Permitting Work that Impacts Streams and Wetlands: Helping You Through the Process

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Presentation Purpose

This presentation will review both federal and state permitting processes, and will provide information on the types of activities that may require permits.
The Corps of Engineers has 3 Districts in the State of Indiana. The Louisville District, seen here in green, covers the majority of Indiana, while the Chicago District covers the counties of Lake, Porter and a portion of LaPorte, and the Detroit District covers the remaining northern counties.
Federal Permitting

- The Regulatory Program’s authority is delegated to the U.S. Army Corps of Engineers (Corps) directly from the U.S. Congress.

- Section 10 of the River and Harbors Act of 1899 ("Section 10")

- Section 404 of the Clean Water Act ("Section 404")
Section 10 of The Rivers and Harbors Act of 1899

Regulates the placement of any structure or work in, under, or over a “traditionally navigable water” (TNW). Structure or work: Utility lines, outfalls, marinas, boat docks, dredging, etc.

The purpose of this law is to protect navigation.
Section 10 of The Rivers and Harbors Act of 1899

These waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce (e.g., Ohio, Wabash, St. Joseph & White Rivers, Lake Michigan, etc.).
Section 404 of the Clean Water Act

Regulates the **discharge** of **dredged or fill material** into "waters of the U.S." (WOUS), including adjacent wetlands

"Dredged material" is material excavated or dredged from WOUS, such as sediment, soil and rock, etc.

Examples of "fill material" can be rock, soil, concrete, etc.
Section 404 of the Clean Water Act

A permit is usually required when “fill material” is placed in WOUS where the material has the effect of replacing any portion of a WOUS with dry land (such as placing fill material into a wetland or stream to build a road) or changing the bottom elevation of any portion of a WOUS (such as placing rip rap in a stream for bank stabilization).

The purpose of the Clean Water Act is to protect and maintain the physical, chemical and biological integrity of the Nation’s waters.
Related Laws Affecting Permit Procedures and Policy

The Corps is also required to ensure compliance with the following laws:

- Endangered Species Act
- Section 307(c), Coastal Zone Management Act (pertains to Lake Michigan in Indiana)
- National Environmental Policy Act, 1969
- Fish and Wildlife Coordination Act
- Section 106 of National Historic Preservation Act
Types of Permits
Standard & General Permits

Standard Permits

Individual Permits
- Full Public Interest Review
- Agency Coordination
- 120 days
- Mitigation is usually involved, and compensates for impacts, i.e., replaces the lost wetland, enhances the impacted stream, etc.
- Permit fee for commercial projects is $100.00
- Permit fee for private projects is $10.00
Types of Permits
Standard & General Permits

Standard Permits

Letters of Permission
- Abbreviated Processing Procedure
- Non-Controversial
- Agency Coordination
- < 120 days
- Mitigation not applicable to this permit type
- No fee for this permit type
Types of Permits
Standard & General Permits

General Permits
- Reissued every 5 years by Corps Headquarters
- Minimal Aquatic Impacts
- The two types of general permits in Indiana are the Indiana Regional General Permit & the Nationwide Permits
- Minimal Aquatic Impacts
- May or may not require a preconstruction notification
- No fees involved for these permit types
- Verifications are issued within 45 to 60 days of receipt of a complete application.
Types of Permits
Standard & General Permits

Indiana Regional General Permits

- Replaces a number of Nationwide Permits in Indiana
- This permit type is used most frequently and mainly authorizes new construction.
- Examples of projects include new roads, residential and commercial developments, relocating streams to cultivate a farm field, and bank stabilization.
- Authorizes construction up to the expiration date of the RGP
Types of Permits
Standard & General Permits

Indiana Regional General Permits (Continued)

- **Minimal Aquatic Impacts** (<1 acre; Up to 1,500 linear feet of stream impact)
- May or may not require a preconstruction notification
- Verifications are issued within 45 to 60 days of receipt of a complete application.
- Requires mitigation for impacts exceeding 0.1 acre and/or 300 linear feet of stream
Types of Permits
Standard & General Permits

Nationwide Permits

- Activity specific authorizations
- Examples include maintenance projects and utility lines
- Authorized for 2 years
- **Minimal Aquatic Impacts** (<1/2 acre; 300 to 500 linear feet, depending on the Nationwide Permit)
- May or may not require a preconstruction notification
- Verifications are issued within 45 to 60 days of receipt of a complete application.
- Requires mitigation for impacts exceeding 0.1 acre and/or 300 linear feet of stream
What Waters are Regulated?

- Waters that are regulated by the Corps of Engineers and the Indiana Department of Environmental Management (IDEM) include wetlands, streams, rivers, ponds, lakes, etc.
- Isolated wetlands that would be impacted by a project don’t need a permit from the Corps of Engineers, however, the State of Indiana does take jurisdiction over isolated wetlands.
Wetlands

The photos provided here are wetlands that would be found in the Midwest.

Wetlands don’t have to be wet all the time to be considered wetlands.

Under Section 404 of the Clean Water Act, wetlands must have some eventual connection to a navigable water.

