



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, LOUISVILLE
CORPS OF ENGINEERS
INDIANAPOLIS REGULATORY OFFICE
9799 BILLINGS ROAD
INDIANAPOLIS, INDIANA 46216-1055
FAX: (317) 532-4228
<http://www.lrl.usace.army.mil/>

February 13, 2012

Operations Division
Regulatory Branch (North)
ID No. LRL-2011-911-sjk

Mr. Thomas Warrner
Indiana Department of Transportation
100 North Senate Avenue, Room N642
Indianapolis, Indiana 46204

Dear Mr. Warrner:

Enclosed is Department of the Army (DA) Permit Number LRL-2011-911-sjk authorizing the replacement of three deteriorated structures and installation of temporary dewatering devices in North Fork Jordan Creek, two of its unnamed tributaries, and ditches resulting in a total impact of 1,256 linear feet (lf) of stream and 0.93 acre of adjacent wetlands. Compensatory mitigation for unavoidable impacts would be constructed on-site (809 lf) and off-site at the Smidley property (870 lf, 3.1 acres). The project is located on State Road 42 beginning 0.71 mile east of the intersection with North County Road 850 East and continuing 0.49 mile to the east in Owen County, Indiana. Also enclosed is ENG Form 4336, "Notice of Authorization," which must be displayed at the construction site throughout construction.

The enclosed Compliance Certification form needs to be signed and returned upon completion of the project. Should any modification of the plans become necessary for any reason, approval from the District Engineer must be received prior to the start of the work. Copies of this letter will be sent to the appropriate coordinating agencies (see enclosure for addresses).

Sincerely,

A handwritten signature in blue ink that reads "Laban C. Lindley".

Laban C. Lindley
Team Leader
Indianapolis Field Office

Enclosures

ADDRESSES FOR COORDINATING AGENCIES

Mr. David Schulenberg
USEPA, Region V
Wetlands Regulatory Unit
77 West Jackson Boulevard
Chicago, IL 60604

Mr. Scott Pruitt
U.S. Fish and Wildlife Service
620 South Walker Street
Bloomington, IN 47403-2121

Mr. Jason Randolph
Indiana Department of Environmental Management
Office of Water Quality
100 North Senate Avenue
Indianapolis, IN 46204-6015

Ms. Christie Stanifer
Division of Fish and Wildlife
Department of Natural Resources
402 West Washington Street, Room 273
Indianapolis, IN 46204

Mr. Mike Neyer
Division of Water
Indiana Department of Natural Resources
402 West Washington Street, Room W264
Indianapolis, IN 46204

Dr. James A. Glass
Division of Historic Preservation
and Archaeology
402 West Washington Street, W274
Indianapolis, IN 46204-2739

Compliance Certification

Permit Number: LRL-2011-921-sjk

Permittee: Indiana Department of Transportation

Agent: NS Services

Date of Issuance: February 13, 2012

Upon completion of the activity authorized by this permit and any mitigation required by this permit, sign this certification and return it to the following address:

USACE - Louisville District
Indianapolis Regulatory Office
9799 Billings Road
Indianapolis, IN 46216-1055

Please note that your permitted activity is subject to a compliance inspection by an U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee
(Thomas Wairner)

Date

DEPARTMENT OF THE ARMY PERMIT

Permittee: Indiana Department of Transportation

Permit Number: LRL-2011-911-sjk

Issuing Office: U.S. Army Engineer District, Louisville

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: Replacement of three deteriorated structures on State Road 42 to meet current hydraulic and safety standards. A bridge at North Fork Jordan Creek would be replaced and widened 12.5 feet, and riprap scour protection would be placed below the ordinary high water mark (OHWM) for 125 linear feet (lf), including the length of the new bridge. Due to the close proximity of a jurisdictional roadside ditch (RSD2) to the bridge replacement, 275 lf of RSD2 would be relocated 8.2 feet to the north of its existing location, and 56.25 lf of the ditch would be lined with riprap to prevent erosion at its mouth to North Fork Jordan Creek. Fill material would be discharged into 2 adjacent wetlands (H, I) totaling 0.09 acre. A structure at an unnamed tributary of North Fork Jordan Creek (UNT 1) would be replaced and widened 10 feet, and riprap scour protection would be placed below the OHWM for 133.3 lf, including the length of the new bridge. Due to the close proximity of a jurisdictional roadside ditch (RSD1), 550 lf of RSD1 would be relocated an average of 12 feet to the south of its existing location. Fill material would be discharged into 2 adjacent wetlands (C,G) totaling 0.4 acre. A triple-pipe culvert at a second unnamed tributary to North Fork Jordan Creek (UNT 2) would be replaced with a new box structure 22.4 feet longer than the existing pipes. The structure would be skewed 30 degrees to match the channel, resulting in the relocation and encapsulation of a total of 172.4 linear feet of permanent impact. Riprap scour protection and bank stabilization would be placed below the OHWM for 61 lf. Immediately downstream from the proposed culvert replacement on State Road 42, a driveway culvert would be removed and the stream channel restored to natural conditions. Fill material would be discharged into 3 adjacent wetlands (A, B, D) totaling 0.43 acre. All three structure replacements would utilize a temporary sandbag dike and pump around system to dewater the construction sites and prevent downstream sedimentation. At North Fork Jordan Creek, temporary fill would be required within Wetland K to stage the dewatering equipment. All temporary fill material in waters of the United States (totaling 0.1 acre within waters of the U.S.) would be removed and the sites restored and stabilized upon completion of the project.

