



# Public Notice

**US Army Corps  
of Engineers**  
Louisville, Nashville,  
Huntington, and Memphis  
Districts

Public Notice No.  
LRL-1999-760  
LRL-2003-27-pgj

Date:  
10 Nov 09

Closing Date:  
N/A

Please address all comments and inquiries to:  
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NOTICE ANNOUNCING ISSUANCE OF RATE INCREASE, AND METHOD FOR ASSESSING  
CREDITS, FOR THE KENTUCKY IN-LIEU FEE PROGRAM

Department of the Army (DA) Permits are required in accordance with Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) for work in or affecting traditionally navigable "waters of the United States" (U.S.) and in accordance with Section 404 of the Clean Water Act (33 USC 1344) for the discharge of dredged and/or fill material into "waters of the U.S." Compensatory mitigation is required to replace aquatic functions and services lost due to impacts authorized by DA permits. In-lieu fee (ILF) mitigation occurs in circumstances where a permittee provides funds to an ILF Sponsor instead of completing project specific mitigation or purchasing credits from an approved mitigation bank.

On January 12, 2000, the Louisville and Nashville Districts of the United States (U.S.) Army Corps of Engineers (Corps) issued a Public Notice (I.D. No. LRL-1999-760) announcing an ILF program for the Commonwealth of Kentucky. On January 31, 2003, the Louisville, Huntington, Nashville, and Memphis Districts of the U.S. Corps issued a Public Notice (I.D. No. LRL-2003-27) announcing the establishment of three ILF Sponsored Programs and soliciting comments on implementation procedures ("local procedures") for the Programs. Currently, there are two ILF Sponsors operating within the Commonwealth of Kentucky, the Kentucky Department of Fish and Wildlife Resources and the Northern Kentucky University - Center for Applied Ecology.

On April 10, 2008, the Corps and the U.S. Environmental Protection Agency published "Compensatory Mitigation for Losses of Aquatic Resources" ("Mitigation Rule") in the Federal Register (FR) (FR Vol. 73 No. 70, p 19670-19705 (33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; and Pub. L. 108-136). The Mitigation Rule established the performance standards and criteria for the use of mitigation banks and ILF programs, as well as requiring ILF programs to be more "bank-like", including the requirement that the Bank or ILF Sponsor set the cost of compensatory mitigation credits. ILF programs approved prior to the Mitigation Rule must be in compliance with the Mitigation Rule within two years from the effective date of publication (73 FR 19687).

The process for modifying the Kentucky ILF Program to make it compliant with the Mitigation Rule is underway. As an interim step, three changes are announced today.

First, for all applications submitted on or after the date of this notice, the cost per credit for stream impacts mitigated through the Kentucky ILF Program has increased. The increase in fees reflects the increase in cost to implement stream mitigation within the Commonwealth of Kentucky due in part to the additional performance standards and criteria required by the Mitigation Rule. The new cost per credit within the Eastern Kentucky Stream Assessment Protocol (EKSAP) area (Eastern Kentucky Coalfield Region) is \$396.00 per Ecological Integrity Unit (EIU). The cost per stream credit for the remaining area of Kentucky is \$170.00 per Adjusted Mitigation Unit (AMU). The cost per credit for wetland mitigation remains at \$30,000.00 per AMU for the entire state.

The second change addresses the method for determining the cost per credit. Within the EKSAP area, the method for determining EIUs will remain unchanged. However, the ILF calculator will be discontinued. Effective immediately, credits for stream impacts to "waters of the U.S." outside of the EKSAP area will be measured in "Adjusted Mitigation Units" (AMUs). Credits for wetland impacts for the entire state will be measured in AMUs. Effective immediately, the cost per credit for stream impacts will be calculated as follows:

**Streams Outside of the EKSAP area:**

AMUs = (Linear Feet of Stream Impacted X Stream Flow and Stream Quality)

ILF = AMUs (1 + Cumulative Impacts and Temporal Loss) X \$170.00

**Streams within the EKSAP area:**

ILF = EIUs (1 + Cumulative Impacts and Temporal Loss) x \$396.00

Effective immediately, the cost per credit for wetland impacts will be calculated as follows:

**Wetlands within Kentucky:**

AMUs = (Area of Wetland Fill X 2.0)

ILF = AMUs (1 + Cumulative Impacts and Temporal Loss) X \$30,000.00

The third change addresses how the Corps directs payment of ILFs to the ILF Sponsors. Effective immediately, the Corps will provide permittees and the ILF Sponsors with the number of credits necessary to compensate for impacts associated with DA permits. The ILF Sponsors shall provide a receipt for credit purchases to the permittee and the Corps.

COVERAGE AREA: All "waters of the U.S." in the Commonwealth of Kentucky.

Operations Division  
Regulatory Branch (South)  
Public Notice No. LRL-2003-27-pgj

CONTACT INFORMATION: Please be advised that the Corps is not seeking public comment on this notice. Questions should be directed to Patricia A. Grace-Jarrett, Ph. D., CELRL-OP-FS, at the address noted above and should refer to the Public Notice Number LRL-2003-27-pgj.