Alphabet Soup: NWPs, RGPs, RPPs, LOPs, & PGPs
An overview of authorizations utilized in Indiana for impacts to Waters of the U.S.

March 23, 2011
Programs & Regulatory Authority

• **Section 401 Water Quality Certification Program**
  – Section 401 of the Clean Water Act (33 USC 1341)
  – State Water Quality Standards (327 IAC 2)

• **State Isolated Wetlands Law**
  – Isolated Wetlands Law (IC 13-18-22)
  – Isolated Wetlands Rule (327 IAC 17)
  – State Water Quality Standards (327 IAC 2)
Who Regulates What?

- **Public Freshwater Lake**: IDNR, USACE & IDEM
- **Navigable Water**: IDNR, USACE & IDEM
- **Non-wetland floodway**: IDNR
- **Floodway wetland**: IDNR, USACE & IDEM
- **Isolated wetland**: IDEM
- **Adjacent wetland**: USACE & IDEM
- **Stream with <1 sq. mile drainage area**: USACE & IDEM
- **Tributary**: IDNR, USACE & IDEM
USACE in Indiana

- Louisville District: lead district
- Historically: Louisville and Detroit Districts
- October 1, 2009 → Public Law 111-8 transferred responsibility for NWI to Chicago District
Methods of Authorization

- Nationwide Permits (NWP)
- Regional General Permits (RGP)
- Regional Permits under the Regional Permit Program (RPP)
- Letters of Permission (LOP)
- Programmatic General Permits (PGP)
Nationwide Permits

• Since 2000, 16 NWPs in Indiana have been suspended

• Remaining non-suspended NWPs are in use
  – 10 NWPs: IDEM denied 401 WQC (8, 17, 20, 23, 31, 32, 34, 35, 38, 48) → Individual 401 WQC required
  – 17 NWPs: 401 WQC approved with general conditions
  – 6 NWPs: 401 WQC approved with specific conditions (3, 12, 27, 37, 46, 47)
401 WQC for NWPs

• General conditions apply to all NWPs
• Special conditions apply to NWP 3, 12, 16, 27, 37

• Most common NWPs in Indiana: 3, 12, 27, 33
Regional General Permit History

• Developed in Indiana in 1999; first issued in 2000
• RGPs are issued on a regional basis for categories of activities that are similar in nature and cause minimal individual & cumulative impacts to the aquatic environment
• Eliminates unnecessary duplication of regulatory control (in this case, between USACE and IDEM)
• RGP was developed to simplify & enhance the effective regulation of waters & wetlands in Indiana
• Replaces many Nationwide Permits (NWPs) in Indiana
2004 Regional General Permit

- Regional General Permit No. 1 issued 12-15-2004
- Expired 12-15-2009
- Designed to replace specific NWPs in Indiana
- Suspended NWPs: 7, 11, 13, 14, 15, 18, 19, 25, 29, 36, 39, 40, 41, 42, 43, 44
2004 RGP - Overview

- Discharges of dredged/fill material into WOTUS is limited to ≤ one (1) acre
- Dredging of navigable (Section 10) waters limited to 10,000 cyds
- Structures/fills for docking & mooring limited to similar permitted structures and fills in the vicinity
- Discharges of dredged/fill material into Lake Michigan limited to 0.10 acre (except for bank stabilization)
- **Mitigation required for wetland impacts > 0.10 acre and stream impacts > 300’**
401 WQC for 2004 Regional General Permit

- 401 WQC issued 7-6-04
- Approved 401 WQC for Indiana RGP #1 – *(also approved 401 WQC for non-suspended NWPs)*

- Additional IDEM thresholds:
  - 300’ max stream impact
  - 150’ max encapsulation
  - 0.10 acre max impact to WOTUS
  - No stream relocations

- Projects exceeding thresholds required an Individual 401 WQC
### RGP Notification Form
(for minimal impact projects)

