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CHAPTER NINE

PERMITS/CERTIFICATIONS

9-1.0 GENERAL

9-1.01 Introduction

Many construction activities performed by the Indiana Department of Transportation impact the environment, navigation, public land or private land. Depending upon the nature of the impact, the activity may require the Department to obtain a permit, certification, approval, etc., during the design phase of a project. Personnel involved in project development should be aware of the requirements for these permits/certifications so that they can ensure that all necessary authorizations and clearances are obtained. The need to receive one or more permits/certifications can significantly affect the project schedule.

Chapter Nine briefly documents the basic information related to the Federal and State permits/certifications which might be required for a project. The Chapter is subdivided as follows:

1. Section 9-2.0 discusses those permits/certifications which are commonly needed;
2. Section 9-3.0 discusses those permits/certifications which are only required for special circumstances; and
3. Section 9-4.0 references permit applications and other information to assist the designer.

The Chapter user should be aware that considerable research is needed to identify all relevant information for each permit or certification (e.g., warrants, procedures, applications). The user must contact the applicable government agencies to determine the permit/certification procedures.

9-1.02 Timing of Permit Information Submittals

The designer is responsible for submitting completed permit application forms in a timely manner such that all permits are received before the Ready for Letting (RFL) date for the project.

If an IDNR permit is required for a project, it is to be applied for shortly after Design Approval. Within one month after receiving notice of Design Approval, the designer should send the completed permit application and attachments to the appropriate project coordinator for transmittal to the Design Division's permits coordinator.

For the 401 Water Quality Certification, 404 (U.S. Army Corps of Engineers) Permits and Rule 5 Submission, the designer should submit the completed applications, attachments, etc., to the project coordinator seven months before the scheduled RFL date for the project. The project coordinator will include the RFL date in the transmittal to the permits coordinator.

On Interstate rehabilitation projects and other projects of short project development duration, the 401 Water Quality Certification, 404 (Corps) Permits and Rule 5 Submissions should be made as soon as feasible. The submissions should not be made later than three months before the schedule RFL date for the project, unless the appropriate Design Division's section manager approves a later submission.

If an Individual Corps Permit will be needed for a project, the completed application, attachments, etc., should be submitted 13 months before the scheduled RFL date of the project.

Any wetlands mitigation requirements should be coordinated with the permitting agencies and the Environment Planning and Engineering Division's Environmental Assessment Section prior to the time the permit information is due. The delineation of the impacted wetlands, the proposed mitigation plan and the wetlands monitoring plan must all be submitted with the permit information.

The counties that require permits if a project affects a regulated drain are listed in Section 9-3.03(06). The designer should submit the application for one of these at the same time as the 401, 404 Regional General and Rule 5 application(s).

The permits coordinator will return all permit applications, etc., to the project coordinator if there is no project-coordinator transmittal memorandum attached.

The designer should track the status of permit expiration dates to ensure that valid permits will be available for the current project construction schedule.

9-1.03 Submittal of Approved Permits with Final Contract Documents

The designer must submit copies of all permits when the final special provisions are submitted at final tracings stage. The copies should be single-sided. Furnishing duplex copies has occasionally resulted in missing pages in the contract document.

If the final special provisions are turned in before all of the approved permits are available, it is the designer's responsibility to ensure that copies are furnished to the Contracts and Construction Division's Contracts Section after the approved permits are received.

All permits should be read and appropriate action should be taken to make the plans, specifications,

and estimate consistent with the permit conditions. For example, special provisions and a pay item for erosion control blankets should be included where required by a permit.

Revisions are often made to the erosion control plans and summary tables after final tracings are submitted. It is the designer's responsibility to initiate plan and contract revisions for all changes that arise during the Rule 5 Submission approval process. Plan revisions and construction changes must be processed in accordance with Sections 14-1.02(04) and 14-1.02(05), respectively.

If a condition is not in a permit, it is not required even if it is listed in the environmental document (Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement) and/or the Fish and Wildlife Review. The exception to this statement is all conditions with respect to the Endangered Species Act (for example, the tree cutting restriction for the Indiana bat).

This procedure does not apply to woody revegetation requirements which are provided as determined by the Design Division's landscape architect.

9-1.04 Delivery of Permits to Project Site

Permits will be given to the designer by the Design Division's permits coordinator. For those permits which are to be publicly displayed on the project site, the designer will be responsible for delivering such permits to the project personnel in a timely manner, generally at the preconstruction conference.

9-2.0 COMMON PERMITS/CERTIFICATIONS

9-2.01 Introduction

1. Section 404 Department of the Army Permit (DA Permit). This permit is obtained from the U.S. Army Corps of Engineers for the discharge of dredge or fill material into Waters of the United States, including adjacent wetlands. Waters of the United States are defined in Section 9-2.02(07). Note that each Corps district has its own procedures and permit requirements.
2. Section 401 Water Quality Certification. This certification is obtained from the Indiana Department of Environmental Management (IDEM). A Section 401 Certification is required when a Section 404 permit is required.
3. IDNR Certification of Approval for Construction in a Floodway. This certification of approval is obtained from the Indiana Department of Natural Resources, Division of Water.

IDNR approval is required for urban streams with a drainage area equal to or greater than 1 sq mi and for rural streams with a drainage area equal to or greater than 50 sq mi.

4. Rule 5 Submission. The Indiana Department of Environmental Management is the responsible agency for Rule 5 compliance. IDNR, acting as IDEM's agent, coordinates the review and acceptance of erosion control plans through the soil and water conservation districts (S&WCD). Once the appropriate S&WCD representative has determined that an erosion control plan meets the acceptance criteria, a Notice of Intent (NOI) is sent to IDEM.

9-2.02 Section 404 Department of the Army Permit (DA Permit)

9-2.02(01) Name

The formal name is a Section 404 Department of the Army Permit (DA Permit). The informal name is Corps Permit.

