

WEST VIRGINIA

STREAM DISTURBANCE PERMITTING REQUIREMENTS

This booklet is for informational purposes only and provides a brief overview of the various permits or certifications required before land disturbing work is conducted in and around West Virginia streams and wetlands. These activities may include water quality improvement projects, installation of habitat structures, streambank stabilization, and other channel modification measures.

This guide is not intended to replace any West Virginia regulation or related federal requirements. Additional permits, licenses, variances, or similar authorizations may be required by other federal, state, or local laws not addressed in this booklet. All applicants should read and follow pertinent, current regulations when applying for any permit. It is important to note that multiple permits may be required for a single project.



[Long Branch of Paint Creek, Kanawha County](#)

Prepared by:
The West Virginia Watershed Network
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Please send any suggested changes to Brandi.L.Hicks@wv.gov. If necessary, the document will be updated periodically to reflect the most recent information available.

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SUMMARY OF PERMITS FOR STREAM RESTORATION:

Construction Stormwater Permits for Minor or Large Construction Projects

For projects disturbing less than 1 acre:

- No permit needed, but projects are still subject to the WV Water Pollution Control Act and should provide for erosion and sediment control.

For projects disturbing 1 to < 3 acres:

- Apply for permit for a Minor Construction Project.
(30 working days prior to construction)

For projects disturbing 3 or more acres:

- Apply for permit for a Large Construction Project.
(60 working days prior / 100 days in some cases)

Contacts:

- ❑ West Virginia Department of Environmental Protection (304) 926-0495
On the Internet at: <http://www.dep.wv.gov/WWE/Programs/stormwater/csw/Pages/home.aspx>

Floodplain Permits

Contact local county/municipal floodplain permit officer or WV Division of Homeland Security and Emergency Management prior to:

- Altering or relocating a stream
- Building or altering new or replacement bridges, culverts or other stream crossings
- Placing fill material or structures, grading, excavating or other development in a stream, streambank or floodplain

Contacts:

- ❑ Local county or municipal floodplain permit officer: On the Internet at:
<http://www.dhsem.wv.gov/MitigationRecovery/Pages/Floodplain-Manager-Contact-Information.aspx>
- ❑ West Virginia Division of Homeland Security and Emergency Management (304) 558-5380

Stream Activity Application

Prior to working/placing equipment in stream:

- Submit Stream Activity Application to WV DNR
- Coordinate with District Fisheries Biologist

Contacts:

- ❑ West Virginia Office of Land and Streams (304) 558-3225
On the Internet at: www.wvdnr.gov/REM/PLC.shtm



SUMMARY OF PERMITS CONTINUED:

Clean Water Act 404 Permits and 401 Certification

Prior to placing fill material into a water, including wetlands, of the U.S., contact the U.S. Army Corps of Engineers for a 404 Permit, such as:

- Letter of Permission (For minor projects)
- Individual Permit (Requires comprehensive evaluation)
- Nationwide Permit (NWP), for example:
 - NWP 3 - Maintenance
 - NWP 27- Aquatic Habitat Restoration, Establishment, and Enhancement Activities
 - NWP 37- Emergency Watershed Protection and Rehabilitation
- Regional General Permit, for example:
 - RGP for Abandoned Mine Lands
 - RGP for Department of Transportation

Contacts

- ❑ US Army Corps of Engineers/Huntington (304) 399-5710
- ❑ US Army Corps of Engineers/Pittsburgh (412) 395-7155
On the Internet at: <http://www.lrp.usace.army.mil/Missions/Regulatory.aspx>
- ❑ West Virginia Department of Environmental Protection (304) 926-0495
On the Internet at: <http://www.dep.wv.gov/WWE/Programs/Pages/401Certification.aspx>

Clean Water Act 404 Permits and 401 Certification for Individual Landowners

For permitting and technical assistance on small stream projects that include:

- Less than 1000 linear ft of stream
- Less than 3000 cubic ft of material
- Excavation
- Streambank Stabilization
- Debris Removal
- Channel Restoration
- Maintenance

Contacts:

- ❑ Contact the West Virginia Conservation Agency through your local Conservation District at <http://www.wvca.us/directory/cdo.cfm> or at 304-872-4302.

