



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

Request for Quotation

RFQ NUMBER
DEP15684

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
GUY NISBET 304-558-8802

RFQ COPY
TYPE NAME/ADDRESS HERE

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

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS		
02/29/2012						
BID OPENING DATE: 03/15/2012		BID OPENING TIME 01:30PM				
LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
ADDENDUM NO. 1						
ADDENDUM NO.1 FOR THE MCDOWELL COUNTY LANDFILL STORAGE FACILITY UPGRADE" IS ISSUED TO PROVIDE ADDITIONAL BIDDER INFORMATION THAT INCLUDES PHOTOS OF CORE SAMPLES, TEST BORING FIELD LOGS, DNR LICENSE AND RIGHT OF ENTRY, CORPS OF ENGINEERS "NWP#12" AND PRE-BID SIGN-IN SHEET FROM: 2/23/2012 MEETING.						
BID OPENING DATE REMAINS UNCHANGED: 03/15/2012 AT 1:30PM						
NO OTHER CHANGES						
END OF ADDENDUM NO. 1						
0001	1	JB		962-73		
RECLAMATION: RESTORATION OF LAND & OTHER PROPERTIES						
***** THIS IS THE END OF RFQ DEP15684 ***** TOTAL: _____						
SEE REVERSE SIDE FOR TERMS AND CONDITIONS						
SIGNATURE			TELEPHONE		DATE	
TITLE		FEIN		ADDRESS CHANGES TO BE NOTED ABOVE		

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

GENERAL TERMS & CONDITIONS REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
4. All services performed or goods delivered under State Purchase Order/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods this Purchase Order/Contract becomes void and of no effect after June 30.
5. Payment may only be made after the delivery and acceptance of goods or services.
6. Interest may be paid for late payment in accordance with the *West Virginia Code*.
7. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
8. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
9. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
10. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern the purchasing process.
11. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
12. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, the State may deem this contract null and void, and terminate such contract without further order.
13. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at www.state.wv.us/admin/purchase/vrc/hipaa.html and is hereby made part of the agreement provided that the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
14. **CONFIDENTIALITY:** The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/noticeConfidentiality.pdf>.
15. **LICENSING:** Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, and the West Virginia Insurance Commission. The vendor must provide all necessary releases to obtain information to enable the director or spending unit to verify that the vendor is licensed and in good standing with the above entities.
16. **ANTITRUST:** In submitting a bid to any agency for the State of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will convey, sell, assign or transfer to the State of West Virginia all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to the bidder.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, or person or entity submitting a bid for the same material, supplies, equipment or services and is in all respects fair and without collusion or Fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division. Complete all sections of the quotation form.
2. Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Unit prices shall prevail in case of discrepancy. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
4. All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications: Department of Administration, Purchasing Division, 2019 Washington Street East, P.O. Box 50130, Charleston, WV 25305-0130
5. Communication during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited (W.Va. C.S.R. §148-1-6.6).

