

State of West Virginia Department of Administration Purchasing Division 2019 Washington Street East Post Office Box 50130 Charleston, WV 25305-0130

#### Request for Quotation

DEP15684

PAGE

ADDRESS CORRESPONDENCE TO ATTENTION OF:

ADDRESS CHANGES TO BE NOTED ABOVE

GUY NISBET 304-558-8802

\*311144600 304-732-8303 PINEVILLE PAVING & EXCAVATING PO BOX 1290 RT 10 SOUTH PINEVILLE WV 24874

ENVIRONMENTAL PROTECTION

DEPARTMENT OF
DIVISION OF LAND RESTORATION
601 57TH STREET SE
CHARLESTON, WV
25304 304-926-0499

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TITLE Sec.

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ENAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

FREIGHT TERMS F.O.B. SHIP VIA TERMS OF SALE DATE PRINTED 01:30PM BID OPENING TIME 01/31/2012 03/15/2012 AMOUNT BID OPENING DATE: UNIT PRICE ITEM NUMBER CAT. UOP QUANTITY LINE AFFIDAVIT MUST BE SIGNED AND SUBMITTED WITH THE BID AS EVIDENCE OF THE VENDOR'S COMPLIANCE WITH THE PROVISIONS OF ARTICLE 1D, CHAPTER 21 OF THE WEST FAILURE TO SUBMIT THE SIGNED DRUG-FREE WORKPLACE AFFIDAVIT WITH THE BID SHALL RESULT VIRGINIA CODE. IN DISQUALIFICATION OF SUCH BID. THIS CONTRACT IS TO BE PERFORMED NOTICE TO PROCEED: WITHIN 365 CALENDAR DAYS AFTER THE NOTICE TO PROCEED IS RECEIVED. CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE MATERIALS OR WORKMANSHIP SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM WITH THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN. WAGE RATES: THE CONTRACTOR OR SUBCONTRACTOR SHALL PAY THE HIGHER OF THE U.S. DEPARTMENT OF LABOR MINIMUM WAGE RATES AS ESTABLISHED FOR MCDOWELL COUNTY, PURSUANT TO WEST VIRGINIA CODE 21-5A, ET, SEQ. (PREVAILING WAGE RATES APPLY TO THIS PROJECT.) ANY REFERENCES MADE TO ARBITRATION OR INTEREST FOR PAYMENTS DUE (EXCEPT FOR ANY INTEREST ARBITRATION: REQUIRED BY STATE LAW) CONTAINED IN THIS CONTRACT OR IN ANY AMERICAN INSTITUTE OF ARCHITECTS DOCUMENTS PERTAINING TO THIS CONTRACT ARE HEREBY DELETED. VENDOR IS REQUIRED TO PROVIDE WORKERS' COMPENSATION: A CERTIFICATE FROM WORKERS' COMPENSATION IF SUCCESSFUL. ALL OF THE ITEMS CHECKED BELOW WILL BE A REQUIREMENT SEE REVERSE SIDE FOR TERMS AND CONDITIONS DATE 3/15/12 TELEPHONE 304-732-8303 ADDRESS CHANGES TO BE NOTED ABOVE

FEIN 550 709824



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**\*311144600** 

PO BOX 1290

RT 10 SOUTH

PINEVILLE WV

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FREIGHT TERMS F.O.B. SHIP VIA TERMS OF SALE DATE PRINTED 01:30PM BID OPENING TIME 01/31/2012 AMOUNT 03/15/2012 UNIT PRICE BID OPENING DATE: ITEM NUMBER CAT. UOP QUANTITY LINE WEST VIRGINIA STATE CODE 21-11-2 REQUIRES THAT ALL PERSONS DESIRING TO PERFORM CONTRACTING WORK IN THIS STATE MUST BE LICENSED. THE WEST VIRGINIA CONTRACTORS LICENSING BOARD IS EMPOWERED TO ISSUE THE CONTRACTORS APPLICATIONS FOR A CONTRACTORS LICENSE MAY B MADE BY CONTACTING THE WEST VIRGINIA DIVISION OF LABOR, CAPITOL COMPLEX, BUILDING 3, ROOM 319, CHARLESTON, WV 25305, PH. 304-558-7890. WEST VIRGINIA STATE CODE 21-11-11 REQUIRES ANY PROSPECTIVE BIDDER TO INCLUDE THE CONTRACTORS LICENSE NUMBER ON THEIR BID. BIDDER TO COMPLETE: Pineville Paving & Excavating Inc CONTRACTORS NAME: ... WYDID 542 CONTRACTORS LICENSE #: . THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FURNISH A COPY OF THEIR CONTRACTORS LICENSE PRIOR TO ISSUANCE OF A PURCHASE ORDER/CONTRACT. APPLICABLE LAW THE WEST VIRGINIA STATE CODE, PURCHASING DIVISION RULES & REGULATIONS, AND THE INFORMATION PROVIDED IN THE "REQUEST FOR QUOTATION" ISSUED BY THE PURCHASING DIVISION IS THE SOLE AUTHORITY GOVERNING THIS PROCUREMENT. ANY INFORMATION PROVIDED IN SPECIFICATION MANUALS, OR ANY OTHER SOURCE, VERBAL OR WRITTEN, WHICH CONTRADICTS OR ALTERS THE INFORMATION PROVIDED FROM THE SOURCES AS DESCRIBED IN THE ABOVE PARAGRAPH IS VOID AND OF NO EFFECT. SEE REVERSE SIDE FOR TERMS AND CONDITIONS 304-732-8303

TELEPHONE

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FEIN 550709824

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PINEVILLE PAVING & EXCAVATING

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304-732-8303

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01/31	/2012	=	2012			BID	OPEN	ING TIME	01:30	AMOUNT
PENING DATE		03/15/		CAT. NO.	ITEM	NUMBER		UNIT PRICE		AMOON
LINE	QUAN	TITY	UOP	NO.					#	913,247.60
	*****	THIS	IS T	HE END	OF RF	Q DEP1	5684	***** TOT	AL:	9112/4 (1)
	·									
				656	PEVERSES	IDE FOR TERMS A	IND COND	itions - 732-8303	DATE	3/15/12

# McDOWELL LANDFILL LEACHATE STORAGE FACILITY UPGRADE

## **DEP15684**

# BID SCHEDULE

Vendors Name: Pineville Paving & Excavating Inc.

The DEP reserves the right to request additional information and supporting documentation regarding unit prices when the unit price appears to be unreasonable.

			TD HTT	
			UNIT PRICE	AMOUNT
ITEM	- ZIA NITETTY	DESCRIPTION		
NO.	QUANTITY			\$30,000.00
		Mobilization/Demobilization (Shall not exceed 10% of total bid)	\$ -	
1	1 LS	Mobilization/Demobilization (Snail not exceed Construction Layout and Documentation (Shall not exceed	\$ -	\$20,000.00
	- 6	10% of total bid)	\$ -	\$ 15,000.00
2	1 LS	Erosion and Sediment Control	\$ 15,000.00	\$ 15,000,00
3	1 LS	Clearing and Grubbing	\$ 2,500.00	\$ 10,000.00
4	1 Acre		\$ 13.00	\$ 146,250.00
5	4 Acre	Revegetation	\$ 13.	\$ 7,200.00
6	11,250 CY	Excavation	\$100.00	
7	72 LF	Channel A	\$ 17,00	1 - 00 00
8	110 LF	Channel B	\$ 32.00	\$ 85,347,00
9	65 LF	12" Culvert	\$ 87.00	\$ 85,347,00
10	981 LF	Leachate Pipe	\$ 12,500.	\$ 12,500.00
11	1 LS	Tank Valve Pit	1 \$ 7 500.	\$ 1,000.
12	1 LS	Truck Load-out Valve Pit	\$450,000	\$ 950,000
	1 LS	Leachate Storage Tanks	\$ 37.50	\$ 101,250,
13	2700 Ton	Access Road Surfacing	\$ 25.00	\$ 9,250.00
14	370 LF	Fence		
15	3/0 LF			\$913,241,00
				\$117,2711
		TOTAL		

# BID BOND PREPARATION INSTRUCTIONS

AGENCY	(A)
RFO/RFP#	(B)

