Public Notice

U S Army Corps
of Engineers
Huntington District

In reply refer to Public Notice No. **LRH-2006-2227**
Issuance Date: **October 20, 2006**
Stream:
Closing Date: **December 4, 2006**

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

NATIONWIDE PERMIT REISSUANCE FOR THE STATE OF WEST VIRGINIA REQUEST FOR COMMENTS

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.

BACKGROUND: On September 26, 20006, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue its nationwide permits (NWPs). Enclosure A is an index of the proposed NWPs and general conditions. Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Many of the proposed NWPs require notification to the district engineer before commencing the work, to ensure that the activities authorized by those NWPs have minimal individual and cumulative adverse impacts on the aquatic environment.

NATIONAL ISSUES CONCERNING THE PROPOSED NWPS: The Federal Register notice is the public's opportunity to comment on the proposed NWPs, general conditions, and definitions. Comments on national issues relating to these NWPs should be submitted to docket number COE-2006-0005 at www.regulations.gov . Instructions for submitting comments are provided in the September 26, 2006, Federal Register notice. Comments on the proposed NWPs are due by November 27, 2006.

REGIONAL ISSUES CONCERNING THE PROPOSED NWPS, INCLUDING REGIONAL CONDITIONING: Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where impacts authorized by those NWPs may be more than minimal. Enclosure

B lists the proposed regional conditions currently under consideration by the Lakes and Rivers Division for the State of West Virginia. The Huntington District is seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions to help ensure that impacts authorized by the proposed NWPs are minimal. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the State of West Virginia. Comments on regional issues relating to the proposed NWPs and regional conditions are to be sent to Huntington District Corps of Engineers Regulatory Branch, 502 Eight Street, Huntington, West Virginia 25701, telephone 304-399-5710 Comments relating to regional conditions are due by December 2, 2006. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices.

In conjunction with the Federal Register notice, Corps districts will be announcing proposed regional conditions for these NWPs for public comment. When the final NWPs are issued, the final regional conditions will be issued at the same time so that the States and Tribes can make their Clean Water Act Section 401 water quality certification and Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must be made within 60 days of the Federal Register notice announcing the issuance of the NWPs. After that 60-day period, the NWPs and the regional conditions will become effective.

Draft decision documents, which include environmental documentation required by the National Environmental Policy Act, have been prepared by Corps Headquarters. The decision documents will address compliance of the NWPs with the requirements for issuance under general permit authority. These documents, as well as the proposed NWPs, are available for viewing at Huntington District Corps of Engineers Regulatory Branch, 502 Eight Street, Huntington, West Virginia 25701 or on the Internet at the www.regulations.gov site (docket ID number COE-2006-0005). Final decision documents will be prepared for those NWPs that are issued. In addition, supplemental decision documents will be issued by division engineers to address their determinations concerning regional conditions for the NWPs.

NATIONWIDE PERMITS FULL TEXT: Listed below is an index of the proposed NWPs and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWPs through www.regulations.gov (docket ID number COE-2006-0005), the Corps home page or the Federal Register address listed below.

INTERNET ADDRESSES:
Copies of the Federal Register notice and the draft decision documents will also be available at http://www.regulations.gov in docket ID number COE-2006-0005.
The Corps home page is: http://www.usace.army.mil/inet/functions/cw/cecwo/reg/
As an alternate, internet users can access the Federal Register through the Government Printing Office (GPO) at http://www.gpoaccess.gov/fr/index.html
Additional information relating to the Corps Regulatory Program in the State of West Virginia may also be found on the following home pages:
Huntington District Regulatory Branch at http://www.lrh.usace.army.mil/permits/
Pittsburgh District Regulatory Branch at http://www.lrp.usace.army.mil/org/who.htm#reg

WATER QUALITY CERTIFICATION: This notice shall serve as a request to the West Virginia Department of Environmental Protection (WVDEP) by the U.S. Army Corps of Engineers, to act on the 401 Water Quality Certification for the above reference Nationwide Permits.

PUBLIC INTEREST REVIEW AND COMMENT: The proposed Nationwide Permits have been reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers, and other pertinent laws, regulations, and executive orders.

SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the District Engineer may be based. For accuracy and completeness of the record, all data in support for, or in opposition to the proposed regional conditions should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

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

Ginger Mullins, Chief
Regulatory Branch

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Enclosure A

<u>Index of Proposed Nationwide Permits, Conditions, and Definitions</u>

Proposed Nationwide Permits

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Operations
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments

40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
A. Emergency Repair Activities
B. Discharges into Ditches and Canals
C. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
D. Commercial Shellfish Aquaculture Activities
E. Coal Remining Activities
F. Underground Coal Mining Activities

Proposed Nationwide Permit General Conditions

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Wild and Scenic Rivers
16. Tribal Rights
17. Endangered Species
18. Historic Properties
19. Designated Critical Resource Waters
20. Mitigation
21. Water Quality
22. Coastal Zone Management
23. Regional and Case-by-Case Conditions
24. Use of Multiple Nationwide Permits
25. Transfer of Nationwide Permit Verifications
26. Compliance Certification
27. Pre-Construction Notification

Proposed Nationwide Permit Definitions

Best management practices (BMPs)
Compensatory mitigation
Currently serviceable
Enhancement
Ephemeral stream
Establishment (creation)
Independent utility
Intermittent stream
Loss of waters of the United States
Non-tidal wetland
Open water
Perennial stream
Practicable
Pre-construction notification
Preservation
Re-establishment
Rehabilitation
Restoration
Riffle and pool complex
Riparian areas
Single and complete project
Stormwater management
Stormwater management facilities
Stream bed
Stream channelization
Structure
Tidal wetland
Vegetated shallows
Waterbody

Enclosure B

Two categories of Regional Conditions are being proposed for the State of West Virginia. The first category is referred to as Regional General Conditions, which are applicable to all nationwide permits. The second category is referred to as Specific Regional Conditions, which are applicable to certain nationwide permits. The Regional Conditions being proposed for the State of West Virginia are described below.

NATIONWIDE PERMIT REGIONAL GENERAL CONDITIONS:

1. ***Full Agency Pre-construction Notification:*** In an effort to expedite full agency permit review it is requested that all pre-construction notifications (PCNs) submitted for activities subject to Nationwide Permits 21, E, and F and for those activities resulting in the loss of greater than ½ acre of waters of the U.S., include one original hard copy and five (5) additional copies of the PCN package. Applicants are encouraged to submit the five agency copies in electronic format as CDs, in order to minimize the use of paper and postage resources.

2. ***Pre-Construction Notification Submittals:*** In addition to the PCN requirements listed in Nationwide Permit General Condition 27, all PCNs should include the following information:

- Graphic illustrations on 8 1/2" x 11" paper. The illustrations must clearly depict the project boundaries, including all elements and phases of the proposed project. Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map (a location map such as the USGS 7.5 Minute Series topographical map is highly encouraged), a Plan View and a Typical Cross-Section Map. Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view or cross-section). In addition, each illustration should be identified with a figure or attachment number and the project Latitude and Longitude.
- A written description of the proposed project including acreage(s) of waters of the U.S. (according to aquatic resource type) proposed to be directly or indirectly affected as a result of the proposed project, the linear footage of proposed direct and indirect stream impacts associated with the project, and cubic yards of fill proposed to be discharged.
- The PCN should include a description of the ways in which the project has been designed to avoid and minimize adverse impacts to waters of the U.S.
- The submittal of ground photographs to illustrate current conditions of the project site is highly encouraged.

3. ***Compensatory Mitigation:*** Compensatory Mitigation will be required for any projects with impacts that result in the conversion of one aquatic resource type to another.

4. ***Passage of Aquatic Life:*** All culverts shall be installed with their inverts at or below existing grade so as to preserve hydraulic connectivity, at its present level, between the waterbody on either side of the road. The lower 10% of all culverts placed within perennial and intermittent streams shall be buried below the existing stream grade and the hydraulic design of the culvert shall be based upon the remaining open portion of culvert. If future inspections discover damage

to the waterbody, perceived to be from lack of hydraulic connectivity, the Permittee shall take necessary measures to correct this deficiency. Any road crossing shall be culverted to municipal or state standards (number and size) sufficient to prevent the restriction of flows and/or faunal movement.

