



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

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# Public Notice

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In reply refer to Public Notice No.

Issuance Date: January 20, 2005

CELRH-05-LOP-1

Stream: Ohio River

Closing Date: February 19, 2005

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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

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## LETTER OF PERMISSION PROCEDURE

### ACTIVITIES AT BELLEVILLE LOCK AND DAM PROJECT POOL AREA

**PUBLIC NOTICE:** The purpose of this public notice is to inform you of the issuance of emergency permit procedures for work in which you might be interested.

**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.

**LOCATION:** Belleville Lock and Dam Project Pool Area (Elevation 582.0 NGVD) between Ohio River Mile 161.7 and 203.9 in the states of Ohio and West Virginia.

## LETTER OF PERMISSION PROCEDURE

### ACTIVITIES AT BELLEVILLE LOCK AND DAM PROJECT POOL AREA

Interested parties are hereby notified that, in accordance with Title 33 CFR 325.2(e)(1), published in the Federal Register on November 13, 1986, the U. S. Army Corps of Engineers, Huntington District, has adopted a Letter of Permission (LOP) procedure for authorizing the work described herein in the States of Ohio and West Virginia. The purpose of this procedure is to expedite Section 10/404 authorization for the activities described below when such activities would not pose substantial adverse individual or cumulative impacts on the aquatic environment. Each LOP issued will include the general conditions identified herein by reference and case-specific provisions intended to protect the environment, including natural and cultural resources. Work that does not comply with these provisions may require authorization by individual permit. However, compliance with the LOP procedure, including the general conditions, does not guarantee authorization of the work by LOP. Work or structures that would have unacceptable impacts on the public interest are not authorized. Activities requiring Department of the Army authorization, not specifically covered by this LOP, are prohibited unless authorized by a separate permit.

### BACKGROUND

On January 6, 2005, six barges became trapped against the gates at Belleville Locks and Dam after the Motor Vessel Jon J. Strong broke apart while locking through the dam. Several of the barges wrapped around the gate piers and are affecting the operations of Gates 3, 4, 5, 6, and 7. Consequently, there is a possibility of losing the navigation pool above Belleville Locks and Dam to Willow Island Locks and Dam if the barges cannot be freed from the gates.

Emergency repair of existing structures and bank stabilization may be eligible for an exemption under 33 CFR 323.4(a) or qualify for a general permit (33 CFR 330); however, maintenance dredging with side casting requires a separate permit authorization. Side casting of the dredged material can not be avoided since limits on navigation would prevent the use of barges for transporting dredged material to upland disposal areas. This LOP in combination with exemptions and general permits is only intended to address the emergency need for dredging and side casting associated with providing adequate water supplies to consumers and/or navigation safety within fleeting and moorage areas during this discrete event. This application procedure will also suffice as the LOP application for work proposed in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899, not covered by an exemption or general permit. When additional Section 10 authorization is required, the Section 10 work will be evaluated using the Section 10 LOP procedures at 33 CFR 325.2(e)(1).

## SCOPE OF WORK

Work that may be authorized by LOP using this procedure includes any dredging and dredge disposal (side casting) for existing authorized intake/outfall and docking structures within the Belleville Lock and Dam Project Pool Area (Elevation 582.0 NGVD) between Ohio River Mile 161.7 and 203.9. Applications will be prioritized based upon the daily current pool conditions and operational considerations.

## CONDITIONS OF THE LETTER OF PERMISSION

In addition to limitations discussed in the scope of work, projects authorized by LOP are subject to the general conditions contained in Appendix A.

## WATER QUALITY CERTIFICATION

The Ohio Environmental Protection Agency (OEPA) and West Virginia Department of Environmental Protection (WVDEP) have waived certification pursuant to Section 401 of the Clean Water Act (CWA), for the activities for which they are responsible.

## AUTHORIZATION FROM OTHER AGENCIES

The permittee is responsible for obtaining any additional federal, state, or local permits that may be required.

