



**US Army Corps of Engineers®**  
**Louisville, Detroit and Chicago Districts**

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Effective: December 15<sup>th</sup>, 2019  
Expiration: December 15<sup>th</sup>, 2024

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## **INDIANA REGIONAL GENERAL PERMIT NO. 001**

### **A. Introduction**

In accordance with Title 33 CFR 325.5(c)(1), as published in the Federal Register, Volume 51, No. 219, the U.S. Army Corps of Engineers Districts of Louisville, Detroit and Chicago (the Districts), have reissued a Regional General Permit (RGP) for certain activities in waters of the United States within the State of Indiana under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

The RGP affords the Districts a means to authorize, on a regional basis, categories of activities that are similar in nature and cause minimal individual and cumulative impacts to the aquatic environment while eliminating unnecessary duplication of regulatory control.

This RGP suspends several Nationwide Permits (NWP) (see Suspensions section of this document). The RGP has simplified and enhanced the effective regulation of waters and wetlands in Indiana and would further assure that only those activities that have minimal individual and cumulative impacts would be authorized by this RGP.

Structures and/or work in or affecting the course, location, condition, or capacity of a navigable water that does not involve the discharge of dredged or fill material requires authorization under Section 10 of the Rivers and Harbors Act and no WQC is required. In this case, the Districts would continue to evaluate the Section 10 activity proposed and authorize only those activities under the RGP that have minimal individual and cumulative impacts.

Certain activities that impact 1 acre or less of waters of the United States, or 2 acres or less for open waters, and have a valid WQC would be eligible for this RGP. Under the RGP, the Districts will continue to coordinate proposed activities with the U.S. Fish and Wildlife Service (USFWS) to satisfy the requirements of the Endangered Species Act and the Indiana State Historic Preservation Officer (SHPO) to satisfy the requirements of the National Historic Preservation Act.

### **B. Activities Covered by the Regional General Permit**

This RGP authorizes activities associated with the construction or installation of facilities or structures, and/or work that are detailed in the “Activity Categories and Conditions” section of this document, and have been granted a WQC from IDEM, if required.

## **SUSPENSIONS:**

The following Nationwide Permits are proposed for suspension in Indiana. The proposed RGP would be used to authorize activities in place of suspended Nationwide Permits:

- 13 Bank Stabilization
- 14 Linear Transportation Projects
- 18 Minor Discharges
- 29 Residential Developments
- 36 Boat Ramps
- 39 Commercial and Institutional Developments
- 40 Agricultural Activities
- 41 Reshaping Existing Drainage Ditches
- 42 Recreational Facilities
- 43 Stormwater Management Facilities
- 44 Mining Activities

The NWP's that would not be suspended and would be used in lieu of the RGP are:

- 1 Aids to Navigation
- 2 Structures in Artificial Canals
- 3 Maintenance
- 4 Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- 5 Scientific Measurement Devices
- 6 Survey Activities
- 7 Outfall Structures and Associated Intake Structures
- 8 Oil and Gas Structures on the Outer Continental Shelf
- 9 Structures in Fleeting and Anchorage Areas
- 10 Mooring Buoys
- 11 Temporary Recreational Structures
- 12 Utility Line Activities
- 15 U.S. Coast Guard Approved Bridges
- 16 Return Water from Upland Contained Disposal Areas
- 17 Hydropower Projects
- 19 Minor Dredging
- 20 Oil Spill Cleanup
- 21 Surface Coal Mining Operations
- 22 Removal of Vessels
- 23 Approved Categorical Exclusions
- 24 Indian Tribe or State Administered Section 404 Programs
- 25 Structural Discharges
- 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- 28 Modifications of Existing Marinas
- 30 Moist Soil Management for Wildlife
- 31 Maintenance of Existing Flood Control Facilities
- 32 Completed Enforcement Actions
- 33 Temporary Construction, Access and Dewatering
- 34 Cranberry Production Activities
- 35 Maintenance Dredging of Existing Basins

- 37 Emergency Watershed Protection and Rehabilitation
- 38 Cleanup of Hazardous and Toxic Waste
- 45 Repair of Uplands Damaged by Discrete Events
- 46 Discharges in Ditches
- 47 Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
- 48 Existing Commercial Shellfish Aquaculture Activities
- 49 Coal Re-Mining Activities
- 50 Underground Coal Mining Activities
- 51 Land-Based Renewable Energy Generation Facilities
- 52 Water-Based Renewable Energy Generation Pilot Projects
- 53 Removal of Low-Head Dams
- 54 Living Shorelines

The Corps will determine the appropriate permit type for authorizing proposed activities.

### **C. Excluded Activities**

1. Activities that are denied any required local, State, or Federal authorization.
2. Activities that the Districts determine to have the potential to cause unacceptable adverse impacts on aquatic resources or other public interest factors. The Districts may, on a case- by-case basis, require an Individual Department of the Army (DA) permit. The Districts will notify the applicant that the project does not qualify for the RGP and instruct the applicant on the procedures to seek authorization under a standard Individual DA permit. The Districts may also require an Individual DA permit for any After-the-Fact application and/or any unauthorized activity regardless of whether or not the loss of waters meets the upper threshold limitation of 1.0 acre of impacts to wetlands, 1,500 linear feet (not to exceed 1.0 acre) of stream impacts, or 2 acres of open water impacts.

### **D. Maximum Limitations**

The following impact limitations apply to all activities authorized by the RGP, with the exception of bank stabilization, boat ramps, agricultural activities, and mining activities. For impact limitations pertaining to these activities, see the "Activity Categories and Conditions" section of this document for further discussion regarding maximum limitations;

1. Loss of waters of the United States (U.S.), including wetlands, is limited to 1.0 acre or less. However, loss of open waters (excluding natural waterbodies) is limited to 2.0 acres or less. Open waters includes ponds, impoundments, and borrow/mined pits;
2. Loss of waters of the U.S. is limited to 1,500 linear feet of stream channel, not to exceed 1.0 acre;
3. Dredging in navigable waters is limited to 10,000 cubic yards;
4. Structures and fills for docking and mooring are limited to similar permitted structures and fills in the vicinity; and
5. "Piecemealing" of projects in order to meet these thresholds will not be allowed.

**RESTRICTIONS:** The work authorized by this RGP would also be subject to the attached General Conditions (see Appendix 1) and any other Special Conditions necessary to reduce impacts to the minimum level.

### **E. Mitigation Requirements**

The District Engineer may determine that the adverse effects of the proposed activity are minimal, and require no mitigation. Otherwise, mitigation will be required as follows, with the exception of bank stabilization, minor discharges, excavation, and agricultural activities (see “Activity Categories and Conditions” section of this document for further discussion regarding mitigation requirements).

1. Impacts resulting from the loss of waters by relocation, encapsulation, or channelization of greater than 300 linear feet of ephemeral, intermittent, or perennial stream shall require mitigation;
2. The loss of greater than 0.10 acre of special aquatic sites (including wetlands) and/or loss of waters of the U.S. causing more than minimal effects shall require mitigation;
3. Other work or structures in waters of the United States will be evaluated on a case-by-case basis and may require mitigation to reduce the impacts to minimal levels;
4. Any required compensatory mitigation must meet the standards set forth in Title 33 CFR Parts 325 and 332, Compensatory Mitigation for Losses of Aquatic Resources, as published April 10, 2008 in the Federal Register, Vol. 73, No. 70, and any district guidance.
5. If the proposed project will result in more than minimal adverse environmental effects, the District Engineer will require the applicant to submit a mitigation proposal, which must comply with Corps of Engineers compensatory mitigation regulations and guidance.

## F. Agency Contact Information

**1. Corps of Engineers-** No application/notification is required if the work falls under stated notification thresholds, and no jurisdictional determination of any kind is required. However, notification is required for all work in navigable waters. A figure illustrating the Districts' boundaries for the state of Indiana can be found in Appendix 3.

### **Louisville District**

U.S. Army Corps of Engineers  
Louisville District  
ATTN: CELRL-RDN  
P.O. Box 59  
Louisville, Kentucky 40201-0059  
Phone: (502) 315-6733  
Website: <http://www.lrl.usace.army.mil/Missions/Regulatory.aspx>.

