

FINAL TRIMMING AND CLEANING

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Army Corps of Engineers Section 404/Section 10 Permits (U.S.)

Excavation and/or discharges of dredged or fill materials in waters of the United States below the ordinary high water elevation on each bank requires a U.S. Army Corps of Engineer's Section 404 Permit prior to the commencement of construction. Section 404 of the Clean Water Act requires a permit for filling and grading work, mechanized land clearing, ditching or other excavation activity and piling installation. A Section 10 Permit is required for the obstruction or alteration of navigable waters of the U.S. This authority is based on the Rivers and Harbors Act and regulates work river ward or below the ordinary high water elevation of a navigable stream. Navigable waters of the U.S. are those waterways that are now used, or have been used in the past, or may be used in the future to transport interstate or foreign commerce. Engineer Form 4345, *Application for a Department of Army Permit* is used to apply for these permits. Only one application is required should both permits be required. The Corps will issue the appropriate permit and/or letter of permission (Section 10 or Section 404) needed for the activity.

For the Section 404 permit in non-tidal waters, the limits of jurisdiction are as follows:

1. No wetlands* present - jurisdiction is between the limit of the ordinary high water elevation on each bank.
2. When adjacent wetlands are present - the jurisdiction extends beyond the ordinary high water mark to the limits of the adjacent wetlands.
3. When only wetlands are present, the limits of jurisdiction extend to the limits of the wetlands.

Waters of the United States include rivers, streams, creeks, intermittent tributaries, natural ponds, prairie potholes, impoundments, lakes and wetlands. They do not include land that was converted from wetland to cropland prior to December 23, 1985, nor do they include waste treatment systems such as treatment ponds or lagoons designed to meet the requirement of the Clean Water Act.

Disposal and clearance of material in waters of the U.S. without the proper permits should not be allowed.

See Army Corps of Engineers Section 404/Section 10 Permit (U.S.) in the Laws and Regulations Section.

Burning

Open Burning

Open burning is generally prohibited. If it is determined that there is no alternative to the burning of woody material, then an Open Burning Variance must be obtained from the Indiana Department of Environmental Management (IDEM). For INDOT projects involving clearing of

less than 4 (1.6 ha) acres, the contractor must obtain a variance. For projects clearing greater than 4 acres, INDOT will obtain the variance. Fires must be attended at all times until completely extinguished. No burning shall be conducted during unfavorable meteorological conditions such as temperature inversions, high winds, air stagnation, etc. Clark, Floyd, Lake and Porter counties have an air quality problem and will not allow any open burning variances. Some cities will have additional local restrictions. Additional information can be found in Operating Procedure 13. All pertinent training and personal protective equipment requirements should be obtained through the Safety Supervisor.

Air Curtain Destructor (Burning)

An air curtain is two long pipes constructed into a “T” shape which is positioned next to a pit in the ground with approximately 12 to 15 ft. depth and 10 ft. width. The length of the pit is a function of the length of the pipe. A fan is connected at the end of the “T” shape and forces air through a slit at the other end. This curtain of air is blown into the pit where the burning of the woody material should be maintained below the curtain of air. A completed application and \$50 fee must be submitted at least 30 days before operation begins to the Department of Environmental Management (IDEM) to obtain an approval letter which must remain at the air curtain destructor site at all times. Only untreated wood products shall be burned. The air curtain destructor shall be located no less than 250 feet from any private residence, public roadway, power line, or structure, no less than 500 feet from any pipeline or fuel storage area, and within 1,000 feet of a landfill or transfer station. A list of approval conditions can be found in the Appendix Section.

Asbestos Burning

Asbestos is a mineral with long, thin fibrous crystals. Its strength and the unique property of having a high melting point made asbestos an ideal material for many products, especially insulation and fireproofing. Because of its resistance to heat, asbestos is not destroyed in the fire and will become airborne when liberated from its confining matrix. The asbestos fibers are microscopic and entrainment in the air presents a health hazard to the respiratory system. Construction projects may involve exposure to asbestos with building renovation/demolition or burning. Asbestos material has been found in approximately 20% of all buildings. It is most likely to occur in buildings built between 1950 and 1975. 326 IAC 4-1-3 (a) (2) (D) states that all asbestos containing materials must be removed before the burning of a structure.

See the Burning Section of the Laws and Regulations Section for further information.

Construction in a Floodway

Any project involving construction, excavation, or placement of fill within the floodway of any river or stream unless exempted, requires the written approval of the Indiana Department of Natural Resources (IDNR) prior to initiating the activity. A floodway is defined as the channel of a river or stream and those portions of the flood plain adjoining the channel, which are reasonably required to carry and discharge the flood water or flood flow of any river or stream. Typically this is the 100 year floodway. Generally, any activity which disturbs soil or

sediments within the floodway, and does not meet the requirements of the bridge exemption, requires a permit from IDNR. Except for the construction of dams, dikes, or levees, work in floodways along rivers and streams where the drainage area is less than 1 square mile, requires no Construction in a Floodway Permit.