National Environmental Policy Act

For projects involving federal funds or federal action, one of the following is completed:

- Categorical Exclusion (CATEX)
- Environmental Assessment (EA), which may lead to a Finding of No Significant Impact (FONSI)
- Environmental Impact Statement (EIS)
On the Internet at: www.epa.gov/compliance/nepa/index.html

Agencies issuing grants or permits may require information from applicants to streamline their own NEPA consultation.

CONSTRUCTION STORMWATER MINOR CONSTRUCTION PROJECT

Purpose: This permit, issued by the West Virginia Department of Environmental Protection (WVDEP), is structured to reduce the amount of sediment entering West Virginia waters from land-disturbing activities during storm events by requiring a plan for the installation of best management practices.

Projects that will disturb an area of land that is equal to or greater than 1 acre and less than 3 acres are subject to the Stormwater Construction Permit for a Minor Construction Project.

Review Process: Submission of the application is **required 30 working days prior** to the start of activity. A Stormwater Pollution Prevention Plan and a Groundwater Protection Plan must be submitted as part of the application and must be maintained on site during construction. The applicant should not begin construction until permit approval has been received from WVDEP. When the construction activity is completed and all disturbed areas stabilized, the responsible party must submit a Notice of Termination (NOT) to WVDEP. Failure to submit the NOT will result in annual renewal fees until the NOT is approved.

We recommended that you visit WVDEP's Construction Stormwater Section on the Internet at: <http://www.dep.wv.gov/WWE/Programs/stormwater/csw/Pages/home.aspx> for current contact information, permit information, document templates, manuals and other pertinent information.

Important Note: Phased projects where phases are less than 1 acre but the total disturbance of all phases is between 1 and 3 acres require a permit for a Minor Construction Project. Land disturbance does not have to be contiguous to qualify. Phased projects where phases are less than 3 acres, but the total disturbance of all phases is 3 acres or more require a permit for a Large Construction Project.

Permit Cost: \$300

Contact Information:

WV Department of Environmental Protection
Division of Water and Waste Management
601 – 57th Street, SE
Charleston, WV 25304
(304) 926-0495



[Riparian restoration and streambank repair on Sleepy Creek, Morgan County](#)

CONSTRUCTION STORMWATER PERMIT FOR A LARGE CONSTRUCTION PROJECT

Purpose: This permit, issued by the West Virginia Department of Environmental Protection (WVDEP), is structured to reduce the amount of sediment entering West Virginia waters during storm events from land-disturbing activities by requiring a plan for the installation of best management practices.

Projects that will disturb 3 acres or greater of land require a Construction Stormwater Permit for a Large Construction Project.

Review Process: The permit application must be submitted **at least 60 days** prior to the start of activity. The application includes the submission of a Stormwater Pollution Prevention Plan and a Groundwater Protection Plan. These are also to be maintained on site.

If the proposed project discharges to or upstream of a Tier 3 water, disturbs more than 100 acres, or has an initial grading construction phase of 1 year or greater, the permit application **must be submitted 100 days prior** to construction to allow for public notice.

The applicant should not begin construction until a permit has been received from WVDEP. When construction activity is completed and all disturbed areas stabilized, the responsible party must submit a Notice of Termination (NOT) to WVDEP. Failure to submit the NOT will result in annual renewal fees until the NOT is approved.

Permit Cost:

3 – 3.9 acres	\$700
4 – 38.9 acres	\$1170
39 – 76.9 acres	\$1400
77 acres or more	\$1750

Contact Information:

WV Department of Environmental Protection
Division of Water and Waste Management
601 – 57th Street, SE
Charleston, WV 25304
(304) 926-0495



[Stream restoration project Knapps Creek, Pocahontas County](#)

We recommended that you visit WVDEP's Construction Stormwater Section on the Internet at: <http://www.dep.wv.gov/WWE/Programs/stormwater/csw/Pages/home.aspx> for current contact information, permit information, manuals and other pertinent information.