5. ***Endangered Species:*** Federally listed endangered species, subject to Section 7 of the Endangered Species Act occur in nearly every county within West Virginia. As part of the PCN process, the District Engineer will assume responsibility for determining project-related effects to endangered species. For projects that do not require a PCN, it is the applicant's responsibility to ensure that all elements of a proposed single and complete project comply with Section 7 of the Endangered Species Act.

6. ***Endangered Species Habitat***: Due to the potential presence of endangered species or their habitats, notification is required to the U.S. Fish and Wildlife Service Elkins Field Office, 694 Beverly Pike, Elkins, West Virginia 26241, for any work in the following waterways:

Huntington District Streams:

- Kanawha River (Kanawha Falls to river mile 89.0 near Boomer) – Fayette County
  (Tubercled-blossum pearlymussel, *Epioblasma torulosa torulosa*; Pink mucket pearlymussel, *Lampsilis abrupta*; and Fanshell, *Cyprogenia stegaria*)

- Potts Creek – Monroe County
  (James spinymussel, *Pleurobema collina*)

- South Fork Potts Creek – Monroe County
  (James spinymussel, *Pleurobema collina*)

- Elk River – Braxton, Clay and Kanawha Counties
  (Pink mucket pearlymussel; *Lampsilis abrupta;* Northern riffleshell, *Epioblasma torulosa rangiana;* and Clubshell, *Pleurobema clava*)

- Meathouse Fork Middle Island Creek – Doddridge County
  (Clubshell, *Pleurobema clava*)

- Middle Island Creek – Doddridge, Tyler and Pleasants Counties
  (Clubshell, *Pleurobema clava*)

- Ohio River – Cabell, Mason and Wood Counties
  (Pink mucket pearlymussel, *Lampsilis abrupta*; and Fanshell, Cyprogenia stegaria)

- Gauley River – Nicholas and Fayette Counties
  (Virginia spiraea, *Spiraea virginiana)*

- Bluestone River – Mercer and Summers Counties
  (Virginia spiraea, *Spiraea virginiana*)

- Greenbrier River – Pocahontas and Greenbrier Counties
  (Virginia spiraea, *Spiraea virginiana*)

- Meadow River – Greenbrier and Fayette Counties
  (Virginia spiraea, *Spiraea virginiana*)

- Dingess Branch of Marsh Fork and associated palustrine emergent and scrub-shrub wetlands – Raleigh County (Virginia spiraea, *Spiraea virginiana*)

- Millers Camp Branch of Marsh Fork and associated palustrine emergent scrub-shrub wetlands - Raleigh County
  (Virginia spiraea, *Spiraea virginiana*)

- South Fork Hughes River – Ritchie County
  (Clubshell, *Pleurobema clava*)

Pittsburgh District Streams:

- Sleepy Creek – Morgan County
  (Harperella, *Ptilimnium nodosum*)

- Cacapon River – Morgan County
  (Harperella, *Ptilimnium nodosum*)

- Back Creek – Morgan County
  (Harperella, *Ptilimnium nodosum*)

- Hackers Creek of West Fork River – Lewis County
  (Clubshell, *Pleurobema clava*)

- Wetlands – Berkeley County
  Northeastern bulrush, *Scirpus ancistrochaetus*)

7. ***Critical Resource Waters:*** Work proposed within any of the following Critical Resource Waters listed below requires notification to the National Park Service and/or the Forest Service:

- **New River**;
- **Bluestone River from the upstream boundary of Pipestem Park to Bluestone Reservoir;**
- **Meadow River from near the US 19 Bridge to its junction with the Gauley River;**
- **All streams within the Monongahela National Forest designated as National Wild and Scenic Study Rivers;**

- **All streams and other bodies of water in State and National Forests and Recreation Areas (included are streams and bodies of water located within the Spruce Knob, Seneca Rocks and Gauley River National Recreation Areas; and**
- **Streams and their tributaries as contained within the boundaries of the designated National Wilderness Areas or the headwaters of such rivers and their tributaries; Cranberry River, Red Creek, Laurel Fork and Otter Creek.**

In accordance with the West Virginia Natural Stream Preservation Act, the following streams or rivers are protected from activities that would impound, divert or flood the body of water:

