Public Notice

U.S. Army Corps of Engineers
Pittsburgh District

In Reply Refer to Notice No. below

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

Date: April 25, 2003

Notice No. 03-R1 Closing Date: May 25, 2003

PUBLIC NOTICE

PROPOSED RENEWAL OF A REGIONAL PERMIT FOR STREAM RESTORATION AND MANAGEMENT BY INDIVIDUAL LANDOWNERS WITHIN THE PITTSBURGH DISTRICT IN THE STATE OF 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 Engineer District, Pittsburgh, Pennsylvania proposes to renew a regional permit to individual landowners that would authorize certain stream restoration and management activities, pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. A total of 180 authorizations have been made within the Pittsburgh District under the existing permit, which expires on May 28, 2003.

The proposed permit would authorize a similar set of activities usually associated with stream repair, including (1) excavation of silt, sand and/or rock deposits; (2) reduction of sand and gravel bars; (3) bank stabilization; (4) channel restorations; and (5) maintenance of approved work.

The permit would apply to work on all streams within the Pittsburgh District in West Virginia, except those excluded by the attached special and general permit conditions.

PROPOSED SPECIAL CONDITIONS FOR FORMULATION OF THE STREAM RESTORATION AND MANAGEMENT PLANS INCLUDE:

A. **The stream review team**: would consist of one or more representative(s) from the WV Conservation Agency and/or Conservation District, Corps of Engineers, U.S. Fish & Wildlife Service, WV Division of Natural Resources, and the WV Division of Environmental Protection, and would have an opportunity to assist in development of the stream management plan. Each agency will be given adequate notification of team reviews. Decisions by the review team on the acceptability of the proposed plan will be directed to the Corps of Engineers District office for evaluation and a decision as to whether the management plan qualifies for authorization under the regional permit. If the proposal is not acceptable to the team, the landowner will have the option of modifying the plan to make it acceptable or applying directly to the Corps of Engineers for other authorizations as described in 33 CFR 320-330.

B. **Excavation of silt, sand and rock deposits**:

1. Will not exceed 3000 cubic yards of material from below the plane of the ordinary high water elevation of the stream.

2. Must be completed as a single operation and will be performed during periods of low flow. For streams with no flow, excavation is limited such that the existing low flow channel can be maintained.

3. Will not increase the original channel width or depth. A low flow channel must be maintained.

4. Excavated material may be placed below the ordinary high water mark **only** if it is to be used as part of a bank protection project (as outlined in section "E").

5. Excavated material will be utilized as part of an approved bank stabilization plan or disposed of at a location that will preclude its reentry into the stream, in accordance with the approved stream management plan and local or state regulations. Any topsoil at the disposal site should be removed, stockpiled and redistributed over the excavated material to promote rapid revegetation.

C. **Sand and/or gravel bar reduction activities**:

1. Will not extend below an elevation which is 12 vertical inches above the surface of the water at the time that the removal activity is performed.

D. **Restoration of stream channels**:

1. Is allowed to protect structures, cropland, pastures, and/or fences.

2. Will not exceed a cumulative total of 1000 linear feet per management plan.

3. Will incorporate measures to prevent excessive turbidity and sedimentation during construction activities.

4. Will incorporate mitigation measures (such as meanders, riffles, pools, low flow channels, etc.) into the restored channel.

E. **Bank stabilization**:

1. Will consist of the minimum amount needed for erosion protection, and will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water elevation.

2. Will be planned and installed in a manner to prevent material from reentering the watercourse under normal or expected high flow conditions.

3. Can consist of rock riprap, crushed concrete, gabions or other acceptable clean, uncontaminated material. Large concrete sections from pavement expansion joint repair and tires are not suitable materials.

4. May include the use of unconsolidated river material if used as a part of streambank reconstruction and it is stabilized by methods intended to prevent further erosion.

5. Will not be placed in any special aquatic site, including wetlands, nor will it be placed in any location or in any manner so as to impair surface water flow into or out of a wetland.

6. Unconsolidated material will be graded to a 2:1 or flatter slope. All dredged materials disposed of on the top of the stream bank will be stacked no higher than three feet above the top-of-bank, will be leveled and graded landward to a 3:1 or flatter slope, and will be adequately seeded and mulched where feasible.