3			
		Bid Bond KNOW ALL MEN BY THESE PRESE	NTS, That we, the undersigned,
	and Grate Agency	KNOW ALL MEN BY THESE PRESE  (C) of (D)  (S Principal, and (F) of a corporation organize	(E)
()	WV State Agency (Stated on Page 1 "Spending Unit")	(C) of	(G)
	(Stated on Page 1 Spending Stated On Page 1	as Principal, and (F) of of	zed and existing under the laws
	Request for Quotation Nutrices (1)	(A)	· 1 - CC on in the ( IIV ())
	right corner of page #1)	of the State of hold a	nd firmly bound unto The State
(C)	Your Company runns	, 43 54.	
(D)	City, Location of your Company	of West Virginia, as Obligee, in the penals	which well and truly to be made,
(E)	State, Location of your Company	(\$) for the payment of	s, administrators, executors,
(F)	Surety Corporate Than	we jointly and severally office ourse.	
(G)	City Location of Sures	augusters and assigns.	to that whereas the Principal
(H)	State, Location of Surety	The Condition of the above obligation has submitted to the Purchasing Section of the I	Department of Administration
(1)	State of Surety Incorporation	has submitted to the Purchasing Section of the I a certain bid or proposal, attached hereto and m	ade a part hereof to enter into a
(1)	City of Surety Incorporation	a certain bid or proposar, accuerns	
(K)	Minimum amount of acceptable bid	contract in writing for(M)	
	bond is 5% of total bid. You may state	(IVI)	
	"5% of bid" or a specific amount on		
	this line in words.	PROPE	
(L)	Amount of bond in figures	NOW THEREFORE.	
(M)	Brief Description of scope of work	(a) If said bid shall be rejected, or (b) If said bid shall be accepted and	the Principal shall enter into a
(N)	Day of the month	(b) If said bid shall be accepted and	I attached hereto and shall furnish
(O)	Month	(b) If said bid shall be accepted and contract in accordance with the bid or proposa any other bonds and insurance required by the	bid or proposal, and shall in all
(P)	Year	other bonds and ill surance require	in the second stand bill their
(Q)	Name of Corporation Raised Corporate Seal of Principal	they respects perform the agreement of	the stiention chall remain in Iui
(R)	Raised Corporate Scal of Prince Signature of President or Vice	this obligation shall be null and voice,	I amond that the liability of the
(S)	Signature of President of The	force and effect. It is expressly understood at Surety for any and all claims hereunder shall.	in no event, exceed the penal
	President	Surety for any and an claims here.	
(T)	Title of person signing Raised Corporate Seal of Surety	amount of this obligation as neroni star	and agrees that the
(U)	Raised Corporate Sear of Surety	The Surety for value received,	be in no way impaired or affected by
(V)	Corporate Name of Surety Signature of Attorney in Fact of the	The Surety for value received, here obligations of said Surety and its bond shall be obligations of said Surety and its bond shall be obligations.	gee may accept such bid: and said
(W)	Signature of Attorney in race of a	any extension of time within without	tangion
	Surety  E: Dated, Power of Attorney with Raised	County does hereby Walve House of any	hove beceunto set their
NOTI	Surety Seal must accompany this bid	IN WITNESS WHEREOU,	have caused their corpora
		hands and seals, and such of them as are con	to be signed by their proper officers
	bond.	hands and seals, and such of them as are corseals to be affixed hereto and these presents	20 (P)
		seals to be affixed hereto and these presents this(N) day of(O)	_,
			(Q)
		Principal Corporate Seal	(Name of Principal)
			D. (S)
		(R)	(Must be President or
			Vice President)
			(T)
			Title
		(U)	(V)
		Surety Corporate Seal	(Name of Surety)
		~ · · · · · · · · · · · · · · · · · · ·	N
			(W)
			Attorney-in-Fact
			1 222.0.1

IMPORTANT – Surety executing bonds must be licensed in West Virginia to transact surety insurance. Raised Corporate Seals must be affixed and a Power of Attorney must be attached.

	AgencyREQ.P.O#
BID BOND	
KNOW ALL MEN BY THESE PRESENTS, That we, the undersigne  of, a corporation  of, a corporation	on organized and existing under the laws of the State
f West Virginia, as Oblige, in the penal sum of  f west Virginia, as Oblige, in the penal sum of	, administrators, executors, successors and assigns.
The Condition of the above obligation is such that whereas the Pri Department of Administration a certain bid or proposal, attached hereto and	ncipal has submitted to the Pulchasing of the national has submitted to the Pulchasing of the hard has been demonstrated in writing for demonstrated and the national hard hard hard hard hard hard hard hard
NOW THEREFORE,  (a) If said bid shall be rejected, or  (b) If said bid shall be accepted and the Principal shall enter interest of the said bid shall be accepted and insurance required by the bid agreement created by the acceptance of said bid, then this obligation shall force and effect. It is expressly understood and agreed that the liability of exceed the penal amount of this obligation as herein stated.  The Surety, for the value received, hereby stipulates and agreed way impaired or affected by any extension of the time within which the Control of any such extension.  IN WITNESS WHEREOF, Principal and Surety have hereunto have caused their corporate seals to be affixed hereunto and these predicts and some control of the said of the sai	of the Surety for any and all claims hereunder shall, and if the Surety for any and all claims hereunder shall, and said shall be in no oblige may accept such bid, and said Surety does hereby waive set their hands and seals, and such of them as are corporations sents to be signed by their proper officers, this
Principal Corporate Seal	(Name of Principal)
	By(Must be President or Vice President)
	(Title)
Surety Corporate Seal	(Name of Surety)
	Attorney-in-Fact

IMPORTANT – Surety executing bonds must be licensed in West Virginia to transact surety insurance. Raised corporate seals must be affixed; a power of attorney must be attached.

Date: 4-May-2007

Applicant Violator System Current Organizational Family Tree (OFT) Time :15:43:09 Page: 1

(147991) PINEVILLE PAVING & EXCAVATING INC

	100		Total	Number:	б
Entity	Name	Desc	Begin Date	End Date	Pct. Hold Own. Code
147992 BRADFORD, 147993 BRADFORD,	AM TUON T	PRS SH VP SH SH SEC	9-Aug-1991 9-Aug-1991 9-Aug-1991 9-Aug-1991 9-Aug-1991 1-Jul-2001		60% 20% 20%



VEZDOR

State of West Virginia
Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130 Charleston, WV 25305-0130

#### Request for Quotation

**DEP15684** 

ADDRESS CORRESPONDENCE TO ATTENTION OF

**GUY NISBET** 304-558-8802

**\*311144600** 304-732-8303 PINEVILLE PAVING & EXCAVATING PO BOX 1290 RT 10 SOUTH PINEVILLE WV 24874

**ENVIRONMENTAL PROTECTION** DEPARTMENT OF DIVISION OF LAND RESTORATION 601 57TH STREET SE CHARLESTON, WV 25304 304-926-0499

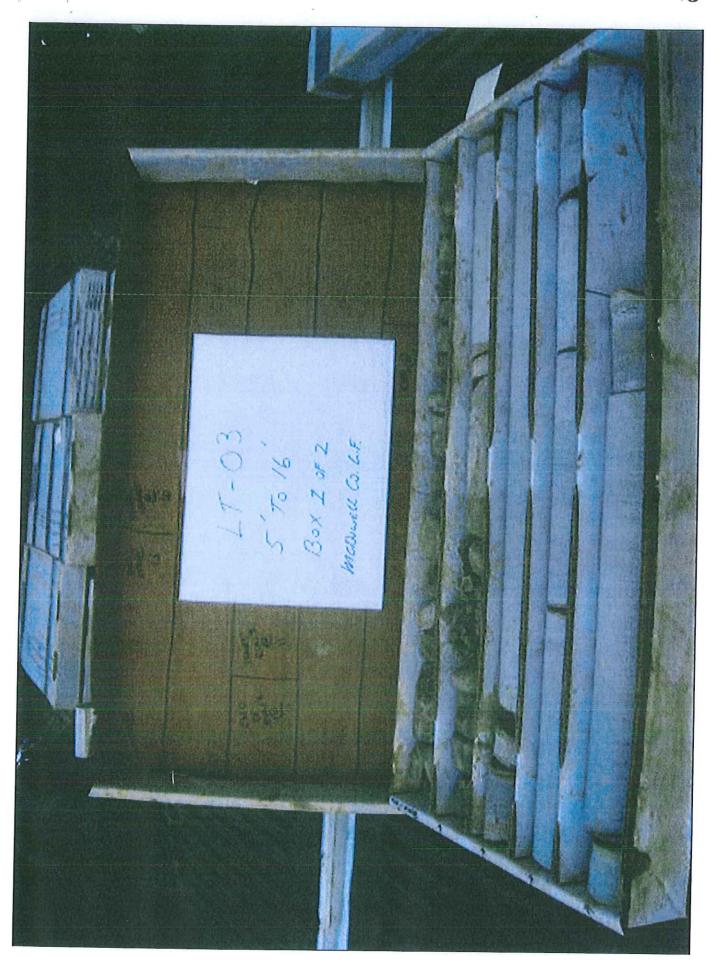
DATE PRINT	······	TER	MS OF SAL	E	SHIP VIA		F.O.B;	FREIGHT TERMS		
02/29/ BID OPENING DATE:	07/15/	2012			DID	ODENING TIME O	1.7004			
	03/13/2012			CAT.				1:30PM		
LINE	QUAI	VIIIY	UOP	NO.	ITEM NUMBE	Ħ.	UNIT PRICE	AMOUNT		
0001	STORAG ADDITI CORE S AND RI PRE-BI BID OP	E FACIONAL BAMPLESGHT OF SIGNENING	1 FOR LITY IDDER , TES ENTR -IN S DATE 03/	ADDEN THE UPGRA INFO T BOR Y, CO HEET REMAI 15/20 NO O D OF	ING FIELD L RPS OF ENGI FROM: 2/23/ NS UNCHANGE 12 AT 1:30F THER CHANGE ADDENDUM NO 962-73 ON OF LAND  VERSE SIDE FOR TERM	ED TO T INC OGS, NEERS 2012 D: M S OTH	PROVIDE LUDES PHOTOS OF DNR LICENSE "NWP#12" AND MEETING.  ER PROPERTIES	. #913, 247, <sup>20</sup>		
SIGNATURE Han	M. Bo	1 Mallal			TEL	EPHONE ZA	1-732-8363 DATE	3/15/10		
TITLE CHANGE	111-170	TE FE	IN C	1.00		00		ER TO BE NOTED ABOVE		
Sec.			550°	1098	24		ADDRESS CHANGE	S TO BE NOTED ABOVE		





