- **Greenbrier River from its confluence with Knapps Creek to its confluence with the New River;**
- **Anthony Creek from its headwaters to its confluence with the Greenbrier River;**
- **Cranberry River from its headwaters to its confluence with the Gauley River;**
- **Birch River from Cora Brown Bridge in Nicholas County to its confluence with the Elk River; and**
- **New River from its confluence with the Greenbrier River to its confluence with the Gauley River.**

8. ***Cultural Resources:*** Cultural resources, including historic and prehistoric sites, buildings, districts, and objects significant in American history, architecture, archeology, engineering and culture, listed in or eligible for listing in the National Register of Historic Places (NRHP), are present throughout the State of West Virginia. As part of the PCN process, the District Engineer will assume responsibility for determining project-related effects to cultural resources subject to the provisions of Section 106 of the National Historic Preservation Act (NHPA). For projects that do not require a PCN, it is the applicant's responsibility to ensure that all elements of a proposed single and complete project comply with Section 106 of the National Historic Preservation Act.

9. ***Fills in the 100-Year Floodplain:*** All PCNs involving fills in the 100 year floodplain shall include a copy of an approval letter or floodplain permit from the appropriate Floodplain Manager/Coordinator.

10. ***Single and Complete Project:*** All projects proposed under Nationwide Permits will be evaluated relative to the proposed single and complete project as defined in the Definitions Section of the full Nationwide Permit.

11. ***Waters of Special Concerns:*** All PCNs involving work in Waters of Special Concern, shall include prior written notification to the West Virginia Department of Environmental Protection, Division of Water Resources. Waters of Special Concern include, but are not limited to, naturally reproducing trout streams, federally designated rivers subject to the Wild and Scenic Rivers Act, U.S.C. Subsection 1271 et. seq., including all study rivers, waters located within the boundaries of state parks, state forests, National Parks, National Forests, waters designated under the National Parks and Recreation Act of 1978, and waters with unique or exceptional aesthetic, ecological, or recreational value.

NATIONWIDE PERMIT SPECIFIC REGIONAL CONDITIONS:

1. ***Aids to Navigation.***
   - No proposed regional conditions.

2. ***Structures in Artificial Canals.***
   - No proposed regional conditions.

3. ***Maintenance.***
   - Discharges of dredged or fill material associated with removal of accumulated sediment and debris in the vicinity of existing structures and placement of new or additional riprap to protect the structure is limited to distances of 50 feet upstream and/or 50 feet downstream of structure.

4. ***Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.***
   - No proposed regional conditions.

5. ***Scientific Measuring Devices.***
   - Discharges of dredged or fill material located in wetlands, islands, island backchannels embayments, and sites at stream mouths are ineligible for this nationwide permit.

6. ***Survey Activities.***
   - No proposed regional conditions.

7. ***Outfall Structures and Associated Intake Structures.***
   - No proposed regional conditions.

8. ***Oil and Gas Structures of the Continental Shelf.***
   - No proposed regional conditions.

9. ***Structures in Fleeting and Anchorage Areas.***
   - No proposed regional conditions.

10. ***Mooring Buoys.***
    - No proposed regional conditions.

11. ***Temporary Recreational Structures.***
    - Discharges of dredged or fill material located at wetlands, islands, island backchannels embayments, and sites at stream mouths are ineligible for this nationwide permit.

12. ***Utility Activities.***
    - Notification is required for all discharges associated with mechanized land clearing in forested and scrub shrub wetlands.

- Notification is required for all work in waters of the U.S. associated with the construction of utility line substations.
- Notification is required for all stream work (perennial, intermittent, and ephemeral) associated with the construction of foundations for overhead utility line towers, poles, and anchors.
- The maximum allowable timeframe for temporary work in waters of the U.S. is limited to one year, unless the permittee receives written approval from the Corps of Engineers granting a time extension.
- Notification for aerial transmission lines over Section 10 waters must include the nominal system voltage and the additional clearance above low steel for bridges, if available, or above maximum high water elevation.

