

WATERWAYS

Permitting Handbook

A guide to the permit process for activities that affect Indiana's waters.



Indiana Department of
Environmental Management

www.wetlands.IN.gov



Indiana Department of Environmental Management

Office of Water Quality

401 Water Quality Certification and Isolated Wetland Program

Produced in cooperation with:

U.S. Army Corps of Engineers

Indiana Department of Natural Resources

WATERWAYS

Permitting Handbook

A guide to the permit process for activities that affect Indiana's waters.



January 2016

Overview of Waterway Regulations

This flowchart gives an overview of the regulatory process required for activities done in or near the waters of the state.

Typically regulated projects include:

Work in wetlands, and below the ordinary high water mark of streams, rivers and lakes

Have a Wetland Delineation/Waters of the United States determination completed for the site.

Determine if your proposed project requires permits.

- Wetland filling or wetland excavating
- Mechanical clearing of wetlands
- Streambank or shoreline stabilization
- Stream relocation or channelization
- Construction of bridges, culverts and stream crossings
- Construction, repair, or refacing of seawalls
- Sand, gravel or peat mining within streams, rivers or wetlands
- Construction of outfall structures, dams, causeways, or other in-stream structures
- Excavation or Dredging of lakes, streams, rivers or wetlands
- Maintenance of drainage ditches

Some projects will require authorizations from both USACE / IDEM and IDNR. Consult with agency staff to determine which agencies have jurisdiction over your project.

Work in the floodplain of a waterbody or in a navigable water, channel or public freshwater lake

NOTE: IDEM Section 401 Water Quality Certification (WQC) information is located on page 8.

NOTE: IDNR Permit information is located on page 13.

U.S. Army Corps of Engineers (USACE) Permitting Process

Submit wetland delineation for verification and jurisdictional determination
(See page 2)

USACE determines jurisdiction and if permit is required

Submit application to USACE

Application review; joint public notice with IDEM required for individual permits

Receipt of IDEM Section 401 WQC Approval required for USACE approval

Final USACE decision

Submit application with wetland delineation and USACE jurisdiction determination
(See page 10)

Review of application for completeness

Joint public notice with USACE for certain applications, IDEM notice for all others

Determination of project impacts on water quality

Final IDEM decision

Indiana Department of Environmental Management (IDEM) Permitting Process

Submit application to IDNR Division of Water
(See page 14)

Public notice and application/completeness review

Review project for impacts on fish, wildlife, and botanical resources

Review project for impacts to the floodway and its ability to efficiently carry flood flows

Hydraulic review by Division of Water

Final IDNR decision

Indiana Department of Natural Resources (IDNR) Permitting Process

TIP: Contact all three regulatory agencies early in your project planning process (see back cover for contact information).

IMPORTANT NOTE:

The purpose of this handbook is to provide general information concerning the legal requirements that apply when persons wish to engage in activities that will impact or affect wetlands or other regulated waters, including lakes, rivers, streams, and ponds. Additionally, the Indiana Department of Natural Resources (IDNR) along with the U.S. Army Corps of Engineers (USACE), Detroit, Chicago, and Louisville Districts, and the Indiana Department of Environmental Management have partnered to simplify the permit process for some types of construction projects. Given the complexity of state and federal regulations, this handbook provides a broad overview of key aspects of the regulatory processes involved, including the basic authorities of each regulatory agency, activities that are regulated, and information about what to expect from each agency. This handbook is general and not determinative of any issue, nor does it establish or affect legal rights. Agency decisions in any particular case will be made by applying applicable(s) law to the specific factual situations. Laws, regulatory authorities, and other information such as permit fees are current as of the printing of this brochure.

Up-to-date information is always available at IDEM's Web site at: www.wetlands.IN.gov.

The 2001 U.S. Supreme Court decision regarding federal jurisdiction over isolated wetlands and isolated waters (Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers *et. al.*) has affected the authority of the federal government to regulate wetlands and other waterbodies. In 2006, the U.S. Supreme Court considered the interpretation of "*Waters of the United States*" as it appears in the 1972 Clean Water Act (Rapanos *et. ux., et. al.* v. United States), leading to further regulatory uncertainty.

Such litigation, along with legislation and state agency rulemaking, will continue to shape the scope of wetland regulation in Indiana, which in turn will affect how your potential projects are regulated by federal and state agencies. IDEM's Web site provides current information on federal and state wetland regulations, which you should consult as you plan your project.

Additionally, your particular project may require other permits from state, federal, and/or local agencies and entities. You should be aware of the need for permits, as well as your obligation to obtain all necessary permits and authorizations required for your project. **It is important to remember that in some cases, an activity and/or water body may not be regulated by one agency, but will be regulated by another.** IDEM recommends that in addition to consulting with IDEM staff, you consult with various local agencies, such as your county surveyor, county plan commission, county storm water department/MS4, county highway department, and county health department when planning your project.

If your project will disturb over one acre of soil, be sure to coordinate with IDEM's Rule 5 Program. Rule 5 (327 IAC

15-5) is a performance-based regulation designed to reduce pollutants that are associated with construction and/or land disturbing activities. The requirements of Rule 5 apply to all persons who are involved in construction activity (which includes clearing, grading, excavation and other land disturbing activities) that results in the disturbance of one acre or more of total land area. If the land disturbing activity results in the disturbance of less than one acre of total land area, but is part of a larger common plan of development or sale, the project is still subject to storm water permitting. The application for a Rule 5 permit is called a Notice of Intent, or NOI, because the *applicant* or *project site owner* is essentially notifying IDEM of their intent to operate their proposed construction project in a manner consistent with Rule 5.

Contact:

**Indiana Department of Environmental Management
Storm Water Program
100 North Senate Avenue IGCN 1255
Indianapolis, IN 46204-2251
(800) 451-6027 or (317) 233-1864**

For more information on IDEM and Rule 5 requirements, visit the Web site at: www.IN.gov/idem/4902.htm.

Agricultural producers who may be planning work in wetlands are advised to contact the Natural Resources Conservation Service (NRCS) for additional information on compliance with the Swampbuster Provisions of the Food Security Act. Persons receiving farm program benefits must ensure that their project is in compliance with these separate requirements administered by the U.S. Department of Agriculture.

Contact:

**U.S. Department of Agriculture
Natural Resources Conservation Service
Indiana State Office
6013 Lakeside Boulevard
Indianapolis, IN 46278
(317) 290-3200**

www.IN.nrcs.usda.gov

Contact:

**Indiana Department of Natural Resources
Division of Water
Technical Services Section
402 West Washington St.
Room W264
Indianapolis, IN 46204-2251
(317) 232-4160 Toll Free: (877) 928-3755
Fax: (317) 233-4579
www.IN.gov/dnr**

Table of Contents

Introduction	i
Who Should Read This Handbook?	i
Why We Need to Protect Our Waters	ii
How to Use This Handbook	ii
Agencies That Regulate Indiana’s Waters	ii-iii
Part I. U.S. Army Corps of Engineers	1
Types of activities that require authorization	1
History and authority of the U.S. Army Corps of Engineers Regulatory Programs.....	1
Jurisdiction	2
Permits	2
How the U.S. Army Corps of Engineers reviews a project	4
Contact information	5-6
Part II. Indiana Department of Environmental Management	7
Types of activities that require authorization	7
History and authority of IDEM Regulatory Programs.....	7
Jurisdiction.....	8
Permits	8
How IDEM reviews a project	9
Early environmental coordination	10
Contact information	11
Part III. Indiana Department of Natural Resources	12
Types of activities that require authorization	12
History and authority of IDNR Regulatory Programs.....	12
Jurisdiction	13
Permits	13
Early environmental coordination	15
How IDNR reviews a project	16
Contact information	18
Glossary of Terms	19
Frequently Asked Questions	22

Introduction

In Indiana, there are three different government agencies that have jurisdiction over the Waters of the State (wetlands, lakes, rivers, ponds, streams, creeks, and other regulated waterbodies). These three agencies (U.S. Army Corps of Engineers, Indiana Department of Environmental Management, and the Indiana Department of Natural Resources) administer a variety of federal and state regulations that are associated with the Waters of the State.

Because there are multiple regulatory agencies involved, at times, the process for obtaining the necessary permits for projects involving Waters of the State can be rather confusing, especially for those who have not been through the permitting process before. People often ask: “When do I need a permit? What agency do I get it from? Who do I contact at the agency? How long will it take?”

This handbook was designed to answer these types of questions and help clear up the confusion. Here, you will find background information on the specific regulations that govern work in Indiana’s waters. This handbook also provides step-by-step guidance and contact information to help you quickly and easily apply for the permits you may need.



Who Should Read This Handbook?

In broadest terms, this handbook was designed for anyone who is contemplating working in or around the Waters of Indiana. For instance, if you are considering any of the activities listed here, chances are good that you will need one or more permits from one or more regulatory agencies:

- ▶ filling, dredging or excavating within wetlands or any other water body for any purpose, including construction of buildings, roads, or leveling of property;
- ▶ construction in the floodway of a water body;
- ▶ mechanical clearing of vegetation, such as trees along a stream or river or in a wetland;
- ▶ channelizing, widening, or otherwise altering the flow or path of a stream, ditch, or river;
- ▶ construction of any type of permanent or temporary dam, causeway, or other related structure;
- ▶ construction of a new seawall, seawall refacing, underwater beaches, boat wells, boat houses, and underwater fish attractors;
- ▶ ditch construction and/or reconstruction; tile drain installation and/or repair; and installation of pipeline having non-watertight joints;
- ▶ widening, deepening, or construction of a pond or detention/retention basin within a river, stream, or wetland;
- ▶ bank armoring or other related practices, such as the placement of riprap or glacial stone, construction of a storm water outfall, or any other stream bank or shoreline armoring activities;
- ▶ construction of any bridge or culvert crossing, (pedestrian or vehicular), or related structure over a wetland or water body; and,
- ▶ sand, gravel, peat, or other related mining activity within any water body.

(This is not a complete list, but it contains some of the more commonly permitted activities.)

Why We Need to Protect Our Waters

All humans have the basic need for clean water to drink. People also want clean water for recreation, such as swimming, boating, and fishing. Also, clean water and habitat are necessary to protect the animals and fish that rely on lakes, rivers, and wetlands for food, shelter, and a place to live. State and federal regulations play a critical role in making sure that the waters of Indiana are clean and safe for all Hoosiers to use and enjoy.

Most people understand the importance of preserving our water quality. The regulations described in this handbook set the standard levels of protection that must be achieved to sustain clean water into the future. The regulations also ensure that all landowners meet the same standards to keep the playing field level for everyone.



IDNR

How to Use This Handbook

This handbook is divided into three main sections; one for each of the agencies that has regulatory jurisdiction over the Waters of the State. Earlier in this handbook, there is a flowchart that can help you determine which permits you may need and which of the three agencies is/are responsible for administering them.

If you already know which agency administers the permits you need, you can go directly to the section of the handbook that focuses on that agency. There, you will find detailed information and useful tips for helping you through that agency's permitting process.

Hopefully, this handbook will provide assistance with navigating the regulatory process. It certainly can give you a solid understanding of how the various agencies and regulatory programs relate to each other and to Waters of the State. **However, there is no substitute for contacting the agencies directly. Any time you are considering a project that has even the slightest chance of impacting Waters of the State, IDEM strongly encourages you to contact one or more of the agencies early in the planning process.** See the back cover for agency contact information.

Agencies That Regulate Indiana's Waters

The following three agencies have regulatory jurisdiction over Indiana's waters:

- ▶ **U.S. Army Corps of Engineers (USACE);**
- ▶ **Indiana Department of Environmental Management (IDEM); and,**
- ▶ **Indiana Department of Natural Resources (IDNR).**

The history, authority, and jurisdiction of each of these agencies, along with a description of the permits that each agency administers, are described in detail in this handbook. The following is a brief overview of the agencies and their relationship to the Waters of the State and to each other.