Project Location: On State Road 42 beginning 0.71 mile east of the intersection with North County Road 850 East and continuing 0.49 mile to the east in Owen County, Indiana.

Permit Conditions:

General Conditions:

1. The time limit for completing the authorized activity ends on **February 7, 2014**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification from this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal 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.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

Special Conditions:

1. The permittee shall be responsible for implementing the restoration and mitigation in accordance with the Mitigation and Monitoring Plan dated January 10, 2012.
2. The permittee shall monitor the on-site stream mitigation annually for a period of five years and monitor the off-site wetland and stream mitigation for a period of ten years. The permittee shall submit monitoring reports to the U.S. Army Corps of Engineers, Indianapolis Regulatory Office, by December 31 of each monitoring year.
3. The permittee shall permanently protect the entire mitigation area through the implementation of the Corps approved deed restriction. A copy of the signed and recorded deed restriction shall be submitted with the final monitoring report. The Corps shall be notified in writing prior to the sale or transfer of the mitigation site to another entity or individual. Permanent protection shall transfer with the property.
4. The permittee's responsibility to complete the required compensatory mitigation as set forth in Special Condition 1 shall not be considered fulfilled until they have demonstrated compensatory mitigation project success and have received written verification of that success from the U.S. Army Corps of Engineers.

Further Information:

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:
 - () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
 - () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. **Limits of Federal Liability.** In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. **Reliance on Applicant's Data.** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions.** General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give you favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

John J. Williams 2/10/2012
(PERMITTEE) (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

for: _____

LUKE T. LEONARD
COLONEL, CORPS OF ENGINEERS
(COMMANDER AND DISTRICT ENGINEER)

(DATE) 2/13/12.

John C. Lindley
BY: John C. Lindley
Team Leader
Indianapolis Regulatory Office

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE) (DATE)



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

Mitchell E. Daniels Jr.
Governor

Thomas W. Easterly
Commissioner

100 North Senate Avenue
Indianapolis, Indiana 46204
(317) 232-8603
Toll Free (800) 451-6027
www.idem.IN.gov

January 11, 2012

VIA CERTIFIED MAIL HAND DELIVERY

Mr. Thomas Warrner
Indiana Department of Transportation
100 N Senate Avenue, Room N642
Indianapolis, IN 46204

Dear Mr. Warrner:

Re: Section 401 Water Quality Certification
Project: SR 42 Bridge and Structures
IDEM No.: 2011-627-60-JWR-A
COE No.: LRL-2011-911-sjk
INDOT Des. No.: 9303350
County: Owen

The Office of Water Quality has reviewed your application for Section 401 Water Quality Certification dated and received December 5, 2011. According to the application, you propose to discharge clean earthen fill material into 6 emergent wetlands (0.89 acre total) and 1 forested wetland (0.03 acre) for a total impact of 0.92 acre. You also propose to impact 152 linear feet of stream for structure replacements, 376 linear feet of stream for the installation of riprap and wing walls and relocate 983 linear feet of stream. Finally, you propose to use temporary pump arounds to dewater construction areas. The purpose of the project is to improve the structural integrity, hydraulic capacity, and safety for motorists traveling this section of SR 42.

As compensatory mitigation for the proposed wetland impacts, you will create approximately 0.6 acre of emergent wetland, 0.50 acre of scrub shrub wetland, 0.50 acre of forested wetland and enhance an existing 1.5 acre emergent area on the Smidley Mitigation Site. As compensatory mitigation for the proposed stream impacts, you will plant a forested riparian corridor along 870 linear feet of stream on the Smidley Mitigation Site and replant approximately 809 linear feet of relocated stream channels on the project site. The project is located on SR 42 approximately 1/2 mile west of North Dam Road, in Section 26, Township 12 North, Range 5 West, Poland USGS Quad.

