

## IC 13-18-22

### Chapter 22. State Regulated Wetlands

#### IC 13-18-22-1

##### Permit for wetland activity; exceptions; goal of permitting

Sec. 1. (a) Except as provided in subsection (b), a person proposing a wetland activity in a state regulated wetland must obtain a permit under this chapter to authorize the wetland activity.

(b) A permit is not required for the following wetland activities:

(1) The discharge of dirt, sand, rock, stone, concrete, or other inert fill materials in a de minimis amount.

(2) A wetland activity at a surface coal mine for which the department of natural resources has approved a plan to:

(A) minimize, to the extent practical using best technology currently available, disturbances and adverse effects on fish and wildlife;

(B) otherwise effectuate environmental values; and

(C) enhance those values where practicable.

(3) Any activity listed under Section 404(f) of the Clean Water Act, including:

(A) normal farming, silviculture, and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(B) maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

(C) construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

(D) construction of temporary sedimentation basins on a construction site that does not include placement of fill material into the navigable waters; and

(E) construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where the roads are constructed and maintained, in accordance with best management practices, to assure that:

(i) flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired;

(ii) the reach of the navigable waters is not reduced; and

(iii) any adverse effect on the aquatic environment will be otherwise minimized.

(c) The goal of the permitting program for wetland activities in state regulated wetlands is to:

(1) promote a net gain in high quality isolated wetlands; and

(2) assure that compensatory mitigation will offset the loss of

isolated wetlands allowed by the permitting program.  
*As added by P.L.282-2003, SEC.38.*

#### **IC 13-18-22-2**

##### **Wetland rules; improving classification of isolated wetland**

Sec. 2. (a) The board may adopt rules under IC 4-22-2 and IC 13-14 not later than February 1, 2005, to implement the part of the definition of Class I wetland under IC 13-11-2-25.8(a)(1)(B).

(b) Before the adoption of rules by the board under subsection (a), the department shall determine the class of a wetland in a manner consistent with the definitions of Class I, II, and III wetlands in IC 13-11-2-25.8.

(c) The classification of an isolated wetland that is based on the level of disturbance of the wetland by human activity or development may be improved to a higher numeric class if an action is taken to restore the isolated wetland, in full or in part, to the conditions that existed on the isolated wetland before the disturbance occurred.

*As added by P.L.282-2003, SEC.38. Amended by P.L.52-2004, SEC.5; P.L.2-2005, SEC.55.*

#### **IC 13-18-22-3**

##### **Individual permits for wetland activity; adoption of rules**

Sec. 3. (a) An individual permit is required to authorize a wetland activity in a Class III wetland.

(b) Except as provided in section 4(a) of this chapter, an individual permit is required to authorize a wetland activity in a Class II wetland.

(c) The board shall adopt rules under IC 4-22-2 and IC 13-14 not later than June 1, 2005, to govern the issuance of individual permits by the department under subsections (a) and (b).

*As added by P.L.282-2003, SEC.38. Amended by P.L.52-2004, SEC.6.*

#### **IC 13-18-22-4**

##### **General permits for wetland activities; adoption of rules**

Sec. 4. (a) Wetland activities with minimal impact in Class I wetlands and Class II wetlands, including the activities analogous to those allowed under the nationwide permit program (as published in 67 Fed. Reg. 2077-2089 (2002)), shall be authorized by a general permit rule.

(b) Wetland activities in Class I wetlands shall be authorized by a general permit rule.

(c) The board shall adopt rules under IC 4-22-2 and IC 13-14 not later than February 1, 2005, to establish and implement the general permits described in subsections (a) and (b).

*As added by P.L.282-2003, SEC.38. Amended by P.L.52-2004, SEC.7.*

#### **IC 13-18-22-5**

### **Contents of wetland rules**

Sec. 5. (a) The rules adopted under section 3 of this chapter:

(1) must require that the applicant demonstrate, as a prerequisite to the issuance of the permit, that wetland activity:

(A) is:

(i) without reasonable alternative; and

(ii) reasonably necessary or appropriate;

to achieve a legitimate use proposed by the applicant on the property on which the wetland is located; and

(B) for a Class III wetland, is without practical alternative and will be accompanied by taking steps that are practicable and appropriate to minimize potential adverse impacts of the discharge on the aquatic ecosystem of the wetland;

(2) except as provided in subsection (c), must establish that compensatory mitigation will be provided as set forth in section 6 of this chapter to reasonably offset the loss of wetlands allowed by the permits; and

(3) may prescribe additional conditions that are reasonable and necessary to carry out the purposes of this chapter.

