



# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

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**Eric J. Holcomb**  
Governor

**Bruno Pigott**  
Commissioner

**VIA ELECTRONIC MAIL:**

December 14, 2020

Mr. Michael Ricketts  
U.S. Army Corps of Engineers  
Louisville District  
P.O. Box 59  
Louisville, KY 40201-0059

Dear Mr. Ricketts:

Re: Section 401 Water Quality Certification  
Project: 2020 Reissuance of Nationwide  
Permits

The Office of Water Quality has reviewed the Federal Register Notice dated September 15, 2020, announcing the proposed reissuance of the Nationwide Permits (NWP's). We have also reviewed your correspondence dated October 16, 2020, stating the Federal Register Notice is the U.S. Army Corps of Engineers (Corps) application for water quality certification under Section 401 of the Clean Water Act for those NWP's that will result in a discharge of dredged and/or fill material into waters of the United States within the State of Indiana.

In electronic mail correspondence dated October 21, 2020, the Louisville District Corps of Engineers notified IDEM that the previously suspended NWP's 13, 14, 18, 29, 36, 39, 40, 41, 42, 43, and 44 would no longer be suspended and be in full force and effect in the state of Indiana.

Under Section 401 of the Clean Water Act (CWA), a federal agency may not issue a permit or license to conduct any activity that may result in any discharge into waters of the United States unless a Section 401 Water Quality Certification (WQC) is issued, verifying compliance with water quality requirements. In Indiana, the Indiana Department of Environmental Management (IDEM) is the certifying authority and certification decisions are based on Indiana's water quality standards (WQS) found at 327 IAC 2 [http://iac.iga.in.gov/iac/iac\\_title?iact=327](http://iac.iga.in.gov/iac/iac_title?iact=327)

Per 327 IAC 2.1, the goal of Indiana's water quality standards is to restore and maintain the chemical, physical and biological integrity of the state's waters. Mitigation of dredge and fill impacts to Indiana's water resources is required to maintain water quality. To ensure WQS are met, IDEM conditions the NWP's as outlined in this 401 WQC. Additional information about the conditions is found in Attachment #3.



It is the judgment of this office that NWP's 12, 21, 29, 39, 40, 42, 44, 50, 51, 52, 57, and 58 will comply with applicable provisions of state law (including 327 IAC 2) and Sections 301, 302, 303, 306, and 307 of the Clean Water Act subject to the conditions set forth in this Certification. Therefore, subject to the following conditions, the Indiana Department of Environmental Management (IDEM) hereby grants Section 401 Water Quality Certification (WQC) for these NWP's. Any changes in language or scope of any NWP not detailed in the aforementioned Federal Register Notice, or as modified by the conditions below, are not authorized by this certification.

It is the judgement of this office that NWP 43 is denied in the state of Indiana and will require a site-specific Individual Section 401 Water Quality Certification. The denial is based on the agency's inability to determine if these activities will comply with Indiana's water quality standards found at 327 IAC 2.

It is the judgement of this office that NWP's 48, 55, and 56 are activities that do not occur in Indiana. Because of this no Section 401 Water Quality Certification is required.

*Section 401 Water Quality Certification decisions for NWP's in effect for the State of Indiana-2021*

<b>NWP</b>	<b>Activity</b>	<b>Decision</b>	<b>Conditions</b>
12	Oil or Natural Gas Pipeline Activities	Approve	General & Specific
21	Surface Coal Mining Activities	Approve	None
29	Residential Developments	Approve	General & Specific
39	Commercial and Institutional Developments	Approve	General & Specific
40	Agricultural Activities	Approve	General & Specific
42	Recreational Facilities	Approve	General & Specific
43	Stormwater Management Facilities	Deny	N/A
44	Mining Activities	Approve	General & Specific
50	Underground Coal Mining Activities	Approve	None
51	Land-Based Renewable Energy Generation Facilities	Approve	General & Specific
52	Water-Based Renewable Energy Generation Pilot Projects	Approve	General & Specific
57	Electric Utility Line and Telecommunication Activities	Approve	General & Specific
58	Utility Line Activities for Water and Other Substances	Approve	General & Specific

**GENERAL CONDITIONS:**

The following conditions shall apply to any permittee whose project qualifies under any NWP approved by this certification. All activities that do not meet these conditions require an individual Water Quality Certification from IDEM and are not authorized under this WQC.

- (1) The permittee must submit a complete Notification Form for any NWP that requires notification by this WQC. For those NWPs, the permittee must submit notification at least 30 days prior to the impacts or receive verification from the IDEM Office of Water Quality stating the proposed project meets the terms and conditions of this Section 401 WQC. The notification submitted to the IDEM Office of Water Quality must at a minimum provide applicant information, project location, existing project site conditions, project impacts, and a proposed plan. Failure to submit all required information will result in the project being considered out-of-scope and not authorized.
- (2) The permittee shall deposit any dredged material in a contained upland disposal area to prevent sediment run-off to any waterbody. An upland disposal area is defined as an area of dry land that does not contain any wetlands as defined by the 1987 Army Corps of Engineers Wetland Delineation Manual and the applicable Regional Supplements or any streams<sup>1</sup>.
- (3) The permittee shall install run-off and sediment control measures prior to any land disturbance to manage stormwater and to minimize sediment from leaving the project site or entering a waterbody. All operations must phase project activities to minimize the impact of sediment to the receiving waterbody(ies). Erosion and sediment control measures shall be implemented using an appropriate order of construction (sequencing) relative to the land-disturbing activities. Wetlands and/or waterbodies that are adjacent to land-disturbing activities must be protected with appropriate sediment control measures. As work progresses, all areas void of protective cover shall be re-vegetated or stabilized as described in the plan. Areas that are to be re-vegetated must utilize mulch that is anchored or, under more severe conditions, erosion control blankets. Erosion control blankets or other armament shall be used for all areas associated with concentrated flow. Standards and specifications for stormwater management, including erosion and sediment control can be obtained in the Indiana Stormwater Quality Manual or similar guidance documents.
- (4) The permittee shall allow the commissioner or an authorized representative of the commissioner (including an authorized contractor), upon the presentation of credentials to conduct the following activities:
  - (a) enter upon the permittee's property;
  - (b) have access to and copy at reasonable times any records that must be kept under the conditions of these permits or this certification;

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<sup>1</sup> Stream, for the purpose of this Water Quality Certification, means conveyance channels that have a defined bed and bank and an ordinary high water mark. This term includes natural streams, relocated streams, channelized streams, artificial channels, encapsulated channels and ditches.

- (c) inspect, at reasonable times, any monitoring or operational equipment or method; collection, treatment, pollution management or discharge facility or device; practices required by this certification; and any mitigation site; and
  - (d) sample or monitor any discharge of pollutants or any mitigation site.
- (5) This WQC does not authorize activities that result in a permanent secondary effect to waters of the U.S. (e.g., dredging, excavation, damming, creation of in-channel ponds) that when combined with the primary effect exceeds the area and length thresholds specified by this WQC.
- (6) This WQC does not:
- (a) authorize impacts or activities outside the scope of this certification;
  - (b) authorize any injury to permittees or private property or invasion of other private rights, or any infringement of federal, state or local laws or regulations;
  - (c) convey any property rights of any sort, or any exclusive privileges;
  - (d) preempt any duty to obtain federal, state or local permits or authorizations required by law for the execution of the project or related activities; or
  - (e) authorize changes in the plan design detailed in the notice or application.
- (7) This WQC does not authorize point source discharges of pollutants other than clean fill<sup>2</sup> and uncontaminated dredged material.
- (8) This WQC does not authorize activities associated with the establishment of a mitigation bank.
- (9) This WQC does not authorize activities that will permanently change the sinuosity, flow path, velocity, the cross-sectional area under the Ordinary High Water Mark (OHWM), or the slope of a stream.
- (10) This WQC does not authorize activities on or in any of the State's waters that have been designated as salmonid waters (*see Attachment #1*), tributaries of salmonid waters within a two river mile reach upstream from the confluence with the salmonid water unless the activity meets one or more of the following conditions:
- (a) Bank stabilization activities that:
    - (1) Are completed using bioengineered methods, riprap, and/or glacial stone, that conforms to the existing shoreline and does not project out into the channel, and
    - (2) Do not create a wall.

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<sup>2</sup> Clean fill, for the purpose of this Water Quality Certification, means uncontaminated rocks, bricks, concrete without rebar, road demolition waste materials other than asphalt, or earthen fill.