Note: All aerial crossings will have the following minimum clearances above the clearance required for bridges, or the clearances which would be required by the U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed crossing. These clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length or span, and type of supports as outlined in the National Electrical Safety Code. **For any non-electrical cable, the crossing must have a minimum clearance of 20 feet above the clearance required for bridges.**

NOMINAL SYSTEM VOLTAGE, KV	ADDITIONAL CLEARANCE, FEET
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750 -765	45

13. ***Bank Stabilization.***

- Notification is required for discharges involving perennial and intermittent stream impacts and for those ephemeral impacts greater than 300 feet.
- Notification is required for all discharges involving the construction of concrete retaining walls.
- Wherever practicable, bank stabilization work shall be accomplished using natural channel design and/or stabilization methodologies.
- All activities shall be constructed in a manner to withstand expected high flows and shall consist of clean and course non-erodable materials with 15% or less fines.

14. ***Linear Transportation Crossings.***

- Notification is required for all activities in Section 10 streams.
- Notification is required for discharges involving perennial and intermittent stream impacts and for those ephemeral impacts greater than 300 feet.
- Notification is required for all vented (culverted) low water crossings.

- Compensatory mitigation, focusing on functional replacement, will be required for discharges causing the loss of greater than 1/10 acre of wetlands. In addition, compensatory mitigation will be required for all loss of perennial stream, loss of greater than 100 linear feet of intermittent stream, and loss of greater than 200 linear feet of ephemeral stream unless the applicant asserts that the adverse effects of the project are minimal without mitigation. In such cases, the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration.

15. ***U.S. Coast Guard Approved Bridges.***

- No proposed regional conditions.

16. Return Water from Upland Contained Disposal Areas.

- No proposed regional conditions.

17. ***Hydropower Projects.***

- No proposed regional conditions.

18. ***Minor Discharges.***

- This Nationwide Permit does not authorize stream culverting, relocation, channelization, or elimination of streams.
- This Nationwide Permit does not authorize structures or fills that extend beyond 10% of the width of the existing stream channel.

19. ***Minor Dredging.***

- Notification is required for activities in Section 10 streams.

20. ***Oil Spill Cleanup.***

- No proposed regional conditions.

21. ***Surface Coal Mining Operations.***

- Notification is required for all activities associated with this permit and shall include at a minimum all items identified in the Standard Operating Procedure for Nationwide Permit 21 Processing, dated March 19, 2004 (or current version).
- Compensatory Mitigation is required for all discharges associated with use of this Nationwide Permit.
- Discharges involving perennial streams are ineligible for this nationwide permit, unless the perennial nature of the stream results from previous mining activities.
- Discharges involving intermittent and/or ephemeral streams scoring greater than 68 (Fair) using the West Virginia Stream Condition Index (WVSCI) are ineligible for this nationwide permit.
- Discharges involving greater than ½ acre of wetland impact are ineligible for this nationwide permit, unless the wetlands are artificially created as a result of previous mining activities. There is no limit for discharges into wetlands created as a result of previous mining activities.

- Projects involving discharges that exceed 2,500 linear feet of ephemeral and/or intermittent stream are ineligible for this nationwide permit.
- Activities involving discharges into open water areas created as a result of prior mining activities are eligible for this nationwide permit. There is no limit for discharges into open water areas created as a result of previous mining activities.
- For those projects that rely on infrastructure or storage areas associated with other mine sites, a detailed description of the manner in which the proposed project is reliant upon features of another project shall be explained.
- Notification shall include an area map, preferably a USGS 7.5 Minute Series topographic map, depicting the names, WVDEP Article 3 Permit and Corps Project Numbers, and locations of all adjacent mines. In addition, if adjacent mines and the proposed project are owned by the same company (including parent company), a summary of the status of each adjacent site should be provided.

22. ***Removal of Vessels.***

- No proposed regional conditions.

23. ***Categorical Exclusions.***

- Notification is required for use of this Nationwide permit.
- Projects with discharges of dredged or fill material into waters of the United States, including wetlands shall not exceed ½ acre.
- In addition to notification requirements identified in Nationwide Permit General Condition 27, the notification should also include a copy of the categorical exclusion.
- Compensatory mitigation, focusing on functional replacement, will be required for discharges causing the loss of greater than 1/10 acre of wetlands. In addition, compensatory mitigation will be required for all loss of perennial stream, loss of greater than 100 linear feet of intermittent stream, and loss of greater than 200 linear feet of ephemeral stream unless the applicant asserts that the adverse effects of the project are minimal without mitigation. In such cases, the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration.

