



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

Public Notice

In reply refer to Public Notice No.
2007-648

Issue Date:
November 1, 2007

Streams: Kanawha River mile 0.0 to 90.0
And
Ohio River mile 127.2 to 438.0

Closing Date:
November 30, 2007

Please address all comments and inquiries to:
U.S. Army Corps of Engineers, Huntington District
ATTN: CELRH-OR-F Public Notice No. 2007-648
502 Eighth Street
Huntington, West Virginia 25701-2070 Phone: (304) 399-5710

PROPOSED REGIONAL PERMIT FOR BARGE UNLOADING ALONG THE KANAWHA AND OHIO RIVERS IN THE HUNTINGTON DISTRICT

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 watercourse, 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.

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 District, Huntington, West Virginia has proposed a regional permit to authorize impacts to waters of the U.S. for barge unloading activities, pursuant to Section 10 of the Rivers and Harbors Act 1899.

The concept of permitting minor non-controversial activities through the use of a regional permit is extremely useful. It provides a method to authorize activities on waterways with no delay but with the same safeguards presently provided by individual processing. The regional permit is intended to comply with all coordination requirements as legislated by Congress for a specific type of activity, thus negating the requirement for coordination of each individual application. Regional permits are subject to reconsideration at any time, but at least every five years.

LOCATION: The proposed permit would authorize limited unloading activities along the Kanawha River, from its confluence with the Ohio River, near Point Pleasant, in Mason County, West Virginia to river mile 90.0, near Alloy, in Fayette County, West Virginia.

The proposed permit would also authorize limited unloading activities along the Ohio River, from river mile 127.2, near New Martinsville, in Wetzel County, West Virginia to river mile 438.0, near Foster, in Bracken County, Kentucky.

HISTORY: The current regional permit for barge unloading, announced in Public Notice 200200400, expired August 14, 2007. Past use of this permit has resulted in no apparent controversy, and it is now being reevaluated to determine whether it should be renewed for an additional five years.

DESCRIPTION OF THE PROPOSED WORK: This regional permit will authorize the temporary unloading of non-hazardous, non-polluting materials along the following waterways:

The Kanawha River from Point Pleasant, West Virginia (mile 0.0), to Alloy, West Virginia (90.0 miles upstream of Point Pleasant, West Virginia).

The Ohio River from New Martinsville, West Virginia (127.2 miles downstream of Pittsburgh, Pennsylvania), to Foster, Kentucky (438.0 miles downstream of Pittsburgh, Pennsylvania).

This regional permit will not authorize indefinite and/or continuous unloading or construction of permanent structures below ordinary high water elevation.

If the type of unloading activity proposed would normally require permanent docking or mooring facilities, the District Engineer (or his authorized representative) reserves the right to require processing of an individual permit application.

The conditions to be used in the regional permit, if renewed, are attached. When performed in accordance with the attached conditions, the activity will have a minimal adverse cumulative effect on the environment; therefore, an Environmental Impact Statement is not required. Information available at the District Office indicates that the proposed activity complies with the requirements for issuance of a regional permit.

HISTORIC AND CULTURAL RESOURCES: A copy of this public notice will be sent to the Kentucky Heritage Council, the Ohio Historic Preservation Office and the West Virginia Division of Culture and History. This public notice serves as a request for any additional information they may have on whether any properties listed or eligible to be listed in the national Register of Historic Places may be present in the area which would be affected by the activity, pursuant to Section 106 of the National Historic Preservation Act of 1966 (as amended).

ENDANGERED/THREATENED SPECIES REVIEW: A copy of this public notice will be sent to the U.S. Fish and Wildlife Service Offices in Reynoldsburg, Ohio; Frankfort, Kentucky; and Elkins, West Virginia. This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b) (1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

SOLICITATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

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:

U.S. Army Corps of Engineers, Huntington District
Attn. CELRH-OR-FS, Public Notice 2007-648
502 Eighth Street
Huntington, West Virginia 25701-2070

Please note 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 contact Mr. Richard A. Hemann of the South Regulatory Section at 304-399-5710.


