



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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June 2, 2011

VIA CERTIFIED MAIL HAND DELIVERY

Mr. Nathan Saxe
Indiana Department of Transportation
100 N Senate Avenue, Room N642
Indianapolis, IN 46204

Dear Mr. Saxe:

SCANNED TO ELECTRONIC FILE

103-0001-1PL

PROJECT NUMBER

06-06-11

DATE

JW

INITIAL

EVANSVILLE INDIANAPOLIS ILLINOIS

Re: Section 401 Water Quality Certification
Modification
Project: I-69 Section 2
IDEM No.: 2010-275-63-JWR-B
COE No.: LRL-2010-466-djd
INDOT Des. No.: 0300378
County: Gibson and Pike

This letter is in response to your requests, dated and received April 26, 2011 and April 29, 2011, for modifications to a Section 401 Water Quality Certification issued for the aforementioned project on September 22, 2010. In the original certification, you were granted approval to construct I-69 Section 2 of 6 which will be a 4-lane interstate facility between SR 64 in Gibson County and US 50 in Daviess County. The construction of Section 2 will impact 14 wetlands totaling 4.98 acres of emergent wetland, 0.03 acre of scrub shrub wetland, and 10.33 acres of forested wetland. The project will also impact 0.72 acre of aquatic bed wetland and 11 jurisdictional ponds totaling 3.83 acres. Additionally, the project will impact 121 streams totaling 45,645 linear feet. Approximately 8,615 linear feet of the 45,645 linear feet total will be bridged or spanned resulting in no permanent fill discharged below the ordinary high water mark. Total permanent stream impacts associated with this project will be 37,030 linear feet. The total project length for Section 2 is approximately 28 miles. In your requests you propose the following changes to the original certification:

1. The April 26, 2011 correspondence proposes to add additional impacts at the I-69/SR 61 Interchange. At Stream 55, you propose to add an additional 415 feet of stream impact to the already approved 1,030 linear feet of stream impact. At Stream 56, you propose to add a 120 foot culvert to the 1,110 linear feet of stream relocation. As compensatory mitigation you propose to use previously approved offsite stream mitigation areas.

2. The April 29, 2011 correspondence, which was amended via electronic mail on May 17, 2011, from Neal Bennett, Butler Fairman and Seufert, proposes to install a 272 foot long structure with 73 feet of riprap on Stream 8. Stream 8 was previously proposed to be bridged with no impacts below the ordinary high water mark. As compensatory mitigation for these stream impacts you will create 345 feet of forested riparian corridor along Stream 8. You also propose to create an additional 268 feet of riparian corridor as contingency wetland mitigation.

Based on available information, it is the judgment of this office that the proposed modifications 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 modifies the Section 401 Water Quality Certification originally issued on September 22, 2010. Any changes in project design or scope not detailed in the requests described above or modified by the conditions below are not authorized by this certification. All modifications proposed in your letters dated April 26, 2011, April 29, 2011, and electronic mail received May 17, 2011 must be conducted in compliance with all conditions of the original Water Quality Certification issued for this project on September 22, 2010.

For the April 26, 2011 modification, Project Specific Condition 10 (a) is hereby modified to read as follows:

- a) Approximately 29,960 linear feet of stream channel shall be functioning on the sites.

For the April 29, 2011 modification, Project Specific Condition 25 through 33 are added to read as follows:

- 25) Implement the mitigation plan as described in the modification received April 29, 2011, and electronic mail correspondence from Neal Bennett, Butler, Fairman, Seufert, dated May 17, 2011 (referred to collectively hereinafter as the "mitigation plan"), and as modified by the conditions of this certification. The stream created or restored pursuant to the mitigation plan shall be referred to hereinafter as the "mitigation stream" or "mitigation streams."
- 26) Complete all activities necessary to create the mitigation stream within one (1) year of the effective date of this certification, unless IDEM grants a written extension upon request. These activities include excavation, grading, installation of hydrologic controls, and planting.