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
</table>
| Applicant | Name of Applicant: [ ]
| | Mailing address: [ ] Street, PO Box, Rural Route, City, State, ZIP Code |
| | Daytime Telephone Number: [ ]
| | Fax Number: [ ]
| | e-mail address (optional): [ ]
| | Project Location | Name of Agent: [ ]
| | Mailing address: [ ] Street, PO Box, Rural Route, City, State, ZIP Code |
| | Daytime Telephone Number: [ ]
| | Fax Number: [ ]
| | E-mail address (optional): [ ]
| | Contact person: [ ]
| County | Nearest Town: [ ]
| | Nearest City: [ ]
| | Nearest Road: [ ]
| | U.S.G.S. Quadrangle map name [ ] Topographic map: [ ]
| | Project street address (if applicable): [ ]
| | Quarter: [ ] Section: [ ] Township: [ ] Range: [ ]
| | E-mail address (optional): [ ]
| | Project name or title (if applicable): [ ]
| | Other location descriptors or driving directions: [ ]
| | Project Purpose and Description (Use additional sheet(s) if required) |
| | Has any construction been started? [ ] Yes [ ] No |
| | If yes, how much work is complete? [ ]
| | Anticipated start date: [ ]
| | Purpose of project: [ ]
| | Acres of wetland impact: [ ]
| | Acres of open water impact: [ ]
| | Linear feet of stream impact: [ ]
| | Riprap below the Ordinary High Water Mark: [ ]
| | Volume (cubic yds. per running ft.): [ ] Area (sq. ft.): [ ]

### Individual 401 WQC App.
(for complex projects)

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
</table>
| Applicant | Name of Applicant: [ ]
| | Mailing address: [ ] Street, PO Box, Rural Route, City, State, ZIP Code |
| | Daytime Telephone Number: [ ]
| | Fax Number: [ ]
| | e-mail address (optional): [ ]
| | Project Location | Name of Agent: [ ]
| | Mailing address: [ ] Street, PO Box, Rural Route, City, State, ZIP Code |
| | Daytime Telephone Number: [ ]
| | Fax Number: [ ]
| | E-mail address (optional): [ ]
| | Contact person: [ ]
| County | Nearest Town: [ ]
| | Nearest City: [ ]
| | Nearest Road: [ ]
| | U.S.G.S. Quadrangle map name [ ] Topographic map: [ ]
| | Project street address (if applicable): [ ]
| | Quarter: [ ] Section: [ ] Township: [ ] Range: [ ]
| | E-mail address (optional): [ ]
| | Project name or title (if applicable): [ ]
| | Other location descriptors or driving directions: [ ]
| | Project Purpose and Description (Use additional sheet(s) if required) |
| | Has any construction been started? [ ] Yes [ ] No |
| | If yes, how much work is complete? [ ]
| | Anticipated start date: [ ]
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| | Acres of wetland impact: [ ]
| | Acres of open water impact: [ ]
| | Linear feet of stream impact: [ ]
| | Riprap below the Ordinary High Water Mark: [ ]
| | Volume (cubic yds. per running ft.): [ ] Area (sq. ft.): [ ]

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2009 Regional General Permit

• Regional General Permit No. 1 re-issued 12-15-2009
• Will expire 12-15-2014
• Replaces the same previously-suspended NWPs
• Chicago District now part of the RGP
2009 RGP - Overview

• Same thresholds as 2004 RGP; some new requirements
• **NEW:** Loss of waters of the U.S. is limited to 1,500’ of stream channel, not to exceed one 1 acre.
• **NEW:** Lake Michigan shore protection limitations:
  – Can’t exceed 300’ in length or 10’ in width below OHWM*
  *except where add. materials are required for structural integrity
  – No projects within 200’ of any confluence to the Lake
  – Can’t extend further than existing structures on adj. land
  – No add. dredging/filling beyond that required for project
  – Can’t impede public access to the shoreline
401 WQC for 2009 Regional General Permit

- 401 WQC issued 12-11-09
- Approved 401 WQC for the re-issued Indiana RGP #1
- New IDEM restrictions for:
  - Culvert oversizing/embedding
  - Stream spawning dates
  - State ETR species coordination
  - No changes allowed to sinuosity, flow path, velocity, x-sectional area, or stream slope
RGP Notification Form (for minimal impact projects)

Individual 401 WQC App. (for complex projects)
Regional Permit Program

- Used by Chicago District USACE in 6 Illinois counties; not in use in Indiana (yet)...
- Replaces portions of the NWP program – similar to Indiana’s RGP
- **2 categories:**
  - **Category I:** minimal impact, may include special conditions to ensure compliance with the RPP
  - **Category II:** minimal impact, requires “more rigorous review by the District” and coordination with resource agencies. May include special conditions to ensure compliance with the RPP
Regional Permit Programs, cont.

