



REPLY TO  
ATTENTION OF:

**DEPARTMENT OF THE ARMY**  
CHICAGO DISTRICT, CORPS OF ENGINEERS  
231 SOUTH LA SALLE STREET  
CHICAGO, ILLINOIS 60604-1437

August 30, 2013

Technical Services Division  
Regulatory Branch  
LRC-2012-50

**SUBJECT:** Enbridge Energy Line 6B Maintenance and Rehabilitation Project, Lake and LaPorte Counties, Indiana (Two Approximately 5-Mile Segments Crossing Sections 6, 7, and 8, Township 35 North, Range 8 East and Sections 1, 2, 3, & 12, Township 35 North, Range 9 East in Lake County and Sections 19, 20, & 21, Township 37 North, Range 3 East and Sections 24, 25, 26, & 27, Township 37 North, Range 4 East in LaPorte County)

IDEM No. 2012-322-45-MTM-A

Rachel Shetka  
Enbridge Energy, Limited Partnership  
1409 Hammond Avenue, 2nd Floor  
Superior, Wisconsin 54880

Dear Ms. Shetka:

Reference your application for a Department of the Army (DA) permit to discharge fill into wetlands in association with above-referenced project. We have verified that the project is authorized by Nationwide Permit (NWP) 12/Utility Line Activities as published in the Federal Register. The following work is authorized under NWP 12:

Temporarily discharge fill into 31.69 acres of wetland and permanently convert 1.05 acres of forested/scrub-shrub wetland into emergent wetland. Temporarily discharge 57.2 cubic yards of fill into 24.5 linear feet of various waterbodies in conjunction with the replacement of 10 miles of crude oil pipeline. The typical trench excavated in a wetland/waterbody will be approximately 9 feet wide and 7 feet deep. (See attached tables for details on wetland/waterbody impacts.)

This authorization is contingent upon compliance with the attached Nationwide Permit General Conditions and Indiana Regional Conditions and the following Special Conditions:

1. The top 12 inches of wetland topsoil must be removed from the excavation area(s) and stockpiled separately from other soils for later reuse. This salvaged topsoil must be placed on top of any other authorized backfill materials in a manner restoring original grade and compaction.

2. Upon completion of construction, the permittee shall restore the wetland soil to pre-existing compaction, permeability, ground contours, and ensure development of native vegetation according to the restoration plan submitted.
3. Monitor the on-site restored wetlands annually for the years 1 through 5, 7, and 10 after construction to ensure the impacted wetlands are restored to pre-existing conditions. The monitoring must start no later than one full growing season after the completion of construction and monitoring reports must be submitted to this office by December 31 of each year until released. The restored wetlands must meet the same success criteria and report format detailed in Special Condition 10.
4. All temporary structures and/or fills shall be removed in their entirety upon completion of the project.
5. All unsuitable/excess dredged and excavated material not used as backfill over the pipeline shall be removed from the waterway and disposed of at an upland disposal site in a manner to ensure no return or erosion to any waterway or wetland.
6. The stream and wetland crossing at mile post 517.5 must be constructed utilizing horizontal directional drilling. If this cannot be done, the permittee must contact the Corp of Engineers before starting work on the crossing to determine if a DA permit is required.
7. Prior to clearing and construction, standard silt fencing must be installed on both sides of the right-of-way and temporary construction workspaces in suitable wetlands and within 50 feet of wetlands between mile posts 515.5 and 518.0 to prevent eastern massasauga rattlesnakes from entering the project area. The silt fence must be inserted to a depth of at least 4 inches into the soil.
8. Erosion control measures detailed in Enbridge's Environmental Mitigation Plan (EMP), shall be placed to prevent discharge material from entering wetlands or waterways. These measures must be in place prior to starting work, and their effectiveness must be maintained until all work at the site is completed and the area has been stabilized against erosion.
9. All wetland and temporary workspace boundaries must be marked prior to starting land disturbing activities.
10. You agree to successfully create 11.52 acres of forested wetlands and re-establish 13.8 acres of forested wetlands, 5.0 acres of scrub-shrub wetlands, 8.7 acres of emergent wetlands, and 39.9 acres of herbaceous dry to mesic prairie grassland buffer according to the mitigation plan titled *Reynolds Creek Wetland Mitigation Plan, Line 6B 2012 Maintenance and Rehabilitation Program and Line 6B Phase 2 Replacement Project, Porter County, Indiana* and dated June 14, 2012 (Revised July 23, 2013 and August 8, 2013). The construction of the mitigation area must be completed within one year of the date of issuance of this permit. Notification of completion of construction must include