9-2.02(02) Responsible Federal Agency

For Section 404 Permits, the United States Army Corps of Engineers (Louisville or Detroit District) is the Federal agency with overall responsibility for administering the program, reviewing permit applications and issuing permits.

The Corps only regularly issues Regional General Permits and Individual Permits.

9-2.02(03) Responsible INDOT Unit

The Design Division's permits coordinator is the responsible INDOT contact for Section 404 Permits. The designer is responsible for submitting to the permits coordinator all completed application forms and required sketches showing the location, nature and quantity of the fill into waters of the United States. These sketches should be in accordance with the permit application instructions and should include a location map.

9-2.02(04) Legal References

The legal references for Section 404 Permits are as follows:

1. Section 404 of the Federal Water Pollution Control Act (1972), as amended by the Clean Water Act (1977 & 1987): 33 USC 1251-1376, DOT Order 5660.1A;

2. 23 CFR 330, 23 CFR 650, Subpart B, 771;
3. 33 CFR 209, 320-323, 325, 328, 329; and
4. 40 CFR 121-125, 129-131, 133, 135-136, 230-231.

9-2.02(05) Purpose

The purpose of Section 404 is to restore and maintain the chemical, physical and biological integrity of the Nation's waters through the prevention, reduction and elimination of pollution.

9-2.02(06) Applicability

A Section 404 Permit is required for any discharge of dredged or fill material (e.g., concrete, riprap, earth fill, excavation) into the Waters of the United States, including wetlands. See Section 9-2.02(07) for a definition of Waters of the United States.

Figure 9-4A, U.S. Army Corps of Engineers Section 404 Permit and Levee Work Permit Application, is accessible from the Department's website www.in.gov/dot/div/contracts/design/dmforms/ as a link to the permitting agency's website for application and instructions.

9-2.02(07) Definitions

The following definitions are applicable to Section 404 Permits.

1. Headwaters of the United States. Rivers, streams and their lakes and impoundments, including adjacent wetlands, which are part of a surface tributary system of navigable waterways of the United States, upstream of that point on such river or stream at which the average flow rate is less than 5 ft³/s.
2. Ordinary High Water (OHW). The line showing on the shore which is established by fluctuations of water and is indicated by physical characteristics such as clear, natural lines impressed on the waterway bank, shelving, changes in the character of the soil, destruction of terrestrial plants, the presence of litter or debris, or other appropriate means that consider the characteristics of the surrounding area. Note that Ordinary High Water (OHW) is different from Average High Water.

3. Special Aquatic Sites. Mudflats, refuges, riffle and pool complexes, sanctuaries, vegetated shallows and wetlands.
4. Waters of the United States. In general, for identification, the Waters of the United States includes all jurisdictional wetlands and areas within a blue solid line or a blue dash line on the USGS quadrangle maps. Each river, stream, creek, intermittent tributary, pond, impoundment, lake or wetlands is considered part of the Waters of the United States.
5. Jurisdictional Wetlands. Bogs, marshes, sloughs and swamps are other terms used to describe these areas. Floodplains, or areas where water stands on, at or near the groundline may be considered suspected jurisdictional wetlands. Riverine wetlands are not a part of the jurisdictional wetlands. Guidelines as established by the U.S. Army Corps of Engineers indicate that jurisdictional wetlands must have all of the characteristics as follows:
 - a. preponderance of water-tolerant plants;
 - b. hydric soils; and
 - c. water on, at or near the surface of the ground during a specified portion of the growing seasons.

9-2.02(08) Individual Permits

Individual Section 404 Department of the Army Permit Applications are required for all projects that do not qualify for a Regional General Permit. Where 1 ac or more of jurisdictional wetlands or Waters of the United States are impacted, an Individual Permit is required. If the area of wetlands impacted is greater than 0.1 ac but less than 1 ac, the project will generally qualify for a Regional General Permit. However, the Individual Permit application forms must be filed with the Corps of Engineers for impacts of 1 ac or more.

The permit application packet should include 8" x 11" sketches of all impacts to Waters of the United States, such as bridge crossing locations and jurisdictional wetlands impact locations. Bridge location sketches require a plan and elevation view, and wetlands impact sketches must show a plan view and a cross section through the fill area. The acres of the wetlands filled should be indicated on the sketch.

The level of detail required in the 8" x 11" permit application sketches is as follows:

1. Vicinity Map (taken from USGS quad map)
 - a. Location of activity
 - b. Name of waterbody

- c. Names or numbers of all roads
 - d. North arrow
 - e. Scale
2. Plan View Sketch
- a. Name of waterbody and all roads
 - b. Hatched area showing the limits of the fill replacement
 - c. Location of all wetlands
 - d. North arrow
 - e. Scale
3. Elevation view (or typical cross section)
- a. OHW Elevation
 - b. Other water elevations
 - c. Riprap
 - d. Other fill material

On major road projects that are expected to require individual Section 404 Permits, the Corps of Engineers has deemed it necessary to include a sketch showing the plan view and a longitudinal cross section of each culvert of 36 in. diameter or greater appearing in naturally occurring waterways. An overall project map shall be included with the permit application to show the location of each such culvert and the locations of the wetlands impacts throughout the project. In this case, the Corps of Engineers interprets the definition of Waters of the United States to include all naturally occurring draws.

The permit application should include the quantities of the various fill materials segregated to show both the total cubic feet and the cubic feet placed below the ordinary high water elevation. The total area in square feet of the fill material placed below ordinary high water shall also be provided. The wetlands mitigation plans submitted with the permit application shall include a wetlands delineation report and a wetlands monitoring plan.