U.S. Army Corps of Engineers (USACE)

USACE has jurisdiction over all navigable Waters of the United States under the Rivers and Harbors Act of 1899. The USACE also regulates the placement of dredge or fill materials into the Waters of the United States under Section 404 of the Clean Water Act. As a result, no person may deposit dredge or fill materials into the wetlands or Waters of the United States without a permit from the USACE.

The USACE permit program is designed to ensure that:

- ▶ our nation's water resources are safeguarded;
- ▶ our nation's water resources are used in the best interest of the public; and,
- ▶ environmental, social, and economic concerns of the public are considered.

Each state has the right to review federal permits and licenses that may result in a discharge to its waters to ensure that federally permitted activities do not violate any applicable state law (e.g., water quality standards). Although this right pre-dates the 1972 Clean Water Act, it is also included in the Clean Water Act under Section 401 of the Act (state water quality certification). The Indiana Department of Environmental Management (IDEM) is responsible for conducting the Section 401 Water Quality Certification (WQC) review in Indiana. Consequently, IDEM has an integral role to play with the U.S. Army Corps of Engineers in administering the federal Clean Water Act.

Indiana Department of Environmental Management (IDEM), Office of Water Quality

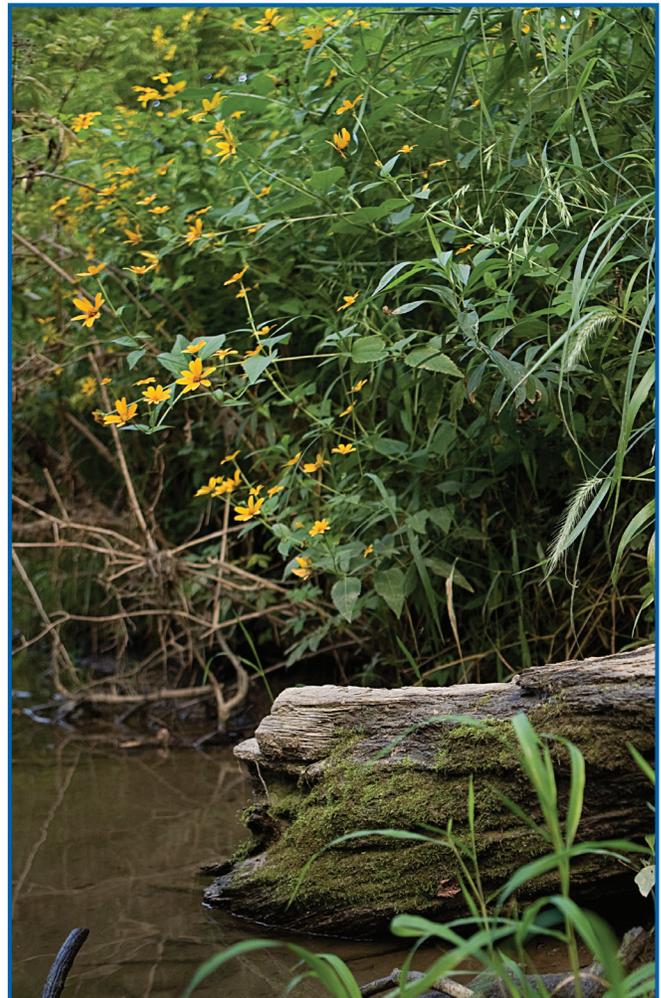
IDEM is responsible for maintaining, protecting and improving the physical, chemical and biological integrity of Indiana's waters. IDEM administers the Section 401 Water Quality Certification (WQC) Program, and draws its authority from the federal Clean Water Act and from Indiana's Water Quality Standards. Any person who wishes to place fill materials, excavate or dredge, or mechanically clear (use heavy equipment) within a wetland, lake, river, stream, or other Water of the State must first apply to the U.S. Army Corps of Engineers for a Clean Water Act Section 404 permit. If the U.S. Army Corps of Engineers (USACE) determines that a USACE permit is necessary, then the person must also apply for, and obtain, a Section 401 Water Quality Certification from IDEM. **The U.S. Army Corps of Engineers cannot grant a Section 404 permit without IDEM's Section 401 Water Quality Certification.**

In certain instances, the USACE will determine that a wetland or other water in question is "isolated" and as such, is not considered to be a Water of the U.S. While all Waters of the U.S. are Waters of the State, there are some Waters of the State, principally isolated wetlands, which are not also Waters of the U.S. Isolated wetlands (those wetlands not regulated under the federal Clean Water Act) are regulated by IDEM under Indiana's State Isolated Wetlands Law (Indiana Code 13-18-22). Isolated wetlands have been regulated by IDEM since the law went into effect in 2004, and impacts to isolated wetlands require State Isolated Wetland Permits from IDEM.

Because the U.S. Army Corps of Engineers' jurisdiction is different than the state's, IDEM must be contacted to determine which, if any, state authorization is needed before a person may legally discharge pollutants (including fill materials) to wetlands, streams, rivers, lakes, and other Waters of the State.

Indiana Department of Natural Resources (IDNR), Division of Water

IDNR is charged by the State of Indiana to serve as stewards of Indiana's surface and ground water resources for the benefit of present and future generations. The Indiana General Assembly has empowered the Indiana Department of Natural Resources with the responsibility to oversee various construction activities within, over, and/or under the state's waterways through the creation of a number of regulatory programs. These statutes were enacted to allow the state's water-related resources to be utilized in a prudent manner, while simultaneously minimizing flood-related damages and protecting Indiana's environmental and cultural resources.



Part I.

United States Army Corps of Engineers



US Army Corps
of Engineers®

Types of Activities That Require Authorization

The U.S. Army Corps of Engineers (USACE) regulates the discharge of dredged or fill material into all Waters of the United States (including wetlands). The USACE also regulates the construction of any dam or dike across any navigable Water of the United States as well as the placement of structures or work in or affecting navigable Waters of the United States. U.S. Army Corps of Engineers regulations apply to both permanent and temporary work. Examples of temporary impacts include discharge of return water from hydraulic dredging, or temporary fills associated with access roadways, cofferdams, storage and work areas.

Some examples of activities requiring a Section 404 Permit:

- ▶ construction of seawalls, weirs, boat launches, intake structures, and open-trench cable or pipeline crossings within Waters of the U.S.;
- ▶ discharging fill or dredged material into Waters of the U.S., including wetlands;
- ▶ filling, or other modifications to Waters of the U.S.;
- ▶ placement of riprap or other fill into Waters of the U.S.; and,
- ▶ site development fill into Waters of the U.S. for residential, commercial, or recreational developments.

History and Authority of the U.S. Army Corps of Engineers Regulatory Programs

The U.S. Army Corps of Engineers (USACE) began regulating the nation's waters in 1899 when Congress passed the Rivers and Harbors Act. The primary focus of this Act was the protection of navigation. In 1968, increasing national concern for the environment and water resources led to the adoption of the "Public Interest Review." Using this process, the USACE considers fish and wildlife values, conservation, pollution, aesthetics, ecology, and other public interest factors in its review of projects.

In order to further promote water quality, Congress passed the Federal Water Pollution Control Act Amendments of 1972 (more commonly known as the Clean Water Act). Section 404 of the Clean Water Act established a permit program to regulate discharges of dredged or fill material into Waters of the United States at specified disposal sites. More specifically, Section 404 jurisdiction is defined as encompassing Section 10 waters plus their tributaries and adjacent wetlands where the use, degradation, or destruction of such waters could affect interstate or foreign commerce.

New laws and policies since that time, including the Clean Water Act of 1977, have further revised the USACE of Engineers Section 404 authority. The regulations also clarified that a 404 permit cannot be issued unless the proposed project complies with the Environmental Protection Agency's 404(b)(1) guidelines. These guidelines are designed to protect wetlands and other special aquatic sites from unnecessary destruction or degradation.



USACE

The following laws define the regulatory authorities and responsibilities of the U.S. Army Corps of Engineers:

Section 9 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401) - authorizes the U.S. Army Corps of Engineers to regulate the construction of any dam or dike across navigable Waters of the United States;

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) - authorizes the U.S. Army Corps of Engineers to regulate certain structures or work in or affecting navigable Waters of the United States;

Section 404 of the Clean Water Act (33 U.S.C. 1344) -

authorizes the U.S. Army Corps of Engineers to regulate the discharge of dredged or fill material into Waters of the United States; and,

Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413) -

authorizes the U.S. Army Corps of Engineers to regulate the transportation of dredged material for the purpose of disposal in the ocean.

The USACE also coordinates compliance with related federal laws:

- National Environmental Policy Act,
- Marine Mammal Protection Act,
- Fish and Wildlife Coordination Act,
- Wild and Scenic Rivers Act,
- Endangered Species Act,
- National Fishing Enhancement Act,
- National Historic Preservation Act,
- National Flood Insurance Act of 1968 (as amended),
- Deepwater Port Act,
- Executive Order 11988 on Flood Management, and
- Federal Power Act.

water mark (OHWM) as the limit in non-tidal waters. When adjacent wetlands are present, the limit of jurisdiction extends to the limit of the wetland.

“Navigable Waters of the United States”
(Section 10 of the Rivers and Harbors Act)

This term includes the oceans and navigable coastal and inland waters, lakes, rivers, and streams. U.S. Army Corps of Engineers’ jurisdiction extends shoreward to the mean high water line. The USACE general definition of navigable Waters of the United States is *“those waters subject to the ebb and flow of the tide shoreward to the mean high water mark and/or those waters that are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the water body, and is not extinguished by later actions or events which impede or destroy navigable capacity.”*



Jurisdiction

The U.S. Army Corps of Engineers’ regulations broadly define two important terms.

“Waters of the United States”
(Section 404 of the Clean Water Act)

The definition of “Waters of the United States” includes the following:

- a. navigable Waters of the United States;
- b. wetlands;
- c. tributaries to navigable Waters of the United States, including adjacent wetlands and lakes and ponds;
- d. interstate waters and their tributaries, including adjacent wetlands; and,
- e. all other Waters of the United States not identified above, such as isolated wetlands, intermittent streams, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, where the use, degradation or destruction of these waters could affect interstate or foreign commerce. Section 404 of the Clean Water Act defines the landward limit of jurisdiction as the high tide line in tidal waters and the ordinary high

Permits

Types of Permits

In Indiana, the USACE authorizes projects in several different ways with several different types of permits. These permits are broadly categorized as either general permits or individual permits. The following is meant to provide you with a brief overview of the most common types of USACE permits in Indiana – Nationwide Permits, Regional General Permits, Programmatic General Permits, and Standard Permits.

General Permits apply to activities that are substantially similar in nature and cause minimal environmental impacts, individually and cumulatively.

There are three kinds of general permits:

Nationwide General Permits – According to the USACE, the Nationwide permits are meant to authorize activities that are *“similar in nature, cause only minimal adverse environmental effects when performed separately, and cause only minimal cumulative adverse effects on the aquatic environment.”* The nationwide permits allow the USACE to focus their limited resources on activities important to them. All Nationwide permits have special conditions that must be met in order for a project to qualify for nationwide Permit status. Some

nationwide permits also require that an applicant submit a pre-construction notification (PCN) to the U.S. Army Corps of Engineers before work begins. The USACE also has the final authority to modify or override nationwide permits, so you are advised to obtain written verification that your activity falls under the criteria applicable to the specific permit before beginning work.

Regional General Permits (RGP) – The Detroit and Louisville District of the USACE established the Indiana Regional General Permit No. 1 (USACE RGP) to replace several Nationwide permits that have been suspended in Indiana.