- (3) Do not include the installation of cofferdams, causeways, temporary access roads, or dewatering activities.
  - (b) Encapsulations that:
    - (1) Are installed to span the width of the ordinary high water mark (OHWM), and are embedded in accordance with Specific Condition 3(f)7 below, and
    - (2) Do not include the installation of cofferdams, causeways, temporary access roads, or dewatering activities.
    - (3) Are installed outside the salmonid fish spawning dates of March 15 through June 15 and from July 15 through November 30.
  - (c) Work is conducted outside the salmonid fish spawning dates of March 15 through June 15 and from July 15 through November 30.
- (11) This WQC does not authorize activities on or in any of the State's waters that have been designated as Outstanding State and/or National Resource Waters (see *Attachment #1*).
- (12) This WQC does not authorize activities on or in any critical wetland or critical special aquatic sites (see *Attachment #2*).
- (13) This WQC does not authorize activities that have a cumulative permanent impact of more than twenty-five hundredths (0.25) acre of waters of the U.S. Note: Activities that have a cumulative permanent impact to waters of the U.S. of more than one-tenth (0.10) acre must comply with the mitigation requirements listed in **General Condition 15** of this WQC.
- (14) This WQC does not authorize activities that will have a cumulative permanent impact of more than 500 linear feet of waters of the U.S. Note: Activities that have a cumulative permanent impact to waters of the U.S. of more than 300 linear feet must comply with the mitigation requirements listed in **General Condition 16** of this WQC.
- (15) Cumulative permanent impacts to waters of the U.S. greater than 0.10 acre up to and including 0.25 acre are authorized provided the following conditions are met:
  - (a) The impacts comply with all conditions of this Section 401 Water Quality Certification.
  - (b) Mitigation is provided for all impacts.
  - (c) Sufficient mitigation credits are available in the service area where the impacts occur. Note: Credits may not be available at all times. Failure to purchase credits before impacting water resources will require an individual 401 WQC and may result in additional mitigation requirements to compensate for temporal loss of water resource functions.
  - (d) Mitigation credits are purchased from an approved compensatory mitigation bank or through the Indiana Stream and Wetland Mitigation Program (in-lieu

- fee (ILF). Permittee responsible mitigation is not authorized under this 401 WQC.
- (e) The amount of mitigation credit purchased is 1:1 for streams, open water, and farmed wetlands, 2:1 for emergent wetland, 3:1 for scrub shrub wetland, 4:1 for forested wetland.
  - (f) The credits are purchased in the bank or ILF service area where the impacts occur.
  - (g) Proof of a finalized credit purchase is provided to IDEM:
    - (1) Before the impacts occur. Note: Banks and ILF programs may require 30 days or more to finalize a purchase.
    - (2) Within one (1) year of IDEM's receipt of the Notification form.
- (16) Cumulative permanent impacts to waters of the U.S. greater than 300 linear feet up to and including 500 linear feet are authorized provided the following conditions are met:
- (a) The impacts comply with all conditions of this Section 401 Water Quality Certification.
  - (b) Mitigation is provided for all impacts.
  - (c) Sufficient mitigation credits are available in the service area where the impacts occur. Note: Credits may not be available at all times. Failure to purchase credits before impacting water resources will require an individual 401 WQC and may result in additional mitigation requirements to compensate for temporal loss of water resource functions.
  - (d) Mitigation credits are purchased from an approved compensatory mitigation bank or through the Indiana Stream and Wetland Mitigation Program (in-lieu fee (ILF)). Permittee responsible mitigation is not authorized under this 401 WQC.
  - (e) The amount of mitigation credit purchased is 1:1 for streams.
  - (f) The credits are purchased in the bank or ILF service area where the impacts occur.
  - (g) Proof of a finalized credit purchase is provided to IDEM:
    - (1) Before the impacts occur. Note: Banks and ILF programs may require 30 days or more to finalize a purchase.
    - (2) Within one (1) year of IDEM's receipt of the Notification form.
- (17) The permittee must demonstrate, via letter from the Indiana Department of Natural Resources (IDNR), Division of Nature Preserves, that no state endangered, threatened, or rare species are documented on a permanent or seasonal basis within ½-mile radius of the proposed project site. If you have listed species, you must provide documentation from the IDNR that states your project will not impact the listed species. If IDNR recommends seasonal work restrictions or other avoidance and minimization measures, those restrictions or avoidance and minimization measures must be incorporated into your project plans and implemented during construction.

- (18) This WQC allows the use of multiple NWP's on the same project as long as the cumulative effect for the entire project is less than the specified impact thresholds in **General Conditions 13 & 14** or as specified in the **Specific Conditions** below. If a project exceeds the specified impact thresholds, the activities are not authorized by this WQC and an individual WQC is required. IDEM may certify several federal permits or licenses under one individual WQC.
- (19) Upon request, the applicant must submit additional information necessary to IDEM to determine if a project will qualify under the terms and conditions of this certification. If the applicant fails to provide any information requested by IDEM, then the project is not authorized.
- (20) All stream pump-around activities must be conducted in a manner that does not cause erosion at the outlet. Cofferdam dewatering activities must use filter bags, upland sediment basins/traps, or a combination of other appropriate sediment control measures to minimize the discharge of sediment-laden water into waters of the U.S. All sediment control measures must be installed and maintained in good working order. For stream pump-around activities, the in-stream material used to construct the dam must be constructed of non-sediment producing sources. Examples include sand bags and sheet pile walls.
- (21) The permittee must ensure all bridges and stream encapsulations meet the following requirements:
  - (a) The encapsulation must not result in the relocation of a stream. Minimal stream relocations may be authorized, provide the encapsulation:
    - (1) Results in a net benefit to the aquatic ecosystem and stream morphology;
    - (2) Does not reduce the cross-sectional area under the OHWM;
    - (3) Is accompanied by an acceptable restoration/stabilization plan; and
    - (4) Does not accelerate stream instability as demonstrated in the plans by a qualified engineer. Examples of instability include, but are not limited to, stream bank erosion, channel enlargement, channel incision, degradation, aggradation, meander migration (down-valley and lateral accretion), avulsion and base-level-shifts.
  - (b) New bridge piers, piles, shafts, or other support structures and their associated scour protection measures must not significantly reduce the cross-sectional area of the stream and be located outside the low flow channel of the stream.
  - (c) Permanent stream encapsulations must:
    - (1) Be installed for the purpose of constructing a road or pedestrian crossing.
    - (2) Allow the passage of aquatic organisms in the waterbody.
    - (3) Not exceed 150 linear feet of cumulative encapsulation.

- (4) Have at least one (1) opening with a cross-sectional area twenty percent (20%) larger than the area under the OHWM of the stream immediately upstream and downstream of the encapsulation. If multiple encapsulations are proposed, then the largest culvert meeting the cross-sectional area requirement must be positioned in the channel to align with the existing flow of the channel.
- (5) Have a streambed slope within the encapsulation that matches the slope of the bed both immediately upstream and downstream.
- (6) Not create or accelerate stream instability as demonstrated in the plans by a qualified engineer. Examples of stream instability include, but are not limited to head cutting, stream bank erosion, channel enlargement, channel incision, degradation, aggradation, meander migration, (down-valley and lateral accretion), avulsion, and base-level shifts.
- (7) Either have no bottom (e.g., three-sided culvert) or are embedded (sumped)<sup>3</sup> into the stream channel based on the following structure sizes and substrate types:
  - (a) Stream bed of sand
    - Structure <four (4) feet wide: Six (6) inch sump
    - Structure four (4) feet wide to 12 feet wide: 12 inch sump
    - Structure 12 feet to 20 feet wide: 18 inch sump
  - (b) Stream bed of other soil or unconsolidated till<sup>4</sup>
    - Structure < four (4) feet wide: Three (3) inch sump
    - Structure four (4) feet wide to 12 feet wide: Six (6) inch sump
    - Structure 12 feet wide to 20 feet wide: 12 inch sump
  - (c) Stream bed of bedrock or consolidated till<sup>5</sup>
    - Inside elevation of the structure bottom shall be a minimum of three (3) inches below the surface of the bedrock or consolidated till.
- (8) Meet the following requirements when installed in a perennial stream with an OHWM width of 12 feet or greater:
  - (a) Be sumped to a greater depth if needed for the design of the streambed inside the encapsulation.
  - (b) Have a width equal to or wider than the existing OHWM.
  - (c) Have a natural stream bottom. If the stream bottom will be disturbed during construction (e.g. four sided box culverts, pipe culverts, or because of footer work for three sided culverts), natural stream substrate must be placed in the encapsulation in accordance with the Federal Highway Administration Hydraulic Engineering Circular No. 26: Culvert Design for Aquatic Organism Passage.

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<sup>3</sup> Sump, for the purpose of this Water Quality Certification, means the inside elevation of the bottom of the structure is placed at a specified depth below the grade of the stream.

<sup>4</sup> Other soil and unconsolidated till includes substrates that are more cohesive and less mobile (e.g clay, silt, gravel, and cobble substrates).

<sup>5</sup> Consolidated till includes dense hard materials such as hardpan.