The designer must review constructibility issues at project sites where work causeways and cofferdams will be required. Construction activities such as bridge pier construction, sewer outfalls in rivers and earth hauling across streams may all require temporary filling of the Waters of the United States. The designer must submit detailed sketches of temporary causeways, etc., which must be included with applications. The designer should think through the project construction sequence, so that all construction activities which impact the Waters of the United States will be included in the permit application.

Projects that have both road construction and bridge construction should have one combined Corps of Engineers Permit application. Multiple projects in the same contiguous section of roadway will also usually be submitted in one combined application.

9-2.02(09) Nationwide Permits

The Corps will occasionally issue a Nationwide Permit, but only under their discretion, in lieu of a Regional General Permit. The designer should not propose an application specifically for a Nationwide Permit.

9-2.02(10) Regional General Permits (RGP)

For projects with Section 404 application, those not covered by an Individual Permit will be covered by a Regional General Permit (RGP). This permit is for those projects that are considered by the U.S. Army Corps of Engineers to have individual and cumulative impacts on Waters of the United States of less than 1 ac. The details and specific applicability criteria of RGPs are found in Figure 9-4A. Generally, any project that impacts greater than 0.1 ac and less than 1 ac of wetlands or impacts less than 1 ac of Waters of the United States below the ordinary high water line may be eligible for a RGP. Minor channel shaping at structure inlets and outlets is not considered channel relocation.

It is INDOT policy to submit a RGP application form for all projects that appear to qualify for a RGP. If a project fits the criteria above and if the wetlands or Waters of the United States area being affected is greater than 0.1 ac and less than 1 ac, the IDEM Form #48598 (February 2000) [a.k.a., IDEM long form] must be completed and submitted to the permits coordinator. This form will suffice for submittal to the Army Corps of Engineers as the 404 application, the IDEM for the Section 401 Water Quality Certification, and the IDNR as the notice related to 401 and 404 / RGP applications. This form does not replace the IDNR Construction in a Floodway Permit application. If a project fits the original criteria above and if the wetlands area being affected is 0.1 ac or less, the IDEM short form in lieu of Form #48598 (February 2000) should be used. It must be completed and submitted to the permits coordinator. This form will also suffice for submittal to the Army Corps of Engineers as the 404 / RGP application, the IDEM as the Section 401 Water Quality Certification, and the IDNR as their notice related to 401 and 404 / RGP matters. The short form does not replace the Construction in a Floodway Permit application. In both cases, the appropriate form will also serve as the preconstruction notification.

Once a RGP is designated or implied, the designer should prepare a memorandum to the INDOT project file stating: This project qualifies for a RGP in that...[each eligibility criterion for the RGP should be listed and the level of adherence to that criterion noted]. In addition, the RGP application form with an accompanying 8.5" x 11" copy of the USGS 7.5-min series map should be submitted to the permits coordinator. Also, any wetlands mitigation plan package that is developed for the specific project may be a required supporting document when wetland mitigation is necessary. As noted, this single packet will serve as an application/notice to the Army Corps of Engineers, IDEM, and IDNR, but not as IDNR's Construction in a Floodway Permit application. Acknowledgment

from the Army Corps of Engineers will be received in either case. An acknowledgment from IDEM will be received when their long form is used. No acknowledgment from IDEM is anticipated when the short form is used. In either case, long form or short form, no response from IDNR is anticipated with respect to 401 or 404 / RGP matters.

9-2.03 Section 401 Water Quality Certification

9-2.03(01) Name

The formal name is Section 401 Water Quality Certification. The informal name is 401.

9-2.03(02) Responsible Federal/State Agency

For Section 401 Certifications, the United States Environmental Protection Agency, through the Indiana Department of Environmental Management (IDEM), is the agency with overall responsibility for administering the program, reviewing applications, and issuing approvals.

9-2.03(03) Responsible INDOT Unit

The Design Division's permits coordinator is the responsible INDOT contact for Section 401 Certification. The designer is responsible for submitting to the permits coordinator all completed application forms and required sketches showing the location of the impact, nature, and quantity of the fill and excavation in the Waters of the United States. A project vicinity map is also required.

9-2.03(04) Legal References

The legal references for the Section 401 Water Quality Certification are as follows:

1. Section 401 of the Federal Water Pollution Control Act (1972), as amended by the Clean Water Act (1977 & 1987);
2. 33 USC 1251-1376, DOT Order 5660.1A;
3. 23 CFR 650, Subpart B, 771;
4. 33 CFR 209, 320-323, 325, 328, 329;
5. 40 CFR 121-125, 129-131, 133, 135-136, 230-231.; and

6. 329 IAC 10.

9-2.03(05) Purpose

The purpose of Section 401 Water Quality Certification is to restore and maintain chemical, physical and biological integrity of the Nation's waters through prevention, reduction and elimination of pollution.

9-2.03(06) Applicability

A Section 401 Certification is required in conjunction with all Section 404 Individual Permits and Regional General Permits. For information on the 401 Water Quality Certification for Regional General Permits, see Section 9-2.02(10).

Figure 9-4B, IDEM Water Quality Section 401 Permit Application, is accessible from the Department's website www.in.gov/dot/div/contracts/design/dmforms/ as a link to the permitting agency's website for application and instructions. In block No. 4 it should be noted if a temporary runaround will be used, and, when appropriate, the possibility of the contractor using a cofferdam and/or work causeway to construct the project.

9-2.04 IDNR Certification of Approval for Construction in a Floodway

9-2.04(01) Name

The formal name is IDNR Certification of Approval for Construction in a Floodway. The informal name is the DNR permit.

9-2.04(02) Responsible State Agency

For IDNR Certification of Approval for Construction in a Floodway, the Indiana Department of Natural Resources, Division of Water is the state agency with overall responsibility for administering the program, reviewing applications, and issuing permits.

