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5.23 Permits

Minor editorial changes have been made to this section since the publication of the Draft Environmental Impact Statement (DEIS). Text has been added to indicate input from the U.S. Army Corps of Engineers (USACE) regarding the processing of Section 404 permits and to provide clarification regarding the Indiana Department of Environmental Management (IDEM) Section 401 Water Quality Certification (WQC).

5.23.1 Introduction

Each alternative would require certain permits prior to beginning construction. These may include: USACE Section 404 permit and Section 10 permit; IDEM Section 401 WQC and state isolated wetland permit; Indiana Department of Natural Resources (IDNR) Construction in a Floodway permit; and Federal Aviation Administration (FAA) Tall Structure Permit. The project would also have to satisfy the IDEM National Pollutant Discharge Elimination System (NPDES) Rule 5 requirements found in 327 IAC 15-5, and Rule 13 requirements found in 327 IAC 15-13. Coordination with the U.S. Coast Guard will be completed to determine if any Section 9 permits are required.

The Section 404 permit, Section 401 WQC, and NPDES permits are authorized under the federal Clean Water Act (CWA). IDEM regulates wetlands and other waterways that do not fall under USACE jurisdiction under Indiana's Isolated Wetlands Law (IC 13-18-22) and the rule implementing the law (327 IAC 17). In addition, IDEM regulates stormwater runoff during construction under Rule 5 (327 IAC 15-5) and stormwater discharges in urbanized areas, both during and post construction, under Rule 13 (327 IAC 15-13). IDNR will require permit approvals for floodway impacts under the Indiana Flood Control Act (IC 14-28-1).

All necessary permits would be applied for and obtained prior to the construction of this project, and the terms and conditions of these permits would be adhered to during the construction and maintenance of this facility. Contractors would be required to obtain the permits required for temporary construction practices, such as temporary roads and causeways for bridge construction or waste and borrow pits.

An overall I-69 permitting and mitigation tracking methodology has been developed to track permitting and mitigation within the entire I-69 project from Evansville to Indianapolis, in consultation with permitting agencies and USEPA. The tracking methodology uses a geographic information system (GIS) database with GIS linked map information. INDOT will provide a tracking summary to permitting agencies and USEPA on an annual basis as a part of mitigation monitoring reports. The summary will identify the permitting and mitigation commitments and describe the status of the activities associated with each commitment.



5.23.2 Section 404 Permit

The USACE regulates the nation's waters for navigation and the full public interest for both the protection and use of water resources. The regulatory authorities and responsibilities of USACE are based on Section 404 of the Clean Water Act (33 U.S.C. 1344) and prohibit the discharge of dredged or fill material into waters of the U.S. without a permit from the USACE. If filling or dredging operations are proposed to occur within the boundary of a water of the U.S., a Section 404 permit must be obtained from USACE before those activities are conducted.

Three types of permits are issued by USACE within the State of Indiana: Nationwide Permits, the Regional General Permit for Indiana, and Individual Permits. Nationwide Permits have been developed for projects meeting specific criteria and having a minimal impact to the regulated resources. Minimal impacts are generally classified as less than 0.1 acre of permanent or temporary impacts to wetlands and less than 300 linear feet of impacts to streams, depending on the activity to be undertaken.

The Regional General Permit (RGP) for Indiana has been developed for projects meeting specific criteria and having a minimal impact to regulated resources within the State of Indiana. The RGP authorizes activities associated with any construction activities impacting less than one acre of wetlands or less than 1,500 linear feet of regulated waterways. Projects involving excavation and/or discharges of dredged or fill material into waters of the U.S., including jurisdictional wetlands, and not authorized under either a regional general or nationwide permit, require an USACE Section 404 Individual permit or a letter of permission from USACE prior to commencement of construction. Section 404 permits would be applied for before or during the design phase of the project.