as-built plans as provided in the mitigation plan. The determination of success rests solely with this office, and will be made in writing by December 31, 2024, unless the monitoring period is extended as detailed below. The criteria for success will be as stated in the final mitigation plan. You must submit annual monitoring reports to this office by December 31, beginning in 2014 after completion of the mitigation area construction. Photographs with a 360 degree panorama taken from a fixed point in the mitigation and control areas must be submitted with each report. The report must include 8.5 x 11" scale drawings of the mitigation site and the control site showing the boundaries of created wetlands, the sample points and photograph locations, and the land/water boundaries at the time of each monitoring visit. Each monitoring effort and report will be based on the sampling technique summarized in the plan. This office reserves the right to determine success based on our interpretation of success criteria, the information in the reports, and/or site visit(s). Should we determine that a deficiency exists during or at the conclusion of the monitoring period, we reserve the right to compel you to take whatever measures are necessary, including starting over, to achieve success within an additional monitoring period to be established at that time. Specific remedial measures to be taken will be designed and executed by you and you will be responsible for unsuccessful remedial measures. Should we determine that the mitigation effort is successful, we will release you from this condition. You agree to allow access to the mitigation site by Corps employees in the future for study and long term evaluation. After achieving a determination of success by this office, the permittee shall notify and receive prior approval from this office for any proposed modification within the mitigation area

11. Within 30 days of the date of this permit you will need to submit to our office for review a plan that details how you will provide a minimum of 1.0725 acres of mitigation within the Chicago Watershed, 15.6195 acres of mitigation in the Little Calumet – Galien Watershed, and 3.55 acres of mitigation in the Kankakee Watershed to compensate for temporal loss of wetland and waterway functions as well as overall project impacts to waters of the United States.
12. The conditions provided in the Section 401 Water Quality Certification, dated April 26, 2013 and modified August 13, 2013, from the Indiana Department of Environmental Management, are binding and must be incorporated into this project.
13. If portions of the project area that were not surveyed will be subject to ground disturbing activities, the permittee shall conduct an archaeological survey and forward it to this office. No work shall commence in those areas until approval is granted by Corps of Engineers.
14. Once the final curation location has been determined for all portions of the Enbridge Line 6B maintenance and rehabilitation project, a list will be provided to the SHPO office within 30 days of project completion, listing which artifacts are being curated and which artifacts will be returned to landowners.

15. If you discover any unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately stop work in that area and 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.
16. For work occurring at mile post 474 near the Sykes Farm at 6197 Colorado Street, Lake County, and at mile post 471.5 near the historic house at 6241 Madison Street, Merrillville, Lake County, the permittee shall erect exclusion fencing along the south boundary of both workspaces as shown in the attached *Cultural Resource Site Treatment Plan*. All project activities shall occur within the construction workspace. If the lawn or landscaping is damaged during construction, it shall be restored to the original appearance.
17. In the vicinity of Site 12Le276, the permittee shall erect exclusion fencing as shown in the attached *Cultural Resource Site Treatment Plan*. All project activities shall occur within the construction workspace. If areas outside the workspace will be subject to ground disturbing activities, the permittee shall conduct an archaeological survey and provide it to this office. The additional investigation must be done in accordance with the "Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation" (48 F.R. 44716). No work shall commence in this area until approval is granted by Corps of Engineers.
18. All information from archaeological investigations on surveyed parcels will be entered into the State Historic Architectural and Archaeological Research Database (SHAARD) per direction of Indiana Department of Natural Resources – Division of Historic Preservation & Archaeology (IDNR – DHPA).

This authorization covers only your project as described and shown in the aforementioned permit application and associated information as well as in subsequent phone and e-mail correspondence with your office. Caution should be taken so that construction materials and/or activities do not enter any waterbodies or wetlands beyond the scope of this authorization. Appropriate soil erosion and sediment controls should be implemented to achieve this end. If the design, location, or purpose of the project is changed, you should contact this office to determine the need for further authorization. This authorization does not obviate the need to obtain all other required Federal, state, or local permits/approvals before starting work. All terms and conditions of other Federal, state, or local permits/approvals must be followed in their entirety.