9-2.04(03) Responsible INDOT Unit

The Design Division's permits coordinator is the responsible INDOT contact for the DNR permit. The designer is responsible for submitting to the permits coordinator all completed application forms, required sketches showing the project location, etc.

9-2.04(04) Legal References

The legal references for the IDNR Certification of Approval for Construction in a Floodway are as follows:

1. IC 14-28-1 (the Flood Control Act);
2. IC 13-2-22 (Construction in a Floodway); and
3. IC 14-3-16 (Public Notice).

The administrative rules are contained in 310 IAC 6-1.

9-2.04(05) Purpose

The purpose of the IDNR Certification of Approval for Construction in a Floodway is to protect the floodway from undue restrictions and other environmental factors and to protect against interference to navigation.

9-2.04(06) Applicability

An IDNR Certification of Approval for Construction in a Floodway is required for any construction in a floodway, including wetlands, where the drainage area is equal to or greater than 50 mi² (rural) or 1 mi² (urban). Projects with more than 100 ft of channel relocation beyond the bridge coping should be reviewed by the Design Division's Hydraulics Unit to determine if a permit application should be filed.

Figure 9-4C, IDNR Construction in Floodway Permit Application, is accessible from the Department's website www.in.gov/dot/div/contracts/design/dmforms/ as a link to the permitting agency's website for application and instructions.

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9-2.05 Rule 5 Submission

9-2.05(01) Name

The formal name is NPDES Rule 5 (Storm Water Run-Off Associated with Construction Activity). The informal name is Rule 5.

9-2.05(02) Responsible State Agency

The Indiana Department of Environmental Management (IDEM) is the State agency with overall responsibility for administering the program, reviewing applications and issuing approvals for Rule 5 compliance. IDNR, acting as IDEM's agent, coordinates the review and acceptance of erosion control plans through the soil and water conservation districts. Once the appropriate S&WCD representative has determined that an erosion control plan meets the acceptance criteria, a Notice of Intent (NOI) is sent to IDEM. A typical NOI contains three components: the S&WCD acceptance notice, a publisher's affidavit, and the processing fee.

9-2.05(03) Responsible INDOT Unit

The Design Division's permits coordinator is the responsible INDOT contact for Rule 5 Submissions. The designer is responsible for submitting to the permits coordinator all completed application forms, required half-sized plan sheets including the title sheet showing the project location, etc. The erosion control plan will include a legend of standard practices with a different color highlighting each practice. The color highlighting will be included on the plans to indicate where each practice will be applied. The work type should be clearly described on the title sheet.

9-2.05(04) Legal References

The legal references for the Rule 5 Submission are as follows:

1. IC 13-1-3-4;
2. IC 13-1-3-7;
3. IC 13-7-7;
4. IC 13-7-10-1; and
5. 327 IAC 15-5-1.

9-2.05(05) Purpose

The purpose of the Rule 5 Submission is to reduce pollutants, principally sediment from soil erosion, in storm water discharges into surface waters of the State from construction sites.

9-2.05(06) Applicability

A Rule 5 Submission is required for construction activities where the area of grading, excavation, or other land disturbance impacts 1 ac or more of land area. Any earth exposed counts toward the 1 ac. Rule 5 applies to all State and local projects regardless of community size or funding type. Chapter Thirty-seven discusses INDOT practices for temporary erosion and sediment control during construction.

The designer should determine if a body of water is designated as outstanding State Resource or designated as exceptional use. These are listed in Figure 9-2A.

If the project's affected water is one of these locations, the designer should supply a list of names and addresses of the affected property owners with the erosion control plan to the Design Division's permits coordinator. The coordinator will then request an individual NPDES Construction Permit. Construction affects on all other waters will not require an individual Permit.

The primary difference between the procedure for which an Individual Permit is or is not required is timing. If an Individual Permit is not required, once the permits coordinator submits the Notice of Intent to IDEM, the process ends. If an Individual Permit is required, IDEM issues a public notice for 30-day comment. The timeframe from IDEM's receipt of the NOI/request for an Individual Permit until the end of the process can be 120 days.

Figure 9-4D, IDEM Storm water Runoff Rule 5 Permit Application, is accessible from the Department's website www.in.gov/dot/div/contracts/design/dmforms/ as a link to the permitting agency's website for application and instructions.

Once the designer receives the Notice of Intent (NOI) letter with respect to a Rule 5, the "permit" may be shown as received on the Scope/Environmental Compliance Certification/Permit Application Certification form.

9-3.0 SPECIAL CIRCUMSTANCE PERMITS / CERTIFICATIONS

9-3.01 Introduction

1. FAA Navigable Airspace Permit. This permit is obtained from the Federal Aviation Administration where proposed highway construction may impact the navigable airspace of a public airport.
2. Regulated Drain. Some counties require formal permission before INDOT performs any construction impacting regulated drains. All regulated drains must have plans submitted for review/approval by the county drainage board.
3. State Trunkline Right-of-Way Permit. This permit is required from states adjoining Indiana when an INDOT project requires incidental construction work outside of Indiana's boundaries.
4. IDNR Navigable Waterways. This permit is obtained as a part of the IDNR Certification of Approval for Construction in a Floodway when the Navigable Waterways permit is required.
5. Section 9 Navigable Waterways Permit. This permit is obtained from the U. S. Coast Guard for construction, modification, replacement or removal of bridges or causeways over navigable waters of the United States. Indiana is in the Second and Ninth districts.
6. Section 10 Navigable Waterways Permit. This permit is obtained from the U. S. Coast Guard for structures or work (other than bridges and causeways) affecting the navigable waters of the United States.
7. USACOE Levee Permit. A Corp of Engineers Levee permit is required when construction impacts a levee system owned by the Corps.
8. Section 402 National Pollutant Discharge Elimination System (NPDES) Point-Source Permit. This permit is attained from IDEM for projects such as rest areas that involve a point-source discharge of pollutants into waters of the United States. An outlet pipe for other than storm water is required. An individual permit will be required where the discharge points are into water categorized as exceptional use.
9. Class V Injection Well Permit. This permit is filed with EPA for projects that impact sinkholes in karst terrain or involve drainage into the sole source aquifer near South Bend.