Important Note: A phased project where phases are less than 3 acres, but the total disturbance of all phases exceeds 3 acres requires a permit for a Large Construction Project. Land disturbance does not have to be contiguous to qualify.

FLOODPLAIN PERMITS

Purpose: Every county and flood-prone municipality in West Virginia participates in the National Floodplain Insurance Program (NFIP) and has an ordinance to regulate development in the floodplain. The ordinances include a flood map that designates floodplain areas and establishes a permitting system to regulate new development in the floodplain. Some jurisdictions regulate activities in and around streams regardless of floodplain designation.

The NFIP sets minimum standards for regulating development in the floodplain, and some communities have more stringent requirements. Below are some minimal standards that may apply to stream restoration activities.

- In all floodplain ordinances, the definition of “development” includes dredging, filling, grading and excavation. Most stream restoration projects may therefore be considered “development”, for which a county or community permit is required.
- Floodplain ordinances also regulate the building or altering of new or replacement bridges, culverts, and other stream crossings.

Review Process: Before altering or relocating a watercourse in the floodplain, consult with the local county, town or city floodplain permit officer about whether a permit is required, and the amount of fee. In reviewing permit applications, the county or community will determine if the proposed project is within the designated floodplain, as well as the specific regulatory standards that pertain to the particular floodplain area. The following are some of the minimum regulatory standards for projects within the different floodplain areas established on flood maps:

- In Approximate A zones, the permit officer must be given written assurance that the flood carrying capacity of the stream will be maintained. On all but extremely small projects this will generally be accomplished by providing a pre- and post-development engineering study demonstrating the project will not cause an unacceptable rise (1-ft. or greater).
- In AE zones with base flood elevations but without a designated floodway, all development may not create more than a 1-ft. cumulative rise in flood elevations. The permit officer may require an engineering study to demonstrate that a 1-ft. cumulative rise will not be exceeded.
- In AE zones with base flood elevations and floodways, hydrologic and hydraulic analysis is required to demonstrate that development will result in no increase to the base flood elevation (zero rise).

Before issuing a permit, the county or community permit officer will require copies of all other permits required by federal or state law.

Permit Cost: Varies

Contact Information:

West Virginia Division of Homeland Security and Emergency Management
Capitol Complex, Bldg. 1, Rm. EB-80
1900 Kanawha Blvd., East
Charleston, WV 25305
(304) 558-5380

To see a list of local floodplain permit officers go to:

<http://www.dhsem.wv.gov/MitigationRecovery/Pages/Floodplain-Manager-Contact-Information.aspx>

For information on floodplain management go to:

<http://www.dhsem.wv.gov/MitigationRecovery/Pages/Floodplain-Management.aspx>

For information on floodplain regulations go to:

<http://www.dhsem.wv.gov/MitigationRecovery/Pages/Floodplain-Management.aspx>

For an on-line West Virginia flood-mapping tool go to:

<http://www.mapwv.gov/flood/>

To see FEMA-issued flood maps go to:

<https://msc.fema.gov/nfhl>



[Bankfull flow over cross vane and step pool in Horseshoe Run, Tucker County](#)

STREAM ACTIVITY APPLICATION

Purpose: Stream Activity applications are for the protection of water quality and aquatic life and are required when working or placing equipment in the stream. West Virginia Division of Natural Resources (WVDNR) fisheries biologists review applications to ensure high quality streams are protected and that activities such as installation of culverts and re-channelizing streams do not have detrimental effects on habitat.

A DNR Stream Activity application is not required if you are removing floating woody debris or trash from the stream (i.e. tree limbs and trash blocking the mouth of a culvert or accumulating around the piers of a bridge) if this work can be performed by hand or with hand tools. A permit is required if any type of equipment is needed, even if the equipment remains on the stream bank.

The threshold for what is considered a “stream” is quite low. A permit is needed if planned activity involves going over, under or through the stream. DNR considers an area with a rock bed to be a stream—even if that bed is dry most of the year.