- (d) Have a low flow channel constructed or restored through the encapsulation. The low flow channel shall have the same width, depth, and side slope as the natural upstream and downstream low flow channel. If the upstream and downstream channels are highly degraded, a V-shaped channel with 5:1 slopes within the structure may be substituted.
- (22) The permittee must ensure all placement of riprap or other bank stabilization materials are designed and installed flush with the upstream and downstream bank and stream channel/lake bed elevations and grades.
- (23) Notification to IDEM is required for any temporary impacts that exceed 0.10 acre for any proposed NWP. For emergency repair situations notification may take place after the emergency repair has begun.
- (24) After construction, temporary fill must be removed in their entirety and the affected areas returned to the pre-construction elevations. The areas affected by temporary fill must be revegetated, as appropriate.
- (25) The permittee will submit an application for an individual certification if IDEM determines the project would have more than minimal impacts to water quality, either viewed individually or collectively with other projects that may affect the same waterbody.

#### **NATIONWIDE PERMIT # 12, OIL AND NATURAL GAS PIPELINE ACTIVITIES, SPECIFIC CONDITIONS**

The following conditions apply to NWP #12. All activities that do not meet these conditions require an individual WQC from IDEM and are not authorized under this WQC.

- (1) The permittee must notify IDEM in accordance with **General Condition 1** listed above unless the only regulated activity is the construction of a stream or wetland crossing where the crossing is constructed using directional boring or other related techniques that do not involve the placement of fill materials within a regulated waterbody. Other forms of crossings, such as trenching, pipeline armoring, etc., require notification to IDEM;
- (2) Notification to IDEM is required for any pipeline project that involves crossing wetlands. The applicant will be required to restore temporarily impacted wetlands to pre-construction grade, contours, and vegetative conditions. A copy of the restoration plan must be submitted with the Notification Form;
- (3) The activity must not permanently affect more than twenty-five hundredths (0.25) of an acre of waters of the United States. See **General Condition 13** of this WQC for additional impact and mitigation requirements. Conversions of forested and scrub shrub wetlands to emergent wetlands is a permanent effect and should be considered in the overall impact calculation;

- (4) The activity must not permanently change the sinuosity, flow path, velocity, cross sectional area under the bank full elevation or the slope of a stream;
- (5) The activity must not permanently affect more than 500 linear feet of streambank or lake shoreline. See **General Condition 14** of this WQC for additional impact and mitigation requirements;
- (6) The activity must not result in a permanent secondary effect to waters of the United States (e.g. dredging, excavation, damming, creation of in-channel ponds) that, when combined with the primary effect, exceeds the area and length thresholds specified above;
- (7) For maintenance activities involving the placement of riprap or other bank stabilization materials, the stabilization material must be installed flush with the upstream and downstream bank and stream channel/lake bed elevations and grades;
- (8) For in-stream utility line stabilization activities, the use of articulated or other matting is only authorized if the utility is only partially (<10%) exposed. Fully exposed utility stabilization activities are not authorized by this WQC;
- (9) Remediation of inadvertent returns of drilling fluids into waters of the U.S require the following actions:
  - (a) Immediately implement containment and clean up measures.
  - (b) Report the spill to IDEM's 24 Hour Emergency Spill Line at (888) 233-7745.
  - (c) Contact the IDEM Wetlands & Stormwater Section at (317) 233-8488.
  - (d) Submit the containment, clean up and restoration plan to IDEM for review and approval.
- (10) If a utility line is placed beneath the bed of a river or stream, the following conditions must be met:
  - (a) Cover of at least three (3) feet, measured perpendicularly to the line, between the lowest point of the stream bed and the top of the utility line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials; and
  - (b) Cover of at least one (1) foot, measured perpendicularly to the line, between the lowest point of the bed and the top of the utility or its encasement, whichever is higher, if the bed is composed of consolidated materials.

## **NATIONWIDE PERMIT #29, RESIDENTIAL DEVELOPMENTS, SPECIFIC CONDITIONS**

The following conditions apply to NWP #29. All activities that do not meet these conditions require an Individual WQC from IDEM and are not authorized under this WQC.

- (1) The permittee must notify IDEM in accordance with **General Condition 1** listed above;
- (2) This WQC does not authorize stream relocations associated with residential developments or their attendant features;

- (3) This WQC does not authorize discharges for the construction of stormwater management facilities;
- (4) Permanent stream encapsulations associated with residential developments must comply with **General Condition 21**;
- (5) The installation of utilities associated with residential developments must comply with the **Specific Conditions of NWP 12, NWP 57, and NWP 58** of this WQC;
- (6) The activity must not permanently affect more than twenty-five hundredths (0.25) of an acre of waters of the United States. See **General Condition 13** of this WQC for additional impact and mitigation requirements;
- (7) The activity must not permanently affect more than 500 linear feet of streambank or lake shoreline. See **General Condition 14** of this WQC for additional impact and mitigation requirements;
- (8) The placement of riprap or other bank stabilization material must be installed flush with the upstream and downstream bank and stream channel/lake bed elevations and grades; and
- (9) The activity must not result in a permanent secondary effect to waters of the United States (e.g. dredging, excavation, damming, creation of in-channel ponds) that, when combined with the primary effect, exceeds the area and length thresholds specified above.

#### **NATIONWIDE PERMIT # 39, COMMERCIAL AND INSTITUTIONAL DEVELOPEMNTS, SPECIFIC CONDITIONS**

The following conditions apply to NWP #39. All activities that do not meet these conditions require an individual WQC from IDEM and are not authorized under this WQC.

- (1) The permittee must notify IDEM in accordance with **General Condition 1** listed above;
- (2) This WQC does not authorize stream relocations associated with commercial or institutional developments or their attendant features;
- (3) This WQC does not authorize discharges for the construction of stormwater management facilities;
- (4) Permanent stream encapsulations associated with commercial and institutional developments must comply with **General Condition 21**;
- (5) The installation of utilities associated with commercial or institutional developments must comply with the **Specific Conditions of NWP 12, NWP 57, and NWP 58** of this WQC;
- (6) The activity must not permanently affect more than twenty-five hundredths (0.25) of an acre of waters of the United States. See **General Condition 13** of this WQC for additional impact and mitigation requirements;
- (7) The activity must not permanently affect more than 500 linear feet of streambank or lake shoreline. See **General Condition 14** of this WQC for additional impact and mitigation requirements;

- (8) The placement of riprap or other bank stabilization material must be installed flush with the upstream and downstream bank and stream channel/lake bed elevations and grades; and
- (9) The activity must not result in a permanent secondary effect to waters of the United States (e.g. dredging, excavation, damming, creation of in-channel ponds) that, when combined with the primary effect, exceeds the area and length thresholds specified above.

#### **NATIONWIDE PERMIT #40, AGRICULTURAL ACTIVITIES, SPECIFIC CONDITIONS**

The following conditions apply to NWP #40. All activities that do not meet these conditions require an individual WQC from the IDEM and are not authorized under this WQC.

- (1) The permittee must notify IDEM in accordance with **General Condition 1** listed above;
- (2) This WQC does not authorize stream relocations associated with activities eligible for this NWP;
- (3) This WQC does not authorize the construction of drainage ditches in a wetland;
- (4) This WQC does not authorize the construction of levees when the levee results in a loss of hydrology to a wetland;
- (5) The WQC only authorizes the installation solid field tile within a wetland;
- (6) The installation of tile riser pipes must be installed outside the boundary of a wetland or the inlet holes to the riser pipe must be set at an elevation to ensure it does not drain the wetland;
- (7) The activity must not permanently affect more than twenty-five hundredths (0.25) of an acre of waters of the United States. See **General Condition 13** of this WQC for additional impact and mitigation requirements; and
- (8) The activity must not result in a permanent secondary effect to waters of the United States (e.g dredging, excavation, damming, creation of in-channel ponds) that, when combined with the primary effect, exceeds the area and length thresholds specified above.

#### **NATIONWIDE PERMIT #42, RECREATION FACILITIES, SPECIFIC CONDITIONS**

The following conditions apply to NWP #42. All activities that do not meet these conditions require an individual WQC from IDEM and are not authorized under this WQC.

- (1) The permittee must notify IDEM in accordance with **General Condition 1** listed above;
- (2) This WQC does not authorize stream relocations associated with activities eligible for this NWP;
- (3) This WQC does not authorize discharges for the construction of stormwater management facilities;

- (4) Permanent stream encapsulations associated with recreational facilities must comply with **General Condition 21**;
- (5) The installation of utilities associated with recreational developments must comply with the **Specific Conditions of NWP 12, NWP 57, and NWP 58** of this WQC;
- (6) Trails, bike paths, and golf cart paths constructed in wetlands must be constructed at grade, or have culverts installed to ensure hydrologic connectivity between wetlands;
- (7) The activity must not permanently affect more than twenty-five hundredths (0.25) of an acre of waters of the United States. See **General Condition 13** of this WQC for additional impact and mitigation requirements;
- (8) The activity must not permanently affect more than 500 linear feet of streambank or lake shoreline. See **General Condition 14** of this WQC for additional impact and mitigation requirements;
- (9) The placement of riprap or other bank stabilization material must be installed flush with the upstream and downstream bank and stream channel/lake bed elevations and grades; and
- (10) The activity must not result in a permanent secondary effect to waters of the United States (e.g. dredging, excavation, damming, creation of in-channel ponds) that, when combined with the primary effect, exceeds the area and length thresholds specified above.