In general, the USACE Regional General Permit No. 1 can be used by the USACE to authorize most projects that affect less than one acre of Waters of the United States. The following types of activities can be authorized by the USACE RGP No.1 :

- ▶ new construction activities, including filling and grading, dredging, channelization, road crossings, culverts, and bank stabilization;
- ▶ agricultural activities, including clearing, tiling, ditching, fills for buildings or access roads; and,
- ▶ mining activities, including staging, access, extraction, berms, temporary storage. (Excludes surface coal mining).

The following maximum limitations are placed on the RGP No. 1 by the USACE.

- ▶ Discharges of dredged or fill material are limited to one (1) acre or less of "Waters of the United States," including wetlands.
- ▶ Dredging in "navigable waters" is limited to ten thousand (10,000) cubic yards.
- ▶ Structures and fills for docking and mooring are limited to similar permitted structures and fills in the vicinity.
- ▶ Discharges of dredged or fill material into Lake Michigan are limited to one tenth (0.10) acre, except for bank stabilization.

Impacts resulting from filling greater than one tenth (0.10) acre of special aquatic sites, or work causing more than minimal effects will require mitigation to compensate for impacts to the stream, special aquatic sites or wetlands affected. Other work or structures in navigable waters will be evaluated and must include mitigation to reduce impacts to minimum levels.

All proposed projects are subject to the USACE restrictions and the USACE RGP No. 1 General Conditions.

The U.S. Army Corps of Engineers does not require a detailed review for the activities covered by general permits. However, written verification from the USACE is necessary for all wetland work and work in Section 10 waters, and other work over 0.10 acre under Regional General Permit No. 1.

Programmatic General Permits (PGP) – The Detroit and Louisville Districts of the USACE issued a Programmatic General Permit (PGP) for specific construction activities on public freshwater lakes. The PGP seeks to reduce duplication among regulatory agencies for review of projects with minimal impacts. The PGP covers certain shoreline protections, beaches, and boat well fills on freshwater lakes in Indiana. For many of these actions, the Indiana Department of Natural Resources (IDNR) permit also serves as the federal permit. For certain types of circumstances and proposed activities, written verification from the USACE is required. You may review the specifics of the PGP on agency Web sites, or contact IDNR, IDEM, or the USACE offices directly (see the back cover for contact information).



USACE

Standard Permits apply to activities that do not fall under the criteria for a general permit. The USACE most common Standard Permit in Indiana is the Individual Permit (IP), which is used for projects proposing extensive impacts or impacts to rare or special aquatic types. Generally speaking, the USACE Individual Permit is always used for projects that propose impacts equal to or greater than one acre of wetland or stream. The USACE can, at their discretion, elevate any project to be reviewed as an individual permit.

Individual permits require the evaluation of U.S. Army Corps of Engineers applications under a public interest review and the environmental criteria set forth in the Clean Water Act Section 404(b)(1) Guidelines. Consult a USACE representative early to find out what information will be required during the review process. If your project requires an individual permit, the USACE issues a public notice advising all interested parties of the proposed activity. This public notice process helps the USACE evaluate the probable impact of the project as part of the public interest review.

Contact your U.S. Army Corps of Engineers district office for more information on permits (see the back cover for contact information).

NOTE: Part of the U.S. Corps of Engineers' permit process requires that you receive Section 401 Water Quality Certification from the State of Indiana. Applying for, and receiving, Section 401 Water Quality Certification from the Indiana Department of Environmental Management demonstrates to the USACE that your proposed project does not violate State of Indiana Water Quality Standards. You cannot receive a Corps of Engineers permit without also receiving a Section 401 Water Quality Certification from IDEM (see page 8).

How the U.S. Army Corps of Engineers Reviews a Project

The U.S. Army Corps of Engineers bases its permit decision on a process called public interest review, which is a public interest balancing process where the benefits of the project are balanced against the detriments. Benefits and detriments are weighed by considering effects on conservation, economics, aesthetics, wetlands, cultural values, navigation, fish and wildlife values, water supply, water quality, energy needs, safety, and any other factors judged important to the needs and welfare of the people.

The following general criteria are considered in evaluating all applications:

- ▶ the relative extent of the public and private need for the proposed activity;
- ▶ where unresolved conflicts of resource use exist, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed activity; and,
- ▶ the extent and permanence of the beneficial and/or detrimental effects the proposed project may have on public and private uses to which the area is suited.

A USACE permit will be granted unless the proposal is found to be contrary to the public interest.



USACE

Evaluating General Permit Applications

The USACE uses a streamlined procedure to evaluate applications for activities authorized by general permits. The USACE does not require a detailed review for activities authorized by general permits; however, it is recommended that you obtain written authorization from the USACE before you proceed with any work.

Evaluating Standard (Individual) Permit Applications

The U.S. Army Corps of Engineers will begin evaluating an application for an individual permit as soon as it receives all the required information. Individual permit applications must include a detailed project description and drawings. Review may also involve site visits, coordination with other agencies, and data analysis. The USACE bases its decision to issue the permit on the evaluation of impacts during the public interest review process. In addition, for activities under Section 404 of the Clean Water Act, the USACE also evaluates the project's compliance with the 404(b)(1) guidelines.

The USACE gives consideration and appropriate weight to comments of federal, state, and local agencies and other experts, as well as the general public.

The 404(b)(1) guidelines, prepared by the U.S. Environmental Protection Agency in consultation with the U.S. Army Corps of Engineers, are the federal environmental regulations for evaluating the filling of waters and wetlands. The guidelines restrict discharges of dredged or fill material where less environmentally damaging, practicable alternatives exist. The guidelines prohibit discharges that:

- ▶ result in violation of state or federal water quality standards, the Endangered Species Act, and/or the Marine Sanctuaries Act;
- ▶ cause or contribute to significant degradation of waters and wetlands;
- ▶ do not demonstrate reasonable and appropriate avoidance and minimization to Waters of the U.S. and that do not propose appropriate mitigation for unavoidable impacts; or,
- ▶ do not provide sufficient information to determine compliance with the guidelines.

For projects involving a discharge in wetlands, the USACE identifies the "basic purpose" of the proposed activity. The applicant must gather all necessary data for the evaluation of practicable alternatives for the project, consistent with the analysis of alternatives reviewed by the USACE. For work in special aquatic sites, like wetlands, the 404(b)(1)

guidelines also assume that alternatives exist for non-water dependent projects. **It is important to understand that if a less damaging practicable alternative to the project exists, the U.S. Army Corps of Engineers (USACE) will not issue a permit.** When unavoidable impacts are proposed, the USACE requires all appropriate and practicable action be taken to mitigate such impacts.

A USACE permit will be granted unless the proposal is found to be contrary to the public interest or if it does not comply with the 404(b)(1) guidelines.

How Do I Know If I Have Wetlands or Other Regulated Waters of the U.S. on My Project Site?

In order to know if wetlands are on your property, you must hire an environmental consultant to conduct a wetland delineation on the property. The environmental consultant will come out to the site to take data points which include soil characterization, dominant vegetation types, and indicators of hydrology. The environmental consultant will put together a report for you, called a wetland delineation report. This report must be submitted to the USACE for review and approval before the delineation report is considered accurate and legal.

The U.S. Army Corps of Engineers has the responsibility of making wetland determinations and determining the limits of federal jurisdiction. The USACE will write a letter to you once they have reviewed your wetland delineation report. This letter will state the jurisdiction of the delineated wetlands and will also state whether or not the USACE concurs with the delineation. Keep this letter, and your wetland delineation report, in a safe place as you will need to submit a copy of both to the Indiana Department of Environmental Management (IDEM) if you wish to apply for IDEM authorizations for impacts to Waters of the State.

IDEM can provide you with a list of environmental consultants upon request. Additional information on how to hire an environmental consultant is found in the Section 401 Water Quality Certification portion of IDEM's Web site at: www.wetlands.IN.gov .

How Long Will It Take to Process an Application?

Evaluation of a standard permit usually takes 60 to 120 days unless a public hearing is required or an environmental impact statement must be prepared. Time frames will vary depending on the complexity of the project, and applicants are encouraged to contact the U.S. Army Corps of Engineers early in the planning stages of any project that is within the USACE jurisdiction.

Applications are available from the U.S. Army Corps of Engineers Detroit and Louisville District Web sites.

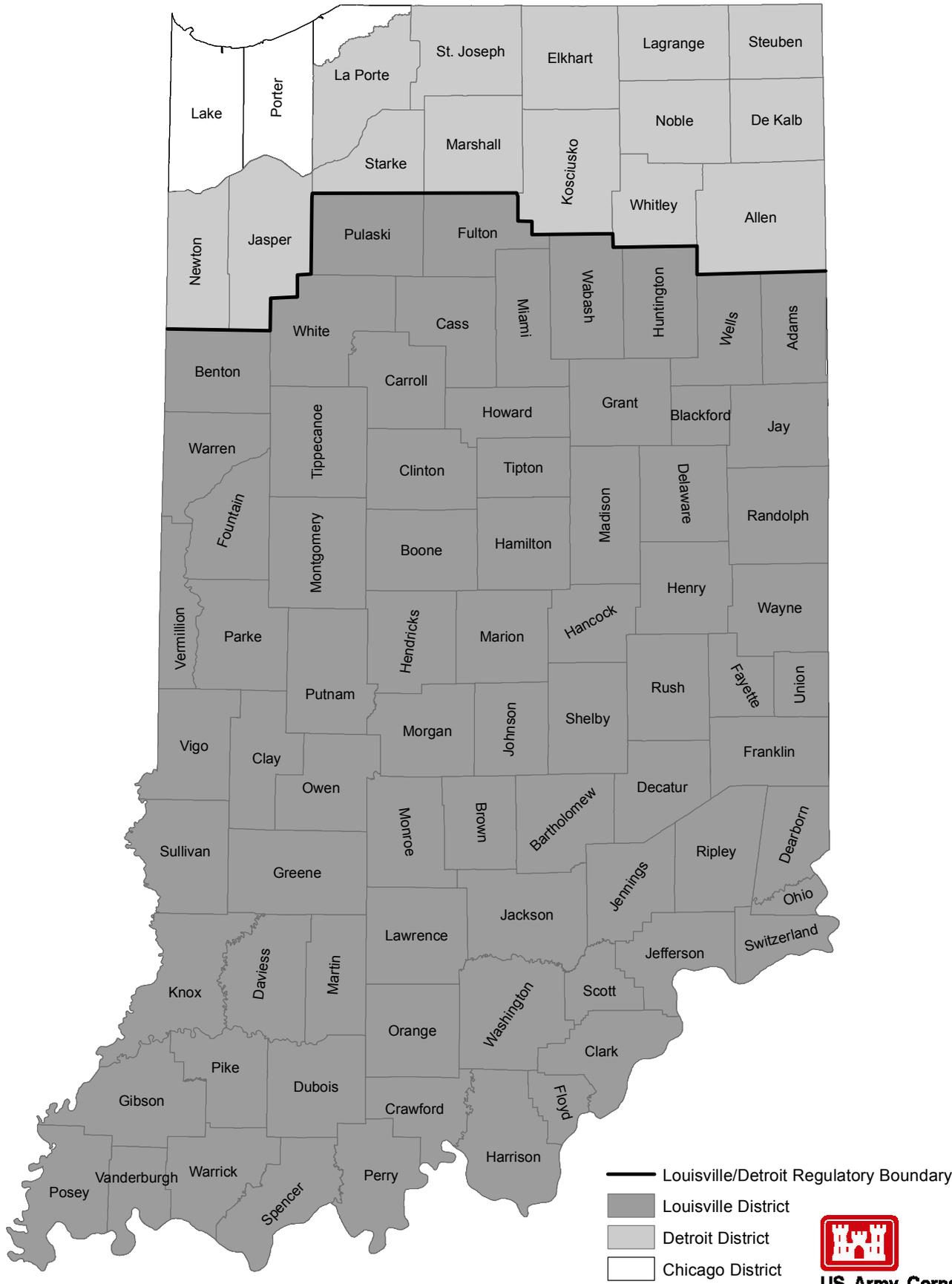
Are There Fees?

