US Army Corps of Engineers®

PUBLIC NOTICE

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Huntington and Pittsburgh Districts
Permit Application No. LRH-2025-00287

PROPOSED REGIONAL GENERAL PERMIT FOR ENERGY AND ENERGY RESOURCE RELATED PROJECTS IN THE STATE OF WEST VIRGINIA

TO WHOM IT MAY CONCERN: In accordance with Title 33 CFR § 325.5(c)(1) as published on November 13, 1986, in the Federal Register, Volume 51, Number 219, the district engineers of the Huntington and Pittsburgh Districts United States Army Corps of Engineers (Corps), are proposing to issue the Regional General Permit (RGP) for energy or energy resource related activities pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. This RGP is proposed to be available for use within the entire state of West Virginia and may be used by the prospective applicants for energy and energy resource related activities that require the discharge of dredged and/or fill material into waters of the United States and/or work or structures in, over or under navigable waters of the United States.

BACKGROUND: RGPs are general permits issued by a district or division engineer on a regional basis to streamline the authorization of activities that result in no more than minimal individual and cumulative adverse environmental effects.

Executive Order (E.O.) 14156, Declaring a National Energy Emergency, was signed by the President of the United States on January 20, 2025. This E.O. focuses on energy and critical minerals (‘‘energy’’) identification, leasing, development, production, transportation, refining, and generation capacity of the United States.

In accordance with 33 CFR § 325.2(e)(4), on March 31, 2025, the Great Lakes and Ohio River Division Commander approved the use of special emergency processing provisions for energy or energy resource related activities covered by E.O. 14156 to expedite the delivery of energy infrastructure, critical minerals, and related energy activities.

PRE-CONSTRUCTION NOTIFICATION (PCN): The permittee must submit a PCN to the district engineer prior to commencing the activity (see Part B of the RGP).

SCOPE OF WORK: The purpose of the RGP is to expedite the Corps’ review of requests for authorization(s) from the prospective applicants to discharge of dredged and/or fill material into waters of the United States and/or work or structures in, over or

under navigable waters of the United States associated with energy or energy resource related activities.

PROPOSED CATEGORIES OF ACTIVITIES: The proposed categories of activities to be authorized by this RGP include energy or energy resource related activities, such as those noted in Term and Condition 1, in the Huntington and Pittsburgh Districts' Areas of Responsibility.

WATER QUALITY CERTIFICATION: A Department of the Army permit, if otherwise warranted, would not be issued on this project until the Clean Water Act Section 401 Water Quality Certification has been issued or waived and the Section 401(a)(2) process has been completed with the United States Environmental Protection Agency. The Corps will submit a Section 401 Water Quality Certification request to the West Virginia Department of Environmental Protection and copy the neighboring jurisdictions (Kentucky Division of Water, Ohio Environmental Protection Agency, Virginia Department of Environmental Quality, Pennsylvania Department of Environmental Protection, and Maryland Department of the Environment). The Reasonable Period of Time for the certifying authority to act on the Section 401 Water Quality Certification will be 60 days from their receipt of a valid certification request. A waiver may be explicit or will be deemed to occur if the certifying authority fails or refuses to act on a request for certification within 60 days after receipt of a valid certification request.

PUBLIC INTEREST REVIEW: This proposed RGP will be reviewed and evaluated in accordance with 33 CFR Parts 320-332, the implementing regulations for the Corps' Regulatory Program as well as other pertinent laws, regulations, and executive orders. The Corps' evaluation will also follow the guidelines published by the United States Environmental Protection Agency pursuant to Section 404(b)(1) of the Clean Water Act (40 CFR Part 230). The decision whether to issue a permit will be based on an evaluation of the probable impacts associated with the discharge of dredged and/or fill material into waters of the United States and/or work within navigable waters of the United States, including cumulative impacts of the proposed activities, on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which may be reasonably expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; among those factors are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

SOLICITATION OF COMMENTS: The Corps is soliciting comments from the public, federal, state and local agencies and officials, Tribal Nations and other interested parties in order to consider and evaluate the impacts of this proposed RGP. For accuracy and completeness of the administrative record, all data in support of or in

opposition to the proposed RGP should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any person may request, in writing, within the comment period specified in the notice, that a public hearing be held to consider the proposed RGP. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Written statements received in this office on or before the expiration date of this Public Notice will become a part of the record and will be considered in the final determination. The RGP will be authorized unless its issuance is found to be contrary to the public interest.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one (1) of this Public Notice. Comments, information requests, and any public hearing requests should be submitted in accordance with the submission methods listed below. If no comments are received by the close of the comment period, it will be considered that there are no objections.

COMMENT SUBMISSION: Comments should be submitted electronically via the Regulatory Request System (RRS) at https://rrs.usace.army.mil/rrs or to the Energy Resource Branch by email at CELRH.Energy@usace.army.mil.

If you do not have internet access, comments may be submitted through the United States Postal Service (USPS) to the following address:

United States Army Corps of Engineers, Huntington District
ATTN: CELRH-RD Public Notice No. LRH-2025-00287
502 8th Street
Huntington, West Virginia 25701

Copies should only be provided through the USPS when electronic transmission is not possible. To be considered in our evaluation, comments submitted through the USPS should have a postmark dated on, or prior to, the close of the comment period listed on this Public Notice.

Please note names and addresses of those who submit comments in response to this Public Notice become part of our administrative record and, as such, may be available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our nation's water resources. If you have any questions concerning this Public Notice, please contact the Energy Resource Branch, at (304) 399-5710, or by email at CELRH.Energy@usace.army.mil.

A. PROPOSED TERMS AND CONDITIONS:

1. **Category of Activities:**

    a. Energy or energy resource related activities and attendant features required for the identification, leasing, development, siting, production, transportation, refining, and generation of crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals, as defined by 30 U.S.C. § 1606 (a)(3);
    b. Energy supply, generation, production, refining and transportation related activities;
    c. Activities and attendant features required for the construction, maintenance, repair, and removal of energy and energy resource related activities and associated facilities;
    d. Construction or maintenance of foundations for aboveground energy and energy resource related activities and attendant features;
    e. Construction of access roads for the construction and maintenance of energy and energy resource related activities and attendant features;
    f. Temporary structures, fills, and work necessary for the remediation of inadvertent returns to waters of the United States through sub-soil fissures or fractures that might occur during energy and energy resource related activities and attendant features;
    g. Temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the energy and energy resource related activities and attendant features;
    h. Construction, maintenance, or expansion of substation facilities associated with energy and energy resource related activities and attendant features;
    i. Construction or maintenance for overhead energy and energy resource related activities associated with towers, poles, foundations and anchors and attendant features; or
    j. Energy and energy resource related activities and attendant features associated with riverine facilities (i.e., fleeting, mooring, offloading, unloading).

2. **Thresholds:** Activities proposed under this RGP are subject to the following threshold:

    The permanent loss of waters of the United States (see definition under Part H) shall not exceed one (1) acre.

3. **Open-Cut Utility Lines (Pipelines):**

    a. The permittee will minimize the impacts of in-stream construction by installing the utility line as close to perpendicular to stream courses as

practicable. Furthermore, where site conditions require that the right-of-way (ROW) cross a stream at a relatively shallow angle, field adjustments to the placement of utility line within the approved ROW will be made to increase the crossing angles for these streams to the maximum extent practicable considering the site conditions, thereby reducing or eliminating low-angle crossings.

b. Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three (3) 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.
c. The streambed (upper 12 inches of substrate) and wetland (upper 12 inches of topsoil) material excavated from the trench will be segregated and stockpiled, to the maximum extent practicable, to prevent mixing with other materials and will be used during restoration efforts. Excavated material not required for backfill will be removed and disposed of at an upland site in a manner to prevent its reentry into waters of the United States.
d. The permittee will implement erosion and sedimentation control measures, such as installing trench breakers and water bars to inhibit water flow along the trench and ROW. Upon completion of construction, the permittee will restore the ground surface as closely as practicable to original contours and re-establish vegetation to facilitate restoration of pre-construction overland flow. The permittee must maintain, to the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters, unless specifically authorized otherwise by the Corps.
e. Burial of the pipeline shall allow wetland vegetation to re-establish and surface flow to function naturally over the permanent ROW. To avoid “a "French-drain effect" in wetlands trenched for the pipeline, trench breakers will be installed in the trench to stop water from flowing along the trench. Trench breakers will be water resistant and stabilized with material designed to resist water movement (e.g., sandbags, bentonite, non-toxic spray foam, etc.) so they will not be penetrated by water, eroded, or moved.