#### **NATIONWIDE PERMIT #44, MINING ACTIVITIES, SPECIFIC CONDITIONS**

The following conditions applies to NWP #44. All activities that do not meet these conditions require an Individual WQC from IDEM and are not authorized under this WQC.

- (1) The permittee must notify IDEM in accordance with **General Condition 1** listed above;
- (2) This WQC does not authorize discharges for the construction of stormwater management facilities;
- (3) This WQC does not authorize discharges associated with outfalls authorized by a National Pollutant Discharge Elimination System Permit;
- (4) Permanent stream encapsulations associated with mining activities must comply with **General Condition 21**;
- (5) The activity must not permanently affect more than twenty-five hundredths (0.25) of an acre of waters of the United States. See **General Condition 13** of this WQC for additional impact and mitigation requirements;
- (6) The activity must not permanently affect more than 500 linear feet of streambank or lake shoreline. See **General Condition 14** of this WQC for additional impact and mitigation requirements;
- (7) Dewatering activities must use filter bags, upland sediment basins/traps, or a combination of other appropriate sediment control measures to minimize the discharge of sediment-laden water into waters of the U.S.; and

- (8) The activity will not result in a permanent secondary effect to waters of the United States (e.g. dredging, excavation, damming, creation of in-channel ponds) that, when combined with the primary effect, exceeds the area and length thresholds specified above.

#### **NATIONWIDE PERMIT #51, LAND-BASED RENEWABLE ENERGY GENERATION FACILITIES, SPECIFIC CONDITIONS**

The following conditions apply to NWP #51. All activities that do not meet these conditions require an individual WQC from IDEM and are not authorized under this WQC.

- (1) The permittee must notify IDEM in accordance with **General Condition 1** listed above;
- (2) The activity must not permanently affect more than one-tenth (0.1) of an acre of waters of the United States;
- (3) The activity must not permanently change the sinuosity, flow path, velocity, cross sectional area under the bank full elevation or the slope of a stream;
- (4) The activity must not permanently affect more than 300 linear feet of streambank or lake shoreline; and
- (5) The activity must not result in a permanent secondary effect to waters of the United States (e.g. dredging, excavation, damming, creation of in-channel ponds) that, when combined with the primary effect, exceeds the area and length thresholds specified above.

#### **NATIONWIDE PERMIT #52, WATER-BASED RENEWABLE ENERGY GENERATION PILOT PROJECTS, SPECIFIC CONDITIONS**

The following conditions apply to NWP #52. All activities that do not meet these conditions require an individual WQC from IDEM and are not authorized under this WQC.

- (1) The permittee must notify IDEM in accordance with **General Condition 1** listed above;
- (2) The activity must not permanently affect more than one-tenth (0.1) of an acre of waters of the United States;
- (3) The activity must not permanently change the sinuosity, flow path, velocity, cross sectional area under the bank full elevation or the slope of a stream;
- (4) The activity must not permanently affect more than 300 linear feet of streambank or lake shoreline; and
- (5) The activity must not result in a permanent secondary effect to waters of the United States (e.g. dredging, excavation, damming, creation of in-channel ponds) that, when combined with the primary effect, exceeds the area and length thresholds specified above.

## **NATIONWIDE PERMIT 57, ELECTRIC UTILITY LINE AND TELECOMMUNICATIONS ACTIVITIES, SPECIFIC CONDITIONS**

The following conditions apply to NWP C. All activities that do not meet these conditions require an individual WQC from IDEM and are not authorized under this WQC.

- (1) The permittee must notify IDEM in accordance with **General Condition 1** listed above unless the only regulated activity is the construction of a stream or wetland crossing where the crossing is constructed using directional boring or other related techniques that do not involve the placement of fill materials within a regulated waterbody. Other forms of crossings, such as trenching, pipeline armoring, etc., require notification to IDEM;
- (2) Notification to IDEM is required for any utility or telecommunication activities that involve crossing wetlands. The applicant will be required to restore temporarily impacted wetlands to pre-construction grade, contours, and vegetative conditions. A copy of the restoration plan must be submitted with the Notification Form;
- (3) The activity must not permanently affect more than twenty-five hundredths (0.25) of an acre of waters of the United States. See **General Condition 13** of this WQC for additional impact and mitigation requirements. Conversions of forested and scrub shrub wetlands to emergent wetlands is a permanent effect and should be considered in the overall impact calculation;
- (4) The activity must not permanently change the sinuosity, flow path, velocity, cross sectional area under the bank full elevation or the slope of a stream;
- (5) The activity must not permanently affect more than 500 linear feet of streambank or lake shoreline. See **General Condition 14** of this WQC for additional impact and mitigation requirements;
- (6) The activity must not result in a permanent secondary effect to waters of the United States (e.g. dredging, excavation, damming, creation of in-channel ponds) that, when combined with the primary effect, exceeds the area and length thresholds specified above;
- (7) For maintenance activities involving the placement of riprap or other bank stabilization materials, the stabilization material must be installed flush with the upstream and downstream bank and stream channel/lake bed elevations and grades;
- (8) For in-stream utility and telecommunication line stabilization activities, the use of articulated or other matting is only authorized if the utility is only partially (<10%) exposed. Fully exposed utility stabilization activities are not authorized by this WQC;
- (9) Remediation of inadvertent returns of drilling fluids into waters of the U.S require the following actions:
  - (a) Immediately implement containment and clean up measures.
  - (b) Report the spill to IDEM's 24 Hour Emergency Spill Line at (888) 233-7745.
  - (c) Contact IDEM Wetlands & Stormwater Section at (317) 233-8488.

- (d) Submit the containment, clean up and restoration plan to IDEM for review and approval.
- (10) If a utility or telecommunication line is placed beneath the bed of a river or stream, the following conditions must be met:
- (a) Cover of at least three (3) feet, measured perpendicularly to the line, between the lowest point of the stream bed and the top of the utility line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials; and
  - (b) Cover of at least one (1) foot, measured perpendicularly to the line, between the lowest point of the bed and the top of the utility or its encasement, whichever is higher, if the bed is composed of consolidated materials.

### **NATIONWIDE PERMIT 58, UTILITY LINE ACTIVITIES FOR WATER AND OTHER SUBSTANCES, SPECIFIC CONDITIONS**

The following conditions apply to NWP D. All activities that do not meet these conditions require an individual WQC from IDEM and are not authorized under this WQC.

- (1) The permittee must notify IDEM in accordance with **General Condition 1** listed above unless the only regulated activity is the construction of a stream or wetland crossing where the crossing is constructed using directional boring or other related techniques that do not involve the placement of fill materials within a regulated waterbody. Other forms of crossings, such as trenching, pipeline armoring, etc., require notification to IDEM;
- (2) Notification to IDEM is required for any utility or telecommunication activities that involve crossing wetlands. The applicant will be required to restore temporarily impacted wetlands to preconstruction grade, contours, and vegetative conditions. A copy of the restoration plan must be submitted with the Notification Form;
- (3) The activity must not permanently affect more than twenty-five hundredths (0.25) of an acre of waters of the United States. See **General Condition 13** of this WQC for additional impact and mitigation requirements. Conversions of forested and scrub shrub wetlands to emergent wetlands is a permanent effect and should be considered in the overall impact calculation;
- (4) The activity must not permanently change the sinuosity, flow path, velocity, cross sectional area under the bank full elevation or the slope of a stream;
- (5) The activity must not permanently affect more than 500 linear feet of streambank or lake shoreline. See **General Condition 14** of this WQC for additional impact and mitigation requirements;
- (6) The activity must not result in a permanent secondary effect to waters of the United States (e.g. dredging, excavation, damming, creation of in-channel ponds) that, when combined with the primary effect, exceeds the area and length thresholds specified above;



- (7) For maintenance activities involving the placement of riprap or other bank stabilization materials, the stabilization material must be installed flush with the upstream and downstream bank and stream channel/lake bed elevations and grades;
- (8) For in-stream utility and telecommunication line stabilization activities, the use of articulated or other matting is only authorized if the utility is only partially (<10%) exposed. Fully exposed utility stabilization activities are not authorized by this WQC;
- (9) Remediation of inadvertent returns of drilling fluids into waters of the U.S require the following actions:
  - (a) Immediately implement containment and clean up measures.
  - (b) Report the spill to IDEM's 24 Hour Emergency Spill Line at (888) 233-7745.
  - (c) Contact the IDEM Wetlands & Stormwater Section at (317) 233-8488.
  - (d) Submit the containment, clean up and restoration plan to IDEM for review and approval.
- (10) If a utility or telecommunication line is placed beneath the bed of a river or stream, the following conditions must be met:
  - (a) Cover of at least three (3) feet, measured perpendicularly to the line, between the lowest point of the stream bed and the top of the utility line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials; and
  - (b) Cover of at least one (1) foot, measured perpendicularly to the line, between the lowest point of the bed and the top of the utility or its encasement, whichever is higher, if the bed is composed of consolidated materials.

