



Public Notice

U S Army USACE
of Engineers
Huntington District

In reply refer to Public Notice No.
2006-2286

Issuance Date:
March 16, 2007

Stream: **N/A**

Closing Date:
April 16, 2007

Please address all comments and inquiries to:

U.S. Army USACE 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 ABANDONED MINE LANDS RECLAMATION FOR THE STATE OF WEST VIRGINIA

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 10: The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: In accordance with Title 33 CFR 322.2 (f), 323.2(h), and 325.2(e)(2) published on November 13, 1986, in the Federal Register, Volume 51, Number 219, the District Engineer, U.S. Army Corps of Engineers Huntington and Pittsburgh Districts are considering issuance of a Regional Permit for Abandoned Mine Lands Reclamation pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. This proposed Regional Permit would be available for use within the entire State of West Virginia.

BACKGROUND: As part of the West Virginia Department of Environmental Protection's (WVDEP) responsibilities for the protection and restoration of the environment in West Virginia, the WVDEP administers two programs that focus on restoration of environmental damage associated with coal mining activities that had occurred prior to the passage of SMCRA in 1977. These Programs are the Abandoned Mine Lands (AML) and the Non-Point Source (NPS) programs.

ABANDONED MINE LANDS PROGRAM: On August 3, 1977, Congress passed the Surface Mining Control and Reclamation Act, Public Law 95-87, (SMCRA) and identified in their statement of findings (Section 101(h) that there are a substantial number of acres of land throughout major regions of the United States disturbed by surface and underground coal mining, on which little or no reclamation was conducted, and the impacts from these unreclaimed lands impose social and economic costs on residents in nearby and adjoining areas as well as continuing to impair environmental quality. Section 102(h) defines one of the purposes of the SMCRA is to promote the reclamation of mined areas left without adequate reclamation prior to the enactment of SMCRA and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land and water resources, or endanger the health or safety of the public. Title IV of SMCRA addresses Abandoned Mine Reclamation, including the establishment of the Abandoned Mine Reclamation Fund (AML Fund) and defines the purposes for which the money may be used.

The U S Department of Interior, Office of Surface Mining (OSM) is the federal agency responsible for ensuring that requirements of SMCRA are implemented, however, many individual states have been given the primary regulatory responsibility. In January 1981, OSM approved West Virginia's State Reclamation Plan, giving the state responsibility and authority to implement a state abandoned mine reclamation program. The West Virginia Department of Environmental Protection (WVDEP), Office of Abandoned Mine Lands and Reclamation (OAML) has been addressing the abandoned mine land problems throughout the state since 1981.

The AML Fund also provides funding through the Appalachian Clean Streams Program to address polluted drainage from abandoned coal mines. Mine drainage may contain high levels of metals and is often acidic. Polluted mine drainage is often referred to as acid mine drainage (AMD), although the water quality may sometimes be alkaline rather than acid. AMD treatment projects are being conducted throughout the state by non-profit watershed groups, frequently using funds from various government organizations.

NON-POINT SOURCE PROGRAM: The WVDEP's Division of Water and Waste Management (DWWM) has the primary responsibility for ensuring the State complies with the Federal Water Pollution Control Act (Title 33 Chapter 26), referred to as the Clean Water Act. Under Section 303(d)(1)(A) of the Act the state is required to "identify those waters within its boundaries for which the effluent limitations required... are not stringent enough to implement any water quality standard applicable to such waters" and to "establish a priority ranking for such waters". This is referred to as the 303(d) List. Paragraph (C) of this section of the Act requires

the state to establish for waters on the List the total maximum daily load (TMDL) of the pollutants. Subsection (2) requires the state to incorporate the TMDL into its “current plan” after approval by the Administrator of EPA.

The NPS program is authorized under Section 319 of the Act that requires the state to develop a “management program for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters”. Subsection (h)(5)(A) authorizes the EPA Administrator to grant funding to the states to implement management programs to “control particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities.”

Water quality impacts resulting from coal mining prior to the regulation of the coal industry after SMCRA are the primary reason that West Virginia’s waters are placed on the 303(d) List. *West Virginia’s Non-point Source Management Plan, 2000 (Plan)* sets the implementation of treatment systems to improve water quality in priority watersheds as a major goal of the NPS program. The *Plan* commits the NPS program to implementing acid mine drainage (AMD) projects in the state’s priority watersheds up to the year 2020.

The NPS program provides grants for project funding without any long term funding for operation and maintenance. This restriction limits the NPS program to funding, almost exclusively, passive AMD treatment systems for coal mine drainage. Treatment systems typically include the collection and treatment of polluted water within and adjacent to affected watercourses.

PERMITTEE INFORMATION: This Regional Permit may be used by the West Virginia Department of Environmental Protection, any non-profit 501(c)(3) watershed organizations or their subsidiaries, and the West Virginia Division of Natural Resources, for projects associated with AML and AMD.