1. The permittee understands and agrees, if future operations by the United States require the removal, relocation or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
2. Any work on lands or in waters under the jurisdiction of any river authority or other operating agency may require a permit from that agency. For projects proposed in West Virginia, the Division of Natural Resources (WVDNR)-Office of Real Estate Management should be contacted at 304-558-3225 to determine if a Public Lands Corporation permit will be required prior to the initiation of any maintenance dredging activities.
3. The attached Consent to Easement (Appendix B), if applicable, is hereby incorporated as part of this authorization.
4. You must notify Mr. Kent Browning, of our Navigation Office, at (304) 399-5239 prior to commencement of the proposed dredging operation so that the appropriate navigation interests may be notified. You should complete and submit the "Notice to Navigation" form (Appendix C) to Mr. Browning at the above location. This form will be used to prepare a Notice to Navigation Interests that announces your proposed construction activities.

5. Activities within a 100-year floodplain may require a permit from the local floodplain administrator. In addition, evidence the project meets non-encroachment restrictions in regulatory floodways may be required.
6. Activities performed outside the permit area of the Corps that may affect a federally listed endangered or threatened species or its critical habitat could require permits from the U.S. Fish and Wildlife Service (USFWS) to prevent a violation of the Endangered Species Act under Section 9.

### APPLICATION PROCEDURES

An application for authorization of work under this emergency LOP procedure must include a written description of the project, proposed work schedule, and the address and telephone number of a point of contact who can be reached during working hours. The information may be submitted on an Application for Department of the Army Permit form (ENG Form) or in any other form convenient to the applicant.

A description of the project must include at least the following information, as applicable:

1. The purpose of, and need for, the project;
2. a vicinity map (e.g., county map, USGS quad sheet, etc.) showing the location of the project, including any disposal site(s);
3. plan, profile, and cross-section views of all work, both permanent and temporary, in or adjacent to waters of the United States, including wetlands;
4. the volume of material proposed to be discharged into and/or excavated from waters of the United States and the proposed type and source of the material. You should include the type of substrate, information on stream bed geometry, as well as a statement about potential hazardous substances in the substrate. In cases where the activity may result in a change to pre-construction contours or drainage patterns, provide the reasons why the changes are necessary and a description of the anticipated outcome of the change.
5. a delineation and description of wetlands and other waters of the United States in the area that would be affected by the proposed work, and a description of the project's likely impact on the aquatic environment. Delineations of wetlands must be conducted using the "Corps of Engineers Wetland Delineation Manual", Corps Waterways Experiment Station Wetlands Research Program Technical Report Y-87-1, dated January 1987 (on-line edition available at <http://www.wes.army.mil/el/wetlands/wlpubs.html>), including all supplemental guidance (currently includes guidance dated October 7, 1991, and March 6, 1992). The supplemental guidance is included in the on-line version and may also be obtained from your Corps district office. In addition, the width and depth of the water body and the waterward distance of any structures from the existing shoreline.

6. a statement disclosing whether or not any species listed as threatened or endangered under the Endangered Species Act might be affected by, or found in the vicinity of, the proposed project. Direct coordination with the USFWS concerning the potential impact of the entire project on threatened and endangered species is strongly encouraged. You may contact the USFWS office in Elkins, WV at (304)636-6586.

7. The applicant should include any other relevant information, including available information on the presence of cultural resources listed or eligible to be listed in the National Register of Historic Places and potential effects of the project on hydrology.

#### Application

([http://www.lrh.Corps.army.mil/\\_kd/Items/actions.cfm?action=Show&item\\_id=4142&destination=ShowItem](http://www.lrh.Corps.army.mil/_kd/Items/actions.cfm?action=Show&item_id=4142&destination=ShowItem))

Address applications and inquiries regarding proposed activities to:

Regulatory Branch, U.S. Army Corps of Engineers, Huntington District,  
ATTN: CELRH-OR-F, 502 8<sup>th</sup> Street, Huntington, WV 25701 or  
Telephone the Regulatory Branch at (304)399-5710 (West Virginia Section) or  
(304)399-5210 (Ohio Section).

