



# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

*Mitchell E. Daniels Jr.*  
Governor

*Thomas W. Easterly*  
Commissioner

100 North Senate Avenue  
Indianapolis, Indiana 46204  
(317) 232-8603  
Toll Free (800) 451-6027  
[www.idem.IN.gov](http://www.idem.IN.gov)  
May 3, 2010

Ms. Laura Hilden  
Indiana Department of Transportation  
100 N. Senate Avenue, Room N642  
Indianapolis, IN 46204

Dear Ms. Hilden:

Re: No State Regulated Wetland Permit Needed  
Project: I-69 Section 3  
IDEM No.: 2010-014-14-JWR-A  
COE No.: LRL-2010-39-djd  
INDOT Des. No.: 0300377  
County: Daviess and Greene

The Office of Water Quality has reviewed your application dated and received January 7, 2010. According to the application, you propose to discharge approximately 11,290 cubic yards of clean earthen fill material into a 0.70 acre isolated wetland and excavate 22,585 cubic yards of material from a 0.70 acre isolated wetland. The isolated wetland to receive a discharge of fill material is located on the south side of CR 750 north approximately 0.25 mile east of CR 475 east in Daviess County. The isolated wetland to be excavated is located east of CR 200 west at the county line between Daviess County and Greene County.

A site inspection was conducted by IDEM staff on January 26, 2010. Based on the site inspection, it was determined that the two isolated wetlands in question are considered fringe wetlands associated with private ponds created by excavating and diking dry land. In accordance with IC 13-11-2-74.5, the two areas identified as isolated wetlands in your application received January 7, 2010 are considered Exempt Isolated Wetlands. Because the proposed activity does not involve a discharge of fill material to State Regulated (isolated) wetlands, it does not require a State Regulated Wetland Permit as specified under Indiana Code (IC) 13-18-22.

This correspondence 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 Storm Water Permits Section at 317-233-1864 concerning the possible need for a 327 IAC 15-5 (Rule 5) permit if you plan to disturb greater than one (1) acre of soil during construction.

If you have any questions about this letter, please contact Jason Randolph, Project Manager, of my staff at 317-233-0467, or you may contact the Office of Water Quality through the IDEM Environmental Helpline (1-800-451-6027).

Sincerely,



Martha Clark Mettler  
Deputy Assistant Commissioner  
Office of Water Quality

cc: Jeremy Kieffner, Bernardin Lochmueller and Associates



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May 3, 2010

VIA CERTIFIED MAIL HAND DELIVERY

*Des 0300379*  
*IDEM 2010-014-14-JWR-A*

Ms. Laura Hilden  
Indiana Department of Transportation  
100 N Senate Avenue, Room N642  
Indianapolis, IN 46204

Dear Ms. Hilden:

Re: Section 401 Water Quality Certification  
Project: I-69 Section 3  
IDEM No.: 2010-0140140JWR-A *Also wrong!*  
COE No.: LRL-2010-39-djd  
INDOT Des. No.: 0300377 *0300379 88*  
Counties: Daviess and Greene

The Office of Water Quality has reviewed your application for Section 401 Water Quality Certification dated and received January 7, 2010. According to the application, you propose to construct I-69 Section 3 of 6 which will be a 4-lane interstate facility approximately 25 miles in length. The interstate facility will be located between US 50 in Daviess County and US 231 in Greene County. The construction of the proposed interstate facility will require the discharge of clean earthen fill material into wetlands and streams. Wetland impacts associated with this project include 11 wetlands totaling 5.31 acres. The 5.31 acres of wetland impact consists of 2.41 acres of emergent wetland, 0.63 acre of scrub shrub wetland, and 2.27 acres of forested wetland. The project will also impact 2 open water areas totaling 0.96 acre.