Review Process: Once you determine your activity requires a Stream Activity application, you must complete the application form and submit it to WVDNR. Direct contact with the District Fisheries Biologist when submitting a Stream Activity application may expedite the process. The permitting process generally takes 5-7 business days unless the activity is in a high-quality stream which could take up to 2 weeks.

Permit Cost: None.

Contact Information:

Office of Land and Streams
Building 74, Room 200
324 Fourth Avenue
South Charleston, WV 25303
Phone: (304) 558-3225
Fax: (304) 558-6048

A Stream Activity application is available on the Internet at:

<http://www.wvdnr.gov/REM/PLC.shtm>.



[Contractor's work along Sleepy Creek, Morgan County](#)

CLEAN WATER ACT SECTION 404 PERMIT AND 401 CERTIFICATION

Purpose: The physical alteration of water bodies in West Virginia, including wetlands and streams, is regulated by federal and state statutes under Section 401 (Certification) and Section 404 (Permits) of the Federal Clean Water Act (CWA).

Section 404 of the Clean Water Act: the U.S. Army Corps of Engineers (Corps) regulates the discharge of dredged and/or fill material in waters of the U.S. Under Section 10 of the Rivers and Harbors Act of 1899 (Section 10 RHA), the Corps regulates work in navigable waters of the U.S.

1. The Corps's jurisdiction for waters of the U. S. is based on the definitions and limits of jurisdiction contained in 33 CFR Part 328, which states navigable waters, their tributaries, and adjacent wetlands are, in part, waters of the U.S. Some examples of jurisdictional waters may include streams, wetlands, lakes, and ponds.
2. The term fill material means material placed in waters of the U.S., where the material has the effect of replacing any portion of a water of the U. S. with dry land or changing the bottom elevation of any portion of a water. Examples of "fill material" include rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in waters of the U.S. Placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills and placement of overburden, slurry, or tailings or similar mining-related materials are also defined as discharge of fill material and regulated under section 404.
3. Projects involving the discharge of dredged and/or fill material into waters of the U.S. require authorization from the Corps.

Section 401 of the Clean Water Act requires that any applicant for a Section 404 permit also obtain a Water Quality Certification from the State. The West Virginia Department of Environmental Protection (WVDEP), in coordination with the West Virginia Division of Natural Resources, provides water quality certifications to ensure federally permitted or licensed activities resulting in a discharge to waters meet the State's water quality requirements.

Be careful not to assume that ditches are exempt from regulation.

Important Note: Performing unauthorized work in waters of the U.S. or failure to comply with the terms and conditions of an issued permit can have serious consequences. Resolutions to unauthorized or non-compliance work can include mandatory restoration, extensive after the fact permitting, additional compensatory mitigation, and the potential for monetary penalties.

404 Review Process:

- **Jurisdictional Determination:** Prior to submitting a permit application, applicants are encouraged to prepare and submit a Jurisdictional Determination (JD) Report. This report provides descriptions and mapping to identify the limits of a project site, in addition to the limits of waters of the U.S. The JD report typically includes information such as location maps, plan views of all waters of the U.S., field data sheets, and photographs. Upon completion of JDs, applicants are encouraged to design projects to avoid work in waters of the U.S. The permit application process can be avoided if proposed work occurs exclusively in uplands.
- **Pre-Application Meetings:** For complex and/or controversial projects, applicants are encouraged to submit preliminary information to the Corps and request a pre-application meeting. Such meetings provide applicants with early input and feedback on projects, recommendations for avoidance / minimization, and consideration of the need for compensatory mitigation. Pre-application meetings may involve Corps project managers, in addition to representatives of federal and state resource agencies.

404 Permit Types: There are two categories of permits pursuant to Section 404 and Section 10. These include Standard Permits and General Permits. Standard Permits include Individual Permits and Letters of Permission (LOPs). General Permits include Nationwide Permits and Regional General Permits. Each permit type is further summarized below.