SCOPE OF WORK: This Regional Permit may be used for the following activities, subject to all appropriate terms and conditions: site access and preparation for active AMD treatment such as the establishment of dosing systems, application of limestone fines and construction of limestone leach beds; site work associated with mine land reclamation, other related projects such as wetland construction, enhancement, and removal; stream channel lining; mine seal installation; channel diversion; impoundment construction; underdrain construction, highwall backfilling, regrading and capping of overburden and/or refuse spoils, disposal of spoil, piping, grouting in-situ, stream relocation, coal refuse sediment removal; steel slag placement, bank and/or slope stabilization; construction of sediment control structures, reducing bioreactors, vertical flow ponds, diversion wells, successive alkaline producing systems, anoxic limestone drains; sludge removal, maelstrom oxidizer, refuse excavation and quenching; landslide repairs, subsidence control; mine fire excavation, quenching, trenching, and foaming; shaft backfilling and capping; and retaining wall construction, in addition to other passive and active mine drainage treatment technologies.

APPLICATION PROCEDURES: The following information will be provided to the appropriate Corps' District concerning each project, prior to initiation of restoration work:

- (1) Name and address of the property owner;
- (2) Name and address of the applicant;
- (3) Name and address of entity responsible for project operation, maintenance, and monitoring;
- (4) Exact location of the work, including location map on U.S.G.S. 7.5 Minute Series Quadrangle, Latitude and Longitude in decimal format (ex. Latitude 38.2111110999569 and Longitude -81.3533333000418);
- (5) Project plan view depicting project boundaries and flagged boundaries of types of all waters of the U.S. located within the project boundaries, including a delineation of all wetlands in accordance with "The 1987 Corps of Engineers Wetland Delineation Manual", in addition to delineation of all streams and other waters of the U.S., in accordance with the definitions and limits of jurisdiction contained in 33 CFR 328,
- (6) Ground photographs with photograph locations and directional views depicted on a site plan
- (7) Any appropriate and cross section views;
- (8) Description of all work proposed and description of the ways in which adverse impacts to waters of the U.S. have been avoided and minimized;
- (9) Description of project purpose and need, including baseline conditions and anticipated conditions upon project construction;
- (10) Description of any anticipated maintenance activities;
- (11) Site photographs;
- (12) Amount of material to be discharged into waters of the U.S. expressed in linear feet and acres for streams and acres for wetlands and ponds, in addition to volume of material proposed to be discharged expressed in cubic yards;
- (13) Any other appropriate information, such as compliance with Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act (NHP); and
- (14) Written authorization from the appropriate Corps District is required prior to commencement of any work in waters of the U.S.

AGENCY NOTIFICATION PROCEDURES: Notification to the appropriate resource agencies, including the U.S. Environmental Protection Agency (USEPA), U.S. Fish and Wildlife Service (USFWS), West Virginia Department of Environmental Protection (WVDEP), and West Virginia Division of Wildlife (WVDNR) will be required for the following types of projects:

- (1) Conversion, degradation or elimination of greater than 0.25 acre of waters of the U.S.;
- (2) Relocation of streams;
- (3) Valley fills impacting greater than 300 linear feet of stream for projects in which fill construction is necessary to provide for the disposal of excess spoil; and
- (4) Projects involving the placement of steel slag.

The Corps will provide the resource agencies copies of the permit application and plans and will request agency review within a 15 day timeframe. To expedite this review, it is requested that permit applications for projects subject to agency notification contain one original hard copy and four agency copies in electronic format as CDs.

The permittee is responsible for ensuring the work is performed in accordance with the terms and conditions of the permit. Work performed under this authorization can be suspended, modified or revoked in accordance with 33 CFR 325.7 if a later determination is made by the Corps that the information provided was inaccurate, incomplete or done in bad faith. In the event of such a determination, enforcement action may be initiated.

WATER QUALITY CERTIFICATION: This Public Notice will serve as a request to the West Virginia Department of Environmental Protection to act on a Section 401 Water Quality Certification for this Regional Permit.

REGIONAL PERMIT EVALUATION: The policies of this Regional Permit are subject to review and reconsideration at any time. At a minimum of every five years, this Regional Permit, if issued, will undergo a comprehensive re-evaluation. This process will involve the evaluation of activities authorized by this permit relative to the overall effects to the aquatic environment in addition to an evaluation of this permit in accordance with the regulations governing the establishment and use of regional permits.

