



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



# Questions?



[wetlands.IN.gov](http://wetlands.IN.gov)