the West Virginia Conservation Agency and conditions of the regional permit. Land ownership must be proved by the applicant prior to development of the plan. All activities authorized will be subject to compliance with the limitations specified in the special and general conditions of the regional permit and any conditions associated with an

approved water quality certification. The policies of this permit will be subject to reconsideration at any time, but at least every five years. At that time, a complete reevaluation will be performed according to regulations governing the use of regional permits.


Ginger Mullins, Chief
Regulatory Branch

(W)

SPECIAL CONDITIONS FOR FORMULATION OF THE STREAM RESTORATION AND MANAGEMENT PLANS:

A. Stream Management Plans:

Stream management plans shall consist of plan and cross section drawings of the reach of stream requiring restoration and/or maintenance. Both pre-construction and expected post-construction drawings shall be included. One stream management plan shall exist per individual property. **Impacts to jurisdictional waters associated with each stream management plan, which can include a combination of activities listed in Special Conditions C-F, shall not exceed a total of 1000 linear feet.**

B. The Stream Review Team:

The review team will consist of one or more representative(s) from the West Virginia Conservation Agency and/or Conservation District, U.S. Army Corps of Engineers, West Virginia Division of Natural Resources, West Virginia Department of Environmental Protection, and U.S. Fish and Wildlife Service, and will have an opportunity to assist in development of the stream management plans. Each agency will be given adequate notification of team reviews. Decisions by the review team on the acceptability of the proposed plan will be directed to the appropriate Corps of Engineers office for evaluation and a decision as to whether the management plan qualifies for authorization under the regional permit. If the proposal is not acceptable to the team, the landowner will have the option of modifying the plan to make it acceptable or applying directly to the Corps of Engineers for other authorizations as described in 33 CFR 320-332.

C. Excavation of Silt, Sand and Rock Deposits:

1. Will not exceed 3000 cubic yards of material from below the plane of the ordinary high water elevation of the stream. Will not exceed 1000 feet in length per management plan.
2. Must be completed as a single operation and will be performed during periods of low flow. For streams with no flow, excavation is limited such that the existing low flow channel can be maintained.
3. Will not increase original channel width or depth. All low flow channels must be maintained.
4. Excavated material may be placed below the ordinary high water mark **only** if it is to be used as part of a bank protection project (as outlined in section "E").
5. Excavated material will be utilized as part of an approved bank stabilization plan or disposed of at an upland location that will preclude its reentry into the stream or any other water of the U.S, including wetlands, in accordance with the approved stream management plan and local or state regulations. Any topsoil at the disposal site should be removed, stockpiled and redistributed over the excavated material to promote rapid revegetation.
6. Excavation should be done from top of bank where feasible.

D. Sand and/or Gravel Bar Reduction Activities:

1. Will not extend below an elevation which is 12 vertical inches above the surface of the water at the time that the removal activity is performed.
2. Will not include reduction of islands that support woody vegetation.
3. Excavation should be done from top of bank where feasible.
4. Will not exceed 1000 feet in length per management plan.

E. Restoration of Stream Channels:

1. Is allowed to protect structures, cropland, pastures and/or fences.
2. Is allowed to return a channel to its previous location if the channel has recently changed course due to a heavy storm event and/or blockage.
3. Removing mid-channel gravel bars is allowed to correct over-widened channel conditions.
4. The use of log/rock/cross vanes is allowed to improve habitat and increase bank stability. The creation of benches is allowed to improve width/depth ratio of the stream.
5. Excavation should be done from top of bank where feasible.
6. Will incorporate mitigation measures (such as meanders, riffles, pools, low flow channels, etc.) into the restored channel where feasible.
7. Will incorporate measures to prevent excessive turbidity and sedimentation during construction activities.
8. Will not exceed 1000 feet in length per management plan.

F. Bank Stabilization:

1. Will consist of the minimum amount needed for erosion protection, and will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water elevation.
2. Will be planned and installed in a manner to prevent material from re-entering the watercourse under normal or expected high flow conditions.
3. Can consist of rock riprap, crushed concrete, gabions or other acceptable clean, uncontaminated material. Large concrete sections from pavement expansion joint repair and tires are not suitable materials.

4. May include the use of unconsolidated river material if used as a part of stream bank reconstruction and it is stabilized by methods intended to prevent further erosion.
5. Will not be placed in any special aquatic site, including wetlands, nor will it be placed in any location or in any manner so as to impair surface water flow into or out of a wetland.
6. Unconsolidated material will be graded to a 2:1 or flatter slope. All unconsolidated dredged material not used for bank stabilization shall be disposed of in an upland location that would prevent the material from re-entering the stream channel.
7. The use of log/rock/cross vanes is allowed to increase bank stability.
8. Will not exceed 1000 feet in length per management plan.
9. Excavation should be done from top of bank where feasible.

