



**US Army Corps
of Engineers**
Louisville District ®

Public Notice

Public Notice No.
LRL-2004-657

Date:
14 Jan 11

Closing Date:
12 Feb 11

Please address all comments and inquiries to:
U.S. Army Corps of Engineers, Louisville District
ATTN: Sam Werner, CELRL-OP-FW
P.O. Box 59
Newburgh, Indiana 47629-0489

Phone: (812) 842-2768

NOTICE ANNOUNCING ISSUANCE OF A LETTER OF PERMISSION

This notice announces that on December 23, 2010, the Louisville District U.S. Army Corps of Engineers approved Letter of Permission (LOP) procedures and list of categories of activity, in accordance with Title 33 CFR 325.2 (e) (1) and 325.5 (b) (2), published in the Federal Register, Volume 51, No. 219, pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

COVERAGE AREA: The Ohio River, within the Commonwealth of Kentucky, from its confluence with the Mississippi River to Foster, Kentucky (Mile 438.0)

CATEGORIES OF ACTIVITY COVERED BY THE LOP:

Commercial sand and gravel dredging operations, including associated fleeting and in some cases the redeposit of dredged material.

RESTRICTIONS: See Conditions "a" through "l" of the attached sheet titled "SPECIAL CONDITIONS FOR COMMERCIAL SAND AND GRAVEL DREDGING IN THE OHIO RIVER," for specific restrictions. The work authorized by the LOP would also be subject to the attached General Conditions.

IMPLEMENTATION PROCEDURES:

The implementation procedures will require the following:

1. Applicant Coordination:

The applicant will conduct early coordination with USFWS to determine if the proposed action would affect listed species or critical habitat. Through this early coordination, if adverse affects may occur to listed species the applicant will contact the Corps so federal consultation may be initiated. Copies of early coordination letters shall be provided to the Corps.

2. The District would review complete applications for project compliance with the terms, maximum limitations, and conditions.
3. Any project that does not comply could not be authorized by this LOP.
4. The District would respond in writing to all complete applications within 45 days as to whether the LOP would be applicable or an Individual Permit will be required.
5. The District may, at their discretion, determine that the LOP would not be appropriate and require a standard individual permit review of the proposal.
6. The LOP does not have an expiration date; however, the Corps would conduct periodic reviews to ensure the LOP continues to meet the Corps Regulatory Program regulations and policies. The Corps would conduct the first review, in coordination with USFWS, EPA, KDFWR, and KDOW, within five years of the effective date of the LOP.

APPLICATION PROCEDURES:

The minimum procedures to be followed for notification of work under this LOP would be a statement that the work would be performed in accordance with the Special and General Conditions, along with the following information: the name, address, and telephone number of the applicant; location of the proposed dredging in river miles, a brief description and purpose, the name, if named, of the bar where dredging would occur, an approximate amount (cubic yardage or tonnage) of material to be dredged including the type of material, and a location map or river chart showing dredging areas.

EXCLUDED AREAS:

MARKLAND POOL
MILE 438.0 - 531.5

Left Side of Channel
(Kentucky Shore)

Right Side of Channel
(Indiana - Ohio Shore)

From	To	From	To
444.4	445.2	443.1	447.5
450.7	452.9		
460.7	462.5	449.3	479.6
468.0	478.3		
		482.3	484.1
		490.5	497.5
499.0	500.0		
		503.1	504.0
		505.5	506.4

Operations Division
Regulatory Branch (West)
Public Notice No. LRL-2004-657

516.0	517.0		
521.6	523.0	517.9	527.5
529.0	531.5		

530.2	531.5
-------	-------

The excluded areas include mussel bed locations per June 30, 1995,
Survey of Mussel Beds in the Lower Ohio River (ORM 438.1 to 981.0).

The excluded area for any reach listed in the table is the portion of
the channel from the shore to the sailing line and between the
referenced mile points.

