



5.25 Permits

5.25.1 Introduction

Each of the I-69 build alternatives would require permits. Permits that were evaluated for applicability include: the United States Army Corps of Engineers' (USACE) Section 404 and Section 10 permit; Section 401 Water Quality Certification (WQC) from the Indiana Department of Environmental Management (IDEM); Construction in a Floodway Permit from the Indiana Department of Natural Resources (IDNR); IDEM National Pollution Discharge Elimination System (NPDES) Section 402 permit; Rule 5 permit; United States Coast Guard (USCG) Section 9 Bridge Permit; and United States Environmental Protection Agency (USEPA) Class 5 Injection Well Permit.

The Section 404 permit, Section 401 WQC and Section 402 permit are authorized under the federal Clean Water Act (CWA), and the decisions are subject to the State of Indiana's water quality standards under IAC Title 327 of the Water Pollution Control Board (WPCB). Also, IDNR will require permit approvals for floodplain impacts under the State of Indiana's Flood Control Act (IC 14-28-1) and Navigable Waterways Act (IC 14-29-1). Rule 5 of the NPDES regulates contaminant discharge via storm water runoff. Sections 9 and 10 of the Rivers and Harbors Act of 1899 authorize regulation of navigable waters of the United States pertaining to bridge crossings, and dredging and filling respectively.

All necessary permits will be applied for and obtained prior to construction, and the terms and conditions of these permits will be adhered to during the construction and maintenance of this facility.

Since the publication of the DEIS, the following changes have been made to this section:

- Discussion of a Section 404(b)(1) consistency analysis
- Determination that no individual US Coast Guard bridge permits are required

5.25.2 Section 404 and Section 10 Permit

For projects involving excavation and/or discharges of dredged or fill material into waters of the United States, or placement of structures or any activity that disturbs soil/sediments below the ordinary high water elevation of a navigable waterway that is not authorized under either a general or a nationwide permit, an individual Section 404/Section 10 Permit or Letter of Permission must be obtained prior to the commencement of construction. Section 404/Section 10 Permit(s) will be applied for and obtained prior to construction (Figure 5.25-1).

Section 404 permitting requires that the project comply with the Section 404(b)(1) Guidelines. These guidelines require selection of the least environmentally damaging practicable alternative or "LEDPA," and are summarized as follows:



Figure 5.25-1: Typical Wetland Subject to Regulation



- There must be no practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.
- The project must not cause or contribute to violation of State water quality standards or toxic effluent standards; must not jeopardize the continued existence of federally listed endangered and threatened species or their critical habitats (except rare circumstance involving an exemption under the Endangered Species Act); and must not violate any requirement to protect marine sanctuaries.
- The project must not cause or contribute to significant degradation of the waters of the United States.
- The project must include appropriate and practicable steps to minimize potential adverse impacts of the discharge on the aquatic ecosystem.

After a coordination meeting between FHWA, INDOT, USACE, USEPA, IDEM and U.S. Fish and Wildlife Service on August 27, 2003, the USACE requested that a Section 404(b)(1) consistency analysis be conducted as part of the Tier 1 EIS. The Section 404(b)(1) Consistency Analysis is included in Appendix DD. The Section 404(b)(1) Consistency Analysis outlines the decision making process of the EIS in terms of the Section 404(b)(1) Guidelines. These steps included scoping of potential alternatives, screening of preliminary alternatives, detailed analysis of 12 distinct routes, elimination of non-practicable alternatives, and selection of the LEDPA.

Additional refinement and modification of the Preferred Alternative 3C in the Tier 2 studies will provide additional avoidance and minimization along with compensatory mitigation plans. The USACE has reviewed this Section 404(b)(1) methodology used in the development of this Tier EIS and provided the following comments in a response letter dated September 25, 2003.

“In considering a project of this magnitude we believe the two-tier EIS process continues to be an appropriate tool for identifying and evaluating environmental concerns, socio-economic issues and accessibility relative to the purpose and need for the project. More importantly, the Tier 1 EIS has specifically identified all of the important natural resource areas within the five alternative corridors. This process is satisfactory to the Corps for early coordination under Section 404 of the CWA.

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It was noted that Alternative 3C was selected as the “Single Preferred Alternative”. We recommend that further site assessment and construction measures be studied in Tier 2 to further avoid and minimize impacts to “waters of the U.S.” associated with each crossing. For example, if further site assessment indicates a particular stream or wetland has high quality functions and values, low impact options such as clear span bridging should be considered to avoid and minimize impacts. This type of analysis would satisfy the Section 404(b) (1) guidelines to insure that the alternative construction methods for each crossing of a “water of the U.S.” is the least environmentally damaging practicable alternative when considering cost, existing technology and logistics in light of the overall project purpose.”

5.25.3 Section 401 Water Quality Certification (WQC)

The Section 401 WQC is required in order to obtain a Section 404 permit. IDEM is responsible for the Section 401 WQC review process in Indiana. Section 401 WQC’s will be applied for and obtained prior to construction of the I-69 project.



