



Indiana Waterway Regulation

Indiana Department of Environmental Management
Office of Water Quality

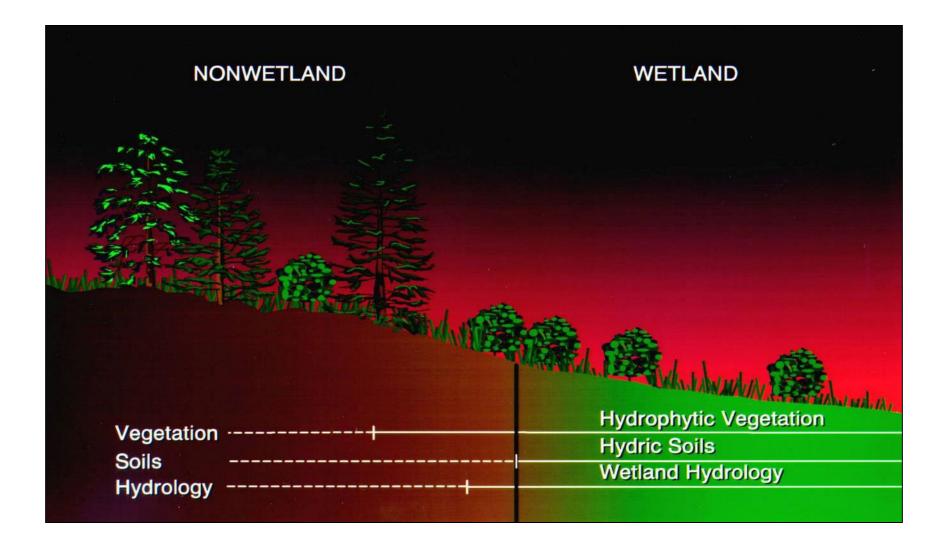








Wetlands Are Transitional Areas







Wetland?

Determined using:

- The 1987 U.S. Army Corps of Engineers
 Wetland Delineation Manual
- The Regional Supplements:
 - Midwest Region
 - Eastern Mountains and Piedmont Region
 - Northcentral and Northeast Region

ERDC/EL TR-12-9



Wetlands Regulatory Assistance Program

Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Version 2.0)

U.S. Army Corps of Engineers

April 2012



Approved for public release; distribution is unlimited.

Environmental Laboratory





Hydrology







Hydric Soils







Hydrophytic Vegetation







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)
- Food Security Act Administered by the Natural Resource Conservation Service (unrelated to the CWA)





Coordination With the Natural Resource Conservation Service (NRCS)

- For the 1985 Farm Bill and Food Security Act
- NRCS determinations do not affect IDEM jurisdiction.
- Work in waters on agricultural land requires USACE and IDEM coordination

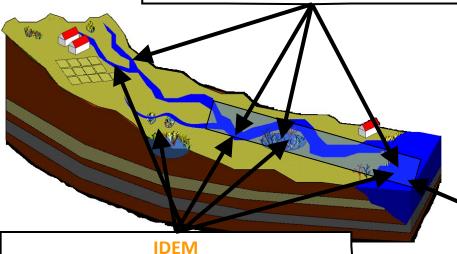




Who Has Jurisdiction?

USACE

Relatively Permanent Streams and Open Water and Wetlands adjacent to them



All USACE waters and All wetlands (State Regulated & WOTUS)

DNR

Floodways over one square mile drainage including streams, wetlands, and trees found within





WOTUS?

- Determined by U.S Army Corps of Engineers
- Approved Jurisdictional Determination:
 good for five years





What Activities Does IDEM Regulate?

- Filling (including stump removal)
- Dredging





What is Fill?