Fees are required for most individual permits. There is a \$10 fee for a permit for a non-commercial activity; a \$100 fee for a permit for a commercial or industrial activity. The district engineer will make the final decision as to the amount of the fee. Do not send a fee when you submit an application. When the USACE issues a permit, you will be notified and asked to submit the required fee, payable to the Treasurer of the United States. No fees are charged for transferring a permit from one property owner to another, for any activities authorized by a general permit, or for permits to governmental agencies.



Contact Information

Contact information for these three U.S. Army Corps of Engineers Districts can be found at the front of this manual and online at www.wetlands.IN.gov.



US Army Corps of Engineers



NOTE: Contact information for these three US Army Corps of Engineers Districts can be found online at www.wetlands.IN.gov.

Part II.

Indiana Department of Environmental Management



Types of Activities That Require Authorization

The Indiana Department of Environmental Management (IDEM) regulates projects that have a discharge to Waters of the State (including wetlands), including, but not limited to, those that require a federal permit or license to authorize the project. For example, if you plan to dredge, excavate, or fill within lakes, rivers, streams, ditches, wetlands, or other regulated waters, you need to obtain a federal permit from the U.S. Army Corps of Engineers (USACE) prior to the commencement of work. Because the USACE permit you seek would authorize a discharge to Waters of the State, the USACE will require you to seek state authorization from IDEM as part of the permitting process (see flowchart at the beginning of this booklet).

In certain instances, the USACE determines that specific wetlands are not federally jurisdictional and are considered by the USACE to be isolated. Isolated wetlands fall under the regulatory authority of IDEM.



Examples of activities regulated by IDEM's Section 401 Water Quality Certification and Isolated Wetlands Program include:

- ▶ depositing fill or dredged material in Waters of the State or adjacent federally jurisdictional wetlands;
- ▶ depositing fill or dredged material into isolated wetlands;
- ▶ site development fill for residential, commercial, or recreational developments;
- ▶ construction of bridges, culverts, revetments, groins, breakwaters, levees, dams, dikes, and weirs;
- ▶ placement of riprap and other fill into Waters of the State;
- ▶ widening, deepening, or construction of a pond or other related structure for the purpose of modifying a mapped floodway or for storm water detention/retention;
- ▶ channelizing, widening, or otherwise altering the flow or path of a stream, ditch, or river; and,
- ▶ mining sand, gravel, or peat (or other related mining activity) within any water body.

(This is not a complete list, but it contains some of the more commonly permitted activities.)

If you intend to conduct any of these types of projects, you should contact IDEM and/or the U.S. Army Corps of Engineers before starting work.

History and Authority of IDEM Regulatory Programs

In 1984, Governor Robert Orr formed a study group to evaluate environmental issues in Indiana and to recommend solutions. One of the group's recommendations was to form a separate environmental agency to deal specifically with the regulation and protection of the environment. In 1985, the Indiana General Assembly passed a law to create the Indiana Department of Environmental Management (IDEM), and Governor Orr signed the executive order on April 1, 1986. IDEM was empowered to implement various federal and state laws regarding the environment, including the Clean Water Act.

IDEM draws authority from two portions of federal and state law regarding the regulation of waters and water quality. First, IDEM is directly given the authority to implement the Section 401 Water Quality Certification Program by the federal Water Pollution Control Act (Clean Water Act or CWA). Section 401 of the CWA [33 U.S.C. 1341] establishes the Section 401 Water Quality Certification Program.

Further, the Clean Water Act sets forth the basic requirements of the certification process, including:

- ▶ requirement for public notice;
- ▶ timeframe for review; and,
- ▶ authority to attach conditions to water quality certifications.

IDEM implements the Section 401 Water Quality Certification Program following these basic requirements. This program is set forth in the federal Clean Water Act in recognition of the fact that Indiana, like every state, has its own water quality standards, and those standards must be met in order for a federal permit to be granted. Congress set aside broad powers for states to implement this program.

Second, IDEM draws authority to regulate Waters of the State (including wetlands) and implement this portion of the Clean Water Act from Title 13 of the Indiana Code. The relevant provisions of Title 13 include:

- ▶ authority of IDEM to implement all aspects of the Clean Water Act;
- ▶ definition of Waters of the State;
- ▶ authority for the Indiana Water Pollution Control Board to adopt rules to protect water quality; and,
- ▶ requirement that IDEM implement those water quality rules.

In addition, Indiana's water quality standards are set forth at 327 Indiana Administrative Code (IAC) 2 and establish standards for physical, chemical, and biological properties for Indiana's waters.

Since 2004, IDEM has regulated isolated wetlands, which are defined by law as those wetlands not subject to regulation under Section 404(a) of the Clean Water Act. Indiana's State Isolated Wetlands Law (Indiana Code 13-18-22) creates a category of Waters of the State known as state regulated wetlands. A state regulated wetland is defined as an isolated wetland located in Indiana that is not an exempt isolated wetland. This law establishes a classification system for wetlands and a set of general permits, exemptions, and individual permitting authority for IDEM to regulate the placement of dredged or fill material into non-exempt isolated wetlands.

Jurisdiction

IDEM regulates all waters in Indiana that meet the definition of "***Waters of the State***":

IC 13-11-2-265

Section 265.

a. "***Waters***", for purposes of water pollution control laws and environmental management laws, means:

1. the accumulations of water, surface and underground, natural and artificial, public and private; or,
2. a part of the accumulations of water; that are wholly or partially within, flow through, or border upon Indiana.

b. The term "***waters***" does not include:

1. an exempt isolated wetland;
2. a private pond; or,
3. an off-stream pond, reservoir, wetland, or facility built for reduction or control of pollution or cooling of water before discharge.

c. The term includes all Waters of the United States, as defined in Section 502(7) of the federal Clean Water Act (33 U.S.C. 1362(7)), that are located in Indiana.

Water bodies regulated by IDEM include, but are not limited to, lakes, rivers, streams, ditches, and wetlands. Any activity that would result in a discharge to any of these waters and requires a federal permit or license (regardless of the size, connection to other waters, or location of the water within Indiana) is regulated by IDEM under Section 401 of the Clean Water Act as well as under Indiana Code Title 13. Any activity that would result in a discharge to a non-exempt state isolated wetland is regulated by IDEM under Indiana Code 13-18-22.

Permits

IDEM reviews projects and issues authorizations through the Section 401 Water Quality Certification (WQC) process and under the Indiana Isolated Wetlands Law.

401 Water Quality Certification

Under Indiana law, the terms and conditions of the WQC are enforceable by IDEM. All projects that require a WQC undergo the same review process.

If your project proposes minimal impacts to Waters of the U.S., your project may be eligible to use IDEM's *Regional General Permit (RGP) Notification Form*. If your project meets the Terms and conditions of the *Regional General Permit Notification Form*, you can apply for Section 401 Water Quality Certification by submitting the RGP Notification Form and all required enclosures to IDEM.

If your project does NOT meet all of the terms and conditions of the IDEM *Regional General Permit Notification Form*, you must apply for a site-specific Individual Section 401 Water Quality Certification. To apply for a site-specific Individual Section 401 Water Quality Certification, you must use the *Application for Authorization to Discharge Dredged or Fill Material to Isolated Wetlands and/or Waters of the State*. It is likely that mitigation will be required for site-specific Individual Section 401 Water Quality Certifications.

Detailed information on IDEM permitting is available online. Visit the Section 401 Water Quality Certification Web site at: www.wetlands.IN.gov.

State Isolated Wetland Permits

By law, Indiana's isolated wetlands are defined as being a Class I, Class II, or Class III wetland; these definitions are listed in Indiana Code 13-11-2-25.8.

Impacts to regulated Class I wetlands, regardless of the size of impact, are regulated by a general permit known as an Isolated Wetland General Permit (IWGP). An impact of 0.10 acre or less to a Class II wetland is also regulated under an Isolated Wetland General Permit. Other minimal impacts to Class I and Class II wetlands, as described in 327 IAC 17-2, can be authorized under an Isolated Wetland General Permit.

Impacts greater than 0.10 acre to a Class II wetland or an impact of any size to a Class III wetland require an Isolated Wetland Individual Permit (IWIP).



How IDEM Reviews a Project

401 Water Quality Certification – Individual Section 401 Water Quality Certification

Public notice and comment are integral components of IDEM's 401 Water Quality Certification (WQC) review. IDEM is required to public notice the receipt of all applications requiring an individual, site-specific, Section 401 Water Quality Certification. IDEM drafts and publishes a public notice for all projects, except projects that require an Individual Permit (IP) from the USACE. In that case, the USACE issues a joint public notice.

IDEM public notice periods run for 21 days. Notice is served to adjacent property owners, other state and federal agencies, and any person who has requested to receive public notices for WQC applications. Any person may request that a public hearing be held to discuss the potential impacts of the project on water quality. Public hearings are held at IDEM's discretion. No decision can be made until the 21-day public notice has expired and all comments have been addressed (if any were received). IDEM has 120 days from the receipt of a complete application for a site-specific Section 401 Water Quality Certification to make an agency decision (approval or denial). Applicants receive a formal agency decision via certified mail once IDEM's review of the application is complete.

401 Water Quality Certification – Regional General Permit (RGP) Notification Form

Upon receipt of a Regional General Permit Notification Form, IDEM will review the application and all required enclosures for completeness and accuracy. If an applicant is not contacted by IDEM within 30 days of the date of receipt of the Regional General Permit Notification Form, the project is automatically authorized (subject to the terms and conditions of the Section 401 Water Quality Certification). Applicants are not contacted by IDEM to acknowledge receipt of the form, and applicants will not be contacted by IDEM regarding approval of the project after thirty days have passed from IDEM's date of receipt. Applicants are only contacted by IDEM if problems are identified with the Regional General Permit Notification Form.

Isolated Wetland General Permits (IWGPs)

Applications submitted for an Isolated Wetland General Permit have a review timeframe of 30 days from the date of receipt by IDEM. Applicants will receive a formal letter from IDEM via certified mail which notifies them whether the project falls within the scope of the terms and conditions of the IWGP, or whether the project falls outside of the scope of the IWGP.

Isolated Wetland Individual Permits (IWIPs)

Public notice and comment are integral components of IDEM's Isolated Wetland Individual Permit (IWIP) review. IDEM is required to public notice the receipt of all applications requiring an IWIP. IDEM drafts and publishes a public notice for all projects that require an IWIP. IDEM public notice periods for IWIPs run for 30 days. Notice is served to adjacent property owners, other state and federal agencies, and any person who has requested to receive public notices for IWIP applications.

Any person may request that a public hearing be held to discuss the potential impacts of the project on water quality. Public hearings are held at IDEM's discretion. No decision can be made until the 30-day public notice has expired and all comments have been addressed (if any were received). IDEM has 120 days from the receipt of a complete application for an IWIP to make an agency decision (approval or denial). Applicants receive a formal agency decision via certified mail once IDEM's review of the application is complete.

Detailed information on IDEM isolated wetland permitting is available online. Read more about our permitting requirements at our Web site: www.wetlands.IN.gov.

Early Environmental Coordination

Planning a project which will impact wetlands, streams, rivers, lakes, or other regulated water resources, and anticipating how IDEM will respond to your application can be difficult. In an effort to avoid delays, confusion, and ensure that Indiana's environment is protected, IDEM offers early coordination for all applicants who need to apply for a Section 401 Water Quality Certification or Isolated Wetland Permits. Most delays in the application review process are caused by applicants not providing all the information required by IDEM. Through the early coordination process, IDEM representatives can help ensure you know exactly what you need before you submit your application.

