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3.26 PERMITS

The following substantive changes have been made to this section since the Draft Environmental Impact Statement (DEIS) was published:

- Updated Construction Stormwater General Permit (CSGP) references
- Added statement regarding defining Waters of the United States during subsequent phases of development

All of the Mid-States Corridor alternatives would require permits except for the No-Build Alternative. The following permits were evaluated for applicability:

- U.S. Army Corps of Engineers (USACE) Section 404 Permit
- USACE Section 10 Permit
- Indiana Department of Environmental Management (IDEM) Section 401 Water Quality Certification (WQC)
- IDEM Isolated Wetlands Permit
- IDEM National Pollutant Discharge Elimination System (NPDES) Section 402 Permit
- IDEM NPDES Construction Stormwater General Permit
- Indiana Department of Natural Resources (IDNR) Construction in a Floodway Permit
- IDNR Navigable Waterways Permit
- U.S. Coast Guard (USCG) Section 9 Bridge Permit
- U.S. Environmental Protection Agency (USEPA) Class 5 Injection Well Permit
- Local Permits and Ordinances

The Section 404 permit, Section 401 WQC, and Section 402 permit are all authorized under the Federal Clean Water Act (CWA), the federal law protecting our nations waters (33 U.S.C. § 1251 et seq.). The decisions are subject to the State of Indiana's water quality standards under IAC Title 327 of the Water Pollution Control Board (WPCB). All wetlands determined by the USACE not to be Waters of the United States are considered Waters of the State (isolated wetlands). Impacts to these wetlands are regulated under Indiana's State Isolated Wetlands law (IC 13-18-22 and Senate Enrolled Act 389). IDNR will require permit approvals for floodway impacts under the State of Indiana Flood Control Act (IC 14-28-1) and Navigable Waterways Act (IC 14-29-1). IDEM regulates contaminant discharge via stormwater runoff under the Construction Stormwater General Permit (CSGP) of the NPDES. Sections 9 and 10 of the River and Harbors Act of 1899 authorize regulation of navigable waters of the United States pertaining to bridge crossings and dredging and filling.

Each individual SIU of the Mid-States project will require a separate permitting process. All necessary permits will be applied for and obtained prior to construction. The terms and conditions of these permits will be adhered to during the construction and maintenance of this facility.

3.26.1 USACE Section 404 and Section 10 Permits

For projects involving excavation and/or discharge of dredged or fill material into waters of the United States, or placement of structures or any activity that disturb soil/sediments below the ordinary high water mark elevation of a navigable waterway, INDOT must obtain an approved Section 404/Section 10 Permit from the USACE prior to



any construction. Section 404/Section 10 approval may be authorized by the USACE under a nationwide permit, regional general permit or as an individual permit. Waters of the United States are not identified at Tier 1. These will be determined during Tier 2 studies based on the current waters rule to define these resources. All potential jurisdictional resources have been incorporated into the Tier 1 impact assessments.

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

- 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 Indiana 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 circumstances 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

The preferred alternative selection shall follow the Section 404(b)(1) guidelines, and additional avoidance and minimization efforts shall continue throughout final design.

3.26.2 IDEM Section 401 Water Quality Certification

Section 401 WQC approval from IDEM is required prior to the approval of the USACE Section 404 permit. IDEM is responsible for the Section 401 WQC review and approval process. Section 401 WQC’s will be applied for and obtained for each SIU of the Mid-States project prior to any construction activities beginning.

While the USACE Section 404 permit considers impacts to broad national waterways, the IDEM 401 WQC 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 with 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 and stream impacts, must also include a review of the physical, biological, and chemical impacts to the water quality in the state of Indiana.

3.26.3 IDEM Indiana Isolated Wetlands Permit

Isolated wetlands, which are defined as wetlands that are considered not regulated by the USACE under the federal Clean Water Act, are regulated by IDEM under the Indiana Isolated Wetland Law (IC 13-18-22 and Senate Enrolled Act 389). Isolated wetlands within Indiana are divided into three classifications: Class I, Class II, and Class III. Class I isolated wetlands are generally low quality while Class III are considered high quality wetlands with Class II being of average quality. Each isolated wetland impact will be reviewed to classify the isolated wetland and will be permitted accordingly under the Indiana Isolated Wetlands law.



3.26.4 IDEM National Pollution Discharge Elimination System – Section 402 Permit

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 that discharge directly into a water of the United States. Individual homes that are connected to a municipal system, use a septic system, or do not have a surface discharge do not require an NPDES permit. However, industrial, municipal, and other facilities must obtain an NPDES permit if their discharges empty directly into surface waters. The Mid-States project does not have any proposed rest areas or other facilities that would require point source discharge into a water of the United States. Therefore, there are no NPDES Section 402 individual permits anticipated for this project.

3.26.5 IDEM NPDES Construction Stormwater General Permit (CSGP)

The requirements of the IDEM NPDES CSGP (327 IAC 15-5) apply to all persons involved in construction activities that result in the disturbance of one or more acres of land. Contractors disturbing one or more acres of land from a non-commercial borrow site are also required to comply with the CSGP.

The Mid-States project will require CSGP permits for each construction segment along with any off-site borrow and waste areas that impact one or more acres of land. Each CSGP permit will require the development and approval of a Storm Water Pollution Prevention Plan (SWPPP).

3.26.6 IDNR Construction in a Floodway

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 with a drainage area greater than one square mile, unless that activity is exempt, obtain written approval of IDNR Division of Water 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 to 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. This permit 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 for all streams that do not meet an exemption prior to construction. The Mid-States project will have a number of stream crossings that will require a Construction in a Floodway approval from IDNR Division of Water, some of which may also require a Navigable Waterways Permit.

3.26.7 USCG Section 9 Bridge Permit

The Rivers and Harbors Act of 1899 (33 U.S.C. 403) and the General Bridge Act of 1946 (33 U.S.C. 525-533) 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. Coordination will be completed with the 8th Coast Guard District to determine whether the Mid-States project will require any Section 9 Bridge Permits.



3.26.8 USEPA Class V Injection Well Permit

Class V Injection Well permit(s) may be required for various types of projects. A Class V Injection Well 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 purposes 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.”

A Class V Injection Well permit may be required for the Mid-States project depending on the alternative selected. The project could potentially require notification to USEPA Region 5 and completion of a Class V Injection Well Inventory Sheet for sinkholes that receive stormwater 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 stormwater. Conditions of the permit may include pretreatment such as peat filters, grassed waterways, and detention basins for stormwater prior to discharge to the sinkhole or drywell. Required Class V Injection Well permit(s) will be applied for and obtained prior to the start of any construction activities.

3.26.9 Local Permits and Ordinances

Each county, town and city that is impacted by the Tier 2 preferred alternative will be contacted to identify any pertinent local permits or ordinances. These contacts will determine if any local permits will be required or if the project must comply with any local ordinance.

3.26.10 Summary

Except for the No-Build Alternative, each SIU of the Mid-States project will require multiple permits. Once the preferred alternative is selected during the Tier 2 studies, the project will be evaluated to determine which of the above permits will be required. Prior to commencement of any construction activities, all appropriate permits will be applied for and obtained, and the terms and conditions of these permits will be adhered to during the construction and maintenance of this facility.