#### EVALUATION PROCEDURES

Prior to authorizing any project, the Corps shall conduct a public interest evaluation and coordinate with the United States Environmental Protection Agency (USEPA), USFWS, Ohio Division of Natural Resources (ODNR), WVDNR, Ohio Historic Preservation Office (OHPO), West Virginia Division of Culture and History (WVDCH), OEPA, or WVDEP (as appropriate by state) to obtain their concurrence with authorizing the proposed work under this LOP procedure. Coordination may be by telephone, email, facsimile transmission, letter, or a combination of the above. Should one of the appropriate agencies not concur, the proposed work would require authorization by standard individual permit or other means. A verbal or written response from each contacted agency is required to complete the interagency coordination process. Concurrence may not be presumed in the absence of a response unless written procedures for such presumption are developed between the Corps and the agency in question.

Work may not proceed prior to written notification that the Corps has issued an LOP. It is the applicant's responsibility to insure that the authorized project meets the terms and conditions set forth herein; failure to abide by them will constitute a violation of the Clean Water Act. Projects outside the scope of this LOP may be considered for authorization by individual permit.

**EXPIRATION**

**This LOP procedure shall expire 30 days from the issuance unless extended after coordination with the resource agencies listed above.**

Comments and requests for additional information pertaining to this Public Notice should be submitted to:

Mr. Stan Walker, Regulatory Project Manager  
North Regulatory Section, CELRH-OR-FN  
U. S. Army Corps of Engineers Huntington District  
502 Eighth Street  
Huntington, West Virginia 25701-2070.

This LOP procedure shall become effective on the date of the signature of the District Engineer, or his authorized representative.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

  
Ginger Mullins  
Chief, Regulatory Branch

(W)(O)

## APPENDIX A

### **GENERAL CONDITIONS OF LETTERS OF PERMISSION ISSUED UNDER "LETTER OF PERMISSION PROCEDURE, ACTIVITIES AT BELLEVILLE LOCK AND DAM PROJECT POOL AREA"**

1. In issuing a letter of permission (LOP), the Department of the Army has relied in part on the information provided by the permittee. If, subsequent to issuing an LOP, such information proves to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part.
2. Projects authorized by LOP shall comply with all terms and conditions herein. Failure to abide by such conditions invalidates the authorization and may result in a violation of the law, requiring restoration of the site or other remedial action.
3. An LOP should not be considered as an approval of the design features of any authorized project or an implication that such is considered adequate for the purpose intended; a Department of the Army permit merely expresses the consent of the Federal Government to conduct the proposed work insofar as public rights are concerned. LOP's do not authorize any damage to private property, invasion of private rights, or any infringement of federal, state or local laws or regulations. Nor do they relieve the permittee from the requirement to obtain a local permit from the jurisdiction within which the project is located and to address all non-encroachment restrictions within a regulatory floodway of such local jurisdiction as identified by the Federal Emergency Management Agency.
4. This LOP procedure may be modified or suspended in whole or in part if it is determined that the individual or cumulative impacts of work that would be authorized using this procedure are contrary to the public interest. The authorization for individual projects may also be summarily modified, suspended, or revoked, in whole or in part, upon a finding by the District Engineer that such action would be in the public interest.
5. Any modification, suspension or revocation of the District Engineer's authorization shall not be the basis for any claim for damages against the United States.
6. An LOP does not authorize the interference with any existing or proposed Federal project, and the permittee shall not be entitled to compensation for damage or injury to the structures or activities authorized herein which may result from existing or future operations undertaken by the United States in the public interest.
7. No attempt shall be made by the permittee to prevent the full and free public use of all navigable waters of the United States at or adjacent to a project authorized by LOP.