Fluid Losses

@ Depth:\_

# TEST BORING FIELD LOG

Test Boring No. : LT-01

Location: 170964.58.1802191.17

AR B	AH2 O224	GINES*	oject No.:_	LCAP	101		Date:	6/2	2/13	
ect N	lame:	MCDOWN CITY STAR	_ Drill Ci	rew:						
al E	200	MAC. Drilling Company. Services	— Groun	d Surfai	ce Ele	vation	ı:			
TI	nck.	mounter Drill Method: Augen HSA		pth	1st	2nd	3rd	4th	Rec.	Pocket Penetrometer
pth (1		Soil Visual Classification/ Descriptions and Hemarks	From	-	6"	6"	6"	6"	/RQD	(Torvane)
m	To	Surface Condition:		2.50		-	6		REC.	1.5 51
-	2 55	Brownish / TAN SANDY SILT W/LOW	0	2.30	-	2				
) 2	,,50	PLASTICITY AND MIXED WITH SANDSTONE FINGMENTS.		-	-			<b> </b>		
-		(52)-SS		-	-		-	+		
$\rightarrow$		(32)			-		-	+	REC. 0.42	Dark
		Dry Lightish TAN NON-PLASTIC SILTY SAND	3.50	5'	16	13	13	/	0.42	14001
53	5'	Dry Lightishlian NON POSSELLE FLAGRENTS AND				-		-		
		MIKED W/ QUALTE SANDSTONE FLAGMENTS AND					-		-	
		TIPLES OF MICA. (SZ)-SS		1					RPC.	1
	<u> </u>	4 . 4 11.00	Z 93	· 2.50	53/0	F /	/	/	2.42'	Rock
.00	2.50	DIY LIGHTISH / TAN NON-PLANTIC SILTY SAND MIKED	- 6.00	7.0	1	"				
		W/ QUALTE SAMSTONE FLAGMENTS AND TINCES	-+-	-	+	1				
		of mich.		-	+	+	1			
_			-	+	_	-	+	_		
		(NOTE) BEGAN Coring & 6.50' in 5' ITENVELS			+	-	+	+	+	
		CNO/E I SEGAN CO.			+	-	-	-	ROO	
	-	1 1ST CORE RUN IN / TOTAL RECOVERY @ 0,21'			-		+	-	Rac	+
,50	7.0	1 Cope RUN WITSHIE ROOM			_	_	-			+
	-	(FINJUNED SAMOSTINE)					_		0.33	1
		1. (0) 233							ROD	6.6
2.0	12	2 MC COTE RUN W/TSTAL RECOVERY @ 3.33								
		(FINCTURED SANDSTINE)								
		,		_	$\neg$				2.54	10.8
12'	17	1 3 "CORE RUN W KITAL REEDWAY @ 4.42"			-	-				
12	+	(NOTE) BOX I CONT. T. BOX 2 @ 18.5 MOSTLY FINLTURE	D SAM STO	INE.	+	-	十	-		
	+				+		+	-	1.6	
	+	' 4th core RUN W/TOTAL RECOVERY 8, 4.50'				-		-	ROV	2 30,
17'	122	4 COLEKON MILITAGE RECENT				-	_		2.6	2/10
		1 12 121 8 417							2.6	53.
22	27	SM COLE RUN WITHTAL RECOVERY & 4.17	TOT OUS	Comp	Tion!	hut	Serle	5 10		
		(NOTE) ROCK SEEMS TO BE VETY FIRETINED AND ROTES in	3 //4 /4 4/	LE.	( A)	F To F	neces	ANCE.		
		BET FAIR SETHERN 18.5 11 27. HAD DITUERCES	othod Boring	Diameter.	UD She	by Tube	s, Well C	Construct	on (draw sk	etch on bac
Total	Boring	Donth: 23,50 COCE DEPTH. Comments. [Disk in	ealog, Sering	taren en M						
	<u>Levels</u>	© First Noted in Samples 7 Collings	Hammer	Type: Do	nut Ha	mmer	/ Safet	у Натп	ner / Auto	matic Han
		@ Completion @ After Hrs	SPT Ham	mer: (We	eight / I	Orop / S	Spoon D	)ia.) _		
		@ Backfilling (date/ time)	Auger Dia	<u>a.</u> : ID / OI	) (inch	i: é	2.25			
								or Ch	elby Tube	Sample
19 3	ng Time			Hollow S					SPT Weigh	
	oving: _	Q:22Ab = 1:45 pm.		Rotary Mu	d Drillir	ng or Auss			SPT Weigl	
Dri	illing: _			Refusal ( Rock Core		or Auge			Recovery (F	
0.			DC F	LAAL I OIL	,					
	CARTER OF TRANSPORT	Vater: 'Grout Boring:		PT Split		Sample			Rock Quali	

@ Depth:\_

# TEST BORING FIELD LOG

Test Boring No.: LT-JZ

Location: 170920.90; 1802158.84

	TAN BULED	TEST BOTH				ation.			,	
ARSH	UNILLER DCINES	D. LANDFILL P	roject No.:	LCAP	101		Date:_	6/2	3/10	
ect Name	: McDowell C	2. 501 5500	Drill C	rew:						
	, , , , 11	rilling Company	Groun	d Surfa	ace Ele	vation	:			
Track	1 D-0	IIII Metriou.		epth	1st	2nd	3rd	4th	Rec.	Pocket Penetrometer
		sification/ Descriptions and Remarks		To	6"	6"	6"	6"	/RQD	(Torvane)
pth (feet)	Surface Condition	n:	Fioli	2.50	,	7	8		2.50 REC	0
m To	DAY L'AUTISH / TA	N NOW-PROSTIC SILTY SOND		2.50	+-					
2,30	1) 17 Engillor	SANDSTINE FLAGORENTS AND		+	+					
_	Frace of Mich.	(51)-55		+	+	<b> </b>				
	4		<del></del>	3 5	53/4 REF	-	/	/	DEC REC	Rock
	Tack Lieux W / Fan	NON-PLASTIC SILTY SAND MIXED W	1/ 3.50	5	KEP	-				
55 5	Dry Cignish This	NE FINGHERTS AND PLACES OF MICE	<u>1.</u>	-	-	+	1			
	SURITE SKATTIN	<u>ve / (-)</u>			-	+-	+	1		
	(52)-53				-	+	+-			
	1 10	icing Rock e 5'		_		+	+	+-		
	(NOTE) BEGAN GO	(.mg Koes		_	_	-	+	+	3.5°S R&D	70%
	1 19	1/T.T. CREENUERY C 4.33			-	-	+	+-	KSE	
5' 15	2 Core RUN h	Cores HAVE LITTLE FLACTURE.		-			+	+		
	SANOSTINE ROUGE	Cares Ande			-	-	-	-	1.50	30%
6	) ND	Les 1 2000 4 P. 4.83'			_	-	-	-	1/480	1
15' 1.	2 COLE RUN W	ITSTAL REBOURTY C 4.83'				_	+	-	_	
	SAMOSTIME ENCO	UNTERED HAS MOTE FRACULASS.				-	$\dashv$	-	2.5 R30	41.6
,		1551 2 July 8,5'				-	-	-	Kal	77.0
15 2	5 3 CORE RUNI	w/Total Recovery @ 5'				_	-		-+-	_
	SAMSSONE ROL	<u>x</u>					-	-+	_	-
							_	-		_
						_	_			+
								_	-+	-
										-
										_
$\vdash$		Comments: [Dri	Poris	o Diamet	er, UD Sh	nefby Tub	es, Well	Constru	action (draw s	ketch on bad
Tatal Bari	ng Depth: 15' Core		Method, Bolli	ly Diamet		000 2040			Co. II gillione	
Water Le		- W Filst Noted in The	Hamme	er Type:	Donut h	Hammei	/ Safe	ety Han	nmer / Au	omane ria
		@ Completion @ After Hrs	SPT H	ammer:	(Weight	/ Drop /	Spoon	Dia.)		
		@ Backfilling (date/ tir	ne) <u>Auger</u>	Dia.: ID	OD (inc	:h):	d.d.	<b>)</b> /		
		W Dackining	VAN TAITEET	20 N T ( N T ( N T ( T ( N T ( T ( N T ( T (	Ol-m	Augere		ST - S	Shelby Tub	Sample
Drilling T	mes:		HSA	- Hollov - Rotary				WOR	- SPT Wei	ght of Rods
Movin	9:30AM - 11:	22 AM.	MU	- Holary - Refus	al (Spoc	on or Au	ger)			ight of Ham
				- Rock (				REC	- Recovery	(Feet)
	· Mater:		507.E. (8-500.E	0	I'l Case	on Samp	ole	RQD	- Rock Qu	ality Design
Aban	don/Grout Boring:	2 Coath	DC	- Driven	Casing	(Hamm	er Type	and R	ecord Blow	s/ft vs. Dep