SUBMARINE CROSSINGS

461.70 - 462.00
462.83
465.79
466.50 - 466.60
471.00 - 471.40
473.90
477.15
478.30
480.94
491.74
492.28
495.60 - 495.66
503.17
509.70

EXCLUDED AREAS
McALPINE POOL
MILE 531.5 - 606.0

Left Side of Channel
(Kentucky Shore)

Right Side of Channel
(Indiana Shore)

From	To	From	To
522.1	522.8	526.0	526.6
531.5	532.9	531.5	532.9
533.8	534.5		
		537.4	540.6
541.5	542.6		
		542.8	543.6
544.8	546.7		
550.8	556.3	549.3	562.7
571.4	572.1		
580.6	582.9	581.8	583.9
589.6	606.0	594.0	606.0

The excluded areas include mussel bed locations per June 30, 1995, Survey of Mussel Beds in the Lower Ohio River (ORM 438.1 to 981.0).

The excluded area for any reach listed in the table is the portion of the channel from the shore to the sailing line and between the referenced mile points.

SUBMARINE CROSSINGS

544.60
545.25 - 545.51
549.16 - 549.60
557.06
558.00
569.36 - 569.43
594.10

EXCLUDED AREAS
 CANNELTON POOL
 MILE 606.0 - 720.8

Left Side of Channel
 (Kentucky Shore)

Right Side of Channel
 (Indiana Shore)

From	To	From	To
606.0	608.3	606.0	610.5
		613.2	617.5
		625.4	627.8
635.1	635.9		
642.5	644.2		
		646.6	648.0
		649.7	651.6
652.0	653.0		
		655.9	658.6
		662.5	665.1
666.7	667.6		
670.0	670.7		
		674.8	675.4
676.2	677.3		
		677.8	680.0
687.3	688.5		
690.0	698.0	690.5	692.3
700.0	701.5		
		702.3	703.6
707.0	708.0		
710.7	712.7	711.3	712.3
		713.5	714.3
719.5	720.8	716.8	720.8

The excluded areas include mussel bed locations per June 30, 1995, Survey of Mussel Beds in the Lower Ohio River (ORM 438.1 to 981.0).

The excluded area for any reach listed in the table is the portion of the channel from the shore to the sailing line and between the referenced mile points.

SUBMARINE CROSSINGS

608.15
 614.05
 620.49 - 620.60
 641.47
 690.50

Operations Division
Regulatory Branch (West)
Public Notice No. LRL-2004-657

EXCLUDED AREAS
NEWBURGH POOL
MILE 720.8 - 776.0

Left Side of Channel
(Kentucky Shore)

Right Side of Channel
(Indiana Shore)

From	To	From	To
720.8	722.4	720.8	726.4
724.7	726.8	730.0	735.5
738.6	741.2	741.8	747.4
748.6	749.9		
753.2	758.4		
		752.5	754.6
		759.3	764.6
		769.3	771.0
		772.4	773.0

The excluded areas include mussel bed locations per June 30, 1995, Survey of Mussel Beds in the Lower Ohio River (ORM 438.1 to 981.0).

The excluded area for any reach listed in the table is the portion of the channel from the shore to the sailing line and between the referenced mile points.

SUBMARINE CROSSINGS

723.77 - 723.84
724.47 - 724.53
743.34 - 743.37
754.45 - 754.60
754.90
763.92 - 764.03

Operations Division
Regulatory Branch (West)
Public Notice No. LRL-2004-657

EXCLUDED AREAS
JOHN T. MYERS (UNIONTOWN) POOL
MILE 776.0 - 845.9

Left Side of Channel
(Kentucky Shore)

Right Side of Channel
(Indiana Shore)

From	To	From	To
776.0	777.5	776.0	777.5
783.1	787.0	783.0	785.1
788.0	791.0		
800.5	809.2	792.3	802.5
		812.5	815.1
815.4	816.2		
819.0	823.1	820.4	823.1
		825.0	827.0
828.0	845.9	828.0	831.6
		839.0	845.9

The excluded areas include mussel bed locations per June 30, 1995, Survey of Mussel Beds in the Lower Ohio River (ORM 438.1 to 981.0).

The excluded area for any reach listed in the table is the portion of the channel from the shore to the sailing line and between the referenced mile points.