Early coordination is an informal, completely voluntary (though recommended) process where you meet with IDEM project managers to discuss a project that is in its early planning stages.

If your project is large, complex, or has the potential to impact sensitive areas, IDEM recommends that you contact program staff to discuss your project. You may also wish to contact IDEM staff if you have never applied for permits before or to simply gather information on needed permits. IDEM project managers each cover a specific territory, so please contact the specific IDEM project manager for the county in which you will be working.

You can call, e-mail, or write a letter to IDEM project managers to open the lines of discussion regarding your project. It may also be beneficial for IDEM staff to meet you or your environmental consultant on-site to discuss your project. Contact the corresponding IDEM project manager to arrange a pre-application meeting or discussion on a project. Staff from the 401 WQC/Isolated Wetlands Program may, if needed, invite staff from the Indiana Department of Natural Resources (IDNR) and the U.S. Army Corps of Engineers (USACE) to attend on-site meetings. IDEM staff may also provide you with contact information for IDNR and USACE staff and request that you contact these agencies to invite them to an early coordination meeting.

To obtain the most useful, project specific comments, we recommend you provide as much information as possible to the IDEM project manager. You should be able to provide many items on the following list, depending on how far along you are in the planning process:

- ▶ a detailed description of the project, and information on its purpose, location, and all buildings, structures, detention ponds, and facilities to be built;
- ▶ a map showing the location of the project, and the project boundaries – this map should preferably be a United States Geological Survey (USGS) 7.5 minute quadrangle map with the project's Section, Township, and Range noted;
- ▶ a copy of the Natural Resources Conservation Service (NRCS) soil survey map showing the project site and the project boundaries;
- ▶ any available diagrams, sketches, cross-sections, and overviews depicting structures or facilities to be located on the site in a proposed alignment or orientation;
- ▶ a wetland delineation for the site; and,
- ▶ any other information gathered as a part of a Phase 1 site assessment.

In addition, if you are proposing work in or along streams and rivers, you may be required to submit copies of mussel surveys, sediment sampling tests, and plans which show areas of bank stabilization and tree clearing.

Want to learn more about early coordination? Need to learn who the IDEM project manager is for your county? All of this information is available through our Web site at: www.wetlands.IN.gov.

Application Review

Upon receipt of an application, your project will be assigned to an IDEM project manager. IDEM project managers are divided up by counties. Your project manager will be the single point of contact for project reviews. The most current IDEM project manager map is always available for viewing and for download from our Web site at: www.wetlands.IN.gov.

IDEM assesses the potential impacts of your project and its compliance with water quality standards by reviewing existing information and studies, and by consulting with other agencies and professionals. This review focuses on these three basic questions.

1. Can adverse impacts to waters be avoided?
2. If impacts are unavoidable, what steps can be taken to minimize adverse impacts to waters?

3. If adverse impacts cannot be avoided or minimized, can impacts be mitigated to ensure no degradation of water quality?

IDEM will work closely with you on project design and analysis to ensure that all steps in the application process are met.

IDEM evaluates the potential impacts a project may have on the physical, chemical, and biological characteristics of the affected waters. This results in a determination as to whether a proposed project can or will comply with Indiana's water quality standards.

First and foremost, IDEM will require an applicant to avoid impacting wetlands, streams, lakes, and rivers. Applicants must demonstrate to IDEM that the impacts and their applications are necessary. If impacts are unavoidable, an applicant must demonstrate how their proposed project and all unavoidable impacts to wetlands and Waters of the State have been minimized. Applicants must provide compensatory mitigation for any remaining adverse impacts to wetlands and other Waters of the State.

Compensatory mitigation is the last step in the previously mentioned three-step approach of (1) avoidance, (2) minimization, and (3) compensation. The purpose of mitigation is to compensate for unavoidable impacts to wetlands, streams, lakes, rivers, and other Waters of the State.

The Indiana Department of Environmental Management will deny a permit or certification if the application is deficient, if the activities are unnecessary, or if the proposed compensatory mitigation is determined to be insufficient to offset the effects of the activity.

You cannot proceed with a project without Section 401 Water Quality Certification or Isolated Wetland Permits from IDEM.

Are There Fees?

There are currently (as of the date of publication) no application fees for Section 401 Water Quality Certification or for State Isolated Wetland Permits.

Contact information

Contact the Section 401 Water Quality Certification/Isolated Wetlands Program Staff at:

Indiana Department of Environmental Management
Section 401 WQC/Isolated Wetlands Program
100 N. Senate Avenue IGCN 1255
Indianapolis, IN 46204-2251

Toll Free:
(800) 451-6027

Telephone:
(317) 233-8488

FAX:
(317) 234-4145

www.wetlands.IN.gov



Part III.

Indiana Department of Natural Resources

DNR

Types of Activities That Require Authorization

The Indiana Department of Natural Resources (IDNR) regulates various construction activities within, over, and/or under the state's waterways. State laws enacted by the Indiana General Assembly created these regulations in order to allow Hoosiers to utilize the state's water-related resources in a prudent manner while minimizing flood-related damages and protecting Indiana's environmental and cultural resources.

Some examples of regulated activities:

1. altering the level of the water or the shoreline of a public freshwater lake by excavating; filling in; or otherwise causing a change in the area or depth of; or affecting the natural resources, scenic beauty, or contour of; the lake below the waterline or shoreline. Typical activities include: dredging, new seawalls, seawall refacing, underwater beaches, boat wells, boat ramps, group piers, and fish attractors;
2. all ditch and/or drain work that is both located within 1/2 mile of a ten (10) acre or more in size freshwater lake and has a bottom depth below the lake's legal or average normal water level. Activities include: ditch construction and/or reconstruction and tile drain installation and/or repairs;
3. construction within the floodway such as bank protection, bridges, buildings, channel work, dams, excavations, fills, flood control projects, levees, outfalls, residential construction, and utility line activity;
4. the placement, filling, or erection of a permanent structure in; water withdrawal from; or material extraction from a navigable waterway;
5. the taking of sand, gravel, stone, or other mineral or substance from or under the bed of a navigable waterway; and,
6. the construction of any channel that meets the following definition: an artificial channel; the improved channel of a natural watercourse; or a channel that connects to any

river or stream in Indiana for the purpose of providing access by boat or otherwise to public or private industrial, commercial, housing, recreational, or other facilities.

History and Authority of the IDNR Regulatory Programs

In the 1930s and 1940s, Indiana was besieged with floods that resulted in the loss of lives and damaged property. Interested in preventing such losses from happening again, the Indiana General Assembly enacted the Flood Control Act in 1945 in an effort to prevent and limit losses due to flooding. The act specifies that all floodways are to remain uninhabited and clear of any obstruction that would restrict their capacity to move floodwaters. The act also specifies that all flood control works and structures and the alteration of natural or present watercourses of all rivers and streams in Indiana are to be regulated. Originally, this regulatory authority was given to the Indiana Flood Control and Water Resources Commission. But in 1965, this commission and other state governmental entities were combined into the Indiana Department of Natural Resources (IDNR). Within the IDNR, the Division of Water was established and given regulatory authority over the Flood Control Act and other water related regulations.

The following laws define the regulatory authorities and responsibilities of the IDNR:

Lake Preservation Act (IC 14-26-2) - authorizes the IDNR to regulate Indiana's public freshwater lakes so that the recreational, natural resource, and scenic beauty values of these waters are preserved and protected;

Lowering of Ten Acre Lakes Act (IC 14-26-5) - authorizes the IDNR to regulate the lowering of a ten (10) acre or more in size freshwater lake's water level as the result of ditch and/or drain activity;

Flood Control Act (IC 14-28-1) - authorizes the IDNR to regulate activities within the floodway to minimize flood risk and property damages due to flooding, and mitigate the effects upon fish, wildlife, or botanical resources;

Navigable Waterways Act (IC 14-29-1) - authorizes the IDNR to regulate any activity within a navigable water that may unreasonably impair the navigability of the waterway, cause significant harm to the environment, and/or pose an unreasonable hazard to life or property;

Sand and Gravel Permits Act (IC 14-29-3) - authorizes the IDNR to regulate the taking of sand, gravel, stone, or other mineral or substance from or under the bed of a navigable waterway of Indiana; and,

Construction of Channels Act (IC 14-29-4) - authorizes

the IDNR to regulate the construction of channels along the state's waterways to protect public health, safety, and welfare.



Jurisdiction

The IDNR jurisdiction is limited to the following:

- ▶ **Lake Preservation Act** - regulates activities over, along, or lakeward of the shoreline of a public freshwater lake's legal or average normal shoreline. However, certain activities are also regulated within 10 feet landward of the lake's legal or average normal shoreline;
- ▶ **Lowering of Ten Acre Lakes Act** - regulates construction work on any ditch or drain within one-half mile of a ten (10) acre or more in size freshwater lake that has a bottom depth lower than the legal or average normal water level of the lake;
- ▶ **Flood Control Act** - regulates the area within the floodway formed by the base flood. "Base flood" means "a flood having a one percent (1%) probability of being equaled or exceeded in a year as calculated by a method and procedure that is approved by the Indiana Natural Resources Commission. The base flood is equivalent to the 100-year frequency flood." "Floodway" means "the channel of a river or stream and those portions of the flood plains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flow of the regulatory flood of any river or stream;" **Note:** The IDNR does not regulate projects where the waterway's drainage area at the downstream end of the project site is less than 1 square mile (640 acres) unless the project involves a dam regulated under IC 14-27-7.5;
- ▶ **Navigable Waterways Act** - regulates construction activity within any water, including Lake Michigan, which meets the definition of "navigable." This term means "a waterway which has been declared to be 'navigable' or a 'public highway' by one or more of the following: a court, the Indiana General Assembly, the United States Army Corps of Engineers (USACE), the Federal Energy Regulatory Commission, a board of county commissioners, or the Indiana Natural Resources Commission (INRC)";
- ▶ **Sand and Gravel Permits Act** - regulates the removal of sand, gravel, or other mineral from or under the bed of any of Indiana's navigable waterways, which includes rivers, streams, and lakes;

- ▶ **Construction of Channels Act** - regulates any channel that meets the following definition: an artificial channel; the improved channel of a natural watercourse; or a channel that connects to any river or stream in Indiana for the purpose of providing access by boat or otherwise to public or private industrial, commercial, housing, recreational, or other facilities.

Permits

The IDNR reviews projects and issues authorizations through the state statutes listed in this section. Projects that are regulated under more than one statute are issued separate permits with appropriate conditions from each statute.

The types of water related construction permits issued by the IDNR are:

Certificate of Approval Public Freshwater Lake

IC 14-26-2 with 312 IAC 11;

Certificate of Approval Ditch Reconstruction

IC 14-26-5;

Certificate of Approval Construction in a Floodway

IC 14-28-1 with 312 IAC 10;

Certificate of Approval Navigable Waters

IC 14-29-1 with 312 IAC 6;

Certificate of Approval Sand or Gravel Removal

IC 14-29-3 with 312 IAC 6;

Certificate of Approval Access Channel IC 14-29-4.