- **Individual Permit:** Individual permits involve the comprehensive evaluation of specific information related to a proposed project. The process includes the solicitation of input from the public and resource agencies through publication and distribution of a public notice, an evaluation of the aquatic resource effects of the project relative to the Section 404(b) (1) Guidelines, full public interest review pursuant to the National Environmental Policy Act of 1969 (NEPA), and ultimately the preparation of an environmental assessment (EA) or environmental impact statement (EIS). The review time of an Individual Permit varies depending on the overall impacts, level of complexity, and degree of controversy.
- **Letter of Permission:** Letters of permission (LOPs) are a form of abbreviated standard permit process. This process includes coordination with federal and state resource agencies. An LOP may be used to authorize activities subject to Section 10 RHA, Section 404 of the CWA, or both. Proposed work being evaluated through this process includes projects that are minor in nature, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition. The LOP procedures serve to reduce administrative procedures and expedite permit decisions. The review time for LOPs varies depending on the level of agency coordination required.
- **Nationwide Permits:** Nationwide Permits (NWP) are a type of general permit issued nationally for a category of activities that are typically similar in nature and result in not more than minimal adverse individual and cumulative impacts and satisfy other public interest factors. Some NWPs and/or established thresholds require

applicants to submit a Pre-construction Notification to the Corps prior to commencing regulated work, while other NWP may be used by applicants without prior notification, provided applicants comply with all terms and conditions of the NWPs, including any applicable Regional Conditions. Some examples of NWPs include NWP 13 for Bank Stabilization, NWP 14 for Linear Transportation Projects, NWP 50 for Underground Coal Mining Activities, NWP 27 for Aquatic Habitat Restoration, Establishment, and Enhancement Activities and NWP 37 for Emergency Watershed Protection and Rehabilitation. The review time for most NWPs is 45 days from receipt of a complete application, however, practical experience demonstrates that it can take from 3 – 9 months. Some NWPs, including those associated with coal mining, do not have specified timeframes.

- **Regional General Permits:** Regional General Permits (RGPs) are a type of general permit issued on a statewide or regional basis for a category of activities that are typically similar in nature and result in not more than minimal adverse individual and cumulative impacts and satisfy other public interest factors. Regional General Permits are coordinated with federal and state resource agencies during their development and provide an expedited permit process for types of work resulting in minimal adverse individual and cumulative effects. Some examples of RGPs include the Regional General Permit for the Department of Transportation and the Regional General Permit for Abandoned Mine Lands. The review time for RGPs is generally similar to that associated with NWPs, typically 45 days from receipt of a complete application, however, practical experience demonstrates that it can take from 3 – 9 months.

401 Certification: For Individual 404 permits and some RGPs and NWPs an applicant must also request Certification in accordance with Section 401 of the CWA. At least 30 days prior to submitting a Certification request, the project proponent shall request a pre-filing meeting with the WVDEP. The request for Certification should be provided to the WVDEP on the prescribed application form and provide information to satisfy the requirements set forth in Rules for Individual Certification of Activities Requiring a Federal Permit, W.Va. CSR §47-5A-4 (2014). The WVDEP will determine application completeness within 60 days of receipt. Once the public notice is approved for publication the applicant must publish a class-1 legal advertisement in the county of activity for a 30-day comment period in accordance with requirements of W.Va. CSR §47-5A. The state has up to one year to issue, deny, or waive certification. Since the Section 404 permit is contingent on the state's certification, the Corps may not issue a permit if state certification is denied.


Permit Cost: 401 permit application fee: \$350 if an individual certification is required
404 permit application fee: Not to exceed \$100

For Nationwide and Regional General Permits, notification to the WVDEP 401 Certification program is required when Pre-construction Notification is required by the Corps or in accordance with 401 Certification special conditions for particular NWPs and RGPs. Notification to US Fish and Wildlife Service for endangered species consultation and the State Historic Preservation Office for cultural and historic resource considerations are made by the Corps as part of the Section 404 application process.