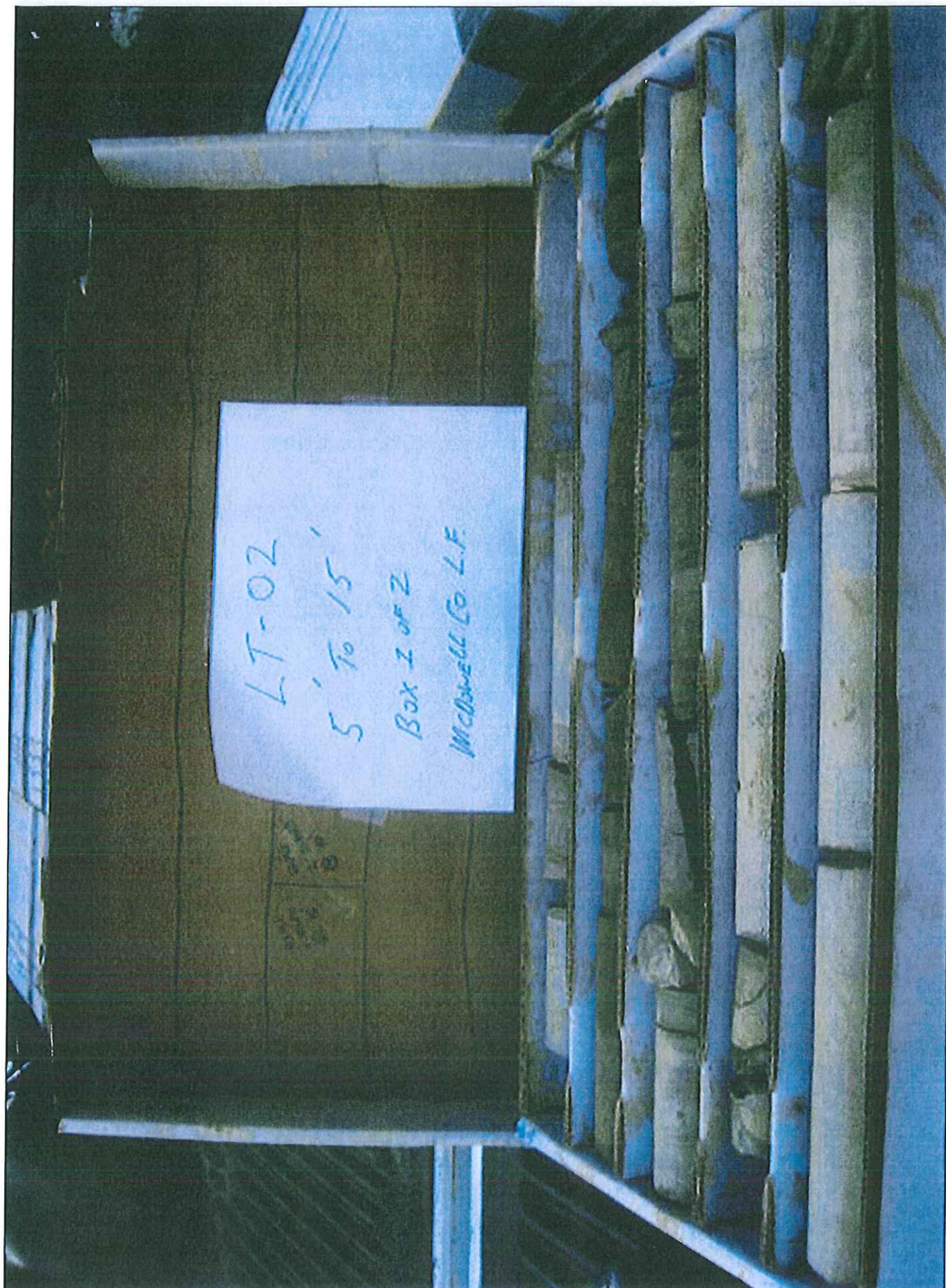




LT-01

18'-6" To 27"

Box 2 of 2



LT-02

5' To 15'

Box 1 of 2

McDowell Co. L.F.



LT-02

15' T. 20'

Box 2 of 2

MCDowell Co. L.F.

NX-NO DIVIDER



LT-03

16' to 21'

Box 2 of 2

McDowell Co. L.F.