• 24 general conditions; applicable to all RPs
  – Mitigation required at 1.5 to 1 ratio (minimum) for impacts > 0.10 acre
  – Written notification (equiv. to PCN) required

• **13 Regional Permits:**
  1) residential/commercial development; 2) recreation projects;
  3) transportation projects; 4) minor discharges & dredging;
  5) WL/stream restoration/enhancement; 6) completed enforcement actions;
  7) temporary construction; 8) utility line projects;
  9) maintenance, 10) bank stabilization; 11) marine structures & activities,
  12) bridge scour protection; 13) toxic/hazardous waste cleanup
Regional Permit Programs, cont.

• Summary: RPP → similar to RGP, but more specific
• Chicago District is interested in making the RGP project-specific (similar to the RPP); each type of project would have specific limitations and conditions
• Will require interagency discussion and coordination among the USACE Districts and IDEM
Letters of Permission (LOP)

- LOPs are abbreviated USACE Individual permits
- Currently used to authorize minor activities in/over/under Section 10 waterways
- Agency coordination required
  - Chicago District: 10 day public notice
  - Louisville District: sends out copies of application to other resource agencies
LOP – Potential Uses

- **Currently**: discussion among USACE districts to develop an LOP to address ‘problem’ permitting situations that shouldn't have to go through the IP process

- **Goal**: Develop an LOP to expedite permit reviews for projects that do not qualify for a NWP or RGP, but have minimal impacts, and avoid a burdensome IP review
Programmatic General Permit

• Developed in Indiana in 2007
• Scope: construction activities in WOTUS under Section 404 that are also regulated by IDNR as public freshwater lakes under Indiana’s Lake Preservation Act
• Gives USACE & IDEM a means to authorize minor impacts through an abbreviated review process
• Relies on the existing IDNR permit review procedures
• Expires on December 3, 2012
PGP – How it Works

• Applicant sends application to IDNR
• IDNR determines if project qualifies for PGP and if activity is a Category I or Category II project
PGP Projects - Category I

- New bioengineered or glacial stone seawalls (250’ max length)
- Refacing of existing seawalls with “like” materials (250’ max length)
- Beach Construction (*meeting certain criteria*)
- Filling of boat wells (20’ wide by 30’ long max)
- Not located in wetland or significant shoreline
PGP - Category I Procedures

- One-stop-shopping concept
  - Only one application form is required to be completed and submitted to IDNR for reviews under the Lake Preservation Act, 401 WQC, & Section 404
  - The IDNR approval will also qualify the project for Section 401 WQC and Section 404
  - IDEM issued 401 WQC on 11-29-2007
PGP Projects - Category II

- Construction activity > 250’ and < 500’ in length
- Any new concrete or sheet piling seawall
- Beach Construction (non-Category I criteria)
- Any Category I activity in wetlands or shoreline defined as “significant wetland”
- Activities under USACE/IDEM jurisdiction & partially not under IDNR jurisdiction
PGP - Category II Procedures

- Applicant submits to IDNR
- IDNR forwards copy to USACE indicating that it appears to meet Category II requirements
- USACE will:
  - Authorize the project under the PGP; or
  - Determine that the PGP isn’t appropriate and evaluate the project under NWP, RGP, or IP
  - Respond to all Category II applications in writing
- IDEM 401 WQC issued; can re-evaluate 401 WQC applicability for specific projects
PGP Summary

• Reduction of agency efforts – IDNR is the lead for Category I & II projects
• Significantly fewer applications reviewed by USACE and IDEM
• Applicants appreciate the “one-stop shopping” approach for the majority of proposed projects
The Take Home Message

• Coordination between IDEM and USACE staff is key
• IDEM staff are not always sure how USACE will authorize a project, which may affect IDEM’s review or the agency responsible for public noticing the project
• Good working relationships make it easier!
• Permitting can still be burdensome for applicants
• Activity-specific RGP or LOP (like the RPP) could make things clearer to the public, and allow them to identify what type(s) of permit(s) they are eligible for & what process will be used to evaluate their project
Questions?

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