USACE has indicated that under Section 404 of the Clean Water Act, the U.S. Corps of Engineers' Louisville District intends to review proposed impacts to waters of the United States on the basis of single and complete crossings. For linear projects, the term single and complete crossing is defined as that portion of the total linear project proposed by the applicant that includes all crossings of a single waterbody at a specific location. If the proposed impacts at a single and complete crossing meets the terms and conditions of Indiana Regional General Permit Number (RGP) 1, issued by the Louisville, Detroit, and Chicago Districts on December 15, 2014, the crossing would be processed under the RGP. Crossings that would have impacts exceeding the RGP limits would be processed using the standard (individual) permitting process.

Figure 5.23-1 illustrates a typical wetland associated with I-69 Section 6. A Section 404 individual permit (IP) would be required for this project. This permit covers cumulative impacts to wetlands that are more than one acre in size and streams impacted below the ordinary high-water mark (OHWM) that are more than 1,500 linear feet. The IP is used to permit projects where the impacts exceed what can be permitted under the Regional General Permit. In general, an IP is more extensive and requires more time to obtain than regional general or nationwide permits.

The Section 404 individual permit process would be initiated by a request for a jurisdiction determination from USACE for the water resources located within the project area. Following USACE jurisdiction determination, the applicant would use that information to minimize impacts during project design, submit an application documenting all remaining water resource impacts, and submit a compensatory mitigation plan for the unavoidable impacts. After confirming that the application is complete, the USACE would publish a public notice of the project for a 30-day comment period. Following the comment period, the USACE would prepare its decision document for the project, which would include addressing National Environmental Policy Act (NEPA) requirements and evaluating the project based on Section 404 requirements.

If the USACE determines that requirements have been met and all appropriate documentation has been provided, it would provide an authorization letter or permit notifying the applicant that the project has been approved for construction, along with a list of conditions.

The stream assessment report prepared for I-69 Section 6 identifies stream segments in the field survey study area that may be considered waters of the U.S., and therefore may be under USACE jurisdiction. For reference to impacts to streams see **Section 5.19** and **Appendix L**.

The Wetland Technical Report prepared for I-69 Section 6 identifies wetland complexes, including open water features in the field survey study area. For reference to impacts to wetlands see **Section 5.19** and **Appendix E**.

Calculated impacts to wetlands are based on the wetland boundary determination and proposed right of way for each alternative, including the RPA. These impacts will be used for USACE permits.

5.23.3 Section 9 and 10 of the Rivers and Harbors Act

Section 9 of the River and Harbors Act of 1899 and the General Bridge Act of 1946 give the U.S. Coast Guard the authority to protect navigable waters of the U.S. Navigable waters are those waters that at some time, in the past, present, or future were, are, or will be used to transport interstate or foreign commerce. Bridges in southwestern Indiana are under the jurisdiction of the 8th Coast Guard District. Coordination with the 8th Coast Guard District will be completed to determine if any Section 9 permits from the Coast Guard are required for the I-69 Section 6 project.

Figure 5.23-1: Typical Wetland Subject to Regulation





Section 10 of the Rivers and Harbors Act of 1899 requires approval by USACE for any work in or over navigable waters of the U.S., or which affects the course, location, condition, or capacity of such waters. Federal jurisdiction under Section 10 on traditional navigable waterways is limited to the lateral extent of the OHWM. The USACE reviews applications for projects performed in or over navigable waters of the U.S., including dredging operations and pier construction in these waters. It is anticipated that Section 10 would apply to any impacts along the White River including bank stabilization which is anticipated in the vicinity of the confluence with Stotts Creek. The Section 10 permit would be applied for in combination with the USACE Section 404 permit.

5.23.4 Section 401 Water Quality Certification

The Section 401 WQC is a state review of applications for Section 404 USACE permits to ensure compliance with state water quality standards. Any activity involving dredging, excavation, or filling within waters of the U.S. requires a Section 401 Water Quality Certification (WQC) from IDEM. The Section 401 WQC would be applied for before or during the design phase of the I-69 Section 6 project.

