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Intended Use of Manual for INDOT and Local Projects

This manual has been written to set expectations for waterway permitting deliverables and review paths for projects developed by the Indiana Department of Transportation (INDOT). Other projects may also benefit from the guidance in this manual. Specifically, preparers of permits for local projects that receive federal funds and which follow INDOT standard specifications are encouraged to use this manual; however, INDOT does not review permits or other related deliverables for local projects.

The Ecology and Waterway Permitting Office (EWPO) provides support and coordination throughout the design and construction of INDOT projects. Section 1.3 summarizes the tasks assigned to this office. Ecological investigations (for example waters determinations and wetland delineations), mitigation/monitoring plans, and mitigation site monitoring are discussed in the Ecology Manual.

2.1 Project Team Overview

The EWPO is a part of a larger project team, which include both INDOT staff and contractors that are involved in project design and construction (Figure 2.1). Some of the activities that occur in the design phase include NEPA compliance, waters and wetland delineations, permit determinations, and permit application preparation. Based on the project scope, these activities may be completed by INDOT district or central office staff or a consultant. EWPO involvement begins with Ecological investigations and continues through project completion. EWPO roles can be in the form of the initiator, reviewer, advisor and/or liaison. During the construction phase, the Project Engineer (PE), Project Supervisor (PS), Area Engineer (AE), and contractor ensure that the project is constructed according to design and that the project stays in compliance with the issued permits. The regulatory agencies (most commonly USACE, IDEM, IDNR, and the USCG) issue the required permits and monitor permit compliance.

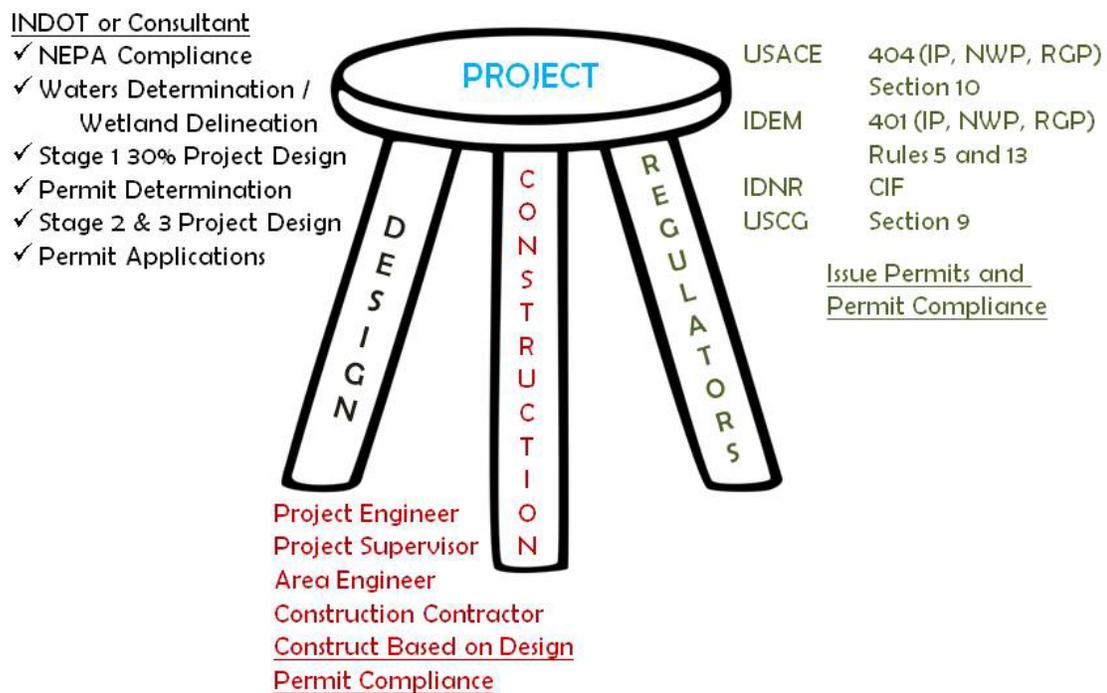


Figure 2.1 Three-Legged Stool

2.2 PERMIT Determinations

A permit determination (PD) is an evaluation by the EWPO to determine what waterway permits, if any, are required for INDOT projects as well as the appropriate level of permitting. During the project development process, a PD package should be submitted to Environmental Services Division (ESD) after stage one (30% design) is reached. It is critical that a PD be done early in the design process to ensure that adequate time is set aside to apply for and receive all necessary waterway permits prior to letting.