Any changes in the language or scope of any NWP not detailed in the Federal Register notice dated September 15, 2020, are not authorized by this certification. In the absence of another action by IDEM that would alter the termination date of this certification, this certification shall expire with the expiration of the federal permits it certifies.

This certification does not relieve the recipient of the responsibility of obtaining any other permits or authorizations that may be required for this project or related activities from IDEM or any other agency or person. You may wish to contact the Indiana Department of Natural Resources at 317-232-4160 (toll free at 877-928-3755) concerning the possible requirement of natural freshwater lake or floodway permits. In addition, you may wish to contact IDEM's stormwater program at 317-233-1864 ([Stormwat@idem.IN.gov](mailto:Stormwat@idem.IN.gov)) concerning the possible need for construction stormwater permit coverage if you plan to disturb one (1) acre or more of land area.

Failure to comply with the terms and conditions of this Section 401 Water Quality Certification may result in enforcement action against you. You may also be subject to criminal liability if it is determined that the Section 401 Water Quality Certification was violated willfully or negligently.

### **Notice of Right to Administrative Review**

If you wish to challenge this permit, you must file a Petition for Administrative Review with the Office of Environmental Adjudication (OEA), and serve a copy of the petition upon IDEM. The requirements for filing a Petition for Administrative Review are found in IC 4-21.5-3-7, IC 13-15-6-1 and 315 IAC 1-3-2. A summary of the requirements of these laws is provided below.

A Petition for Administrative Review must be filed with the Office of Environmental Adjudication (OEA) within fifteen (15) days of the issuance of this notice (eighteen (18) days if you received this notice by U.S. Mail), and a copy must be served upon IDEM.

Addresses are:

Director	Commissioner
Office of Environmental Adjudication	Indiana Dept. of Environmental Management
Indiana Government Center North	Indiana Government Center North
100 North Senate Avenue, Room N103	100 North Senate Avenue, Room 1301
Indianapolis, Indiana 46204	Indianapolis, Indiana 46204

The petition must contain the following information:

- (a) The name, address and telephone number of each petitioner.
- (b) A description of each petitioner's interest in the permit.
- (c) A statement of facts demonstrating that each petitioner is:
  - (1) a person to whom the order is directed;
  - (2) aggrieved or adversely affected by the permit; or
  - (3) entitled to administrative review under any law.
- (d) The reasons for the request for administrative review.
- (e) The particular legal issues proposed for review.
- (f) The alleged environmental concerns or technical deficiencies of the denial.
- (g) The permit terms and conditions that the petitioner believes would be appropriate and would comply with the law.
- (h) The identity of any persons represented by the petitioner.
- (i) The identity of the person against whom administrative review is sought.
- (j) A copy of the permit that is the basis of the petition.
- (k) A statement identifying petitioner's attorney or other representative, if any.

Failure to meet the requirements of the law with respect to a Petition for Administrative Review may result in a waiver of your right to seek administrative review of the permit. Examples are:

- (a) Failure to file a Petition by the applicable deadline;
- (b) Failure to serve a copy of the Petition upon IDEM when it is filed; or
- (c) Failure to include the information required by law.

If you seek to have a permit stayed during the administrative review, you may need to file a Petition for a Stay of Effectiveness. The specific requirements for such a Petition can be found in 315 IAC 1-3-2 and 315 IAC 1-3-2.1.

Pursuant to IC 4-21.5-3-17, OEA will provide all parties with notice of any pre-hearing conferences, preliminary hearings, hearings, stays, or orders disposing of the review of this action. If you are entitled to notice under IC 4-21.5-3-5(b) and would like to obtain notices of any pre-hearing conferences, preliminary hearings, hearings, stays, or orders disposing of the review of this action without intervening in the proceeding you must submit a written request to OEA at the address above.

If you have procedural or scheduling questions regarding your Petition for Administrative Review, additional information on the review process is available at the website of the Office of Environmental Adjudication at <http://www.in.gov/oea>.

If you have any questions about this certification, please contact Jason Randolph, Project Manager, of my staff by phone at 317-233-0467, or by e-mail at [jrandolp@idem.in.gov](mailto:jrandolp@idem.in.gov).

Sincerely,



Martha Clark Mettler  
Assistant Commissioner  
Office of Water Quality

cc: Kimberly Simpson, USACE-Louisville  
Aaron Damrill, USACE-Detroit, Michiana Branch  
Paul Leffler, USACE-Chicago  
Scott Pruitt, USFWS  
Matt Buffington, IDNR  
Randy Braun, IDEM

## **Attachment 1: Indiana Waters Designated for Special Protection**

### **Designated Salmonid Waters:**

#### **[327 IAC 2-1.5-5(a)(3)]**

- Trail Creek and its tributaries downstream to Lake Michigan, LaPorte County
- East Branch of the Little Calumet River and its tributaries downstream to Lake Michigan via Burns Ditch, Porter and LaPorte Counties
- Salt Creek above (upstream of) its confluence with the Little Calumet River, Porter County
- Kintzele Ditch (Black Ditch) from Beverly Drive downstream to Lake Michigan, Porter County
- The Galena River and its tributaries, LaPorte County
- The St. Joseph River and its tributaries in St. Joseph County from the Twin Branch Dam in Mishawaka downstream to the Indiana/Michigan state line, St. Joseph County
- The Indiana portion of the open waters of Lake Michigan
- Those waters designated by the Indiana Department of Natural Resources (IDNR) for put-and-take trout fishing<sup>1</sup>

### **Waterbodies which have been designated all or partially as Outstanding State Resource Waters: [327 IAC 2-1-11(b), 327 IAC 2-1.3-3(d), and 327 IAC 2-1.5-19(b)]**

- Big Pine Creek in Warren County downstream of the State Road 55 bridge near the town of Pine Village to its confluence with the Wabash River
- Mud Pine Creek in Warren County from the bridge on the County Road between Brisco and Rainsville to its confluence with Big Pine Creek
- Fall Creek in Warren County from the old C.R. 119 bridge in the NW quarter of Section 21, Township 22N, Range 8W downstream to its confluence with Big Pine Creek
- Indian Creek in Montgomery County from the County Road 650 West bridge downstream to its confluence with Sugar Creek
- Clifty Creek in Montgomery County within the boundaries of Pine Hills Nature Preserve
- Bear Creek in Fountain County from the bridge on County Road 450 North to its confluence with the Wabash River
- Rattlesnake Creek in Fountain County from the bridge on County Road 450 North to its confluence with Bear Creek
- The small tributary to Bear Creek in Fountain County within the Portland Arch Nature Preserve which enters Bear Creek at the sharpest bend and has formed the small natural bridge called Portland Arch
- Blue River from the confluence of the West and Middle Forks of the Blue River in Washington County downstream to its confluence with the Ohio River
- The South Fork of Blue River in Washington County from the Horner's Chapel Road bridge downstream to its confluence with Blue River.
- Lost River and all surface and underground tributaries upstream from the Orangeville Rise (T2N, R1W, Section 6) and the Rise of Lost River (T2N, R1W, Section 7) and the mainstem of the Lost River from the Orangeville Rise downstream to its confluence with the East Fork of White River.
- The Blue River in Washington, Crawford, and Harrison Counties, from river mile 57.0 to river mile 11.5
- The North Fork of Wildcat Creek in Carroll and Tippecanoe Counties, from river mile 43.11 to river mile 4.82

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<sup>1</sup> Available on the internet at: <http://www.in.gov/dnr/fishwild/5457.htm>

- The South Fork of Wildcat Creek in Tippecanoe County, from river mile 10.21 to river mile 0.00
- Cedar Creek in Allen and DeKalb counties, from river mile 13.7 to its confluence with the St. Joseph River
- The Indiana portion of the open waters of Lake Michigan
- All waters incorporated in the Indiana Dunes National Lakeshore.