NX-NO DIVIDER

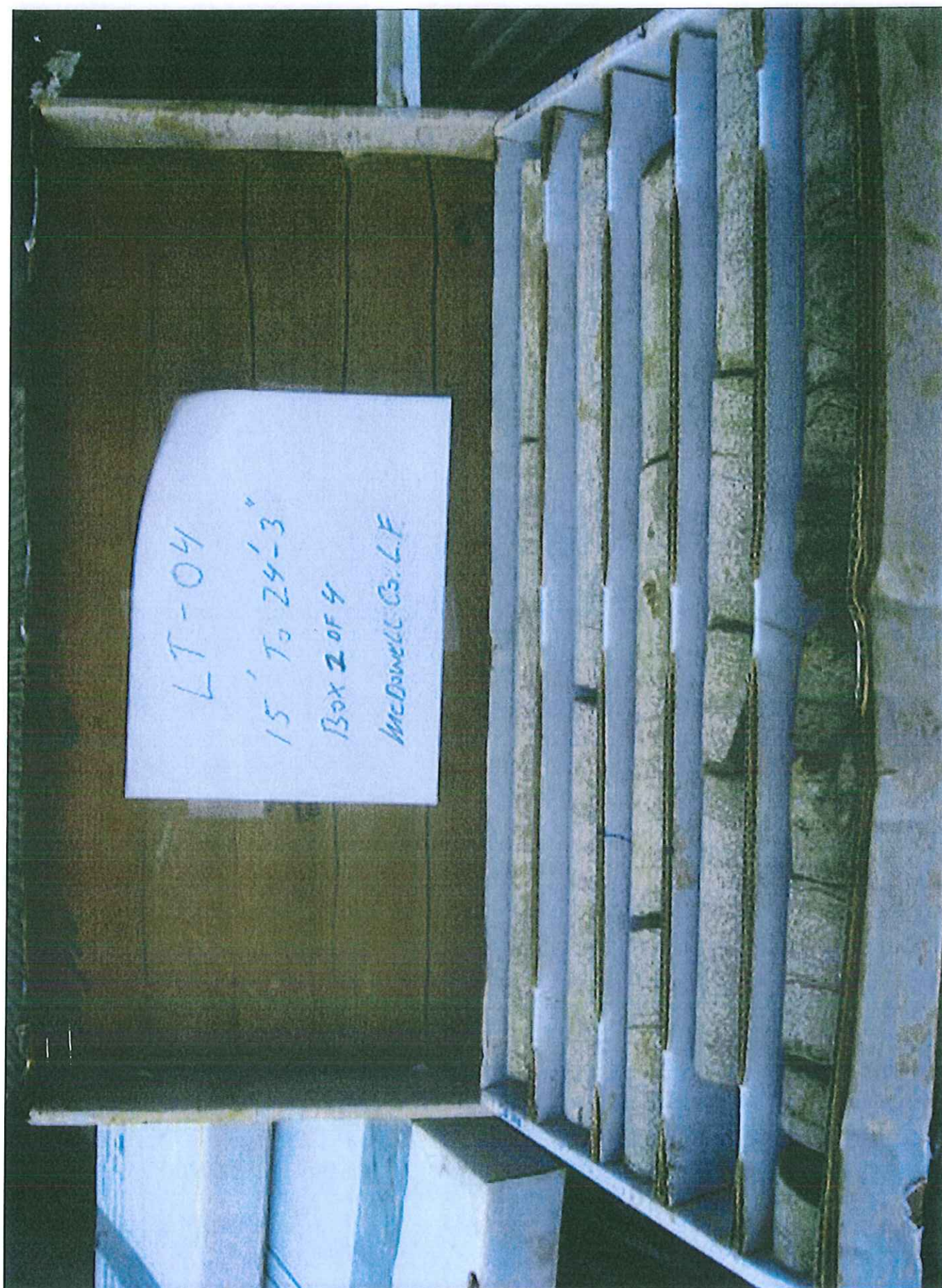


LT-04

15' To 24'-3"

Box 2 of 4

McDowell Co. L.F.









TEST BORING FIELD LOG

Test Boring No.: LT-01Location: 170964.58, 1802191.17Project Name: MCDOWELL CO. LANDFILLProject No.: LCAP101Date: 6/22/10Logged By: MECDrilling Company: CENTRAL STAR

Drill Crew: _____

Rig: TRUCK MOUNTEDDrill Method: AUGER HSA

Ground Surface Elevation: _____

Depth (feet)		Soil Visual Classification/ Descriptions and Remarks Surface Condition: _____	Depth		1st	2nd	3rd	4th	Rec. /RQD	Pocket Penetrometer (Tonnes)
From	To		From	To	6"	6"	6"	6"		
0	2.50'	BROWNISH/TAN SANDY SILT W/ LOW PLASTICITY AND MIXED WITH SANDSTONE FRAGMENTS. (S2)-SS	0	2.50'	5	5	6	✓	REC. 0.38'	1.5 T ₁₀
3.50'	5'	DRY LIGHTISH/TAN NON-PLASTIC SILTY SAND MIXED W/ QUARTZ SANDSTONE FRAGMENTS AND TRACES OF M.I.C.A. (S2)-SS	3.50'	5'	16	10	10	✓	REC. 0.42'	Rock
6.00'	6.50'	DRY LIGHTISH/TAN NON-PLASTIC SILTY SAND MIXED W/ QUARTZ SANDSTONE FRAGMENTS AND TRACES OF M.I.C.A.	6.00'	6.50'	50% REF	✓	✓	✓	REC. 0.42'	Rock
		(NOTE) BEGAN CORING @ 6.50' IN 5' INTERVALS.								
6.50'	7.0'	1 ST CORE RUN W/ TOTAL RECOVERY @ 0.21' (FRACTURED SANDSTONE)							0 RQD	
7.0'	12'	2 ND CORE RUN W/ TOTAL RECOVERY @ 3.33' (FRACTURED SANDSTONE)							0.33' RQD	6.6%
12'	17'	3 RD CORE RUN W/ TOTAL RECOVERY @ 4.42' (NOTE) BOX 1 CONT. TO BOX 2 @ 18.5' MOSTLY FRACTURED SANDSTONE.							0.54' RQD	10.8%
17'	22'	4 TH CORE RUN W/ TOTAL RECOVERY @ 4.50'							1.67' RQD	33.4%
22'	27'	5 TH CORE RUN W/ TOTAL RECOVERY @ 4.17' (NOTE) ROCK SEEMS TO BE VERY FRACTURED AND RATES IN THE POOR CONDITION, BUT SEEMS TO GET FAIR BETWEEN 18.5' TO 27'. HAD DRILLER GO ADDITIONAL 5' FT DUE TO APPEARANCE.							2.67' RQD	53.4%

Total Boring Depth: 20.50 CORE DEPTH

Comments: (Drill Method, Boring Diameter, UD Shelby Tubes, Well Construction (draw sketch on back), etc)

Water Levels: _____

@ First Noted in Samples / Cuttings

@ Completion

@ _____ After _____ Hrs

@ Backfilling _____ (date/ time)

Hammer Type: Donut Hammer / Safety Hammer / Automatic Hammer

SPT Hammer: (Weight / Drop / Spoon Dia.) _____ / _____ / _____

Auger Dia.: ID / OD (inch): 2.25 /

Drilling Times:

Moving: _____

Drilling: 9:00AM - 1:45PM

Standby: _____

Hauling Water: _____

Abandon/Grout Boring: _____

Fluid Losses: _____

@ Depth: _____

HSA - Hollow Stem Augers

MD - Rotary Mud Drilling

REF - Refusal (Spoon or Auger)

RC - Rock Core

SS - SPT Split Spoon Sample

DC - Driven Casing (Hammer Type and Record Blows/ft vs. Depth)

ST - Shelby Tube Sample

WOR - SPT Weight of Rods

WOH - SPT Weight of Hammer

REC - Recovery (Feet)

ROD - Rock Quality Designation

Location: 170920.90, 1802158.84

Rig: Track mounted Drill Method: Auger HSA Ground Surface Elevation: _____

Depth (feet)		Soil Visual Classification/ Descriptions and Remarks Surface Condition: _____	Depth		1st	2nd	3rd	4th	Rec. /RQD	Pocket Penetrometer (Tonnes)
From	To		From	To	6"	6"	6"	6"		
1'	2.50'	DRY LIGHTISH/TAN NON-PLASTIC SILTY SAND MIXED W/ QUARTZ SANDSTONE FRAGMENTS AND FRACES OF MICA. (S1)-SS	1'	2.50'	7	7	8	/	0.50' REC	0
3.50'	5'	DRY LIGHTISH/TAN NON-PLASTIC SILTY SAND MIXED W/ QUARTZ SANDSTONE FRAGMENTS AND FRACES OF MICA. (S2)-SS (NOTE) BEGAN CORING ROCK @ 5'	3.50'	5'	50/11 REF	/	/	/	0.33' REC	Rock
5'	10'	1 ST CORE RUN W/ TOTAL RECOVERY @ 4.33' SANDSTONE ROCK CORES HAVE LITTLE FRACTURE.							3.50' RQD	70%
10'	15'	2 ND CORE RUN W/ TOTAL RECOVERY @ 4.83' SANDSTONE ENCOUNTERED HAS MORE FRACTURES.							1.50' RQD	30%
15'	20'	3 RD CORE RUN W/ TOTAL RECOVERY @ 5' SANDSTONE ROCK							2.58' RQD	41.6%

Comments: [Drill Method, Boring Diameter, UD Shelby Tubes, Well Construction (draw sketch on back), etc]

④ First Noted in Samples / Cuttings

@ Completion

② After Hrs

@ Backfilling _____ (date/ time)

SPT Hammer: (Weight / Drop / Spoon Dia.) / /

Auger Dia.: ID / OD (inch): 2.25 /

Moving: _____

Drilling: 9:30 AM - 11:30 AM.

Standby: _____

Hauling Water: _____

Abandon/Grout Boring: _____

Fluid Losses: _____ @ Depth: _____

HSA - Hollow Stem Augers

MD - Rotary Mud Drilling

REF - Refusal (Spoon or Auger)

RC - Rock Core

SS - SPT Split Spoon Sample

DC - Driven Casing (Hammer Type and Record Blows/ft vs. Depth)

ST - Shelby Tube Sample

WOR - SPT Weight of Rods

WOH - SPT Weight of Hammer

REC - Recovery (Feet)

RQD - Rock Quality Designation

Test Boring No. : LT-03

Location: 170929,45,1802228.92

Project Name: McDOWELL CO. LANDFILL Project No.: LCAP101 Date: 6/22/10

Logged By: MTC Drilling Company: CENTRAL STAR Drill Crew: _____

Rig: Track mounted Drill Method: Auger HSA Ground Surface Elevation: _____

Depth (feet)		Soil Visual Classification/ Descriptions and Remarks Surface Condition: _____	Depth		1st	2nd	3rd	4th	Rec. /RQD	Pocket Penetrometer (Tonfane)
From	To		From	To	6"	6"	6"	6"		
1'	2.50'	BROWNISH / TAN SANDY SILT W / LOW PLASTICITY AND MIXED WITH SANDSTONE FRAGMENTS. (S1) - SS	1'	2.50'	5	6	8	/	0.42' REC.	Ø
3.50'	5'	BROWNISH / TAN SANDY SILT W / LOW PLASTICITY AND MIXED WITH SANDSTONE FRAGMENTS. (S2) - SS	3.50'	5'	5 3/4 REF	/	/	/	0.50' REC.	3.0 TON SF
		(NOTE) BEGAN CORING @ 5'								
5'	6'	1 ST CORE RUN W / TOTAL RECOVERY @ 1' FRACTURED SANDSTONE RQD < 0.33'							Ø RQD	N/A
6'	11'	2 ND CORE RUN W / TOTAL RECOVERY @ 3.50' ROCK APPEARS LESS FRACTURED TOWARDS END OF RUN.							0.42' RQD	18.4%
11'	16'	3 RD CORE RUN W / TOTAL RECOVERY @ 5' ROCK IN GOOD CONDITION. (BOX 1 5'-16' DEPTH.) LAST 2.17' APPEARS TO BE A GREYISH SHALE.							4.17' RQD	83.4%
16'	21'	4 TH CORE RUN W / TOTAL RECOVERY @ 4.50' (NOTE) START OF BOX 2. (16-21' FT.)							1.08' RQD	21.6%

Total Boring Depth: 16 core depth.