PDs are usually initiated by the designer or project manager, who should submit the following documents to the EWPO when requesting a PD:

- Scope of the project;
- Plan and profile sheets;
- Structure detail sheets, including the upstream drainage area for each structure;
- Cross sections;
- Waters of the U.S. report (see Ecology Manual);
- Documentation of the presence or absence of federal/state endangered, threatened, or rare species; and
- Impact estimates for waters resources, including linear feet and acres of impact below the ordinary high water mark (OHWM) for streams and acres of impact for wetlands.

The designer should submit these documents electronically to the ecology and waterway permitting specialist and team lead assigned to the area. A map that provides the areas of responsibility for the ecology and waterway permit specialists and the team leads is available online at <http://www.in.gov/indot/2522.htm>. Uploading the documents into ERMS or on to an FTP site is acceptable and may be required for larger files. A [permit determination checklist](#) is available in Appendix A. The appendix also includes a [PE/PS Checklist](#) that outlines key activities that should occur prior to and during the PRECON and during construction.

If a PD is not requested from the project manager or designer at stage one, the project's permitting needs will be reviewed when it appears on INDOT's eighteen-month tracking list. This list details project letting schedules by month over an eighteen month period. EWPO staff will initiate coordination for new projects on this list that have not had a PD. A delayed permit determination may cause problems since several permits have an average agency review time of more than 12 months, and if compensatory mitigation is required, it may take over a year to locate and design a suitable mitigation site. As a result, some permits may require up to two years to prepare a complete application and for regulatory agency review.

PDs will include the level of waterway permitting that is likely required as well as identify the need for compensatory mitigation. The type and amount of impacts to regulated aquatic resources as well as compliance with general permit conditions determines the type of permits that will be required. The waterway permits that may be required on INDOT projects and the responsible agencies include:

- **United States Army Corps of Engineers (USACE)**
 - 404 Nationwide Permit (NWP)
 - 404 Regional General Permit (RGP)
 - 404 Individual Permit (IP)
 - Section 10 Permit
 - Levee Permit

- **United States Coast Guard (USCG)**
 - Section 9 Bridge Permit
- **Environmental Protection Agency (EPA)**
 - Class V Injection Well Permits
 - Sole Source Aquifer
- **Indiana Department of Environmental Management (IDEM)**
 - Section 401 Water Quality Certification (WQC)
 - Rule 5
 - Section 402 National Pollutant Discharge Elimination System (NPDES) Point-Source Permit
 - Isolated Wetland Permit
- **Indiana Department of Natural Resources (IDNR)**
 - Construction in a Floodway Permit
 - Navigable Waterways Permit
 - Lake Preservation Act
 - Lowering of Ten Acre Lakes Act
- **County Regulated Drain Permit** (Allen, Elkhart, Hamilton, Lake, and LaPorte counties)

EWPO staff will communicate the waterway permitting need to the designer and project manager based on the submitted project design and the waters impacts. For the majority of INDOT projects, PDs are completed in less than one week if sufficient information regarding impacts to aquatic resources is available. EWPO correspondence will include the timeline for permit submittal to INDOT prior to the ready for contract (RFC) date. Submittal of complete permit applications by this date will minimize project delay due to the lack of a permit.

Permit determinations are revisited when waterway permit applications are submitted to the EWPO. Changes to the project’s scope or design since the original PD may change the permitting need. The designer is responsible for notifying the EWPO of changes as soon as possible so that a permit determination can be reevaluated. A determination that a different or additional permits are required at the time of permit application submittal increases the risk that permits will not be received prior to letting. Time and funding can also be saved by not preparing unnecessary permits.

2.3 Waterway Permit Applications

Application Submittal and Timelines

Permit applications should be accurately and completely filled out prior to submission. This includes providing all the information and supplemental material listed on each application form. The permit application should include all permanent impacts to water resources, and any temporary impacts should be quantified in an attachment. Inaccurate or incomplete applications will result in multiple reviews and delay submittal to the agencies. This will put the project at risk for meeting its schedule.

The designer can submit the permit application through INDOT’s Electronic Records Management System (ERMS). Alternative submittal methods include hard copy submittal, uploading the application onto an FTP site, or electronically mailing the application directly to the appropriate staff members. A final version of the permit application must be uploaded into ERMS for long-term INDOT storage. ERMS naming conventions should be followed as stipulated in the INDOT Design Manual.

Applications will be reviewed by EWPO staff, who will send any questions or comments to the designer. Once all changes have been made, the completed application will be signed by an authorized signatory (the EWPO manager or a Team Lead). EWPO staff will submit the signed application to the appropriate regulatory agency for review and approval. After a permit has been issued, EWPO staff will notify the project manager and the designer. This notification will include a copy of the permit and a request for its inclusion into the project’s contract letting documents.

