

## KY in lieu fees Q's and A's

### **Q1: Who determines if compensatory mitigation is required?**

A1: The United States Army Corps of Engineers regulates the discharge of dredged and fill material and activities that impact waters of the United States. As part of the review of permit applications, the Corps evaluates impacts to streams and wetlands to determine further ways to avoid and minimize impacts to the aquatic environment. When impacts are unavoidable, the Corps seeks compensatory mitigation and strives for no net loss of aquatic functions and values.

### **Q2: If mitigation is required, who determines if the permit applicant may pay an in lieu fee?**

A2: The Corps of Engineers will consider in lieu fee mitigation when asked by an applicant. However, the Corps will not demand that mitigation be in the form of in lieu fees.

### **Q3: Who sets the fees, how are they calculated and what are the minimum and maximum ranges?**

A3: If paying an in lieu fee is acceptable to the Corps, the Corps will then add a special condition to the permit confirming the amount to be paid, to whom and a payment schedule. The amount of the fee is based on the quality of the aquatic resource, cumulative impacts, and generally starts at \$100.00 per running foot of stream loss.

### **Q4: To whom does the permit applicant pay the fee?**

A4: The permit applicant pays the money directly to the in lieu fee recipient. If a payment is made to Kentucky Fish and Wildlife Resources (KDFWR), the money is deposited in Kentucky's Stream and Wetland Mitigation Trust Fund established by the General Assembly July 14, 2000. The Kentucky Department of Fish and Wildlife Resources administers the trust fund.

### **Q5: How will the in lieu mitigation fees be spent?**

A5: In lieu fee recipients will use the money to identify and assess ecologically appropriate stream and wetland restoration opportunities in Kentucky; to implement practical plans to protect, purchase, enhance, restore and monitor selected sites; and, to establish financial, technical and legal mechanisms to ensure long-term success of the mitigation projects.

### **Q6: Who will decide how the money is spent?**

A6: The Corps of Engineers in cooperation with other federal and state agencies will establish a Mitigation Review Team (MRT) to approve projects proposed by the KDFWR and to perform a yearly review of ongoing and completed projects. The Corps will chair the MRT and other members may include the Kentucky Division of Water, KDFWR, the U.S. Fish and Wildlife Service and the U.S. Environmental Protection Agency.

### **Q7: Would the mitigation project be located close to the permit applicant's original project?**

A7: The intent is to conduct mitigation projects as close to the impact site as possible. However, all mitigation projects should occur in the same river basin and ecological region. For example, an impact in the Kentucky River Basin in the Appalachian region of Kentucky would be mitigated by an in lieu fee project in this same basin and region.

**Q8: What type of mitigation projects would the in lieu fees be used for?**

A8: The in lieu fees would be used for mitigation projects that restore the loss of stream habitats that have been impacted by activities such as dredging and filling.

**Q9: Will in lieu fee agreements compete with wetland mitigation banks?**

A9: The primary focus of in lieu fee arrangements is to mitigate impacts caused by the dredging and filling of streams.

**Q10: Is this the only in lieu agreement in Kentucky?**

A10: No. The Corps has in lieu fee agreements with Northern Kentucky University and the Jefferson County/Louisville Metropolitan Sewer District. At the university, the fee goes to the Northern Kentucky University Foundation and the mitigation is managed by the Environmental Resource Management Center of Northern Kentucky University. The fund is known as the Stream Corridor Restoration Fund and the intent of the fund is to restore streams in Northern Kentucky. The Metropolitan Sewer District's fund is also known as the Stream Corridor Restoration Fund and the intent is to restore streams in Jefferson County, Kentucky.