Comments: [Drill Method, Boring Diameter, UD Shelby Tubes, Well Construction (draw sketch on back), etc]

Water Levels: _____ @ First Noted in Samples / Cuttings

Hammer Type: Donut Hammer / Safety Hammer / Automatic Hammer

@ Completion

SPT Hammer: (Weight / Drop / Spoon Dia.) / /

① After Hrs

@ Backfilling (date/ time)

Auger Dia.: ID / OD (inch): 2.25 /

Drilling Times:

Moving: _____

HSA - Hollow Stem Augers

ST - Shelby Tube Sample

Drilling: 2:30 pm - 5:20 pm.

MD - Rotary Mud Drilling

WOR - SPT Weight of Rods

Standby: _____

REF - Refusal (Spoon or Auger)

WOH - SPT Weight of Hammer

Hauling Water: _____

RC - Rock Core

REC - Recovery (Feet)

Abandon/Grout Boring: _____

SS - SPT Split Spoon Sample

RQD - Rock Quality Designation

Fluid Losses: _____ @ Depth: _____

DC - Driven Casing (Hammer Type and Record Blows/ft vs. Depth)



TEST BORING FIELD LOG

Test Boring No.: LT-04Location: N: 37.46735° W: 81.68118Project Name: MCDOWELL CO. LANDFILL Project No.: LCAP101 Date: 6/22 & 6/23/10Logged By: MBL Drilling Company: CENTRAL STAR Drill Crew: _____Rig: TRACK MOUNTED Drill Method: AUGER HSA Ground Surface Elevation: _____

Depth (feet)		Soil Visual Classification/ Descriptions and Remarks Surface Condition: _____	Depth		1st	2nd	3rd	4th	Rec. /RQD	Pocket Penetrometer (Ton/ft)
From	To		From	To	6"	6"	6"	6"		
1'	2.50'	BROWNISH/TAN SANDY SILT W/ LOW PLASTICITY AND MIXED WITH SANDSTONE FRAGMENTS. (S2) - SS	01'	2.50'	5	8	8	✓	0.42 REC.	0.75 ^{FSN} SF
3.50'	5'	BROWNISH/TAN SANDY SILT W/ LOW PLASTICITY AND MIXED WITH SANDSTONE FRAGMENTS. (S2) - SS (NOTE) BEGAN ROCK Casing @ 5'	3.50	5'	8	6	11		0.61 REC.	2.5 ^{FSN} SF
5'	10'	1 ST CORE RUN W/ TOTAL RECOVERY @ 4.83' SANDSTONE ROCK APPEARS TO HAVE LESS FRACTURE	Box 1	5'-15'					2.50 RQD	50%
10'	15'	2 ND CORE RUN W/ TOTAL RECOVERY @ 4.67' SANDSTONE CORE APPEARING CONSISTANT.							2.75 RQD	55%
15'	20'	3 RD CORE RUN W/ TOTAL RECOVERY @ 5' Box 2 15'-24'-3"							3.11 RQD	63.4%
20'	25'	4 TH CORE RUN W/ TOTAL RECOVERY @ 4.75' CORE LOOKS GOOD HAS LESS FRACTURE.							4.75 RQD	95%
25'	30'	5 TH CORE RUN W/ TOTAL RECOVERY @ 5'							3.33 RQD	66.6%
30'	35'	6 TH CORE RUN W/ TOTAL RECOVERY @ 5' (NOTE) @ 4.58' CONTRACTOR BROKE CORE AND MARKED IT BY A BLUE SHARP PENCIL MARKER. (NOTE) RUN 6 STARTED @ 30 FEET.							4.5 RQD	80%
* HAD TO ADJUST HOLE LOCATION DUE TO ACCESS PROBLEMS. GPS COORDS. LISTED ON TOP OF RIG.										

