

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

Issuance Date: September 30, 2003

Notice No. CELRP-OR 03-R3

Expiration Date: September 30, 2008

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 has issued a regional permit to individual landowners that will 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.

This Regional Permit authorizes 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. This Regional Permit applies to work on all streams within the Pittsburgh District in West Virginia, except those excluded by the attached special and general permit conditions.

A copy of the required State 401 Water Quality Certification is attached.

Individuals interested in using this Regional Permit for work in stream(s) on their property must contact one of the West Virginia Conservation Districts to request technical assistance in developing a stream management plan. A flow chart of the process to obtain authorization is attached, as well as a map of the Conservation Districts and other contact information. Representatives from Federal and State agencies, listed in Special Condition "A", will be part of a review team that will provide assistance to the landowner in development of the management plan. A completed plan will be forwarded to the Corps of Engineers for a final decision as to whether the proposed work qualifies for authorization by the Regional Permit.

The landowner is responsible for performance of the work in accordance with the individual management plan and conditions of the Regional Permit. Land ownership must be proved by the applicant prior to development of the plan. All activities authorized are subject to compliance with the limitations specified in the special and general

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conditions and the attached water quality certification. Compliance inspections of completed work will be conducted on a regular basis. The policies of this permit will be subject to reconsideration at any time, but at least every five years. At that time, a complete reevaluation will be performed according to regulations governing the use of regional permits.

FOR THE DISTRICT ENGINEER:

/signed/
Scott A. Hans
Chief, Regulatory Branch

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

A. The Stream Review Team:

The review team will 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 will 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.

2. Will not include reduction of islands that support woody vegetation.

D. Restoration of Stream Channels:

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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, using native plant species. 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 in accordance with an approved plan is permitted, provided the environmental effects resulting from such activities are similar in nature.

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

I. **National or State Wild and Scenic Rivers.** Work in designated components of the National or State Wild and Scenic Rivers Systems, a Federal or State designated wildlife management

area, National Park Service lands, 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.

J. **National Rivers Inventory Streams**. Work in National Rivers Inventory Streams is not authorized by this Regional Permit unless coordinated with the National Park Service.

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 if 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 to 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.

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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.

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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

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and bill the proponent for the cost.

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



West Virginia Department of Environmental Protection

Bob Wise
 Governor

Stephanie R. Timmermeyer
 Cabinet Secretary

July 10, 2003

Ms. Ginger Mullins
Chief, Regulatory Branch
Operations & Readiness Division
Huntington District, Corps of Engineers
502 Eighth Street
Huntington, West Virginia 25701-2070

**RE: Public Notice Nos. 199700048-1 and 03-R1, 401
 Water Quality Certification, US Army Corps of
 Engineers - Huntington and Pittsburgh Districts,
 Regional Permit for stream restoration and
 management by individual landowners, all
 counties in the State of West Virginia;
 (WQC 030005).**

Dear Ms. Mullins:

The West Virginia Department of Environmental Protection-Division of Water and Waste Management (WVDEP-DWWM), in consultation with the West Virginia Division of Natural Resources - Wildlife Resources Section (WVDNR-WRS), has completed review of the 401 Water Quality Certification application for the above-referenced proposal and offers the following comments.

This permit would authorize excavation of silt, sand and rock deposits, sand and/or gravel bar reduction activities, restoration of stream channels, and bank stabilization of established stream channels. This permit does not include work in designated areas of the National or State Wild and Scenic Rivers Systems, a Federal or State designated wildlife management area, sites included in the National Registry of Natural Landmarks and streams excluded by the special and general conditions imposed by this State water quality certification.

We have been an active participant in the Regional Permit for Stream Restoration and Management by Individual Landowners (RLOP) Program. Our staff routinely attends field reviews and we thoroughly review all completed plans. We have participated in a comprehensive review of the program that included analysis of survey responses and field reviews of completed projects. The following comments are based on this review.

The RLOP has been well received by the citizens of West Virginia. Our records indicate that there have been over 800 requests for assistance since the inception of the RLOP Program. Results of the mail survey indicate that the public is very satisfied with the program. Program participants were asked to rate the program on a 10 point scale with 1 being very dissatisfied and 10 being extremely satisfied. The overall response was 8.4 indicating a high level of satisfaction with the program.