### **Detroit District**

U.S. Army Corps of Engineers  
Regulatory Michiana Branch  
2422 Viridian Drive, Suite #200  
South Bend, IN 46628-3561  
Phone: (574) 232-1952  
Website: <http://www.lre.usace.army.mil/Missions/RegulatoryProgramandPermits.aspx>.

### **Chicago District**

Submit applications to: [chicagorequests@usace.army.mil](mailto:chicagorequests@usace.army.mil)  
U.S. Army Corps of Engineers  
Chicago District Regulatory Branch  
231 South LaSalle Street, Suite 1500  
Chicago, Illinois 60604  
Phone: (312) 846-5529  
Website: <http://www.lrc.usace.army.mil/Missions/Regulatory.aspx>.

## **2. Indiana Department of Environmental Management**

If there are proposed impacts to any waters, then an application must be submitted on a Section 401 WQC Regional General Permit Notification Form (State Form 51937) to the Indiana Department of Environmental Management.

The applicant must submit an Application for Authorization to Discharge Dredged or Fill material to Isolated Wetlands and/or Waters of the State (Form 5 1 821) for proposed isolated waters impacts greater than 0.10 acre, for bank stabilization impacts greater than 300 linear feet on stream banks and lake shorelines, and for encapsulation activities greater than 150 feet.

**Indiana Department of Environmental Management**

Section 401 WQC Program  
100 North Senate Avenue  
MC 65-42 WQS IGCN 1255  
Indianapolis, Indiana 46204.

Note: Certain construction activities in waters of the U.S. within the State of Indiana under Section 404 of the Clean Water Act that are also regulated by the IDNR as public freshwater lakes will be covered under the Programmatic General Permit (PGP) dated March 2, 2018, and will not be covered under this RGP.

**G. Information Requirements**

Any request for authorization under the RGP must provide the following information:

1. Name, address, and phone number of the applicant;
2. Location of the proposed work to include an address, the latitude and longitude, or the UTM;
3. A detailed description of the project, its purpose, the dimensions including the size of the structure or the fill area, fill quantity and type of fill being used. Please include a discussion of any temporary construction activities such as access roads or cofferdams if included as part of the scope of work;
4. Drawings on 8 1/2 x 11-inch paper must include a location map, plan and cross-section drawings illustrating all the work to be done. The application drawings must provide a scale and/or the exact dimensions given;
5. Legible and reproducible construction drawings on 8 1/2 x 11-inch paper showing all aspects of the proposed activity, including existing and proposed contours, utilities, the location of wetlands/waters of the U.S. to be impacted and not impacted (marked appropriately for identification purposes), the Ordinary High Water Mark (OHWM) of all waters and the observed outermost boundary of all wetlands. In addition, the drawings shall include a detailed plan view and a profile view of existing and proposed conditions, including of structures AND/OR FILL to be discharged and/or installed in jurisdictional areas.
6. Submittal of photographs representing the existing site conditions;
7. Submittal of proposed mitigation, if applicable. Proposed mitigation must meet the standards set forth in Title 33 CFR Parts 325 and 332, Compensatory Mitigation for Losses of Aquatic Resources, as published April 10, 2008 in the Federal Register, Vol. 73, No. 70, and any District guidance.

8. For any project that impacts jurisdictional wetlands and other waterbodies, a wetland delineation report is required and must conform to the Corps of Engineers' 1987 Wetland Delineation Manual, Technical Report Y-87-1, and the appropriate regional supplement for the proposed review area. The regional supplements in Indiana are the Midwest Regional Supplement to the Corps 1987 Wetland Delineation Manual, the Northcentral and Northeastern Regional Supplement to the Corps 1987 Wetland Delineation Manual, or the Eastern Mountains and Piedmont Regional Supplement to the Corps 1987 Wetland Delineation Manual. For other waters such as lakes, streams, or rivers the Ordinary High Water Mark (OHWM) should be identified according to the 33 CFR 328.3(e) and related guidance.

## **H. Implementation Procedures**

1. Applicants proposing to conduct work or discharge dredged and/or fill material into all waters of the U.S., including wetlands, must submit the application or notification form to the IDEM and the Corps as described in Section F and I.
2. The Districts will review all applications for project compliance with the terms, maximum limitations, and general conditions identified in the attachment. The conditions have been adapted from the Corps' present standard permit conditions and the nationwide permit program. Any individual project that fails to comply with all conditions cannot be authorized under the RGP procedures. The Districts will also review the proposal to determine the coordination requirements with the USFWS in accordance with the Endangered Species Act, and the SHPO in accordance with the National Historic Preservation Act (see general condition numbers 17 and 20). Any proposal that may affect a Corps' Civil Works Project will require coordination pursuant to 33 USC 408. Applicants will be notified if additional information or project modification were necessary to comply with these requirements.
3. The applicant must immediately provide a copy of the Section 401 WQC to the appropriate Corps District. Typically, the District will respond in writing to all requests within 60 days of the District's receipt of a complete application. However, any work conducted under the RGP must comply with all the terms of the Section 401 WQC as well as the RGP general conditions and any other special conditions that may be necessary to reduce the impacts to a minimal level, and to satisfy other environmental concerns and regulatory requirements.
4. The Districts may, at their discretion, determine that the RGP is not appropriate and require an individual permit review of the proposed project.
5. The Districts may, at their discretion, insert project-specific special conditions to RGP verifications to ensure that proposed projects have minimal individual and cumulative impacts on the aquatic environment.

## **I. Activity Categories and Conditions**

### **BANK STABILIZATION ACTIVITIES**

This activity includes bank stabilization necessary for erosion prevention. The District Engineer may require mitigation for this activity on a case-by-case basis.

1. The proposed bank stabilization activity shall be justified based on a demonstrated need for erosion prevention. This category does not include maintenance activities.
2. Proposed fill is limited to two (2) cubic yards per running foot, unless the District Engineer waives this criterion or the RGP linear foot limitation by making a written determination concluding that the discharge will result in minimal adverse effects on the aquatic environment. IDEM will be notified by the Corps that the RGP linear foot limitation has been waived.
3. The District Engineer will decide, on a case-by-case basis, if projects involving the use of vegetative and biotechnical practices will be subject to length restrictions. Biotechnical practices are defined as bank stabilization practices that benefit the aquatic environment by incorporating organic materials to produce functional structures, provide wildlife habitat, and provide areas for revegetation. Examples of biotechnical practices include, but are not limited to: a) adequately sized riprap or A-Jack structures keyed into the toe of the slope with native plantings on the banks above; b) vegetated geogrids; c) coconut fiber (coir) logs; d) live, woody vegetative cuttings, fascines or stumps; e) brush layering; and f) soil lifts.
4. Riprap shall not be placed at a steeper slope than 2:1 (2 horizontal to 1 vertical) for dumped riprap, and 1.5:1 for hand placed riprap.
5. Bank stabilization shall be constructed using clean fill materials. The following materials may be used: rock, quarry stone, fieldstone, clay, granular fill, broken concrete, steel or vinyl sheet piling, cellular blocks, fabric formed concrete, concrete filled fabric mats, gabion baskets, rock and wire mattresses, sand/cement filled bags, geotechnical fabric materials, non-invasive vegetation, and treated timber. If broken concrete is used, it must be free from asphalt and oils, in addition all protruding material such as reinforced rods shall be cut flush with the surface of the concrete and removed from the construction area.
6. All material utilized shall be properly sized or anchored to resist anticipated forces of wave action.

Notification: The permittee shall submit a pre-construction notification to the District Engineer prior to commencing the activity if the bank stabilization activity: (1) Involves discharges into special aquatic sites, including wetlands; or (2) is in excess of 300 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark.

## **TRANSPORTATION PROJECTS**

This activity includes the construction, expansion, modification or improvement of linear transportation projects including roads, bridges, runways and taxiways, bike/pedestrian pathways, and railroads. Temporary structures, fills, and work necessary to construct linear transportation projects are also included.

1. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.
2. Crossings of waterways and/or wetlands must be culverted, bridged, or otherwise designed to prevent the restriction of expected high water flows. The crossing must be designed as to not impede low water flows or the safe passage of fish and aquatic organisms.