@ Depth:\_

# TEST BORING FIELD LOG

Test Boring No. : LT - 93

Location: 170929, 45, 1802228, 92

	IN NILED	1201 201						, , ,		,	
ARSHAL 8ASSOC	LINILLER	ELL CS. LANDFILL  DEILLING COMPANY: CENTRAL STAR	Project N	No.: 1	CAPI	01	[	Date:_	6/2	2/10	
		CV CO. LANDFILL	Dr	ill Cr	ew:						
				round	Surfac	e Ele	vation	:			
TIACK MO	waten	Drill Method.		De	-		2nd	3rd	4th	Rec.	Pocket Penetrometer
epth (feet)	Soil Visua	I Classification/ Descriptions and Remarks		rom		6"	6"	6"	6"	/RQD	(Torvane)
	Surface Co	andition:		THE REAL PROPERTY.	2.50	5	6	8		S.42 REC	8
OIII	Remultish /TI	AN SANDY SILT W/LOW PLASTICITY		/	2.50						
2.30	and witten	WITH SANDSTINE FLAGNENTS. (SI)-S	3		-					,	
				3.50	5'	5 XEF	/	/	/	0.50 REC	3.0 SF
.55 5'	200 154 /1	AN SAMOY SILT W/LOW PLASTICITY		3.50	13	Kel	-				
55 5	DISWALINE	WITH SAMPSTINE FLAGRICINTS. (52) - S	3		-	$\vdash$					
-	MAN MIXELL	V				-	-				
	1-1000	J Cocing C. 5'			-	+-	-	+	1		
	CNOTE ) / SEGA	<del>V ()                                     </del>			-	-	+-	+-		220	NIA
-1 -1	255 6 06 00	NW/FITTH RECOVERY & 1'			-	+-	+	+	+	73.35	
5' 6'	1 Care /ZU	SANDSTONE ROD 40.33				+-	+-	+-	+		,
				_		+-	+-	+	+	3.92 R30	18.4
	NO D.	NW /T. TAL RECOVERY Q 3.50'		<u> </u>		-	+-		_	73.5	
6' 11'	2 CORE RU	ors LESS Fractionall Towards END of	Rud.	_		+	+-	+	-		
	Rock Apper	its tess the tree		_	-		-		+	4.17 R3C	83.5
		UN W/TOTAL RECOVERY C 5'		1	_	-	+	-	$\dashv$	KAL	1
11/16	3, COLE K	DID CONNITION (BOX 2 5'-16' DENTAL	.)	1			-	-+-	-	_	
	Rock in G	Appenes to be a Grey-34 SMOLE.		1		$\dashv$	-	-	-	-	
				_		-	+		-	1.00	21.
	- 01	RUN W/TSTAL RECOURTY P. 4.50'					-	-		K.37	2 2
16 21	4" COK 1	EUN WITSIM REGULATION					-		_		+
	(NOTE) STA	or of Box 2. (16-21'FT.)					_	-	_		-
								_			-
								-			$\dashv$
											-
									_		
				1							
				$\neg$							
	/_	Comments: [1	Dall Mathod	Boring	Diameter	, UD She	lby Tub	es, Well	Constru	ction (draws	sketch on ba
Total Boring	Depth: 16 Co	Comments. [ر] Comments. [ر] (Comments. [Comments. [Co									
Water Levels		@ Completion	Ha	mmer	Type: C	onut H	ammer	/ Sate	ety Ham	nmer / Au	/
		@ AfterHrs		T Han	nmer: (V	/eight /	ntob 1	2.25	1		
		@ Backfilling (date/	time) Au	iger Di	<u>a.</u> : ID / C	)D (Incr	1).	2.07			
n III Timo				uca.	Hollow :	Stem A	ugers		ST - S	Shelby Tub	e Sample
Drilling Time					Rotary M				WOR	- SPT Wei	ght of Rod
Drillina:	2:30pm	- 5:20 pm.		REF -	Refusal	(Spoor	or Aug	ger)		- SPT We	
				RC ·	Rock Co	re			REC -	- Recovery - Rock Qu	(Leer)
				SS-	SPT Spli	t Spoor	Samp	le	HQD and B	- HOCK QUI	s/ft vs. De
Abandon	/Grout Boring:	a Doubh		DC -	Driven C	asing (	Hamme	er Type	ano He	ecord Blow	anti Din Ti

@ Depth:\_

## TEST BORING FIELD LOG

Test Boring No. : LT-34

Location: N: 37,46735; W-81.68/18

ARSHA 8ASSO	MCDOWELL CO. LANDFILL FARENCE STAT	Project No.:	LCAI	0101		Date:	6/22	\$ 6/23	110
ect Name:	MCDOWELL CO. LANDFILL  MEC Drilling Company: CENTRAL STAT  ON MANAGE ALONG HSA	Drill C	rew:						
100220	Drilling Company.		d Surfa	ce Ele	evation	n:			
: TrACK !	Drill Method Drill Method.		epth	1st	2nd	3rd	4th	Rec.	Pocket Penetrometer
opth (feet)	Soil Visual Classification/ Descriptions and Home		То	6 <sup>H</sup>	6"	6"	6"	/RQD	(enemoT)
To	Surface Condition:	0/	2.50	5	8	8		REC.	2.75 FF
2.50	Brown: SH /TAN SANDY SILT W/LOW PLASTICITY								
	Ann Mixen WITH SANDSTINE FLAGHENTS, (SZ) -SS							227	TIN
		3.50	5'	8	6	11	-	REC	2.5 SF
50 5	BIOWN: SA / TAN SOURS CILT W/LOW PLASTICITY	3					-	-	-
	AND MIXELL WITH SANDSTONE FANGEMENTS. (SZ)-S						-		-
	(NOTE) BEGAN ROCK COLING & 5'							2 50	1 2
		Box	1 5'	151				2.50 R30	50%
5' 10'	2 ST CORE RUN W/F. SAL RECOUNTY @ 4.83'								
	SANDSDINE ROLL APPENIS TO HOVE LESS FINITUAL							275	1 2
	10462'							2.75 RQO	55%
15 15	2 "CORE RUN W/TOTAL RECOVERY & 4.67'								-
	SAMOSTINE COLE Appending Consistant,							2.0	/
								311	63.4
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DIVISION OF NATURAL RESOURCES 324 Fourth Avenue, Room 200 South Charleston WV 25303-1228 TDD (304) 558-1439 TDD 1-800-354-6087 Fax (304) 558-6048 Telephone (304) 558-3225

Frank Jezioro Director

Earl Ray Tomblin Governor

May 12, 2011 Division of Natural Resources LICENSE AND RIGHT OF ENTRY

Re: P-11-IV/27-658

West Virginia Department of Environmental Protection c/o Marshall Miller & Associates Attention: Bill Dickey, P.E. 200 George Street, Suite 6 Beckley, WV 25801-

The Division of Natural Resources hereby grants to you for a term of 25 years, from the date hereof, a License and Right of Entry to construct, replace, cover, repair, operate, maintain, use and remove a six inch (6") pipeline along Tug Fork, Brown Creek District, McDowell County, West Virginia, as shown located and highlighted in red on the map attached hereto as Exhibit A.

This License and Right of Entry is subject to the following terms and conditions:

- No in stream work during the fish-spawning season (April 1-June 30). 1.
- The pipeline must be buried at least three-feet (3'). 2.
- High Quality Streams Directional boring only method permitted during fish spawning season (April 1 - June 30). Other dry ditch methods as 3. referenced in the WV DEP Best Management Practices 2006 Section 3.21 may be used outside of the spawning season. No wet trench at anytime. Crossing to be completed in two (2) consecutive working days.
- Non High Quality Streams Directional boring or other dry ditch methods as referenced in the WV DEP Best Management Practices 2006 Section 3.21 4. must be used during fish spawning season (April 1 - June 30) and during periods of flowing water. Trenching permitted during periods of no flow. Crossings to be completed in one (1) work day.
- Any stream bed disturbance should be restricted to the immediate area. In stream use of equipment should be kept to a minimum. 5.
- All shore areas disturbed by this operation must be reshaped, seeded and mulched immediately upon completion of work. The prompt establishment of 6. vegetative cover will reduce future damage from high water levels.
- Green concrete must not be put in the stream (highly toxic to aquatic life). 7.
- Amount of stream side vegetation disturbed should be kept to a minimum. 8.

WV DEP P-11-IV/27-658 Page 2 May 12, 2011

- Best management practices should be followed; measures such as hay bales must be used to reduce downstream siltation.
- 10. Any plastic pipeline under four-inch (4") in diameter shall be encased in a metal conduit.
- 11. The State's issuance of this Right-of-Entry does not provide for the applicant to work outside the requested boundaries nor does the State assume any liability for the applicant's/landowner's construction activities. By accepting this Right-of-Entry, the applicant/landowner assumes liability for any/all damages caused by this activity to both upstream and downstream landowners.
- 12. Work should be completed as quickly as possible during low flows in designated work areas only.
- A 404 Permit may be required from The U.S. Army Corps of Engineers. You may contact them at (304-399-5710/412-395-7170.

Guidelines of Best Management Practices for Sediment and Erosion Control as outlined by the Section of Water Resources, Division of Environmental Protection must be followed. Copies of those guidelines are available from the Section of Water Resources, Telephone No. (304) 926-0495.

The issuance of this License and Right of Entry by the Division of Natural Resources does not preclude the necessity to obtain a permit from the Corps of Engineers or any other state or federal permits which may be required by law, nor does this License and Right of Entry negate the need to comply with the West Virginia Water Pollution Control Act and/or the State Environmental Quality Board's administrative regulations, applicant is also responsible for determining if the proposed activity is located within an identified flood plain and it is the applicant's responsibility for contacting the local governmental agency in charge of that program and obtaining a flood plain development permit for it. This License and Right of Entry does not grant any rights or privileges, or permission to enter upon or to cross the property of any other person, nor is permission granted to remove any material that lies upon the property of any other persons. Work should be completed in as brief a period as possible and within one year from the date of this letter. In the event you fail or refuse to comply with any of the terms or conditions herein, this License and Right of Entry will be canceled and considered null and void and the Division will reject further applications.

There is no fee for this Right of Entry.

Sincerely,

Joe T. Scarberry, Supervisor Office of Land and Streams

JTS:af

attachment

pc: DNR Fish Biologist

Mr. Mike Zeto, Environmental Enforcement

**DNR Conservation Officers** 



Issuance Date: March 19, 2007 Expiration Date: March 18, 2012

#### **NWP # 12**

# NATIONWIDE PERMITS FOR THE STATE OF WEST VIRGINIA

# CORPS OF ENGINEERS REGULATORY PROGRAM ISSUANCE OF NATIONWIDE PERMITS

On March 12, 2007, the Corps of Engineers published, in the Federal Register, the final rule for the administration of its nationwide permit program regulations under the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and the Marine Protection, Research and Sanctuaries Act. The rule became effective on March 19, 2007.