Based on available information, it is the judgment of this office that the proposed project will comply with the applicable provisions of 327 IAC 2 and Sections 301, 302, 303, 306, and 307 of the Clean Water Act if you comply with the conditions set forth below. Therefore, subject to the following conditions, the Indiana Department of Environmental Management (IDEM) hereby grants Section 401 Water Quality

Certification for the project described in your application received December 5, 2011. Any changes in project design or scope not detailed in the application described above or modified by the conditions below are not authorized by this certification.

CONDITIONS OF THE SECTION 401 WATER QUALITY CERTIFICATION:

You shall:

- 1) Deposit any dredged material in a contained upland disposal area to prevent sediment runoff to any waterbody.
- 2) Install erosion control methods prior to any soil disturbance to prevent soil from leaving the construction site. Appropriate erosion control methods include, but are not limited to, straw bale barriers, silt fencing, erosion control blankets, phased construction sequencing, and earthen berms. Monitor and maintain erosion control structures and devices regularly, especially after rain events, until all soils disturbed by construction activities have been permanently stabilized.
- 3) Install silt fence or other erosion control measures around the perimeter of any wetlands and/or other waterbodies to remain undisturbed at the project site.
- 4) Allow the commissioner or an authorized representative of the commissioner (including an authorized contractor), upon the presentation of credentials:
 - a) to enter your property, including impact and mitigation site(s);
 - b) to have access to and copy at reasonable times any records that must be kept under the conditions of this certification;
 - c) to 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;
 - d) to sample or monitor any discharge of pollutants or any mitigation site.
- 5) Complete all approved discharges no later than two (2) years of the date of issuance of this Section 401 Water Quality Certification. You may request a one (1) year extension to the Section 401 Water Quality Certification by submitting a written request ninety (90) days prior to the deadline stated above. The written request shall contain an account of which discharges and mitigation have been completed and list the reasons an extension is requested.
- 6) Implement the mitigation plan as described in the application received December 5, 2011, (referred to collectively hereinafter as the "mitigation plan"), and as modified by the conditions of this certification. The wetland(s) created or restored pursuant to the mitigation plan shall be referred to hereinafter as the "mitigation wetland" or "mitigation wetlands." The stream(s) created or restored

pursuant to the mitigation plan shall be referred to hereinafter as the "mitigation stream" or "mitigation streams".

- 7) Complete all activities necessary to create the mitigation wetlands and streams within one (1) year of the effective date of this certification, unless IDEM grants a written extension upon request. These activities include excavation, grading, installation of hydrologic controls, and planting.
- 8) Monitor the mitigation wetland and mitigation stream sites for a minimum period of three (3) continuous years. If the sites do not meet the success criteria, specified in **Condition 9 & 10**, for two consecutive years in this three year period, then you will monitor the sites for an additional two years for a total of five years. For IDEM to release the mitigation sites from this monitoring requirement, you must demonstrate to IDEM, through your monitoring reports, that the sites meet or exceed the success criteria for at least two (2) consecutive years. If the sites fail to meet the success criteria for at least two (2) consecutive years within a five year period then corrective actions will be required. These corrective actions may include additional grading, planting, relocation, or other actions deemed necessary by IDEM to meet the success criteria. Corrective actions often include extended monitoring to verify the effectiveness of the corrective action. Extended monitoring may constitute the sole corrective action if IDEM believes that the sites need more time to meet the success criteria. Once you believe that the sites meet or exceed all of the success criteria listed below, you may submit a proposed final monitoring report to IDEM and suspend monitoring. If IDEM confirms that the mitigation sites meet or exceed all of the success criteria, then IDEM shall notify you that the mitigation is complete and that you may permanently discontinue monitoring.
- 9) Ensure that the mitigation wetland meets all of the following success criteria for at least two (2) consecutive years:
 - a) The area of wetland established, as measured by a wetland delineation, must meet or exceed the 3.1 acres of wetland compensatory mitigation required.
 - b) The wetland actually established must consist of 0.6 acre of emergent wetland, 0.50 acre of scrub shrub wetland, 0.50 acre of forested wetland and 1.5 acres of enhanced emergent wetland.
 - c) Greater than 50% of the dominant vegetation species must have a wetland indicator of FAC (i.e., facultative) or wetter.
 - d) The hydrology at the mitigation wetland site must meet the wetland hydrology criteria contained in the United States Army Corps of Engineers Wetland Delineation Manual, Technical Report Y-87-1 (January, 1987).
 - e) The combined surface areal coverage of *Phalaris arundinacea* (reed canary grass) and *Typha spp.* (cattail) shall not exceed 15% of the mitigation wetland.
 - f) The mitigation wetland is free of the following exotic species: *Lythrum salicaria*