## **Attachment 2: Critical Wetlands and Critical Special Aquatic Sites**

In the interest of maintaining consistency with the State Regulated (Isolated) Wetland program established at 327 IAC 17, IDEM defines Critical Wetlands and Critical Special Aquatic Sites to be synonymous with Rare and Ecologically Important Wetland Types under 327 IAC 17-1-3(3)(B):

- **Acid bog:** Acid bog is an acidic wetland of kettle holes in glacial terrain. Bogs can be graminoid (*Carex* spp. and *Sphagnum* spp.) or low shrub (*Chamaedaphne calyculata* and *Betula pumila*). The graminoid bog can be a floating, quaking mat. The soils in acid bogs are saturated and acidic peat. Bogs have non-flowing or very slow flowing water. The water level fluctuates seasonally. When a sphagnum mat floats, it rises and falls with the water table. Acid bogs can be found in northern Indiana.
- **Acid seep:** Acid seep is a bog-like wetland typically found in unglaciated hill regions. This community is a small groundwater-fed wetland located primarily in upland terrain. A thin layer of muck may lie over a mineral substrate. The soil reaction is acid. This seep community is characterized by flowing water during at least part of the year. Acid seeps are located primarily in southern Indiana.
- **Circumneutral bog:** Circumneutral bog is a bog-like wetland that receives groundwater. Circumneutral bogs can be a mosaic of tall shrub bog, graminoid bog, and other communities. The graminoid bog often occurs on a quaking or floating mat. Although a few bogs occur in unglaciated regions, most are found in glacial ice-block depressions. The soils in circumneutral bogs are usually peat, or other low nutrient organic substrates, which are saturated and circumneutral to slightly acid. Circumneutral bogs have non-flowing or very slow flowing water. The water level fluctuates seasonally. Circumneutral bogs are usually found in northern Indiana.
- **Circumneutral seep:** The circumneutral seep (or seep-spring) is a groundwater-fed wetland on organic soil. It is primarily herbaceous. Species typically include marsh marigold (*Caltha palustris*) and skunk cabbage (*Symplocarpus foetidus*) with a scattered tree canopy. Circumneutral seep is typically situated on or near the base of a slope. The soil is typically circumneutral muck. This seep community is characterized by slowly flowing water during at least part of the year. Circumneutral seeps can be found scattered throughout Indiana.
- **Cypress swamp:** Bald cypress swamps are seasonally to permanently inundated wetlands found in depressions and sloughs of large bottomlands associated with the Wabash/Ohio River system. Poorly to very poorly drained soils characterize this environment. Bald cypress (*Taxodium distichum*) is present, and green ash (*Fraxinus pennsylvanica*), silver maple (*Acer saccharinum*), and overcup oak (*Quercus lyrata*) are also usually present. This community is restricted to extreme southwest Indiana.
- **Dune and swale:** Dune and swale is an ecological system consisting of a mixture of upland (black oak sand savanna, dry to mesic sand prairie) and wetland (pond, panne, sedge meadow, marsh, wet prairie) natural communities. These communities occur in long, narrow, linear complexes, with the dry communities occupying sand ridges, and the wet communities occurring in the intervening swales. Black oak (*Quercus velutina*), paper birch (*Betula papyrifera*), jack pine (*Pinus banksiana*), and prairie vegetation typically occur on the ridges, and sedges, reeds, and marsh/aquatic vegetation line are found in the swales. Water levels are directly influenced by ground water, with the interdunal swales controlled

largely by lateral flow through porous beach ridges. Dune and swale is restricted to extreme northwest Indiana, near Lake Michigan.

- **Fen:** Fen is a calcareous, groundwater-fed wetland. Fens are often a mosaic of grassy areas, sedge areas, graminoid-shrubby cinquefoil, and tall shrub areas. The extent of the tall shrub component of fens may be determined by fire frequency and/or soil moisture. Drying of the soil increases the growth of shrubs. Fens typically occur in the vicinity of glacial moraines. Fens typically have a muck or peat substrate. The water level fluctuates seasonally and is fed by groundwater. Fens can be found in central and northern Indiana.
- **Forested fen:** Forested fen is a tree-dominated wetland on organic soil which receives groundwater. Forested fens are often a mosaic of treed areas, tall shrub areas, and herbaceous areas. A tall shrub layer is often well developed in forested fens. Indicative species typically include tamarack (*Larix laricina*), black ash (*Fraxinus nigra*), yellow birch (*Betula alleghaniensis*), poison sumac (*Toxicodendron vernix*), and red maple (*Acer rubrum*). Forested fens occur in wet lowlands, where moraines meet outwash features or depressions. Forested fens have saturated, poorly to very poorly drained soils that are often muck, but some seasonal flooding can occur in forested fens that are especially level. This community is a late successional stage of fen or circumneutral bog. Forested fens occur in northern Indiana.
- **Forested swamp:** Forested swamp is a seasonally inundated to intermittently exposed wetland of large river bottoms. Forested swamps do not receive direct flow from river flooding except under exceptional circumstances. Forested swamps occur in depressions, sloughs and large bottomlands, typically dominated by tree species such as swamp cottonwood (*Populus heterophylla*), green ash (*Fraxinus pennsylvanica*), and swamp white oak (*Quercus bicolor*). In northern Indiana important tree species include black ash (*Fraxinus nigra*), yellow birch (*Betula alleghaniensis*), and red maple (*Acer rubrum*). Poorly to very poorly drained and aerated soils characterize the swamp environment. Soils usually are mineral not muck or peat. This community type is found throughout Indiana.
- **Marl beach:** Marl beach is a fen-like community located on the marly muck shorelines of lakes. Marl precipitate is evident. A thin layer of water is present in spring, but dries down in summer. Draw-down of a lake creates additional area for this community to develop on. Marl beaches can be found in extreme northern Indiana, primarily in the northeast.
- **Muck flat:** Muck flat is a shoreline and lake community possessing a unique flora of sedges and annual plants, many of which are also found on the Atlantic and Gulf Coastal Plains. This community is found at the margins of lakes or covering shallow basins. This community has a peat substrate. The muck flats can float on the water surface, but during high water periods are usually inundated. The water level of a basin fluctuates during a season or from year to year in response to the amount of precipitation. This exposes bare substrate needed for germination by species of the community. Muck flats are found in northern Indiana.
- **Panne:** Panne is a groundwater fed herbaceous wetland occupying interdunal swales near Lake Michigan. Pannes are located on the lee side of the first or second line of dunes from the lakeshore. The soil is wet, calcareous sand. Pannes are located in counties bordering Lake Michigan.
- **Sand flat:** Sand flat is a shoreline and lake community possessing a unique flora of sedges and annual plants, many of which are also found on the Atlantic and Gulf Coastal Plains. This community is found at the margins of lakes or covering shallow basins. This community has a sand substrate. During high water periods sand flats at the margins of

lakes or ponds are inundated. The water level of a basin fluctuates during a season or from year to year in response to the amount of precipitation. This exposes bare substrate needed for germination by species of the community. Sand flats occur in northern Indiana, and in the Plainville Sand Section of southwest Indiana.

- **Sedge meadow:** Sedge meadow is an herbaceous wetland typically dominated by graminoid species such as flat sedge (*Cyperus* spp.), spike rush (*Eleocharis* spp.), rushes (*Juncus* spp.) and sedges (*Carex* spp.). Sedge meadow is an herbaceous wetland of stream margins and river floodplains, and lake margins or upland depressions. Streamside sedge meadows are frequently flooded in the spring and early summer. Sedge meadows of lake margins and depressions often contain standing water during wet months and after heavy rains; during dry periods, the water level is at or just below the substrate. Sedge meadow usually occupies the ground between a marsh and the uplands, or a shrub swamp or wet forest. Periodic high water can kill trees and shrubs invading sedge meadows. Sedge meadows can be found in the northern half of the state.
- **Shrub swamp:** Shrub swamp is a shrub-dominated wetland that is seasonally inundated to intermittently exposed. This community occurs in depressions and the substrate is either mineral soils or muck, as opposed to peat which is characteristic of bogs. Shrub swamp is characterized by non-flowing or very slowly flowing water with levels that fluctuate seasonally. Shrub swamps are persistent, though considered successional. Two opportunistic native shrubs, sandbar willow (*Salix exigua*) and gray dogwood (*Cornus racemosa*), by themselves, are not indicative of shrub swamps. This community type is found throughout Indiana.
- **Sinkhole pond:** Sinkhole ponds are water-containing depressions in karst topography. Sinkhole ponds are found in the Mitchell Karst Plain in south-central Indiana.
- **Sinkhole swamp:** Sinkhole swamps are depressions in karst topography dominated by tree or shrub species. Sinkhole swamps are found in the Mitchell Karst Plain in south-central Indiana.
- **Wet floodplain forest:** Wet floodplain forest is a broadleaf deciduous forest of river floodplains. Wet floodplain forests occur in depressions and flats on narrow to wide floodplains and also on recently exposed substrates that are frequently flooded. Wet floodplain forests are frequently flooded and may have standing water seasonally to permanently present. Wet floodplain forests occur statewide.
- **Wet prairie:** Wet prairie is an herbaceous wetland typically dominated by graminoid species such as prairie cordgrass (*Spartina pectinata*), bluejoint (*Calamagrostis canadensis*), and sedges (*Carex* spp.). Vegetation height is often 2-3 m. The species diversity of wet prairies is lower than that of mesic prairies. Wet prairies occur in deep swales and the substrate ranges from very deep black mineral soils (which are high in organic matter) to muck. Ponding in spring lasts for several weeks prior to drainage. Wet prairies commonly occur in the Grand Prairie Natural Region, the Tipton Till Plain and the Bluffton Till Plain, with a few examples found in the Northern Lakes Natural Region.
- **Wet sand prairie:** Wet sand prairie is an herbaceous wetland typically dominated by graminoid species such as prairie cordgrass (*Spartina pectinata*), bluejoint (*Calamagrostis canadensis*), and sedges (*Carex* spp.). Vegetation height is often 2-3 m. The species diversity of wet prairies is lower than that of mesic prairies. Wet lowland prairies occur in deep swales and the substrate is sand, sometimes mixed with muck. Flooding is a regular springtime occurrence in wet sand prairie and may last several weeks. This community occurs in a mosaic with marsh and other wetlands, and with upland prairies and sand



savannas. Fire was frequent occurrence, but more common in the fall when waters had receded. This community occurs in northwest Indiana and in the Plainsville Sands area.