**Special Conditions for Regional Permit for Abandoned
Mine Lands Reclamation for the State of West Virginia**

- a. All work shall be performed in an environmentally, technically, and economically sound manner and shall incorporate natural stream channel design principles to the maximum extent practicable.
- b. Stream grouting shall be limited to those projects for which other stabilization methodologies are not practicable.
- c. Adverse impacts to existing wetlands shall be avoided to the maximum extent practicable.
- d. Due to potential for adversely affecting threatened or endangered species, this permit will not apply to work in the following waters:

Huntington District:

Upper Kanawha River (Kanawha Falls-Wheeler Islands, 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 - 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 spinymussel, 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) (riverine emergent wetland habitat)

Back Creek (Berkeley County) (Harperella, Ptilimnium nodosum) (riverine emergent wetland habitat)

Wetlands (Berkeley and Hardy Counties) (Northeast bulrush, Scirpus ancistrochaetus)

Evitts Run watershed (Jefferson County) (Madison cave isopod Antrolana lira)

Rippon and Leetown areas – especially near sinkholes or other groundwater/surface water interfaces (Jefferson County) (Madison cave isopod Antrolana lira)

- e. Stabilization through the planting of vegetation is highly encouraged and shall be limited to those species native to West Virginia.
- f. A copy of this permit must be posted on-site during construction activities.
- g. For all AMD projects, the permittee will be required to perform semi-annual water quality sampling for a minimum of two years. Monitoring will be conducted at the final discharge(s) of the completed remediation project and the testing results will be submitted to the appropriate Corps District, annually and will include all sampling performed for that project during the year.
- h. This regional permit will not authorize:
 - 1. Activities that may result in more than minimal adverse impacts to the aquatic environment;
 - 2. Activities that would affect historic, cultural or archaeological sites listed or eligible for listing in the National Register of Historic Places, unless coordination as required by Section 106 of National Historic Preservation Office and the Advisory Council on Historic Preservation. Permit applicants will contact the WV Division of Culture and History to determine if historic, cultural or archaeological sites have been listing on the National Register;

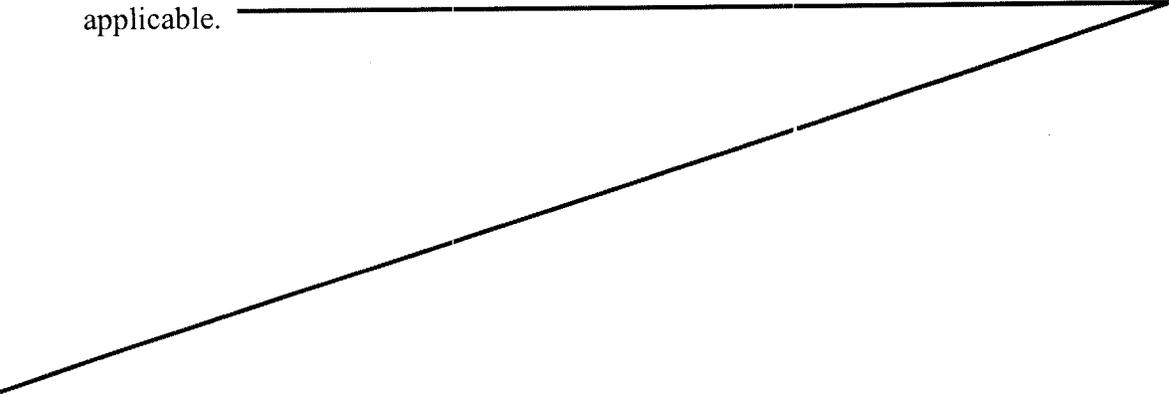
3. Activities at sites that may affect proposed or listed endangered species or their designated critical habitat, unless consultation under Section 7(a)(2) of the Endangered Species Act has been completed. Permit applicants may contact the U.S. Fish and Wildlife Service to determine the presence of potential threatened or endangered species or their habitats;
 4. Fills in designated components of the National or State Wild and Scenic Rivers Systems, Federal or State designated wildlife management areas or at sites included in the National Registry of Natural Landmarks will not be authorized, unless approval is granted from the administering agency;
 5. Work proposed in Nationwide Rivers Inventory streams unless coordinated with the National Park Service. Inventory Rivers within the State of West Virginia include: Cherry River, South Fork of Cherry River, North Fork of Cherry River, Cranberry River, Elk River, Left Fork of Elk River, Gauley River, Greenbrier River, East Fork of Greenbrier River, West Fork of Greenbrier River, Holly River, Left Fork of Holly River, Hughes River, North Fork of Hughes River, Laurel Fork, Little Kanawha River, Mud River and New River;
 6. Prior to commencement of work, Miss Utility of West Virginia should be contacted at 1-800-245-4848 to determine the location of underground utility lines in the project area.
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**General Conditions for Regional Permit for Abandoned
Mine Lands Reclamation for the State of West Virginia Stream**

- a. 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 initiate the Federal and state coordination required to determine if the remains warrant a recovery effort if the site is eligible for listing in the National Register of Historic Places.
- b. 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.
- c. Further information
 1. Congressional Authorities. This activity has 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.
 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 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 you provided pursuant to the notification requirement. Any change 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 this 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 this office did not consider 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 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail 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 contract to otherwise and bill the proponent for the cost.

7. Consent to easement over and under lands identified as flowage is attached, if applicable. _____
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CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to

Ms. Jennifer Walker, Project Manager, South Regulatory Section,
CELRH OR-FS; U. S. Army Corps of Engineers Huntington District
502 Eighth Street; Huntington, West Virginia 25701-2070

Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please call Ms. Jennifer Walker of the South Regulatory Section at 304-399-6956.


Ginger Mullins, Chief
Regulatory Branch

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