- (purple loosestrife), *Phragmites australis* (common reed), and *Myriophyllum spicatum* (water milfoil).
- g) Native plant species excluding *Typha spp.* (cattail) must have an areal cover of at least 70%.
 - h) No more than 10% of the surface area coverage of the mitigation wetland may be open water, bare ground, or a combination of the two. Open water and bare ground are defined as areas with less than 10% areal vegetative cover.
 - i) For forested areas, the average density of live individuals of tree species shall be at least 200 stems per acre.
 - j) For forested and shrub areas, the average density of live individuals of shrub and vine species shall be at least 436 stems per acre.
 - k) Any additional success criteria specified in the mitigation plan.
- 10) Ensure that the mitigation streams meet all of the following success criteria:
- a) 870 linear feet of the southern bank of the UNT-Jordan Creek is planted with a forested riparian corridor 50 feet wide.
 - b) 75% of the planted trees and shrubs shall be alive and showing signs of growth at the end of monitoring.
 - c) Plant an herbaceous wetland seed mix in and along the bank of 809 linear feet of the relocated channel.
 - d) Native plant species excluding *Typha spp.* (cattail) must have an areal cover of at least 70% in the 809 linear feet of wetland plantings.
 - e) The combined surface areal coverage of *Phalaris arundinacea* (reed canary grass) and *Typha spp.* (cattail) shall not exceed 15% of the mitigation streams.
 - f) The mitigation streams are free of the following species: *Lythrum salicaria* (purple loosestrife), *Phragmites australis* (common reed), *Myriophyllum spicatum* (water milfoil), *Elaeagnus umbellate* (autumn olive), *Elaeagnus angustifolia* (russian olive), *Rosa multiflora* (multiflora rose), and *Lonicera maackii*, *L. morrowii*, *L. tatarica* (honeysuckle).
 - g) The stream relocation channels exhibit no accelerated bank erosion or excessive stream bed deposition.
 - h) Any additional success criteria specified in the mitigation plan.
- 11) Monitor the mitigation wetland and mitigation streams annually, starting one full growing season after construction and planting, to determine whether they are achieving the success criteria specified in **Condition 9 & 10** of this certification. You must complete corrective actions as are necessary to ensure the mitigation sites will achieve the success criteria within the required period. These corrective actions may include additional grading, plantings, or relocation of the mitigation wetland, along with extended monitoring. Describe, in the monitoring reports, any corrective actions taken to ensure success of the mitigation sites.

- 12) Permanently and clearly identify on-site all mitigation wetlands and streams after construction. If the mitigation wetlands to be established are adjacent to or near existing wetlands, then permanent stakes/markers must distinguish the mitigation wetland from the existing wetland.
- 13) Submit annual monitoring reports of the mitigation wetland and mitigation streams to this office by December 31 of each year until released from monitoring by this office. These reports shall contain information concerning what steps you have taken to create the mitigation wetland and whether the wetland is achieving each of the success criteria specified in **Condition 9 & 10**. The reports shall include the following:
 - a) The IDEM identification number.
 - b) As-built plans (in the first year's report).
 - c) Discussion of hydrology at the mitigation site.
 - d) Discussion of plant community development at the mitigation wetland site.
 - e) Discussion of methods or means used to determine compliance with the success criteria.
 - f) Photographs representative of the mitigation wetland site and sampling points.
 - g) Identification of any problems with meeting the success criteria.
 - h) Recommendations for correcting any problems identified.
 - i) Wetland delineation for the mitigation wetland in the final monitoring report.
- 14) Submit as-built plans with the first year's monitoring report for the mitigation stream and/or wetland. As-built plans shall include the final grade elevations at one foot contours, including a plan view and cross sections. For relocated streams, this shall include a longitudinal profile, and lateral cross sections at the apex of each meander and at the midpoint between meanders. For wetlands, this shall include a cross section along the primary axis and secondary axis. In addition, as-built plans shall include locations and elevations of structures (e.g., culvert inverts, outfalls, inlets, berms, piezometers, wells, etc.), including markers specified in Condition 11. As-built plans shall also include the species and quantities of each species that were planted. Deviations from the approved mitigation plan must be highlighted and explained.
- 15) File a signed and recorded environmental notice, which describes the compensatory mitigation contained in the mitigation plan, with the department within sixty (60) days of the release from monitoring requirements. You may substitute a copy of a properly recorded deed restriction or conservation easement protecting the mitigation site(s) to satisfy this condition.
- 16) Allow no construction equipment, temporary run-arounds, coffer dams, temporary causeways, temporary crossings, or other such structures to enter or be constructed within any of the streams, unless specifically stated, depicted, or

detailed in the aforementioned correspondence and project plans. A modification of this Section 401 Water Quality Certification is required from this office if any of the aforementioned items are needed for project construction.