For information on 401 Certification regarding streams and wetland go to:

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

Contact Information:

<p>U.S. Army Corps of Engineers, Huntington District</p> <p>CELRH, Huntington 502 Eighth Street Huntington, WV 25701 Phone: (304) 399-5710 FAX: (304)-399-5591</p> <p>District Website http://www.lrh.usace.army.mil/Missions/Regulatory.aspx</p> <p>Headquarters Website http://www.usace.army.mil/</p>	<p>U.S. Army Corps of Engineers, Pittsburgh District</p> <p>Attention: CELRP-OP-F Federal Building 1000 Liberty Avenue Pittsburgh, PA 15222-4186 Phone: (412)-395-7155 FAX: (412)-644-4211</p> <p>District Website http://www.lrp.usace.army.mil/Missions/Regulatory.aspx</p>	<p>Section 401 Certification - for all filling activities, except coal and quarries:</p> <p>West Virginia Department of Environmental Protection / Division of Water and Waste Management 601 - 57th Street, SE Charleston, WV 25304 (304) 926-0495</p> <p>West Virginia Department of Environmental Protection's Website http://www.dep.wv.gov/WWE/Programs/Pages/401Certification.aspx</p>
 <p>Huntington District</p> <p>Pittsburgh District</p>		



[Pre-application meeting with Corps, Deckers Creek, Preston County](#)

CLEAN WATER ACT SECTION 404 PERMIT AND 401 CERTIFICATION FOR INDIVIDUAL LANDOWNERS

The Corps, WVCA, WVDEP, and WVDNR have signed an interagency memorandum for the coordination for requests by individual landowners or for WVCA sponsored projects to perform in-stream work under the Section 10 RHA and CWA Sections 404 and 401.

Purpose: On behalf of individual landowners, or for WVCA-sponsored projects, the WVCA may perform a site visit to provide guidance to landowners proposing work within streams and to collect the information required for the development of a Stream Management Plan (SMP). The SMP typically includes pre- and proposed post-construction plan and cross section drawings of the reach of stream in which the landowner or WVCA is proposing restoration and/or maintenance. Drawings in the SMP typically include dimensions and the amount and types of materials to be placed within, or excavated from, the stream.

The SMP has become a valuable tool for the interagency review of proposed stream work within the State. The SMP may also provide the information necessary for the Corps to evaluate the proposal and determine permit requirements, if any. The SMP also provides a clear, concise document and plan for the individual landowner or WVCA to complete the project.

Eligible Activities Include:

1. Excavation
2. Streambank stabilization
3. Debris removal
4. Channel restoration
5. Maintenance

This permit program is promoted as a one-stop shop because the WVCA notifies all other government agency permit programs that may be involved in the process. This would normally require many months of planning and preparation on the part of the landowner.

Review Process: Landowner contacts WVCA to request assistance with in-stream and/or streambank stabilization activity. The WVCA will assess their current workload to determine if resources are available to perform a site visit and develop a SMP.

If resources are not available, the WVCA will advise the landowner to contact the appropriate Corps office. The Corps will then process the request following their standard procedures. If WVCA resources are available, the WVCA will arrange a site visit to provide guidance to the landowner and develop the SMP. The WVCA will then submit the SMP to WVDEP and WVDNR to determine the potential requirement for Individual 401 Water Quality Certification and for potential field review. If Individual Certification is not required, then the WVDEP and WVDNR will review the SMP and provide concurrence or comments to the Corps for consideration. The Corps reviews comments provided by the WVDNR and WVDEP to determine if additional evaluation of the SMP may be required.

Upon Corps review, if it is determined the project would result in a discharge of dredged or fill material into waters of the U.S. and the discharge may be authorized under an existing general permit, such as a Nationwide Permit (NWP), the Corps will provide the landowner written verification that the work, as proposed in the SMP, is authorized or the conditions for

authorization. The Corps will provide the landowner with a copy of the SMP, and copy(s) of the applicable NWP(s), any conditions for authorization, and a form to return to the Corps when the work is complete.