4. **Coal Mining Activities:** Activities already authorized or which are currently being processed with the approved program in the respective state of West Virginia under Title V of the Surface Mining Control and Reclamation Act of 1977 or by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement.

5. **Bank Stabilization**:

    a. No material is placed in excess of the minimum needed for erosion protection.

b. The activity is no more than 1,000 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects.
c. No discharged dredged and/or fill material is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States.
d. No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas).
e. Native plants appropriate for current site conditions must be used for bioengineering or vegetative bank stabilization.
f. Proper installation is required for use of this RGP and does not include material that is dumped from the top of bank resulting in uncontrolled spilling of material over the bank into the waterway.
g. Soft bank stabilization techniques such as live stakes and brush mattresses are encouraged where practicable, alone or in combination with hard bank stabilization.

6. **Access Roads:** 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). Where access roads will be adjacent to a waterbody, the permittee will install silt fence and/or other erosion prevention measures along the edge of the access road to minimize adverse effects to the waterbody through erosion and sedimentation.

7. **Installation of Stream Crossings:**

a. Appropriate engineering is required to ensure structures are sized and designed to provide adequate capacity (to pass various flood flows) and stability (bed, bed forms, footings and abutments).
b. Site-specific information (i.e. stream bed slope, type and size of stream bed material, stream type, existing natural or manmade barriers, etc.) shall be assessed to determine appropriate culvert design and to ensure management of water flows and aquatic life movement.
c. Before replacing a culvert or other crossing structure with a larger structure it is essential that the replacement be evaluated for its impacts on downstream flooding, upstream and downstream habitat (in-stream habitat, wetlands), and potential for erosion and headcutting, and stream stability.
d. The dimension, pattern, and profile of the stream above and below the stream crossing shall not be permanently modified by changing the width or depth of the stream channel.
e. Additionally, it is recommended that the culvert bed slope remain consistent with the slope of the adjacent stream channel. Bankfull flows

shall be accommodated through maintenance of the existing bankfull channel cross sectional dimensions within the culvert. Bankfull width is generally considered to be the top width at the stage where a stream begins to overtop its banks and spread into the floodplain.

f. The design and condition of a stream crossing determine whether a stream behaves naturally and whether aquatic life can migrate along the stream corridor. A well-designed crossing provides fish, salamanders, and other wildlife full access to the stream. Undersized crossings, shallow crossings, and crossings that are perched can be barriers to fish and wildlife. Adequate crossings span the stream and banks, maintain comparable water velocities, have a natural streambed, and create no noticeable change in the stream or river. For those projects where an impediment (e.g. stream erosion, mechanical breakdown of existing crossings, or changes in the upstream or downstream channel shape) is found or proposed to impede the movement of aquatic life and water flows, the applicant must provide information as to how they will mitigate for those deficiencies. Mitigation measures may include, but are not limited to, baffles, weirs, roughened channels, and grade control structures.

8. **Temporary Construction Access and Dewatering:** 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.

9. **Removal of Temporary Structures and Fills**: Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned as close as practicable to the pre-construction condition. The affected areas must be revegetated, as appropriate. All material removed must be placed at least 100 feet from any water of the United States, including wetlands, and adequately contained to prevent the return to any water of the United States, including wetlands.

10. **Maintenance of Existing Infrastructure**:

    a. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project or within the boundaries of the structure or fill.
    b. New or additional riprap necessary to protect the structure or to ensure the safety of the structure cannot exceed a total of 600 feet from the structure in either direction (e.g., 100 feet upstream plus 500 feet downstream from

the structure), unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects.

11. **Retaining Walls:** The retaining wall, designed to hold back soil or other materials and prevent erosion and provide stability to slopes, embankments, and streambanks, is no more than 1,000 feet in length along the bank. No waivers of this requirement will be approved. Acceptable materials include concrete, stone, timber, or geosynthetic materials.

12. **Maintenance Dredging:**

    a. Dredged material will be disposed of at an off-site upland disposal site. The disposed material must be contained in a manner to prevent the re-entry of any material into waters of the United States in accordance with applicable federal, state, and local regulations.
    b. The permittee must advise this office in writing, at least two (2) weeks before you start maintenance dredging activities under the authority of this permit.
    c. No dredging is to be conducted within 1,000 feet upstream of any potable water intake. The permittee will notify local water company personnel 48 hours prior to commencement of dredging activities within five (5) miles any potable water intake.

13. **Expiration:** Unless otherwise specified in the Corps letter verifying a project complies with the terms and conditions of this RGP, the time limit for completing work authorized by the permit ends upon the expiration date of the RGP.

14. **Proper Maintenance and Abandonment:** The permittee must maintain the structure/fill authorized by this RGP in good condition and in conformance with the terms and conditions of this RGP to ensure public safety. The permittee is not relieved of this requirement unless you transfer to a third party in compliance with Condition 16 below. Should the permittee wish to cease maintenance of, or abandon the authorized activity, without transferring the permit, the permitteemust apply for a RGP reverification from this office, which may require restoration of the area to the original condition.

15. **Transfer of Regional General Permit (RGP) Verification:** If the permittee sells the property associated with a RGP, the permittee may transfer the RGP to the new owner by submitting a letter to this office to validate the transfer. A copy of the RGP must be attached to the letter and include the contact information of the new owner, such as name (business included), address, telephone number and email, and the letter must contain the following statement and signature:

    “When the structures or work authorized by this RGP are still in existence at the time the property is transferred, the terms and conditions of this RGP, including

any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this RGP, and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____ _____
(Transferee) Date

_____
Printed Name

_____
Address, Phone Number, Email

16. **Design Features:** This RGP is not an approval of the design features of any authorized project or an implication that such project is adequate for the intended purpose. A Department of the Army permit merely expresses the consent of the Federal Government to conduct the proposed work insofar as public rights are concerned.

17. **Bog and Fens:** This RGP shall not authorize any regulated activity which negatively impacts the functions and services of bogs and/or fens. Negative impacts include conversion of an area of the waters of the United States considered as a bog or fen into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.

18. **Bridges:** Pipes and pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered bridges and may require a permit from the United States Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. Discharges of dredged and/or fill material into waters of the United States associated with such pipes and pipelines require a Section 404 authorization and may be authorized under this RGP.

19. **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 responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, United States Forest Service, Bureau of Land Management, United States Fish and Wildlife Service). Information on these rivers is also available at: http://www.rivers.gov/

20. **Threatened and Endangered Species and Critical Habitat**: No activity is authorized which is likely to directly or indirectly 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, or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation.

21. **Historic Properties:** No activity is authorized which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act have been satisfied. Prospective permittees should be aware that Section 110k of the National Historic Preservation Act (54 U.S.C. § 306113) 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 National Historic Preservation Act, 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, 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 Advisory Council on Historic Preservation and provide documentation specifying the circumstances, 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, the State Historic Preservation Office, appropriate federally recognized Tribal Nations 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.