Additionally, the Indiana Department of Natural Resources (IDNR) along with the U.S. Army Corps of Engineers (USACE), Detroit, Chicago, and Louisville Districts, and the Indiana Department of Environmental Management have partnered to simplify the permit process for some types of construction projects on specifically listed public freshwater lakes and streams in Indiana through a USACE Programmatic General Permit (PGP). Under the PGP, if a proposed construction project qualifies under the PGP Category 1, the Certificate of Approval issued by IDNR will also serve as authorization under Section 404 of the Clean Waters Act regulated by the U.S. Army Corps of Engineers and Section 401 Water Quality Certification regulated by the Indiana Department of Environmental Management. In general, the type of projects that may qualify for a PGP are certain shoreline protections, beaches, boat ramps, and boat well fills. For additional information about the Programmatic General Permit refer to the USACE Public Notice available at www.ire.usace.army.mil/Portals/69/docs/regulatory/PDFs/Final_PN_12Dec.pdf

Exemptions / General Licenses

Certain project types may be specifically exempted by statute from any IDNR permit requirement. Projects that are exempt by statute do not require notification to the IDNR. Additionally, the IDNR has adopted rules to further clarify implementation of

the regulatory statutes including the development of criteria for granting a general license for certain projects where impacts to the State's natural resources have been determined to be minimal. Some general licenses require the applicant to notify the IDNR before beginning work on the project. See below for a listing of rules adopted for their respective statutes:

312 IAC 6 Navigable Waters
(Navigable Waterways Act – IC 14-29-1)

312 IAC 10 Flood Plain Management
(Flood Control Act – IC 14-28-1)

312 IAC 11 Public Freshwater Lakes
(Lake Preservation Act - IC 14-26-2)

Flood Control Act – most commonly used exemptions

A project is not subject to IDNR regulation if the project meets one of the following exemptions:

- ▶ A reconstruction or maintenance project (as defined in the "County Drainage Code," IC 36-9-27) on an open stream or an open regulated drain, if the total length of the stream or drain is less than or equal to 10 miles. "**Total length**" means the length of the stream, expressed in miles, from the confluence of the stream with the receiving stream to the upstream or headward extremity of the stream, as indicated by the solid or dashed, blue or purple line depicting the stream on the most current edition of the seven and one-half (7-1/2) minute topographic quadrangle map published by the United States Geological Survey, measured along the meanders of the stream as depicted on the map;
- ▶ A state or county road bridge project where the drainage area at the bridge structure is less than 50 square miles and the project site is in a rural area. "**Rural area**" means an area where:
 1. the flood protection grade of each residential, commercial, or industrial building impacted by the project is higher than the regulatory flood elevation under the project condition, and
 2. the area lies outside:
 - a. the corporate boundaries of a consolidated city or an incorporated city or town, and
 - b. the territorial authority for comprehensive planning established under IC 36-7-4-205(b); and,
- ▶ The removal of a logjam or mass of wood debris that has accumulated in a river or stream, subject to the following conditions:
 - (A) Work must not be within a salmonid stream designated under 327 IAC 2-1.5-5 without the prior written approval of the department's division of fish and wildlife.

(B) Work must not be within a natural, scenic, or recreational river or stream designated under 312 IAC 7-2.

(C) Except as otherwise provided in Indiana law, free logs or affixed logs that are crossways in the channel must be cut, relocated, and removed from the floodplain. Logs may be maintained in the floodplain if properly anchored or otherwise secured so as to resist flotation or dislodging by the flow of water and placement in an area that is not a wetland. Logs must be removed and secured with a minimum of damage to vegetation.

(D) Isolated or single logs that are embedded, lodged, or rooted in the channel, and that do not span the channel or cause flow problems, must not be removed unless the logs are either of the following:

(i) Associated with or in close proximity to larger obstructions.

(ii) Posing a hazard to navigation.

(E) A leaning or severely damaged tree that is in immediate danger of falling into the waterway may be cut and removed if the tree is associated with or in close proximity to an obstruction. The root system and stump of the tree must be left in place.

(F) To the extent practicable, the construction of access roads must be minimized, and should not result in the elevation of the floodplain.

(G) To the extent practicable, work should be performed exclusively from one (1) side of a waterway. Crossing the bed of a waterway is prohibited.

(H) To prevent the flow of sediment laden water back into the waterway, appropriate sediment control measures must be installed.

(I) Within fifteen (15) days, all bare and disturbed areas must be revegetated with a mixture of grasses and legumes. Tall fescue must not be used under this subdivision, except that low endophyte tall fescue may be used in the bottom of the waterway and on side slopes.

Other statutory exemptions and general licenses may be applicable based on project type.



Flood Control Act

- ▶ utility line crossings and relocation projects;
- ▶ removal of obstructions for river and stream maintenance;
- ▶ residential additions and reconstructions;
- ▶ wetland restoration projects;
- ▶ outfall projects;
- ▶ creek rock removal; and,
- ▶ recreational gold prospecting

Lake Preservation Act

- ▶ temporary structures (i.e., piers, boat lifts);
- ▶ dry hydrants;
- ▶ reface of existing bulkhead seawall with glacial stone;
- ▶ impoundments on the Tippecanoe River; and,
- ▶ public water supply reservoirs

Lowering of the Ten Acre Lakes Act

- ▶ construction or reconstruction of inlet ditches to lakes

Navigable Waterway

- ▶ Lake Michigan beach nourishment; and,
- ▶ recreational gold prospecting



Early Environmental Coordination

Before beginning any large project, the IDNR strongly encourages early coordination with the agency. Pre-application consultation with the IDNR can verify the need for a permit application, clarify permit requirements, and explain processing procedures.

An environmental review of a project may be requested prior to submittal of a permit application to IDNR. The request should be sent to the IDNR Division of Fish and Wildlife's Environmental Unit (mail to the address at the end of this paragraph or email to: environmentalreview@dnr.in.gov). The comments and recommendations in the response letter would likely be

used on any subsequent permit application as long as the project has not been revised. The following information should be included in the early coordination request:

1. brief project proposal;
2. project location on a U.S. Geological Survey quadrangle map; and,
3. drawing of the area that will be disturbed; and,
4. any other pertinent information or preliminary plans.

**Attn: Environmental Coordinator
Indiana Department of Natural Resources
Division of Fish and Wildlife
402 West Washington St, Room W273
Indianapolis, IN 46204
Direct: (317) 232-8163
Fax: (317) 232-8150**

SEA 368 Review Process

In addition to the above process, a formal, early coordination procedure for drainage board projects was established by the creation of Section 53.5 of the Indiana Drainage Code (IC 36-9-27) in 1995. Section 53.5 states that if a reconstruction or maintenance project is subject to regulation under the Flood Control Act or the Lowering of Ten Acre Lakes Act, or if it requires an individual permit from the U.S. Army Corps of Engineers under Section 404 of the federal Clean Water Act, the county surveyor or drainage board shall request an on-site field review of the project.

The following process is detailed in the law.

1. The county surveyor or drainage board, through written notification to the IDNR Division of Water, requests an on-site field review meeting.
2. Within 14 days, the division contacts the surveyor (or the surveyor's designee) and IDEM to determine the date, time, and location of the meeting.
3. The on-site field review is conducted by one or more staff representatives from:
 - a. the county;
 - b. IDNR, including one engineer from the Division of Water;
 - c. IDEM; and,
 - d. the local soil and water conservation district, if applicable.
4. Within 30 days of the on-site field review, the Division of Water will provide the county with a summary of the review. The summary will include:
 - a. a narrative and map defining the project location;
 - b. a description of the proposed work;
 - c. a list of conditions that IDNR would place on a permit to mitigate any unreasonable or detrimental effects that may occur as a result of the proposed work;

- d. a list of conditions that IDEM would place on a certification to comply with Section 401 of the federal Clean Water Act, if it is possible to ensure compliance with Section 401 by placing conditions on the certification; and,
- e. a list of any other conditions that the IDNR and/or IDEM would place on a permit or certification for the proposed project.

How the IDNR Reviews a Project

Each of the six statutes listed in the History and Authority of the IDNR Regulatory Programs section has specific criteria listed below, that a project is evaluated on to be an approvable project. Conditions may also be added to a Certificate of Approval based on various IDNR staff reviews.

Lake Preservation Act: The IDNR determines a project's approvability by evaluating if the project will adversely affect:

1. the shoreline, water line, or bed of the public freshwater lake,
2. the fish, wildlife, or botanical resources,
3. the public rights for the natural resources, the natural scenic beauty, and the recreational purpose of the lake,
4. the management of watercraft operations under IC 14-15,
5. the interests of a landowner having property rights abutting the public freshwater lake or rights to assess the public freshwater lake.

The Department reviews must also consider the cumulative effects.

Lowering of Ten Acre Lakes Act: The IDNR evaluates a project's impact on "... *land, water, lakes, fish, wildlife, and botanical resources that may be affected by the proposed work.*"

The IDNR determines a project's approvability by evaluating if the project will:

1. endanger the legally established water level of the lake;
2. endanger the normal water level of the lake, if the water level has not been legally established; and,
3. result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

The Department reviews must also consider the cumulative effects.

Flood Control Act: The IDNR determines a project's approvability by evaluating if the project will:

1. adversely affect the efficiency of, or unduly restrict the capacity of, the floodway;
2. constitute an unreasonable hazard to the safety of life or property; and,
3. result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

The Department reviews must also consider the cumulative effects.

Navigable Waterways Act: If a project that requires a permit under the Flood Control Act is also located within a navigable waterway, it does not require a separate permit under the Navigable Waterways Act, since the Navigable Waterways Act evaluation criteria are applied during the Flood Control Act project review. However, the following criteria must also be assessed:

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

Sand and Gravel Permits Act: Projects which are subject to jurisdiction under this Act are also subject to jurisdiction under the Flood Control Act and the Navigable Waterways Act. To determine a project's approvability under the Sand and Gravel Permits Act, the IDNR evaluates a proposed project against the same criteria set forth under both the Flood Control and Navigable Waterways Act.

Construction of Channels Act: Prior to evaluating the approvability of a proposed project, an applicant must demonstrate to the IDNR that they have:

1. obtained the written approval of IDEM for sewage disposal facilities involved with the channel and each facility that the channel is to serve; and,
2. will dedicate any water created to general public use.

Upon demonstrating that an applicant has satisfied these requirements, the approvability of a proposed project will be evaluated on whether the project will:

- a. constitute an unreasonable hazard to life and property;
- b. result in undue effects upon the water levels of the river or stream or upon fish and wildlife resources; and,
- c. adversely affect the public health, safety, and welfare.

General Public Notice

Upon receipt, all permit applications submitted to the IDNR must be placed on the IDNR 30-day Public Notice. This is in addition to the notice that applicants are required to give to property owners adjacent to the project site. Unless an emergency has been declared by the director of the IDNR, the agency cannot act on an application until 30 days after the date of the applicant's public notice or the IDNR's general public notice whichever comes later. At any time during the agency review process, a public hearing may be requested by the public if the provisions under 312 IAC 2-3 have been satisfied.



Inter-Department Consultation

For projects reviewed under the regulations administered by the IDNR, several IDNR professionals are responsible to review the projects. One aspect of the review that is performed by the staff of the Division of Water involves a technical assessment of the project's impacts on the efficiency or capacity of the floodway of a river or stream, the project's potential to create an unreasonable hazard to the safety of life or property upstream or downstream of the project site, or the effect on the water level or shoreline of a freshwater lake.

Other aspects of the IDNR review involve the environmental impacts. This portion of the review is conducted by staff from multiple divisions, and is coordinated by the Division of Fish and Wildlife's Environmental Unit. The divisions involved and their areas of expertise are listed below:

- **Division of Outdoor Recreation** - reviews project sites to determine if recreational sites developed with Land and Water Conservation Fund grants will be impacted. The Outdoor Recreation Division also informs the Division of Fish and Wildlife's Environmental Unit if the project will occur along one of Indiana's listed scenic waterway;
- **Division of Nature Preserves** - reviews project sites against the natural heritage database for reports of endangered, threatened, or specially listed plant or animal species. This information is forwarded to the Division of Fish and Wildlife's Environmental Unit;
- **Division of Fish and Wildlife** - receives information noted above from other IDNR divisions and conducts field inspections to determine whether or not the project will result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

If the project will occur in a navigable waterway, two additional IDNR divisions become involved in the application review process. These divisions and their responsibilities are:

- **Division of Law Enforcement** - reviews project plans to determine a project's potential impacts on navigability and boater safety; and,
- **Division of Historic Preservation and Archaeology** - reviews project plans to determine if any known historical, architectural, or archaeological sites listed in or eligible for inclusion in the National Register of Historic Places will be impacted by the proposed project.