This verification is valid until the NWP 12 is modified, reissued, or revoked. All of the existing NWPs are scheduled to be modified, reissued, or revoked prior to March 18, 2017. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice when the NWPs are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation of the NWP 12 to complete the activity under the present terms and conditions of this nationwide permit.

We note that the Indiana Department of Environmental Management (IDEM) has issued Section 401 Water Quality Certification (Section 401 WQC) from for this project. If you have questions regarding the 401 WQC and its conditions, please contact IDEM at 317-233-8488.

As per 33 CFR 325, Appendix A, representatives from this office are allowed to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of the Nationwide Permit.

If you have any questions, please contact Andrew J. Blackburn of my staff by telephone at 312-846-5543, or email at [Andrew.J.Blackburn@usace.army.mil](mailto:Andrew.J.Blackburn@usace.army.mil).

Sincerely,



Leesa Beal  
Chief, Regulatory Branch  
Chicago District

Attachments

Copies Furnished:

U.S. Army Corps of Engineers, Detroit District – Michiana Branch (Mr. Aaron Damrill)  
U.S. Fish and Wildlife Service – Northern Indiana Sub-Office (Ms. Elizabeth McCloskey)  
U.S. Department of Transportation – PHMSA (Mr. Allan Beshore)  
National Park Service – Indiana Dunes National Lakeshore (Mr. Charlie Morris)  
IDEM (Mr. Marty Maupin)  
IDNR – Division of Water (Ms. Jennifer Ware)  
IDNR – Division of Fish and Wildlife (Ms. Lori White)  
Merjent, Inc. (Ms. Naomi Christenson)

**Enbridge Energy, Limited Partnership**  
**Line 6B 2012 Maintenance and Rehabilitation Project**  
**Wetland Impacts in Lake and LaPorte Counties, Indiana**  
**U.S. Army Corps of Engineers Project Reference #: LRC-2012-50**

County	Crossing Length (ft) a/	Temporary Wetland Impacts (Acre) b/	Temporary Forested Wetland Impact (Acre) c/	Permanent Forested Wetland Impact (Acre) d/	Temporary Excavation Impacts (ft <sup>2</sup> ) e/	Excavation Volume (yd <sup>3</sup> ) f/
<b>GRIFFITH SEGMENT</b> (Lake County)						
Subtotal	14,808.7	28.84	8.52	1.05	263,592.3	33,221.0
<b>LAPORTE SEGMENT</b> (LaPorte County)						
Subtotal	1,475.0	2.85	1.15	0.00	22,125.0	3,441.7
<b>TOTAL IMPACTS</b>	<b>16,283.7</b>	<b>31.69</b>	<b>9.67</b>	<b>1.05</b>	<b>285,717.3</b>	<b>36,662.7</b>

- a/ Crossing length of proposed pipeline centerline across wetlands. A crossing length of 0.0 indicates the wetland is within the construction workspace, but is not crossed by the proposed pipeline.
- b/ Area of wetland impacts within the construction workspace based on an approximate 80-foot-wide workspace, including temporary dredge and fill areas, travel lanes, and staging areas.
- c/ Temporary forested wetland impacts include total impacts where forested wetland clearing was necessary within the construction workspace.
- d/ Permanent forested wetland impacts include the 10-foot-wide area within the new permanent easement where the pipeline corridor will be maintained by periodic clearing activities.
- e/ Temporary excavation and storage impacts include the area where the trench will be excavated and where the trench material will be stored. These areas are generally 15 feet wide along the length of the pipeline that crosses the wetland.
- f/ The temporary excavation and storage volumes are based on an average trench width of 9 feet and average trench depth of 7 feet. Volume (yd<sup>3</sup>) = (crossing length x 63 ft<sup>2</sup>/27). Excavated material will be returned to the trench after placement of the pipe. See supplement for further information.