Stream impacts associated with this project includes the relocation of 15 streams totaling 6,880 linear feet of impact and impacts to 23 streams totalling 9,810 linear feet from the installation of structures and riprap for bank protection. Additionally, 11 streams totalling 4,785 linear feet will be spanned or bridged by the project with no discharge of fill material below the ordinary high water mark.

As compensatory mitigation for the proposed wetland impacts, you will create 4.82 acres of emergent wetland, 1.89 acres of scrub shrub wetland, and 6.81 acres of forested wetland at an off-site location. As compensatory mitigation for stream relocation activities, you will create 4,425 linear feet of stream channel onsite and create 12,265 linear feet of stream channel with riparian corridors 50 feet wide on each side at an offsite location. The offsite mitigation site for both wetland and stream impacts is known as the Cornelius Site and it is part of an Umbrella Mitigation Bank created for impacts associated with Sections 2 and 3 of I-69. Total forested riparian corridor mitigation is 28.16 acres.

The I-69 Section 3 project begins at US 50 near Washington and extends north and northeast to US 231 in Greene County, in numerous sections in Daviess and Greene Counties in the Lower White (05120202) watershed.

Based on available information, it is the judgment of this office that the proposed project will comply with the applicable provisions of 327 IAC 2 and Sections 301, 302, 303, 306, and 307 of the Clean Water Act if you comply with the conditions set forth below. Therefore, subject to the following conditions, the Indiana Department of Environmental Management (IDEM) hereby grants Section 401 Water Quality Certification for the project described in your application received January 7, 2010 and modifications received from Jeremy Kieffner, Bernardin Lochmueller and Associates dated January 27, 2010 and April 23, 2010. Any changes in project design or scope not detailed in the application described above or modified by the conditions below are not authorized by this certification.

### **CONDITIONS OF THE SECTION 401 WATER QUALITY CERTIFICATION:**

You shall:

- 1) Deposit any dredged material in a contained upland disposal area to prevent sediment runoff to any waterbody.
- 2) Install erosion control methods prior to any soil disturbance to prevent soil from leaving the construction site. Appropriate erosion control methods include, but are not limited to, straw bale barriers, silt fencing, erosion control blankets, phased construction sequencing, and earthen berms. Monitor and maintain erosion control structures and devices regularly, especially after rain events, until all soils disturbed by construction activities have been permanently stabilized.
- 3) Install silt fence or other erosion control measures around the perimeter of any wetlands and/or other waterbodies to remain undisturbed at the project site.
- 4) Allow the commissioner or an authorized representative of the commissioner (including an authorized contractor), upon the presentation of credentials:
  - a) to enter your property, including impact and mitigation site(s);
  - b) to have access to and copy at reasonable times any records that must be kept under the conditions of this certification;
  - c) to 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 wetland site;
  - d) to sample or monitor any discharge of pollutants or any mitigation site.
- 5) Complete all approved discharges no later than four (4) years of the date of issuance of this Section 401 Water Quality Certification. You may request a one (1) year extension to the Section 401 Water Quality Certification by submitting a written request ninety (90) days prior to the deadline stated above. The written request shall contain an account of which discharges and mitigation have been completed and list the reasons an extension is requested.

- 6) Within 180 days provide a credit ledger which shows the deduction of 12,265 linear feet of stream credit, 28.16 acres of forested riparian corridor credit, 4.82 acres of emergent wetland credit, 1.89 acres of scrub shrub credit, and 6.81 acres of forested wetland credit.
- 7) Allow no construction equipment, temporary run-arounds, coffer dams, temporary causeways, temporary crossings, or other such structures to enter or be constructed within any streams identified within Section 3 of I-69, unless specifically stated, depicted, or detailed in the aforementioned correspondence and project plans. A modification of this Section 401 Water Quality Certification is required from this office if any of the aforementioned items are needed for project construction.
- 8) Remove any temporary causeway or other approved temporary structures used to facilitate construction or access upon completion of construction activities.
- 9) Ensure all relocated stream channels are seeded and stabilized before stream flows are released into the new channels.
- 10) Ensure all stream pump around activities and dewatering activities are conducted in a manner that does not discharge sediment laden water or discharges water in a manner that causes erosion.
- 11) Clearly mark all construction limits and perform no work or outside of those limits.
- 12) Plant native trees and shrubs along any streams captured into roadside side ditches on the outside right-of-way line.
- 13) Ensure no excavation or grade work is conducted below the ordinary high water mark on the streams identified as being bridged in the April 23, 2010 correspondence from Jeremy Kieffner, Bernardin Lochmueller and Associates.