Total Boring Depth: 30' CORE DEPTH

Comments: [Drill Method, Boring Diameter, UD Shelby Tubes, Well Construction (draw sketch on back), etc]

Water Levels: _____ @ First Noted in Samples / Cuttings

_____ @ Completion

_____ @ After _____ Hrs

_____ @ Backfilling _____ (date/ time)

Hammer Type: Donut Hammer / Safety Hammer / Automatic Hammer

SPT Hammer: (Weight / Drop / Spoon Dia.) _____ / _____ / _____

Auger Dia.: ID / OD (inch): 2.25 /

Drilling Times:

Moving: _____

Drilling: 6/22/10 (6:00pm - 8:10pm) 6/23/10 (7:00pm - 8:30pm)

Standby: _____

Hauling Water: _____

Abandon/Grout Boring: _____

Fluid Losses: _____ @ Depth: _____

HSA - Hollow Stem Augers

MD - Rotary Mud Drilling

REF - Refusal (Spoon or Auger)

RC - Rock Core

SS - SPT Split Spoon Sample

DC - Driven Casing (Hammer Type and Record Blows/ft vs. Depth)

ST - Shelby Tube Sample

WOR - SPT Weight of Rods

WOH - SPT Weight of Hammer

REC - Recovery (Feet)

RQD - Rock Quality Designation



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

Earl Ray Tomblin
Governor

Frank Jezioro
Director

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-

Dear Mr. Dickey:

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:

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

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

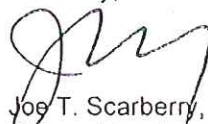
9. Best management practices should be followed; measures such as hay bales must be used to reduce downstream siltation.
10. Any plastic pipeline under four-inch (4") in diameter shall be encased in a metal conduit.
11. The State's issuance of this Right-of-Entry does not provide for the applicant to 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.
13. 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

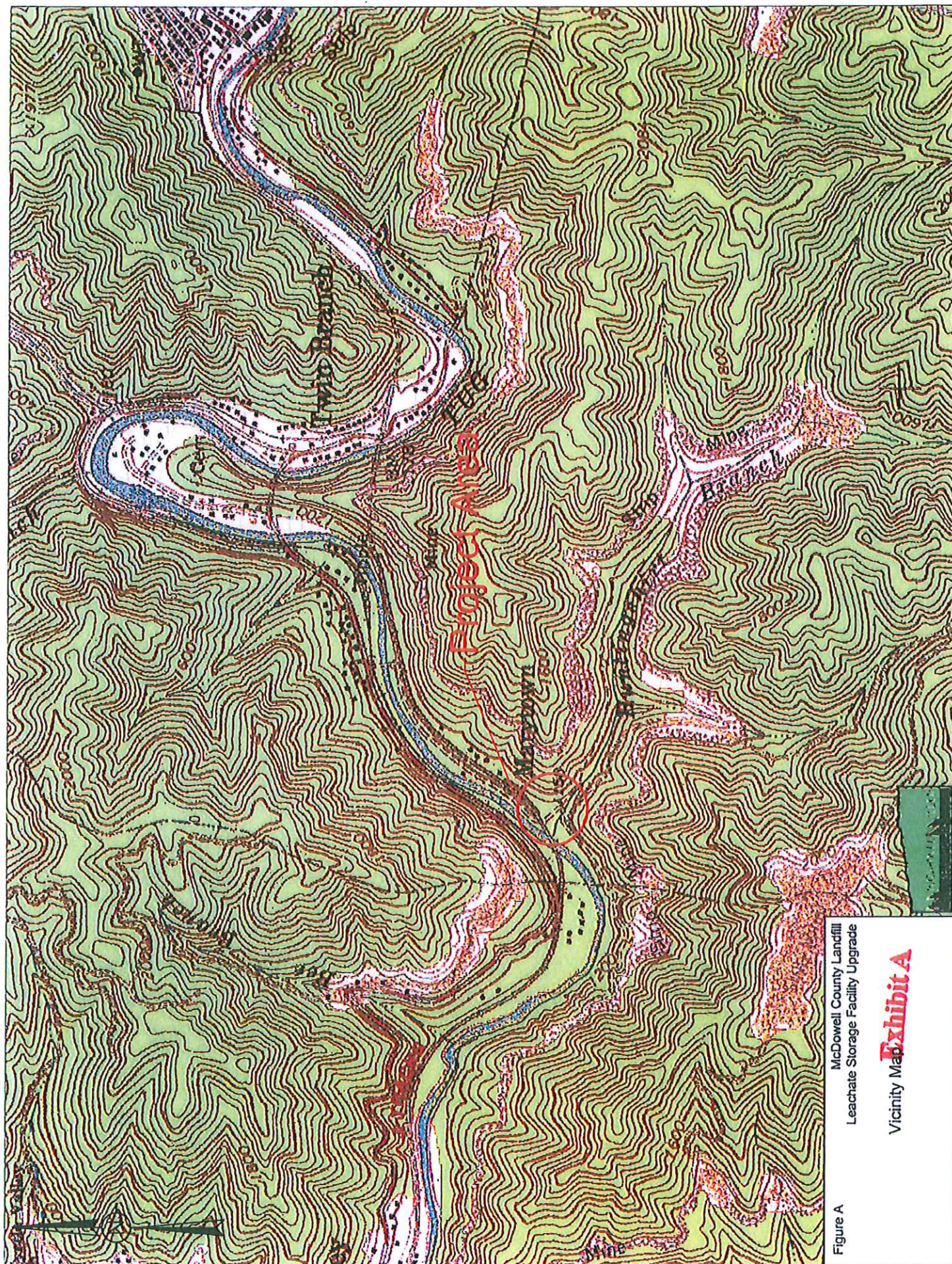


Figure A
McDowell County Landfill
Leachate Storage Facility Upgrade

Vicinity Map **Exhibit A**

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 57th 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 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