- Soil, rock, sand, gravel
- Riprap, articulated mats
- Pipes and culverts
- Tile and tile outlets
- Dredged material
- Dams
- Mechanized land clearing
- Stump removal







IDEM's Programs

- 401 Water Quality Certification
- State Isolated Wetlands Law



NOTE:

Water resource impacts are regulated by:

- IDEM
- IDNR
- U.S. Army Corps of Engineers (USACE)





Section 404 of the Clean Water Act

- Implemented by the U.S. Army Corps of Engineers (USACE) and overseen by the U.S. EPA
- Establishes permitting program to regulate discharges of dredged and fill material into Waters of the U.S. (jurisdictional waters)
 - A waterbody, being a stream/river, lake or wetland, that has a hydrological connection (drains into) a navigable water body (significant nexus)
 - Only the USACE (overseen by the U.S. EPA) can make this determination





Section 401 of the Clean Water Act

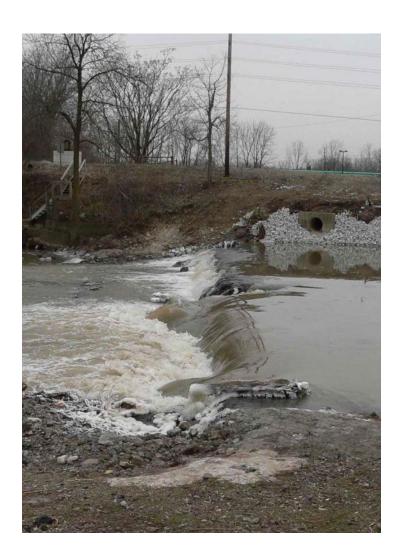
- Implemented by IDEM
- Water Quality Certifications issued
- Ensures activities authorized by federal permits or licenses maintain the:
 - chemical,
 - physical, and
 - biological integrity of Indiana's waters





Methods of Water Quality Certification

- Individual
- General
 - Nationwide Permits (NWP)
 - Regional General Permit (RGP)







General Certifications

- Use RGP form
- 401 WQC for projects with "minimal impact"
- USACE is the lead agency and determines if a project falls under a general permit
- Common General Permits:
 - RGP
 - NWP 3 Maintenance
 - NWP 12 Utility Line Activities
 - NWP 33 Temporary Construction, Access, and Dewatering





NWP & RGP Notification Form

- Two pages
- 401 WQC for projects with "minimal impact"
- 30-day review time frame
- Automatic approval unless there is a problem
- Applicants must meet the terms and conditions of the IDEM General WQC





General WQC Major Thresholds

- Impacts to streams/shorelines must be less than 300 linear feet
- Impacts to wetlands/open water must be less than 0.10 acre
- Stream encapsulation must be for the purposes of a constructing a crossing:
 - Must be less than 150 feet in length
 - Requirements for oversizing/embedding





Individual 401 WQC

- For projects requiring a site-specific individual 401 WQC (projects exceeding general permits)
- Nine-page form
- 120-day review period
- Public Notice required
- Avoidance and minimization required
- Mitigation often required





State Regulated Wetland Law

- Established 2004
- Regulates wetlands not under the Clean Water Act
- IC 13-18-22
- 327 IAC 17
- Distinguishes wetlands by Class
- Modifications Prior to 2021:
 - Allow mitigation through in-lieu fee
 - Exempt some surveyor maintenance of regulated drains
- Modifications in 2021 and 2024





Indiana Code Changed in 2021

- 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)





Public Law 1-2024 Changes

- IC 13-11-2-25.8 (Class III definition)
- IC 13-11-2-74.5 (Municipal Wetland Exemption Added)
- IC 13-18-22-1 (Municipal Wetlands moved to 13-11)
- IC 13-18-22-4 (Changed General Permit)
- IC 13-18-22-6 (Added preservation ratios)





New Class III Wetland Definition

Highest quality wetland habitat:

- Rare or ecologically important type
- Some must be no more than minimally disturbed

Rare or Ecologically Important Wetlands:

| (1) Is the wetland a listed rare or e | Yes No | | | |
|--|---|-----------------------|------------------------------|------------------------------|
| Acid Bog Fen Panne | ☐ Circumneutral Seep ☐ Cypress Swamp | | Dune and Swale Forest Fen | Sinkhole Pond Sinkhole Swamp |
| If Yes, the Wetland is Class I If No, proceed to Question (2 | II. This form is now complete. | | | |
| (2) Is the wetland a listed rare or e If Yes, please indicate type: | Yes No | | | |
| Shrub Swamp Sedge | Meadow Forested Swamp | Wet Floodplain Forest | Wet Prairie | Wet Sand Prairie |
| If Yes OR No, proceed to Qu | estion (3). | | | |