West Virginia Department
 of Environmental Protection

"Promoting a healthy environment."

read
 7/31/03
for ARC

Field reviews of completed projects were conducted in the Pittsburgh District on April 15, 2003 and Huntington District on April 16, 2003. Representatives from Huntington District U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, WVDNR-WRS, WVDEP-DWWM, and the WV Conservation Agency attended one or both of the field reviews. Our assessment of the field review was positive. Permittees generally abided by their Stream Management Plans.

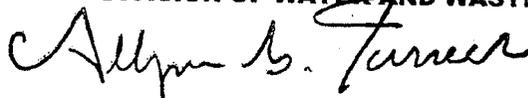
Special Conditions

1. "Sand and/or gravel bar reduction activities will not include the reduction of islands that support woody vegetation."
2. "Work proposed in the National Rivers Inventory Streams is not authorized by this regional permit unless coordinated with the National Park Service."

State 401 Certification, as required by the Clean Water Act is granted, subject to inclusion of the above special conditions. Certification shall be effective fifteen (15) days after receipt unless appealed under title 47, Series 5A, Section 7 of the Code of State Regulations, Rules for Individual State Certification of Activities Requiring A Federal Permit. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It should be directed to: Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection, 414 Summers Street, Charleston, West Virginia 25301: ATTENTION: Regulatory Review Program.

