How to Watchdog Wetland and Water Permits

Part 1
Introduction

Tracking

Prioritizing

Intro to commenting

Questions
Why track and comment on permits?

✓ Reduce environmental harm

✓ Bring the community voice into decision-making

✓ Establish standing in case of future litigation
The Water Cycle

This diagram shows the Earth’s “Natural” water cycle, omitting the significant impacts of human influences.

Keep in mind:

- To effectively track and comment on a permit, one must go along with the segmentation of water types in the regulation.
Water Regulation

Waterbodies

[Logos and images from United States Environmental Protection Agency, DNR (Indiana Department of Natural Resources), and IDEM (Indiana Department of Environmental Management)]
Clean Water Act
Indiana Isolated Wetlands Law
Indiana Flood Control Act
Local city or county ordinances
<table>
<thead>
<tr>
<th>Clean Water Act</th>
<th>federal waterways and wetlands (WOTUS)</th>
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</thead>
<tbody>
<tr>
<td>Indiana Isolated Wetlands Law</td>
<td>state wetlands</td>
</tr>
<tr>
<td>Indiana Flood Control Act</td>
<td>rivers</td>
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<td>Clean Water Act, section 404</td>
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<td>Clean Water Act, section 401</td>
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<td>Clean Water Act, section 402</td>
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Regulated Activity
<table>
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<th>Law and Act</th>
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<td>Clean Water Act, section 401</td>
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</table>
Tracking Water Permits

• Routinely monitoring public notices on a regular basis

• Permits focused on in this training:
  ➢ Section 401 Water Quality Certificates
  ➢ Section 402 National Pollutant Discharge Elimination System (NPDES) Permits
  ➢ Section 404 Dredge and Fill Permits
  ➢ State Isolated Wetland Permits
  ➢ Construction in a Floodway Permits
Three Steps

• Step 1: Sign up for public notice notifications

• Step 2: Navigate agency resources

• Step 3: Get organized
Steps 1 & 2: Sign up for public notice notifications, navigate agency resources (live tutorial)

- IDEM Public Notice Homepage
  - Tutorial given for Water Quality Certificates, NPDES Permits, State Isolated Wetland Permits
- Refer to handout on how to sign up for all agency notifications
Step 3: Get organized

- Create a new folder or identify file location to save your work

- Create an Excel spreadsheet to record permits
  - Permits of concern tab
  - Submitted permits tab
Prioritizing Water Permits

• Consider overall scope of permit impacts

• Utilize time efficiently

• Identify most important permits to prepare effective public comments
What should you consider?

• Where are you tracking permits?

• Why are you tracking permits?

• Considerations are subjective and ultimately up to you
WHAT SHOULD YOU CONSIDER?

- Size of impacts
- Comment deadline
- Water quality
- Compliance history
- NPDES: Discharge quality and quantity
- Socioeconomic factors
- NPDES: New, Renewal, Modification
- Surrounding land-use
- Waterway significance
- Design alternatives
Compliance History

• Is the permittee complying with the terms of their permit?
  ➢ For example, chronic violators: Steel plants in NW Indiana
Comment Deadline

• When are public comments due?

• More thorough investigation is more likely to influence the outcome
Waterway significance: Are you targeting a single stream, lake, or wetland?
Waterway significance: Are you targeting an entire watershed?

Size of impacts

• How much wetland and/or stream will be impacted?

• Are water features being properly classified?
  ➢ Size of impacts is dependent on wetland classification for State wetlands
  ➢ Obtain Waters Report from permit manager

• Does not apply to Floodway or NPDES
Example – State Isolated Wetland Permit: Proposed wetland impacts

Wetlands were Class II...

<table>
<thead>
<tr>
<th>Impact ID</th>
<th>Feature</th>
<th>Feature Type</th>
<th>Size (On-SITE)</th>
<th>ORAM Class</th>
<th>Anticipated Regulatory Status</th>
<th>Impacts</th>
<th>Ratio</th>
<th>Mitigation Required</th>
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Hoosier Environmental Council
All Together Now.

hecweb.org
Reclassified wetlands = mitigation requirement increased

<table>
<thead>
<tr>
<th>Wetland</th>
<th>Class &amp; Type</th>
<th>Class</th>
<th>Area (on-site, acres)</th>
<th>Proposed Impacts (acres)</th>
<th>Ratio</th>
<th>Mitigation Required (acres)</th>
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<td><strong>Total</strong></td>
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<td><strong>-</strong></td>
<td><strong>-</strong></td>
<td><strong>9.35</strong></td>
</tr>
</tbody>
</table>

The revised compensatory mitigation proposal is 9.35 acres of mitigation.
Low quality?

High quality?

High quality does not necessarily mean undeveloped
Surrounding land-use

• Is it next to a sensitive ecological site?
  ➢ Open space
  ➢ Park or nature preserve
  ➢ River or stream corridor
  ➢ Large undisturbed area
  ➢ Old agricultural land with wetlands and/or forest
Design alternative example: Original design, no stormwater control measures
Example: Revised design
Socioeconomic factors

- Water permits can have community implications
- New housing developments may displace low-income residents
Socioeconomic factors

- Is it adjacent to a low-income neighborhood?

- What is the nature or need for development?
  - For example, grocery store versus new housing development
Additional considerations for NPDES

• NPDES – National Pollutant Discharge Elimination System
• Section 402 of the Clean Water Act
• Regulates *point source* discharges into WOTUS
  ➢ Effluent coming out of discrete conveyance and going into receiving waters
What is the quantity of the discharge?

What is the quality of the discharge?
Additional considerations for NPDES

• Is it a new, renewal, or modified permit application?
Recap

• Sign up for notifications
• Stay on top of tracking
• Get organized: Identify file location, save public notices, create an Excel spreadsheet, mark comment deadlines in your calendar
• Considerations can be tailored to your own interests
Drafting Comments
Drafting Comments

• Don't be intimidated
Drafting Comments

- Read the documents carefully
- Gather information about the impacted waterway
- Gather information about the proposed regulated activity
Drafting Comments

- Learn how the relevant regulation applies
- Get help from people with scientific or legal expertise
Effective Comments

• Identify problems with the permit application
• Identify flaws in a draft permit
• Provide information
• Offer solutions
• Offer support, as well as, critique
• **Request actions the agency has legal authority to take**
Stay Tuned for Part 2

• How to write effective public comments

• Third week of January

• Send email to ifrank@hecweb.org if you would like to sign up for this training
VIRTUAL

Greening THE Statehouse

SAVE THE DATES:
Friday, November 19, and Saturday, November 20, 2021

REGISTER AT: hecweb.org/gts

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Questions?