**Enbridge Energy, Limited Partnership**  
**Line 6B 2012 Maintenance and Rehabilitation Project**  
**Waterbody Impacts in Lake and LaPorte Counties, Indiana**  
**U.S. Army Corps of Engineers Project Reference #: LRC-2012-50**

County	Crossing Length (ft) <u>a/</u>	Area Disturbed (ft <sup>2</sup> ) <u>b/</u>	Excavation Volume (yd <sup>3</sup> ) <u>c/</u>
<b>GRIFFITH SEGMENT</b> (Lake County)			
Subtotal	21	315	49
<b>LAPORTE SEGMENT</b> (LaPorte County)			
Subtotal	3.5	165	8.2
<b>TOTAL IMPACTS</b>	<b>24.5</b>	<b>480</b>	<b>57.2</b>

- a/ Crossing length of pipeline centerline across the waterbody at its ordinary high water mark.
- b/ Area of waterbody disturbed during construction and is based on a trench excavation width of 15 feet.
- c/ The temporary excavation volumes are based on an average trench width of 9 feet and average trench depth of 7 feet. Volume (yd<sup>3</sup>) = (crossing length x 63 ft<sup>2</sup>/27). Excavated material will be returned to the trench after placement of the pipe. See supplement for further information.



### Nationwide Permit General Conditions:

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR §§ 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR § 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.



6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an

ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the



activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for

any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring

requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been



independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

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

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(Transferee)

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(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual

permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate



that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

#### District Engineer's Decision:

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a

waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWP's 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (a) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to

seek authorization under an individual permit; (b) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period, with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

Further Information:

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.



### **INDIANA REGIONAL GENERAL CONDITIONS FOR THE STATE OF INDIANA**

These regional conditions are in addition to but do not supersede the requirements in the Federal Register (Volume 77 No. 34 of February 21, 2012). Information on Pre-Construction Notification (PCN) can be found at NWP General Condition No. 31 (Federal Register, Volume 77, No. 34, Tuesday, February 21, 2012, pp 10286).

The following Nationwide Permits in the State of Indiana have been suspended:

NWP 7	Outfall Structures and Associated Intake Structures
NWP 11	Temporary Recreational Structures
NWP 13	Bank Stabilization
NWP 14	Linear Transportation Projects
NWP 15	U.S. Coast Guard Approved Bridges
NWP 18	Minor Discharges
NWP 19	Minor Dredging
NWP 25	Structural Discharges
NWP 29	Residential Developments
NWP 36	Boat Ramps
NWP 39	Commercial and Institutional Developments
NWP 40	Agricultural Activities
NWP 41	Reshaping Existing Drainage Ditches
NWP 42	Recreational Facilities
NWP 43	Stormwater Management Facilities
NWP 44	Mining Activities

#### **REGIONAL CONDITIONS:**

1. Nationwide Permit No. 12 – Utility Line Activities
  - (a) Notification is required for all substations.
  - (b) Impacted wetlands outside of permanently maintained rights of way shall be restored to the same or more valuable wetland type (e.g. forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by the Corps.
  - (c) For utility lines placed across the channel of an authorized Federal navigation project, the following conditions apply: 1) the line must be embedded at least 6 feet below the authorized Federal channel depth; 2) existing and proposed elevation information on precise plan and section scale drawings are required; 3) within 60 days after construction, an as-built survey must be provided indicating the points of entry and exit of the installation.
  - (d) Notification is required for all stream crossings.

#### **Regional Conditions Applicable to all NWPs within Indiana:**

1. Excavation/dredging from areas of known or suspected contamination requires:
  - (a) Placement of the material in a Confined Disposal Facility or Class II landfill; or
  - (b) Placement of the material by other Corps' approved method; or
  - (c) Testing to demonstrate that the material is not contaminated. If the material is determined

to be contaminated, it must be disposed of in a. or b. above.

2. Notification in accordance with Condition 31 is required to the Corps for all activities affecting Designated Salmonid Waters, Outstanding State Resource Waters, Exceptional Use Streams, and Critical Wetlands and Critical Special Aquatic Sites (See Attachments 1 and 2).
3. Notification in accordance with Condition 31 is required to the Corps for all activities which would cause, alter, or affect diversion of water from the Great Lakes basin.