Sincerely,

DIVISION OF WATER AND WASTE MANAGEMENT



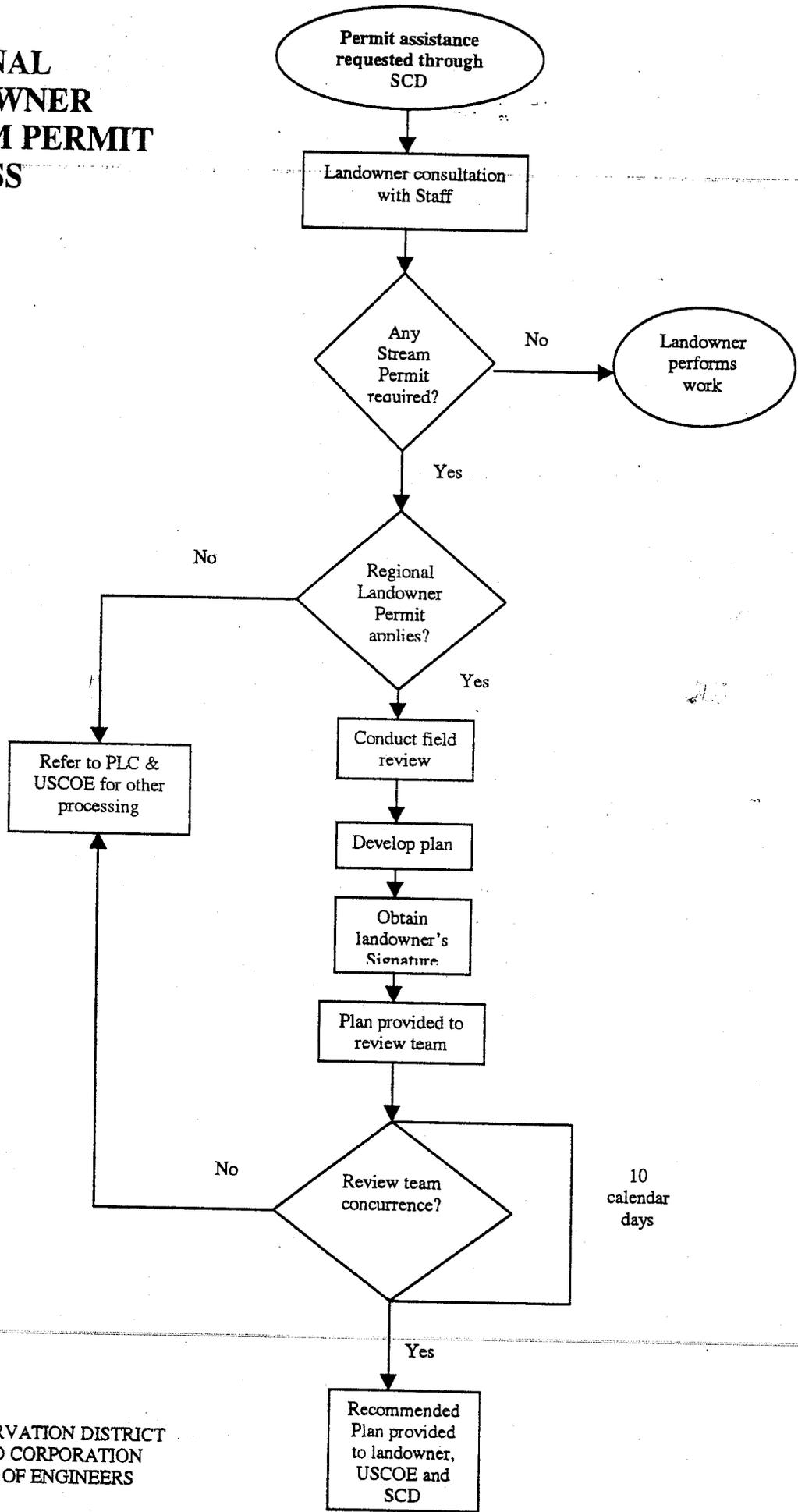
Allyn G. Turner, Director



AGT/wir

cc: Mr. Albert H. Rogalla ✓
Chief, Regulatory Branch
U.S. Army Corps of Engineers
Pittsburgh District - CEORP-OR-F
1000 Liberty Avenue
Pittsburgh, Pennsylvania 15222-4186
Natural Resources Conservation Service
State Soil Conservation Agency
U.S. Environmental Protection Agency - Jessica Greenwood
U.S. Fish and Wildlife Service - Jeffrey Towner
WVDNR-Wildlife Resources Section, Elkins - Roger Anderson
WVDEP-DWR, Regulatory Review Program - Lyle Bennett

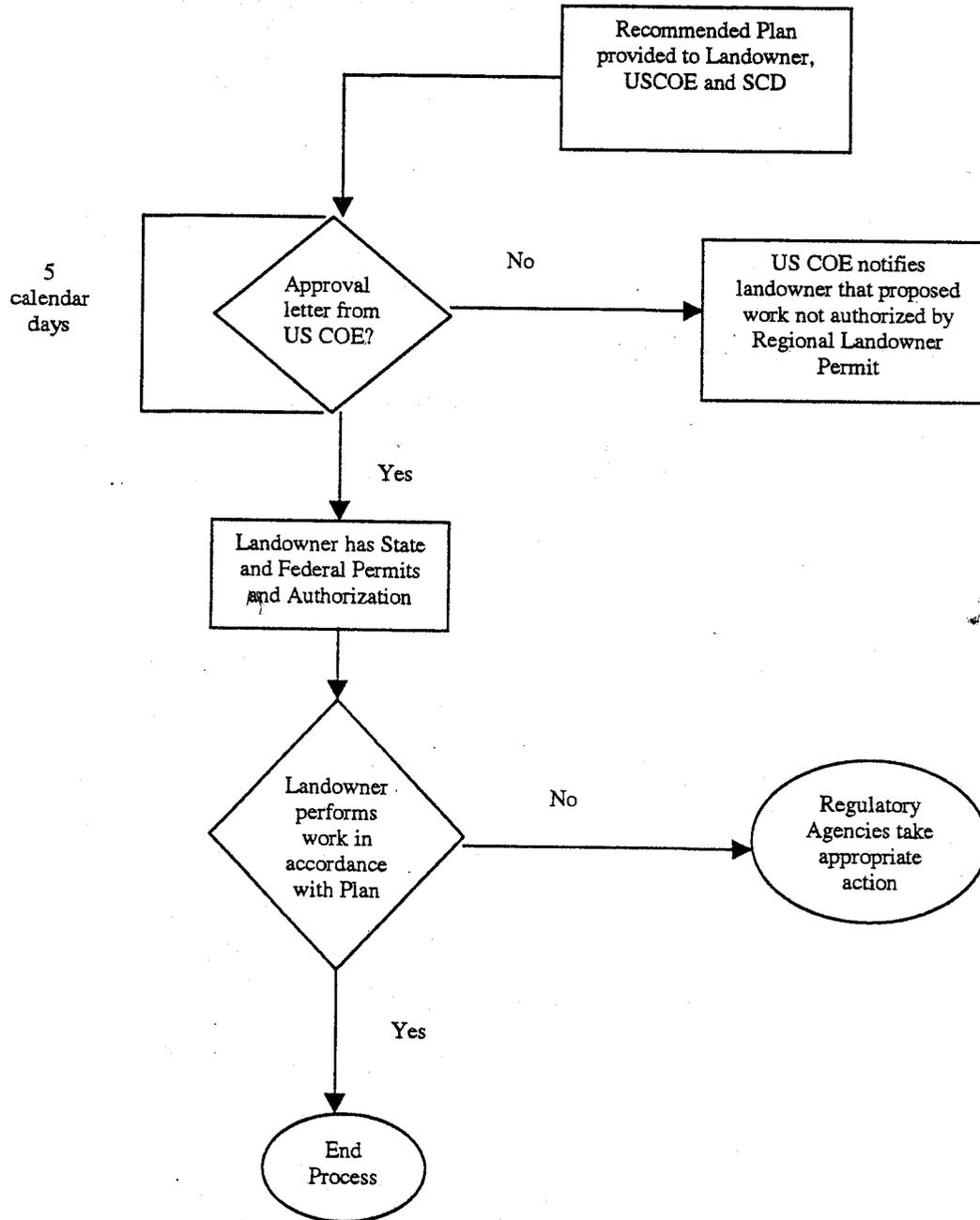
REGIONAL LANDOWNER STREAM PERMIT PROCESS