Notification: The permittee must submit a pre-construction notification to the District Engineer prior to commencing the activity if: (1) The loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands.

## **RESIDENTIAL, COMMERCIAL, INSTITUTIONAL, INDUSTRIAL AND RECREATIONAL DEVELOPMENTS**

Activities include the construction or expansion of a single residence, a multiple unit residential development, a residential subdivision, commercial and institutional buildings, and recreational facilities. Attendant features may include but are not limited to roads, parking lots, garages, yards, infrastructure and utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, golf courses, hiking trails, bike paths, horse paths, nature centers and campgrounds. The maximum impact limitations will be applied on a cumulative basis for activities that are part of a larger common plan of development or sale.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity.

## **BOAT RAMPS**

Activities required for the construction of boat ramps.

1. The proposed boat ramp shall not exceed 60 feet in width, unless the District Engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects on the aquatic environment. EPA and IDEM will be notified by the Corps that the maximum width limitation has been waived. Boat ramps should be constructed of crushed stone, concrete, gravel, or other suitable material. Boat ramps constructed of asphalt are not authorized under this permit.

Notification: The permittee must submit a pre-construction notification to the District Engineer prior to commencing the activity if: (1) The discharge into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width.

## **MINOR DISCHARGES AND EXCAVATION ACTIVITIES**

Activities include minor discharges of dredged or fill material into waters of the U.S. and reshaping of existing drainage ditches. The District Engineer may require mitigation for this activity on a case-by-case basis.

1. Projects involving the grading or reshaping of existing drainage ditches may not increase the slope of the ditch banks, the drainage capacity, nor can they expand the area drained by the ditch (as originally constructed).
2. All dredged/excavated materials will be disposed of in upland location(s) landward of the OHWM with no placement in, or return to, any waterway or wetland. Any excess material that cannot be accommodated on the permittee's upland property shall be placed in an upland location without any return to a waterway or wetland.

Notification: The permittee must submit a pre-construction notification to the District Engineer prior to commencing the activity if: (1) The discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands.

## **AGRICULTURAL ACTIVITIES**

Agricultural activities including the construction of building pads for farm buildings; installation, placement or construction of drainage tiles, ditches or levees; the relocation of existing serviceable drainage ditches constructed in waters of the U.S.; and similar activities. The District Engineer may require mitigation on a case-by-case basis, and may waive the RGP linear foot limitation by making a written determination concluding that the discharge will result in minimal adverse effects on the aquatic environment. EPA and IDEM will be notified by the Corps that the RGP linear foot limitation has been waived. This RGP does not affect those agricultural activities that are exempt in accordance with 33 CFR Part 323.4, or are exempt under CWA Section 404(f)(1)(A).

Notification: The permittee must submit a pre-construction notification to the District Engineer prior to commencing the activity.

## **MINING ACTIVITIES**

Mining activities are authorized under this category, except for coal mining activities. This RGP does not affect those mining activities that are exempt in accordance with 33 CFR Part 323.4.

1. The District Engineer may waive the RGP linear foot and cubic yards per foot of fill limitation by making a written determination concluding that the discharge will result in minimal adverse effects on the aquatic environment. EPA and IDEM will be notified by the Corps that the RGP linear foot and cubic yards per foot limitations have been waived.
2. If reclamation is required by other statutes, a copy of the reclamation plan must be submitted with the permit application.

Notification: The permittee must submit a pre-construction-notification to the District Engineer prior to commencing the activity.

## APPENDIX 1: GENERAL CONDITIONS

1. *Navigation:* (a) No activity authorized by the RGP may cause more than a minimal adverse effect on navigation. (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army, or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. *Aquatic Life:* No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. *Spawning Areas:* Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. *Shellfish Beds:* No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to an authorized shellfish harvesting activity, or is a shellfish seeding or habitat restoration activity.

5. *Suitable Materials:* No activity, including structures and work in waters of the U.S. or discharges of dredged or fill material, may use unsuitable material, including auto bodies, tires, garbage or debris, scrap lumber, metal refuse, roofing materials, asphalt or other bituminous material, broken concrete containing asphalt, or any material which would cause water pollution as defined by the Indiana Department of Environmental Management.

6. *Water Supply Intakes:* The permittee shall not perform any work under the RGP where the discharge of dredged and/or fill material will occur in the proximity of a public water supply intake except where the activity is for the repair or improvement of the public water supply intake structures or adjacent bank stabilization.

7. *Safety of Impoundment Structures:* To ensure that all impoundment structures are safely designed, the District Engineer may require non-federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons, i.e., a licensed engineer. The District Engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

8. *Adverse Effects from Impoundments*: If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. *Management of Water Flows*: To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. *Fills Within 100-Year Floodplains*: The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. *Equipment*: All construction equipment shall be refueled and maintained on an upland site away from existing streams, drainage ways and wetland areas. Heavy equipment working in wetlands must be placed on mats, or other measures taken to minimize soil disturbance.

12. *Soil Erosion and Sedimentation Controls*: Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. *Removal of Temporary Fills*: Temporary fills must be removed in their entirety and the affected areas returned to pre-construction conditions (i.e., elevation, contours, re-establishment of vegetation, etc.).

14. *Proper Maintenance*: Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable general conditions, as well as any activity-specific conditions added by the District Engineer to an RGP authorization.

15. *Single and Complete Project*: The activity must be a single and complete project. The RGP cannot be used more than once for the same single and complete project.

16. *Endangered Species*: (a) No activity is authorized under the RGP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under the RGP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the District Engineer with the appropriate documentation to demonstrate compliance with those requirements. The District Engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the RGP activity, or whether additional ESA consultation is necessary. (c) Non-federal permittees must submit a pre-construction notification to the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the

activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work. The District Engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-federal applicant of the Corps determination within 45-days of receipt of a complete pre-construction notification. In cases where the non-federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (d) As a result of formal or informal consultation with the USFWS the District Engineer may add species-specific regional endangered species conditions to the RGP. (e) Authorization of an activity under the RGP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS Service, the ESA prohibits any person subject to the jurisdiction of the United States to take listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. (f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS or their webpages on the Internet.

17. *Migratory Birds and Bald and Golden Eagles*: The permittee is responsible for obtaining any “take” permits required under the USFWS’ regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the USFWS to determine if such “take” permits are required for a particular activity.

18. *Migratory Bird Breeding Areas*: Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

19. *Historic Properties*: The permittee shall not perform any activity under the RGP which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places until the District Engineer has complied with the provisions of 33 CFR Part 325, Appendix C. The permittee must notify the District Engineer if the activity authorized by the RGP may affect any historic properties listed, determined to be eligible or which the permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin construction until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the IDNR, Division of Historic Preservation and Archaeology.

If the permittee discovers any previously unknown historic or archaeological remains while accomplishing the activity authorized by the RGP, work must be immediately stopped and the

Corps immediately notified. The District will initiate the Federal, tribal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

20. *Discovery of Previously Unknown Remains and Artifacts:* If you discover any previously unknown historic, cultural, or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the District Engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The District Engineer will initiate the federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

21. *Mitigation:* The permittee shall provide a mitigation proposal that meets the standards set forth in Title 33 CFR Parts 325 and 332, Compensatory Mitigation for Losses of Aquatic Resources, as published April 10, 2008 in the Federal Register, Vol. 73, No. 70, and any District guidance for any activity where the adverse impact (i.e., loss of waters) on special aquatic sites (including wetlands) exceeds 0.10 acre (4,356 sq. ft.) or is determined to be more than minimal impact. The permittee shall also provide a mitigation proposal that meets the standards set forth in Title 33 CFR Parts 325 and 332, Compensatory Mitigation for Losses of Aquatic Resources, as published April 10, 2008 in the Federal Register, Vol. 73, No. 70, and any District guidance for any channelization, encapsulation, or relocation of greater than 300 linear feet of stream, unless there is no net loss of function, in which case the District Engineer will determine, on a case-by-case basis, if mitigation is required.

22. *Water Quality:* If an individual 401 WQC is required, the permittee must provide a copy of it to the Corps. The permittee must comply with any case specific special conditions added by the Corps or by the Section 401 WQC. The conditions imposed in the Section 401 WQC are also conditions of this RGP.