Final Processing

Once all the Department permit review staff have completed their assessment of the project and compiled their recommendation and comments, an agency decision is made. If the final agency decision is an approval, the Certificate of Approval will include specific and general permit conditions and information concerning appeal procedures.

Are There Fees?

With the exception of the Navigable Waterways Act, all of the regulatory programs administered by the IDNR require a non-refundable fee. These fees must be paid in full before the IDNR can initiate its review of an application. If a project requires a permit under more than one regulatory program, the processing fee required by each program must be submitted. Following are the application processing fees for each IDNR regulatory program.

IDNR Permit Application Fees

CODE	TITLE	FEE
IC 14-26-2	Lake Preservation Act	\$100
IC 14-26-5	Lowering of Ten Acre Lakes Act	\$ 25
IC 14-28-1	Flood Control Act - choose one of the following <ul style="list-style-type: none"> • All non-residential floodway construction projects • Residential reconstruction in a floodway, other than the Ohio River floodway • Residential construction, or reconstruction, in the Ohio River floodway 	\$200 \$ 50 \$ 10
IC 14-29-1	Navigable Waterways Act	No Fee
IC 14-29-3	Sand and Gravel Permits Act	\$ 50
IC 14-29-4	Construction of Channels Act	\$100

The fees listed above were current as of the time of publication and are subject to change. To view the most up to date information on application fees, visit IDNR's Web site at www.IN.gov/dnr/water.

Note: Each permit application submitted online to IDNR through Indiana Interactive is subject to a \$15 enhanced access fee for online permit application filing.

If a permit is issued under the provisions of the Sand and Gravel Permits Act, the statute requires the submission of two post-action fees: surety bond and royalties. The act requires that, as a condition of the permit, *"the permittee shall give bond in the amount and with surety approved by the Department for full and prompt compliance with the terms and conditions of the permit."* The Navigable Waterways Rule states that the bond must be in one of the following forms:

1. a surety bond (will not be accepted unless it is issued by a company holding an applicable certificate of authority from the Indiana Department of Insurance);
2. a cash bond; or,
3. a certificate of deposit.

In addition to the surety bond, the Sand and Gravel Permits Act also requires that the IDNR *"... collect from the permittee ... the amount of the reasonable value of the mineral or substance taken, measured by weight, cubic dimensions, or other common and usual measurements."* The rule states that the royalty value *"... shall be as determined by the Department ..."*

There are certain occasions when the material removed from or under the bed of a navigable waterway either has no commercial value or can be used for public benefit. Under these circumstances the rule allows the IDNR to waive the royalty fee; however, the surety requirement remains in place.

How Long Does It Take to Process an Application?

The IDNR Division of Water strives to be efficient with reviews and thorough in its consideration of all information. Typically, IDNR actions are completed between 90 and 120 days from the date on which a complete application was received. No final actions can be taken until the statutorily mandated 30-day public notice has expired and comments from the reviewing divisions have been completed.

Contact Information

Contact the Department of Natural Resources at:

**Indiana Department of Natural Resources
Division of Water
Technical Services Section
402 West Washington St.
Room W264
Indianapolis, IN 46204-2251**

**Toll Free:
(877) 928-3755**

**Telephone:
(317) 232-4160**

**FAX:
(317) 233-4579**

Water_inquiry@dnr.in.gov

www.IN.gov/dnr/water



Glossary of Terms

Bank Stabilization — practices that stabilize streambanks and shorelines from erosion.

Bankfull — the point where a stream spills out of the channel and into the floodplain

Cofferdam — a temporary watertight enclosure built in the water and pumped dry to expose the bottom so that construction, as of piers, may be undertaken.

Culvert — a metal, wooden, plastic, or concrete conduit through which surface water can flow under or across roads.

Discharge of Dredged Material — any addition of dredged material into the Waters of the United States. The term includes, without limitation, the addition of dredged material to a specified discharge site located in Waters of the United States and the run-off or overflow from a contained land or water disposal area.

Discharge of Fill Material — the addition of fill material into waters of the United States, including wetlands.

Dredged Material — material that is excavated or dredged from Waters of the United States, including wetlands.

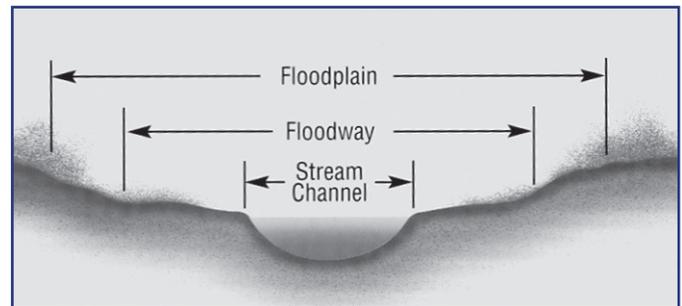
Early Coordination — contact between the applicant and the appropriate agency regarding a proposed project, prior to the submittal of an application form to the agency. The purpose of such contact is to provide for informal discussions about the pros and cons of the proposal before an applicant makes irreversible commitments of resources (funds, detailed designs, etc.). The process is designed to provide the applicant with an assessment of the viability of some of the more obvious alternatives available to accomplish the project purpose, to discuss measures for reducing the impacts of the project, and to make known the factors the agency must consider in its decision-making process. The process ranges from a single phone call or e-mail between an applicant and an agency staff person, to in-office or on-site meetings that involve the applicant, agency staff member(s), interested resource agencies (federal, state, or local), and sometimes the interested public.

Ephemeral Stream — a stream that has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Ground water is not a source of water for the stream. Run-off from rainfall is the primary source of water for stream flow.

Federally Jurisdictional Wetland — a wetland under the jurisdiction of the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act and under the jurisdiction of IDEM under Section 401 of the Clean Water Act.

Fill Material — any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a waterbody.

Floodway — the channel of a river or stream and those portions of the flood plains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flow of the regulatory flood of any river or stream.



Groin — a structure projecting out from a shoreline into the water for protection against beach erosion.

Intermittent Stream — a stream which has flowing water during certain times of the year, when ground water provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Run-off from rainfall is a supplemental source of water for stream flow.

Isolated Wetland — a wetland that is not subject to regulation under Section 404(a) of the Clean Water Act. Isolated wetlands fall under IDEM's jurisdiction and are, in general, regulated by Indiana's State Isolated Wetlands Law (IC 13-18-22).

Mean High Water Mark — with respect to ocean and coastal waters, the line on the shore established by the average of all high tides. It is established by survey based on available tidal data (preferably averaged over a period of 18.6 years because of the variations in tide). In the absence of such data, less precise methods to determine the mean high water mark are used, such as physical markings, lines of vegetation or comparison of the area in question with an area having similar physical characteristics for which tidal data are readily available.



Navigable Waters — those waters that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or have been used in the past, are now used, or are susceptible to use as a means to transport interstate or foreign commerce. Section 10 and/or Section 404 permits are required for construction activities in these waters.

Ordinary High Water Mark — the line on the shores established by the fluctuations of water and indicated by physical characteristics such as a clear natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. This term is significant because it is the landward regulatory limit for non-tidal waters (in the absence of adjacent wetlands).

Outfall — a drainage outlet that discharges materials into a body of water (e.g., a pipe that carries water from a detention basin to a stream).

Perennial Stream — a stream that has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Ground water is the primary source of water for stream flow. Run-off from rainfall is a supplemental source of water for stream flow.

Public Notice — the primary method of advising all interested parties of a proposed activity for which a permit is sought, and of soliciting comments and information necessary to evaluate the probable beneficial and detrimental impacts of the project on the public interest.

Public Interest Review — the evaluation process used by the U.S. Army Corps of Engineers to determine the probable impacts of a proposed activity. Expected benefits are balanced against reasonably foreseeable detriments. The U.S. Army Corps of Engineers' policy is to provide applicants with a timely and carefully weighed decision which reflects the public interest. All factors relevant to the proposal are considered, including conservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, wetland values, energy needs, safety, food production, and the needs and welfare of the people.

Regulatory Flood — a flood having a one percent (1%) probability of being equaled or exceeded in a year as calculated by a method and procedure that is approved by the Indiana Natural Resources Commission. The regulatory flood is equivalent to the base flood or the 100-year frequency flood.

Riparian Corridor — the banks of and vegetated areas adjacent to a waterbody such as a stream or river.

Riprap — a loose assemblage of stones placed in water or on soft ground to stabilize banks and/or to reduce or prevent erosion where there is high water flow.

Waters of the State — in general, Waters of the State include all lakes, ponds, rivers, streams, creeks, drainage ditches, and wetlands, including ground water. Water of the State also encompass all Waters of the U.S.

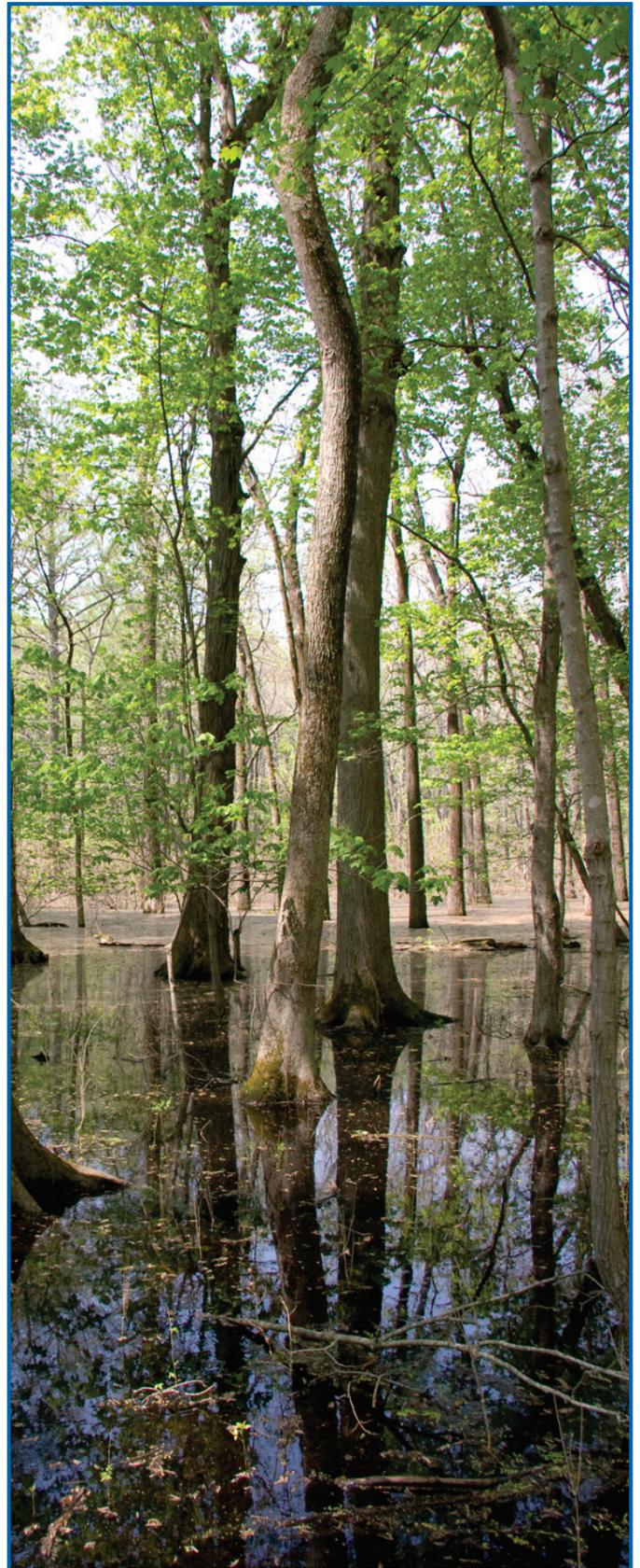
Waters of the United States — essentially all surface waters such as all navigable waters and their tributaries, all interstate waters and their tributaries, all wetlands adjacent to these waters, and all impoundments of these waters.

