Waterway Permitting

Why do we care about waterway permitting?

It’s the law...specifically, it’s these laws:

- Clean Water Act (Sections 401, 402, & 404)
- Rivers and Harbors Act of 1899
- Executive Order 11990
- Safe Drinking Water Act
- Lakes Preservation Act
- Lowering of Ten Acre Lakes Act
- Flood Control Act
- Sand and Gravel Permits Act
- Construction of Channels Act
- 327 IAC 15-5 (Rule 5)
- State Regulated Wetlands and Rules
Pollution

Ecological Impacts
Hydraulic Modifications to streams, rivers, wetlands, watersheds, etc.

Property Damage to neighboring parcels

Construction costs increase when:
- we have a delay for permit violations,
- when contractor claims a delay for obtaining amended permits, or
- for after the fact mitigation

Lawsuits from:
- neighboring land owners for property damage,
- concerned citizens, or
- from EPA, IDNR, IDEM, or USACE for permit violations

Aquatic Resources Subject to Waterway Permits

- Waters of the United States
  - Streams
    - Perennial
    - Ephemeral
    - Intermittent

- Wetlands
  - Wetlands subject to jurisdiction by USACE or IDEM
  - Wetlands subject to jurisdiction by NRCS
    - Prior converted cropland (PC)
    - Wetland (W)
    - Farmed Wetland (FW)
    - Converted Wetland (CW)
    - Artificial Wetland (AW)
Typical Permits:

U.S. Army Corps of Engineers
- Section 404 Regional General Permit (RGP)
- Section 404 Nationwide Permit (NWP)
- Section 404 Individual Permits (IP)

Ind. Dept. of Environmental Management
- Section 401 Water Quality Certification (WQC)
- Rule 5 – Erosion Control
- Isolated Wetland Permit

Ind. Dept. of Natural Resources
- Construction in a Floodway Permit
- Navigable Waterways Permit

Less common waterway permits (federal):

U.S. Army Corps of Engineers
- Section 10 Permit (Work IN a navigable waterway)
- USACE Levee Permit (Work ON a legal levee)

United States Coast Guard
- Section 9 Bridge Permit (Commerially navigable)

Environmental Protection Agency (EPA)
- Class V Injection Wells (Connection to groundwater)
- Sole Source Aquifers (St. Joseph Aquifer - ground water)
Less common waterway permits (state):

Indiana Dept. of Environmental Management
- Isolated Wetland Permit
- Section 402 (NPDES) Permit (Sewer & septic systems)
- Rule 13 Statewide Permit (Individual storm water permit)

Ind. Dept. of Natural Resources
- Navigable Waterways Permit (Work IN a navigable waterway)
- Dewatering Well Installation facility (Significant water withdrawal)
- Water Well Abandonment (Closure of water wells)
- Lake Preservation Act (Piers, seawalls, dredging)
- Lowering of Ten Acre Lakes Act (Ditching or draining affecting lake level)

Q: What water resources are regulated and for which will we need a permit to work in or around?

A: Waters of the US
- Lakes
- Rivers
- Streams
- Roadside Ditches (channelized or captured stream)
- Drainage Swales/Irrigation Ditches
- Non-Isolated Wetlands

AND Isolated Wetlands
Seasonal Streams

Roadside Ditch
Waters of the US

- Waterways that are jurisdictionally under the control of the US Army Corps of Engineers (USACE)

- Work in and around these areas will require permitting from one or more of the following agencies: USACE, Indiana Department of Environmental Management (IDEM), Indiana Department of Natural Resources (IDNR) and US Coast Guard
Defining Waters of the US

1. Presence of Ordinary High Water Mark

2. Connected upstream and downstream to another Waters of the US

3. Waterway that is *channelized*

Note: *Seasonal streams can be Waters of the US*

One of the main defining features of Waters of the US is the presence of an Ordinary High Water Mark (OHWM)
Wetlands
To be considered a wetland, a site must have three characteristics

1) Hydrology - water present for some period each year.
2) Wet soils
3) Water-loving vegetation

Importance of Wetlands

- Provide habitat for wildlife
- Act as a natural filter for water flowing through them
- Reduce flood risk
- Control erosion
- Recreation
Disposal Areas

- Areas where fill or other unwanted materials from a project are dumped

- Waters of the US and Wetlands cannot be used as disposal areas unless all applicable permits have been obtained.

Disposal Areas (cont.)

- Dumping in Waters of the US or Wetland may result in fines and/or mitigation to return the dump site to its original state.

- INDOT is liable for INDOT material regardless of who dumps it in a wetland or Water of the US
Avoid!

The Process

* Permitting starts earlier than design, begins in NEPA with water determinations and wetland delineations
* Includes legally mandated review periods
The Process for INDOT Projects

- Permit Section staff (6)
- Divided by districts,
  - Kristopher Grinnell - Vincennes
  - Kristie Davis - LaPorte
  - Li Kang - Seymour
  - Jared Sanders - Greenfield
  - Nathan Saxe – Fort Wayne
  - Patrick Ewbank - Crawfordsville
- All submittals and status requests for permits come through the Permit Supervisor
- Permit Unit has developed check lists for information to be supplied by the designer for permit determination packages and permit application packages.

