



**U.S. Army Corps
of Engineers**
Pittsburgh District

Public Notice

In Reply Refer to
Notice No. below

US Army Corps of Engineers, Pittsburgh District
1000 Liberty Avenue
Pittsburgh, PA 15222-4186

Date: November 24, 2006

Notice No. 06-R2

Expiration Date: November 24, 2011

**REGIONAL PERMIT FOR STREAM RESTORATION ACTIVITIES
TO BE PERFORMED BY THE WEST VIRGINIA CONSERVATION AGENCY
WITHIN THE PITTSBURGH DISTRICT IN WEST VIRGINIA**

1. TO WHOM IT MAY CONCERN: In accordance with Title 33 CFR 322.2 (f), 323.2(h), and 325.2(e)(2) published on November 13, 1986, in the Federal Register, Volume 51, Number 219, the District Engineer, U.S. Army Engineer District, Pittsburgh, Pennsylvania, has issued a Regional Permit for stream restoration activities to be performed by the West Virginia Conservation Agency (WVCA) pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

2. BACKGROUND: The West Virginia Conservation Agency provides assistance to public or private landowners in alleviating hazards to life and property resulting from sudden watershed impairment. This work typically requires the discharge of dredged or fill material into waters of the U.S. and therefore requires authorization from the Corps of Engineers (Corps) under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. The purpose of this Regional Permit is to expedite authorizations for the WVCA to perform projects for the purposes of alleviating hazards to life and property. Such projects would include debris and deposition removal, bank stabilization, stream erosion repair, restoration of stream channel geometry and alignments, and minor repair or maintenance of existing roads, bridges or utilities. Authorization applies to all streams within the Pittsburgh 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' Pittsburgh District concerning each project, prior to initiation of restoration work:

- (1) Name of the property owner;
- (2) Exact location of the work, including location map on U.S.G.S. 7.5 Minute Series Quadrangle, Latitude and Longitude;
- (3) Project plan view and cross sectional view depicting boundaries of waters of the U.S. and boundaries of proposed work;

- (4) Brief description of all work proposed;
- (5) Amount of material to be discharged into waters of the U.S. expressed in linear feet or acres, in addition to volume of material proposed to be discharged expressed in cubic yards; and
- (6) Any other appropriate information, such as compliance with Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act (NHP)

The WVCA is responsible for ensuring the work is performed in accordance with the terms and 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 information provided was inaccurate, incomplete or done in bad faith. In the event of such a determination, enforcement action may be initiated.

The policies of this Regional Permit are subject to review and reconsideration at any time. At a minimum of every five years, this Regional Permit will undergo a comprehensive reevaluation in accordance with the regulations governing the establishment and use of regional permits.

For further information, please contact Mr. Allen Edris of the Pittsburgh District Regulatory Branch at 412-395-7158.

FOR THE DISTRICT ENGINEER:

//SIGNED//

Michael J. Cummings, Jr.
Chief, Regulatory Branch

**Special Conditions for Stream Restoration Activities to be
Performed by the West Virginia Conservation Agency**

- 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, including: the West Virginia Department of Environmental Protection (WVDEP), U.S. Fish and Wildlife Service (USFWS), and West Virginia Division of Natural Resources (WVDNR) inviting them to field reviews of proposed exigency projects. At the earliest possible date, WVCA shall provide location and construction details of exigency projects to the resource agencies. For non-exigency projects the WVCA 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 is limited to 150 meters (500 feet), unless approved during a site review by resource agencies.
- d. The work shall be performed in an environmentally, technically, and economically sound manner. For non-exigency projects, Natural Stream Channel Design principles shall be incorporated into project designed to the maximum extent 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. In-stream 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, involving repair activities, shall be critically reviewed in the field by resource, regulatory, and construction agencies to assess likely causes of current failure and to seek concurrence on any appropriate measures to prevent future failure.
- g. Exigency work under this regional permit will require notification to the Fish and Wildlife Service. Due to potential for adversely affecting threatened or endangered species, this permit will not apply to emergency (non-exigency) work in the following waters:

Hackers Creek of the West Fork River (Lewis County) (Clubshell, Pleurobema clava)

Sleepy Creek and the Cacapon River (Morgan County) (Harperella, Ptilimnium nodosum) (riverine emergent wetland habitat)

Back Creek (Berkeley County) (Harperella, Ptilimnium nodosum) (riverine emergent wetland habitat)

Evitts Run watershed (Jefferson County) (Madison cave isopod, Antrolana lira)

Rippon and Leetown Areas – especially areas near sinkholes or other groundwater/surface interfaces (Jefferson County) (Madison cave isopod, Antrolana lira)

Wetlands (Berkeley County) (Northeastern bullrush, Scirpus ancistrochaetus)

- h. Stabilization will, at a minimum, consist of the placement of random large boulders situated along the toe of the stream bank at a rate of one per 5 meters. In high bedload streams WVCA should contact WVDNR for technical assistance in accessing proper stabilization. Revegetation must include seeding and mulching of all disturbed areas and the establishment of permanent vegetative cover as deemed appropriate. Planting of 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. Channel modification that increases the pre-disaster capacity, including the construction of dikes;
 - 4. Repair, construction or maintenance of “rock piles” that are not constructed in accordance with approved dike criteria;
 - 5. Projects where, following on-site Review, the Conservation Agency and the resource agencies are in disagreement over construction methods or mitigative measures. These projects must be authorized by individual permit;
 - 6. Activities that 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 National Historic Preservation Office and the Advisory Council on

- Historic Preservation. The WVCA will contact the WV Division of Culture and History to determine if historic, cultural or archaeological sites have been listed on the National Register;
7. 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. The WVCA will contact the U.S. Fish & Wildlife Service to determine if listed or proposed site;
 8. 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;
 9. Work proposed in National Rivers Inventory streams unless coordinated with the National Park Service.
 10. 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 Activities to be
Performed by the West Virginia Conservation Agency**

- 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 activity authorized by this permit.
 - (d) Design or construction deficiencies associated with the permitted work.

- (e) Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data. The determination of this office that the activity is not contrary to the public interest was made in reliance on the information 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 to otherwise and bill the proponent for the cost.

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