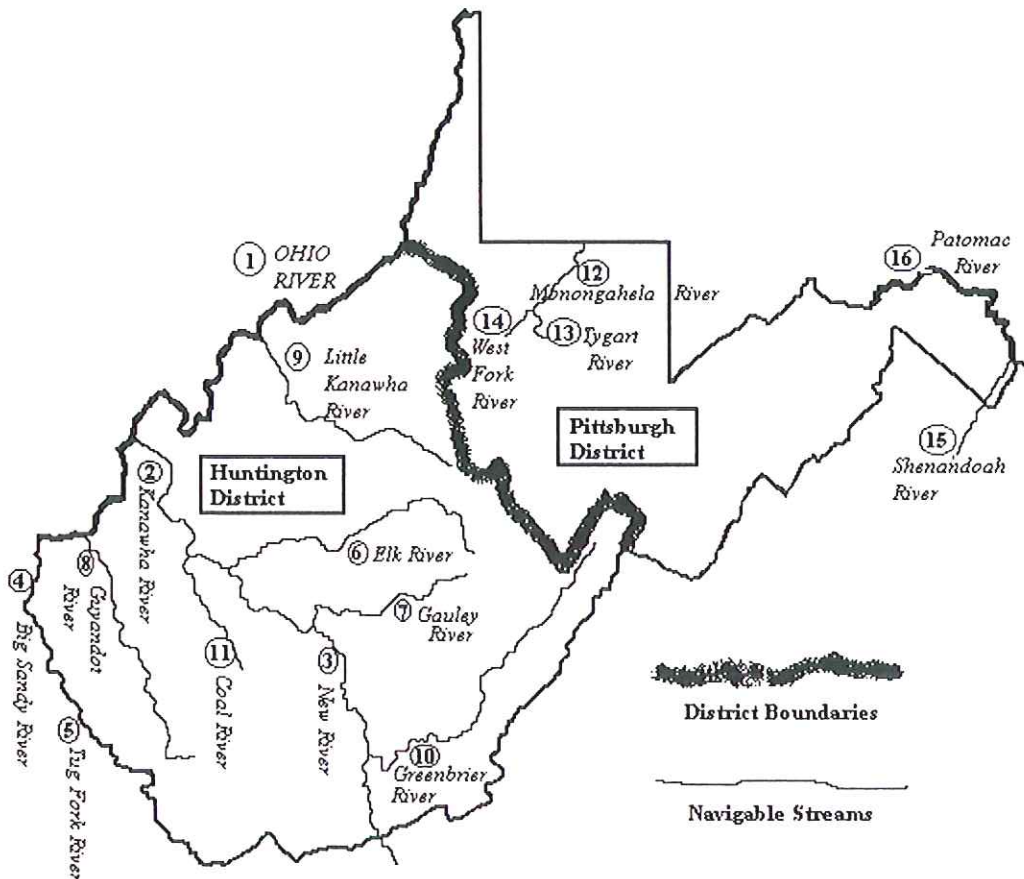
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Attached is a map showing the district boundaries for the State of West Virginia.

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 River.....Total Length
3. New River.....Total Length in State
4. Big Sandy River.....Total Length
5. Tug Fork.....58 Miles
6. Elk River.....139 Miles
7. Gauley River.....75 Miles
8. Guyandot River.....122 Miles
9. Little Kanawha River.....130.75 Miles
10. Greenbrier River.....150.50 Miles
11. Coal River.....57.90 Miles

Pittsburgh District

1. Ohio River.....Total Length in State
12. Monongahela River.....Total Length in State
13. Tygart River.....7 Miles
14. West Fork.....74 Miles
15. Shenandoah River.....Total Length in State
16. Potomac River.....Total Length in State

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 pre-construction 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 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 necessary and separate footings for each tower leg (rather than a larger single pad) are used 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 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 (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.**

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

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:

- A. 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 NWP

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.

(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 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. Aquatic Life Movements. 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. Spawning Areas. 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. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48.

6. Suitable Material. 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. Water Supply Intakes. 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. Adverse Effects From Impoundments. 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. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. 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. Removal of Temporary Fills. 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. Proper Maintenance. 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 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. Tribal Rights. 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 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 designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the 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' 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. Historic Properties. (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 Historic Preservation Act (NHPA) have been satisfied.