## **Attachment 3: 40 CFR 121.7 Citation and Justification**

### **NWP Denial Citation and Justification**

It is the judgment of the Office of Water Quality that the proposed Nationwide Permit 43 may violate Indiana Code (IC) 13-18-4-5 and the water quality standards (WQS) set forth at 327 Indiana Administrative Code (IAC) 2-1-6(a)1, and 327 IAC 2-1.3-3.

1. Indiana Code 13-18-4-5 states in part:

A person may not:

- (1) throw, run, drain or otherwise dispose into any of the streams or waters of Indiana;
- or
- (2) cause, permit, or suffer to be thrown, run, drained, allowed to seep, or otherwise disposed into any waters; any organic or inorganic matter that causes or contributes to a polluted condition of any waters, as determined by a rule of the board adopted under Sections 1 and 3 of this chapter.

2. 327 Indiana Administrative Code 2-1-6(a)1 states in part:

All waters at all times and at all places meet the minimum conditions of being free from substances, materials, and discharges that form objectionable deposits, are unsightly or deleterious, and are toxic to plant, animal or aquatic life.

3. 327 Indiana Administrative Code 2-1.3-3 states in part:

For all surface waters of the state, existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected.

Because the discharges associated with the activities specified in NWP 43 may, even as conditioned, violate Indiana's WQS, projects undertaking those activities will require a site-specific Section 401 Water Quality Certification to ensure compliance with the water quality requirements found in 327 IAC 2. For NWP 43 activities to receive a site-specific Section 401 Water Quality Certification, the applicant must provide information for the proper installation, monitoring and maintenance of adequate pre-treatment measures and appropriate mitigation to ensure measures installed in waters of the U.S do not violate the states water quality standards identified above.

## General Condition (GC) Citation and Justification

**To ensure projects completed under the Indiana certified NWP's comply with Indiana's WQS, the Indiana general conditions are required.**

- GC (1) For certain NWP's, IDEM has placed a notification requirement to ensure the discharges associated with the activities specified in those NWP's comply with 327 IAC 2. To appropriately evaluate impacts to water quality, including cumulative impacts, Indiana needs to be notified.
- GC (2) Several NWP's authorize minor dredging. This condition requiring the deposit any dredged material in a contained upland disposal area to prevent sediment run-off to any waterbody is necessary to ensure the discharges associated with the disposal of the dredged material complies with 327 IAC 2.
- GC (3) Per 40 CFR 122.26 and 327 IAC 15, the use of appropriate stormwater control measures and maintenance thereof will prevent any sediment laden water from migrating off site and entering waterways and wetlands, potentially impairing water quality.
- GC (4) Per IC 13-14-4-2, the department may inspect public or private property to inspect for and investigate possible violations of environmental management laws. Additionally, 40 CFR 121.11 allows the certifying authority the right to inspect a facility or activity prior to initial operation of a certified project.
- GC (5) This condition is necessary to ensure a projects permanent and secondary impacts fall within the designated minimal impact thresholds specified in GC 13 and GC 14. This condition is necessary to ensure authorized project comply with 327 IAC 2.
- GC (6) This condition is necessary to ensure projects are implemented in accordance with this Section 401 Water Quality Certification and only projects described in the notification are authorized. This ensures compliance with 327 IAC 2 and 327 IAC 5-2-8.
- GC (7) This condition is necessary to ensure only clean fill materials are proposed for discharge to ensure compliance with 327 IAC 2. Discharges of pollutants may require separate authorization under Section 402 of the Federal Clean Water Act.
- GC (8) This condition is necessary to ensure mitigation banking projects go through the procedures found in 33 CFR 332 and IDEM has the opportunity to appropriately review and condition any proposed mitigation bank to ensure it complies with 327 IAC 2.
- GC (9) Projects that will permanently change the sinuosity, flow path, velocity, cross-sectional area or the slope of a stream have more than a minimal impact. These activities can change the physical, chemical, and biological integrity of waters by impacting aquatic life movement, sediment transport, and changing the thalweg of a stream. These activities do not comply with 327 IAC 2.
- GC (10) Salmond streams are designated for special protection by 327 IAC 2-1.5-5(a)(3). Only those activities identified in GC (10) are authorized by this WQC. Compliance with these activities, conditions and work restrictions will ensure

the chemical, physical and biological integrity of the salmonid waters are maintained and protected in compliance with 327 IAC 2.

- GC (11) These waters are designated as Outstanding State Resource Waters by 327 IAC 2-1-11(b), 327 IAC 2-1.3-3(d), and 327 IAC 2-1.5-19(b). Individual Section 401 Water Quality Certifications are required for these waters to ensure there is no degradation and their water quality is protected and maintained in accordance with 327 IAC 2-1-1.5 and 327 IAC 2-1.5-3.
- GC (12) These wetlands and special aquatic sites are synonymous with Rare and Ecologically important wetland types under 327 IAC 17-1-2(3)(B). Individual Section 401 Water Quality Certifications are required for impacts to these waters to ensure there is no degradation and their water quality is protected and maintained in accordance with 327 IAC 2-1-1.5 and 327 IAC 2-1.5-3.
- GC (13) To ensure projects comply with the water quality standards found at 327 IAC 2, IDEM has established 0.10 acre as the minimal impact threshold for the state of Indiana. To ensure consistency with the policy established in 327 IAC 17-2-2(b), this is the threshold for which minimal impact projects are eligible for general permit authorizations. To allow more projects to fit under the NWP's, IDEM has increased this threshold to 0.25 acre if compensatory mitigation is conducted in accordance with GC 15. Compensatory mitigation ensures there is no permanent degradation to water quality in compliance with 327 IAC 2.
- GC (14) To ensure projects comply with the water quality standards found at 327 IAC 2, IDEM has established 300 linear feet as the minimal impact threshold for streams in the state of Indiana. To allow more projects to fit under the NWP's, IDEM has increased this threshold to 500 linear feet if compensatory mitigation is conducted in accordance with GC 16. Compensatory mitigation ensures there is no permanent degradation to water quality in compliance with 327 IAC 2.
- GC (15) 327 IAC 2-1.3-3 establishes anti-degradation standards for all waters of the State to include waters of the U.S. Proposed activities that exceed the minimal impact thresholds identified in GC 13 require compensatory mitigation to ensure there is no permanent degradation. IDEM is authorizing the use of mitigation banks and the Indiana Stream and Wetland Mitigation Program since the use of the NWP's does not allow for the placement of specific conditions on a permittee responsible mitigation proposal. IDEM is requiring proof of purchase and establishing a timeframe for submittal which is consistent with current Corps and IDEM procedures. To ensure aquatic resource functions and values are replaced, the compensatory mitigation ratios and service area requirements are based in part on the requirements found in IC 13-18-22 and 33 CFR 332.
- GC (16) 327 IAC 2-1.3-3 establishes anti-degradation standards for all waters of the State to include waters of the U.S. Proposed activities that exceed the minimal impact thresholds identified in GC 14 require compensatory mitigation to ensure there is no permanent degradation. IDEM is authorizing the use of mitigation banks and the Indiana Stream and Wetland Mitigation Program since the use of the NWP's does not allow for the placement of specific conditions on a permittee responsible mitigation proposal. IDEM is requiring proof of

purchase and establishing a timeframe for submittal which is consistent with current Corps and IDEM procedures. To ensure aquatic resource functions and values are replaced, the compensatory mitigation ratios and service area requirements are based in part on the requirements found in IC 13-18-22, 327 IAC 2 and 33 CFR 332.