While the USACE 404 permit addresses broad, national waterway issues, the IDEM 401 permit focuses on how the project may impact the water quality of state waters, as applied under the CWA within the jurisdiction of Indiana water quality standards under IAC Title 327. The IDEM review of water quality impacts, while focusing primarily on wetland and stream impacts, must include a review of the physical, biological, and chemical impacts on water quality. While USEPA has reviewed and approved Indiana water quality standards, USEPA has no oversight of Section 401 WQCs for states. The certifications are undertaken by states to ensure that the federal permit does not adversely impact state water quality.

Subject to specific terms and conditions, IDEM has issued a WQC for projects meeting specific criteria and conditions for the both select Nationwide Permits and the RGP for Indiana. The specific conditions of these WQCs generally limit impacts to projects with less than 0.1 acre and 300 linear feet of impacts to wetlands and waterways. An Individual Section 401 WQC is required for projects impacting greater than 0.1 acre or 300 linear feet of wetlands or waterways. As with the USACE 404 permit process, the Section 401 WQC process requires applicants to minimize impacts during project design and submit a compensatory mitigation plan for the unavoidable impacts.

5.23.5 Isolated Wetlands

Under the Indiana Isolated Wetlands Regulatory Program, IDEM regulates wetlands that do not fall under USACE jurisdiction, also referenced as isolated wetlands. Isolated wetlands are those wetlands or waterways that are not considered connected or adjacent to waters of the U.S. Isolated wetlands are regulated under Indiana's State Isolated Wetlands law (IC 13-18-22).



Isolated wetlands are grouped into one of three classes based upon wetland quality. A Class I wetland is an isolated wetland that is at least fifty percent disturbed or affected by human activity or development by removal or replacement of the natural vegetation and/or modification of the natural hydrology. These wetlands support minimal wildlife or aquatic habitat or hydrologic function, are typified by low species diversity, or contain greater than fifty percent aerial coverage of non-native invasive species of vegetation. A Class II wetland is an isolated wetland that is not a Class I or Class III wetland. A Class III wetland is an isolated wetland located in a setting undisturbed or minimally disturbed by human activity or development that supports more than minimal wildlife, aquatic habitat, or hydrologic function, or is a rare and ecologically important type. Different wetland classes have different mitigation requirements.

Official determination of regulatory status of wetlands as waters of the U.S. must first be made by USACE in a formal jurisdiction determination. USEPA would review and make the final decision on the federal jurisdiction determination as part of its responsibility in jointly administering Section 404 of the CWA. The authority of IDEM to regulate activities in isolated wetlands is granted by IC 13-18-22. For any wetlands, not under the jurisdiction of USACE, and therefore “isolated,” IDEM would determine the class, exemptions, and mitigation requirements. Filling and grading work and the side casting of excavated material into isolated wetlands would constitute or otherwise involve discharges of dredged and/or fill material that fall under IDEM regulatory authority.

All the alternatives could impact wetlands that may be considered isolated based on preliminary review. After USACE determines that it does not have jurisdiction of a wetland, IDEM would determine whether the wetlands are “isolated,” and identify the classification and mitigation requirements. The application for the IDEM Isolated Wetland permit would be made together with the application for IDEM Section 401 WQC, if required. For reference to impacts to wetlands see **Section 5.19** and **Appendix E**.

5.23.6 Construction in a Floodway Permit

The Indiana Flood Control Act (IC 14-28-1) requires that any person proposing to construct a structure, place fill, or excavate material at a site located within the floodway of any river or stream, unless that activity is exempted, must obtain the written approval of IDNR prior to initiating the activity. This law ensures that floodway channels are not inhabited and are kept free and clear of interference or obstruction that will result in undue restriction to the capacity of the floodway. Since its enactment, the scope of IDNR analysis has been expanded to protect natural resources located in the floodway. A Construction in a Floodway permit for each affected floodway would be applied for during the design phase of this project. For reference to impacts to floodways see **Section 5.19**.



5.23.7 National Pollution Discharge Elimination System Permit

As authorized by the CWA, the NPDES permit program controls water pollution by regulating point sources that discharge pollutants into waters of the U.S. Both construction stormwater runoff and post construction stormwater runoff are regulated under NPDES general permit requirements under Rule 5 and Rule 13.