- 17) Remove any temporary causeway or other approved temporary structures used to facilitate construction or access upon completion of construction activities.
- 18) Ensure all riprap discharged for bank protection is embedded into the stream channel and the top elevation of the riprap is no higher than the stream bed elevation.
- 19) Avoid channel work in North Fork Jordan Creek during the fish spawning season (April 1 through June 30).
- 20) Stabilize all disturbed areas upon completion of the project.
- 21) If karst features are found during construction, immediately cease all work and comply with the October 13, 1993 Karst Memorandum of Understanding.

This certification does not relieve you of the responsibility of obtaining any other permits or authorizations that may be required for this project or related activities from IDEM or any other agency or person. You may wish to contact the Indiana Department of Natural Resources at 317-232-4160 (toll free at 877-928-3755) concerning the possible requirement of natural freshwater lake or floodway permits. In addition, you may wish to contact IDEM's Storm Water Permits Section at 317-233-1864 concerning the possible need for a 327 IAC 15-5 (Rule 5) permit if you plan to disturb greater than one (1) acre of soil during construction.

This certification does not:

- (1) authorize impacts or activities outside the scope of this certification;
- (2) authorize any injury to persons or private property or invasion of other private rights, or any infringement of federal, state or local laws or regulations;
- (3) convey any property rights of any sort, or any exclusive privileges;
- (4) preempt any duty to obtain federal, state or local permits or authorizations required by law for the execution of the project or related activities; or
- (5) authorize changes in the plan design detailed in the application.

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

This certification is effective eighteen (18) days from the mailing of this notice unless a petition for review and a petition for stay of effectiveness are filed within this 18-day period. If a petition for review and a petition for stay of effectiveness are filed within this period, any part of the certification within the scope of the petition for stay is stayed for fifteen (15) days, unless or until an Environmental Law Judge further stays the certification in whole or in part.

This decision may be appealed in accordance with IC 4-21.5, the Administrative Orders and Procedures Act. The steps that must be followed to qualify for review are:

- 1) You must petition for review in writing that states facts demonstrating that you are either the person to whom this decision is directed, a person who is aggrieved or adversely affected by the decision, or a person entitled to review under any law.
- 2) You must file the petition for review with the Office of Environmental Adjudication (OEA) at the following address:

Office of Environmental Adjudication
100 North Senate Avenue
IGCN Room N501
Indianapolis, IN 46204

- 3) You must file the petition within eighteen (18) days of the mailing date of this decision. If the eighteenth day falls on a Saturday, Sunday, legal holiday, or other day that the OEA offices are closed during regular business hours, you may file the petition the next day that the OEA offices are open during regular business hours. The petition is deemed filed on the earliest of the following dates: the date it is personally delivered to OEA; the date that the envelope containing the petition is postmarked if it is mailed by United States mail; or, the date it is shown to have been deposited with a private carrier on the private carrier's receipt, if sent by private carrier.

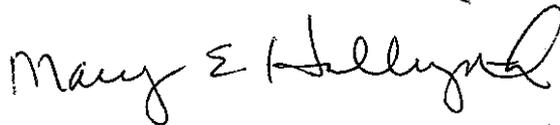
Identifying the certification, decision, or other order for which you seek review by number, name of the applicant, location, or date of this notice will expedite review of the petition.

Note that if a petition for review is granted pursuant to IC 4-21.5-3-7, the petitioner will, and any other person may, obtain notice of any prehearing conferences, preliminary hearings, hearings, stays, and any orders disposing of the proceedings by requesting copies of such notices from OEA.

If you have procedural questions regarding filing a petition for review you may contact the Office of Environmental Adjudication at 317-232-8591.

If you have any questions about this certification, please contact Jason Randolph, Project Manager, of my staff at 317-233-0467, or you may contact the Office of Water Quality through the IDEM Environmental Helpline (1-800-451-6027).

Sincerely,

A handwritten signature in cursive script that reads "Mary E. Hollingsworth".

Mary E. Hollingsworth, Branch Chief
Surface Water, Operations & Enforcement Branch
Office of Water Quality

cc: Sarah Keller, USACE-Louisville, Indianapolis Field Office
Mike Litwin, USFWS
Danny Gautier, IDNR
Chris Leek, NS Services