22. **Discovery of Previously Unknown Remains and Artifacts:** Permittees that discover any previously unknown historic, cultural or archaeological remains and artifacts while accomplishing the activity authorized by this RGP, must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

23. **Tribal Rights**: No activity or its operation may impair reserved Tribal rights (executive orders, military decrees, federal legislation, and judicial decisions), including, but not limited to, reserved water rights and treaty fishing and hunting rights.

24. **In-Water Work Exclusion Dates:** No construction activities in West Virginia will occur within designated warm water streams and their adjacent tributaries during the fish spawning season of April 1 to June 30 or in trout waters and their adjacent tributaries during the trout water fish spawning season of September 15 to March 31 unless a waiver is obtained from the West Virginia Division of Natural Resources. Additionally, no work in trout streams shall occur on the days trout are stocked.

25. **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 unless specifically authorized by the West Virginia Division of Natural Resources.

26. **Shellfish Populations:** No activity may occur in areas of concentrated shellfish populations as determined by the West Virginia Division of Natural Resources or the United States Fish and Wildlife Service. To protect shellfish populations, prior to any in-water work, a professional malacologist must collect and relocate the shellfish populations to suitable and similar habitat upstream of the project site. Should federal listed species be encountered, the work must cease and the United States Fish and Wildlife Service must be contacted for consultation. Any juvenile and adult specimens must be located to an acceptable location, as approved by the West Virginia Division of Natural Resources and the United States Fish and Wildlife Service. Individual adult mussel specimens must be marked when relocated. Juveniles are not to be marked.

27. **Special Areas:** This RGP does not authorize work in a park, wildlife management area, refuge, sanctuary, or similar area administered by a federal, state or local agency without that agency's approval.

28. **Dry Conditions:** Permittees shall conduct work in dry conditions to the maximum extent practicable.

29. **Navigation:**

    a. No activity may cause more than a minor adverse effect on navigation.
    b. Permittees will comply with required setback distances within federally maintained channels and/or waterways, as determined by the Corps.
    c. Any safety lights and signals prescribed by the United States 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.
    d. 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 or her 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.

e. Permittees shall mark intake and/or outfall structures and other fills and structures in navigable waters, when appropriate, so that boaters will notice their presence.

30. **Suitable Material:** Materials to be discharged into waters of the United States are restricted to clean native soils and concrete, sand, gravel, rock, other coarse aggregate, and other suitable material. All material used shall be free of toxic pollutants in toxic quantities and/or acid forming constituents.

31. **Avoided Water Resources:** The permittee shall not conduct any of the following activities in waters of the United States that have not been affirmatively authorized under the Department of the Army Permit: discharge any dredged or fill material; place or stockpile any excavated dredged or fill material, equipment or other materials; operate, park or store any construction equipment or vehicles (whether temporarily or permanently); or engage in other ground disturbing activities. All water resources and their buffers, which are to be avoided, must be clearly indicated on site drawings, demarcated in the field and protected with suitable materials prior to site disturbance to protect these resources from inadvertent impacts beyond those which are authorized. These materials must remain in place and be maintained throughout the construction and restoration activities.

32. **Best Management Practices:** Following the demarcation of streams and wetlands that would not be affected by the discharge of dredged and/or fill material with suitable materials and, prior to the initiation of any work authorized by the Department of the Army Permit, appropriate site-specific best management practices (BMPs) for sediment and erosion control will be fully implemented during construction activities at the site. Appropriate bank protection measures installed in channel or on barren areas requiring erosion control include, but are not limited to, planting native grasses and forbs, vegetation, and placement of other acceptable clean non-contaminated material. Immediately after completion of the final grading of the land surface, all slopes, land surfaces, and filled areas shall be appropriately stabilized to prevent erosion. The erosion control measures shall remain in place and be maintained until all authorized work is completed and the work areas are stabilized.

33. **Low Flow Conditions:** The discharge of dredged and/or fill material will be performed during periods of low surface flow within the stream reaches, to the greatest extent practicable, to minimize potential adverse effects to stream current velocities and turbulence associated with the discharge of dredged and/or

fill material into waters of the United States.

34. **Equipment:** Permittees shall place all heavy equipment working in wetlands on mats or take other measures to minimize soil disturbance. Construction equipment fueling is prohibited within 100 feet of the waterbody banks (except for water pumps, which will be placed in secondary containment structures) and hazardous material storage will be prohibited within 100 feet of waterbodies.

35. **Water Supply Intakes:**

    a. 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.
    b. Should a product (i.e., oil, chemicals, fracking water) release occur that may impact any of the downstream public drinking water intakes, the permittee will notify the Local Water Department and National Response Center within 30 minutes of the initial release.

36. **Adverse Effects from Impoundments**: The permittee must make best efforts to avoid impounding waters of the United States to the maximum extent practicable. 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.

37. **Safety of Impoundment Structures:** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

38. **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, storm water management activities, and temporary and permanent road crossings, 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. 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).

39. **Fills Within 100-Year Floodplains**: The activity must comply with applicable Federal Emergency Management Agency-approved state or local floodplain management requirements.

40. **Aquatic Life Movements:** No activity may significantly 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. All permanent and temporary crossings of waterbodies must be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. The culvert shall be designed and sized to accommodate bankfull discharge and match the existing depth of flow to facilitate the passage of aquatic organisms. When practicable, culverts shall be installed at the existing streambed slope, to allow for the natural movement of bedload and aquatic organisms. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

41. **Migratory Bird Breeding Areas and Bald and Golden Eagles:** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable. The permittee is responsible for ensuring that the activities authorized by this procedure comply with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the United States Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for any RGP activity.

42. **Bioengineering Techniques**: Where possible, any activity involving bank stabilization must incorporate bioengineering techniques. Bioengineering techniques include using a combination of biological, mechanical, and ecological concepts to control erosion and stabilize soil through the sole use of vegetation, or a combination of vegetation and construction materials.

43. **Single and Complete Project:** The activity must be a single and complete project with independent utility. Single and complete non-linear projects may not be ‘‘piecemealed’’ to avoid the limits in the RGP. For example, multiple non-linear activities may be authorized by the RGP for an overall project, provided the cumulative loss of waters of the United States does not exceed one (1) acre.

44. **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 minor:

    a. The activity must be designed and conducted to avoid and minimize adverse effects, both temporary and permanent and conversion, 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, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are not more than minor.
c. Compensatory mitigation using the ratios established by the West Virginia Stream and Wetland Valuation Metric will be required for wetland losses and permanent wetland conversions of greater than 1/10 acre.
d. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR Part 332.
e. Compensatory mitigation using the ratios established by the West Virginia Stream and Wetland Valuation Metric will be required for losses of greater than 3/100 acre of stream bed.
f. For wetland losses and permanent wetland conversions of 1/10-acre or less or stream losses of 3/100-acre or less, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

45. **Water Quality:** In accordance with Section 401 of the Clean Water Act, certification of compliance with state or tribal water quality standards by the state or tribal water quality certifying authority, is required for any discharge of dredged and fill material into waters of the United States.

46. **Case-By-Case Conditions**: The activity must comply with any case-specific conditions added by the Corps or by the state in its Section 401 Water Quality Certification or by the state in its Coastal Zone Management Act consistency determination.

47. **Activities Affecting Structures or Works Built by the United States:** If the activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. § 408 because it will alter or temporarily or permanently occupy or use a United States Army Corps of Engineers (USACE) federally authorized Civil Works project (a ‘‘USACE project’’), no RGP will be granted until the appropriate Corps office issues the Section 408 permission or completes its review to alter, occupy, or use the USACE project.

48. **Construction Plans:** The permittee shall require, as a material condition of its contracts and subcontracts, that all its contractors and their subcontractors at any tier comply with the Department of the Army Permit. A copy of the Department of the Army Permit shall be available at the construction site(s) at all times and the permittee shall ensure that all contractors and subcontractors are provided a copy of the permit and are familiar with the activities that have been authorized and familiar with all parts of the project area containing waters of the United States that shall be avoided.

