



Chapter 5: Permits

The Preferred Alternative will impact 11 streams and drainages in Marshall and St. Joseph Counties. The Yellow River will be crossed using the existing US 31 bridges, therefore no direct impacts to this resource are expected. Permits that will be required include: the United States Army Corps of Engineers' (USACE) Section 404 and Section 10 permit; Section 401 Water Quality Certification (WQC) and an Isolated Wetlands Regulatory Program Permit from the Indiana Department of Environmental Management (IDEM); Construction in a Floodway Permit from Indiana Department of Natural Resources (IDNR); and an IDEM National Pollution Discharge Elimination System (NPDES) Stormwater Erosion Control permit. In addition, permits will be required from the St. Joseph and Marshall County Drainage Boards for crossing streams designated as legal drains.

The Section 404 permit and Section 401 WQC 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). The Isolated Wetlands Regulatory Permit Program was created by Indiana House Enrolled Act (HEA) 1798 and amended by HEA 1277. 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. Phase II of the National Pollution Discharge Elimination System (NPDES) Rule 5 stormwater program regulates contaminant discharge via storm water runoff associated with construction activities. Sections 9 and 10 of the Rivers and Harbors Act of 1899 authorized 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 the construction of this project, and the terms and conditions of these permits will be adhered to during the construction and maintenance of this facility.

5.1 Section 404 and Section 10 Permit

For projects involving excavation and/or discharges of dredged or fill material into waters of the United States (including wetlands), or placement of structures or any activity that disturbs soil/sediments below the ordinary high water elevation of a navigable waterway, and not authorized under either a general or a nationwide permit, an Individual USACE Section 404/Section 10 Permit or letter of permission must be obtained prior to the commencement of construction. Section 404 Permit(s) will be applied for and met during the design phase of the project.

5.2 Section 401 Water Quality Certification

The Section 401 Water Quality Certification is a state's review of applications for Section 404 USACE permits for compliance with water quality standards. Any activity involving dredging, excavation, or filling within waters of the United States may need a Section 401 Water Quality Certification. The IDEM is responsible for the Section 401 Water Quality Certifications review process in Indiana. Section 401 Water Quality Certifications will be applied for and met during the design phase of the US 31 project.

While the USACE 404 permit concerns broad national waterway issues, the Section 401 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 water quality certifications. 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.



5.3 Isolated Wetlands Regulatory Program Permit

The Isolated Wetlands Regulatory Program is administered by IDEM and includes requirements, exemptions, and other items for the regulation of isolated wetlands. An Isolated Wetlands Regulatory Program Permit will be applied for and obtained prior to construction of the project.

5.4 Construction within a Floodway Permit

The IDNR has the jurisdictional responsibility within the State of Indiana for approving any construction within a floodway or navigable waterway under the Flood Control Act (IC 14-28-1). A Construction in a Floodway Permit will be applied for during the design phase of this project.

5.5 National Pollution Discharge Elimination Permit

Water pollution degrades surface waters making them unsafe for drinking, fishing, swimming, and other activities. As authorized by the Clean Water Act, the National Pollutant Discharge Elimination System (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 NPDES permit required for this project is included under 327 IAC 15-5 (Rule 5).

The requirements of 327 IAC 15-5 (Rule 5) apply to all persons who are involved in construction activity that result in the disturbance of 1 acre or more of total land area. Contractors disturbing more than an acre of land from a non-commercial borrow site are also required to comply with these stormwater regulations. IDEM is the Indiana agency that governs over Rule 5.

Phase II of the NPDES program addresses non-point sources of water pollution converged to surface waters via stormwater runoff. Section 327 IAC 15-13 (Rule 13) requires designated and municipal separate storm sewer systems (MS4) to develop and implement stormwater quality management plans to address stormwater runoff within their jurisdiction. The erosion control plan must meet the requirements under Rule 5 and any additional requirements of the jurisdictional MS4.

The erosion control plan is developed during the design phase. The plan will incorporate Best Management Practices (BMP) for the elimination of erosion and subsequent pollutant discharges leaving the construction site. This plan, after being filed and reviewed by the local MS4 and the appropriate Soil and Water Conservation District (SWCD) is incorporated into the plans and is included in the contract documents. A Notice of Intent (NOI) will be submitted to IDEM once the erosion control plan has been approved by the MS4 and SWCD.