This certification does not relieve you 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 Storm Water Permits Section at 317-233-1864 concerning the possible need for a 327 IAC 15-5 (Rule 5) permit if you plan to disturb greater than one (1) acre of soil during construction.

This certification does not:

- (1) authorize impacts or activities outside the scope of this certification;
- (2) authorize any injury to persons or private property or invasion of other private rights, or any infringement of federal, state or local laws or regulations;
- (3) convey any property rights of any sort, or any exclusive privileges;
- (4) 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
- (5) authorize changes in the plan design detailed in the application.

Failure to comply with the terms and conditions of this Section 401 Water Quality Certification may result in enforcement action against you. If an enforcement action is pursued, you could be assessed up to \$25,000 per day in civil penalties. You may also be subject to criminal liability if it is determined that the Section 401 Water Quality Certification was violated willfully or negligently.

This certification is effective eighteen (18) days from the mailing of this notice unless a petition for review and a petition for stay of effectiveness are filed within this 18-day period. If a petition for review and a petition for stay of effectiveness are filed within this period, any part of the certification within the scope of the petition for stay is stayed for fifteen (15) days, unless or until an Environmental Law Judge further stays the certification in whole or in part.

This decision may be appealed in accordance with IC 4-21.5, the Administrative Orders and Procedures Act. The steps that must be followed to qualify for review are:

- 1) You must petition for review in writing that states facts demonstrating that you are either the person to whom this decision is directed, a person who is aggrieved or adversely affected by the decision, or a person entitled to review under any law.
- 2) You must file the petition for review with the Office of Environmental Adjudication (OEA) at the following address:

Office of Environmental Adjudication  
100 North Senate Avenue  
IGCN Room N501  
Indianapolis, IN 46204

- 3) You must file the petition within eighteen (18) days of the mailing date of this decision. If the eighteenth day falls on a Saturday, Sunday, legal holiday, or other day that the OEA offices are closed during regular business hours, you may file the petition the next day that the OEA offices are open during regular business hours. The petition is deemed filed on the earliest of the following dates: the date it is personally delivered to OEA; the date that the envelope containing the petition is postmarked if it is mailed by United States mail; or, the date it is shown to have been deposited with a private carrier on the private carrier's receipt, if sent by private carrier.

Identifying the certification, decision, or other order for which you seek review by number, name of the applicant, location, or date of this notice will expedite review of the petition.

Note that if a petition for review is granted pursuant to IC 4-21.5-3-7, the petitioner will, and any other person may, obtain notice of any prehearing conferences, preliminary hearings, hearings, stays, and any orders disposing of the proceedings by requesting copies of such notices from OEA.

If you have procedural questions regarding filing a petition for review you may contact the Office of Environmental Adjudication at 317-232-8591.

If you have any questions about this certification, please contact Jason Randolph, Project Manager, of my staff at 317-233-0467, or you may contact the Office of Water Quality through the IDEM Environmental Helpline (1-800-451-6027).

Sincerely,



Martha Clark Mettler  
Deputy Assistant Commissioner  
Office of Water Quality

cc: Deb Snyder, USACE-Louisville, Indianapolis Field Office  
Mike Litwin, USFWS  
Danny Gautier, IDNR  
Jeremy Kieffner, Bernardin Lochmueller and Associates  
Janice Osadczuk, FHWA

