



**US Army Corps  
of Engineers**  
Huntington District

# Public Notice

In reply refer to:	Issuance Date:
<b>Public Notice No.</b> 199600911-1	26 November 2001
Application No.:	Expiration Date:
Huntington District	25 November 2006
Address comments to:	US Army Corps of Engineers, Huntington District 502 Eighth Street ATTN: CELRHE Huntington, West Virginia 25701-2070

## **REGIONAL PERMIT FOR STREAM RESTORATION TO BE PERFORMED BY THE WV SOIL CONSERVATION AGENCY WITHIN THE HUNTINGTON DISTRICT IN 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 District, Huntington, West Virginia has issued a regional permit for stream restoration activities, to be performed by the WV Soil Conservation Agency (WVSCA), pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

This regional permit will be used by the WVSCA to assist public or private landowners in alleviating hazards to life and property resulting from sudden watershed impairment. The permit authorizes debris/deposition removal, bank stabilization, stream erosion repair and restoration of channel alignments. Authorization applies to all streams within the Huntington District in West Virginia, except those excluded by special and general permit conditions, or conditions imposed by the state water quality certification.

The following information will be provided to the Corps' Huntington office concerning each project, prior to initiation of restoration work:

- (1) Name of the property owner;
- (2) Exact location of the work, the name(s) of streams, quad sheet location;
- (3) Brief description of the work to be performed; and
- (4) Any other appropriate information.

The WV Soil Conservation Agency is responsible for assuring that the work is accomplished in accordance with the 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 work was inaccurate, incomplete or done in bad faith. In that case, enforcement action may be initiated.

Conditions and requirements of this regional permit including a copy of water quality certification from the West Virginia Division of Environmental Protection are attached.

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

For further information, please contact Susan Joy at 304-529-5710.



JOHN D. RIVENBURGH  
Colonel, Corps of Engineers  
District Engineer

(R,W)

**SPECIAL CONDITIONS FOR STREAM RESTORATION BY WVSCA:**

a. The permit will apply only in counties declared to be disaster areas by the Governor for the specific sudden watershed impairment.

b. Notice shall be given to resource agencies (WVDNR, West Virginia Division of Environmental Protection, U.S. Fish and Wildlife Service ([USFWS]) inviting them to field reviews of proposed exigency projects. At the earliest possible date, WVSCA shall provide location and construction details of exigency projects to the resource agencies. For non-exigency projects the WVSCA shall invite resource agencies to the field reviews and provide WVDNR and USFWS construction and location details for review a minimum of 15 days prior to initiation of work.

c. The maximum length of a single and complete project per landowner will be limited to 150 meters, unless approved during a site review by resource agencies.

d. The work will be performed in an environmentally, technically and economically sound manner. For non-exigency projects, consideration will be given to incorporating Natural Stream Channel Design principles into the project whenever practicable. Only clean, uncontaminated material will be used. Acceptable materials include durable stone and concrete rubble. Any reinforcing rods extending from rubble must be cut flush with the concrete surfaces. Blast furnace slag, asphalt, wood, waste metal, bituminous pavement, solid waste, glass and ceramic wastes, tires, appliances, automobile bodies, and other deleterious materials are not acceptable.

e. Instream work will be limited to that absolutely necessary for completion of restoration activities.

f. Any project or portion of a project authorized by this permit that must be repaired shall be critically reviewed in the field by resource, regulatory, and construction agencies to assess likely causes and to agree on measures to prevent future failure.

g. Exigency work under this regional permit will require notification to the Fish and Wildlife Service. Due to the potential for adversely affecting threatened or endangered species, this permit will not apply to emergency (non-exigency) work in the following waters:

Beaver Creek in Raleigh County

Bluestone River in Summers and Mercer Counties

Buffalo Creek in Raleigh County

Clover Creek in Pocahontas County  
Elk River below Sutton Dam to the slackwater of the Kanawha River in Braxton, Clay and Kanawha Counties  
Gauley River in Nicholas County  
Greenbrier River in Greenbrier County  
West Fork Greenbrier River in Pocahontas County;  
Hughes River in Ritchie and Wirt Counties  
North Fork Hughes River in Ritchie County  
South Fork Hughes River in Ritchie and Wirt Counties;  
Kanawha River from Kanawha Falls to Alloy in Fayette County  
Little Kanawha River in Calhoun, Gilmer and Wirt Counties  
Marsh Fork in Raleigh County  
Meadow River in Fayette, Greenbrier, and Nicholas Counties  
Meathouse Fork of Middle Island Creek in Doddridge County  
Middle Island Creek in Doddridge, Tyler and Pleasants Counties  
New River in Raleigh, Summers and Fayette Counties  
Ohio River in Cabell, Mason and Wood Counties  
Potts Creek in Monroe County  
South Fork of Potts Creek in Monroe County

h. **Mitigation**, at a minimum, will consist of random large boulder placement along the toe of the bank at a rate of one per 5 meters. In high bedload streams WVSCA should contact WVDNR for technical assistance in accessing proper mitigation. Revegetation must include seeding and mulching of all disturbed areas and the establishment of permanent vegetative cover as deemed appropriate. Planting of native or acceptable non-native shrub and/or tree seedlings along the top of the bank (1 seedling per 2 meters) is strongly encouraged. Only native vegetation will be used in the re-vegetation of projects within the confines of the National Park system. Native vegetation may be used in other areas where feasible and under conditions which provide bank stabilization in support of stream restoration.

- i. A copy of this permit must be posted on-site during construction activities.
- j. **This regional permit will not authorize:**
  - 1. Normal operation and maintenance activities;
  - 2. Problems that existed prior to the disaster;
  - 3. Repair, construction or maintenance of roads, bridges or utilities;

4. Channel modification that increases the pre-disaster capacity, including the construction of dikes; or
  5. Repair, construction or maintenance of "rock piles" that are not constructed in accordance with approved dike criteria.
  6. Projects where, following on-site review, the Soil Conservation Agency and the resource agencies are in disagreement over construction methods or mitigative measures. These projects must be authorized by individual permit.
  7. Activities which 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 the National Historic Preservation Office and the Advisory Council on Historic Preservation. To determine if historic, cultural or archaeological sites have been listing on the National Register, the WVSCA will contact the WV Division of Culture and History.
  8. Activities at sites that may affect proposed or listed endangered species or their designated critical habitat, unless consultation under Section 7 (c) of the Endangered Species Act has been completed. To determine if listed or proposed endangered species or their critical habitats are present at the proposed site, the WVSCA will contact the U.S. Fish & Wildlife Service.
  9. 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.
  10. Work proposed in Nationwide Rivers Inventory streams unless coordinated with the National Park Service. Inventory Rivers within the Huntington District 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.
- k. Prior to commencement of stream restoration 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.

### **GENERAL CONDITIONS FOR STREAM RESTORATION BY WVSCA:**

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 the 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:

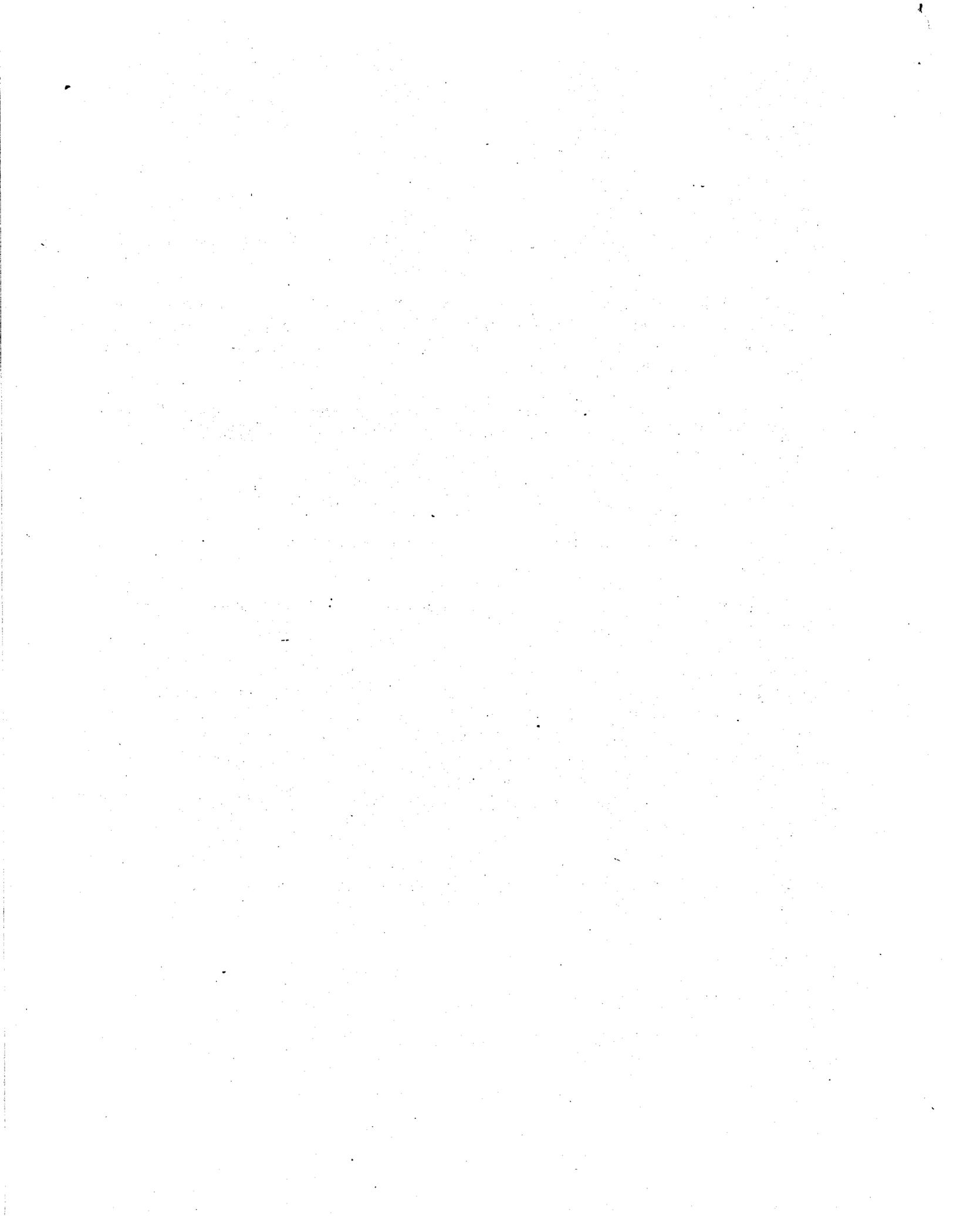
(a) Failure to comply with the terms and conditions of this permit.

(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 or otherwise and bill the proponent for the cost.

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





DIVISION OF WATER RESOURCES  
1201 GREENBRIER STREET  
CHARLESTON, WEST VIRGINIA 25311-1088  
Telephone Number: 304/558-2107  
Fax Number: 304/558-5905

---

## West Virginia Department of Environmental Protection

---

Bob Wise  
Governor

Michael O. Callaghan  
Secretary

October 26, 2001

**Michael D. Gheen, Chief  
Regulatory Branch  
U.S. Army Corps of Engineers  
Huntington District - CELRH-OR-F  
502 Eighth Street  
Huntington, West Virginia 25701-2070**

**RE: Public Notice No. 199600911-1, Proposed  
Regional Permit for Stream Restoration by the WV  
Soil Conservation Agency (SCA) within the  
Huntington District in the State of WV.**

**Dear Mr. Gheen:**

**The West Virginia Department of Environmental Protection, Division of Water Resources (WVDEP) in conjunction with the Division of Natural Resources, Wildlife Resources Section (WVDNR) has completed its review of Public Notice 199600911-1, Proposed Regional Permit for Stream Restoration by the West Virginia Soil Conservation Agency (WVSCA) within the Huntington District in the State of West Virginia dated August 10, 2001.**