9-3.02 FAA Navigable Airspace Permit

9-3.02(01) Name

The formal name is an FAA Navigable Airspace Permit. The informal name is FAA permit.

9-3.02(02) Responsible Federal Agency

For FAA Navigable Airspace permit, the Federal Aviation Administration is the Federal agency with overall responsibility for administering the program, reviewing permit applications, and issuing permits.

9-3.02(03) Responsible INDOT Unit

The Design Division's permits coordinator is the responsible INDOT contact for the FAA Navigable Airspace permit. The designer is responsible for submitting to the permits coordinator all completed application forms, quadrangle map with a crosshair indicating the location of each obstruction, etc. The latitude and longitude of each location and the height of each obstruction must be given. A separate application must be prepared for both the permanent and the temporary features.

9-3.02(04) Legal References

The legal references for the FAA Navigable Airspace Approval are as follows:

1. Federal Aviation Act of 1958;
2. Federal Aviation Regulations (FAR) Part 77; and
3. AC 70 / 7460-2I.

9-3.02(05) Purpose

The purpose of the FAA Navigable Airspace permit is to promote safety in air commerce and to preserve the navigable airspace at public-, private-, or military-use airports.

9-3.02(06) Applicability

An FAA Navigable Airspace permit is required for any permanent installation (e.g., a high-mast lighting tower) or construction equipment (e.g., cranes, derricks) which is adjacent to a public airport, and if the installation or equipment extends to a greater height than an imaginary surface extending outward and upward at one of the slopes as follows:

1. 1 to 100 for a horizontal distance of 20,000 ft from the nearest runway of an airport which has at least one runway at least 3200 ft long. The designer should contact the airport for information regarding runway lengths.
2. 1 to 50 for a horizontal distance of 10,000 ft from the nearest runway of an airport whose longest runway is less than 3200 ft long.
3. 1 to 25 for a horizontal distance of 5000 ft from the nearest landing or takeoff area of a heliport.

Figure 9-4E, FAA Notice of Proposed Construction or Alteration in Airspace Application, is accessible from the Department's website www.in.gov/dot/div/contracts/design/dmforms/ as a link to the permitting agency's website for application and instructions.

9-3.03 Regulated Drain Permit

9-3.03(01) Name

The formal name is Regulated Drain Permit. The informal name is County Drainage Permit.

9-3.03(02) Responsible Agency

For the Regulated Drain, the county drainage boards for those counties within the project location have overall responsibility for reviewing applications and issuing approvals.

9-3.03(03) Responsible INDOT Unit

The Design Division's permits coordinator is the responsible INDOT contact for the Regulated Drain Permit. The designer is responsible for submitting to the permits coordinator all completed application forms, a set of plans showing the project location, etc., for those counties that have a formal permit process. Such counties are listed in Section 9-3.03(06). For all such projects, the designer should provide a set of plans to the County Surveyor at the field check phase.

9-3.03(04) Legal References

Regulated Drains are referred to by law in IC 36-9-27. Each county has its own rules and not all counties require approval.

9-3.03(05) Purpose

The purpose of the Regulated Drain Permit is to notify the county of INDOT's proposed construction that may impact a regulated drain.

9-3.03(06) Applicability

The Regulated Drain Permit is required for work in Allen, Elkhart, Hamilton, Lake, or LaPorte county.

Figure 9-4F, Regulated Drain Permit Application, is accessible from the Department's website www.in.gov/dot/div/contracts/design/dmforms/ as a link to Elkhart, Hamilton, or Lake county's website for application and instructions. The application and instructions for Allen or LaPorte county work is not accessible from a website. The designer must contact one of these local agencies for such information.

Some of the counties listed above require notification of any change in drainage. A Regulated Drain approval typically requires the following:

1. project description;
2. high water and low water elevations;
3. legal description (if not on plans); and
4. set of plans.

9-3.04 State Trunkline Right-of-Way Permit

9-3.04(01) Name

The formal name is State Trunkline Right-of-Way Permit. The informal name is Border State Coordination.

9-3.04(02) Responsible Agency

For State Trunkline Right-of-Way permits, the Department of Transportation within one of the four states that adjoin Indiana is the agency with overall responsibility for reviewing permit applications and issuing permits.

9-3.04(03) Responsible INDOT Unit

The Design Division's permits coordinator is the responsible INDOT contact for the State Trunkline Right-of-Way permit. The designer is responsible for submitting to the permits coordinator all completed application forms, required sketches showing the project location, etc.

9-3.04(04) Legal References

The legal reference for the State Trunkline Right-of-Way permit is Act 51 of 1951 to authorize construction (Michigan's law).

9-3.04(05) Purpose

The purpose of the State Trunkline Right-of-Way permit is to coordinate INDOT projects with adjoining states for incidental construction within the adjoining state.

9-3.04(06) Applicability

A State Trunkline Right-of-Way permit is required to perform incidental construction work outside Indiana's boundaries, if not performed under special agreement. Some cases require formal agreements, shared costs, or responsibility of work that exceeds incidental construction. For such cases, the State Trunkline Right-of-Way permit will not apply.

A State Trunkline Right-of-Way permit will typically require the following documentation.

1. From Designer.
 - a. Set of plans;
 - b. description of project; and
 - c. completed application form.

2. From Permits Coordinator.
 - a. Letter to adjoining state; and
 - b. entire package to the state's department of transportation that INDOT is applying to.