SCD=SOIL CONSERVATION DISTRICT
 PLC=PUBLIC LAND CORPORATION
 USCOE=US CORPS OF ENGINEERS

REGIONAL LANDOWNER STREAM PERMIT PROCESS

(Continued)



ADDRESSES AND TELEPHONE NUMBERS FOR
WEST VIRGINIA SOIL CONSERVATION DISTRICTS

West Virginia Soil Conservation Agency
(304) 558-2204, FAX (304) 558-1635

CAPITOL

Kanawha County
418 Goff Mountain Road, Suite 102
Cross Lanes, WV 25313
776-5272

EASTERN PANHANDLE

Berkeley, Jefferson and Morgan Counties
1450-1 Edwin Miller Blvd.
Martinsburg, WV 25401
263-4376

ELK

Braxton, Clay, Nicholas and Webster Counties
801 State Street
Gassaway, WV 26624
364-5105

GREENBRIER VALLEY

Greenbrier, Monroe and Pocahontas Counties
717 North Jefferson Street, Room 102
Lewisburg, WV 24901
645-6173

GUYAN

Boone, Cabell, Lincoln, Logan, Mingo and
Wayne Counties
2631 5th Street Road
Huntington, WV 25701
528-0108

LITTLE KANAWHA

Calhoun, Ritchie, Roane, Wirt and
Wood Counties
Rt. 5, Box 1000
Parkersburg, WV 26101
422-9088

MONONGAHELA

Marion, Monongalia and Preston Counties
Monongahela SCD Building
201 Scott Avenue-Vista Del Rio
Morgantown, WV 26505
296-0081

NORTHERN PANHANDLE

Brooke, Hancock, Marshall and Ohio Counties
Federal Building, 324 Seventh Street
Moundsville, WV 26041
845-8085

POTOMAC VALLEY

Grant, Hampshire, Hardy, Mineral and Pendleton
Counties
500 East Main Street
Romney, WV 26757-1836
822-5174

SOUTHERN

Fayette, McDowell, Mercer, Raleigh, Summers
and Wyoming Counties
475 Ragland Road
Beckley, WV 25801
253-0261

TYGARTS VALLEY

Barbour, Randolph, Taylor, Tucker and
Upshur Counties
P. O. Box 579, Philippi, WV 26416
457-3026

UPPER OHIO

Pleasants, Tyler and Wetzel Counties
Agricultural Service Center, Main Street
P. O. Box 125
Middlebourne, WV 26149
758-2512

WEST FORK

Doddridge, Gilmer, Harrison and Lewis Counties
Agricultural Service Center
Rt. 1, Box 204-E
Mt. Clare, WV 26408
627-2160

WESTERN

Jackson, Mason and Putnam Counties
224-C First Street
Point Pleasant, WV 25550
675-3054