An integral part of the Corps' regulatory program is the concept of nationwide permits (NWPs) for minor activities. NWPs are activity specific, and are designed to relieve some of the administrative burdens associated with permit processing for both the applicant and the Federal government. The NWPs, published in the March 12, 2007, Federal Register, Issuance of Nationwide Permits (72 FR 11092), are issued by the Chief of Engineers, and are intended to apply throughout the entire United States and its territories.

In response to the Federal Register Notice (72 FR 11092), the West Virginia Department of Environmental Protection (WVDEP) has issued 401 water quality certification, pending compliance with certain conditions and/or limitations, for the following NWPs: 3, 4, 5, 6, 7, 12, 13, 14, 16, 18, 19, 20, 22, 25, 27, 30, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42, 45, 46, 47 and 48.

An individual State Water Quality Certification is required for the following NWPs: 15, 17, 23, 29, 34, and 43. Certification response is not applicable to NWPs: 1, 2, 8, 9, 10, 11, 24, 26, 28, and 35.

Authorization for discharges covered by nationwide permits is denied without prejudice if: (1) the State Certification has been denied; or (2) the discharge is not in compliance with conditions imposed in the State Certification. Applicants wishing to conduct such discharges must first obtain either an individual water quality certificate or waiver from:

Director West Virginia Department of Environmental Protection Division of Water and Waste Management 601 57<sup>th</sup> Street Charleston, West Virginia 25304 Some nationwide permits require advance notification. The notification must be made in writing as early as possible prior to commencing the proposed activity. The notification procedures are located under General Condition 27. The notification to the Corps can be made concurrently with the request for individual state certification, if required.

For activities involving Section 10 of the Rivers and Harbors Act of 1899, the permittee understands and agrees that, 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.

Assistance and further information regarding all aspects of the Corps of Engineers regulatory program may be obtained by contacting:

# HUNTINGTON DISTRICT

Name: Ginger Mullin

Ginger Mullins, Chief, Regulatory Branch

Address:

U.S. Army Corps of Engineers, Huntington District

502 Eighth Street

Huntington, West Virginia 25701

Phone:

304-399-6900

# PITTSBURGH DISTRICT

Name:

Scott Hans, Chief (acting), Regulatory Branch

Address:

U.S. Army Corps of Engineers, Pittsburgh District

William S. Moorhead Federal Building

1000 Liberty Avenue

Pittsburgh, Pennsylvania 15222

Phone:

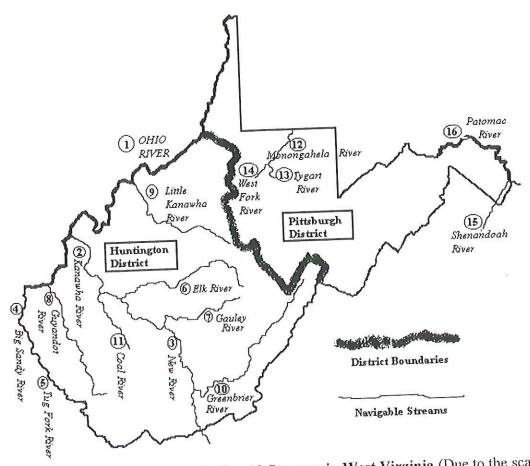
412-395-7152

Attached is a map showing the district boundaries for the State of West Virginia.

GINGER MULLINS Chief, Regulatory Branch

(WV)

## Corps Districts and Navigable Streams in The State of West Virginia



Navigable Limits of Major Section 10 Streams in West Virginia (Due to the scale of this map, all Section 10 Streams are not shown. Contact the proper District office for information.)

	Huntington District
1.	Ohio River Total Length in State
2.	Kanawha RiverTotal Length
3.	New RiverTotal Length in State
4.	Rig Sandy River
5.	Tug Fork
0.20	Elk River
6.	- 1 D: // // // // // // // // // // // // //
7.	Guyandot River
8.	Guyandot River 130.75 Miles
9.	Little Kanawha River130.75 Miles
10	Greenbrier River150.50 Miles
11	Coal River57.90 Miles

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# A. U.S. Army Corps of Engineers Nationwide Permit #12 for Utility Line Activities in West Virginia

This nationwide permit authorizes activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2 acre of waters of the United States.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in preconstruction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2 acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size anchors and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the total discharge from a single and complete project does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-

construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit

This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 27.) (Sections 10 and 404)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters), copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

## B. U.S. Army Corps of Engineers Regional Conditions for Nationwide Permit #12

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
	22
138	24
161	26
230	30
350	35
500	42
700 750 -765	15

For activities involving a discharge, the West Virginia 401 Water Quality Certification Standard Conditions apply.

### C. West Virginia Department of Environmental Protection 401 Water Quality Certification Special Conditions for Nationwide Permit No. 12

\*For activities involving a discharge, the West Virginia 401 Water Quality Certification Standard Conditions apply\*.

\*West Virginia 401 Water Quality Certification Special Conditions:

Points of ingress and egress to streams for equipment shall be within the work site. Location of ingress and egress outside the immediate work area requires prior approval of the West Virginia Department of Environmental Protection Division of Water and Waste Management with concurrence from the West Virginia Division of Natural Resources.

- B. Certification is limited to pipelines 36 inches or less in diameter. Individual stream crossings must be completed in a continuous, progressive manner and within 72 hours under normal (normal or below stream flow) conditions. Crossings on the Ohio, Kanawha, New and Monongahela Rivers and the Little Kanawha River, below the confluence with Hughes Rivers, are exempt from the 72-hour requirements, as are stream crossings requiring blasting. Whatever the situation, all stream activities shall be conducted in a continuous, progressive manner and be completed as rapidly as possible.
- C. Shoreline restoration will be completed and stabilized in accordance with standard condition 5. Equipment tracking in wetlands will utilize protective mats when practical. Restoration of the disturbed areas will be completed within 72 hours of the completion of pipeline installation across the watercourse.
- D. Surface disturbance will not extend beyond the right-of-way limits. Stream crossings will be conducted as close to a right angle to the watercourse as practical and the area of disturbance will be limited to reduce in stream activity.
- E. Dredging for backfill material is not allowed.
- F. Submarine-type pipeline crossings must be designed and constructed to prevent flotation and the possibility of leakage or rupture and the top of pipelines must be buried a minimum of three (3) feet below the stream bottom.
- G. Where it is apparent that small boats, inner tubes, swimmers, etc. could be using the stream in the work area, easily seen warning signs must be placed a minimum of 50 feet upstream and downstream of the stream crossings construction site to advise stream users of the potential danger.
- H. Individual State Water Quality Certification is required for pipelines transporting hazardous materials/substances as defined by the Toxic Substances Control Act, except pipelines carrying natural gas are exempt from this condition.
- I. Individual State Water Quality Certification is required for utility lines through (under, on or over) wetlands that would use or consider the use of herbicides for right-of-way maintenance.
- J. Only utility lines regulated by a State or Federal agency and to individual family residences are covered by this certification. Utility lines proposed by individuals or unregulated groups of individuals, industry and similar types of applicants are required to obtain prior written approval from the Director of the Division of Water and Waste Management.
- K. Written notification to the Director of the Division of Water and Waste Management detailing the amount of water to be withdrawn by the intake structures is required. The proposed water withdrawal notification shall include sufficient detail to allow the

resource agencies to determine if the proposed water withdrawal will have minimal impacts on aquatic resources.

- L. Individual State Water Quality Certification is required for an activity impacting greater than 200 linear feet on one or more of the streams listed in West Virginia State Certification, Standard Condition 15.
- M. Individual State Water Quality Certification is required for perennial and intermittent stream impacts greater than 300 linear feet.
- N. No structure authorized by this permit shall entrain or impinge fish or any other aquatic life or impede or prevent fish movement upstream or downstream without specific written authorization from the West Virginia Department of Environmental Protection, Division of Water and Waste Management with concurrence from West Virginia Division of Natural Resources.

## D. U.S. Army Corps of Engineers Nationwide Permit General Conditions Applicable to ALL NWPs

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP.

- 1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.
- navigation.

  (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- (c) The permittee understands and agrees that, 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 work shall cause unreasonable obstruction to the Corps of Engineers, to remove, relocate, or 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. <u>Aquatic Life Movements</u>. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

- 3. <u>Spawning Areas</u>. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
- 4. <u>Migratory Bird Breeding Areas</u>. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
- 5. <u>Shellfish Beds</u>. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48.
- 6. <u>Suitable Material</u>. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
- 7. <u>Water Supply Intakes</u>. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
- 8. <u>Adverse Effects From Impoundments</u>. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
- 9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
- 10. <u>Fills Within 100-Year Floodplains</u>. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
- 11. <u>Equipment</u>. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
- 12. <u>Soil Erosion and Sediment Controls</u>. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

- 13. <u>Removal of Temporary Fills</u>. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.
- 14. <u>Proper Maintenance</u>. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.
- 15. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River in writing that the proposed activity will not adversely affect the Wild and Scenic River may be obtained from the designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
  - 16. <u>Tribal Rights</u>. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
  - 17. Endangered Species. (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
  - (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.
  - (c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or authorized activities that might affect by the proposed work or that utilize the endangered or threatened species that may be affected by the proposed work or that utilize the endangered or threatened species that may be affected by the proposed work. The district engineer will designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' actermination within 45 days of receipt of a complete pre-construction notification. In cases determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed.
    - (d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