## **ATTACHMENT 1**

### **Designated Salmonid Waters**

1. Galena River and its tributaries, LaPorte County
2. Trail Creek & tributaries downstream to Lake Michigan, LaPorte County.
3. East Branch of the Little Calumet River and its tributaries downstream to Lake Michigan via Burns Waterway (Ditch), Porter and LaPorte Counties.
4. The Indiana portion of the open waters of Lake Michigan.
5. Kintzele Ditch (Black Ditch) from Beverly Drive downstream to Lake Michigan, Porter County.
6. Salt Creek and its tributaries upstream of its confluence with the Little Calumet River, Porter County.
7. The St. Joseph River and its tributaries in St. Joseph County from the Twin Branch Dam in Mishawaka downstream to the Indiana/Michigan state line, St. Joseph County.
8. Those waters designated by the Indiana Department of Natural Resources (IDNR) for put-and-take trout fishing.

### **Waterbodies which have been designated all or partially as Outstanding State Resource**

#### **Waters:**

1. The Blue River in Washington, Crawford, and Harrison counties (from the confluence of the West and Middle Forks of the Blue River in Washington County) from river mile 57.0 to river mile 11.5.
2. Cedar Creek in Allen and DeKalb counties.
3. The North Fork of Wildcat Creek in Carroll and Tippecanoe counties.
4. The South Fork of Wildcat Creek in Tippecanoe County.
5. The Indiana portion of Lake Michigan.
6. All waters incorporated in the Indiana Dunes National Lakeshore.

### **Streams which have been designated all or partially as Exceptional Use Waters:**

1. Big Pine Creek in Warren County.
2. Mud Pine Creek in Warren County.
3. Fall Creek in Montgomery County.
4. Indian Creek in Montgomery County.
5. Clifty Creek in Montgomery County.
6. Bear Creek in Fountain County.
7. Rattlesnake Creek in Fountain County.
8. The small tributary to Bear Creek in Fountain County within the Portland Arch Nature Preserve which enters Bear Creek at the sharpest bend and has formed the small natural bridge called Portland Arch.
9. Blue River from the confluence of the West Middle Forks of the Blue River in Washington County to the Ohio River.
10. The South Fork of the Blue River in Washington County.

11. Lost River and all surface and underground tributaries upstream from the Orangeville Rise.
12. Rise of the Lost River
13. Mainstream of the Lost River from Orangeville Rise downstream to its confluence with the East Fork of the White River (Orangeville Rise location)

## ATTACHMENT 2

### **Critical Wetlands and Critical Special Aquatic Sites**

1. Acid bogs
2. Acid seeps
3. Circumneutral bogs
4. Circumneutral seeps
5. Cypress Swamps
6. Dune and swales
7. Fens
8. Forested fens
9. Forested swamps
10. Marl beaches
11. Muck flats
12. Pannes
13. Sand flats
14. Sedge meadows
15. Shrub swamps
16. Sinkhole ponds
17. Sinkhole swamps
18. Wet floodplain forests
19. Wet prairies
20. Wet sand prairies

## **APPENDIX F: CULTURAL RESOURCE SITE TREATMENT PLAN**

Enbridge contracted Cardno JFNew to conduct a Phase I archaeological reconnaissance prior to construction activities related to the replacement of select segments of Line 6B, a crude oil pipeline operated by Enbridge in Lake, Porter, La Porte and St. Joseph Counties, Indiana.

The area surveyed during the field investigation consisted of a 250-foot (76-meter) wide corridor, described as the survey corridor. The construction workspace however is a smaller area within the survey corridor defined as the vertical and horizontal space that will be impacted by project activities. Generally, the construction workspace is a maximum 105 feet (32 meter) wide in upland settings and a maximum of 80 feet (24 meter) wide in wetlands. The Area of Potential Effects (APE) for direct effects corresponds to the construction workspace. The APE for indirect effects corresponds to the area immediately adjacent to the construction workspace.

Cardno JFNew conducted the Phase I fieldwork between April and June, 2012. As a result of the Spring 2012 survey efforts Cardno JFNew identified 24 new prehistoric sites and relocated 12 previously identified prehistoric sites in Lake, Porter, La Porte and St. Joseph Counties, Indiana. These sites include 13 prehistoric isolated finds and 23 prehistoric artifact scatters. Eleven additional previously recorded sites were merged with existing sites as a result of the Spring 2012 reconnaissance survey. Cardno JFNew also identified six historic houses and one historic barn in or near the project area.

