

SECTION 2.4

PERMITS/CODES ADMINISTERED BY IDEM

2.41 Introduction

The Indiana Department of Environmental Management (IDEM) has been designated as the water pollution control agency for the State of Indiana. The Commissioner of IDEM has the authority to prevent any pollution that is determined to be unreasonable and against the public interest in view of the conditions in any stream or any waters of the state. As the water pollution control agency for the state, IDEM is responsible for providing certification for discharges of dredged or fill material according to Section 401 of the Clean Water Act (33 U.S.C. 1341). Without Section 401 Water Quality Certification (WQC) or a waiver of certification, a permit may not be issued under Section 404 of the Clean Water Act (33 U.S.C. 1344).

For purposes of water pollution control laws and environmental management laws, "**Waters (of the State) are defined as:** The accumulations of water, surface and underground, natural and artificial, public and private, or a part thereof, that are wholly or partially within, flow through, or border upon Indiana. The term does not include a private pond or an off-stream pond, reservoir, or facility built for reduction or control of pollution or cooling of water before discharge unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution.

2.42 Description

Indiana's Water Quality Standards (Standards) are applied through the Section 401 WQC process for Section 404 approvals. In general, if a project requires a Section 404 permit from the COE, Section 401 WQC is required by IDEM. The Standards are the "measuring stick" for determining if a proposed project or activity will adversely impact the quality of the waters of the State.

Section 401 of the Clean Water Act (33 U.S.C. 1341)

Section 404 of the Clean Water Act (33 U.S.C. 1344) requires an individual to obtain a permit from the U.S. Army Corps of Engineers (COE) for dredging and filling in "Waters of the United States," which includes wetlands. Section 401 of the Clean Water Act requires the individual to obtain certification from the state that the discharge of the dredge or fill material will not violate the water quality standards of the state. As stated previously, approval under Section 404 cannot occur until Section 401 WQC has been obtained or waived by IDEM. Under Section 401, the water pollution control agency for a state must act on a certification request within a reasonable time, not to exceed one year. For IDEM, this "reasonable time" has been set as 60 days from the receipt of a complete application.

Indiana Water Quality Standards (327 IAC 2)

The Standards include policies of maintenance of existing uses and non-degradation of water quality in waters of the State. IDEM's granting of Section 401 WQC to an applicant indicates that a proposed project will comply with the Standards. Section 401 of the Clean Water Act also provides that compliance with the Standards may include limitations, conditions or any other provisions on the certification which are deemed necessary by IDEM to assure that the Standards will not be violated.

The Standards also include several lists of streams. Portions of 4 streams, the Indiana portion of Lake Michigan, and all waters incorporated in the Indiana Dunes National Lakeshore have been designated as State Resource Waters. The Standards also list Designated Salmonid Streams in Indiana and Exceptional Use Streams. These stream listings are given in Appendix "F.2".

Jurisdictional Limits

If a permit or authorization is not required from COE under Section 404 of the Clean Water Act, then 401 WQC from IDEM is not required. Section 5 of the Indiana Water Quality Standards provides the limits to which the Standards are applied. The Standards cease to be applicable when stream flows are less than the average minimum 7 consecutive day low flow which occurs once every 10 years ($7Q_{10}$).

2.43 Exempt/Waived Projects

As will be discussed in Section 2.5, most Section 404 authorizations are grouped either under "Individual Permit" (IP) or under "Nationwide Permit" (NWP). Many, but not all, of the activities covered under a COE Nationwide Permit have been granted a blanket Water Quality Certification by IDEM. (A complete listing of the COE NWP's can be found in Appendix "G.2"). However, several categories of Nationwide Permits have not been given a blanket Water Quality Certification by IDEM.

If IDEM has not given a blanket WQC for a particular NWP, then an individual WQC from IDEM will be necessary. The COE will normally inform the applicant if the project needs an individual WQC. The applicant may also request a list of the NWPs for which IDEM has granted blanket certification and NWPs that IDEM has certified with special conditions. Appendix "F.3" is a copy of an IDEM letter, dated February 8, 1997, in which IDEM's decision on each of the 39 Nationwide Permits (issued by the COE in December 1996) is listed. Any project which will be processed by the COE as an Individual Permit (IP) requires an individual Section 401 WQC from IDEM.

2.44 Pre-Application Consultation/Early Coordination Process

IDEM encourages applicants to contact its appropriate personnel before they apply for certification in order to discuss the various aspects of a project. A pre-application meeting is a good way to find out what concerns IDEM may have, what aspects of the project may be changed in order to avoid or minimize impacts, and what type of mitigation may be required in order to receive WQC. Pre-application meetings often help avoid delays during the review process. Additionally, IDEM staff participate in the early coordination process mentioned in Section 2.2 of this Handbook and described in detail in Section 2.3. Additional information pertaining to the Section 401 WQC program can be found on the at the IDEM Internet address provided in Appendix "F.4."

2.45 Application/Permit Requirements

As stated above, any project which will be processed as an Individual Permit by the COE for Section 404 review and activities under the NWP's listed in Section 2.5 require Section 401 WQC. Applications for Section 401 WQC must be submitted on the Section 401 WQC Application Form attached as Appendix "F.1".

2.46 Overview of the Application Review Process by the Agency

In general, IDEM has 60 calendar days to review a given 401 WQC application and render a decision to either grant, deny, or waive WQC. Failure to respond within the 60 day timeframe will typically result in automatic waiver by IDEM, unless the COE extends the period of review. IDEM may request an extension of time for review, but it is at the COE's discretion as to whether an extension is permissible, and if so, for how long.

The 60-day review period for Individual Permits starts on the date of issuance of the public notice by the COE, which is also the start date for the 30-day comment period (Note that the 401 WQC is not a comment to the COE and therefore not restricted to the 30 day period). All Nationwide Permit-related applications or notifications are reviewed within 60 calendar days from the date of the start of the IDEM Public Notice, unless additional time is granted by the COE. If IDEM determines that the application is incomplete, the application will be held until the necessary information is required and the timeframe will not begin until the date the requested information is received.

IDEM is required to public notice all applications for WQC. For COE Individual Permits, a Joint Public Notice is mailed out by the COE. For all Nationwide Permits, IDEM sends a copy of the Public Notice to all adjacent property owners and individuals/organizations that have requested to receive copies of the Public Notice. There is typically a 21-day response time for the public to submit written comments to IDEM. IDEM considers all written comments pertaining to water quality during the project review. An individual/organization may request a public meeting or public hearing to present information relevant to water quality.

The review of an application for 401 WQC typically involves the review of the submitted information, a site inspection by a project manager, and possibly consultation with other regulatory agencies. During the site inspection, the quality of the water resource is evaluated with regards to the plant and animal species present and using the resource. Using the Minimum Surface Water Quality Standards (Section 6 of 327 IAC 2) as a guide, IDEM determines whether or not the proposed project will degrade the quality of the water at the site. If degradation of the water quality can be eliminated (or minimized to a reasonable level) by mitigation or plan revisions, these items will be recommended in order to avoid denial of WQC.

2.47 Procedures for Timely Access to IDEM Regulatory Personnel

Within the IDEM Water Quality Standards Section of the Planning Branch, 4 Project Managers have been assigned to separate portions of the State, along with a 401 Administrator and a staff person dedicated to monitoring mitigation sites. Each project manager can be contacted for information regarding either a future project in his/her section or the current status of the review of a project in that section. A diagram of the State and a county listing for the project managers is included in Appendix "F.4". A listing of IDEM personnel, addresses, phone numbers, fax number and IDEM's Internet address is also included in Appendix "F.4".