49. **Invasive Species:** No area for which grading has been completed will be unseeded or unmulched for longer than 14 days. All disturbed areas will be

seeded and/or revegetated with native species and West Virginia Division of Natural Resources approved seed mixes (where practicable) after completion of construction activities for stabilization and to help preclude the establishment of non-native invasive species. Invasive plant species are prohibited from planting in the buffer zones along restored streams and in wetland restoration sites. Preventative measures will also be taken to inhibit invasive species from establishing in the vegetated buffer zones along the restoration areas during the monitoring period and until the permittee is released from monitoring. Upon discovery of invasive species, the permittee will coordinate removal efforts with the Corps to determine and implement appropriate eradication techniques to ensure all invasive species are no more than 10% of the cumulative population within the tree, shrub, and herbaceous layer. The use of tubes (i.e., Tubex), chicken wire, hardware cloth, repellants, or other materials may be necessary to achieve succession requirements in areas with beaver, white tailed deer and other wildlife populations. Any placement of large woody debris will be native to the site or obtained locally (adjacent to the site).

50. **Periodic Inspections:** Permittees shall allow the district engineer and his or her authorized representative(s) to make periodic inspections of project sites at any time deemed necessary to ensure that the activity authorized by the RGP is in accordance with the terms and conditions prescribed herein.

51. **Proper Maintenance:** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with the RGP, as well as any activity-specific conditions added by the district engineer to any RGP granted under this RGP.

52. **As-Built Drawings**: As-built drawings will be furnished to the appropriate Corps district within 60 days of completion of construction showing the location and configuration, as well as all pertinent dimensions and elevations of each project component authorized under this Department of the Army permit. If construction spans over multiple years, annual as-built drawings showing increment progress over the preceding year will be submitted in conjunction with any annual reporting requirements specified in any special conditions attached to the RGP approval.

53. **Certification of Completion of Work:** Each permittee who receives a RGP from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the RGP letter. The certification document will include:

    a. A statement that the authorized activity was done in accordance with the RGP authorization, including any terms and conditions, limitations, or

activity-specific conditions;

b. A comparison of the pre- and post-construction conditions of the project area;
c. A map showing the final configuration of waters of the United States, including wetlands, restored as a result of temporary discharges of dredged and/or fill material;
d. A discussion about whether disturbed areas, such as road embankments, stream banks, road crossings, and temporary impact areas are revegetating adequately and not suffering erosion damage;
e. Photographs and maps as appropriate to illustrate the information presented;
f. A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR § 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
g. The signature of the permittee certifying the completion of the activity and mitigation. The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

B. **Pre-Construction Notification (PCN):** For an activity to be considered for a RGP under this procedure, the project proponent must submit a pre-construction notification including the following:

1. A cover letter from the project proponent requesting authorization under this RGP, providing their contact information and designated agents or primary points-of-contact, including email addresses and telephone numbers.

2. A completed and signed Department of the Army Engineering Form 6082 (https://www.publications.usace.army.mil/USACE-Publications/Engineer-Forms/u43543q/36303832/). All activities which the applicant plans to undertake which are reasonably related to the same project and for which a Department of the Army permit would be required should be included in the same pre-construction notification. District engineers will reject, as incomplete, any pre-construction notification which fails to comply with this requirement.

3. A delineation of all aquatic resources located within the project boundary, including rivers, streams (ephemeral, intermittent and perennial), open waters (such as impounded features) and wetlands identified. All wetlands must be delineated in accordance with the 1987 Corps of Engineers Wetland Delineation Manual and the applicable Regional Supplement to the Corps' Wetland Delineation Manual. If a delineation has already been verified and/or a

jurisdictional determination has been previously provided by this office and remains valid, provide a copy of the verification letter.

4. Site location map(s), including the site of the proposed activity, clearly outlined on United States Geological Survey 7.5-foot quad sheet drawings, county maps, scaled aerial photographs, or other suitable maps, with latitudes and longitudes for the site(s), name of the quad sheet(s) and directions to the site(s). The map(s) must show the project area in relation to nearby wells, access roads, highways and other roads, and other pertinent features. Identify all base maps, e.g. Huntington, WV 7.5-minute United States Geological Survey quadrangle, etc.

5. Plan, profile and cross-section views of the proposed work, both permanent and temporary, relative to waters of the United States (e.g., wetlands, and open waters below the ordinary high water mark), showing areas, types and acreages of waters of the United States to be impacted by the proposed activity. All available drawings must be provided and must show proposed impacts on appropriately scaled figures.

6. The total area (acreage) and length (feet) for linear features for each type of waters of the United States proposed to be filled by the proposed activity, and the volume (in cubic yards) and proposed type and source of material to be discharged into each type of aquatic resource.

7. The volume of material (in cubic yards) proposed to be excavated from and a description of other work (horizontal direction drilling [HDD], powerlines, etc.) in/over/under HDD, powerlines, etc. in navigable waters of the United States.

8. If bank stabilization is proposed along both banks of a stream, the linear footage should be provided separately for each bank.

9. For all existing structures requiring maintenance within the calendar year, include the date of initial construction and any major modifications. A structure that is 50 years or older is considered historic and must be evaluated in accordance with the National Historic Preservation Act (see Item 15 below).

10. A description of how impacts to waters of the United States and associated functions (e.g., water quality and habitat) have been avoided and minimized to the maximum extent practicable within the permit area. Documentation that the amount of area impacted is the minimum necessary to accomplish the project and, in cases where the activity would result in a change to pre-construction elevations and/or contours and/or drainage patterns, a description of the anticipated impacts of the changes, the reason(s) that the changes are necessary, and documentation that the changes would not result in more than a minor adverse impact on the aquatic environment. The applicant should include any other relevant information, including information on hydrology and hydraulics.

11. Description of project purpose and need, including baseline conditions and anticipated conditions upon project construction.

12. The description of the proposed access roads must include such information as the height, width, and length of the road, width of the cleared right-of-way, location of each crossing of a water of the United States, size and spacing of culverts and bridges, and location and dimensions of roadside borrow ditches.

13. Description of any anticipated maintenance activities.

14. If compensatory mitigation is proposed at a Corps-approved mitigation bank and/or In-Lieu Fee (ILF) program, the proposal must include the name of the mitigation bank/ILF program, the number and resource type of credits to be secured, and a statement on how these were determined. If a permittee-responsible is proposed, the project proponent must submit a comprehensive mitigation and monitoring plan, for review and approval by this office in accordance with 33 CFR Part 332.

15. Information disclosing whether or not any cultural resources protected under the National Historic Preservation Act might be affected by, or found in the vicinity of, the proposed project(s).

    a. The applicant must submit a cultural resources report including but not limited to the following:

        i. A detailed description of the project site in its current condition (i.e. prior to construction activities) including information on the terrain and topography of the site, the acreage of the site, the proximity of the site to major waterways, and any known disturbances within the site.
        ii. A detailed description of past land uses in the project site.
        iii. Photographs and mapping showing the site conditions and all buildings or structures within the project site and on adjacent parcels are useful. Photographs and maps supporting past land uses should be provided as available.
        iv. Information regarding any past cultural resource studies or coordination pertinent to the project area, if available.
        v. United States Geological Survey 7.5' series topographic maps;
        vi. West Virginia Division of Culture and history files including:
            1. Historic Property Inventory Form(s);
            2. Archaeological Site Form(s);
            3. Cemetery Inventory Form(s);
            4. National Register of Historic Places nomination forms including Historic Districts; and

5. County atlases, histories and historic United States Geological Survey 15' series topographic map(s).

When needed to evaluate effects to historic properties, the applicant is encouraged to consult with professionals meeting the Professional Qualification Standards as set forth in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716) during this data gathering process. These professionals can assist with compiling the project information discussed above and should provide recommendations as to whether the proposal has the potential to affect historic properties and if further effort is needed to identify or assess potential effects to historic properties. These professionals can also compile preliminary review information to submit to the district engineer as part of the application submittal. The Corps may request additional information and/or surveys be conducted such as a Phase 1 Archaeological Survey or an Architectural Survey. The applicant may choose to conduct pre-coordination with the State Historic Preservation Office prior to submitting a PCN via the following portal: https://goapply2.akoyago.com/shpo/identity/account/login. Any correspondence related to this pre-coordination should be provided with the PCN.

