

US Army Corps
of Engineers
Great Lakes and Ohio
River Division ®

Public Notice

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Closing Date: 12 July 2019

Please address all comments and inquiries to:

U.S. Army Corps of Engineers

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REQUEST FOR COMMENTS ON A STATE OF WEST VIRGINIA PROPOSAL TO MODIFY ITS CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION OF THE 2017 NATIONWIDE PERMITS

BACKGROUND: On January 6, 2017, the U.S. Army Corps of Engineers (Corps) published in the Federal Register (82 FR 1860) the most recent iteration of its nationwide permit (NWP) program (2017 NWPs). The 2017 NWPs became effective on March 19, 2017. On May 12, 2017, the Corps published the approved WV-specific Corps regional conditions, and incorporated into the 2017 NWPs the standard and special conditions of WV's Clean Water Act Section 401 water quality certification (401 WQC).

On April 24, 2019, following a 30-day public comment period, WV modified its certification of the 2017 NWPs. Also on April 24, 2019, WV requested that the Corps incorporate WV's modified 401 WQC into the Corps' 2017 NWPs. The Corps' Great Lakes and Ohio River Division, representing the Huntington and Pittsburgh Districts, is considering WV's request.

BY THIS NOTICE, the Corps is providing an opportunity for the public to express its views on whether the Division Engineer should accept and incorporate WV's modified 401 WQC into the Corps' 2017 NWPs. The modification includes changes to Special Conditions A, C, and L of the 401 WQC for NWP 12 (Utility Line Activities). The proposed changes are shown in Attachment A; no other changes are proposed.

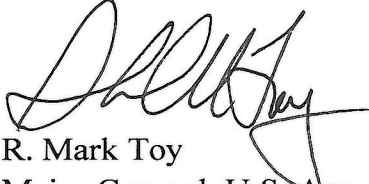
A complete copy of the existing 2017 NWPs, Corps regional conditions, and WVDEP water quality certification may be referenced online at the Corps' Huntington District website at the following address:

<https://www.lrh.usace.army.mil/Portals/38/docs/regulatory/20181227%20NWP%20West%20Virginia%202017%20LRH%20PN%20WV-WQC.pdf?ver=2019-01-03-103223-220>

WV's proposed Clean Water Act Section 401 water quality certification modification and supporting materials are available on the WVDEP 401 website at:

<https://dep.wv.gov/WWE/Programs/Pages/401Certification.aspx>

All comments regarding this proposal should be addressed to Ms. Suzanne Chubb at the address noted above. Please refer to Public Notice Number 2019-01-LRD and ensure your comments reach the Division Office by the closing date. If you desire to submit your comments by email, please send to: Suzanne.L.Chubb@usace.army.mil. Please note that the names and addresses of those who submit comments in response to this Public Notice become part of the administrative record and, as such, are available to the public under provisions of the Freedom of Information Act.



R. Mark Toy
Major General, U.S. Army
Commanding

Attachment A

Huntington District Website:

<https://www.lrh.usace.army.mil/Missions/Regulatory/Public-Notices/>

Pittsburgh District Website:

<https://www.lrp.usace.army.mil/Missions/Regulatory/Public-Notices/>

ATTACHMENT A

Special Conditions of West Virginia's 401 Water Quality Certification Applicable to the Individual 2017 Nationwide Permits

12. Utility Line Activities.

Current Special Condition A

Individual State Water Quality Certification is required for

- i. Pipelines equal to or greater than 36 inches in diameter;
- ii. Pipelines crossing a Section 10 river (unless the bore is greater than 100 feet below the stream bed on the Ohio River mainstem, or greater than 50 feet below the stream bed on all other Section 10 waters);
- iii. Pipelines transporting hazardous materials/substances as defined by the Toxic Substances Control Act;
- iv. Utility lines within wetlands that would use or consider the use of herbicides for right-of-way maintenance;
- v. Cumulative permanent impacts totaling greater than 200 linear feet, on one side, of any stream identified in WQC Standard Condition 18 A, B, and C herein;
- vi. Cumulative permanent impacts on any one perennial or intermittent stream totaling greater than 300 linear feet;
- vii. Pipelines carrying separated natural gas liquids, unless installed with an automated system which will indicate a sudden loss of pressure.

Modified Special Condition A

The Secretary of the West Virginia Department of Environmental Protection, in the Secretary's sole discretion, reserves the right to require an individual water quality certification for any of the following facilities or impacts:

- i. Pipelines equal to or greater than 36 inches in diameter;
- ii. Pipelines crossing a Section 10 river (unless the bore is greater than 100 feet below the stream bed on the Ohio River mainstem, or greater than 50 feet below the stream bed on all other Section 10 waters);
- iii. Pipelines transporting hazardous materials/substances as defined by the Toxic Substances Control Act;
- iv. Utility lines within wetlands that would use or consider the use of herbicides for right-of-way maintenance;
- v. Cumulative permanent impacts totaling greater than 200 linear feet, on one side, of any stream identified in WQC Standard Condition 18 A, B, and C herein;
- vi. Cumulative permanent impacts on any one perennial or intermittent stream totaling greater than 300 linear feet;
- vii. Pipelines carrying separated natural gas liquids, unless installed with an automated system which will indicate a sudden loss of pressure.

Current Special Condition C

Individual stream crossings must be completed in a continuous, progressive manner and within 72 hours during seasonal normal or below normal stream flow conditions. Crossings on the Ohio River, Kanawha River, New River, Monongahela River, and the Little Kanawha River, below the confluence with Hughes Rivers, are exempt from the 72-hour requirements. All stream activities shall be completed as rapidly as possible.

Modified Special Condition C

Individual stream crossings **using wet or open-cut methods that do not isolate the excavation area** must be completed in a continuous, progressive manner and within 72 hours during seasonal normal or below normal stream flow conditions. **Stream crossings using the dry ditch method are exempt from the 72-hour requirement. Construction and access bridges and** crossings on, Section 10 rivers are also exempt from the 72-hour requirements. Whatever crossing method is chosen by the permittee, the crossing should be completed as rapidly as practicable.

Current Special Condition L

No structure authorized by this permit shall impede or prevent fish movement upstream or downstream.

Modified Special Condition L

No **permanent** structure authorized by this permit shall impede or prevent fish movement upstream or downstream.