



Indiana Department of Environmental Management

Protecting Hoosiers and Our Environment Since 1986



Wetland Regulation in Indiana 2020 Legislative Changes Senate Enrolled Act 389

Indiana Department of Environmental Management
Office of Water Quality





Wetland Regulatory Framework

- Section 404 of the Clean Water Act – U.S. Army Corps of Engineers dredge and fill permit
- Section 401 of the Clean Water Act – State Water Quality Certification
- State Water Quality Standards (327 IAC 2)
- State Regulated Wetlands Law (IC 13-18-22)



State Regulated Wetland Law

- Established in 2005 to regulate dredge and fill to wetlands in Indiana not covered by the Clean Water Act
- Wetland Activity Permitting Rules adopted at 327 IAC 17 to implement the law
- Prior to 2020 the law was modified to:
 - Allow for mitigation requirements to be met through purchase of in-lieu fee credits
 - Exempt some surveyor maintenance of regulated drains



Citations Changed in the Law

- IC 13-11-2-25.8 (Amended)
- IC 13-11-2-48.5 (Added)
- IC 13-11-2-72.4 (Added)
- IC 13-11-2-74.5 (Modified)
- IC 13-11-2-104.8 (Added)
- IC 13-11-2-265.8 (Amended)
- IC 13-18-22-1 (Amended)
- IC 13-18-22-3 (Amended/Added)
- IC 13-18-22-4 (Amended)
- IC 13-18-22-7 (Amended)
- IC 13-18-22-8 (Amended)
- IC 13-18-22-12 (Added)
- IC 13-18-23-1 (Amended)
- IC 14-12-4 (Added)



The Changes to the Law

- Added and revised definitions
- Refined the definitions of wetland classes
- Modified, updated, and added exemptions
- Created new general permit(s) for tile maintenance
- Clarified ratios for in-lieu fee mitigation
- Updated permit review timeframes
- Established the Indiana Wetlands Task Force



Definitions Added or Revised

- Wetland class definitions refined
- “Cropland” defined
- “Ephemeral stream” defined
- “In-lieu fee” defined
- “Wetlands delineation” definition updated
- “Delineated” defined



Class III Wetland Definition

Clarified and strengthened protection of the highest quality wetlands in the state:

- Undisturbed or minimally disturbed
- Supports more than minimal wildlife, aquatic habitat, or hydrologic function
- Rare or ecologically important type



Class II Wetland Definition

Specific definition added (previous definition defaulted to Class II if not Class I or Class III):

- Supports moderate habitat or hydrological functions
- Dominated by native species
- Without the presence of or habitat for rare, threatened, or endangered species



Class I Wetland Definition

Unchanged:

- At least 50% of the wetland has been disturbed or affected
- Supports only minimal/does not support significant wildlife or aquatic habitat or hydrologic function
- Does not provide critical habitat for rare, threatened, or endangered species
- Typified by low species diversity
- Contains greater than 50% non-native invasive vegetation



Results of Class Definition Changes

- Wetland class determinations made before April 29, 2021 may need to be re-evaluated
- Strengthened protection of Indiana's highest quality wetlands





Results of Exemption Changes

Dredge and fill activities to the following do not require a permit:

- Class I wetlands
- Class II wetlands delineated at not more than 3/8 acre
 - If multiple wetlands exist on a tract, the exemption is limited to 60% of the total acreage of those wetlands delineated at 3/8 acre or less
- Streams identified as ephemeral by an approved U.S. Army Corps of Engineers jurisdictional determination
- Wetlands delineated at 3/4 acre or less located within the boundaries of a municipality
 - This does not obviate the need to verify any local regulations
 - This exemption overrides the Class II 3/8-acre exemption
- Farmed wetlands on active agricultural land
 - Agricultural activity must have occurred in preceding five to 10 years



Tile Maintenance General Permit(s)

Wetlands which have re-established over failed drainage tiles qualify for a general permit for maintenance that:

- Is necessary to restore drainage of land adjacent to the wetland
- Does not have the effect of draining of the wetland itself

General Permit for tile maintenance within Class II wetlands:

- Placed on Public Notice May 28, 2021
- Issued on July 12, 2021 with an effective date July 30, 2021
- Effective for five years

Tile maintenance in Class III wetlands requires individual review of information showing:

- The location and area needed to be disturbed
- A lack of reasonable alternatives to the disturbance of the area



Other Changes

- In-lieu fee mitigation ratios are the same as on-site mitigation ratios
- Permit review timeframes have been updated
 - Agency review time for individual State Regulated Wetland permits reduced from 120 days to 90 days
 - Agency review time for Section 401 Certification reduced from 120 days to 90 days provided a pre-filing request was made 30 days prior to the submission of the permit application
- Establishment of an Indiana Wetlands Task Force
 - Comprised of 14 members
 - Review and study wetland related issues in Indiana
 - Make recommendations to the general assembly by Nov. 1, 2022



Considerations for Implementation of the Law

- Is it a wetland?
 - Hydric soils
 - Hydrophytic vegetation
 - Hydrology
- Is it waters of the United States (WOTUS)?
- What class is the State Regulated Wetland?
- What constitutes/creates fill?



How to Determine Necessary Permits

- IDEM and the Indiana Department of Natural Resources (DNR) partnered to create the **Waterways Inquiry Request** to help Indiana citizens determine if a permit is needed to complete a project that may impact a water,
 - The Waterways Inquiry Request and more information can be found at waterways.IN.gov
- Staff from both agencies provide a single response to the user





Questions?



wetlands.IN.gov