- GC (17) The goal of 327 IAC 2 is to restore and maintain the chemical, physical, and biological integrity of waters of the state. This condition is required to ensure there are no state rare, threatened, or endangered water dependent species impacts authorized by the NWP.
- GC (18) This a clarification condition to allow the use of multiple NWPs if they do not exceed specific impact thresholds. This condition is necessary to ensure compliance with 327 IAC 2.
- GC (19) This is a necessary condition to ensure an applicant submitted all required information with the notification required by GC 1. Without all necessary information, IDEM cannot determine if a project complies with 327 IAC 2.
- GC (20) Certain NWPs allow for temporary impacts. If these activities are poorly implemented, they result in discharges that would affect water quality. This condition is necessary to ensure projects comply with 327 IAC 2 and 327 IAC 15.
- GC (21) Per 327 IAC 2-1-1.5, the goal of Indiana's water quality standards is to restore and maintain the chemical, physical, and biological integrity of the state's waters. Activities authorized by several NWPs allow for the installation of permanent stream encapsulations. If the encapsulations and associated fill are not properly installed, they can cause erosion and scour within stream channels, interfere with sediment transport and aquatic organism passage which alters the chemical, physical, and biological integrity of waters. The sumping requirements were developed by IDEM and the Indiana Department of Transportation and are part of their standards and specifications. The requirements for perennial streams greater than 12 feet were designed by the Federal Highway Administration to ensure aquatic organism passage is considered during culvert installations. These conditions are necessary to ensure compliance with 327 IAC 2.
- GC (22) Certain NWPs allow for the discharge of riprap or other bank stabilization material. This condition is necessary to ensure authorized activities do not interfere with sediment transport, create aquatic life barriers, or interfere with movement between aquatic and upland habitats and ensure compliance with 327 IAC 2.
- GC (23) Several NWPs allow temporary impacts. Since these activities exceed the minimal impact threshold specified in GC 13, IDEM is requiring notification to ensure they are properly restored. This will ensure compliance 327 IAC 2.
- GC (24) Several NWPs allow temporary impacts. This condition is necessary to ensure those temporary impacts are restored so there is no degradation and the project complies with 327 IAC 2.
- GC (25) This condition is necessary to ensure only projects that have a minimal impact to water quality and comply with 327 IAC 2 are authorized by the NWPs.

### **Nationwide Permit # 12 Citation and Justification**

Per 327 IAC 2-1-1.5, the goal of Indiana's water quality standards is to restore and maintain the chemical, physical and biological integrity of the state's waters. Please refer to the citations and justifications above for references to General Conditions. The conversion of forested and scrub shrub wetlands to emergent wetlands is a permanent impact and results in a degradation of the existing chemical, physical, and biological integrity of the wetlands. The depth requirements for utility lines installed within a river or stream can be found at 312 IAC 10-5-4. These depth requirements ensure utilities do not create a hydraulic jump within the stream channel which could interfere with sediment transport, aquatic life movements, and otherwise impact water quality. These conditions ensure compliance with 327 IAC 2.

### **Nationwide Permit #29 Citation and Justification**

Per 327 IAC 2-1-1.5, the goal of Indiana's water quality standards is to restore and maintain the chemical, physical and biological integrity of the state's waters. Please refer to the citations and justification above for references to General Conditions and NWP Specific Conditions. These conditions are necessary to ensure the existing beneficial uses of waters of the State are protected and there is no permanent degradation to water quality. Stream relocations are not authorized because these activities change the physical, chemical, and biological integrity of waters by impacting aquatic life movement, sediment transport, and changing the thalweg of a stream. Stormwater management facilities are not authorized because they convert waters of the state to a pollution prevent device or convert them to a differing use for water retention which degrades the existing beneficial uses and changes the chemical, physical, and biological integrity. These conditions ensure compliance with 327 IAC 2.

### **Nationwide Permit #39 Citation and Justification**

Per 327 IAC 2-1-1.5, the goal of Indiana's water quality standards is to restore and maintain the chemical, physical and biological integrity of the state's waters. Please refer to the citations and justification above for references to General Conditions and NWP Specific Conditions. These conditions are necessary to ensure the existing beneficial uses of waters of the State are protected and there is no permanent degradation to water quality. Stream relocations are not authorized because these activities change the physical, chemical, and biological integrity of waters by impacting aquatic life movement, sediment transport, and changing the thalweg of a stream. Stormwater management facilities are not authorized because they convert waters of the state to a pollution prevent device or convert them to a differing use for water retention which degrades the existing beneficial uses and changes the chemical, physical, and biological integrity. These conditions ensure compliance with 327 IAC 2.

### **Nationwide Permit #40 Citation and Justification**

Per 327 IAC 2-1-1.5, the goal of Indiana's water quality standards is to restore and maintain the chemical, physical and biological integrity of the state's waters. Please refer to the citations and justification above for references to General Conditions. Stream relocations are not authorized because these activities change the physical, chemical, and biological integrity of waters by impacting aquatic life movement, sediment transport, and changing the thalweg of a stream. The construction of drainage ditches and perforated tile within wetlands degrades the chemical, physical, and biological integrity by removing hydrology and changing the use. The requirements for riser pipes are necessary to ensure wetlands are not degraded by the removal of hydrology. These conditions ensure compliance with 327 IAC 2.

### **Nationwide Permit #42 Citation and Justification**

Per 327 IAC 2-1-1.5, the goal of Indiana's water quality standards is to restore and maintain the chemical, physical and biological integrity of the state's waters. Please refer to the citations and justification above for references to General Conditions and NWP Specific Conditions. These conditions are necessary to ensure the existing beneficial uses of waters of the State are protected and there is no permanent degradation to water quality. Stream relocations are not authorized because these activities change the physical, chemical, and biological integrity of waters by impacting aquatic life movement, sediment transport, and changing the thalweg of a stream. Stormwater management facilities are not authorized because they convert waters of the state to a pollution prevent device or convert them to a differing use for water retention which degrades the existing beneficial uses and changes the chemical, physical, and biological integrity. The condition for trails, bike paths, and golf cart paths is necessary to ensure hydrologic connectivity between wetlands to ensure there is no loss of hydrology which results in water quality degradation. These conditions ensure compliance with 327 IAC 2.

### **Nationwide Permit #44 Citation and Justification**

Per 327 IAC 2-1-1.5, the goal of Indiana's water quality standards is to restore and maintain the chemical, physical and biological integrity of the state's waters. Please refer to the citations and justification above for references to General Conditions and NWP Specific Conditions. Stormwater management facilities are not authorized because they convert waters of the state to a pollution prevent device or convert them to a differing use for water retention which degrades the existing beneficial uses and changes the chemical, physical, and biological integrity. The dewatering requirements are necessary to ensure no objectionable deposits occur from an authorized discharge. These conditions ensure compliance with 327 IAC 2.

### **Nationwide Permit #51 Citation and Justification**

Per 327 IAC 2-1-1.5, the goal of Indiana's water quality standards is to restore and maintain the chemical, physical and biological integrity of the state's waters. Please refer to the citations and justification above for references to General Conditions. These conditions are necessary to ensure only minimal impact projects are authorized by this NWP. These conditions ensure there are no permanent changes to the physical, chemical, and biological integrity of waters by impacting aquatic life movement, sediment transport, and changing the thalweg of a stream. These conditions ensure compliance with 327 IAC 2.

### **Nationwide Permit #52 Citation and Justification**

Per 327 IAC 2-1-1.5, the goal of Indiana's water quality standards is to restore and maintain the chemical, physical and biological integrity of the state's waters. Please refer to the citations and justification above for references to General Conditions. These conditions are necessary to ensure only minimal impact projects are authorized by this NWP. These conditions ensure there are no permanent changes to the physical, chemical, and biological integrity of waters by impacting aquatic life movement, sediment transport, and changing the thalweg of a stream. These conditions ensure compliance with 327 IAC 2.

### **Nationwide Permit #57 Citation and Justification**

Per 327 IAC 2-1-1.5, the goal of Indiana's water quality standards is to restore and maintain the chemical, physical and biological integrity of the state's waters. Please refer to the citations and justifications above for references to General Conditions. The conversion of forested and scrub shrub wetlands to emergent wetlands is a permanent impact and results in a degradation of the existing chemical, physical, and biological integrity of the wetlands. The depth requirements for utility lines installed within a river or stream can be found at 312 IAC 10-5-4. These depth requirements ensure utilities do not create a hydraulic jump within the stream channel which could interfere with sediment transport, aquatic life movements, and otherwise impact water quality. These conditions ensure compliance with 327 IAC 2.

### **Nationwide Permit #58 Citation and Justification**

Per 327 IAC 2-1-1.5, the goal of Indiana's water quality standards is to restore and maintain the chemical, physical and biological integrity of the state's waters. Please refer to the citations and justifications above for references to General Conditions. The conversion of forested and scrub shrub wetlands to emergent wetlands is a permanent impact and results in a permanent degradation of the existing chemical, physical, and biological integrity of the wetlands. The depth requirements for utility lines installed within a river or stream can be found at 312 IAC 10-5-4. These depth requirements ensure utilities do not create a hydraulic jump within the stream channel which could



interfere with sediment transport, aquatic life movements, and otherwise impact water quality. These conditions ensure compliance with 327 IAC 2.