Weir — a small dam placed across a river or canal to raise or divert the water.

Wetland Delineation — the scientific determination of the boundaries of a wetland according to specific legal criteria which include a dominance of wetland vegetation, hydric soils, and indicators of hydrology.

Wetland Mitigation — the practice of compensating for the destruction or degradation of wetlands in one location by creating or restoring wetlands in another location. Mitigation is required as a condition of many permits issued under state law and federal law. The goal of wetland mitigation is to replace wetland functions which provide public benefits, such as flood storage, water quality protection, fish and wildlife habitat, and ground water recharge.

Wetlands — areas characterized by a dominance of wetland vegetation where the soil is saturated during a portion of the growing season or the surface is flooded during some part of most years. Wetlands generally include swamps, marshes, bogs, and similar areas.



Frequently Asked Questions

Q. What are the “Waters of the United States?”

A. Waters of the United States include navigable waters and their tributaries, all interstate waters and their tributaries, all wetlands adjacent to these waters, and all impoundments of these waters.

Q. What are the “Waters of the State?”

A. Waters of the State are defined as the accumulations of water, surface and underground, natural and artificial, public and private or a part of the accumulations of water that are wholly or partially within, flow through, or border upon Indiana. In general, this includes all lakes, ponds, rivers, streams, creeks, drainage ditches, and wetlands, including ground water. The definition of Waters of the State legally includes all Waters of the United States. Exempt isolated wetlands, private ponds and off-stream waterbodies built for treatment are all excluded from the definition of Waters of the State, unless they are also Waters of the U.S.

Q. What are wetlands and why are they important to Indiana?

A. Wetlands are defined as areas that are saturated by surface or ground water at a frequency and duration sufficient to support . . . a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetlands have a dominance of water-loving plants which can live in water or wet soil, are wet or flooded for part of the year, and have soils which have formed under wet conditions, such as muck or peat. We typically call wetlands by other names, such as marshes, swamps, bogs, sloughs, or bottom lands.

Indiana has lost more than 80 percent of its original wetlands due to drainage or filling for farming, roads, and buildings. Wetlands are not wastelands. Wetlands are important because:

- they purify water by filtering and trapping sediment, chemicals, and excess nutrients before water enters other waterbodies or ground water;
- they provide habitat for fish, waterfowl, many endangered species, and other wildlife which use these areas to breed, find food, and protect their young;
- they reduce flood damages by storing and slowing floodwaters.

- they protect shorelines from erosion; and,
- they provide areas for recreation, education, and research.

Q. How do I find out if there are wetlands on my property?

A. Wetlands do not have to have standing water in them in order to perform important water quality, hydrologic and habitat related functions or to be regulated by the Indiana Department of Environmental Management (IDEM) and the U.S. Army Corps of Engineers (USACE). Determining the boundaries of wetlands is a task that must be conducted by a qualified wetland consultant. Wetlands are delineated by carefully examining a site for the presence of wetland indicators.

In order to legally be defined as wetland, an area must have all three of the following present:

- a dominance of wetland vegetation (i.e. hydrophytic vegetation);
- the presence of soils that typically form under wet conditions (i.e. hydric soils); and,
- indicators of hydrology (the presence of surface water or waterlogged soils) at or just below the surface for a sufficient period of time in most years to influence the types of plants and soils that occur in that area.

In order to know if wetlands are on your property, you must hire a wetland or environmental consultant to conduct a wetland delineation on the property. The wetland consultant will put together a report for you, called a wetland delineation report. **This report must be submitted to the U.S. Army Corps of Engineers (USACE) for review and approval before the delineation report is considered accurate and legal.** The USACE has the responsibility of making wetland determinations and determining the limits of federal jurisdiction. The USACE will write a letter to you once they have reviewed your wetland delineation report – this letter will state the jurisdiction of the delineated wetlands and will also state whether or not the USACE concurs with the delineation. Keep this letter, and your wetland delineation report, in a safe place as you will need to submit a copy of both to IDEM if you wish to apply for IDEM Section 401 Water Quality Certification or a State Isolated Wetlands Permit.

Q. How do I know what permits I need?

A. If the project you are proposing involves working in or near a wetland or water body in Indiana, you can call the numbers given on the back cover of this booklet to find out if you will need a permit. Some examples of projects needing permits are given at the beginning of this booklet.

Q. Are there application fees for the permits I need?

A. As of the publication of this booklet, fees for permits issued by the USACE for Section 404 permit applications range from \$0 to \$100. Currently, no fees are required to apply for IDEM Section 401 Water Quality Certification or for State Isolated Wetland Permits. Fees for permit applications through IDNR range from \$0 to \$200.

Q. How long will it take to obtain the permits I need?

A. The USACE normally acts on Section 404 permit applications in 60 to 120 days. IDEM Regional General Permit Notification Forms are acted on within 30 days from the receipt of the application form. IDEM has 120 days to make an agency decision for applications submitted for a site-specific Section 401 Water Quality Certification. Isolated Wetland General Permit (IWGP) applications are acted on by IDEM within 30 days of receipt of the application form. IDEM has 120 days to make an agency decision for applications submitted for an Isolated Wetland Individual Permit (IWIP). IDNR normally acts on its water-related applications in 60 to 120 days. All of these timeframes are from the date the agency receives a complete application.

Q. How can I design my project to eliminate the need for any of these permits?

A. Review the regulated activities identified in each section of this handbook, and design your project to avoid regulated activities. The various agencies can help you do this. Have a wetland delineation completed so you know if your site has wetlands. Then, avoid impacts to wetlands and any streams or lakes on the property. If you need to install a stream crossing, select a culvert or bridge type that is installed outside of the ordinary high water mark of the stream.



Q. How do I get an authorization for culvert replacement?

A. For culvert replacements, a USACE general permit, known as a Nationwide Permit (NWP) #3, may be used. When necessary, a Pre-construction Notification is made to USACE, but no notification is required to IDEM for NWP #3.

NWP #3 requires that the culvert replacement:

- is the same type of culvert as the existing one;
- does not reduce the cross-sectional area under bankfull elevation;
- does not increase the length of the total culvert to over 150 feet;
- has either the same slope as the existing culvert or will more closely match the slope of the stream immediately upstream and downstream of the culvert;
- bank stabilization and channel bottom stabilization do not exceed either one bankfull width upstream and downstream of the replacement culvert or ten linear feet, whichever is greater; and,
- channel bottom stabilization is flush with the existing stream bottom grade.

An individual site specific Section 401 Water Quality Certification is required for culvert replacement projects that do not meet the above conditions.

Q. How do I get an authorization to install a new culvert?

A. New culverts and crossings may be authorized under a general or an individual permit. The USACE Regional General Permit (RGP) #1 requires a thirty-day notice to IDEM and USACE prior to construction and does not involve a site specific review by IDEM. To qualify for this general permit, the culvert must meet the conditions of the RGP. For more information about the RGP conditions or to discuss your project with an IDEM project manager, visit the IDEM Web site at www.wetlands.IN.gov.

An individual site specific Section 401 Water Quality Certification is required for new culvert projects that do not meet the above conditions.

For more information on culverts and stream crossings, visit the IDEM Web site at: www.wetlands.IN.gov.

For more information on determining bankfull elevation, visit the United States Environmental Protection Agency (USEPA) Web site at: www.epa.gov/warsss/pla/box03.htm.

Q. I have a copy of a National Wetland Inventory map, doesn't this show the location of wetlands?

A. National Wetland Inventory (NWI) Maps were compiled by the U.S. Fish and Wildlife Service in the 1980s using high-altitude aerial photography. They were not field-verified.

Many wetlands exist that do not show up on the National Wetland Inventory Maps. Since these wetlands were not formally delineated using the 1987 U.S. Army Corps of Engineers wetland delineation manual, the maps cannot be used in place of an on-site wetland delineation. The NWI maps are a good place to start when planning a project as they are very useful as a planning tool as they may give you the first indication that wetlands may be present on your property. Used in conjunction with soil surveys published by the Indiana Natural Resources Conservation Service, these resources can provide information on areas which may be jurisdictional wetlands. However, the only definitive way to know if wetlands are present on a site is to have a wetland delineation completed for the site.

Q. What is mitigation?

A. Wetland mitigation refers to the practice of compensating for the destruction or degradation of wetlands in one location by creating or restoring wetlands in another location. Mitigation is required as a condition of many permits issued under state law and federal law. The goal of wetland mitigation is to replace wetland functions which provide public benefits, such as flood storage, water quality protection, fish and wildlife habitat, and ground water recharge. Impacts to streams may also require stream mitigation.

Compensatory mitigation is the last step in the three-step approach of (1) avoidance of impacts to water resources, (2) minimization of impacts to water resources, and (3) compensation for unavoidable impacts to water resources. The purpose of mitigation is to compensate for unavoidable impacts to wetlands, streams, lakes, rivers, and other Waters of the U.S.

Compensatory actions are actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource. Compensatory mitigation may involve:

- restoration of existing degraded wetlands or areas that were previously wetland;
- creation of new wetlands;
- stream restoration activities;
- preservation of existing wetland and streams, when utilized in conjunction with creation or restoration;
- preservation or restoration of upland buffers adjacent to surface waters, when utilized in conjunction with creation or restoration; and,
- enhancement of existing wetlands.

For answers to other frequently asked questions and additional information on early coordination and project planning tips, visit our Web site: www.wetlands.IN.gov .



USACE

Agency Contact Information

If you wish to fill, dredge, or excavate a wetland or water body in northern Indiana, contact:

U.S. Army Corps of Engineers
Detroit District Office – Regulatory Program
P.O. Box 1027
Detroit, MI 48231
(313) 226-2218
www.lre.usace.army.mil

If you wish to fill, dredge, or excavate a wetland or water body in central or southern Indiana, contact:

U.S. Army Corps of Engineers
Louisville District Office – Regulatory Program
P.O. Box 59
Louisville, KY 40201
(502) 315-6733
www.lrl.usace.army.mil

If you wish to fill, dredge, or excavate a wetland or water body in northwestern Indiana, contact:

U.S. Army Corps of Engineers
Chicago District Office
111 North Canal Street, Suite 600
Chicago, IL 60606-7206
(312) 846-5530
www.lrc.usace.army.mil/Missions/Regulatory/Indiana.aspx

If you wish to fill, dredge, or excavate a wetland or water body anywhere in Indiana, contact:

Indiana Department of Environmental Management
Section 401 WQC/Isolated Wetlands Program
100 N. Senate Ave. • IGCN 1255
Indianapolis, IN 46204-2251
(800) 451-6027 or (317) 233-8488
www.wetlands.IN.gov

If you wish to fill or work within a floodway of a stream or river, or propose to alter the shoreline or lakebed of a public freshwater lake, contact:

Indiana Department of Natural Resources
Division of Water
402 West Washington St. • Room W264
Indianapolis, IN 46204-2251
(877) 928-3755 or (317) 232-4160
www.IN.gov/dnr/water

For basic information on wetlands and an overview of federal wetland regulations, contact:

U.S. Environmental Protection Agency
Region 5 – Water Division
77 West Jackson Blvd. • Mail Code W-15J
Chicago, IL 60604
(800) 621-8431 or (312) 353-2000
www.epa.gov/region5



www.wetlands.IN.gov