F. **Best Management Practices**:

1. Points of ingress and egress will be identified to minimize streambed damage from equipment for instream work. Maintenance work should be done from the top-of-bank, whenever possible. Initial in-stream restoration may include the use of a bulldozer.

2. Removal of mature riparian vegetation not directly associated with the project is prohibited. Disturbance and removal of vegetation at construction areas will be limited to that absolutely necessary to perform the work.

3. All disturbed areas, including stream banks, access roads and disposal areas will be re-vegetated, where feasible. The approved stream management plan will include consideration of planting rates, species specifications and survival evaluation procedures. In low gradient streams, consideration will be given to mechanical and bioengineered reclamation of banks.

4. A copy of the approved plan must be available on-site for inspection by team members during implementation of restoration activities. Members of the public are not authorized to inspect the work without permission of the landowner.

5. Maintenance of the stream is accordance with an approved plan is permitted, provided the environmental effects resulting from such activities are similar in nature.

G. **Historic and/or Archaeological Resources**:

Activities that would affect historic, cultural or archaeological sites listed or eligible for listing in the National Register of Historic Places are not authorized by this regional permit unless coordination as required by Section 106 of the National Historic Preservation Act has been completed with the State Historic Preservation Office and the Advisory Council on Historic Preservation. To determine if historic, cultural or archaeological sites have been listed on the National Register, contact the Division of Culture and History.

H. **Endangered Species**:

Due to the presence of endangered species of plants and animals, work on the following streams will not be authorized by the regional permit:

- Hackers Creek – Lewis County (Clubshell mussel, 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);
- Dunkard Creek – Monongalia County (Northeastern bullrush);
- Patterson Creek – Grant and Mineral Counties (Northeastern bullrush).

I. **Work in designated components of the National or State Wild and Scenic Rivers Systems, a Federal or State designated wildlife management area or at sites included in the National Registry of Natural Landmarks, is not authorized by this regional permit, unless approval is granted from the administering agency.**

PROPOSED GENERAL CONDITIONS FOR STREAM RESTORATION AND MANAGEMENT:

A. The activity authorized by this permit must be maintained in good condition and in conformance with the terms and conditions of the 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 the authorized activity or abandonment without a good faith transfer must be authorized by a modification of this permit by this office, which may require restoration of the area.

B. If any previously unknown historic or archaeological remains are discovered while accomplishing the activity authorized by this permit, notification must immediately be provided this office of what has been found. The Corps of Engineers will initiate the Federal and state coordination required to determine is the remains warrant a recovery effort if the site is eligible for listing on the National Register of Historic Places.

C. Representatives from the Corps of Engineers will be allowed to inspect the authorized activity at any time deemed necessary in insure that it is being or has been accomplished in accordance with the terms and conditions of the regional permit. Landowners are encouraged to contact members of the agency management team to resolve issues and/or request technical assistance.

D. 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 provided pursuant to the notification requirement. Any changes 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 the 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 was not considered 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 contact or otherwise and bill the proponent for the cost.

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

The final decision on this proposed permit will not be made by the Corps of Engineers until the State of West Virginia, Division of Environmental Protection (DEP), issues, denies, or waives State certification required by Section 401 of the Clean Water Act.

Any person who has an interest that may be adversely affected by the issuance of a 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 which may be adversely affected and the manner in which the interest may be adversely affected by the proposed activity.

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, which 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. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under the authority of Section 404(b) of the Clean Water Act.

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. A permit will be granted unless its issuance is found to be contrary to the public interest. 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. Persons wishing to submit comments, objections or requests for public hearings concerning the Corps of Engineers permit should write:

U. S. Army Corps of Engineers
Attn: CELRH-OR-F, Public Notice No. 199700048-2
502 8th Street, Huntington, West Virginia 25701-2070

If you have questions concerning this public notice, please contact Linda Malsch at 412-395-7157 or Fred Pozzuto 412-395-7275.

FOR THE DISTRICT ENGINEER:

Albert H. Rogalla
Chief, Regulatory Branch