- 27) Monitor the mitigation stream site for a minimum period of three (3) continuous years. If the site does not meet the success criteria, specified in **Condition 28**, at the end of this three year period, then you will monitor the site for an additional two years for a total of five years. For IDEM to release the mitigation site from this monitoring requirement, you must demonstrate to IDEM, through your monitoring reports, that the site meets or exceeds the success criteria at the end of this three year period. If the site fails to meet the success criteria then corrective actions will be required. These corrective actions may include additional grading, planting, relocation, or other actions deemed necessary by IDEM to meet the success criteria. Corrective actions often include extended monitoring to verify the effectiveness of the corrective action. Extended monitoring may constitute the sole corrective action if IDEM believes that the site needs more time to meet the success criteria. Once you believe that the site meets or exceeds all of the success criteria listed below, you may submit a proposed final monitoring report to IDEM and suspend monitoring. If IDEM confirms that the mitigation site meets or exceeds all of the success criteria, then IDEM shall notify you that the mitigation is complete and that you may permanently discontinue monitoring.
- 28) Ensure that the mitigation stream meets all of the following success criteria:
- a) 345 feet of Buck Creek (Stream 8) is planted with trees, shrubs and herbaceous plantings.
 - b) 268 feet of Buck Creek (Stream 8) is planted with trees, shrubs, and herbaceous plantings as contingency mitigation.
 - c) 75% of the planted trees and shrubs shall be alive and showing signs of growth at the end of monitoring.
 - d) The combined surface areal coverage of *Phalaris arundinacea* (reed canary grass) and *Typha spp.* (cattail) shall not exceed 15% of the mitigation streams.
 - e) The mitigation stream is free of the following species: *Elaeagnus umbellate* (autumn olive), *Elaeagnus angustifolia* (russian olive), *Rosa multiflora* (multiflora rose), and *Lonicera maackii*, *L. morrowii*, *L. tatarica* (honeysuckle).
 - f) The stream mitigation is free from *Lythrum salicaria* (purple loosestrife) and *Phragmites australis* (common reed).
 - g) The stream mitigation exhibits no accelerated bank erosion or excessive stream bed deposition.
 - h) Any additional success criteria specified in the mitigation plan.

- 29) Monitor the mitigation stream annually, starting one full growing season after construction and planting, to determine whether it is achieving the success criteria specified in **Condition 28** of this certification. You must complete corrective actions as are necessary to ensure the mitigation stream will achieve the success criteria within the required period. These corrective actions may include additional grading, plantings, or relocation, along with extended monitoring. Describe, in the monitoring reports, any corrective actions taken to ensure success of the mitigation sites.
- 30) Permanently and clearly identify on-site all mitigation after construction. Stakes should be placed at the farthest upstream limit of the stream mitigation.
- 31) Submit annual monitoring reports of the mitigation stream to this office by December 31 of each year until released from monitoring by this office. These reports shall contain information concerning what steps you have taken to create the mitigation stream and whether it is achieving each of the success criteria specified in **Condition 28**. The reports shall include the following:
 - a) The IDEM identification number.
 - b) As-built plans (in the first year's report).
 - c) Discussion of hydrology at the mitigation site.
 - d) Discussion of plant community development at the mitigation stream sites.
 - e) Discussion of methods or means used to determine compliance with the success criteria.
 - f) Photographs representative of the mitigation stream sites and sampling points.
 - g) Identification of any problems with meeting the success criteria.
 - h) Recommendations for correcting any problems identified.
- 32) Submit as-built plans with the first year's monitoring report for the mitigation stream and/or wetland. As-built plans shall include the final grade elevations at one foot contours, including a plan view and cross sections. For relocated streams, this shall include a longitudinal profile, and lateral cross sections at the apex of each meander and at the midpoint between meanders. For wetlands, this shall include a cross section along the primary axis and secondary axis. In addition, as-built plans shall include locations and elevations of structures (e.g., culvert inverts, outfalls, inlets, berms, piezometers, wells, etc.), including markers specified in Condition 11. As-built plans shall also include the species and quantities of each species that were planted. Deviations from the approved mitigation plan must be highlighted and explained.

- 33) File a signed and recorded environmental notice, which describes the compensatory mitigation contained in the mitigation plan, with the department within sixty (60) days of the release from monitoring requirements. You may substitute a copy of a properly recorded deed restriction or conservation easement protecting the mitigation site(s) to satisfy this condition.

All other conditions of the certification not affected by this modification remain in full force as written.

This certification modification 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 modification;
- (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.

Mr. Nathan Saxe

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If you have any questions about this modified 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
✓ Jeremy Kieffner, Bernardin Lochmueller and Associates
✓ Neal Bennett, Butler, Fairman and Seufert, Inc.