Of the sites relocated or discovered during the current survey, only one potentially National Register of Historic Places (NRHP) eligible archaeology site (12-Le-0276) is in the construction corridor and requires a treatment plan. One property that contains a building more than 50 years old is located in the construction corridor, and one farmstead is immediately adjacent to the construction corridor. Avoidance treatment plans are provided for both of these properties.

The purpose of this document is to request concurrence from the DHPA regarding the recommended treatment of these cultural sites and to provide Enbridge information to use in the design of the project to avoid impacts to important cultural resources documented during the Spring 2012 survey.

### **1. Archaeological Site 12-Le-0276 (ESA-497.6-a)**

Archaeological Site 12-Le-0276 is located in La Porte County along a wooded ridgetop near Milepost 497.5 (Figure 1). This site was originally identified in 1999 during an investigation for an unrelated project (Purtill and Goodfellow 1999, Goodfellow et al. 2001). The results of Cardno JFNew's Phase I investigation of the site during the Spring of 2012, together with the 1999 investigation indicate the significant portion of 12-Le-0276 is located approximately 30m (100ft) south of the current project corridor. This area contains intact soils and high research potential that may provide important information about the past, and makes the site potentially eligible for listing in the NRHP. The portion of the site within the construction workspace was found by Gray & Pape to not meet the eligibility criteria for such listing. The Spring 2012 Phase I investigation recorded only two surface artifacts in the portion of the site extending into the construction workspace; the collection and recordation of these artifacts exhausts their research potential.



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Cardno JFNew recommends that Enbridge be allowed to install the pipeline using standard construction practices; however, a stipulation should be added to the project plans stating all project activities, including additional work space or other temporary activities be restricted to the construction workspace corridor at this location and no direct or indirect ground disturbance is permitted in the significant portion of Site 12-Le-0276. Exclusion fencing or a similar barrier should also be placed along the construction corridor boundary at this location (see Figure 1).

**2. Historic Resource: Historic House at 6421 Madison St., Merrillville, Indiana (ESA-471.4)**

A historic homestead (more than 50 years old) is located just outside the project area in parcel 45-12-09-256-001.000-030 near Milepost 471.5 (Figure 2). The landscaped yard is located within the construction workspace, but the house is outside the workspace. Cardno JFNew recommends adding a stipulation to the project plans stating all project activities, including additional work space or other temporary activities be restricted to the construction workspace in this location. Exclusion fencing or similar barriers should also be placed along the construction workspace boundary in this location. All construction activities should avoid or minimize impacts to the lawn, landscaping, fences, and other components at this parcel, all of which may contribute to the historic setting of the house. We also recommend that if the lawn or landscaping is damaged during construction, it should be restored to its original condition as practical and possible.

**3. Historic Resource: Sykes Farm (ESA-473.9)**

An historic farm is located adjacent to the project area in parcel 45-12-12-100-001.000-046 near Milepost 474. The Sykes Farm is eligible for listing in the National Register of Historic Places and has been assigned a rating of Outstanding by the Indiana Historic Sites and Structures Inventory. While the historic farm buildings are located outside the construction workspace, avoidance measures will assure that the property is not impacted by project activities.

Cardno JFNew recommends adding a stipulation to the project plans stating all project activities, including additional work space or other temporary activities be restricted to the construction workspace in this location. Exclusion fencing or similar barriers should also be placed at the construction workspace boundary on the northern edge of the farmstead as shown on Figure 3. All construction activity should avoid impacting the lawn, landscaping, fences and other components at this parcel. We also recommend that if the lawn or landscaping is damaged during construction, it should be restored to its original condition as practical and possible.

**4. Additional Recommendations**

If archaeological artifacts or human remains are identified during project activities in any location, work within the area must stop and the Indiana Department of Natural Resources – Division of Historic Preservation and Archaeology must be notified within two (2) business days pursuant to Indiana Code 14-21-1.

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Purtil, Matthew and Susan Goodfellow

1999 *Supplemental Phase I Survey of a Proposed Reroute and Extra Workspaces at Holmesville Road and Phase II Investigations at Site 12Le276, Vector Pipeline Corridor, La Porte County, Indiana.* Copy on file at the Indiana Department of Natural Resources Division of Historic Preservation and Archaeology.

FIGURES HAVE BEEN REMOVED FROM THIS TREATMENT PLAN