- (e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at http://www.fws.gov/ and http://www.noaa.gov/fisheries.html respectively.
- 18. <u>Historic Properties</u>. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Places, the activity is not authorized, until the requirements of Section 106 of the National Places, the activity is not authorized, until the requirements of Section 106 of the National Places, the activity is not authorized, until the requirements of Section 106 of the National Places, the activity is not authorized, until the requirements of Section 106 of the National Places, the activity is not authorized, until the requirements of Section 106 of the National Places, the activity is not authorized, until the requirements of Section 106 of the National Places, the activity is not authorized, until the requirements of Section 106 of the National Places, the activity is not authorized, until the requirements of Section 106 of the National Places, the activity is not authorized, until the requirements of Section 106 of the National Places, the activity is not authorized, until the requirements of Section 106 of the National Places, the activity is not authorized.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

- (c) Non-federal permittees must submit a pre-construction notification to the district those requirements. engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.
  - (d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.
  - (e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances

justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

19. Designated Critical Resource Waters. Critical resource waters include, NOAAdesignated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable

at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the

aquatic environment are minimal. (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

- (h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.
- 21. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.
- 22. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.
- 23. <u>Regional and Case-By-Case Conditions</u>. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

- 24. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.
- 25. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

- 26. Compliance Certification. Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:
- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
  - (c) The signature of the permittee certifying the completion of the work and mitigation.
- 27. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:
- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

- (2) Forty-five calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).
  - (b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:
    - (1) Name, address and telephone numbers of the prospective permittee;
  - (2) Location of the proposed project; (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);
    - (4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;
    - (5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.
    - (6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

- (7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.
- (c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.
- (d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse
- (2) For all NWP 48 activities requiring pre-construction notification and for other NWP environmental effects to a minimal level. activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.
  - (3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.
  - (4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.
  - (5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS. (e) District Engineer's Decision: In reviewing the PCN for the proposed activity, the
  - district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the

PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

28. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

# E. West Virginia Department of Environmental Protection 401 Water Quality Certification Standard Conditions Applicable to ALL NWPs

The following are West Virginia's Section 401 Water Quality Certification standard and special conditions that apply to the Nationwide Permits 1-20 and 22-48 as published on March 12, 2007 in Part II of the Federal Register (72FR 11092), by the U.S. Army Corps of Engineers. These conditions must be implemented into any activity authorized by a U.S. Army Corps of Engineers Nationwide Permit(s). The State's certification of these Nationwide Permit activities does not replace the need for the applicant proposing an activity under the Nationwide Permit Program from obtaining other applicable permits/authorizations from the West Virginia Department of Environmental Protection and/or the Division of Natural Resources. permittee shall, if they do not understand or are not aware of applicable Nationwide Permit conditions, contact the Corps of Engineers prior to conducting any activity authorized by a Nationwide Permit in order to be advised of applicable conditions. These 401 Water Quality Certifications, with all attendant standard conditions and special conditions, are applicable to Corps of Engineers Civil Works Projects in West Virginia.

- 1. The permittee will investigate for the presence of water supply intakes or other activities within 1/2 mile downstream, which may be affected by suspended solids and turbidity increases caused by work in the watercourse. The permittee will give notice to operators of any such water supply intakes and such other water quality dependent activities as necessary before beginning work in the watercourse in sufficient time to allow preparation for any change in water quality.
- Excavation, dredging or filling in the watercourse will be done only to the extent necessary to achieve the project's purpose.
- 3. Spoil materials from the watercourse or onshore operations, including sludge deposits, will not be dumped in the watercourse, or deposited in wetlands or other areas where the deposit may adversely affect the surface or ground waters of the state.
- 4. The permittee will employ measures to prevent or control spills from fuels, lubricants or any other materials used in connection with construction and restrict them from entering the watercourse. Storage areas for chemicals, explosives, lubricants, equipment fuels, etc., as well as equipment refueling areas, must include containment measures (e.g., liner systems, dikes, etc.) to ensure that spillage of any material will not contact surface or systems. Storage areas and refueling areas shall be a minimum distance of 100 feet ground waters. Storage areas and refueling areas must be located outside the from any surface water body. Storage and refueling areas must be located outside the West Virginia Division of Health's established wellhead protection zone when domestic water supply wells are present. All spills shall be promptly reported to the State Center for Pollution, Toxic Chemical and Oil Spills, 1-800-642-3074.
  - 5. Upon completion of earthwork operations, all fills in the watercourse or onshore and all other areas onshore disturbed during construction will be properly stabilized to prevent soil erosion. Where possible, stabilization shall incorporate revegetation using bioengineering as an alternative to rip rap. If rip rap is utilized, it is to be of such weight and size that bank stress or slump conditions will not be created due to its placement. Fill is to be clean, nonhazardous and of such composition that it will not adversely affect the biological, chemical or physical properties of the receiving waters. To reduce potential slope failure and/or erosion behind the material, fill containing concrete must be of such weight and size that promotes stability during expected high flows. Loose large slab placement of concrete sections from demolition projects greater than thirty-six inches in longest dimension and tires are prohibited. Rebar or wire in concrete should not extend further than one (1) inch. All activities require the use of clean and coarse non erodible materials with 15% or less fines, that is properly sized to withstand expected high flows.

- Runoff from any storage areas or spills will not be allowed to enter storm sewers without acceptable removal of solids, oils and toxic compounds. Discharges from retention/detention ponds must comply with permit requirements of the National Pollutant Discharge Elimination System permit program of the West Virginia Department of Environmental Protection, Division of Water and Waste Management.
- 7. Land disturbances, which are integral to the completion of the permitted activity and are one (1) acre or greater in total area, must comply with the National Pollutant Discharge Elimination System stormwater permit requirements as established by the West Virginia Department of Environmental Protection, Division of Water and Waste Management. Best Management Practices for Sediment and Erosion Control, as described in the West Virginia Department of Environmental Protections Erosion and Sediment Control Best Virginia Management Practice Manual, 2006, or similar documents prepared by the West Virginia Division of Highways, U.S. Department of Agriculture, Natural Resource Conservation Service (NRCS), or West Virginia Department of Environmental Protection's, Division of Mines and Reclamation may be used. These handbooks are available from the respective agency offices.
  - 8. Green concrete will not be permitted to enter the watercourse unless contained by tightly sealed forms or cells. Concrete handling equipment shall not discharge waste washwater into wetlands or watercourses at any time without adequate wastewater treatment as approved by the West Virginia Department of Environmental Protection, Division of Water and Waste Management.
  - In stream work in warm water fishery streams and their adjacent tributaries during fish spawning season, April June and trout waters and their adjacent tributaries during the trout water fish spawning season September 15-February 28 requires a spawning season waiver from the West Virginia Division of Natural Resources, Wildlife Resources Section. For information about specific streams contact Wildlife Resources Section, Trout Fisheries Program at 304-637-0245 or Warm Water fisheries Program 304-558-Trout Fisheries Program at 304-637-0245 or Warm Water fisheries Program at 304-637-0245 or Warm Water fisheries Program 304-558-Trout Fisheries work may occur during the respected spawning season in waters not considered fisheries without a waiver if all reasonable measures are taken to minimize turbidity and sedimentation downstream associated with the proposed project and the instream work is less than 1 day in duration.
    - 10. Removal of mature riparian vegetation not directly associated with the project construction is prohibited. Disturbance and removal of vegetation from project construction area is to be avoided, where possible, and minimized when necessary. Removal of vegetation shall not be allowed where stream bank stability under normal flow conditions would be compromised.
    - Operation of equipment instream is to be minimized and accomplished during low flow periods when practical. Ingress and egress for equipment shall be within the work site. Location of ingress and egress outside the immediate work area requires prior approval of the West Virginia Department of Environmental Protection, Division of Water and Waste Management in concurrence with the West Virginia Division of Natural Resources.

- 12. The permittee will comply with water quality standards as contained in the West Virginia Code of State Regulations, <u>Requirements Governing Water Quality Standards</u>, Title 47, Series 2.
- 13. Stream activities permitted under the Nationwide Permit Program require that a West Virginia Public Lands Corporation Right of Entry be obtained. Application for this authorization should be made to the West Virginia Division of Natural Resources, Office of Real Estate Management, Capitol Complex, Building 3, Room 643, Charleston, West Virginia 25305. Any activity within the 100-year floodplain requires approval from the appropriate Floodplain Manager. The following website provides a statewide listing of Floodplain Managers in West Virginia: www.wvdhsem.gov/fplain\_mgt1.htm.
- 14. The deposit of dredged or fill materials in island backchannels, embayments or stream mouths is not certified for any of the Nationwide Permits. Stream mouth is defined as the area extending 100 feet upstream and 100 feet downstream on receiving streams that are classified as a Section 10 stream.
- 15. This Standard Condition requires an Individual State Water Quality Certification for Nationwide Permits; 7, 29, 33, 39, 45, and 48 for work in any of the rivers or streams listed in Sections A through D below. Prior written notification to the West Virginia Department of Environmental Protection, Division of Water and Waste Management, is required for use of Nationwide Permits 6, 12, 13, 14, 16, 17, 18, 19, 27, 40, 41, and 42 in any of the streams listed in Sections A through D as follows, except as may be provided for in the individual nationwide permit:
  - A. 'Waters of Special Concern' includes all of those waters listed in Appendix A of 60 CSR 5, Waters of Special Concern, including but not limited to, naturally reproducing trout streams, federally designated rivers under the Wild and Scenic Rivers Act, Public law 95-542, as amended, 16 U.S.C. §§ 1271 et. seq. (Bluestone River from the upstream boundary of Pipestem State Park to Bluestone Reservoir, Meadow River from near the US 19 bridge to its junction with the Gauley River, also included are all rivers within the Monongahela National Forest designated as National Wild and Scenic Study Rivers), waters in state parks and forests, waters in National Parks and Forests, waters designated under the National Parks and Recreation Act of 1978, and waters with unique or exceptional aesthetic, ecological, or recreational value.
    - B. All naturally reproducing trout streams in the following counties; Barbour, Fayette, Grant, Greenbrier, Hampshire, Hardy, Mercer, Mineral, Monroe, Nicholas, Pendleton, Pocahontas, Preston, Raleigh, Randolph, Summers, Tucker, Upshur and Webster. For information about specific streams contact Wildlife Resource Section, Trout Fisheries Program at 304-637-0245;
    - C. 'Outstanding National Resource Waters' In all cases, waters that constitute an Outstanding National Resource shall be maintained and protected as

necessary; included are the following rivers 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. West Virginia Code of State Regulations, Requirements Governing Water Quality Standards, Title 47, Series 2.