23. *Minimization/Avoidance:* Discharges of dredged or fill material into waters of the U.S. must be minimized or avoided to the maximum extent practicable at the project site (i.e. on-site). In determining the minimal impact threshold, the Districts will consider the direct and secondary impacts of the fill or work and any mitigation measures.

24. *Access:* Representatives from the Corps of Engineers and/or IDEM may inspect any authorized activity or mitigation site at any time deemed necessary to ensure compliance with the terms and conditions of the RGP, Section 401 WQC, and applicable laws.

25. *Construction Period:* If construction of the project has commenced, or is under contract to commence prior to the expiration date, the applicant must complete the project within one (1) year of the RGP expiration date. If you find you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least 3 months prior to the expiration date.

26. *Reporting:* The permittee, after completion of work under the RGP, shall submit a signed certification letter regarding the completed work and required mitigation, if applicable. The certification letter will include a statement that the work was done in accordance with the RGP

authorization including compliance with all general and special conditions and completion of mitigation work.

*27. Activities Affecting Structures or Work Built by the United States:* An activity that is located on an existing locally or federally maintained U.S. Army Corps of Engineers project requires separate approval from the District under 33 USC 408.

## APPENDIX 2: DEFINITIONS

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Discharge: The term “discharge” means any discharge of dredged or fill material into waters of the United States.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream 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. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR Part 60).

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for the RGP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included

in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, orders, including tribal trust resources.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Reestablishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation (pertaining to compensatory mitigation): The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: reestablishment and rehabilitation.

Single and complete non-linear projects: The total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility and may not be ‘piecemealed’ to avoid the limitation in a RGP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity or location that causes more than minimal interruption of natural stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

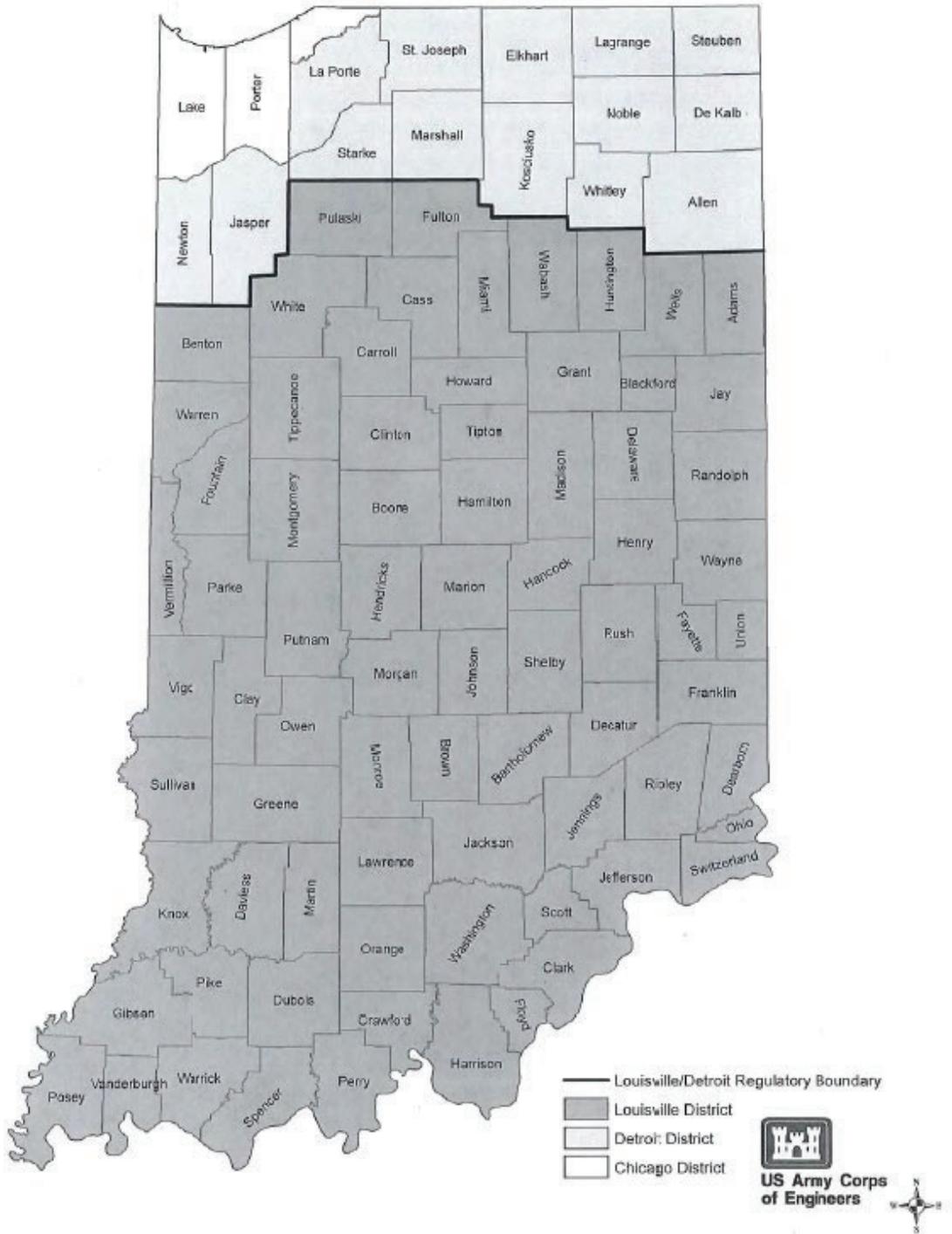
Tribal lands: Any lands title to which is either: (1) Held in trust by the United States for the benefit of any Indian tribe or individuals; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Waterbody: For purposes of the RGP, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent - meaning bordering, contiguous, or neighboring - to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)–(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

APPENDIX 3: U.S. ARMY CORPS OF ENGINEERS  
DISTRICT BOUNDARIES IN INDIANA

This map represents the Louisville, Detroit, and Chicago District boundaries. Please contact the appropriate District using the "Agency Notification Procedures" outlined above for your area.



APPENDIX 4. INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
401 WATER QUALITY CERTIFICATION



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

100 N. Senate Avenue • Indianapolis, IN 46204  
(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb  
Governor

Bruno L. Pigott  
Commissioner

**Section 401 Water Quality Certification**  
**for the**  
**2019 Reissuance of Indiana Regional General Permit No. 1**

Authorization Number: 2019-602-00-JWR-A

USACE Number: LRL-2018-00988

Authority: 327 IAC 2. CWA Sections: 301, 302, 303, 306, 307, & 401

Effective Date: December 3, 2019

Expiration Date: In the absence of another action by IDEM that would alter the termination date of this certification, this certification shall expire on December 15, 2024, the expiration date of the federal permit this certifies.

Approved:

Martha Clark Mettler  
Assistant Commissioner  
Office of Water Quality

Applicant / Permittee: U.S. Army Corps of Engineers

The Office of Water Quality has reviewed the Joint Public Notice/Application for Section 401 Water Quality Certification (WQC) dated August 22, 2019. According to the application, the U.S. Army Corps of Engineers (USACE) proposes to reissue the Regional General Permit No. 1 (RGP #1) for the state of Indiana. The RGP #1 is intended to authorize categories of activities that are similar in nature and cause minimal individual and cumulative impacts to the aquatic environment.

The Louisville, Detroit, and Chicago Districts of the USACE developed the existing Indiana RGP to replace several Nationwide Permits (NWP). As a consequence of this

action, the following NWP's have been suspended and will not be in effect for the state of Indiana. The USACE proposes to suspend the following:

- NWP 13 Bank Stabilization
- NWP 14 Linear Transportation Projects
- NWP 18 Minor Discharges
- NWP 29 Residential Developments
- NWP 36 Boat Ramps
- NWP 39 Commercial and Institutional Developments
- NWP 40 Agricultural Activities
- NWP 41 Reshaping Existing Drainage Ditches
- NWP 42 Recreational Facilities
- NWP 43 Stormwater Management Facilities
- NWP 44 Mining Activities

Since these NWP's are suspended in Indiana, no Section 401 WQC decision is required.

