



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

Section 401 Water Quality Certification

IDEM Authorization Number: 2020-673-79-ERL-A
USACE Number: LRL-2019-1118-sjk
Project Name: Elliott Ditch Reaches 1-3 Sediment and Isolated Soil Remediation
Authority: 327 IAC 2. CWA Sections: 301, 302, 303, 306, 307, & 401
Date of Issuance: September 29, 2020
Impacts must be completed by: September 29, 2022

Approved:

Brian Wolff, Branch Chief
Surface Water and Operations
Office of Water Quality

Applicant / Permittee: Robert Prezbindowski
Arconic Corporation
2300 North Wright Road
Alcoa, Tennessee 37701

Agent: J. Matthew Bruck, P.E.
Civil & Environmental Consultants, Inc.
2704 Cherokee Farm Way, Suite 101
Knoxville, Tennessee 37920

Project Location: Tippecanoe County
Starting Latitude 40.224992, Longitude -86.513557
Ending Latitude 40.221745, Longitude -86.525102
Lafayette, Indiana

Project Description: Temporarily impact 3200 linear feet of Elliott Ditch through removal of sediment. Phased dewatering will occur along the project limits and the banks of the stream will be graded as necessary to provide slope stability during sediment removal. In addition, temporary culvert crossings will be installed to allow construction access.

The purpose of the project is to remove PCB contaminated sediment from the stream channel.

Mitigation for impacts to aquatic resources is the restoration of the stream channel to pre-project conditions through backfilling the channel with clean fill to the original channel bottom elevation. In addition, riparian areas disturbed by remedial activities will be restored through vegetative and tree plantings in accordance with the IDNR Habitat Mitigation Plan.

Authorized Impacts

STREAM IMPACT(S)	Length of Impact (linear feet)		
	Ephemeral	Intermittent	Perennial
Type of Impact:			
Removal of contaminated sediment			3200

Application Signed: August 24, 2020

Application Received: August 26, 2020

Based on available information, it is the judgment of this office that the impacts from the proposed project as outlined by this Section 401 Water Quality Certification and described in your application will comply with the applicable provisions of 327 IAC 2 and Sections 301, 302, 303, 306, and 307 of the Clean Water Act if you comply with the conditions set forth below. Therefore, subject to the following conditions, the Indiana Department of Environmental Management (IDEM) hereby grants Section 401 Water Quality Certification for the project described in your application. Any changes in project design or scope not detailed in the application described above or modified by this Section 401 Water Quality Certification are not authorized.

Failure to comply with the terms and conditions of this Section 401 Water Quality Certification may result in enforcement action against you. If an enforcement action is

pursued, you could be assessed up to \$25,000 per day in civil penalties. You may also be subject to criminal liability if it is determined that the Section 401 Water Quality Certification was violated knowingly or intentionally.

Conditions of the Section 401 Water Quality Certification

1.0 General

- (a) Implement the project as depicted and described in the application for Section 401 Water Quality Certification.
- (b) Complete all approved discharges no later than two (2) years after the date of issuance of this Section 401 Water Quality Certification. You may request a one (1) year extension to the Section 401 Water Quality Certification by submitting a written request ninety (90) days prior to the deadline stated above. The written request shall contain an account of which discharges and mitigation have been completed and list the reasons an extension is requested.
- (c) Allow the commissioner or an authorized representative of the commissioner (including an authorized contractor), upon the presentation of credentials:
 - (1) to enter your property, including impact and mitigation site(s);
 - (2) to have access to and copy at reasonable times any records that must be kept under the conditions of this certification;
 - (3) to inspect, at reasonable times, any monitoring or operational equipment or method; collection, treatment, pollution management or discharge facility or device; practices required by this certification; and any mitigation wetland site;
 - (4) to sample or monitor any discharge of pollutants or any mitigation site.

2.0 Restoration and Mitigation

- (a) Implement the restoration and mitigation plans as described in the application (referred to collectively hereinafter as the “restoration and mitigation plan”), and as modified by the conditions of this certification.
- (b) Complete activities to implement the restoration and mitigation plan within two (2) years of the effective date of this certification unless IDEM grants a written extension upon request. These activities include excavation, grading, installation of hydrologic controls, and planting.