8. Permittees shall not cause any unreasonable interference with navigation by the existence or use of the permanent and temporary structures authorized by LOP using this procedure.
9. Permittees shall make every reasonable effort to conduct the activities authorized by LOP in a manner that will minimize any adverse impact of the work on water quality, fish and wildlife, and the natural environment, including adverse impacts to migratory waterfowl breeding areas, spawning areas, and trees, particularly mast-producing trees such as oaks and hickories.
10. Permittees shall allow the District Engineer and his authorized representative(s) to make periodic inspections at any time deemed necessary to ensure that the activity being performed by LOP is in accordance with the terms and conditions prescribed herein.
11. The impact of activities authorized by LOP using this procedure on historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP), shall be taken into account by the Corps prior to the initiation of work. Historic properties include prehistoric and historic archeological sites, and areas or structures of cultural interest which occur in the permit area. If a known historic property would be encountered, the permittee shall not conduct any work in the permit area that would affect the property until the requirements of 33 CFR Part 325, Appendix C, has been satisfied. If a previously unknown historic property is encountered during work authorized by an LOP issued under this procedure, the permittee shall immediately notify the Corps and avoid further impact to the site until the Corps has verified that the requirements of 33 CFR Part 325, Appendix C, have been satisfied.
12. Permittees shall use and maintain appropriate erosion and siltation controls in effective operating condition during construction, and permanently stabilize all exposed soil at the earliest practicable date.
13. Permittees shall remove all temporary fills in their entirety.
14. Permittees shall coordinate all construction activities in federally maintained channels and/or waterways for required setback distances with the Corps.
15. Permittees shall place all heavy equipment working in wetlands on mats, or take other measures to minimize soil disturbance.
16. No authorization will be granted for an activity that is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act, or for an activity that is likely to destroy or adversely modify the critical habitat of such species. Permittees shall notify the District Engineer if any listed species or critical habitat might be affected by, or is in the vicinity of, the project and shall not begin work until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

17. The project shall not significantly disrupt the movement of those species of aquatic life indigenous to the water body or those species that normally migrate through the project area unless the primary purpose of the activity is to impound water.

18. Permittees shall properly maintain any structure or fill, including maintenance to ensure public safety.

19. Permittees shall address any potential adverse impacts of the discharge of dredged or fill material to public water supply intakes.

20. Stream realignment is not authorized.

21. Permittees shall avoid and minimize discharges of dredged or fill material into waters of the United States through the use of practicable alternatives.

22. To the maximum extent practicable, permittees shall not permanently restrict or impede the passage of normal or expected high flows unless the primary purpose of the fill is to impound water.

23. Permittees shall design facilities to be stable against the forces of flowing water, wave action, and the wake of passing vessels.

24. This permit does not authorize work in a park, wildlife management area, refuge, sanctuary, or similar area administered by a federal, state or local agency without that agency's approval.

APPENDIX B  
BLANKET CONSENT TO EASEMENT  
FOR USE WITH REGULATORY PERMITS

Consent is hereby granted to the permittee to construct, use, maintain, control, operate and repair the said structures across, over and under lands for which the United States government may own. The location for the purposes of this consent is specifically shown in the plans and drawings attached hereto. It is understood that this consent effective insofar as the easement rights of the United States in the land to be occupied are concerned and that it does not relieve the permittee from the necessity of obtaining grants from the owner(s) of the other interests therein; nor from obtaining any other permission required by Federal, State, or local laws, regulations or ordinances, including but not limited to, any Federal permits that may be required by Section 10 of the River and Harbors Act of 1899 or Section 404 of the Clean Water Act.

12 February 2004  
Date

  
Garry L. Bennett  
Chief, Management and Disposal Branch  
Real Estate Division

ACKNOWLEDGMENT

STATE OF WEST VIRGINIA )  
  )  
COUNTY OF CABELL         )

On this 12<sup>th</sup> day of February, 2004, before me the undersigned officer, personally appeared Garry L. Bennett, Chief, Management and Disposal Branch, Real Estate Division, U.S. Army Engineer District, Huntington, West Virginia, known to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

  
NOTARY PUBLIC

My Commission Expires:

11-20-2004



APPENDIX C

Notice to Navigation Information Sheet

CELRH-OR-TD Fax: (304) 399-5167 Phone: (304) 399 – 5684 /5239 /6977 /6978 /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, unless authorized by the Chief, Operations Division.**

PERMIT NUMBER: _____ _____
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For Internal Use Only — Mail — Email — Intranet — Infoport — File
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