Figure 9-4G, Trunkline Right of Way Permit Application, is accessible from the Department's website www.in.gov/dot/div/contracts/design/dmforms/ as a link to Michigan's, Ohio's, or Illinois' website for application and instructions.

9-3.05 IDNR Navigable Waterways

9-3.05(01) Name

The formal name is IDNR Navigable Waterways.

9-3.05(02) Responsible State Agency

For IDNR Navigable Waterways, the Indiana Department of Natural Resources, Division of Water, is the State agency with overall responsibility for administering the program, reviewing applications, and issuing approvals.

9-3.05(03) Responsible INDOT Unit

The Design Division's permits coordinator is the responsible INDOT contact for the IDNR Navigable Waterways. The designer is responsible for submitting to the permits coordinator all completed application forms, required sketches showing the project location, etc. Typically, the designer does not need to take any action to request this permit other than making application for the IDNR Construction in a Floodway Permit.

9-3.05(04) Legal References

The following discusses the legal references for IDNR Navigable Waterways.

Navigable Waterways Act, IC 14-29-1

A. Regulatory Program

The General Assembly charged the Department of Natural Resources with oversight of the State's navigable waters in the Powers and Duties of the Department Act, IC 14-19-1-1 (9), by stating, "... the Department shall ... have general charge of the navigable water of Indiana." To carry out this regulatory responsibility, the Assembly created several permitting programs, including Section 8 of the Navigable Waterways Act. This provision requires that a person obtain a permit from the Department prior to initiating certain activities within a navigable waterway.

Fundamental to the Department's administration of the Act's regulatory program is the definition of navigable waterway and the limit of jurisdictional authority.

1. “Navigable water” is defined by rule in 2 parts:
 - a. “navigable” means “a waterway which has been declared to be ‘navigable’ or a ‘public highway’ by one (1) or more of the following:
 - (1) A court.
 - (2) The Indiana General Assembly.
 - (3) The United States Army Corps of Engineers.
 - (4) The Federal Energy Regulatory Commission.
 - (5) A board of county commissioners under IC 14-29-1-1.
 - (6) The commission following a completed proceeding under IC 4-21.5.”
 - b. “waterway” means “a river, stream, creek, run, canal, channel, ditch, lake reservoir, or embayment.”

The determination of whether or not a waterway satisfies both definitions can be time consuming. Therefore, IDNR has prepared a roster of the State’s navigable waterways. The roster was printed as a nonrule policy document in the *Indiana Register*, Volume 15, Number 10, (15 IR 2385) on July 1, 1992 under the title “Natural Resources Commission, Information Bulletin #3, Roster of Indiana Waterways Declared Navigable.” The roster is not dispositive of whether or not a waterway is navigable, but rather lists waterways where sufficient evidence exists to recognize them as such. A copy of the roster is included in the Appendix.

2. The accepted limit of jurisdiction on a navigable waterway is the ordinary high water mark unless the State’s boundary is present. The “ordinary high water mark” is also defined by rule:
 - a. “ordinary high water mark” means the following:
 - (1) The line on the shore of a waterway established by the fluctuations of water and indicated by physical characteristics. Examples of these physical characteristics include the following:
 - (A) A clear and natural line impressed on the bank.
 - (B) Shelving.
 - (C) Changes in the character of the soil.
 - (D) The destruction of terrestrial vegetation.
 - (E) The presence of litter or debris.

- (2) Notwithstanding subdivision (1), the shore of Lake Michigan at five hundred eight-one and five-tenths (581.5) feet, I.G.L.D., 1985 (five hundred eighty-two and two hundred fifty-two thousandths (582.252) feet, N.G.V.D., 1929).

B. Administrative Rule

The Navigable Waterways rule, 310 IAC 21, contains definitions, standards, and permit information relative to the administration of the Navigable Waterways Act.

C. Regulated Activities

For a person, other than a public or municipal water supply utility, the Act requires that a permit be obtained from the Department for the placement, filling, or erection of a permanent structure in; water withdrawal from; or material extraction from; a navigable waterway. Regulated activities include, but are not limited to bridge foundations, piers, seawalls, mineral extraction, etc.

D. Evaluation Criteria

In its assessment of a project's approvability, the Department evaluates a project's impact using the criteria prescribed within the Act:

1. whether or not the project will reasonably impair the navigability of the waterway;
2. whether or not the project will cause significant harm to the environment; and
3. whether or not the project will pose an unreasonable hazard to life or property.

E. Exempted Activities

The Navigable Waterways Act's regulatory program contains a number of exemptions to minimize duplicity of regulation. Specifically, a permit under the Act is not required if a permit has been obtained under any of the State or Federal statutes listed in Figure 9-3A, Navigable Waterways Act Exempted Activities, and the requirements of the Navigable Waterways Act have been applied in the project review.

9-3.05(05) Purpose

The purpose of the IDNR Navigable Waterways Permit is to protect those waterways that have been designated by the State as navigable.

9-3.05(06) Applicability

The IDNR Navigable Waterways permit is obtained as a part of the IDNR Certification of Approval for Construction in a Floodway when the Navigable Waterways permit is required.

The IDNR Navigable Waterways Roster is accessible from the IDNR's website, at www.in.gov/dnr/water/surface_water/DrainageHandbook/pdf/Appdx_E-3.pdf.

9-3.06 Section 9 Navigable Waters Permit

9-3.06(01) Name

The formal name is Section 9 Navigable Waters Permit. The informal name is the Coast Guard bridge permit.

9-3.06(02) Responsible Federal Agency

For Section 9 Navigable Waters permits, the United States Coast Guard is the Federal agency with overall responsibility for administering the program, reviewing permit applications, and issuing permits. Indiana is included in the Second and Ninth districts.

9-3.06(03) Responsible INDOT Unit

The Design Division's permits coordinator is the responsible INDOT contact for the Section 9 Navigable Waters permit. The designer is responsible for submitting to the permits coordinator all completed application forms, required sketches showing the project location, etc.