3.0 Stream Restoration and Mitigation Success Criteria and Monitoring

- (a) Ensure that the stream restoration and mitigation meet the following success criteria for at least two (2) consecutive years:
- (1) Mitigation for impacts to the riparian zone must consist of restoration and enhancement of 3.8 acres of floodway forest immediately adjacent to Elliott Ditch.
 - (2) At minimum 75% of the planted trees and shrubs shall be alive and showing signs of growth.
 - (3) The mitigation area exhibits 80% vegetative cover, 75% of which consists of native species.
 - (4) Seed and stabilize all disturbed streambanks as soon as possible upon completion.
 - (5) Stream banks exhibit 90% vegetative cover.
 - (6) Ensure all stream banks are stable and show no signs of gully erosion from overland flow or excessive bank scour from stream flows.
 - (7) The mean channel width, depth, channel slope, sinuosity, bankfull dimensions, and bank characteristics of the stream channel mitigation areas shall match the mitigation design plans within the range of natural variability.
 - (8) Permanently and clearly identify on-site all mitigation areas with “Do Not Mow or Spray – Restoration Area” signs placed no further apart than every 100 feet after construction. If the mitigation areas to be established are adjacent to or near existing mitigation areas, then permanent stakes/markers must distinguish the new mitigation areas from the existing mitigation areas.
 - (9) Any additional success criteria specified in the mitigation plan and not superseded by this 401 WQC.
 - (10) Copy IDEM on status/monitoring reports to IDNR.
 - (11) Once you believe that the site meets or exceeds all of the success criteria, you may submit a proposed final status/monitoring report to IDEM and suspend monitoring. IDEM will not release the site from further monitoring until you have demonstrated, through monitoring reports, the site is compliant. If IDEM confirms that the mitigation site meets or exceeds all of the success criteria, IDEM will notify you that the mitigation is complete and that you may permanently discontinue monitoring. If the site does not meet the specified success criteria you will monitor the site for an additional two (2) years. Extended monitoring may constitute the sole corrective action if IDEM believes that the site needs more time to meet the success criteria. Other corrective actions may also include additional grading, planting, relocation, or other actions deemed necessary by IDEM to meet the success criteria.

4.0 Erosion and Sediment Control

- (a) Designate on-site erosion and sediment control personnel that are trained and knowledgeable in storm water quality principles and practices to ensure that erosion and sediment control measures are installed at appropriate times and locations and are maintained to ensure compliance with this 401 WQC and if applicable the construction site run-off general permit (327 IAC 15-5).
- (b) Implement erosion and sediment control measures on the construction site prior to land disturbance to minimize soil from leaving the site or entering a waterbody. Erosion and sediment control measures shall be implemented using an appropriate order of construction (sequencing) relative to the land-disturbing activities associated with the project. Appropriate measures include, but are not limited to, silt fence, diversions, and sediment traps.
- (c) Monitor and maintain erosion control measures and devices regularly, especially after rain events, until all soils disturbed by construction activities have been permanently stabilized.
- (d) Use run-off control measures, including but not limited to diversions and slope drains. These measures are effective for directing and managing run-off to sediment control measures and for preventing direct run-off into waterbodies.
- (e) Install and make appropriate modifications to erosion and sediment control measures based on current site conditions as construction progresses on the site. The Indiana Storm Water Quality Manual or similar guidance documents are available to assist in the selection of measures that are applicable to individual project sites.
- (f) Implement appropriate erosion and sediment control measures for all temporary run-arounds, cofferdams, temporary causeways, temporary crossings, or other such structures that are to be constructed within any waters of the state. Minimize disturbance to riparian areas when constructing these structures.
- (g) Cut and fill slopes located adjacent to wetlands and streams (including encapsulated streams) or that directly discharge to these aquatic features are to be stabilized using rapid/incremental seeding or other appropriate stabilization measures.
- (h) Stabilize and re-vegetate disturbed soils as final grades are achieved. Initiation of stabilization must occur immediately or at a minimum within the requirements of a construction site run-off permit after work is completed. Use a mixture of herbaceous species beneficial for wildlife or an emergent wetland seed mix

wherever possible and appropriate. Tall fescue may only be planted in ditch bottoms and ditch side slopes and must be a low endophyte seed mix.

- (i) As work progresses, areas void of protective ground cover shall be re-vegetated. Areas that are to be re-vegetated shall use seeding and anchored mulch. **If alternative methods are required to ensure stabilization, erosion control blankets may be used that are biodegradable, that use loose-woven/leno-woven netting to minimize the entrapment and snaring of small-bodied wildlife such as snakes and turtles (follow manufacturer's recommendations for selection and installation).**

Mulch must be anchored. Anchoring shall be appropriate for the site characteristics such as slope, slope length, and concentrated flows. **Anchoring methods may not include loose netting over straw, but can range from crimping of straw, erosion control blankets as specified above that minimize wildlife entrapment, or net free blankets.** Tackifiers with mulch and hydro-mulch are acceptable and shall be applied to the manufacturer specifications.