If it is determined the project would not result in a discharge of dredged or fill material into waters of the U.S., or if the project qualifies for an exemption, the Corps will provide the landowner written verification that authorization from the Corps is not required, based on the description of the proposed work in the SMP. The landowner will be provided a copy of the SMP.

Restrictions and limitations: There are certain restrictions and/or projects that may not qualify through this process. Larger projects such as those encompassing greater than 1000 linear feet of stream or the excavation of more than 3000 cubic yards of material may not qualify. In addition, there are certain restrictions regarding the removal of woody vegetation. In most cases, riparian buffer plantings and no disturbance of existing vegetation are important aspects of all projects. Islands that have woody vegetation cannot be disturbed.

Permit Cost: 401 permit application fee: \$ 350 if an individual certification is required
404 permit application fee: Not to exceed \$100.00

Contact Information:

West Virginia Conservation Districts: <http://www.wvca.us/directory/cdo.cfm>
Or West Virginia Conservation Agency
Phone: 304-872-4302

Landowners can do the following without a permit:

- Fallen trees may be pulled from a stream by vehicle or motorized equipment from **top of streambanks** using winches, chains or cables.
- Handheld tools like chainsaws, axes and handsaws may be used to cut debris in the waterway into smaller pieces.
- Downed trees still attached to streambanks can be cut to the stump. Do not remove the stumps. They keep streambanks from eroding.
- All trees and brush removed from the waterway must be removed from the floodplain.

A permit is required if the work will:

- Disturb the stream bed or bank
- Requires the use of machinery like excavators or backhoes in the stream channel or **below the top** of the stream bank.

For a brochure about removal of wood debris go to: <https://www.wvca.us/district/upload/26919.pdf>.

THE NATIONAL ENVIRONMENTAL POLICY ACT

Purpose: Purpose: The National Environmental Policy Act (NEPA) is not a permit. It is a law that requires federal agencies to integrate environmental values into their decision-making processes by considering the impacts of their proposed actions and reasonable alternatives to those actions.

Before granting funds or a permit for a project, federal agencies must consult with state or federal agencies that enforce particular laws. For example, they consult with the West Virginia State Historic Preservation Office to make sure no crucial historic or cultural resources are disturbed, and with the West Virginia Division of Natural Resources and the United States Fish and Wildlife Service to make sure no endangered species will be harmed. For the sake of efficiency, federal agencies often ask the applicants to prepare information for those reviews in various ways.

Review Process: The NEPA process consists of an evaluation of the environmental effects of a federal undertaking including its alternatives. There are three types of analysis. The three types include: (1) categorical exclusion determination; (2) preparation of an environmental assessment (EA) and/or finding of no significant impact (FONSI); and (3) preparation of an environmental impact statement (EIS).

1. An undertaking may be excluded from a detailed environmental analysis if it meets certain criteria, which a federal agency has previously determined as having no significant environmental impact. Many agencies have developed lists of actions, which are normally excluded from environmental evaluation under their NEPA regulations.
2. A federal agency prepares a written environmental assessment (EA) to determine whether a federal undertaking would significantly affect the environment. If the answer is no, the agency issues a finding of no significant impact (FONSI). The FONSI may address measures, which an agency will take to reduce potentially significant impacts.
3. If the EA determines that the environmental consequences of a proposed federal undertaking may be significant, an EIS is prepared. An EIS is a more detailed evaluation of the proposed action and alternatives. The public, other federal agencies and outside parties may provide input into the preparation of an EIS and then comment on the draft EIS when it is completed. If a federal agency anticipates that an undertaking may significantly impact the environment, or if a project is environmentally controversial, a federal agency may choose to prepare an EIS without having to first prepare an EA. After a final EIS is prepared and at the time of its decision, a federal agency will prepare a public record of its decision addressing how the finding of the EIS, including consideration of alternatives, were incorporated into the agency's decision-making process.

It is important to follow the guidance of the federal agency for the consultation process. For example, for abandoned mine projects supported by the Office of Surface Mining Reclamation

and Enforcement (OSMRE) Watershed Cooperative Agreement Program, requirements for consultation are spelled out in Section 6-200-40, Item B.12. of their Financial Assistance Manual (<https://www.osmre.gov/lrg/fam/toc.shtml>).