Based on available information, it is the judgment of this office that the RGP #1 will comply with the applicable provisions of 327 IAC 2 and Sections 301, 302, 303, 306, and 307 of the Clean Water Act if the recipient of the certification complies with the conditions set forth below. Therefore, subject to the following terms and conditions, the Indiana Department of Environmental Management (IDEM) hereby grants Section 401 WQC for the RGP #1. Any changes in the language or scope of the RGP #1 not detailed in the Joint Public Notice/Application, or as modified by the conditions below, are not authorized by this certification.

#### **APPLICANT RESPONSIBILITIES:**

- (1) An applicant seeking coverage under this Section 401 WQC must:
  - (a) Demonstrate, via letter from the Indiana Department of Natural Resources (IDNR), Division of Nature Preserves, that no state endangered, threatened, or rare species are documented on a permanent or seasonal basis within 1/2-mile radius of the proposed project site. If you have listed species you must provide documentation from the IDNR that states your project will not impact the listed species.
  - (b) Submit a complete Section 401 WQC Regional General Permit Notification Form (most current State Form 51937) (referred to hereinafter as the "notification") at least 30 days prior to the activity or receive verification from the IDEM Office of Water Quality stating the proposed project meets the terms and conditions of this Section 401 WQC. The notification submitted to the IDEM Office of Water Quality must at a minimum provide applicant information, project location, existing project site conditions, project impacts, and a proposed plan. Failure to submit all required information will result in the project being considered out-of-scope and not authorized.

- (c) Provide any additional information required by the IDEM to verify that a given project will qualify under the terms and conditions of this Section 401 WQC. If the applicant fails to provide any requested information, the project is not authorized.
- (d) Allow the commissioner or an authorized representative of the commissioner (including an authorized contractor), upon the presentation of credentials, to enter upon the applicant's property to inspect the project site during the review of a proposed project.

### **PERMITTEE RESPONSIBILITIES**

- (1) Permittees qualifying for impacts under this Section 401 WQC must:
  - (a) Execute the project per the information contained in the notification submitted to the IDEM.
  - (b) Allow the commissioner or an authorized representative of the commissioner (including an authorized contractor), upon the presentation of credentials to:
    - 1. Enter upon the permittee's property.
    - 2. Access and copy at reasonable times any records that must be kept under the conditions of this certification.
    - 3. Inspect, at reasonable times, any monitoring or operational equipment or method; collection, treatment, pollution management or discharge facility or device; practices required by this certification; and any mitigation wetland site.
    - 4. Sample or monitor any discharge of pollutants or any mitigation site.
  - (c) Obtain any other permits or authorizations required for this project or related activities from IDEM or any other local, state, or federal agency or person. Land-disturbing activities of one (1) acre or more or disturbances of less than an acre that are part of a larger common plan will require permit coverage for discharges associated with construction site run-off. Additional information should be obtained through the IDEM Stormwater Program at [www.in.gov/idem/stormwater](http://www.in.gov/idem/stormwater) or at 317-233-1864 or via email at [Stormwat@idem.IN.gov](mailto:Stormwat@idem.IN.gov). In addition, the Indiana Department of Natural Resources (317-232-4160 or toll free at 877-928-3755) should be contacted concerning the possible requirement of natural freshwater lake or floodway permits.
  - (d) Deposit any dredged material in a contained upland disposal area outside of any water of the state and implement appropriate measures to prevent sediment run-off to any waterbody.
  - (e) Install run-off and sediment control measures prior to any land disturbance to manage stormwater and to minimize sediment from leaving the project site or entering a waterbody. All operations must phase project activities to minimize the impact of sediment to the receiving waterbody(ies). Erosion and sediment

control measures shall be implemented using an appropriate order of construction (sequencing) relative to the land-disturbing activities. Wetlands and/or waterbodies adjacent to land-disturbing activities must be protected with appropriate sediment control measures. As work progresses, all areas void of protective cover shall be re-vegetated or stabilized as described in the plan. Areas that are to be re-vegetated must utilize mulch that is anchored or, under more severe conditions, erosion control blankets. Standards and specifications for stormwater management, including erosion and sediment control can be obtained in the Indiana Stormwater Quality Manual or similar guidance documents.

**TERMS OF THIS SECTION 401 WQC:**

- (1) Although a project may meet the terms and conditions of this certification, IDEM may require an individual Section 401 WQC if the agency determines that the project would potentially have more than minimal impacts to water quality, either viewed individually or collectively with other projects that may impact the same watershed affected by the proposed project.
- (2) IDEM retains the right to review, modify, terminate, replace or amend this certification as needed to ensure that the federal permits or licenses certified do not result in violations of Indiana's Water Quality Standards or other applicable state laws.

**SPECIFIC CONDITIONS OF THIS SECTION 401 WQC**

- (1) This Section 401 WQC does not :
  - (a) Convey any property rights of any sort, or any exclusive privileges.
  - (b) Preempt any duty to obtain federal, state or local permits or authorizations required by law for the execution of the project or related activities.
- (2) This Section 401 WQC does not authorize:
  - (a) Impacts or activities that do not meet the terms and conditions of this Section 401 WQC. Such activities require an individual Section 401 WQC from the IDEM.
  - (b) Any injury to permittees or private property or invasion of other private rights, or any infringement of federal, state or local laws or regulations.
  - (c) Changes to the original plan design detailed in the notification.
  - (d) The discharge of pollutants, principally sediment, associated with stormwater run-off.

- (e) Discharges of pollutants other than clean fill<sup>1</sup> and uncontaminated dredged material.
- (f) Activities on or in any of the State's waters that have been designated as salmonid waters (cold water streams) or tributaries of salmonid waters within a two river mile reach upstream from the confluence with the salmonid water unless the activity meets one or more of the following conditions:
  - 1. Bank stabilization activities that:
    - a. Are completed using bioengineered methods, riprap, and/or glacial stone, that conforms to the existing shoreline and does not project out into the channel, and
    - b. Do not create a wall.
    - c. Do not include the installation of cofferdams, causeways, temporary access roads, or dewatering activities.
  - 2. Encapsulations that:
    - a. Are installed to span the width of the ordinary high water mark (OHWM), and are embedded in accordance with Specific Condition 3(f)7 below, and
    - b. Do not include the installation of cofferdams, causeways, temporary access roads, or dewatering activities.
    - c. Are installed outside the salmonid fish spawning dates of March 15 through June 15 and from July 15 through November 30.
  - 3. Work is conducted outside the salmonid fish spawning dates of March 15 through June 15 and from July 15 through November 30.
- (g) Activities on or in any Outstanding State and/or National Resource waters (see Attachment #1), or in any critical wetland or critical special aquatic sites (see Attachment #2).
- (h) Activities associated with the establishment of a mitigation bank.
- (i) Activities that have a cumulative permanent impact of more than twenty-five hundredths (0.25) acre of waters of the U.S. Note: Activities that have a cumulative permanent impact to waters of the U.S. of more than one-tenth (0.10) acre must comply with the mitigation requirements listed in Specific Conditions (3)(k) below.
- (j) Activities that will have a cumulative permanent impact of more than 500 linear feet of waters of the U.S. Note: Activities that have a cumulative permanent impact to waters of the U.S. of more than 300 linear feet must comply with the mitigation requirements listed in Specific Conditions (3)(l) below.
- (k) Activities that will permanently change the sinuosity, flow path, velocity, cross-sectional area under the Ordinary High Water Mark (OHWM), or the slope of

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<sup>1</sup> Clean fill, for purposes of this WQC, means uncontaminated rocks, bricks, concrete without rebar, road demolition waste materials other than asphalt, or earthen material.

a stream<sup>2</sup> except those that may be authorized through compliance with Conditions (3)(a), (3)(d), and (3)(f).