The Corps is the agency that makes the final wetland determination.
Wetlands

These are examples of emergent wetlands. They usually will contain grasses, cattails, etc.

Note: Wetlands don’t always contain standing water.
Wetlands

This is an example of a mix of forested and scrub-shrub wetlands.
Wetlands

These are examples of forested wetlands.
Streams

Perennial stream (left), Intermittent stream (right)
Streams

Examples of ephemeral streams
Jurisdictional Waters

Waters are considered to be “jurisdictional” if they have a connection to, are adjacent to, and/or eventually flow to a navigable water.

The Regulatory Office makes the determination if waters on your project site are jurisdictional. If work is to be performed in waters found to be jurisdictional, a permit may be required.

If in doubt, contact the Regulatory Office to make this determination AS EARLY AS POSSIBLE IN THE CONCEPTUAL DESIGN PROCESS, i.e., before property is procured and or work begins, etc.
Examples of Activities That May Need A Corps Permit

Bank stabilization
Re-routing of a stream
Dredging
Mechanized land-clearing
Channelization of a stream
Roads
Utility lines
Residential construction projects
Commercial construction projects
Boat ramps
Boat docks
Marinas

*These are some examples and are not limited to these activities.
Recommendations

If your project area has drainage features, i.e., a stream, “ditch,” wet areas, and/or low areas that appear to receive drainage, it is recommended that you contact the Corps to determine if a permit will be required for your project.
IDEM Regulates

- Placement of fill into Waters of the US
- Placement of fill into State Isolated Wetlands
IDEM Permitting Overview

- Regional General Permit (RGP)
- Nationwide Permits (NWP)
- Individual Section 401
- Isolated Wetland Permit
IDEM Regional General Permit

- Two pages
- 401 Water Quality Certification for projects with “minimal impact”
- Thirty-day review timeframe
- Automatic approval unless there is a problem
- Applicants must meet the terms and conditions of the IDEM RGP
IDEM Nationwide Permits

- Both IDEM and Corps general and specific conditions
- Notification required to IDEM for some permits (12, 27, 51 & 52)
- Notify IDEM using the RGP Notification Form
Individual Section 401

- For projects that do not meet terms and conditions of general permits
- 120 day review process from receipt of complete application
- Compensatory mitigation often required
- Requires a 21-day public notice
- Contains conditions to ensure compliance with state water quality standards
IDEM Isolated Wetland Permits

- General and Individual permit based on class and size of wetlands
- Thirty-day review for general permit and 120-day review for individual permit
- Thirty-day public notice for individual permit
- Compensatory mitigation required
- Both permits contain conditions that must be complied with
Culvert Replacements
Bank Stabilization
New Drainage Tile Installation
Dredging Ditches
Two-Stage Ditch Construction
Logjam Removal
So, If I Have a Project, What Do I Do?

Call the Corps Regulatory Office to determine if you need a permit. Before making the call, have your project information ready:

Describe the proposed project and its purpose.

Describe the location. Latitude and longitude information would be very helpful.

Describe the project details, i.e., such as if it will involve the placement of fill or dredged material into a possible “water of the U.S.” and if so, provide the area of wetlands to be filled, and/or the linear feet of stream impacts.

Avoid or minimize impacts to jurisdictional waters when possible.

Providing the above information in the phone call may determine if you need a permit, however, you may be asked to submit a permit application to be sure.
Applying for a Permit

Visit the following website for information on how to apply for a permit, as well as additional information regarding the Regulatory Program: http://www.lrl.usace.army.mil/
When the page opens click on “Obtain a Permit” and you will be directed to the Regulatory page where application information and instruction on how to apply for a permit are provided.

NOTE: The Corps will also accept a completed Indiana Department of Environmental Management 401 Water Quality Certification Application.

The following Louisville District phone numbers are provided if you have further questions regarding permitting:

502-315-6733/502-315-6686
IDEM Online

Applications
• IDEM Application Forms - www.idem.IN.gov/4388.htm
• Regulatory Service Portal - www.idem.IN.gov/5964.htm

Program Staff
• Project Manager Map - www.idem.IN.gov/4395.htm

Volunteer Mitigation Map
• IDEM Volunteer Mitigation Map Web Tool - http://idemmaps.idem.IN.gov/apps/MitigationVolunteer

IDEM Wetlands Information
• All About Wetlands - www.wetlands.IN.gov
Planning a Project? Call us!

Project Managers

1. Heather Parsons  
   (317) 233-2482  
   hparsons@idem.in.gov

2. Aaron McMahan  
   (317) 234-6351

3. Samantha Groce  
   (317) 234-6223

4. Matt Smedley  
   (317) 234-5647

5. David Carr  
   (317) 234-6350

6. Marty Maupin  
   (317) 234-2471

State Regulated Wetlands and Section 401 Water Quality Certification Programs

Report a Violation  
(800) 401-6027, Ext 2-4464
Arm Yourself with Info!

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

Filling? Dredging? Excavating?
READ THIS FIRST!

INDIANA WETLANDS
A guide to state and federal permits required to work in or along Indiana's wetlands, lakes, rivers, streams and ponds.
Questions?

www.wetlands.IN.gov