Class II Wetland Definition

New:

 New: Some rare and ecologically important wetland types that have been disturbed

Unchanged:

- Supports moderate habitat or hydrological functions
- Dominated by native species
- Without the presence of or habitat for rare, threated, 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, threated, or endangered species
- Typified by low species diversity
- Contains greater than 50% non-native invasive vegetation





State Regulated Exemptions

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

- Class I wetlands
- Class II wetlands 3/8 acre or smaller or if within a municipality
 3/4 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 or in municipality 3/4 acre or less
- House construction on wetlands cultivated and harvested in preceding 10 years





State Regulated Permits

- State Regulate Wetland General Permit (SRGP):
 - Effective July 20, 2024
 - Impacts to Class II wetlands less than 0.25 acre
 - 30-day review time period
 - No public notice
- Isolated Wetland Individual Permits (IWIP):
 - Impacts to Class II wetlands greater than 0.25 acre
 - Impacts to Class III wetlands regardless of size
 - 90-day review period
 - 30-day public notice





New Class Determination Worksheet

| | | | 7 | | | | | | | |
|--|---|--|---|---|--|---|---|---|---|---|
| State Regulated Wetland Class Determination Worksheet HOWA SEPARATERY OF BRYTHOMERY'S, MANAGEMENT HOWA SEPARATERY OF BRYTHOMERY'S, MANAGEMENT BRYTHOM DISK 34, 54 18 | | | | | | | | | | |
| Agent First Name: | Agent Last Name: | Agent Affiliation (Company Name): | | | | - | | | | |
| Phone Number: | Email Address: | | | | | | | | | |
| Project Name: | Wetland ID (Per the I | retiand Delineation): Wetland Size (Acres): | 11-2-25.8(3)(A)? | | Yes No | | | | | |
| Project Description (If Applicable): | | | Muck Flat | Dune and Swale | Sinkhole Pond | | | | | |
| | | | Sand Flat | Forest Fen | Sinkhole Swamp | | | | | ٦ |
| INSTRUCTIONS | | | | | | sment: | | | | |
| Read all questions and instructions thoroug | | | 11-2-25.8(3)(B)? | | Yes No | ate wildlife or aquatic habitat? (Se | | | Yes No | |
| are required for wetlands that have zones of | f different classifications. | spleted for each wetland on-site. Multiple forms | Wet Floodplain i | Forest Wet Prairie | Wet Sand Prairie | nities (Score =) , using parameters to the right. | | on Community Cover Scale (4.1a) | | |
| Submit all completed forms with your wetlar correspondence when applying for Waters of t | nd delineation and Approved Jurisdictional Det the State Determinations or State Regulated V | ermination or official U.S. Army Corps of Engineers etland Permits. | | | | | - | ent or comprises <0.1ha (0.2471 acres) con ent and comprises small part of wetland's v | _ | |
| Please attach any additional comments, jus attachment appended to this form. | tifications, and/or supporting documentation re | lated to this class determination as a separate | | | | | 1 mod | erate quality. | | |
| Additional instructions and guidance for con https://www.in.gov/idem/wetlands/files/state_n | upleting this form can be found at the following equiated quidance class determination.pdf | website: | | | Yes No | | Pres and | ent and comprises a significant part of wetli is of low quality. | and's vegetation | |
| | Method manual at the following website may b | referenced for help completing this form, except | ecovering (2) | □ Bassat as as as | (4) | | Pres | ent and comprises significant part of wetlan | d's vegetation and | |
| https://epa.ohio.gov/static/Portals/35/401/ORA | M#%20Manual%205.0.pdf | | ecovering (z) | ecovering (2) Recent or no recovery (1) | | | is of moderate quality. Present and comprises a s | | vegetation and is | Functional Assessment: support moderate hydrological function? (See below) Yes No |
| Completed forms and materials or question following website: https://www.in.gov/idem/we | s regarding this form may be submitted to app tland/contact | opriate program staff which can be found at the | pir (3) Poor (1) | | | of high quality. | | | support moderate hydrological function? (See Delow) be Capacity (Score =) | |
| Please complete ALL questions and asses | sments to complete the tables below. | | oor to fair (2) | | 3 Present and comprises a and is of high quality. | | ent and comprises a significant part of wetla is of high quality. | and s vegetation | s ≥50 acres (7) Wetland is 10 to <25 acres (5) Wetland is 1 to <3 acres (3) Wetland is 0.1 to <0.3 acre (1) | |
| Table 1: | | | | | | spersion (Score =) the diversity of habitat by plant | | Description of Vegetation Quality (4.1b) | | s 25 to <50 acres (6) Wetland is 3 to <10 acres (4) Wetland is 0.3 to <1 acres (2) Wetland is <0.1 acre (0) |