5.0 Construction

- (a) Do not clear trees within the project boundaries during April 1 through September 30 in order to protect any habitat suitable for the federally endangered Indiana Bat (*Myotis sodalis*) and the federally threatened Northern Long Eared Bat (*Myotis septentrionalis*) unless a waiver has been issued by the US Fish and Wildlife Service.
- (b) Clearly mark wetlands and streams that are to remain undisturbed on the project site.
- (c) Work from only one side of the stream, and where possible, from the side of the stream which does not have adjacent wetlands. If no wetlands are present, work from the side with the fewest trees and woody vegetation.
- (d) Restrict channel work and vegetation clearing to the minimum necessary for installation of any structures.
- (e) Obtain prior approval from IDEM for operation of construction equipment or the placement of temporary run-arounds, temporary cofferdams, temporary causeways, temporary crossings, or other related structures within any water of the state, unless specifically stated, depicted, or detailed in the aforementioned correspondence and project plans.

- (f) Construct temporary run-arounds, temporary cofferdams, temporary causeways, temporary crossings, or other such structures of non-erodible materials.
- (g) Construct temporary crossings in a manner that does not impede surface flows or an approximate two (2) year (Q2) flood event.
- (h) Stream pump-around operations are to be installed in accordance with the plans and the in-stream component is to be constructed of non-sediment producing materials. The discharge at the outlet shall not cause erosion of the stream bottom and banks.
- (i) Cofferdam dewatering activities must be directed to an appropriate sediment control measure or a combination of measures prior to discharging into a water of the state to minimize the discharge of sediment-laden water.
- (j) Operate machinery on land above the ordinary high water mark and in a manner that minimizes disturbance to the banks of the watercourse.
- (k) Deposit any dredged material in a contained upland (non-wetland) disposal area to prevent sediment run-off to any waterbody.
- (l) Temporary structures constructed in streams are to be created such that near normal stream flows are maintained.
- (m) Established stream bank slopes are to be stabilized and no steeper than 2:1 (Horizontal length: Vertical height). Established bank slopes are allowed to be steeper than 2:1 if the slope provides a smooth transition to the stream and prevents stream instability.
- (n) Temporary crossings and causeways must be completely removed upon completion of the project and the affected area restored to pre-construction contours, grades, and vegetative conditions.
- (o) The channel is to be stabilized before releasing stream flows into the channel.

Other Applicable Permits

If the land disturbance for the overall project will disturb one (1) acre or more, a construction site run-off general permit (327 IAC 15-5) is required for the project. Permit coverage must be obtained prior to the initiation of land-disturbing activities. Information related to obtaining permit coverage is available at www.in.gov/idem/stormwater or by contacting the IDEM, Stormwater Program at 317-233-1864 or via email at Stormwat@idem.IN.gov.

This certification does not relieve you of the responsibility of obtaining any other permits or authorizations that may be required for this project or related activities from IDEM or any other agency or person. You may wish to contact the Indiana Department of Natural Resources at 317-232-4160 (toll free at 877-928-3755) concerning the possible requirement of natural freshwater lake or floodway permits.

This certification does not:

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

Notice of Right to Administrative Review (Permits)

If you wish to challenge this permit, you must file a Petition for Administrative Review with the Office of Environmental Adjudication (OEA), and serve a copy of the petition upon IDEM. The requirements for filing a Petition for Administrative Review are found in IC 4-21.5-3-7, IC 13-15-6-1 and 315 IAC 1-3-2. A summary of the requirements of these laws is provided below.

A Petition for Administrative Review must be filed with the Office of Environmental Adjudication (OEA) within fifteen (15) days of the issuance of this notice (eighteen (18) days if you received this notice by U.S. Mail), and a copy must be served upon IDEM. Addresses are:

Director	Commissioner
Office of Environmental Adjudication	Indiana Dept. of Environmental Management
Indiana Government Center North	Indiana Government Center North
100 North Senate Avenue, Room N103	100 North Senate Avenue, Room 1301
Indianapolis, Indiana 46204	Indianapolis, Indiana 46204

The petition must contain the following information:

- (a) The name, address and telephone number of each petitioner.
- (b) A description of each petitioner's interest in the permit.
- (c) A statement of facts demonstrating that each petitioner is:
 - (1) a person to whom the order is directed;
 - (2) aggrieved or adversely affected by the permit; or
 - (3) entitled to administrative review under any law.

- (d) The reasons for the request for administrative review.
- (e) The particular legal issues proposed for review.
- (f) The alleged environmental concerns or technical deficiencies of the permit.
- (g) The permit terms and conditions that the petitioner believes would be appropriate and would comply with the law.
- (h) The identity of any persons represented by the petitioner.
- (i) The identity of the person against whom administrative review is sought.
- (j) A copy of the permit that is the basis of the petition.
- (k) A statement identifying petitioner's attorney or other representative, if any.