- D. '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 the confluence of the river with the Elk River, and New River from its confluence with the Greenbrier River to its confluence with the Gauley River.
- 16. Wetland and Stream Mitigation guidelines The discharge of fill material into a stream or wetland is authorized based upon the following criteria:
  - 1. One-tenth to ½ acre of wetland impact requires a Pre-Construction Notice (PCN) and plan for mitigation to be submitted to the Corps of Engineers along with the proposed plan for mitigation provided to the state for approval.
  - 2. The amount of fill in a wetland, wetland complex or wetland system without mitigation is not to cumulatively exceed 1/10 acre.

In all instances, mitigation for all impacts incurred through use of these Nationwide Permits must first be directed to elimination of the impacts, then minimization of the impacts and lastly through replacement of in-kind within the major watershed in which the impact occurs. However, the use of mitigation banks for in-kind replacement is not restricted to the major watershed in which the impact has occurred until such time as mitigation banks are developed in each major watershed. The use of the In-Lieu Fee program is authorized for compensatory mitigation when all other compensatory mitigation options have been exhausted.

When in-kind, replacement mitigation is used it is to be accomplished at the following ratios:

Impacts to open water wetlands are to be one (1) acre replaced for one (1) acre impacted.

Impacts to wet meadow wetlands are to be two (2) acres replaced for one (1) acre impacted.

Impacts to scrub-shrub and forested wetlands are to be three (3) acres replaced for one (1) acre impacted.

In instances where compensatory in-kind mitigation is completed 12 months prior to the impact of the resource, the replacement ratio will be one (1) acre created to every one (1) acre impacted.

NOTE: The ratio of created wetlands to impacted wetlands not only insure no net loss, but assure the adequate replacement of the impacted wetlands functions and values at the level existing prior to the impact. For many of the more complicated type wetlands, such as scrub-shrub and forested, the values and functions cannot readily be replaced through creation. Furthermore, not all wetland creation is successful.

In certain instances, the West Virginia Department of Environmental Protection, Division of Water and Waste Management may consider the acquisition of existing wetlands. Acquisition ratios are the following:

5 to 1 for open water wetlands;

10 to 1 for wet meadow wetlands and

15 to 1 for scrub-shrub and forested wetlands.

All wetlands acquired, using the acquisition method of mitigation, will either be deeded to the West Virginia Division of Natural Resources' Public Land Corporation for management by the Wildlife Resources Section or placed under a conservation easement and be protected from disturbance by the permittee or their designee.

In certain instances, the West Virginia Department of Environmental Protection, Division of Water and Waste Management may consider enhancement of existing wetlands. Mitigation ratios for enhanced wetlands will be decided on a case-by-case basis. Enhanced wetlands will either be deeded to the West Virginia Division of Natural Resources' Public Land Corporation for management by the Wildlife Resources Section or placed under a conservation easement and be protected from disturbance by the permittee or their designee.

Streams. Compensatory mitigation projects for stream impacts should attempt to replace stream functions. Acceptable functional assessments can be used to assess impacts and ecological lift from a proposed project. Mitigation ratios will be determined on a case-by-case basis based on the pre and post condition stream quality and complexity of the mitigation project. Riparian zones used for compensatory mitigation purposes may require protection through deed restrictions or conservation easements by the permittee or their designee.

#### Streams with Mussel populations. 17.

Should native freshwater mussels be encountered during the use of any Nationwide Permit, all activity is to cease immediately and the Wildlife Resources Section, Wildlife Diversity Program is to be contacted (304-637-0245) to determine significance of the mussel population and the action to be taken.

B. The following list of streams are known to have mussel populations, which are established as a protected "no take" species by the state. Applicants wishing to conduct projects in these streams are strongly encouraged to contact the Wildlife Resources Section, Wildlife Diversity Program with a detailed project description and an accurate project location. For further information please contact the Wildlife Resources Section, Wildlife Diversity program at 304-637-0245.

#### **HUNTINGTON DISTRICT**

James River Drainage

South Fork of Potts Creek

Kanawha River Drainage

Pocatalico River

Kanawha River above Charleston

Coal River

Elk River (downstream of Webster Springs)

Big Sandy Creek

New River

Bluestone River

Greenbrier River

Indian Creek

Little Kanawha River Drainage

Little Kanawha River

Hughes River

North and South Fork of Hughes River

Steer Creek

Cedar Creek

Leading Creek

Reedy Creek

Spring Creek

Spruce Creek

Henry's Fork

Goose Creek

Middle Island Creek Drainage

Middle Island Creek

Meathouse Fork (below Indian Fork)

Buckeye Creek

Mud River Drainage

Mud River

Middle Fork

Trace Fork

Ohio Direct Drainage

Twelvepole Creek

Beech Fork

Tug Fork River (up stream of Kermit, WV)

00

Mill Creek (Jackson County) Hurricane Creek

#### PITTSBURGH DISTRICT

Ohio River Direct Drainage

Wheeling Creek

Fishing Creek

Fish Creek

Monongahela River Drainage

**Dunkard Creek** 

West Fork River

Hackers Creek of Tygart Valley River

Kincheloe Creek

Potomac River Drainage

Cacapon River (below Wardensville)

North River of Cacapon River

Patterson Creek

#### 18. Isolated Wetlands.

In some cases, the Corps of Engineers may determine that an activity will not impact waters of the United States because the water is an isolated wetland, and therefore does not require a 404 permit. However, under West Virginia State code (§§22-11-3(23)) isolated wetlands are designated waters of the State. Accordingly, any applicant proposing to impact an isolated wetland must contact the West Virginia Department of Environmental Protection, Division of Water and Waste Management to obtain all necessary approvals for activities impacting any isolated wetlands.

#### F. Further Information

- 1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
- 2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
  - 3. NWPs do not grant any property rights or exclusive privileges.
  - 4. NWPs do not authorize any injury to the property or rights of others.
  - 5. NWPs do not authorize interference with any existing or proposed Federal project.

#### G. Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

<u>Currently serviceable</u>: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Discharge: The term "discharge" means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting

from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

<u>Practicable</u>: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

<u>Preservation</u>: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or

maintain local water quality. (See general condition 20.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete project: The term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete project must have independent utility (see definition). For linear projects, a "single and complete project" is all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to

navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of

vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent--meaning bordering, contiguous, or neighboring--to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

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RECEIVED WVDEPDate: 2-23-12

Page 1 of 3

Request for Proposal No. DEP15684

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FIRM & REPRESENTATIVE NAME	MAILING ADDRESSIBLE ATTWE SERVICES	
Company: MUDED  Rep: Mark Church  Email Address: Mark a Church & Wygay	7174 Maia St. Summess wille WV 24651	PHONE 304-545-0193 TOLL FREE FREE FAX 304 872-3800
Company: A4A ENCRGY IN C Rep: Down: E HAgerman	1515TWRRT 57Reet Welchwv24801	PHONE 304 436 5165 TOLL FREE 304 320 3961 FAX
Company: All-Con Rep: Dave Irle Frail Address: NTRLE(A) ACT-WV. Com	124 philpof Ln Braver, WV 25813	PHONE 304 255-049/ TOLL FREE 304 73/-0190 FAX 304 255-4233
Company: MARK CLEMONS  Rep: MARK CLEMONS	SSY INDUSTRIAL DARK RO. Bluetical, VR. 24605	PHONE (スプレータダイア) TOLL FREE (ピアクギ (タタッ) 233・・アディン
Email Address: Marker & Excaveting Inc.  Email Address: Tong p. 2. R. 10. Com.	P.O. Box 1290 Pineuille NV 24874	PHONE 304-732-8303 TOLL FREE FAX 504-732-7855

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Date: 2-23-12

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FIRM & REPRESENTATIVE NAME	MAILING ADDRESS	I ELEPHONE & PAX NUMBERS
Company: Green Mountain (0.	511 Soth SI	PHONE 304 - 925 - 2253
Rep: Harriss Bowman	Charleston we 25304	TOLL FREE
Add		FAX 304-925-9230
Company: WISEMAN EXCAUATING	724. 1 Box 190	PHONE 304-586.3736
Rep: JOE WISEMAN	Liberty, WV 25124	TOLL FREE
Email Address: Juboca 12@wol. Com		FAX 304-586-3789
COMPANY: MAIN STREET BUILDERS, LLC	PO BOX 309	PHONE 304-487-3912
Rep: ADAM SARVER	PRINCETON, WV 24740	TOLL FREE
Add		FAX 304-425-2171
Company: MANSARI Wilher & ASSOC.	601 MOrns St Swite 204	PHONE 304-553-7312
Rep: Chris Butler	Charleston WV 25301	TOLL FREE
Addres		FAX
Company: Cuipant 20 Reclamation	R B 1301S	PHONE 364 78411115
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Address: RCurp		FAX 754.2770
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Request for Proposal No. DEP15684