| Question (2) is YES | Moderate Habitat or Hydrology or E Question (4) and/or (5) are YES | oth Neither Moderate Habitat nor Hydrology Both Question (4) and (5) are NO | ecovering (3) | Recent or no rec | overy (1) | (5) | Low | Low species diversity and/or predominal disturbance-tolerant native species. Native species are dominant component | | Vater (Score =) /y. |
| Undisturbed or Minimally Disturbed Question (3) is YES | Class III | Class II | hrub/sapling rem erbaceous/aqual edimentation | ic bed removal | Dredging Farming Nutrient Enrichment | | Moderati | although nonnative and/or disturbance to species can also be present. Species di to moderately high. | olerant native | roundwater (5) Perennial surface water (lake or stream) (5) Precipitation (1) undwater (3) Seasonal/intermittent surface water (3) |
| More than Minimally Disturbed Question (3) is NO | Class II | Class II | edimentation | ı | Nutrent Enronment | | High | A predominance of native species, with and/or disturbance-tolerant native speci virtually absent. High species diversity. | nonnative species es absent or | ater Depth (Score =) 7. 6in) (3) |
| | | | tional photos, na | rrative, etc., as necessa | ry to justify score. | | | virtually ausent. Figit species diversity. | | nundation/Saturation (Score =) |
| Table 2: | 1 | | | | | (Score =) | Interspe | rsion (4.2) | | permanently inundated/saturated (4) Seasonally inundated (2) |
| Question (2) is NO | Moderate Habitat or Hydrology or E Question (4) and/or (5) are YES | oth Neither Moderate Habitat nor Hydrology Both Question (4) and (5) are NO | | | | coverage of any combination of sive Species Council List: | | | | inundated/saturated (3) Seasonally saturated in upper 30cm (12in) (1) |
| Undisturbed or Minimally Disturbed | | | | | | siveplants.html 5) | | | | (Score =) ly. |
| Question (3) is YES | Class II | Class I | | | | (-3) | | sone low | lov | osition in the watershed is 1 st order (3) osition in the watershed is 2 nd or 3 nd order (2) |
| More than Minimally Disturbed Question (3) is NO | Class II | Class I | | | | r (0) | | | | osition in the watershed is 4th or 5th order and the substrate is sand or silt (1) s located within a groundwater Wellhead Protection Area (2) |
| Question (3) is NO | | | | | | | | | | win.gov/den/deanwater/information-about/groundwater-monitoring-and-source-water-protection/wellhead-protection- tource-water-proximity-determination-tool/ |
| Select the State Regulated Wetland Classification based on the tables above: Class II Class III Class III | | | | | | | moderate moderate | high | s located within a drinking water Source Water Susceptibility Area (2) s located within a drinking water Source Water Assessment Area (2) | |
| | | | | |) | Microtop | ography Cover Scale (4.4) | | floodplain (1) Part of wetland/upland. e.g. forest. complex (1) | |
| Page 1 of 4 | | | | | e, using parameters to the right. ssocks | 0 Abse | | | stream/lake and other human use (1) Part of riparian or upland corridor (1) | |
| • | | | | | 5cm (6in) 0in) diameter at breast height | 1 Pres | ent in very small amounts or, if more comm ty. | on, of marginal | of Moderate Hydrologic Function (Score =) | |
| | | | | | | ls | 2 Pres | ent in moderate amounts but not of the high I amounts of the highest quality. | nest quality, or in | ossess strong hydric soil indicators – likely needs to be observed from datapoint near the center of a wetland atrix or chroma ≤1) (1) |
| | | | | | | | - | ent in moderate or greater amounts and of | the highest quality | vegetation in wedand is highly adapted to prolonged inundation (OBL dominance) (1) substrate is sand or silt, indicating higher hydraulic conductivity (1) |
| Pa | | ge 2 of 4 | | | | | s located within a highly developed landscape (>75% impervious surfaces in ½ mile radius) (1) | | | |
| | | | n total score is 5 or greater, | | |) + (4.2) + (4.3) + (4.4) = -theck Yes to Question (4) | | | | h welland is bordered by development, roads, or impervious surfaces (1) |
| | | | | | | eck No to Question (4) - Provide additional photos, narrative, etc., as necessary to justify score. | | | from above: (5.1) + (5.2) + (5.3) + (5.4) + (5.5) + (5.6) = or greater, check Yes to Question (5) | |
| | | | | If Yes OR No, proceed to Qu | estion (၁). | | | | less, check No to Question (5) - Provide additional photos, narrative, etc., as necessary to justify score. | |
| | | | | | | P | age 3 of 4 | | | oceed to tables (Page 1 of 4). |
| | | | | | | | | | | |
| | | | | | | | | | | = |
| | | | | | | | | | I | |