16. For activities that may affect federally listed threatened or endangered species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation), pursuant to Section 7 of the Endangered Species Act the applicant must submit a biological resources report and an official species list from Information for Planning and Consultation. The report must include a description of the action to be considered; the specific area that may be affected by the action; any listed species or critical habitat that may be affected by the action; the manner in which the action may affect any listed species or critical habitat; and an analysis of any cumulative effects on listed species and/or their critical habitat. The report must include copies of all references, a proposed mitigation plan, and any other relevant available information. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the United States Fish and Wildlife Service or their world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac.

17. For proposed activities where the Corps is not the lead federal agency, the applicant must provide this office with the appropriate documentation to demonstrate compliance with Section 106 of National Historic Preservation Act, and Section 7 of the Endangered Species Act and if available, documentation demonstrating compliance with the National Environmental Policy Act, such as an Environmental Assessment or Environmental Impact Statement.

18. A statement confirming if the proposed activity will require permission from the Corps pursuant to 33 U.S.C. § 408 (Section 408) because it will alter or temporarily or permanently occupy or use a Corps federally authorized Civil

Works project. If yes, describe if a written request for Section 408 has been submitted. RGP decisions for activities that require Section 408 permission will not be authorized until the Section 408 permission decision is finalized. See https://section408.ops.usace.army.mil/ords/f?p=9408:75:6204308711017:::::&tz=-4:00 for program requirements.

19. A restoration plan showing how all temporary fills and structures within waters of the United States will be removed and the area restored to pre-project conditions.

20. The location of any water intakes in the vicinity of the project.

21. A list of authorizations required by other federal, interstate, state, or local agencies for the work, including all approvals received or denials already made.

22. The project proponent must submit the application package, which includes the information above, as follows:

    a. PCNs may be submitted via the Corps' Regulatory Request System at: https://rrs.usace.army.mil/rrs/home or saved as a PDF document, and then submitted as an attachment in an email to the respective district, as follows:
        Huntington District – LRH.permits@usace.army.mil
        Pittsburgh District – Regulatory.Permits@usace.army.mil
    b. Electronic documents must have sufficient resolution to show project details. The Department of the Army permit application and supporting documents submitted electronically must not exceed 10 megabytes (10MB) per email. Multiple emails may be required to transmit documents to ensure the 10MB limit is not exceeded. Alternatively, use of the Department of Defense Secure Access File Exchange (DoD SAFE) service to transfer large files may be requested in your email.
    c. For tracking and processing purposes, the email should include the following:
        i. Email Subject Line: include the name of the applicant, type of Department of the Army permit application request, and location (County and State). Example: RE: Doe, John, Department of the Army permit application and Clean Water Act Section 401 Water Quality Certification Request, Fayette County, West Virginia;
        ii. Email Body: 1) Brief description of the proposed project, 2) contact information (phone number, mailing address, and email address) for the applicant and/or their agent, and 3) the project location: address and latitude/longitude in decimal degrees (e.g. 42.92788° N, 88.36257° W).
    d. If you do not have internet access, information may be submitted through the United States Postal Service to the appropriate Regulatory Office however, it is optimal to expedite processing by providing a complete application package electronically:

United States Army Corps of Engineers, Huntington District
ATTN: Regulatory Division
502 Eighth Street
Huntington, West Virginia 25701-2070

United States Army Corps of Engineers, Pittsburgh District
ATTN: Regulatory Division
William S. Moorhead Federal Building
1000 Liberty Avenue
Pittsburgh, Pennsylvania 15222-4186

C. DISTRICT ENGINEER'S COMPLETENESS DETERMINATION:

1. This office will review each application package to determine if it is complete and notify the project proponent of any information that is missing. If the requested information is not received within 30 days, unless an extension is granted by the respective district, the PCN will be withdrawn.

2. When this office determines an application is complete, but the activity cannot be authorized by a RGP, we will notify the applicant of the determination with guidance on a potential alternate permit type (letter of permission or standard individual permit) and the application will be withdrawn.

3. If the application is determined complete and appears to meet the terms and conditions of this RGP, this office will notify the project proponent that the proposed activity is being evaluated for a RGP.

D. AGENCY COORDINATION:

1. Agency coordination is required for loss of greater than 0.5 acre of waters of the United States.

2. Upon receipt of a notification, the district engineer will immediately provide (i.e., by electronic mail, facsimile transmission, overnight mail or other expeditious manner) a copy to the offices of the United States Environmental Protection Agency, the United States Fish and Wildlife Service, the Ohio Environmental Protection Agency, Ohio Department of Natural Resources, United States Forest Service, National Park Service, State Historic Preservation Office or Tribal Historic Preservation Office, any Tribal Environmental Offices, Advisory Council on Historic Preservation, as appropriate.

3. These agencies will be requested to provide a response to the Corps Regulatory Project Manager as expeditiously as possible, but within five (5) calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide

substantive, site-specific comments regarding the proposed project. If notified that comments will be provided by an agency or tribal representative, the district engineer will allow them to provide their comments in three (3) calendar days.

4. The district engineer will fully consider any comments received within the agency coordination period concerning the proposed activity's compliance with the conditions of the agency's authority, the need to impose terms and conditions to avoid and minimize adverse effects on aquatic resources, and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. The district engineer will indicate the results of that consideration in the administrative record associated with the notification and will provide an informal response to the commenting agency by electronic mail, facsimile transmission, or other means.

E. DISTRICT ENGINEER'S DECISION:

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the RGP activity. The district engineer will also consider the cumulative adverse environmental effects caused by activities authorized by this RGP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site-specific factors, such as the environmental setting in the vicinity of the RGP activity, the type of resource that will be affected by the RGP activity, the functions provided by the aquatic resources that will be affected by the RGP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the RGP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the RGP authorization to address site-specific environmental concerns.

3. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) That the activity does not qualify for authorization under the RGP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) That the activity is authorized under the RGP subject to the

applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) That the activity is authorized under the RGP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 30-day of receiving a complete application (unless additional time is required to comply with general conditions 21, 22, 47, and/or 49), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

F. FURTHER INFORMATION:

1. **Congressional Authorities:** The permittee has been authorized to undertake the activity pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and/or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

2. The district engineer has authority to determine if an activity complies with the terms and conditions of this RGP and retains discretionary authority to require an individual permit for any activity eligible for authorized by a RGP based on concern for the aquatic environment or for any other factor of the public interest.

3. This RGP does not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

4. This RGP does not grant any property rights or exclusive privileges.

5. This RGP does not authorize any injury to the property or rights of others.

6. This RGP does not authorize interference with any existing or proposed federal project (see Term and Condition 47).

7. **Limits of Federal Liability:** In issuing this permit, the federal Government does not assume any liability for the following:

    a. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
    b. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
d. Design or construction deficiencies associated with the permitted work.
e. Damage claims associated with any future modification, suspension, or revocation of this permit.

8. **Reliance on Applicant's Data:** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information the permittee provided. If, subsequent to issuing the RGP authorization, such information proves to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part.