This permit often contains conditions. These conditions carry the force of law, and must be adhered to. They must be understood and complied with. They are currently being included in the letting package. The permit should be posted at the construction site at all times. It is the project engineer's responsibility to be familiar with these conditions, and comply with them. If there are conditions that you cannot feasibly comply with, contact the Division of Operations Support for assistance. Do not ignore any conditions. **Remember, if you have one permit for an activity, you are not exempted from obtaining all required permits for the same work. Make sure you have obtained all other required permits.**

See the Construction in a Floodway Laws and Regulations Section for more detailed information.

Fugitive Dust

Fugitive dust means the generation of particulate matter to the extent that some portion of the material escapes beyond the property line or boundaries of the property, right-of-way, or easement on which the source is located regardless of whether from a single operation or a number of operations. Simply, if at least fifty percent (50%) of the dust can be breathed in or is visible crossing the right-of-way, it is fugitive dust.

The final trimming and cleaning may generate fugitive dust. Indiana code states that fugitive dust from construction or demolition where **every reasonable precaution has been taken in minimizing fugitive dust emissions** is exempted from the fugitive dust rule. This code also provides some fugitive dust control measures. These include spraying with water or treating with an approved oil or chemical dust suppressant. These precautions are especially important on dry, windy days.

See the Fugitive Dust Section of the Laws and Regulations Section for detailed information.

Lake Preservation Act (Permit)

The Lake Preservation Act mandates that any person proposing to perform an activity at or lakeward of the legal shoreline or average normal water level (mark) of a public freshwater lake must obtain written approval of the Indiana Department of Natural Resources prior to initiating the activity. A *public freshwater lake* is a naturally occurring body of water for which access is provided by the property owner to the general public, **excluding** Lake Michigan, lakes within the city of Hammond, borrow pits, sinkholes, or privately owned water bodies associated with surface coal mining. Most public freshwater lakes are located in the northern part of the state.

See the Lake Preservation Act Section of the Laws and Regulations Section for detailed information.

Navigable Waterway Permit

A Navigable Waterway permit is required from IDNR when working below the ordinary high water mark within the floodplain of a navigable waterway. This includes any activity which disturbs sediments below the high water mark, including final trimming and clearing in a navigable waterway. A list of navigable waterways is included in the Laws and Regulations Section under Navigable Waterway Permit.

An IDNR Construction in a Floodway Permit can also serve as a Navigable Waterway Permit. However, exemption from the Construction in a Floodway Permit does not exempt you from obtaining a Navigable Waterway Permit.

See the Navigable Waterway Permit Section of the Laws and Regulations Section for further information.

Rule 5 - Erosion Control

The requirements of Rule 5 apply to projects which disturb 5 acres or more of total land area. Projects that result in the disturbance of less than five acres, but which are part of a larger common plan of development or sale are also subject to Rule 5. If neither of these applies, Rule 5 does not apply. However, erosion control practices should still be utilized at the site regardless of the land area that is disturbed. Often erosion control measures are conditions of permits. It is the responsibility of the project engineer to ensure that erosion control measures are properly maintained. Frequent temporary seeding can be one of your most effective tools in controlling erosion.

See the Rule 5-Erosion Control regulations section for detailed information.

Section 401 Water Quality Certification

Excavation and/or discharges of dredged or fill materials in waters of the United States below the ordinary high water elevation on each bank requires a U.S. Army Corps of Engineer's Section 404 Permit and possibly a Section 401 Water Quality Certification prior to the commencement of construction. For non-tidal waters, the limits of jurisdiction are as follows:

1. No wetlands present - jurisdiction is between the limit of the ordinary high water elevation on each bank.
2. When adjacent wetlands are present - the jurisdiction extends beyond the ordinary high water mark to the limits of the adjacent wetlands.
3. When only wetlands are present, the limit of jurisdiction extends to the limits of the wetlands.

Waters of the United States, generally speaking, include rivers, streams, creeks, intermittent tributaries, natural ponds, prairie potholes, impoundments, lakes and wetlands.

The Section 401 Water Quality Certification is the state's certification to the U.S. Army Corps of Engineers that the project complies with the state's water quality standards. The

Indiana Department of Environmental Management (IDEM) is responsible for the Section 401 Water Quality Certificate review process in Indiana. Disposal and clearance of material in Waters of the United States without the proper permits should not be allowed.

See the Section 401 Water Quality Certification Section of the Laws and Regulations Section for detailed information.

Solid Waste Disposal

The disposal of uncontaminated and untreated natural growth solid waste including tree limbs, stumps, leaves, and grass clippings that are greater than 3 feet in length are not subject to any regulations. These materials may be disposed of on-site, if the property is owned by INDOT. When buried on private property, written permission must be received from the property owner. Necessary arrangements must be made with the property owner for a suitable disposal location. Open burning to debris is subject to other rules. David Rice of IDEM's Office of Air Management must be contacted at (317) 232-8220 before any type of opening burning is conducted. Contact the local Health Department or Solid Waste Management District for more information about ordinances prohibiting open burning in your area.

See Solid Waste Disposal Section of the Laws and Regulations Section for detailed information.