Class Determination Worksheet

Table 1:

| Question (2) is YES | Moderate Habitat or Hydrology or Both Question (4) and/or (5) are YES | Neither Moderate Habitat nor Hydrology Both Question (4) and (5) are NO | | |
|---|--|--|--|--|
| Undisturbed or Minimally Disturbed Question (3) is YES | Class III | Class II | | |
| More than Minimally Disturbed Question (3) is NO | Class II | Class II | | |

Table 2:

| Question (2) is NO | Moderate Habitat or Hydrology or Both Question (4) and/or (5) are YES | Neither Moderate Habitat nor Hydrology Both Question (4) and (5) are NO | | |
|---|--|--|--|--|
| Undisturbed or Minimally Disturbed Question (3) is YES | Class II | Class I | | |
| More than Minimally Disturbed Question (3) is NO | Class II | Class I | | |

| Select the State Regulated Wetland Classification based on the tables above: Class I Class II | Class III |
|---|-----------|
| select the State Regulated Wetland Classification based on the tables above: | Class II |





Considerations for Implementation of the Law

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





Determine Permits Needed

IDEM and Indiana DNR Waterways Inquiry Request

waterways.in.gov

Two Agencies, One Response



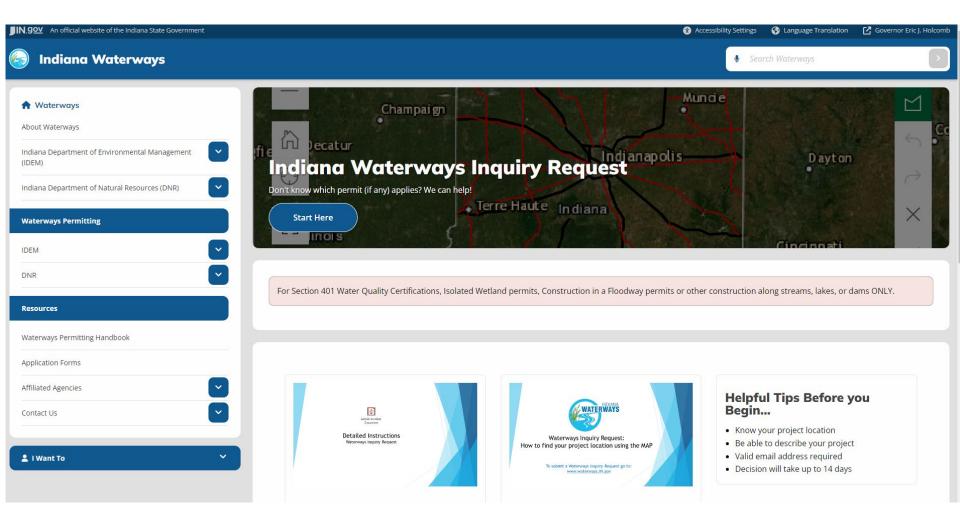


Indiana Department of Environmental Management

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Questions?



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