9. **Reevaluation of Permit Decision:** This office may reevaluate its decision on this RGP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. The permittee fail to comply with the terms and conditions of this RGP.
b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate.
c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR § 325.7 or enforcement procedures such as those contained in 33 CFR § 326.4 and § 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR § 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

G. OTHER AUTHORIZATIONS: The permittees are responsible for obtaining any additional federal, state, or local permits that may be required, which include, but are not limited to:

1. Projects involving government property on Corps reservoirs will require submission of detailed design information to the reservoir manager and Corps approval of the proposed activity, including a real estate consent to easement.

2. Activities within a 100-year floodplain may require a permit from the local Floodplain Administrator. In addition, evidence that the project meets non-encroachment restrictions in regulatory floodways may be required.

3. Storm water runoff from construction activities that result in a disturbance of one (1) or more acres or are a part of a common plan of development that will result in the disturbance of one (1) or more acres, must be controlled and authorized under a National Pollutant Discharge Elimination System permit from the respective state agency.

4. Oil and Gas Pipeline Projects in West Virginia must receive their Annual Standards and Specifications for Erosion and Sediment Control and Stormwater Management from the West Virginia Department of Environmental Protection.

5. Oil and Gas Pipeline Projects in West Virginia must receive an Oil and Gas Construction Stormwater permit from the West Virginia Department of Environmental Protection.

6. Activities outside the Corps' review area that may affect a federally listed endangered or threatened species or its critical habitat could require permits from the United States Fish and Wildlife Service to prevent a violation of the Endangered Species Act under Section 9.

7. Coal mining activities in the state of West Virginia require a Surface Mining Control and Reclamation Act permit from the West Virginia Department of Environmental Protection.

8. Coal mining activities in the state of West Virginia require a National Pollutant Discharge Elimination System permit from the West Virginia Department of Environmental Protection.

9. Pipes and pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered bridges and may require a permit from the United States Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899.

H. 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.

Bogs: Bogs are a type of freshwater wetland. Histosol, bog soil, is made up largely of decaying plant matter. It is oxygen-poor and nutrient-poor, making biodiversity much lower than in other wetland ecosystems. Few plants can survive in such an acidic, waterlogged soil. Bogs are peat-forming ecosystems and are also known as mires.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which

remain after all appropriate and practicable avoidance and minimization has been achieved.

Critical mineral: Any mineral, element, substance, or material designated as critical by the Secretary of the Interior under subsection (c) of 30 USC § 1606. The term “critical mineral” does not include— (i) fuel minerals; (ii) water, ice, or snow; (iii) common varieties of sand, gravel, stone, pumice, cinders, and clay.

Cumulative adverse environmental effects: Cumulative adverse environmental effects are the changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges of dredged or fill material. Although the impact of a particular discharge may constitute a minor change in itself, the cumulative effect of numerous such piecemeal changes can result in a major impairment of the water resources and interfere with the productivity and water quality of existing aquatic ecosystems. Cumulative adverse environmental effects attributable to the discharge of dredged or fill material in waters of the United States should be predicted to the extent reasonable and practical.

Discharge: The term ‘‘discharge’’ means any discharge of dredged or fill material into waters of the United States.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Energy or energy resources: Crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals, as defined by 30 U.S.C. 1606 (a)(3).

Energy supply: Production, transportation, refining, and generation of energy.

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.

Fens: A fen is a type of peat-accumulating wetland fed by mineral-rich ground or surface water. The unique water chemistry of fens is a result of the ground or surface water input. Typically, this input results in higher mineral concentrations and a more basic pH than found in bogs. As peat accumulates in a fen, groundwater input can be reduced or cut off, making the fen ombrotrophic rather than minerotrophic. In this way, fens can become more acidic and transition to bogs over time.

Generation: The use of energy to produce electricity or thermal power and the transmission of electricity from its site of generation.

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 non-linear 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.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

In-lieu fee program: In-lieu fee mitigation is a form of "third-party" compensation because a third party, in-lieu fee sponsor assumes responsibility from the permittee for the implementation and success of the compensatory mitigation. A permit applicant may make a payment to an in-lieu fee program that will conduct wetland, stream or other aquatic resource restoration, creation, enhancement, or preservation activities. In-lieu fee programs are generally administered by government agencies or non-profit organizations that have established an agreement with the regulatory agencies to use in-lieu fee payments collected from permit applicants.

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. The loss of stream bed includes the acres of stream bed that are permanently

adversely affected by filling or excavation 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. 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 that do not require Department of the Army authorization, such as 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.

Minor: Minor means effects that are beyond mere de minimus impact but no more than minimal individual and cumulative adverse environmental impacts when considering effects of the proposed action.

Mitigation banking: Mitigation banking involves the restoration, creation, enhancement, and, in exceptional circumstances, preservation of wetlands and/or other aquatic resources expressly for the purpose of providing compensatory mitigation for wetland losses authorized by Corps permits. The newly established wetland acreage (credits) may then be sold to permittees who need to provide compensatory mitigation for unavoidable impacts. (i.e., "debits"). The Corps tracks credits through the Regional In-Lieu Fee and Banking Information Tracking System (RIBITS). The decision to allow the use of a mitigation bank for compensatory mitigation must comply with the Final Compensatory Mitigation Rule. Per the Final Compensatory Mitigation Rule, there is a preference to use available mitigation credits in a particular service area if there are credits of the appropriate type to compensate for the impact.

National Register of Historic Places: The National Park Service administers the National Register of Historic Places. The National Register is the official Federal list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture. National Register properties have significance to the history of their community, state, or the nation. Nominations for listing historic properties come from State Historic Preservation Officers, from Federal Preservation Officers for properties owned or controlled by the United States Government, and from Tribal Historic Preservation Officers for properties on Tribal lands. Private individuals and organizations, local governments, and Tribal Nations often initiate this process and prepare the necessary documentation. A professional review board in each state considers each property proposed for listing and makes a recommendation on its eligibility. National Historic Landmarks (NHL) are a separate designation, but upon designation, NHLs are listed in the National Register of Historic Places if not already listed.

Navigable waters: Navigable waters are subject to Section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR Part 329.

Open water: 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 flowing or standing 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: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Permittee-responsible mitigation: Permittee responsible mitigation is defined as an aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility. Permittee responsible mitigation may include on-site or offsite mitigation. The proposed compensatory mitigation should utilize a watershed approach and fully consider the ecological needs of the watershed. Where an appropriate watershed or sub-watershed plan is available, mitigation site selection should be based on recommendations in the plan. The applicant shall describe in detail how the mitigation site was chosen and will be developed, based on the specific resource need of the impacted watershed. A good mitigation design selects an appropriate site and takes into consideration all-important multi-disciplinary factors that affect self-sustaining ecological systems, such as wetlands and associated uplands. If the whole landscape design is not integrated with site water management, mitigation efforts may not achieve the performance standards. Proposed permittee responsible mitigation should be in a written report addressing all of the requirements of the Final Compensatory Mitigation Rule (33 CFR Part 332) and utilizing the Monitoring and Performance Standards, which outline the criteria for establishing mitigation banks as well as permittee responsible mitigation.

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 (PCN): A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by this RGP. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects.

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.

Production: The extraction or creation of energy.

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

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 and functions.

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 (2) categories: Reestablishment and rehabilitation.

Refining: Physical or chemical change of energy into a form that can be used by consumers or users, including, but not limited to, the creation of gasoline, diesel, ethanol, aviation fuel, or the beneficiation, enrichment, or purification of minerals.

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

Riparian areas: Riparian areas are lands next to streams and lake shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality.