- (l) The installation of encapsulations for purposes other than road, driveway, and pedestrian crossings.
- (3) This Section 401 WQC authorizes:
- (a) Minimal changes to stream morphology, including minor relocations, which result in a net benefit to the aquatic ecosystem. Stream relocations may be authorized, provided the activity:
    - 1. Is associated with the installation of a stream crossing or replacement of an existing crossing, and results in a net benefit to the stream morphology.
    - 2. Does not reduce the cross-sectional area under the OHWM.
    - 3. Is accompanied by an acceptable restoration/stabilization plan.
    - 4. Does not accelerate stream instability. Examples of instability include, but are not limited to, stream bank erosion, channel enlargement, channel incision, degradation, aggradation, meander migration (down-valley and lateral accretion), avulsion and base-level shifts.
  - (b) Stream bank stabilization activities or new lake and reservoir shoreline stabilization that will permanently affect 500 linear feet or less and the applicant demonstrates that the bank or shoreline in question is unstable. Natural shoreline stabilization methods are required where there is no pre-existing seawall or other shoreline hard armament on a lake or reservoir. Natural shoreline stabilization methods include bank stabilization practices that benefit the aquatic environment by incorporating organic materials to produce functional structures, provide wildlife habitat, and provide areas for revegetation.
  - (c) Placement of riprap or other bank stabilization materials provided the design and installation is flush with the upstream and downstream bank and stream channel/lake bed elevations and grades.
  - (d) New bridge piers, piles, shafts or other support structures and their associated scour protection measures that do not significantly reduce the cross-sectional area of the stream and are located below the OHWM and outside the low flow channel of the stream.
  - (e) Activities that do not result in a permanent secondary effect to waters of the U.S. Potential secondary effects include, but are not limited to damming, loss of hydrology, and creation of in-channel ponds.
  - (f) Permanent stream encapsulations that:
    - 1. Are for the purpose of constructing a crossing.

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<sup>2</sup> Stream, for the purposes of this WQC, means waters of the U.S. that have a defined bed and bank and convey water ephemerally, intermittently or perennially. This term includes natural streams, relocated streams, channelized streams, artificial channels, encapsulated channels and ditches.

2. Allow the passage of aquatic organisms in the waterbody.
3. Do not exceed 150 cumulative linear feet of encapsulation.
4. Have at least one (1) opening with a cross-sectional area at least twenty percent (20%) larger than the area under the OHWM of the stream immediately upstream and downstream of the encapsulation. If multiple encapsulations are proposed, then the largest culvert meeting the cross sectional area requirement must be positioned in the channel to align with the existing flow of the channel.
5. Have a streambed slope within the encapsulation that matches the slope of the bed both immediately upstream and downstream.
6. Do not create or accelerate stream instability. Examples of stream instability include, but are not limited to head cutting, stream bank erosion, channel enlargement, channel incision, degradation, aggradation, meander migration, (down-valley and lateral accretion), avulsion and base-level shifts.
7. Either have no bottom (e.g., three sided culvert) or are embedded (sumped)<sup>3</sup> into the stream channel based on the following structure sizes and substrate types:
  - a. Stream bed of sand
    - Structure < four (4) feet wide: Six (6) inch sump
    - Structure four (4) feet wide to 12 feet wide: 12 inch sump
    - Structure 12 feet to 20 feet wide: 18 inch sump
  - b. Stream bed of other soil or unconsolidated till <sup>4</sup>
    - Structure < four (4) feet wide: Three (3) inch sump
    - Structure four (4) feet wide to 12 feet wide: Six (6) inch sump
    - Structure 12 feet to 20 feet wide: 12 inch sump
  - c. Stream bed of bedrock or consolidated till <sup>5</sup>
    - Inside elevation of the structure bottom shall be a minimum of three (3) inches below the surface of the bedrock or consolidated till
8. Meet the following requirements when installed in perennial streams with OHWM width of 12 feet or greater. These encapsulations must:
  - a. Be sumped to a greater depth if needed for the design of the streambed inside the encapsulation.
  - b. Have a width equal to or wider than the existing OHWM.
  - c. Have a natural stream bottom. If the stream bottom will be disturbed during construction (e.g. four sided box culverts or pipe culverts or because of footer work for three sided culverts), natural stream substrate must be placed in the encapsulation in accordance with the Federal Highway Administration Hydraulic Engineering Circular No. 26: Culvert Design for Aquatic Organism Passage.

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<sup>3</sup> Sump, for the purpose of this Water Quality Certification, means the inside elevation of the bottom of the structure is placed at a specified depth below the grade of the stream.

<sup>4</sup> Other soil and unconsolidated till includes substrates that are more cohesive and less mobile (e.g. clay, silt, gravel, and cobble substrates).

<sup>5</sup> Consolidated till includes dense hard materials such as hardpan.

- d. Have a low flow channel constructed or restored through the encapsulation. The low flow channel shall have the same width, depth, and side slope as the natural upstream and downstream low flow channel. If the upstream and downstream channels are highly degraded a V-shaped channel with 5:1 slopes within the structure may be substituted.
- (g) Stream pump-around activities, provided:
1. The discharge from the activity does not cause erosion at the outlet.
  2. Cofferdam dewatering activities are directed to a filter bag(s), upland sediment basins/traps, or a combination of other appropriate sediment control measures to minimize the discharge of sediment-laden water into waters of the U.S.
  3. All sediment control measures are installed and maintained in good working order.
  4. Any materials used for an in-stream dam are constructed using non erodible materials. Examples include sand bags and sheet pile walls.
- (h) The installation of temporary work causeways when the activity is conducted in a manner that maintains near normal downstream flows and is constructed of material that can be expected to withstand high flow events.
- (i) The use of temporary structures provided the structures are removed in their entirety and the stream channel restored to preconstruction grades, contours, and vegetative conditions.
- (j) Multiple impacts on a project as long as the cumulative amount of those impacts are less than the most restrictive thresholds of this Section 401 WQC.
- (k) Cumulative permanent impacts to waters of the state greater than 0.10 acre up to and including 0.25 acre are authorized provided the following conditions are met:
1. The impacts comply with all conditions of this Section 401 Water Quality Certification.
  2. Mitigation is provided for all impacts.
  3. Sufficient mitigation credits are available in the service area where the impacts occur. Note: Credits may not be available at all times. Failure to purchase credits before impacting water resources will require an individual 401 WQC and may result in additional mitigation requirements to compensate for temporal loss of water resource functions.
  4. Mitigation credits are purchased from an approved compensatory mitigation bank or through the Indiana Stream and Wetland Mitigation Program (in-lieu fee (ILF)). Permittee responsible mitigation is not authorized under this 401 WQC.
  5. The amount of mitigation credit purchased is 1:1 for streams, open water, and farmed wetlands, 2:1 for emergent wetland, 3:1 for scrub shrub wetland, 4:1 for forested wetland.

6. The credits are purchased in the bank or ILF service area where the impacts occur.
  7. Proof of a finalized credit purchase is provided to IDEM:
    - a. Before the impacts occur. Note: Banks and ILF programs may require 30 days or more to finalize a purchase.
    - b. Within one (1) year of IDEM's receipt of the RGP Notification form.
- (l) Cumulative permanent impacts to waters of the state greater than 300 linear feet up to and including 500 linear feet provided the following conditions are met:
1. The impacts comply with all conditions of this Section 401 Water Quality Certification.
  2. Mitigation is provided for all impacts.
  3. Sufficient mitigation credits are available in the service area where the impacts occur. Note: Credits may not be available at all times. Failure to purchase credits before impacting water resources will require an individual 401 WQC and may result in additional mitigation requirements to compensate for temporal loss of water resource functions.
  4. Mitigation credits are purchased from an approved compensatory mitigation bank or through the ILF program. Permittee responsible mitigation is not authorized under this 401 WQC.
  5. The amount of mitigation credit purchased is 1:1 for streams.
  6. The credits are purchased in the bank or ILF service area where the impacts occur.
  7. Proof of a finalized credit purchase is provided to IDEM:
    - a. Before the impacts occur. Note: Banks and ILF programs may require 30 days or more to finalize a purchase.
    - b. Within one (1) year of IDEM's receipt of the RGP Notification form.

Failure to comply with the terms and conditions of this Section 401 Water Quality Certification may result in an enforcement action. If an enforcement action is pursued, civil penalties could be assessed up to \$25,000 per day. Criminal liability may apply if it is determined that the Section 401 Water Quality Certification was violated willfully or negligently.

#### **Notice of Right to Administrative Review**

If you wish to challenge this permit, you must file a Petition for Administrative Review with the Office of Environmental Adjudication (OEA), and serve a copy of the petition upon IDEM. The requirements for filing a Petition for Administrative Review are found in IC 4-21.5-3-7, IC 13-15-6-1 and 315 IAC 1-3-2. A summary of the requirements of these laws is provided below.