<table>
<thead>
<tr>
<th>Agency</th>
<th>Permit type</th>
<th>Average Agency Review Time (in months)</th>
<th>Number of Months Application Packages Need to be Given to OES-WPU Before RFC Date</th>
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</thead>
<tbody>
<tr>
<td>USACE</td>
<td>Section 10</td>
<td>2 months</td>
<td>7 months</td>
</tr>
<tr>
<td>USACE</td>
<td>404 Individual Permit</td>
<td>12 to 18 months</td>
<td>20 months</td>
</tr>
<tr>
<td>USACE</td>
<td>404 Nationwide Permit</td>
<td>3 to 6 month</td>
<td>9 months</td>
</tr>
<tr>
<td>USACE/IDEM</td>
<td>404/401 RGP</td>
<td>1 month (review by IDEM)</td>
<td>4 months</td>
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<tr>
<td>IDEM</td>
<td>401 w/more than .1 acre impacts</td>
<td>4 month</td>
<td>7 months</td>
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<tr>
<td>IDEM</td>
<td>401 w/less than .1 acre impacts</td>
<td>1 month</td>
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<tr>
<td>IDEM</td>
<td>Rule 5</td>
<td>1 month</td>
<td>4 months</td>
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<tr>
<td>IDEM</td>
<td>Isolated Wetlands</td>
<td>4 months</td>
<td>7 months</td>
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<tr>
<td>DNR</td>
<td>All permit types by DNR</td>
<td>6 months</td>
<td>9 months</td>
</tr>
</tbody>
</table>
**Permit Application Prerequisites:**

- USACE Jurisdictional Determination
- Water Quality studies for streams
- Wetland delineations and qualitative analysis
- Ecological Coordination – Section 7
- Cultural Resources – Section 106

### IDEM 401/USACE 404 Permit Example

- **Sight Distance Improvement Project**
  - Raising the grade of the pavement and widening
- 7 pipe replacements
**Example**

**IDEM 401/USACE 404 RGP**

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**Activity Description:**
The project primarily involves the grading of the right of way and adding a full depth PCC pavement with new asphalt surfacing, with selective base compaction and the installation of acoustical barriers on the northbound lanes. The project includes replacing all critical underground utilities at the site. The existing pavement is rehabilitated by grinding and reverse shotcrete, followed by the application of a new asphalt surface. This work is expected to improve the overall condition of the roadway and reduce noise levels.

**Potential Impacts:**

### Social

- Increased traffic during construction
- Temporary noise from construction activities

### Environmental

- Dust generation and air quality issues
- Localized water runoff

### Economic

- Temporary job creation during construction
- Reduced economic activity during construction

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**Risk Assessment:**

- **Low Risk:** The project is expected to have minimal environmental impact.
- **Medium Risk:** There is a potential for noise pollution, but it is expected to be controlled.
- **High Risk:** Traffic congestion could be a concern, although measures are in place to mitigate this.

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**Conclusion:**
The project is deemed safe and feasible with proper planning and execution. The community will be informed of the construction schedule and any potential impacts. Public consultations and meetings will be held to address concerns and ensure the project's successful completion.

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**Appendix:**

- Project timeline and budget
- Construction permits and approvals
- Public notice and outreach plans

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**Contact Information:**

- IDEM Project Manager: [Contact Details]
- USACE Project Manager: [Contact Details]
401/404 Permit Example

- Sight Distance Improvement Project
  - Raising the grade of the pavement and widening

7 pipe replacements – Only Str. #14 in Waters of the US
Rule 5 Permit required for projects with $\geq 1.0$ acre of soil disturbance

- Cumulative
- Erosion Control Measures
  - Implementation PRIOR to soil disturbance
  - Measures need to be MAINTAINED

All projects should have some form of erosion control
READ YOUR PERMIT!

- Read the conditions of the permits thoroughly as soon as possible
- Follow ALL conditions to the word.
- Check permit expiration dates.
Do review plans

Good erosion control plans. Highlighted erosion control methods

USE COMMON SENSE

- If there is an erosion control measure that you know should be used then use it even if it is not in the plans

No erosion control protection in or around the outlet

Sedimentation in water body
Illegal dumping in wetlands:
Failure to obtain permits:
* US 20, LaGrange County
* Lick Creek, Orange County
**DO NOT** allow water to flow through an unstabilized channel.

Do Not Work in a Waterway without a Permit.
Permit Manual

- Manual Divisions
  - Laws & Permitting Agencies
  - Permit Process
  - Types of Permits USACE, IDEM, IDNR, County
  - Mitigation
  - 17 appendixes
  - Can be found on INDOT website under Publications/ Waterway Permit Manual

Conclusion

- Future Goals of Permitting
  - Carabell/Rapanos Court Case
  - Funding Agreements with other agencies
  - Possible MOU with USACE regarding “like” pipe replacements
Conclusion

INDOT Waterway Permitting Unit

Vincennes District – Kristopher Grinnell – 317-234-4915
Seymour District – Li Kang – 317-232-6766
Crawfordsville District – Patrick Ewbank – 317-233-5568
Greenfield District – Jared Sanders – 317-232-5017
LaPorte District – Kristie Davis – 317-232-5112

Major Moves Permits Manager- Steve Sperry- 317-232-5206
Waterway Permit Supervisor- Richard Phillabaum- 317-233-5151
Waterway Permit and Ecology Administrator- Michelle Allen- 317-232-5135

ANY QUESTIONS?