G. Best Management Practices:

1. Points of ingress and egress will be identified to minimize streambed damage from equipment for instream work when specifically authorized by the approved management plan. Maintenance work should be done from the top-of-bank, whenever possible. Initial in-stream work may include the use of a bulldozer if specifically authorized by the approved stream management plan.
2. Removal of mature riparian vegetation not directly associated with the project is prohibited. Disturbance and removal of vegetation at construction areas will be limited to that absolutely necessary to perform the work.
3. All disturbed areas, including stream banks, access roads and disposal areas shall be revegetated using native plant species.
4. Work should be done during low flow.
5. Working during the spawning season on streams that contain native trout (September 15 - February) should be avoided, where possible.
6. Working on stocked streams during stocking periods should be avoided, where possible.
7. Using the channel to transport materials or equipment is prohibited unless specifically authorized by the stream management plan.
8. All heavy earth moving equipment working in or near the stream should be inspected daily for necessary maintenance (i.e. fluid leaks) prior to commencement of work.
9. A copy of the approved plan must be available on-site for inspection by team members during implementation of restoration activities.

10. Maintenance of the stream in accordance with an approved plan is permitted, provided the environmental effects resulting from such activities are similar in nature. Maintenance activities, in accordance with the approved plan, may occur within the limits of the authorized permit until the permit expires.

H. Historic and/or Archaeological Resources:

Activities that may affect historic, cultural, or archaeological sites listed or eligible for listing in the National Register of Historic Places are not authorized by this regional permit unless coordination as required by Section 106 of the National Historic Preservation Act has been completed. To determine if historic, cultural, or archaeological sites have been listed on the National Register, contact the Division of Culture and History. If previously unknown historic or archaeological remains are discovered during activities authorized by this proposed regional permit, work shall cease and immediate notification to the Corps of Engineers is required. The Corps of Engineers will initiate Section 106 coordination with the West Virginia State Historic Preservation Office to determine if the site is eligible for listing on the National Register of Historic Places.

I. Endangered Species:

Due to the presence of threatened and endangered species of plants and animals, work on the following streams is not authorized by the regional permit:

Huntington District

- Upper Kanawha River (Kanawha Falls to Watson Island, River Mile 75.5) (Fayette and Kanawha Counties) (Tubercled-blossum pearlymussel, Epioblasma torulosa torulosa; Pink mucket pearlymussel, Lampsilis abrupta; and Fanshell, Cyprogenia stegaria)
- Elk River (Sutton Dam to slackwater below Coonskin Park) (Braxton, Clay, Kanawha Counties) (Clubshell, Pleurobema clava; Northern riffleshell, Epioblasma torulosa rangiana; and the Pink mucket pearlymussel, Lampsilis abrupta)
- Ohio River (Upper Greenup, R.C. Byrd, Racine, and Belleville Navigation Pools) (Cabell, Mason, Jackson, and Wood Counties) (Pink mucket pearly mussel, Lampsilis abrupta and the Fanshell, Cyprogenia stegaria)
- Hackers Creek of the West Fork River (Lewis County) (Clubshell, Pleurobema clava)
- Meathouse Fork of Middle Island Creek (Doddridge County) (Clubshell, Pleurobema clava)
- Middle Island Creek (Doddridge, Tyler, and Pleasants Counties) (Clubshell, Pleurobema clava)
- South Fork of the Hughes River (Ritchie County) (Clubshell, Pleurobema clava)

- Potts Creek and the South Fork of Potts Creek (Monroe County) (James spiny mussel, Pleurobema collina)
- Greenbrier River (Greenbrier County) (Virginia spiraea, Spiraea virginiana)
- Lower Gauley River (Summersville Dam - Swiss) (Nicholas and Fayette Counties) (Virginia spiraea, Spiraea virginiana)
- Lower Meadow River (Nallen - Gauley River) (Nicholas and Fayette Counties) (Virginia spiraea, Spiraea virginiana)
- Bluestone River (Bluestone Gorge - slackwater Bluestone Reservoir) (Mercer and Summers Counties) (Virginia spiraea, Spiraea virginiana)
- Dingess Branch and Millers Camp Branch of Marsh Fork and associated palustrine emergent and scrub-shrub wetlands (Raleigh County) (Virginia spiraea, Spiraea virginiana)