9-3.06(04) Legal References

The legal references for Section 9 Navigable Waters permits are as follows:

1. Section 9 of the Rivers and Harbors Act of 1899;
2. 33 USC 401, et seq, as amended and supplemented;
3. 23 CFR part 650, Subpart H; and
4. 33 CFR 114-115.

9-3.06(05) Purpose

The purpose of Section 9 Navigable Waters permits is to ensure that there will be no interference to navigation on the navigable waterways of the United States.

9-3.06(06) Applicability

A Section 9 Navigable Waters permit is required for the construction, modification, replacement, or removal of any bridge or causeway over a navigable waterway (tidal or non-tidal).

The following lists the navigable waterways within Indiana which require the Section 9 Navigable Waters permit from the United States Coast Guard.

1. Second Coast Guard District.

WATERWAY	UPPER LIMIT
Anderson River	Mile 6.0
Crooked Creek	Mile 7.7
Cypress Creek	Mile 0.8
Great Miami River	Only on bend of the river which is in the State of Indiana from approximately Mile 0.5 to Mile 1.4
Indian Creek	Mile 4.7
Little Blue River	Mile 10.6
Little Oil Creek	Mile 4.4
Little River	Mile 20.1
McFadden Creek	Mile 2.2
Ohio River	Entirely within navigable limit
Patoka River	Mile 8.0
Pigeon Creek	Mile 5.9
Wabash River	Mile 95.0
White River	Mile 51.5 (Junction East and West Fork)

2. Ninth Coast Guard District.

WATERWAY	UPPER LIMIT
Grand Calumet River	Mile 23.9
Indiana Harbor Canal	Mile 3.9
Indiana Harbor Canal,	
Lake George Branch	Mile 2.9
Little Oil Creek	Mile 2.6

Note: The distances of navigable length shown are measured upstream from the mouth.

9-3.07 Section 10 Navigable Waters Permit

9-3.07(01) Name

The formal name is Section 10 Navigable Waters Permit. The informal name is the Coast Guard permit.

9-3.07(02) Responsible Federal Agency

For Section 10 Navigable Waters permits, the United States Coast Guard is the Federal agency with overall responsibility for reviewing permit applications and issuing permits.

9-3.07(03) Responsible INDOT Unit

The Design Division's permits coordinator is the responsible INDOT contact for the Section 10 Navigable Waters permit. The designer is responsible for submitting to the permits coordinator all completed application forms, required sketches showing the project location, etc.

9-3.07(04) Legal References

The legal references for Section 10 Navigable Waters permits are as follows:

1. Section 10 of the Rivers and Harbors Act of 1899;
2. 33 USC 401, et seq, as amended and supplemented;
3. 23 CFR part 650, Subpart H; and
4. 33 CFR 114-115.

9-3.07(05) Purpose

The purpose of Section 10 Navigable Waters permits is to protect and preserve the navigable waterways of the United States against any degradation in water quality.

9-3.07(06) Applicability

A Section 10 Navigable Waters permit is required for structures or work (other than bridges or causeways) affecting a navigable waterway (tidal or non-tidal). Examples of work include dredging, channelization, and filling.

9-3.08 USACOE Levee Permit

9-3.08(01) Name

The formal name is a USACOE Levee Permit.

9-3.08(02) Responsible Federal Agency

For a USACOE Levee Permit, the United States Army Corps of Engineers is the Federal agency with overall responsibility for administering the program, reviewing permit applications, and issuing permits. The local levee authority is a partner in this process. The approval of the local levee authority is required before making application to Army Corps of Engineers.

9-3.08(03) Responsible INDOT Unit

The Design Division's permits coordinator is the responsible INDOT contact for the USACOE Levee Permit. The designer is responsible for submitting to the permits coordinator all completed application forms, required sketches showing the project location, etc.

9-3.08(04) Legal References

The regulations for maintenance and operation are included in the *Code of Federal Regulations*, as promulgated in Chapter II - Corps of Engineers, Department of the Army, Section 208.10 - Flood Control Regulations for local flood protection works; maintenance and operation of structures and facilities. Such regulations were issued under authority of Sec. 3, 49 Stat. 1571, as amended; 33 USC 701c (9 F.R. 9999, Aug., 17, 1944); 9 F.R. (10203, Aug. 22, 1944).

9-3.08(05) Purpose

For those projects that affect a regulated levee, a permit from the Army Corps of Engineers is necessary before any work can be constructed which may affect the levee. The purpose of the levee

permit program is to ensure continuous levee system integrity. The actual permit form may vary, depending on to whom it will be initially sent.

Generally, for legal levees within the jurisdiction of a local levee authority (e.g., Evansville Levee Authority), the permit application plus a set of mostly complete plans and select specifications is sent through the permits coordinator to the levee authority. The permit form should be obtained from the local levee authority prior to application submittal. The levee authority may suggest or require changes to the project's plans. These changes must be evaluated and coordinated on a case-by-case basis. After the levee authority accepts and approves the project's plans, it forwards them to the Army Corps of Engineers for final approval. Army Corps of Engineers' acceptance and approval of a levee permit application is generally assured once the local levee authority approves the plans. A formal approval document is received from the local levee authority and the Army Corps of Engineers. It is very rare that the Army Corps of Engineers will not accept a set of plans already approved by a local levee authority. However, the designer must account for that possibility when determining the time for permit application submittals.

For legal levees that exist outside of the jurisdiction of a levee authority, the permit application plus a set of mostly complete plans and select specifications is sent through the permits coordinator directly to the Army Corps of Engineers. The Army Corps of Engineers may suggest or require changes to the project's plans. These changes must be evaluated and coordinated on a case-by-case basis. The Army Corps of Engineers will ultimately accept and approve the project's plans, and it will send a notice to INDOT once final approval is granted.