A common mistake made by designers is to wait to forward applications to the EWPO until late in the design process. INDOT staff must review and approve applications prior to submission. *The permitting agencies have timeframes and tasks mandated by law, and some of these timeframes cannot be accelerated to accommodate a project’s schedule.* For example, IDEM must hold a twenty one-day public notice period for each individual 401 Water Quality Certification (WQC). In addition, a 401 individual permit does not become effective until the eighteen day mandated appeal period has passed. Therefore, the minimum IDEM review period is at least 39 days for each 401 individual permit application.

Early application submittal allows additional time to respond to agency comments. This may require design and permit application modification. Table 2.1 describes the average review time for common waterway permit applications. It also includes the number of months prior to a project’s RFC date that the application must be submitted to the EWPO office. Failure to submit applications according to these timelines increases the risk of not having a permit by the RFC date. These timeframes assume an accurate and complete permit application is received at the first submittal. The review process will be halted if INDOT or a regulatory agency denies the application, or puts it in abeyance, because of missing or insufficient information.

Table 2.1: Permitting Timeframes

Agency	Permit type	Average Agency Review Time (months)	Number of Months Application Packages Need to be Given to EWPO Prior to RFC
USCG	Section 9	3 months	5 months
USACE	Section 10	2 months	7 months
USACE	404 Individual Permit	12 to 18 months	18 months
USACE	404 Nationwide Permit	4 months	4 months
USACE	404 Regional General Permit	4 months	4 - 6 months
IDEM	401 Individual	2 months	7 months
IDEM	401 Nationwide Permit	1 month	4 months
IDEM	401 Regional General Permit	1 month	4 months
IDEM	Rule 5	1 month	4 months
IDEM	Isolated Wetlands	4 months	7 months
IDNR	All Permits	6 months	9 months
County Drain	Regulated Drain Permit	3 months	4 months

Application Fees

INDOT does not pay fees for waterway permit applications with the exception of filing fees associated with Rule 5 Notices of Intent (NOI). The INDOT EWPO will coordinate on the funds transferred to IDEM for Rule 5 applications. The contractor is responsible for paying the filing fees for design build and lump sum erosion control projects. See Chapter 6.6 for more information on the Rule 5 permitting process.

Public Notices

Public notices are required for several permits. In some cases these are issued by the regulatory agencies while in others the applicant (INDOT) is required to issue the public notice. The EWPO will issue the public notice required for Rule 5 and IDNR construction in a floodway applications.

IDEM will issue a public notice for all individual 401 WQCs. This public notice period lasts twenty-one days and is sent to adjacent property owners as well as other resource agencies. IDEM will coordinate with INDOT regarding any relevant comments received as a result of the public notice prior to approving the WQC. IDEM will also follow this process when processing permits under its isolated wetlands program.

The USACE will issue a public notice for all individual 404 and Section 10 permits. The public comment period ranges from fifteen to thirty days. The USCG will issue a public notice under Section 9 with a public comment period of thirty days. Comments resulting from these public notices will be passed along to INDOT for resolution prior to approval of the permit application.

2.4 Contract Letting Documents

Contract Information Book

Contract information books (CIBs) detail contractor responsibilities for each INDOT project. These are available on INDOT's website (<http://www.in.gov/dot/div/contracts/letting/index.html>). CIBs contain pay items and special provisions associated with the project. The designer is responsible for ensuring that the CIB reflects all of the waterway permits obtained for the project.

The designer should verify that all the acquired permits for the contract are included as well as all of the conditions for each permit. In addition, the pay items need to match the measures required for all waterway permits. The erosion and sediment control measures associated with the Rule 5 permit application should be included as pay items and the quantities verified to determine if adequate amounts are included in the contract. Materials required for wetland or stream mitigation are other pay items that may be required. Change orders during construction could result if necessary pay items, or the appropriate quantities, are not included in the CIB.

Special provisions related to waterway permits may include:

- Instructions on the installation of non-standard pay items, such as those associated with compensatory mitigation site construction or Rule 5 applications;
- Provisions to address unique special conditions included in waterway permits; and
- Provisions to prevent violations, such as marking adjacent wetlands with construction flagging/fencing.

Project Plans

Contract letting plans should reflect all waterway permits obtained for the project. The designer is responsible for delivering a set of plans free of discrepancies that would result in violations of permits or applicable environmental laws and regulations during construction. In particular, letting plans should include:

- Symbols and labels for all rivers, streams, creeks, ditches, lakes, ponds, etc. using the same nomenclature used in the permit application (USGS topographic name);
- Symbols and labels for the ordinary high water mark (OHWM) elevation on all stream and structure cross sections;
- Marked boundaries for all impacted and adjacent wetlands with labels reflecting the nomenclature used in the permit applications;
- Marked boundaries for the 100-year floodplain;
- Marked boundaries of any other aquatic resource;
- Erosion and sediment control measures that reflect the finalized Rule 5 application; and
- Compensatory mitigation, if required, reflecting the mitigation plan submitted to regulatory agencies.