Section 404(b)(1) Guidelines: The Section 404(b)(1) Guidelines are the substantive environmental standards by which all Section 404 permit applications are evaluated. The Guidelines, which are binding regulations, were published by the Environmental Protection Agency at 40 CFR Part 230 on December 24, 1980. The fundamental

precept of the Guidelines is that discharges of dredged or fill material into waters of the United States, including wetlands, should not occur unless it can be demonstrated that such discharges, either individually or cumulatively, will not result in unacceptable adverse effects on the aquatic ecosystem. The Guidelines specifically require that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." 40 CFR § 230.10(a). Based on this provision, the applicant is required in every case (irrespective of whether the discharge site is a special aquatic site or whether the activity associated with the discharge is water dependent) to evaluate opportunities for use of non-aquatic areas and other aquatic sites that would result in less adverse impact on the aquatic ecosystem. A permit cannot be issued, therefore, in circumstances where a less environmentally damaging practicable alternative for the proposed discharge exists (except as provided for under Section 404(b)(2)).

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term ‘‘single and complete project’’ is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes 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 or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of RGP authorization. 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.

Single and complete project: The total project proposed or accomplished by one (1) owner/developer or partnership or other association of owners/developers. A single and complete project must have independent utility (see definition of ‘‘independent utility’’). Single and complete projects may not be ‘‘piecemealed’’ to avoid the limits in a RGP authorization.

Special aquatic sites: Special aquatic sites are defined in 40 CFR Part 230, Subpart E and include wetlands, riffle and pool complexes and vegetates shallows. They are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region.

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 jurisdictional 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.

Transportation: The physical movement of energy, including through, but not limited to, pipelines.

Tribal lands: Any lands title to which is either: (1) held in trust by the United States for the benefit of any Indian Tribe or individual; or (2) held by any Indian Tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a Tribe or Tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the Section 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 RGP, a waterbody is a ‘‘water of the United States.’’ If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR § 328.4(c)(2)).

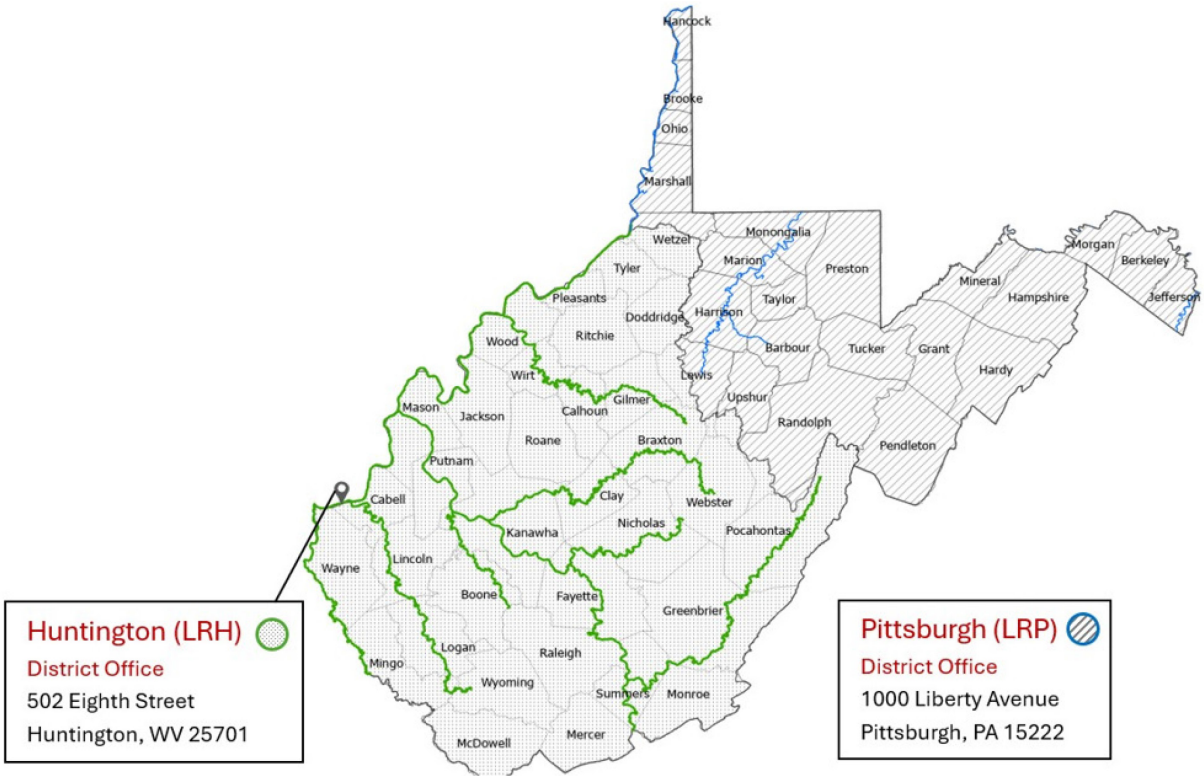
Waters of the United States: All waters which are currently used, or were used historically, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to ebb and flow of the tide; all interstate waters; all other waters such as wetlands, lakes, rivers, streams, mudflats, sandflats, sloughs, prairie potholes, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce (33 CFR Part 328).

Wetlands: Wetlands are areas where water covers the soil or is present either at or near the surface of the soil all year or for varying periods of time during the year, including during the growing season. Water saturation (hydrology) largely determines how the soil develops and the types of plant and animal communities living in and on the soil. Wetlands may support both aquatic and terrestrial species. The prolonged

presence of water creates conditions that favor the growth of specially adapted plants (hydrophytes) and promote the development of characteristic wetland (hydric) soils.

ATTACHMENTS:
ATTACHMENT A – Huntington and Pittsburgh Districts Areas of Responsibility
ATTACHMENT B – Helpful Information

ATTACHMENT A – HUNTINGTON AND PITTSBURGH DISTRICTS AREAS OF RESPONSIBILITY



ATTACHMENT B –
HELPFUL INFORMATION

DISCLAIMER: The below information is intended to provide helpful contact information and other submittal recommendations. Contact the appropriate local, state, or federal agency for the most updated links to ensure compliance with the terms and conditions of the RGP.

Term and Condition 19 (Wild and Scenic Rivers)

Prior to submitting a PCN for work in a National Wild and Scenic River System, it is recommended that the applicant contact the National Park Service Regional Wild and Scenic Rivers Specialist, at the Midwest Regional Office, 601 Riverfront Drive, Omaha, Nebraska 68102, for assistance in complying with RGP General Condition 16. Any determination provided by the National Park Service should be submitted with the PCN. The following website provides information on National Wild and Scenic Rivers within Ohio: https://www.rivers.gov/ohio.php

Term and Condition 20 (Threatened and Endangered Species and Critical Habitat)

To obtain the most up to date information on federally threatened and endangered species applicants are encouraged to utilize the United States Fish and Wildlife Service IPaC found at https://ipac.ecosphere.fws.gov/.

Prior to the submittal of a PCN, applicants may also contact the United States Fish and Wildlife Service, West Virginia Field Office, Ecological Services at:

Address: 6263 Appalachian Highway
Davis, West Virginia 26260

Email: fw5_wvfo@fws.gov

Phone: 304-866 3858

Website: https://www.fws.gov/office/west-virginia-ecological-services

The West Virginia Mussel Survey Protocol may be found at the following link: http://www.wvdnr.gov/Mussels/Main.shtm.

Survey protocols for mytoid bat species, crustacean species, and plants can be found at the following link: https://www.fws.gov/office/west-virginia-ecological-services/species.

Term and Condition 21 (Historic Properties)

The West Virginia National Register of Historic Places can be found at the following link: http://www.wvculture.org/shpo/nr/nr.html.

The West Virginia State Historic Preservation Office Interactive Map Viewer can be found at the following link: https://mapwv.gov/shpo/.