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Page 3 of 3 Date: 2-23-12

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FIRM & REPRESENTATIVE NAME	MAILING ADDRESS	TELEPHONE & FAX NUMBERS
Company: Lee Suyphy G.	Po Box 1250	PHONE 304763-2215
Rep: Sob Gentry	Be a work 25813	TOLL 888 353-3747
Email Address: BGentry @ Lea Supply. Com		FAX 364 763-0218
Company:		PHONE
Rep:		TOLL FREE
Email Address:		FAX
Company:		PHONE
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Rep:		TOLL FREE
Email Address:		FAX

Agency DEP	
REQ.P.O# DEP15684	

#### **BID BOND**

	BID BOMD
THESE PRESENTS. That v	we, the undersigned, <u>Pineville Paving &amp; Excavating, Inc</u> as Principal, and <u>Ohio Farmers</u> Insurance Compa
KNOW ALL MEN BY THESE TREESERS	we, the undersigned, Pineville Faving & Exocution of the State of, as Principal, and Ohio Farmers Insurance Compa
of PO Box 1230 1 Montfield Center OH	, as Principal, and
of One Park Circle Westing to the City of Westington	estfield Center, as Surety, are held and firmly bound unto the State, for the payment of which,
hio with its principal office in the city of	estfield Center, as Surety, are neid and infinity dodne and experience, as Surety, are neid and infinity dodne and experience, as Surety, are neid and infinity dodne and experience, as Surety, are neid and infinity dodne and experience, as Surety, are neid and infinity dodne and experience, as Surety, are neid and infinity dodne and experience, as Surety, are neid and infinity dodne and experience, as Surety, are neid and infinity dodne and experience, as Surety, are neid and infinity dodne and experience, as Surety, are neid and infinity dodne and experience, as Surety, are neid and infinity dodne and experience, as Surety, are neid and infinity dodne and experience, as Surety, are neid and infinity dodne and experience, as Surety, are neid and infinity dodne and experience, as Surety, are neid and infinity dodne and experience, as Surety, are neid and experience
West Virginia, as Obligee, in the penal sum of Five Fe	receives, our heirs, administrators, executors, successors and assigns.
ell and truly to be made, we jointly and severally billd ou	Journey, and
	Bigginal has submitted to the Purchasing Section of the
The Condition of the above obligation is such that	at whereas the Friday and made a part hereof, to enter into a contract in writing for
	at whereas the Principal has submitted to ttached hereto and made a part hereof, to enter into a contract in writing for Facility Upgrade.
NOW THEREFORE,	the hid or proposal attached
hereto and shall furnish any other borius and interests agreement created by the acceptance of said bid, then the force and effect. It is expressly understood and agreed force and effect. It is expressly understood and agreed to the paper amount of this obligation as herein state.	ipal shall enter into a contract in accordance with the bid or proposal attached required by the bid or proposal, and shall in all other respects perform the this obligation shall be null and void, otherwise this obligation shall remain in full that the liability of the Surety for any and all claims hereunder shall, in no event, ated.
The Surety, for the value received, hereby stip way impaired or affected by any extension of the time way impaired of any each oversion.	ulates and agrees that the obligations of said Surety and its bond shall be in his vithin which the Obligee may accept such bid, and said Surety does hereby
	ly have hereunto set their hands and seals, and such of them as are corporation
IN WITNESS WHEREOF, Principal and Suret	to and these presents to be signed by their proper officers, this
have caused their corporate seals to be affixed hereun	to and mese biosomo to an ap
13th day of March , 20 12	
Principal Corporate Seal	Pineville Paving & Excavating, Inc (Name of Principal)  By Kevin Bradfor(Must be President or Vice President)
	Vice President (Title)
Surety Corporate Seal	Ohio Farmers Insurance Company (Name of Surety)
	Ross E. Johnson Attorney-in-Fact
to de must be licer	nsed in West Virginia to transact surety insurance. Corporate seals must be affin
a selection nones must be lice.	The state of the s

IMPORTANT – Surety executing bonds must be licensed in West Virginia to transact surety insurance. Corporate seals must be affixed, and a power of attorney must be attached.

POWER NO. 4751892 01

General Power of Attorney

## Westfield Insurance Co. Westfield National Insurance Co. Ohio Farmers Insurance Co.

CERTIFIED COPY

Westfield Center, Ohio

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make constitute and appoint presents make, constitute and appoint ROSS E. JOHNSON, H. RANDOLPH NEVILLE, PATRICK B. KEE, SHEILA D. MCCORMICK, JOINTLY OR SEVERALLY presents make, constitute and appoint

and State of WV its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings, or other instruments or contracts of

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate and to bind any of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in seal at the confiscible Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY. WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and behalf of the Company subject to the following provisions:

The Attorney-in-Fact. may be given full power and authority for and in the name of and on behalf of the Company. To execute, acknowledge and

and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact. may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all obligatory undertakings and any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all obligatory

Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be it Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their Senior Executive and their corporate seals to be hereto affixed this 25th day of A.D., 2008 . **AUGUST** 

MSURANC Corporate Seals Affixed

State of Ohio

A Managara

WESTFIELD INSURANCE COMPANY WESTFIELD NATIONAL INSURANCE COMPANY OHIO FARMERS INSURANCE COMPANY

Richard L. Kinnaird, Jr., Senior Executive Ву:

A.D., 2008, before me personally came Richard L. Kinnaird, Jr. to me known, who, being by me duly Sworn, did depose and say, that he resides in **Medina**, **Ohio**; that he is **Senior Executive** of WESTFIELD INSURANCE COMPANY, WESTFIELD NSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above Instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he sloned his name thereto by like order. County of Medina by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial Seal Affixed

State of Ohio County of Medina

ss.:



William J. Kahelin, Attorney at Law, Notary Public My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

I, Frank A. Carrino, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are full force and effect. in full force and effect.

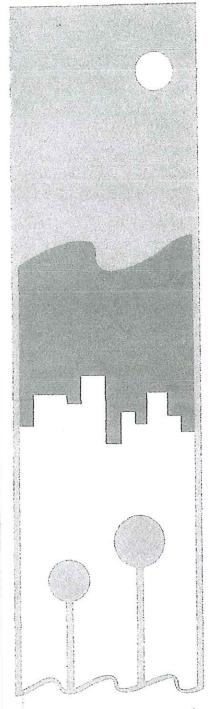
In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this 13th day of arch A.D., 2012 March



KIONAL W Manual Manual



Frank A. Carrino, Secretary



# ONTRACTOR LICENSE

Authorized by the

West Virginia Contractor Licensing Board

Number:

WV010542

Classification:

GENERAL BUILDING GENERAL ENGINEERING PIPING RESIDENTIAL SPECIALTY

> PINEVILLE PAVING & EXCAVATING INC DBA PINEVILLE PAVING & EXCAVATING INC PO BOX 1290 PINEVILLE, WV 24874-1290

Date Issued

AUGUST 30, 2011

**Expiration Date** 

AUGUST 30, 2012

Authorized Company/Signature

Chair, West Virginia Contractor Licensing Board

This license, or a copy thereof, must be posted in a conspicuous place at every construction site where work is being performed. This license number must appear in all advertisements, on all bid submissions and on all fully executed and binding contracts. This license cannot be assigned or transferred by licensee. Issued under provisions of West Virginia Code, Chapter 21, Article 11.



# State of West Virginia DRUG FREE WORKPLACE CONFORMANCE AFFIDAVIT West Virginia Code §21-1D-5

STATE OF West Virginia
COUNTY OF Wyoming , TO-WIT:
I, Anthony M. Bradford , after being first duly sworn, depose and state as follows:
1. I am an employee of Pineville Paving & Excavating The; and, (Company Name)
2. I do hereby attest that Pineville Paving & Excavating Inc. (Company Name)
maintains a valid written drug free workplace policy and that such policy is in compliance with <b>West Virginia Code</b> §21-1D-5.
The above statements are sworn to under the penalty of perjury.  Pineville Paving & Excavating Inc.  (Company Name)
STATE OF WEST VIRGINIA NOTARY PUBLIC Ketherine D. Bradford PO Box 949 Pineville, WV 24874 My Commission Exp. Feb. 20, 2019 Date: 3/5/2
Taken, subscribed and sworn to before me this $15^{th}$ day of $15^{th}$ day of $15^{th}$ .
By Commission expires Feb. 20, 2019
(Seal) Katherine D. Bradford (Notary Public)

THIS AFFIDAVIT MUST BE SUBMITTED WITH THE BID IN ORDER TO COMPLY WITH WV CODE PROVISIONS. FAILURE TO INCLUDE THE AFFIDAVIT WITH THE BID SHALL RESULT IN DISQUALIFICATION OF THE BID.

RFQ No. DEP 15684

#### STATE OF WEST VIRGINIA Purchasing Division

#### **PURCHASING AFFIDAVIT**

West Virginia Code §5A-3-10a states: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

#### **DEFINITIONS:**

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

**EXCEPTION:** The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

Under penalty of law for false swearing (*West Virginia Code* §61-5-3), it is hereby certified that the vendor affirms and acknowledges the information in this affidavit and is in compliance with the requirements as stated.

WITNESS THE FOLLOWING SIGNATURE	
vendor's Name: Pineville Paving & Excapating Inc.	
Authorized Signature: Unthony M. Burl Date: 3/15/2012	
State of West Virgina	
County of Wyoming, to-wit:	
Taken, subscribed, and sworn to before me this 5th day of March , 20 12	
My Commission expires Feb. 20 , 2019.	
AFFIX SEAL HERE NOTARY PUBLIC Latherine D. Bradford	
OFFICIAL SEAL	