All of this information is required to minimize the chances for violations of waterway permits. For instance, INDOT construction staff and the contractor will need to link the permitted impacts to the project plans. Without appropriate labeling of waters of the U.S. and the 100-year floodplain, it would be difficult to link impacts listed in 404, 401, and IDNR permits. This could result in additional impacts to these resources and/or difficulty in determining whether or not a permit modification is needed. To assist with clarifying impacts, it is recommended that designers include notation in letting plans on resources that are not to be either wholly (or only partially disturbed) during construction. This could include labels such as “Do Not Disturb” or symbols such as hatching to convey this information to construction. Additionally, if adequate erosion and sediment control measures are not included in the letting plans, there is an increased risk of violating Rule 5 during construction. Finally, if compensatory mitigation is left out of a contract, INDOT will not be able to construct the mitigation within the required regulatory timelines, thereby violating the terms of the projects permits. INDOT may then need to let a separate contract to address this oversight.

Project Commitments

The commitments database conveys important information to designers, project managers, and construction staff. It ensures that important requirements (commitments) on projects are either addressed during the development process or are flagged for construction’s attention after project letting. Requirements covered by INDOT Standard Specifications should not be included in the commitments database. The EWPO will include unique permit conditions in the commitments database if compliance will require special action from construction. For example, if an IDNR Construction in a Floodway (CIF) permit requires that a peregrine falcon expert be brought in to assess a bridge for nests prior to its demolition, a commitment will be entered in the database so construction will be aware of this unique situation. The designer should address this during design by including a special provision in the CIB. Questions regarding an EWPO entered commitment should be coordinated with the EWPO contact.

2.5 Construction

Preconstruction Meeting

A preconstruction (PRECON) meeting is held prior to the start of construction for each INDOT project. The Project Manager, designer, contractor, and project engineer (PE) or project supervisor (PS) in addition to other interested parties (i.e. utility companies or local government entities), will attend this meeting. The PE/PS is responsible for ensuring that waterway permits are available and discussed at the PRECON. A PE/PS checklist for PRECONs and construction is provided in Appendix A-1 - PE/PS Checklist. Items to discuss include:

- Sequencing of erosion/sediment control measures for all phases of construction;
- Any necessary permit modifications, including unpermitted temporary impacts;
- Any necessary waivers (fish spawning season and Indian Bat clearing restriction); and
- Permits needed for utility work (utilities are required to obtain their own permits).

All waterway permits must be posted on the construction site. They are usually posted on a bulletin board located within the project limits. The PE/PS and contractor must be familiar with the general and specific conditions associated with each permit, to include linking permitted impacts to the project plans. Any questions can be directed to the EWPO contact for that district.

Permit Modifications and Extensions

Permit modifications are needed for any deviation that exceeds the level or type of impacts authorized in the permits. All modification requests should be submitted through the EWPO office for processing since INDOT was the permit applicant. Regulatory agencies will typically reject modifications not submitted through INDOT. Additional impacts may result in the requirement for additional compensatory mitigation. As with all impacts to aquatic resources, INDOT must demonstrate that all practical steps have been taken to avoid and minimize impacts.

The PE/PS is responsible for forwarding documentation of the proposed change(s) and the contractor is required to provide the necessary information needed for a permit modification. This includes:

- The scope of the proposed changes to the permitted impacts;
- The reason for the additional impacts and any avoidance/minimization that was considered; and
- Project plans marked with the location of any proposed changes.

Waterway permits have expiration dates and a permit may expire prior to the start or before completion of construction. The Project Manager and/or PE/PS are responsible for ensuring that all permits remain valid. If a permit is set to expire, the EWPO should be notified at least ninety (90) days prior to the permit expiration date so that a permit extension can be requested. The reason for the extension and the expected completion date should be provided so that this can be included with the extension request. Since permit extensions are from the date requested they should not be requested too far in advance to avoid multiple extension requests.

Regulatory Agency Enforcement

A violation occurs when a project is out of compliance with one or more of its permits or when the project has unpermitted impacts to an aquatic resource. The EWPO conducts site inspections to identify noncompliance on active construction projects and provide technical assistance to project construction staff to bring projects back into compliance before formal violations are issued by regulatory agencies.

Regulatory agencies will conduct routine inspections of projects and follow-up on complaints. The agencies issue inspection summaries following their visit, which may include violations that require correction to bring the project back into compliance. EWPO staff will coordinate with construction staff (PE, PS, area engineer, etc.) and the Project Manager on appropriate corrective action. EWPO staff will also coordinate a formal written response to the agency. It is the responsibility of the Project Manager and PE/PS to ensure compliance with all permit conditions and environmental laws and regulations.