When reviewing a PCN, the Corps will scope appropriate historic property identification efforts and if applicable work with the applicant to take into account the effect of the proposed activity on historic properties. In these instances, information and coordination may include:

- Requesting comments directly from the West Virginia Department of Arts, Culture, and History, State Historic Preservation Office on the effect the proposed regulated activity may have on historic properties. The West Virginia Department of Arts, Culture, and History, State Historic Preservation Office may be contacted at:

  Address: 1900 Kanawha Blvd E
  Charleston, West Virginia 25305

  Phone: (304) 558-0220

- To identify potential historic properties that may be affected by a proposed project, the following information may be reviewed and/or provided with the PCN when applicable:
  i. A detailed description of the project site in its current condition (i.e., prior to construction activities) including information on the terrain and topography of the site, the acreage of the site, the proximity of the site to major waterways, and any known disturbances within the site.
  ii. A detailed description of past land uses in the project site.
  iii. Photographs and mapping showing the site conditions and all buildings or structures within the project site and on adjacent parcels are useful. Photographs and maps supporting past land uses should be provided as available.
  iv. Information regarding any past cultural resource studies or coordination pertinent to the project area, if available.
  v. United States Geological Survey (USGS) 7.5' series topographic maps;
  vi. West Virginia Department of Arts, Culture, and History files including:
    a. Historic Property Inventory Form(s);
    b. Archaeological Site Form(s);
    c. Cemetery Inventory Form(s);
    d. National Register of Historic Places nomination forms including Historic Districts; and
    e. County atlases, histories and historic USGS 15' series topographic map(s).

  When needed to evaluate effects to historic properties, the applicant is encouraged to consult with professionals meeting the Professional Qualification Standards as set forth in the Secretary of the Interior's

Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716) during this data gathering process. These professionals can assist with compiling the project information discussed above and should provide recommendations as to whether the proposal has the potential to affect historic properties and if further effort is needed to identify or assess potential effects to historic properties. These professionals can also compile preliminary review information to submit to the district engineer as part of the PCN. The applicant may choose to conduct pre-coordination with the State Historic Preservation Office prior to submitting a PCN via the following portal: https://goapply2.akoyago.com/shpo/identity/account/login

Term and Conditions 24 (In-Water Work Exclusion Dates) and 25 (Spawning Areas)

In stream work in designated warm water streams and their adjacent tributaries during the fish spawning season, April 1 to June 30 and trout waters and their adjacent tributaries during the trout water fish spawning season September 15 to March 31 requires a spawning season waiver from the West Virginia Division of Natural Resources Coordination Unit, at (304) 637-0245. For information about specific stream designations contact West Virginia Department of Environmental Protection, Water Quality Standards Section at (304) 926-0495.

Term and Condition 35 (Water Supply Intakes)

Locations of drinking water source protection areas associated with public water supply intakes, including the name of the public water supply, can be found at the following link:

http://gis.wvinfrastructure.com/

Term and Condition 26 (Shellfish Populations)

Shellfish beds in West Virginia include concentrations of freshwater mussels. All mussels are protected in the State of West Virginia pursuant to West Virginia §20-2-4 and CSR 58-605.11. In addition, nine (9) federally endangered and two (2) federally threatened freshwater mussel species, with federally designated or proposed designated critical habitat, are known to occur in the state. These species are protected by the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.). All streams that contain mussels or potential mussel habitat must be surveyed prior to any proposed streambed disturbance. Please contact the West Virginia Division of Natural Resources and/or the United States Fish and Wildlife Service for assistance in determining if a mussel survey is or is not required. The West Virginia Division of Natural Resources contact information can be found at: http://www.wvdnr.gov/contact.shtm. Currently accepted protocol and supporting materials can be found at the West Virginia Division of Natural Resources' website: http://www.wvdnr.gov/Mussels/Main.shtm

Term and Condition 29 (Navigation)

Navigable Limits of Major Section 10 Streams in West Virginia (Embayments or backwater areas on tributaries of streams listed below are considered navigable for administrative purposes and require authorization under Section 10 of the Rivers and Harbors Act of 1899. There are slackwaters of the Ohio River, Kanawha River, Little Kanawha River, Big Sandy River, Coal River, and Elk River that are also subject to Section 10 of the Rivers and Harbors Act of 1899; Contact the proper District office for information.)

Huntington District

1. Ohio River…… ……Miles 127.2 to Mile 438.0
2. Kanawha River……97 Miles
3. New River…….....87.5 miles
4. Big Sandy River…….26.83 miles
5. Tug Fork……..58 Miles
6. Elk River……139 Miles
7. Gauley River…… 75 Miles
8. Guyandotte River……122 Miles
9. Little Kanawha River……..130.75 Miles
10. Greenbrier River…….150.5 Miles
11. Coal River…….57.9 Miles

Pittsburgh District

1. Ohio River……Mile) to Mile 127.2
2. Monongahela River….. Total Length in State
3. Tygart River…….……7 Miles
4. West Fork…….……74 Miles
5. Shenandoah River…….Total Length in State
6. Potomac River……. Total Length in State

Navigation Charts: The navigation charts for the Huntington and Pittsburgh Districts can be found at the following link:
https://www.lrd.usace.army.mil/Water-Information/Navigation/

Locks and Dams: Information for all Locks and Dams located within the Huntington, and Pittsburgh Districts can be found at the following link: https://www.lrd.usace.army.mil/Water-Information/Navigation/

Notice to Navigation Interests Request Sheets: The Notice to Navigation Interests Request Sheets for the Huntington and Pittsburgh Districts can be found at the following link: https://www.lrd.usace.army.mil/Water-Information/Navigation/

Term and Condition 39 (Fills Within 100-year Floodplains)

The following website provides a statewide listing of Floodplain Managers in Ohio: https://ohiodnr.gov/wps/portal/gov/odnr/discover-and-learn/safety-conservation/about-ODNR/water-resources/floodplains/

Term and Condition 41 (Migratory Bird Breeding Areas and Bald and Golden Eagles)

Prior to the submittal of a PCN, information to assist in complying with Term and Condition 41 may be obtained from the United States Fish and Wildlife Service (USFWS) at:

Address: USFWS Migratory Bird
Permit Office
300 Westgate Center Drive
Hadley, MA 01035-0779

Email: PermitsR5MB@fws.gov

Phone: (413) 253-8643

United States Fish and Wildlife Service online National Bald Eagle Management Guidelines and the Northeast Bald Eagle Project Screening Form: https://www.fws.gov/media/northeast-bald-eagle-project-screening-form

The West Virginia Division of Natural Resources Coordination Unit may be contacted at (304) 637-0245.

Term and Condition 44 (Mitigation)

Information pertaining to mitigation can be found at the following link:

https://www.lrd.usace.army.mil/Missions/Regulatory/West-Virginia/

Term and Condition 45 (Water Quality)

The West Virginia Department of Environmental Protection may be contacted at:

Address: 601 57th Street
Charleston, West Virginia 25304

Phone: (304) 926-0440

Information pertaining to the West Virginia Department of Environmental Protection https://dep.wv.gov/WWE/Programs/Pages/401Certification.aspx

Subpart B (Pre-Construction Notification)

The pre-construction notification form (Form ENG 6082) may be obtained at the following link:

https://www.publications.usace.army.mil/Portals/76/Eng_Form_6082_2019Oct.pdf?ver=2019-10-22-081550-710/

Ordinary High Water Mark

Ordinary high water mark identification and/or delineation for official Corps' Regulatory purposes will continue in accordance with the applicable ordinary high water mark definition in the Federal regulations, Regulatory Guidance Letter 05-05, and any applicable Corps' district policies. However, the Final National Ordinary High Water Mark Field Delineation Manual for Rivers and Streams and Revised Ordinary High Water Mark Data Sheet (ENG 6250) may be used as technical resources to assist with identifying and delineating the ordinary high water mark using a scientifically supported, rapid framework.