Ginger Mullins, Chief
Regulatory Branch

(K,O, WV,)

**SPECIAL AND GENERAL CONDITIONS
FOR REGIONAL GENERAL PERMIT 2007-648
FOR BARGE UNLOADING**

SPECIAL CONDITIONS:

1. The permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States. Mooring will be restricted to a distance of one barge width riverward of the crane barge or 100 feet wide, whichever is less. Material barges will not be moored more than two barges wide.
2. The floating equipment must be spudded or secured to anchors, deadmen or other such devices. Mooring lines or cables attached to deadmen constructed above ordinary high water are allowed; however, construction of pile clusters, sheetpile cells or any other permanent mooring devices below ordinary high water elevation is not permitted.
3. No dredging or depositing of material below ordinary high water elevation will be authorized.
4. All measures necessary will be taken to prevent runoff from storage areas or spills (bilge, ballast or washwater) from barges from entering the waterway.
5. Machinery used for handling and conveying loose materials will be designed to prevent spilling of materials into the waterway or onto streambanks and materials stockpiled or stored onshore will not wash into the river or fall over the riverbank.
6. Bank disturbance and clearing of vegetation will not exceed a width of 50 feet. Only one width of 50 feet may be cleared at any single stockpiling location. During bank clearing, no material, including vegetation, will be pushed into the waterway or placed such that it may be washed into the waterway.
7. All bare or exposed soil in the work areas will be seeded and mulched immediately after disturbance and again after completion of the unloading activity, if needed.
8. Only non-polluting materials, such as sand, gravel, rock, limestone, steel, machinery or other inert material may be unloaded. Handling of materials such as salt, coal, and hazardous or toxic substances will not be authorized.
9. Unloading is restricted to the mainstem riverbanks. Unloading shall not be performed in or on wetlands, embayments or islands.
10. Written notification must be provided to this office a minimum of 30 days prior to commencement of work. Notification must include information pertaining to the location, the material to be unloaded, the type of facilities to be used, the time of day of activity, the duration of activity, the responsible individual and a telephone contact number.
11. The Huntington District Dredge Team must be provided information a minimum of 20 days prior to the commencement of work to advise navigation interests of the proposed activity. Information necessary for the required notification are provided in the attached Notice to Navigation Information Sheet.

12. Activities must not interfere with the Government maintenance of navigation or operation of navigable structures. This permit is not applicable for the area between one mile upstream and one mile downstream of the arrival points at any navigation locks.

13. Unloading activities must not be located such that it might affect property listed in or eligible for inclusion in the National Register of Historic Places unless coordination as required with the appropriate State Historic Preservation Officer and the Advisory Council on Historic Preservation has been completed.

14. Sites within the permit area that are identified by the District Engineer as being freshwater wetlands, habitat for rare or endangered species or environmentally sensitive areas are specifically excluded from this regional permit.

15. Indeterminate and/or continuous unloading is not authorized by provisions of this permit. Activities that would normally require permanent docking or mooring facilities, as determined by this office, will not qualify for authorization under this regional permit. (Individual application processing may be required).

GENERAL CONDITIONS:

1. The activity authorized by this permit must be maintained in good condition and in conformance with the terms and conditions of this 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.

2. If any previously unknown historic or archaeological remains are discovered while accomplishing the activity authorized by this permit, the permittee must cease work immediately and notify this office. The Corps of Engineers will initiate the Federal and state coordination necessary to determine if the remains warrant a recovery effort if the site is eligible for listing in the National Register of Historic Places.

3. 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.

Further information:

1. Congressional Authorities. This activity has been authorized pursuant to: Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

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 the following:

- 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 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 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. The information provided in support of the project description proves to have been 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 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 contract or otherwise and bill the proponent for the cost.

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

Notice to Navigation Information Sheet

CELRH-OR-TD Fax: (304) 399-5167 Phone: (304) 399 – 5239 /6977 /6982

Date: _____

Received by: _____

Navigation number assigned: _____

Name (contractor/sub-contractor): _____

Telephone Number: _____

Contact Person: _____

City: _____ State: _____

Who work is being done for: _____

City: _____ State: _____

Type of work that is being done: _____

Location (river/milepoint/right or left descending): _____

Description of floating plant (boat and name/type of equipment they will use/how many pieces of equipment): _____

Monitoring which marine channels at the worksite? _____

Location of floating plant during non-working hours: _____

Date work will begin: _____

Completion Date: _____

Work hours (hours per day/days per week): _____

Note: Work can NOT begin sooner than 14 days once NTN is complete.

PERMIT NUMBER :

For Internal
Use Only
___ Mail
___ Email
___ Intranet
___ Infoport
___ File