(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 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 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, NOAA-designated 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 NWP 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 waters.

(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. Regional and Case-By-Case Conditions. 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 be 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 Act (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 NWP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP 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. Each 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.
2. 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 ground waters. Storage areas and refueling areas shall be a minimum distance of 100 feet 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 its 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.

6. 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 Protection's Erosion and Sediment Control Best 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.
9. In stream work in warm water fishery streams and their adjacent tributaries during the 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 304-558-2771. In stream 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 in-stream 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.
11. 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, Requirements Governing Water Quality Standards, 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.

17. Streams with Mussel populations.

A. 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)

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.

Currently serviceable: 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 NHPs, 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.

Practicable: 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.

Preservation: 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 coarse 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 NWP, 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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Request for Proposal No. **DEP15684**

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MAILING ADDRESS

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Company: <u>WV DEP</u>	<u>7174 Main St.</u>	PHONE <u>304-545-0793</u>
Rep: <u>Mark Church</u>	<u>Summersville WV 26651</u>	TOLL FREE
Email Address: <u>mark.a.church@wv.gov</u>		FAX <u>304 872-3800</u>
Company: <u>ATA Energy Inc</u>	<u>151 STWART STREET</u>	PHONE <u>304 436 5160</u>
Rep: <u>DONWIE HAGERMAN</u>	<u>Welch WV 24801</u>	TOLL FREE <u>304 320 3961</u>
Email Address: _____		FAX _____
Company: <u>All-Con</u>	<u>124 philbot Ln</u>	PHONE <u>304 255-0491</u>
Rep: <u>Dave Irle</u>	<u>Beaver, WV 25813</u>	TOLL FREE <u>304 731-0190</u>
Email Address: <u>DIRLE@ACT-WV.COM</u>		FAX <u>304 255-4232</u>
Company: <u>MARSHALL MILLER & ASSOCIATES</u>	<u>534 IMPERIAL PARK RD.</u>	PHONE <u>(276) 322-5467</u>
Rep: <u>MARK CLEMENS</u>	<u>Blountsville, VA. 29605</u>	TOLL FREE <u>CERC # (540) 230-7962</u>
Email Address: <u>mark.clemens@mmal.com</u>		FAX _____
Company: <u>Pineville Paving & Excavating Inc.</u>	<u>P.O. Box 1290</u>	PHONE <u>304-732-8303</u>
Rep: <u>Tony Brackford</u>	<u>Pineville WV 24874</u>	TOLL FREE
Email Address: <u>tonypp@apl.com</u>		FAX <u>304-732-7855</u>

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Company: <u>Green Mountain Co.</u>	<u>511 50th St</u>	PHONE <u>304-925-0253</u>
Rep: <u>Harrison Bowman</u>	<u>Charleston WV 25304</u>	TOLL FREE
Email Address: <u>DHB722@yahoo.com</u>		FAX <u>304-925-9230</u>
Company: <u>WISEMAN EXCAVATING</u>	<u>Rt. 1 Box 190</u>	PHONE <u>304-586-3736</u>
Rep: <u>JOE WISEMAN</u>	<u>Liberty, WV 25124</u>	TOLL FREE
Email Address: <u>jwpocall@aol.com</u>		FAX <u>304-586-3789</u>
Company: <u>MAIN STREET BUILDERS, LLC</u>	<u>PO BOX 309</u>	PHONE <u>304-487-3912</u>
Rep: <u>ADAM SARVER</u>	<u>PRINCETON, WV 24740</u>	TOLL FREE
Email Address: <u>asarver@msbwv.com</u>		FAX <u>304-425-2171</u>
Company: <u>Marshall Miller & Assoc.</u>	<u>601 Morris St Suite 204</u>	PHONE <u>304-553-7312</u>
Rep: <u>Chris Butler</u>	<u>Charleston WV 25301</u>	TOLL FREE
Email Address: <u>Chris.butler@mma1.com</u>		FAX
Company: <u>Carpenter Reclamation</u>	<u>Po Box 13015</u>	PHONE <u>304-984-1115</u>
Rep: <u>Randy Carpenter</u>	<u>5550011th, WV 25300</u>	TOLL FREE
Email Address: <u>RCarpenter103@aol.com</u>		FAX <u>984-2770</u>

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Company:	<u>Lee Supply Co.</u>	<u>PO Box 1250</u>	PHONE <u>304 763-0215</u>
Rep:	<u>Bob Gentry</u>	<u>Beaver WV 25813</u>	TOLL FREE <u>888 353-3747</u>
Email Address:	<u>BGentry@LeeSupply.com</u>		FAX <u>304 763-0218</u>
Company:			PHONE
Rep:			TOLL
Email Address:			FREE
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Company:			PHONE
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Email Address:			FREE
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