A Petition for Administrative Review must be filed with the Office of Environmental Adjudication (OEA) within fifteen (15) days of the issuance of this notice (eighteen (18) days if you received this notice by U.S. Mail), and a copy must be served upon IDEM.

Addresses are:

Director	Commissioner
Office of Environmental Adjudication	Indiana Dept. of Environmental Management
Indiana Government Center North	Indiana Government Center North
100 North Senate Avenue, Room N103	100 North Senate Avenue, Room 1301
Indianapolis, Indiana 46204	Indianapolis, Indiana 46204

The petition must contain the following information:

- (a) The name, address and telephone number of each petitioner.
- (b) A description of each petitioner's interest in the permit.
- (c) A statement of facts demonstrating that each petitioner is:
  - (1) a person to whom the order is directed;
  - (2) aggrieved or adversely affected by the permit; or
  - (3) entitled to administrative review under any law.
- (d) The reasons for the request for administrative review.
- (e) The particular legal issues proposed for review.
- (f) The alleged environmental concerns or technical deficiencies of the denial.
- (g) The permit terms and conditions that the petitioner believes would be appropriate and would comply with the law.
- (h) The identity of any persons represented by the petitioner.
- (i) The identity of the person against whom administrative review is sought.
- (j) A copy of the permit that is the basis of the petition.
- (k) A statement identifying petitioner's attorney or other representative, if any.

Failure to meet the requirements of the law with respect to a Petition for Administrative Review may result in a waiver of your right to seek administrative review of the permit. Examples are:

- (a) Failure to file a Petition by the applicable deadline;
- (b) Failure to serve a copy of the Petition upon IDEM when it is filed; or
- (c) Failure to include the information required by law.

If you seek to have a permit stayed during the administrative review, you may need to file a Petition for a Stay of Effectiveness. The specific requirements for such a Petition can be found in 315 IAC 1-3-2 and 315 IAC 1-3-2.1.

Pursuant to IC 4-21.5-3-17, OEA will provide all parties with notice of any pre-hearing conferences, preliminary hearings, hearings, stays, or orders disposing of the review of this action. If you are entitled to notice under IC 4-21.5-3-5(b) and would like to obtain notices of any pre-hearing conferences, preliminary hearings, hearings, stays, or orders disposing of the review of this action without intervening in the proceeding you must submit a written request to OEA at the address above.

If you have procedural or scheduling questions regarding your Petition for Administrative Review, additional information on the review process is available at the website of the Office of Environmental Adjudication at <http://www.in.gov/oea>.

## **Attachment 1: Indiana Waters Designated for Special Protection**

### **Designated Salmonid Waters: [327 IAC 2-1.5-5(a)(3)]**

- Trail Creek and its tributaries downstream to Lake Michigan, LaPorte County
- East Branch of the Little Calumet River and its tributaries downstream to Lake Michigan via Burns Ditch, Porter and LaPorte Counties
- Salt Creek above (upstream of) its confluence with the Little Calumet River, Porter County
- Kintzele Ditch (Black Ditch) from Beverly Drive downstream to Lake Michigan, Porter County
- The Galena River and its tributaries, LaPorte County
- The St. Joseph River and its tributaries in St. Joseph County from the Twin Branch Dam in Mishawaka downstream to the Indiana/Michigan state line, St. Joseph County
- The Indiana portion of the open waters of Lake Michigan
- Those waters designated by the Indiana Department of Natural Resources (IDNR) for put-and-take trout fishing<sup>6</sup>

### **Waterbodies which have been designated all or partially as Outstanding State Resource Waters: [327 IAC 2-1-11(b), 327 IAC 2-1.3-3(d), and 327 IAC 2-1.5-19(b)]**

- Big Pine Creek in Warren County downstream of the State Road 55 bridge near the town of Pine Village to its confluence with the Wabash River
- Mud Pine Creek in Warren County from the bridge on the County Road between Brisco and Rainsville to its confluence with Big Pine Creek
- Fall Creek in Warren County from the old C.R. 119 bridge in the NW quarter of Section 21, Township 22N, Range 8W downstream to its confluence with Big Pine Creek
- Indian Creek in Montgomery County from the County Road 650 West bridge downstream to its confluence with Sugar Creek
- Clifty Creek in Montgomery County within the boundaries of Pine Hills Nature Preserve
- Bear Creek in Fountain County from the bridge on County Road 450 North to its confluence with the Wabash River
- Rattlesnake Creek in Fountain County from the bridge on County Road 450 North to its confluence with Bear Creek
- The small tributary to Bear Creek in Fountain County within the Portland Arch Nature Preserve which enters Bear Creek at the sharpest bend and has formed the small natural bridge called Portland Arch

<sup>6</sup> Available on the internet at: <http://www.in.gov/dnr/fishwild/5457.htm>.



- Blue River from the confluence of the West and Middle Forks of the Blue River in Washington County downstream to its confluence with the Ohio River
- The South Fork of Blue River in Washington County from the Horner's Chapel Road bridge downstream to its confluence with Blue River.
- Lost River and all surface and underground tributaries upstream from the Orangeville Rise (T2N, R1W, Section 6) and the Rise of Lost River (T2N, R1W, Section 7) and the mainstem of the Lost River from the Orangeville Rise downstream to its confluence with the East Fork of White River.
- The Blue River in Washington, Crawford, and Harrison Counties, from river mile 57.0 to river mile 11.5
- The North Fork of Wildcat Creek in Carroll and Tippecanoe Counties, from river mile 43.11 to river mile 4.82
- The South Fork of Wildcat Creek in Tippecanoe County, from river mile 10.21 to river mile 0.00
- Cedar Creek in Allen and DeKalb counties, from river mile 13.7 to its confluence with the St. Joseph River
- The Indiana portion of the open waters of Lake Michigan
- All waters incorporated in the Indiana Dunes National Lakeshore.

## Attachment 2: Critical Wetlands and Critical Special Aquatic Sites

In the interest of maintaining consistency with the State Regulated (Isolated) Wetland program established at 327 IAC 17, IDEM defines Critical Wetlands and Critical Special Aquatic Sites to be synonymous with Rare and Ecologically Important Wetland Types under 327 IAC 17-1-3(3)(B):

- **Acid bog:** Acid bog is an acidic wetland of kettle holes in glacial terrain. Bogs can be graminoid (*Carex* spp. and *Sphagnum* spp.) or low shrub (*Chamaedaphne calyculata* and *Betula pumila*). The graminoid bog can be a floating, quaking mat. The soils in acid bogs are saturated and acidic peat. Bogs have non-flowing or very slow flowing water. The water level fluctuates seasonally. When a sphagnum mat floats, it rises and falls with the water table. Acid bogs can be found in northern Indiana.
- **Acid seep:** Acid seep is a bog-like wetland typically found in unglaciated hill regions. This community is a small groundwater-fed wetland located primarily in upland terrain. A thin layer of muck may lie over a mineral substrate. The soil reaction is acid. This seep community is characterized by flowing water during at least part of the year. Acid seeps are located primarily in southern Indiana.
- **Circumneutral bog:** Circumneutral bog is a bog-like wetland that receives groundwater. Circumneutral bogs can be a mosaic of tall shrub bog, graminoid bog, and other communities. The graminoid bog often occurs on a quaking or floating mat. Although a few bogs occur in unglaciated regions, most are found in glacial ice-block depressions. The soils in circumneutral bogs are usually peat, or other low nutrient organic substrates, which are saturated and circumneutral to slightly acid. Circumneutral bogs have non-flowing or very slow flowing water. The water level fluctuates seasonally. Circumneutral bogs are usually found in northern Indiana.
- **Circumneutral seep:** The circumneutral seep (or seep-spring) is a groundwater-fed wetland on organic soil. It is primarily herbaceous. Species typically include marsh marigold (*Caltha palustris*) and skunk cabbage (*Symplocarpus foetidus*) with a scattered tree canopy. Circumneutral seep is typically situated on or near the base of a slope. The soil is typically circumneutral muck. This seep community is characterized by slowly flowing water during at least part of the year. Circumneutral seeps can be found scattered throughout Indiana.
- **Cypress swamp:** Bald cypress swamps are seasonally to permanently inundated wetlands found in depressions and sloughs of large bottomlands associated with the Wabash/Ohio River system. Poorly to very poorly drained soils characterize this environment. Bald cypress (*Taxodium distichum*) is present, and green ash (*Fraxinus pennsylvanica*), silver maple (*Acer saccharinum*), and overcup oak (*Quercus lyrata*) are also usually present. This community is restricted to extreme southwest Indiana.
- **Dune and swale:** Dune and swale is an ecological system consisting of a mixture of upland (black oak sand savanna, dry to mesic sand prairie) and wetland (pond, panne, sedge meadow, marsh, wet prairie) natural communities. These



communities occur in long, narrow, linear complexes, with the dry communities occupying sand ridges, and the wet communities occurring in the intervening swales. Black oak (*Quercus velutina*), paper birch (*Betula papyrifera*), jack pine (*Pinus banksiana*), and prairie vegetation typically occur on the ridges, and sedges, reeds, and marsh/aquatic vegetation line are found in the swales. Water levels are directly influenced by ground water, with the interdunal swales controlled largely by lateral flow through porous beach ridges. Dune and swale is restricted to extreme northwest Indiana, near Lake Michigan.