SUBMARINE CROSSINGS

779.15
784.95 - 785.15
785.82
786.68 - 786.84
803.66
820.40
821.00 - 821.20
821.70
823.00
829.85

EXCLUDED AREAS
SMITHLAND POOL & LOWER RIVER
MILE 845.9 - 981.0

Left Side of Channel
(Kentucky Shore)

Right Side of Channel
(Indiana - Illinois Shore)

From	To	From	To
845.9	847.4	845.9	850.5
855.9	856.0		
860.0	861.0	854.0	861.6
		867.0	872.0
882.0	884.0	877.1	882.6
		888.0	892.3
892.7	895.0		
		895.5	903.0
903.5	905.0		
907.0	911.0	909.3	910.5
912.0	915.0	912.0	915.0
917.2	924.5*	917.2	924.0
		927.0	930.5
931.5	935.5**	932.5	934.5
936.3	940.1		
		936.3	949.5
943.9	950.0		
956.0	975.0	956.0	975.0
		980.3	981.0

* Includes the Cumberland River

** Includes the Tennessee River

The excluded areas include mussel bed locations per June 30, 1995, Survey of Mussel Beds in the Lower Ohio River (ORM 438.1 to 981.0).

The excluded area for any reach listed in the table is the portion of the channel from the shore to the sailing line and between the referenced mile points.

SUBMARINE CROSSINGS

895.57
924.80 - 924.90
936.50 - 937.45
952.50 - 952.93
954.27
979.01

GENERAL CONDITIONS:

COMMERCIAL SAND AND GRAVEL DREDGING

a. That all activities authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically authorized herein or by other Department of the Army Permits shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension, or revocation of this authorization, in whole or in part, as set forth more specifically in 33 CFR Part 325.7.

b. That the applicant agrees to make every reasonable effort to prosecute the work authorized herein in a manner so as to minimize any adverse impact of the work on fish, wildlife, and natural environmental values.

c. That the applicant agrees to prosecute the work authorized herein in a manner so as to minimize any degradation of water quality.

d. That the applicant shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

e. That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; nor does it obviate any requirement to pay a royalty or other fee to the property owner.

f. That this permit does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations, nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein. The authorization is void if any Federal, State, or local assent (including zoning) required by law is denied.

g. That this permit does not authorize the interference with any existing or proposed Federal project and that the applicant shall not be entitled to compensation for damage or injuries to the work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

h. That in acknowledging a site-specific proposal authorized by this permit, the Government has relied on the information and data that the applicant has provided in connection with his authorization. If, subsequent to the acknowledgement of a site-specific authorization, such information and data prove to be false, incomplete, or inaccurate, this authorization may be modified,

suspended, or revoked, in whole in part, and/or the Government may, in addition, institute appropriate legal proceedings.

i. That any modification, suspension, or revocation of this permit or a site-specific authorization shall not be the basis for any claim for damages against the United States.

j. That no attempt shall be made by the applicant to prevent the full and free use by the public of all navigable waters at or adjacent to an activity authorized by this permit.

k. That if the display of lights and signals on the dredge and attendant equipment is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the applicant.

l. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

m. That a site specific authorization may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this authorization in writing, agreeing to comply with all terms and conditions of this permit. In addition, if the applicant transfers the interest authorized herein by the conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this authorization shall be recorded along with the deed with the Register of Deed or other appropriate official.

n. The applicant understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the applicant 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.

o. That in acknowledging excluded areas based on actual or potential presence of threatened or endangered species or their designated critical habitat within this permit, the Government has relied on information and data that has been obtained utilizing the most up to date information at the time of this permit evaluation. If, subsequent to the acknowledgement of a site-specific authorization, such information or survey data confirm the presence of threatened or endangered species or their designated critical habitat

this authorization may be modified, suspended, or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate consultation with the U.S. Fish and Wildlife Service.

p. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

q. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.

SPECIAL CONDITIONS FOR COMMERCIAL SAND AND GRAVEL
DREDGING IN THE OHIO RIVER:

a. That no dredging shall be allowed on the Illinois side of the Channel from Mile 934.0 to Mile 936.3, between April 15 and June 15, due to paddlefish spawning.

b. That, irrespective of pool stage, the applicant shall not dredge:

(1) Within 150 feet of the shoreline. 1/

(2) Within a distance of the shoreline equal to three times the dredge depth when the depth exceeds 50 feet.