**The Proposed Regional Permit would be used by the WVSCA for stream restoration projects that, if not completed, would pose a threat to life and property. The proposed permit would cover such activities as debris/deposition removal, bank stabilization and restoration of channel alignments.**

**WVDEP and WVDNR supports the use of this Regional Permit to allow the WVSCA to complete, in a timely manner, exigency and non-exigency projects that have minimal environmental impact. The following modifications to the conditions of the permit are offered to further protect resources and allow WVSCA to perform this necessary function.**

---

**"To use all available resources to protect and restore West Virginia's  
environment in concert with the needs of present and future generations."**

---



West Virginia  
Department of  
Environmental Protection

---

- 1. Existing Special Condition (b) states that WVSCA shall notify WVDNR five (5) days prior to initiation of exigency work. This provision may result in unnecessary delays in the start of a project. WVDNR requests that this condition be modified to the following:**
  - b. Notice shall be given to resource agencies (WVDNR, West Virginia Division of Environmental Protection, U.S. Fish and Wildlife Service [USFWS]) inviting them to field reviews of proposed exigency projects. At the earliest possible date, WVSCA shall provide location and construction details of exigency projects to the resource agencies. For non-exigency projects the WVSCA shall invite resource agencies to the field reviews and provide WVDNR and USFWS construction and location details for review a minimum of 15 days prior to initiation of work.**
  
- 2. There may be circumstances where traditional stream restoration techniques (i.e., rip-rap, gabion baskets and dredging) are not the most "environmentally, technically and economically sound" project design options. Therefore, WVDNR requests the following wording be added to Condition d:**
  - d. The work will be performed in an environmentally, technically, and economically sound manner. For non-exigency projects, consideration will be given to incorporating Natural Stream Channel Design principles into the project whenever practicable. Only clean, uncontaminated . . . .**
  
- 3. Random boulder placement in some stream types, especially high bedload streams, will result in channel instability and may allow formation of mid-channel gravel bars. Therefore, we recommend the following changes to Condition h:**
  - h. Mitigation, at a minimum, will consist of random large boulder placement along the toe of the bank at a rate of one per five meters. In high bedload streams WVSCA should contact WVDNR for technical assistance in accessing proper mitigation. Revegetation must include . . . .**
  
- 4. There must be clarification on existing Condition j (4) stating that this permit does not authorize the construction of dikes that serve to confine the flow of the stream to an enlarged channel and restrict access to the adjacent floodplain. We suggest the following modification.**
  - j (4). Channel modification that increases the pre-disaster channel capacity, including the construction of dikes; or . . . .**

Mr. Michael Gheen  
Page three  
October 26, 2001

State 401 Certification, as required by the Clean Water Act, is granted with the above recommendations as conditions. Certification shall be effective fifteen (15) days after receipt unless appealed under Title 47, Series 5A, Section 8, of the Code of State Regulations, State Certification of Activities Requiring Federal Licenses and Permits. The appeal must be in writing and set forth action complained of and the grounds upon which the appeal is based. It should be directed to: Director, Division of Water Resources, West Virginia Department of Environmental Protection, Greenbrier Street, Charleston, West Virginia 25311-1088, Attention: Regulatory Review Program.

Sincerely,

**DIVISION OF WATER RESOURCES**

  
Allyn G. Turner, Director

AGT/bb

Copies provided:

**WV State Soil Conservation Agency**  
Capitol Building  
1800 Kanawha Blvd. East  
Charleston, WV 25311  
**U.S. Environmental Protection Agency**  
**U.S. Fish and Wildlife Service**  
**WVDNR-Wildlife Resources Section, Elkins**  
**WVDEP-DWR, Regulatory Review Program**

---

"To use all available resources to protect and restore West Virginia's environment in concert with the needs of present and future generations."

---

**DEP**

West Virginia  
Department of  
Environmental Protection