- **Fen:** Fen is a calcareous, groundwater-fed wetland. Fens are often a mosaic of grassy areas, sedgy areas, graminoid-shrubby cinquefoil, and tall shrub areas. The extent of the tall shrub component of fens may be determined by fire frequency and/or soil moisture. Drying of the soil increases the growth of shrubs. Fens typically occur in the vicinity of glacial moraines. Fens typically have a muck or peat substrate. The water level fluctuates seasonally and is fed by groundwater. Fens can be found in central and northern Indiana.
- **Forested fen:** Forested fen is a tree-dominated wetland on organic soil which receives groundwater. Forested fens are often a mosaic of treed areas, tall shrub areas, and herbaceous areas. A tall shrub layer is often well developed in forested fens. Indicative species typically include tamarack (*Larix laricina*), black ash (*Fraxinus nigra*), yellow birch (*Betula alleghaniensis*), poison sumac (*Toxicodendron vernix*), and red maple (*Acer rubrum*). Forested fens occur in wet lowlands, where moraines meet outwash features or depressions. Forested fens have saturated, poorly to very poorly drained soils that are often muck, but some seasonal flooding can occur in forested fens that are especially level. This community is a late successional stage of fen or circumneutral bog. Forested fens occur in northern Indiana.
- **Forested swamp:** Forested swamp is a seasonally inundated to intermittently exposed wetland of large river bottoms. Forested swamps do not receive direct flow from river flooding except under exceptional circumstances. Forested swamps occur in depressions, sloughs and large bottomlands, typically dominated by tree species such as swamp cottonwood (*Populus heterophylla*), green ash (*Fraxinus pennsylvanica*), and swamp white oak (*Quercus bicolor*). In northern Indiana important tree species include black ash (*Fraxinus nigra*), yellow birch (*Betula alleghaniensis*), and red maple (*Acer rubrum*). Poorly to very poorly drained and aerated soils characterize the swamp environment. Soils usually are mineral not muck or peat. This community type is found throughout Indiana.
- **Marl beach:** Marl beach is a fen-like community located on the marly muck shorelines of lakes. Marl precipitate is evident. A thin layer of water is present in spring, but dries down in summer. Draw-down of a lake creates additional area for this community to develop on. Marl beaches can be found in extreme northern Indiana, primarily in the northeast.
- **Muck flat:** Muck flat is a shoreline and lake community possessing a unique flora of sedges and annual plants, many of which are also found on the Atlantic and Gulf Coastal Plains. This community is found at the margins of lakes or covering shallow basins. This community has a peat substrate. The muck flats can float on the water surface, but during high water periods are usually inundated. The water level of a

basin fluctuates during a season or from year to year in response to the amount of precipitation. This exposes bare substrate needed for germination by species of the community. Muck flats are found in northern Indiana.

- **Panne:** Panne is a groundwater fed herbaceous wetland occupying interdunal swales near Lake Michigan. Pannes are located on the lee side of the first or second line of dunes from the lakeshore. The soil is wet, calcareous sand. Pannes are located in counties bordering Lake Michigan.
- **Sand flat:** Sand flat is a shoreline and lake community possessing a unique flora of sedges and annual plants, many of which are also found on the Atlantic and Gulf Coastal Plains. This community is found at the margins of lakes or covering shallow basins. This community has a sand substrate. During high water periods sand flats at the margins of lakes or ponds are inundated. The water level of a basin fluctuates during a season or from year to year in response to the amount of precipitation. This exposes bare substrate needed for germination by species of the community. Sand flats occur in northern Indiana, and in the Plainville Sand Section of southwest Indiana.
- **Sedge meadow:** Sedge meadow is an herbaceous wetland typically dominated by graminoid species such as flat sedge (*Cyperus* spp.), spike rush (*Eleocharis* spp.), rushes (*Juncus* spp.) and sedges (*Carex* spp.). Sedge meadow is an herbaceous wetland of stream margins and river floodplains, and lake margins or upland depressions. Streamside sedge meadows are frequently flooded in the spring and early summer. Sedge meadows of lake margins and depressions often contain standing water during wet months and after heavy rains; during dry periods, the water level is at or just below the substrate. Sedge meadow usually occupies the ground between a marsh and the uplands, or a shrub swamp or wet forest. Periodic high water can kill trees and shrubs invading sedge meadows. Sedge meadows can be found in the northern half of the state.
- **Shrub swamp:** Shrub swamp is a shrub-dominated wetland that is seasonally inundated to intermittently exposed. This community occurs in depressions and the substrate in either mineral soils or muck, as opposed to peat which is characteristic of bogs. Shrub swamp is characterized by non-flowing or very slowly flowing water with levels that fluctuate seasonally. Shrub swamps are persistent, though considered successional. Two opportunistic native shrubs, sandbar willow (*Salix exigua*) and gray dogwood (*Cornus racemosa*), by themselves, are not indicative of shrub swamps. This community type is found throughout Indiana.
- **Sinkhole pond:** Sinkhole ponds are water-containing depressions in karst topography. Sinkhole ponds are found in the Mitchell Karst Plain in south-central Indiana.
- **Sinkhole swamp:** Sinkhole swamps are depressions in karst topography dominated by tree or shrub species. Sinkhole swamps are found in the Mitchell Karst Plain in south-central Indiana.
- **Wet floodplain forest:** Wet floodplain forest is a broadleaf deciduous forest of river floodplains. Wet floodplain forests occur in depressions and flats on narrow to wide floodplains and also on recently exposed substrates that are frequently flooded. Wet

floodplain forests are frequently flooded and may have standing water seasonally to permanently present. Wet floodplain forests occur statewide.

- **Wet prairie:** Wet prairie is an herbaceous wetland typically dominated by graminoid species such as prairie cordgrass (*Spartina pectinata*), bluejoint (*Calamagrostis canadensis*), and sedges (*Carex* spp.). Vegetation height is often 2-3 m. The species diversity of wet prairies is lower than that of mesic prairies. Wet prairies occur in deep swales and the substrate ranges from very deep black mineral soils (which are high in organic matter) to muck. Ponding in spring lasts for several weeks prior to drainage. Wet prairies commonly occur in the Grand Prairie Natural Region, the Tipton Till Plain and the Bluffton Till Plain, with a few examples found in the Northern Lakes Natural Region.
- **Wet sand prairie:** Wet sand prairie is an herbaceous wetland typically dominated by graminoid species such as prairie cordgrass (*Spartina pectinata*), bluejoint (*Calamagrostis canadensis*), and sedges (*Carex* spp.). Vegetation height is often 2-3 m. The species diversity of wet prairies is lower than that of mesic prairies. Wet lowland prairies occur in deep swales and the substrate is sand, sometimes mixed with muck. Flooding is a regular springtime occurrence in wet sand prairie and may last several weeks. This community occurs in a mosaic with marsh and other wetlands, and with upland prairies and sand savannas. Fire was frequent occurrence, but more common in the fall when waters had receded. This community occurs in northwest Indiana and in the Plainsville Sands area.