The Corps and OSMRE consult with the US Fish and Wildlife Service (USFWS) to make sure that their actions do not violate the Endangered Species Act and other laws. USFWS has prepared a tool (<http://ecos.fws.gov/ipac>) that compiles important documents used in consultation, including a list of species of concern in the area, keys to determine whether the action may affect those species, and limitations that USFWS might call for in order to avoid or minimize impacts. The applicant, the consulting federal agency, and USFWS can then refer to those documents rather than calling for the information all over again.

Go to: <https://ceq.doe.gov/> for a complete text of NEPA;

Go to: <https://www.epa.gov/nepa/national-environmental-policy-act-review-process> for NEPA requirements; and

Go to: <https://www.epa.gov/nepa/environmental-impact-statement-filing-guidance> for information about submitting an EIS.

Important Note: If a project is federally funded or requires federal authorization, an EA may be required.

NOTIFYING WEST VIRGINIA'S DEPARTMENT OF ENVIRONMENTAL PROTECTION OFFICE OF ENVIRONMENTAL ENFORCEMENT

As a good measure, you may want to notify your regional West Virginia Department of Environmental Protection Office of Environmental Enforcement (EE) of your upcoming project. This will open the lines of communication if a problem occurs from your project site. In most cases EE is notified of an activity if it requires a WVDNR Stream Activity Permit.

WV DEP Office Locations

Office	Telephone
Charleston Headquarters	304-926-0470
Fairmont	304-368-3910
Romney	304-822-7266
Fayetteville	304-574-4471
Parkersburg	304-420-4635
Wheeling	304-238-1220

WV DEP Enforcement Program Managers

Program	Employee	Email	Phone
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Construction Stormwater	Brad Wright	brad.m.wright@wv.gov	304-926-0470
Hazardous Waste & Tanks	Joe Sizemore	joe.m.sizemore@wv.gov	304-926-0470
Compliance Monitoring	David Simmons	david.c.simmons@wv.gov	304-926-0470
Tanks	Ruth Porter	ruth.m.porter@wv.gov	304-926-0470
Dam Safety	Delbert Shriver	Delbert.g.shriver@wv.gov	304-926-0470
Air Quality	Brian Tephabock	brian.s.tephabock@wv.gov	304-926-0470

ADDITIONAL INFORMATION FROM THE INTERNET

Important Note: The credibility of each of the web pages included here has not been thoroughly investigated. Apply the normal standards of Internet research to your investigation of each website in order to determine its veracity. The West Virginia Watershed Network (WVWN) provides these web pages because they may have information of interest to a wide audience. WVWN does not necessarily endorse the views expressed or the facts presented at these sites, nor endorse any commercial product that may be advertised or available on the sites.

West Virginia BMPs for Controlling Sediment and Erosion from Logging Operations
<http://www.wvforestry.com/BMP%20Book%20Complete.pdf>

West Virginia Department of Environmental Protection's Permit Guides
<http://www.dep.wv.gov/insidedep/deppermittinghandbook/Pages/downloadpermitguide.aspx>

West Virginia Department of Environmental Protections Citizen's Guide
<http://www.dep.wv.gov/environmental-advocate/Pages/depcitizensguide.aspx>

West Virginia Department. of Transportation: Erosion and Sediment Control Manual
<http://www.transportation.wv.gov/highways/engineering/Pages/Erosion.aspx>

West Virginia's Chesapeake Bay Program
<http://www.wvchesapeakebay.us/>

EPA Wetlands Protection and Restoration
<http://www.epa.gov/owow/wetlands/guidance/CWAwaters.html>

WATERS OF THE UNITED STATES

For the most recent guidance, view the following website or contact your local U.S. Army Corps of Engineers District Office: <https://www.epa.gov/cwa-404/guidance-identify-waters-protected-clean-water-act>

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Sleepy Creek: Barbie Elliott, WVCA
Deckers Creek: Rick Buckley, OSMRE