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While the USACE 404 permit concerns broad national waterway issues, the IDEM review focuses on how the project may impact the water quality of the waters of the United States as applied under the Clean Water Act within the jurisdiction of Indiana's water quality standards under IAC 327. Indiana's water quality standards have been reviewed and approved by the USEPA which maintains oversight of IDEM's approvals of 401 WQC's. The IDEM review of water quality impacts, while focusing primarily on wetland impacts, also must include a review of the physical, biological, and chemical impacts to the water quality.

5.25.4 Construction within a Floodway Permit



Figure 5.25-2: Typical Floodplain Impact

The 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 was originally enacted to protect Indiana citizens from the loss of lives and property caused by floods, and ensure that floodway channels are not inhabited and kept free and clear of interference or obstruction that may result in undue restriction to the capacity of the floodway. Since then it has been expanded to protect Indiana's natural resources located in the floodway. Construction in a Floodway Permit(s) will be applied for and obtained prior to construction. (Figure 5.25-2).

IDNR has the jurisdictional responsibility within the State of Indiana for approving any construction within a floodway or navigable waterway under Indiana Code 14. The proposed I-69 highway will have numerous stream and river crossings requiring approval of construction within a floodway and a navigable waterway.

5.25.5 National Pollution Discharge Elimination Permit (Section 402 Permit) – Rest Areas

Water pollution degrades surface waters making them unsafe for drinking, fishing, swimming, and other activities. As authorized by the Clean Water Act, the NPDES permit program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. Point sources are discrete conveyances such as pipes or man-made ditches. Individual homes that are connected to a municipal system, use a septic system, or do not have a surface discharge do not need an NPDES permit; however, industrial, municipal, and other facilities must obtain permits if their discharges go directly to surface waters.

The proposed I-69 highway will include rest areas. Four rest areas are planned – two northbound and two southbound. These rest areas may require a Section 402 NPDES permit for a point source discharge (40 CFR 122) if the rest area cannot be discharged into a Publicly Owned Treatment Works, or develop alternative treatment methods that do not require a surface water discharge. Since the location of rest areas are not known, potential impacts resulting from such proposed facilities will be identified in Tier 2 NEPA studies with proposed mitigation measures. Once these locations have been identified in Tier 2 NEPA studies, these permit(s) will be applied for and obtained prior to construction.



5.25.6 Rule 5 – Erosion Control

The requirements of Rule 5 (327 IAC 15-5) apply to all persons who are involved in construction activity that results in the disturbance of five acres or more of total land area. Contractors disturbing more than five acres of land from a non-commercial borrow site are also required to comply with Rule 5. IDEM is the agency that governs over Rule 5.

The erosion control plan is developed during the design phase. This plan, after being filed and reviewed by the appropriate Soil and Water Conservation District is incorporated into the plans and is included in the contract documents. A Notice of Intent is submitted to IDEM (Figure 5.25-3).



Figure 5.25-3: Eroding Bank on Roadway Construction Project

5.25.7 Section 9 Bridge Permit – Crossing a Navigable Waterway

The River and Harbors Act of 1899 and the General Bridge Act of 1946 give the USCG the authority to protect navigable waters of the United States. Navigable waters are those waters that at some time, in the past, present, or future are used or will be used to transport Interstate or foreign commerce. The 8th Coast Guard District regulates activities for southern Indiana. Based on coordination with the 8th Coast Guard District, all waters crossed by the proposed I-69 alternatives fall under the Coast Guard Authorization Act and do not require individual Coast Guard Section 9 bridge permits. Additional coordination and formal correspondence with the USCG regarding potential bridge crossings will be conducted prior to construction.

5.25.8 Class V Injection Well Permit

A Class V Injection Well permit(s) may be required for various types of projects. For example such a permit may be needed if a project is located within the karst region of the state or a sole source aquifer area, or where INDOT proposes to discharge stormwater runoff to a drywell. Injection wells are “any dug hole or well that is deeper than its largest surface dimension, where the principal function of the hole is emplacement of fluids.” Class V Injection Well permit(s) will be applied for and obtained prior to construction.

A Class V Injection Well permit will likely be required for the Preferred Alternative 3C. Alternates 2, 3, 4 and 5 could potentially require notification of USEPA Region 5 and completion of a Class V Well Inventory Form for sinkholes that receive storm water runoff from construction sites or facilities located in karst areas. The Class V Injection Well permit will also cover drywells or injection wells constructed to discharge storm water. Conditions of the permit may include some type of pretreatment (peat filter, grassed waterway, detention basins, etc.) for the storm water prior to discharge to the sinkhole or drywell. This permit will be applied for and obtained prior to construction.



5.25.9 Summary

The Preferred Alternative 3C will require a Section 404 permit from the USACE. In order to obtain the Section 404 permit, Section 401 WQC by IDEM will be required. In addition, a number of other permits will be required such as Construction in a Floodway Permit from IDNR. All necessary permits will be obtained prior to construction.



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