24. ***Indian Tribe of State Administered Section 404 Programs.***

- No proposed regional conditions.

25. Structural Discharges.

- No proposed regional conditions.

26. ***Reserved.***

27. ***Stream and Wetland Restoration Activities.***

- Notification is required for all work in waters of the U.S., including special aquatic sites.

28. ***Modifications of Existing Marinas.***

- No proposed regional conditions.

29. ***Residential Developments.***

- Notification shall include information sufficient to demonstrate the proposed project represents a single and complete project and a description of the ways in which the proposed project has been designed to avoid and minimize adverse impacts to waters of the United States.
- Projects involving the culverting of streams for the purpose of yard construction or expansion are not eligible for this nationwide permit.
- Issuance of waivers of the 300-linear foot limit for ephemeral and intermittent streams will be limited to those projects located in degraded waters of the United States. If a waiver is being requested, notification shall include documentation on the nature of stream degradation.
- Compensatory mitigation, focusing on functional replacement, will be required for discharges causing the loss of greater than 1/10 acre of wetlands. In addition, compensatory mitigation will be required for all loss of perennial stream, loss of greater than 100 linear feet of intermittent stream, and loss of greater than 200 linear feet of ephemeral stream unless the applicant asserts that the adverse effects of the project are minimal without mitigation. In such cases, the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration.
- Projects involving stream relocation activities that incorporate appropriate channel plan, profile, dimension, as well as other elements of natural stream design would not require additional compensatory mitigation

30. ***Moist Soil Management for Wildlife.***

- No proposed regional conditions.

31. ***Maintenance of Existing Flood Control Facilities.***

- No proposed regional conditions.

32. ***Completed Enforcement Action.***

- No proposed regional conditions.

33. ***Temporary Construction Access and Dewatering.***

- The maximum allowable timeframe for temporary work in waters of the U.S. is limited to one year unless the permittee receives written approval from the Corps granting an extension.
- All activities shall be constructed in a manner to withstand expected high flows and shall consist of clean and course non-erodable materials with 15% or less fines.

34. ***Cranberry Production Activities.***

- No proposed regional conditions.

35. ***Maintenance Dredging of Existing Basins.***

- No proposed regional conditions.

36. ***Boat Ramps.***

- The use of unsuitable material is prohibited.
- Discharges of dredged or fill material located at wetlands, islands, island backchannels, embayments, and sites at stream mouths are ineligible for this nationwide permit.

37. ***Emergency Watershed Protection and Rehabilitation.***

- No proposed regional conditions.

38. ***Cleanup of Hazardous and Toxic Waste.***

- No proposed regional conditions.

39. ***Commercial and Institutional Developments.***

- Notification shall include information sufficient to demonstrate the proposed project represents a single and complete project and a description of the ways in which the proposed project has been designed to avoid and minimize adverse impacts to waters of the United States.
- Issuance of waivers of the 300-linear foot limit for ephemeral and intermittent streams will be limited to those projects located in degraded waters of the United States. If a waiver is being requested, notification shall include documentation on the nature of stream degradation.
- Compensatory mitigation, focusing on functional replacement, will be required for discharges causing the loss of greater than 1/10 acre of wetlands. In addition, compensatory mitigation will be required for all loss of perennial stream, loss of greater than 100 linear feet of intermittent stream, and loss of greater than 200 linear feet of ephemeral stream unless the applicant asserts that the adverse effects of the project are minimal without mitigation. In such cases, the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration.

40. ***Agricultural Activities.***

- Projects involving impacts to perennial streams are not eligible for this nationwide permit.
- Notification is required for all intermittent and ephemeral stream impacts greater than 200 linear feet in waters of the U.S.

Note: These regional conditions apply to non-USDA program participants.

41. ***Reshaping Existing Drainage Ditches.***

- Notification is required for all impacts.

42. ***Recreational Facilities.***

- Notification shall include information sufficient to demonstrate the proposed project represents a single and complete project and a description of the ways in which the

proposed project has been designed to avoid and minimize adverse impacts to waters of the United States.