(3) In an area less than 5 feet deep.

(4) In an area less than 9 feet deep if within 1,000 feet of the shoreline.

c. That the applicant shall not dredge closer than 1,500 feet upstream of any known mussel bed, nor closer than 500 feet to the side, nor within 500 feet downstream of such a bed; or in designated sensitive areas. See the attached tables titled "EXCLUDED AREAS."

d. That the applicant shall, on encountering uncharted mussel beds, cease all dredging in the subject area and notify the Louisville District Engineer of such location.

1/ Shoreline as used in this Letter of Permission means the water's edge at normal pool. This applies to the riverbanks and islands. An island, for the purpose of this Letter of Permission, is an area surrounded by water at normal pool and greater than 1 acre in size.

Operations Division
Regulatory Branch (West)
Public Notice No. LRL-2004-657

e. That the applicant shall neither dredge nor have any attendant equipment or appurtenances such as anchors or barges within:

(1) 300 feet of the centerline of the Federally maintained navigation channel as defined as the sailing line in the current Navigation Chart Book. Further, in buoyed areas, the dredge and attendant equipment must stay a minimum of 75 feet outside the buoy line.

(2) 300 feet of a ferry crossing.

(3) 2,000 feet of any lock or dam.

(4) 1,500 feet of any Federal Emergency Mooring Buoy.

(5) 1,000 feet of any municipal or private water intake without prior written consent of the District Engineer. (For the most part, consent will be given if signed agreements with the intake operator are submitted.)

(6) 500 feet of any submarine pipeline, submarine cable crossing, public or commercial marinas and boat ramps, private docks, bridges, navigation buoys, fleeting areas (designated in the Navigation Chart Book), cells, loading or unloading terminals, or other structures without prior written consent of the District Engineer.

(7) 1,000 feet of the shoreline of an island with less than 5 foot depth.

f. That the applicant shall display, on both sides and on top of the dredge, the assigned authorization number in characters at least 12 inches high and in colors that clearly contrast with their background.

g. That should the District Engineer become aware of any particular fish and wildlife resource areas experiencing substantial adverse impacts from dredging operations, the District Engineer reserves the right to impose any additional restrictions or eliminate specific areas from dredging permits entirely in order to preserve the integrity of these resource areas.

h. That, should the District Engineer become aware of any areas experiencing critical caving bank problems, the District Engineer reserves the right to impose any additional restrictions, or eliminate specific areas from dredging permits entirely in order to preserve the integrity of these areas.

i. That except for fleeting areas which have been authorized by a site-specific Department of the Army permit, this activity is subject to the following:

(1) No more than two fleeting sites allowed per dredge. The maximum authorized fleet size shall not exceed 12 barges per fleeting site with a maximum 4-wide configuration.

(2) The securing devices shall either be deadmen constructed above the Ordinary High Water elevation or Danforth Anchors or equivalent. **(THE USE OF TREES AS MOORING DEVICES IS PROHIBITED).**

(3) That the fleet shall be composed of only sand and gravel barges (empty or loaded) used in connection with the dredging operation.

(4) That all cables and floats shall be removed from the securing devices when the dredge activity moves to another location requiring the use of a different fleeting area.

(5) That for each operating dredge, not more than one fleeting area established under this General Permit may be used at any one time.

j. Should any barge or barges become inoperable, they must be removed from the river within 72 hours.

k. That nothing in this permit relieves the applicant of the responsibility to obtain legal consent of the property owner for the temporary or permanent installation or use of mooring structures or devices.

Further Information:

Re-evaluation of Permit Decision: This office may re-evaluate its decision on this authorization at any time the circumstances warrant. Circumstances that could require a re-evaluation include, but are not limited to, the following:

- a. Failure to comply with the terms and conditions of this authorization.
- b. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a re-evaluation may result in the 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 compliance with the terms and conditions of the authorization and for the initiation of legal action, where appropriate. Payment

Operations Division
Regulatory Branch (West)
Public Notice No. LRL-2004-657

would be required for any corrective measures ordered by this office, and failure to comply with such a directive, this office may, in certain circumstances (such as those specified in 33 CFR 209.170), accomplish the corrective measures by contract, or otherwise, and bill the cost.