5.23.7.1 Rule 5, Stormwater Run-Off Associated with Construction Activity

Rule 5 is a state regulation (327 IAC 15-5) to control erosion and prevent sediment from leaving the construction site. The requirements of Rule 5 apply to all persons who are involved in construction activity that results in the disturbance of one acre or more of total land area. Rule 5 requires that a Construction Plan be developed. An important part of the Construction Plan is the Stormwater Pollution Prevention Plan (SWPPP). The SWPPP would address the control of stormwater on site. As part of the erosion and sediment control plan and SWPPP, best management practices (BMPs) found in INDOT *Standard Specifications*¹ 205 would be used. These may include check dams, sediment traps, sediment basins, slope drains, vegetated filter strips, splash pads, inlet protection and retention ponds. Section 205.06 includes perimeter protection such as silt fence and filter berms. The intent is to minimize sediment and debris from leaving the project site in stormwater runoff and minimize sediment and debris in tributaries crossed by the project. The overall construction plan would be approved by INDOT and IDEM.

The applicant must submit the construction plan and a Notice of Intent to IDEM for review and to obtain a Notice of Sufficiency. The notice must state the project start date, this is used by IDEM to determine the five-year duration date of the notice. Plan implementation must occur before, during, and after construction. Once a construction contractor is selected they would prepare a Stormwater Quality Management Plan (SWQMP) to further detail the sequencing of implementation of BMPs. Upon completion of construction, a Notice of Termination must be submitted to IDEM.

5.23.7.2 Rule 13 - Stormwater Run-Off Associated with Municipal Separate Storm Sewer System (MS4) Conveyances

Rule 13 is a state regulation (327 IAC 15-13) that establishes requirements for stormwater discharges from MS4 conveyances to protect public health, existing water uses, and aquatic biota. The requirements of Rule 13 apply to any entity that operates, maintains, or otherwise has responsibility for an MS4 conveyance within a designated urbanized area. In this project area, INDOT is an MS4 entity as well as the City of Indianapolis/Marion County, Johnson County, Morgan County, the City of Greenwood, the City of Martinsville, and the Town of Bargersville.

¹ "Indiana Department of Transportation Standard Specifications, 2016,"
<http://www.in.gov/dot/div/contracts/standards/book/sep15/2016Master.pdf>



Each MS4 entity is required to prepare and implement a Stormwater Quality Management Plan with six minimum control measures. The six minimum control measures are: public education, public participation, illicit discharge detection, construction stormwater control, post construction stormwater control, and pollution prevention and good housekeeping. The Marion County Health Department is responsible for oversight of the wellhead protection areas in Perry Township.

INDOT has completed coordination with each of the MS4 entities within the project study area and has gathered their input regarding the project, especially with regards to construction and post construction stormwater treatment. Appropriate stormwater control measures would be included as part of the project design, construction, and maintenance. For example, post-construction stormwater detention basins or swales may be constructed at locations where runoff from the roadway would exit the right of way to reduce the peak flow discharge and remove pollutants of concern.

5.23.8 Tall-Structure Permit/FAA Permit

A tall-structure permit (IC 8-21-10) is required where proposed construction may impact the navigable airspace of a public-use airport. Proposed construction may include permanent installation (e.g., high-mast lighting towers) or construction equipment (e.g., crane, derrick). Indianapolis International Airport is a public-use airport within 20,000 feet of I-69 Section 6. Coordination with the INDOT Office of Aviation and the FAA would be required during the final design phase to determine whether tall-structure permits are necessary. Since the Greenwood Municipal Airport is greater than 20,000 feet from I-69 Section 6, the need for a tall structure permit associated with the Greenwood Municipal Airport is not anticipated. This would be confirmed during the final design phase.

In addition to the Indiana Tall Structure Permit, the FAA requires notice of construction activities under 14 alternative Part 77.13 that occur within a specified distance or height from an airport. It is expected that notification would be required for I-69 Section 6 for the Indianapolis International Airport since the northern end of the project at I-465 is in the approach to Runway 14-32.