Numerous embankments that serve as unofficial levees have been constructed and are not part of the Army Corps of Engineers' levee system or part of some other levee authority's levee system. Although the designer may need to alter these embankments to achieve an effective design, some minor coordination should be accomplished before simply breaking the embankment's integrity. The designer should check with the local drainage authority and the Army Corps of Engineers to ensure that the embankment is not part of either of those parties' flood control systems. Also, the designer may need to check with the Design Division's Hydraulics Unit and the Land Acquisition Division to determine the effects of breaking the embankment on adjacent lands. Only after these types of issues have been investigated, should the designer, if necessary, propose a cut into an apparent flood control embankment that is not part of a legal, flood control, levee system.

9-3.08(06) Applicability

A USACOE Levee Permit is required where construction affects a levee system owned by the Corps. Figure 9-4A, U.S. Army Corps of Engineers Section 404 Permit and Levee Work Permit Application, is accessible from the Department's website www.in.gov/dot/div/contracts/design/dmforms/ as a link to the permitting agency's website for application and instructions.

9-3.09 Section 402 National Pollutant Discharge Elimination System (NPDES) Point-Source Permit

9-3.09(01) Name

The formal name is the National Pollutant Discharge Elimination System (NPDES - Point Source) Permit. The informal name is the NPDES - Rule 2 Permit.

9-3.09(02) Responsible Federal/State Agency

For the NPDES - Point Source Rule 2 Permit, the United States Environmental Protection Agency is the ultimate agency with oversight responsibility for enforcement, management, and implementation of the permit program. The Indiana Department of Environmental Management is the State agency that has the responsibility for the daily execution of the permit program (e.g., establishing program procedures, reviewing permit applications, issuing permits).

9-3.09(03) Responsible INDOT Unit

The Design Division's permits coordinator is the responsible INDOT contact for the NPDES - Point Source Rule 2 Permit. The designer is responsible for submitting to the permits coordinator all completed application forms, supporting documents, required sketches showing the project locations, etc.

9-3.09(04) Legal References

The legal references for the NPDES - Point Source Rule 2 Permit are as follows:

1. Section 402 of the Federal Water Pollution Control Act (1972), as amended by the Clean Water Act (1977 and 1987);
2. 33 USC 1251-1376, DOT Order 5660.1A;
3. 23 CFR 650, Subpart B, 771;
4. 33 CFR 209, 320-323, 325, 328, 329; and
5. 40 CFR 121-125, 129-131, 133, 135-136, 230-231.

9-3.09(05) Purpose

The purpose of the NPDES - Point Source Rule 2 Permit is to restore and/or maintain the chemical, physical, and biological integrity of the Nation's waters through prevention, reduction, and elimination of pollution.

9-3.09(06) Applicability

A NPDES - Point Source Rule 2 Permit is required for all point-source discharges (other than those addressed by the Section 404 Permit and/or a Rule 5 submission) into the Nation's waters (e.g., sewage treatment plants at rest areas) where an outlet pipe for other than storm water is required. An Individual Permit will be required where the discharge points are into waters categorized as exceptional use. See Section 9-2.05(06).

Currently, storm water runoff from mainline pavement, shoulders, ramps, etc., which does not enter combination sewers, does not fall under jurisdiction of the NPDES - Point Source Rule 2 Permit program. There is some question on whether or not storm runoff from rest area parking areas is within the permit program's jurisdiction. The Environment, Planning and Engineering Division's Environmental Services Section manager should be queried on a case-by-case basis to determine the permitting requirements of this program for individual rest area projects.

9-3.10 Class V Injection Well Permit

9-3.10(01) Name

The formal name is Class V Injection Well Permit.

9-3.10(02) Responsible Federal/State Agency

The United States Environmental Protection Agency has the responsibility for enforcement, management, and implementation of the permit program.

9-3.10(03) Responsible INDOT Unit

The Design Division's permits coordinator is the responsible INDOT contact for the Class V Injection Well Permit. The designer is responsible for submitting to the permits coordinator all

completed application forms, supporting documents, required sketches showing the project locations, etc.

9-3.10(04) Legal References

The legal reference for the Class V Injection Well Permit is The Safe Drinking Water Act (SDWA) of 1974.

9-3.10(05) Purpose

The purpose of the Class V Injection Well Permit is to restore and/or maintain the chemical, physical, and biological integrity of the Nation's karst environments and eco-systems through control, prevention, reduction, mitigation, and/or elimination of pollution sources.

9-3.10(06) Applicability

1. Karst Conditions: This permit is filed with the United States Environmental Protection Agency (EPA). It is required for projects in karst terrain when a sinkhole is modified to accept a direct discharge of roadway runoff. If the runoff passes through a natural drainage ditch or swale before entering a sinkhole which is not modified, the permit is not required.

The filing should be made during the design stage when other permit applications are filed.

2. Sole Source Aquifer (South Bend region only): Projects located near South Bend may impact the region's sole source aquifer. These projects will also require filing of the Class V Injection Well Permit form if dry wells or retention basins are used that may permit infiltration of surface water into the ground water. In addition to this permit, projects located in a sole source aquifer area require a compliance certificate to be filed with EPA early in the design phase. Screening of such projects by the EPA is necessary to determine the level of impacts to the sole source aquifer.

Figure 9-4J is an editable version of the application, which may be found on the Department's website at www.in.gov/dot/div/contracts/design/dmforms/. See Figure 9-4K for the Class V Well Inventory form application instructions.

9-4.0 APPLICATIONS FOR PERMITS / CERTIFICATIONS

The permits listed in the List of Figures for this Chapter have applications and instructions which are accessible from the Department's website www.in.gov/dot/div/contracts/design/dmforms/ . All such applications and instructions are referenced to this Section.