- Issuance of waivers of the 300-linear foot limit for ephemeral and intermittent streams will be limited to those projects located in degraded waters of the United States. If a waiver is being requested, notification shall include documentation on the nature of stream degradation.
- Compensatory mitigation, focusing on functional replacement, will be required for discharges causing the loss of greater than 1/10 acre of wetlands. In addition, compensatory mitigation will be required for all loss of perennial stream, loss of greater than 100 linear feet of intermittent stream, and loss of greater than 200 linear feet of ephemeral stream unless the applicant asserts that the adverse effects of the project are minimal without mitigation. In such cases, the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration.

43. ***Stormwater Management Facilities.***

- Notification is required for all impacts to Section 10 waters and wetlands adjacent to Section 10 waters.
- Notification is required for all perennial and intermittent stream impacts.
- Notification is required for ephemeral stream impacts greater than 300 linear feet.
- No waivers will be granted for impacts to more than 300 linear feet of intermittent streams under this nationwide permit.

44. ***Mining Activities.***

- Revoked.

A. ***Emergency Repair Activities.***

- No proposed regional conditions.

B. ***Discharges in Ditches and Canals.***

- No proposed regional conditions.

C. ***Pipeline Safety Program Designated Time Sensitive Inspections and Repairs***

- No proposed regional conditions.

D. ***Commercial Shellfish Aquaculture Activities.***

- No proposed regional conditions.

E. ***Remining Activities.***

- Notification is required for all activities associated with this permit and shall include at a minimum all items identified in the Standard Operating Procedure for Nationwide Permit 21 Processing, dated March 19, 2004, or current version.
- Compensatory Mitigation is required for all discharges associated with use of this nationwide permit.
- Discharges involving perennial streams are ineligible for this nationwide permit, unless the perennial nature of the stream results from previous mining activities.

- Discharges involving intermittent and/or ephemeral streams scoring greater than 68 (Fair) using the West Virginia Stream Condition Index (WVSCI) are ineligible for this nationwide permit.
- Discharges involving greater than ½ acre of wetland impact are ineligible for this nationwide permit, unless the wetlands are artificially created as a result of previous mining activities. There is no limit for discharges into wetlands created as a result of previous mining activities.
- Projects involving discharges that exceed 2,500 linear feet of ephemeral and/or intermittent stream within new mining areas are ineligible for this nationwide permit. There is no limit for discharges into waters of the U.S. previously mined.
- Activities involving discharges into open water areas created as a result or prior mining activities are eligible for this nationwide permit and have no upper impact limit.
- For those projects that rely on infrastructure or storage areas associated with other mine sites, a detailed description of the manner in which the proposed project is reliant upon features of another project shall be explained.
- Notification shall include an area map, preferably a USGS 7.5 Minute Series topographic map, depicting the names, WVDEP Article 3 Permit, and Corps Project Numbers, and locations of all adjacent mines. In addition, if adjacent mines and the proposed project are owned by the same company (including parent company), a summary of the status of each adjacent site should be provided.

F. ***Underground Coal Mining Activities.***

- Notification is required for all activities associated with this permit and shall include at a minimum all items identified in the Standard Operating Procedure for Nationwide Permit 21 Processing, dated March 19, 2004, or current version.
- Discharges involving perennial, intermittent and/or ephemeral streams scoring greater than 68 (Fair) using the West Virginia Stream Condition Index (WVSCI) are ineligible for this nationwide permit.
- The maximum impact for this nationwide permit is 2,500 linear feet of stream. This total may include a combination of up to 2,500 linear feet of permanent intermittent and/or ephemeral impact or 2,500 linear feet of temporary perennial, intermittent, and/or ephemeral stream impacts.
- Discharges involving permanent impacts to perennial streams are ineligible for this nationwide permit, unless the perennial nature of the stream results from previous mining activities.

DEFINITIONS:

Backchannels: Smaller backwater portion of a larger, typically navigable waterway.

Embayments: An indentation in a stream or river bank which provides for the formation of a shallow water area or cove.

Island: Area of land completely surrounded by water.

Low Water crossing (vented crossing): Stream crossings incorporating a low profile with culverts.

Stream Mouth: The point at which one stream discharges into another, typically larger waterbody.

Unsuitable materials: trash, debris, car bodies, asphalt, etc. and material used for construction or discharge must be free from toxic pollutants in toxic amounts (see Section 307 of the CWA).