Pittsburgh District

- Sleepy Creek and the Great Cacapon River (Morgan County) (Harperella, Ptilimnium nodosum)
- Back Creek (Berkeley County) (Harperella, Ptilimnium nodosum)
- Wetlands (Berkeley and Hardy Counties) (Northeastern bulrush, Scirpus ancistrochaetus)
- Evitts Run watershed (Jefferson County) (Madison cave isopod Antrolana lira)
- Jefferson County – the groundwater system including caves, areas near sinkholes, and other groundwater/surface interfaces, especially in the Rippon and Leetown Areas (Madison cave isopod Antrolana lira)

J. National or State Wild and Scenic Rivers

Work in designated components of the National or State Wild and Scenic Rivers Systems, a Federal or State designated wildlife management area or at sites included in the National Registry of Natural Landmarks, is not authorized by this regional permit, unless approval is granted from the administering agency.

K. National Park Service Notification

The National Park Service should be notified at 304-465-0508 of proposed activities within or draining into the Bluestone River and its tributaries within the Bluestone National Scenic River, Gauley River (below Summersville Dam) and Meadow River and their tributaries within the Gauley River National Recreation Area, and the New River (Upper and Lower) and its tributaries within the New River Gorge National River.

GENERAL CONDITIONS FOR STREAM RESTORATION AND MANAGEMENT:

A. The activity authorized by this permit must be maintained in good condition and in conformance with the terms and conditions of the permit. Abandonment of the permitted activity will not relieve this requirement; although a good faith transfer to a third party may be made. Cessation of maintenance of the authorized activity or abandonment without a good faith transfer must be authorized by a modification of this permit by this office, which may require restoration of the area.

B. If any previously unknown historic or archaeological remains are discovered while accomplishing the activity authorized by this permit, notification must immediately be provided to this office of what has been found. The Corps of Engineers will then initiate the Federal and state coordination required to determine if the remains warrant a recovery effort if the site is eligible for listing on the National Register of Historic Places.

C. Representatives from the Corps of Engineers will be allowed to inspect the authorized activity at any time deemed necessary to insure that it is being or has been accomplished in accordance with the terms and conditions of the regional permit. Landowners are encouraged to contact members of the agency management team to resolve issues and/or request technical assistance.

D. Further information:

1. Congressional Authorities. This activity had been authorized pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.
2. Limits of this authorization:
 - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
 - e. This permit does not authorize work at locations that do not have an approved stream restoration plan.
3. Limits of Federal Liability. In issuing this permit, the federal government does not assume any liability for:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on applicant's data. The determination of this office that the activity is not contrary to the public interest was made in reliance on the information provided pursuant to the notification requirement. Any changes to the description may make the project ineligible for authorization by this regional permit.
5. Reevaluation of permit decision. This office may reevaluate its decision on the permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to the following:
 - a. Failure to comply with the terms and conditions of this permit.
 - b. If information provided in support of the project description is false, incomplete, or inaccurate.
 - c. Significant new information surfaces which was not considered in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring compliance with the terms and conditions of the permit and for the initiation of legal action where appropriate. The project proponent will be required to pay for any corrective measures ordered by this office, and for failure to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contact or otherwise and bill the proponent for the costs.

6. Consent to Easement over and under lands identified as flowage easement is attached, if applicable.



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Telephone Number: (304) 926-0495
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Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

August 29, 2008

Ms. Ginger Mullins
Chief, Regulatory Branch
Huntington District, Corps of Engineers
502 Eighth Street
Huntington, West Virginia 25701-2070

Re: Regional Permit 199700048-3 for Stream
Restoration and Management by Individual
Landowners in West Virginia.

Dear Ms. Mullins:

The West Virginia Department of Environmental Protection-Division of Water and Waste Management (WVDEP-DWWM), in conjunction with the West Virginia Division of Natural Resources - Wildlife Resources Section (WVDNR-WRS), has completed review of the above-referenced project.

As an active participant in the structuring of this Regional Permit, all necessary water quality certification conditions were incorporated into the permit during its development. As this is the reissuance of the permit established in 1997 WVDEP has determined that no further water quality certification action is necessary and the Regional Permit should be reissued as written.

Should you have any questions please contact Mr. Lyle Bennett, 401 Certification Program Manager at the above listed address or telephone number.

Sincerely,


Lisa A. McClung, Director

LAM/lbb

Cc: WVDNR-Wildlife Resources Section, Elkins - Roger Anderson

Promoting a healthy environment.