



**US Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to:	Issuance Date:
Public Notice No. 200200400	May 8, 2002
Application No.:	Expiration Date:
N/A	June 7, 2007
Address comments to:	US Army Corps of Engineers, Huntington District 502 Eighth Street ATTN: CELRHE Huntington, West Virginia 25701-2070

PROPOSED REGIONAL PERMIT FOR BARGE UNLOADING

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 Engineer District, Huntington, West Virginia, proposes to reissue a regional permit for barge unloading pursuant to Section 10 of the Rivers and Harbors of 1899.

The reissuance of this permit would authorize the unloading of non-hazardous, non-polluting materials along the following waterways:

Kanawha River, Point Pleasant, West Virginia to Alloy, West Virginia (mouth to mile 90.0)

Ohio River, New Martinsville, West Virginia to Foster, Kentucky (mile 127.2 to mile 438.0)

The current regional permit for barge unloading, announced in Public Notice 199700477, will expire on July 11, 2002. Past use of this permit has resulted in no apparent controversy, and is now being reevaluated to determine whether it should be renewed for an additional five years. This notice is intended to allow the opportunity to comment on the proposed renewal.

The conditions to be used for this the regional permit, if renewed, are attached. The general conditions reflect current regulatory requirements. Regional permits are subject to reconsideration at any time, but at least every five years.

Under the regional permit, those who wish to perform unloading activities must notify the District Office at least 30 days prior to the initiation of work. Such notification must conform to Special Condition 10. Unloading to be performed in compliance with the listed conditions will normally qualify for authorization. Work may commence at the end of the 30-day period unless the project proponent is notified that the proposal does not satisfy the conditions of the regional permit.

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

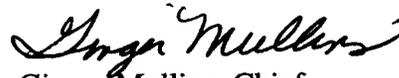
Any later determination by the Corps that the permittee's request was inaccurate, incomplete, or made in bad faith or that the activity does not comply with permit conditions, will result in appropriate enforcement action under 33 CFR Part 326. The District Engineer reserves the right to require an individual permit application after review of any plans submitted. The project proponent will be notified of this requirement within the 30-day notification period.

All work performed in accordance with the conditions attached should only have minimal adverse individual and cumulative effect on the environment, therefore, an Environmental Impact Statement is not required. Review of the typical work involved in barge unloading activities indicates that these activities would comply with the requirements for authorization by regional permit.

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; among 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. Any person who has an interest that may be adversely affected by the reissuance of this regional 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 that may be affected and the manner in which the interest may be adversely affected by the activity.

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. 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.

If you have any questions concerning this public notice, please contact Kimberly Courts-Brown at (304) 529-5210.



Ginger Mullins, Chief
Regulatory Branch

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**SPECIAL AND GENERAL CONDITIONS FOR
THE PROPOSED REGIONAL PERMIT 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 devices. Mooring lines or cables attached to deadmen constructed above the ordinary high water elevation are allowed, however, construction of pile clusters, sheetpile cells, or any other permanent mooring devices below the ordinary high water elevation is not permitted.
3. No dredging or deposition of material below the 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 and 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 wetlands, embayments, or around island areas.

10. Proper notification must be written and include information pertaining to the location, the material to be unloaded, the type of facilities to be used, the time of day that the unloading activities will take place, the duration of the activity, the responsible individual, and a telephone contact number.

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

12. Unloading activities must not be located such that it might affect property listed on 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.

13. 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.

14. The provisions of this permit do not authorize indeterminate and or/continuous unloading. 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 this authorized activity or abandonment without a good faith transfer must be authorized by a modification of this permit by this office. The modification may require restoration of the area.

2. If any previously unknown historic or archeological remains are discovered while accomplishing the activity authorized by this permit, notification must immediately be provided to this office. 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.

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 of this Regional Permit.

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 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 projects.

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. Dangers to persons, properties 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 the 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 the regional permit.

5. Reevaluation of the permit decision: This office may reevaluate its decision on the permit at any time that the circumstances warrant. Circumstances that could require reevaluations 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 that 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 lands owned by the government is attached, if applicable.