Failure to meet the requirements of the law with respect to a Petition for Administrative Review may result in a waiver of your right to seek administrative review of the permit. Examples are:

- (a) Failure to file a Petition by the applicable deadline;
- (b) Failure to serve a copy of the Petition upon IDEM when it is filed; or
- (c) Failure to include the information required by law.

If you seek to have a permit stayed during the administrative review, you may need to file a Petition for a Stay of Effectiveness. The specific requirements for such a Petition can be found in 315 IAC 1-3-2 and 315 IAC 1-3-2.1.

Pursuant to IC 4-21.5-3-17, OEA will provide all parties with notice of any pre-hearing conferences, preliminary hearings, hearings, stays, or orders disposing of the review of this action. If you are entitled to notice under IC 4-21.5-3-5(b) and would like to obtain notices of any pre-hearing conferences, preliminary hearings, hearings, stays, or orders disposing of the review of this action without intervening in the proceeding you must submit a written request to OEA at the address above.

If you have procedural or scheduling questions regarding your Petition for Administrative Review, additional information on the review process is available at the website of the Office of Environmental Adjudication at <http://www.in.gov/oea>.

If you have any questions about this certification, please contact Erin Lish, Project Manager, by email at ELish@IDEM.IN.Gov or by phone at 317-232-0516.

cc: Sarah Keller, USACE – Indianapolis Field Office
Liz McCloskey, USFWS
Brian Boszor, IDNR
J. Matthew Bruck, Civil & Environmental Consultants, Inc.



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Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

March 3, 2021

Mr. Robert Prezbindowski
Arconic Corporation
2300 North Wright Road
Alcoa, Tennessee 37701

Dear Mr. Prezbindowski:

Re: Section 401 Water Quality Certification
Project: Elliott Ditch Reaches 1-3
Sediment and Isolated Soil Remediation
IDEM No.: 2020-673-79-ERL-A
COE No.: LRL-2019-1118-sjk
County: Tippecanoe

The Indiana Department of Environmental Management (IDEM) has reviewed correspondence from Mr. Simon Davies dated March 2, 2021, requesting a modification of Section 401 Water Quality Certification No. 2020-673-79-ERL-A, dated September 29, 2020. In the original certification, you were granted approval to temporarily impact 3200 linear feet of Elliott Ditch through removal of sediment, phased dewatering, grading of the banks of the stream as necessary to provide slope stability during sediment removal, and installation of temporary culvert crossings to allow construction access. You were to mitigate for impacts to aquatic resources by restoring the stream channel to pre-project conditions through backfilling the channel with clean fill to the original channel bottom elevation and restoring riparian areas disturbed by remedial activities through vegetative and tree plantings in accordance with the IDNR Habitat Mitigation Plan. According to your correspondence it is now proposed to remove the restriction on tree clearing from April 1 through September 30. The project is located on Elliott Ditch starting at Latitude 40.224992, Longitude -86.513557 and ending at Latitude 40.221745, Longitude -86.525102 in Lafayette, Indiana.

Based on available information, it is the judgment of this office that the proposed modification will comply with the applicable provisions of 327 IAC 2 and Sections 301, 302, 303, 306, and 307 of the Clean Water Act if you adhere to the conditions of the Section 401 Water Quality Certification. Therefore, IDEM hereby modifies the Section 401 Water Quality Certification No. 2020-673-79-ERL-A dated September 29, 2020 as follows:

Project Specific Condition 5.0 (a) restricting tree clearing within the project boundaries during April 1 through September 30 is hereby deleted based on correspondence from Liz McCloskey of the USFWS indicating that the proposed tree clearing will not adversely affect the federally endangered Indiana Bat (*Myotis sodalis*) and the federally threatened Northern Long Eared Bat (*Myotis septentrionalis*).

All other conditions of the certification not affected by this modification remain in full force as written. Any changes in project design or scope not detailed in the request described above are not authorized by this certification.

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

This certification does not:

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

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

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

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

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

Office of Environmental Adjudication
100 North Senate Avenue
IGCN Room N103
Indianapolis, IN 46204

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

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

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

If you have procedural or scheduling questions regarding your Petition for Administrative Review, additional information on the review process is available at the website of the Office of Environmental Adjudication at <http://www.in.gov/oea>.

If you have any questions about this modified certification, please contact Erin Lish, Project Manager, by phone at 317-232-0516, or by e-mail at ELish@idem.in.gov.

Sincerely,

A handwritten signature in black ink that reads "Erin R. Lish". The signature is written in a cursive style with a vertical dotted line extending downwards from the end of the name.

Erin Lish,
Project Manager
Wetlands and Storm Water Section
Surface Water and Operations
Office of Water Quality

cc: Sarah Keller, USACE- Indianapolis Regulatory Office
Liz McCloskey, USFWS
Brian Boszor, IDNR
Simon Davies, Civil & Environmental Consultants, Inc.