(b) The rules adopted under section 4 of this chapter must require, as a prerequisite to the applicability of the general permit by rule to a specific wetland activity, that the person proposing the discharge submit to the department a notice of intent to be covered by the general permit by rule that:

(1) identifies the wetlands to be affected by the wetland activity; and

(2) except as provided in subsection (c), provides a compensatory mitigation plan as set forth in section 6 of this chapter to reasonably offset the loss of wetlands allowed by the general permit.

(c) Under subsections (a) and (b), the rules adopted under sections 3 and 4 of this chapter may provide for exceptions to compensatory mitigation in specific, limited circumstances.

(d) For purposes of subsection (a)(1)(A):

(1) a resolution of the executive of the county or municipality in which the wetland is located; or

(2) a permit or other approval from a local government entity having authority over the proposed use of the property on which the wetland is located;

that includes a specific finding that the wetland activity is as described in subsection (a)(1)(A) is considered conclusive evidence of that fact.

*As added by P.L.282-2003, SEC.38. Amended by P.L.52-2004, SEC.8.*

### **IC 13-18-22-6**

#### **Compensatory mitigation**

Sec. 6. (a) Except as otherwise specified in subsections (b) and (c), compensatory mitigation shall be provided in accordance with the

following table:

Wetland Class	Replacement Class	On-site Ratio	Off-site Ratio
Class I	Class II or III	1 to 1	1 to 1
Class I	Class I	1.5 to 1	1.5 to 1
Class II	Class II or III	1.5 to 1	2 to 1
		Nonforested	Nonforested
		2 to 1	2.5 to 1
		Forested	Forested
Class III	Class III	2 to 1	2.5 to 1
		Nonforested	Nonforested
		2.5 to 1	3 to 1
		Forested	Forested

(b) The compensatory mitigation ratio shall be lowered to one to one (1:1) if the compensatory mitigation is completed before the initiation of the wetland activity.

(c) A wetland that is created or restored as a water of the United States may be used, as an alternative to the creation or restoration of an isolated wetland, as compensatory mitigation for purposes of this section. The replacement class of a wetland that is a water of the United States shall be determined by applying the characteristics of a Class I, Class II, or Class III wetland, as appropriate, to the replacement wetland as if it were an isolated wetland.

(d) The off-site location of compensatory mitigation must be:

(1) within:

(A) the same eight (8) digit U.S. Geological Service hydrologic unit code; or

(B) the same county;

as the isolated wetlands subject to the authorized wetland activity; or

(2) within a designated service area established in an in lieu fee mitigation program approved by the United States Army Corps of Engineers.

(e) Exempt isolated wetlands may be used to provide compensatory mitigation for wetlands activities in state regulated wetlands. An exempt isolated wetland that is used to provide compensatory mitigation becomes a state regulated wetland.

*As added by P.L.282-2003, SEC.38. Amended by P.L.241-2005, SEC.4; P.L.147-2015, SEC.12.*

### **IC 13-18-22-7**

#### **Department action on wetland permits; department action before adoption of wetland rules; forms**

Sec. 7. (a) The department shall:

(1) administer the permit programs established by this chapter; and

(2) review and issue decisions on applications for permits to undertake wetland activities in state regulated wetlands in accordance with the rules issued by the board under this chapter.

(b) Before the adoption of rules by the board under this chapter, the department shall:

(1) issue individual permits under this chapter consistent with the general purpose of this chapter; and

(2) for wetland activities in Class I wetlands, issue permits under this subsection:

(A) that are simple, streamlined, and uniform;

(B) that do not require development of site specific provisions; and

(C) promptly upon submission by the applicant to the department of a notice of registration for a permit.

(c) Not later than June 1, 2004, the department shall make available to the public:

(1) a form for use in applying for a permit under subsection (b)(1); and

(2) a form for use in submitting a notice of registration for a permit to undertake a wetland activity in a Class I wetland under subsection (b)(2).

*As added by P.L.282-2003, SEC.38. Amended by P.L.52-2004, SEC.9.*

#### **IC 13-18-22-8**

##### **Department action on wetland permits; effective dates of permits; amended permit application**

Sec. 8. (a) Subject to subsection (f), the department shall make a decision to issue or deny an individual permit under section 3 or 7(b)(1) of this chapter not later than one hundred twenty (120) days after receipt of the completed application. If the department fails to make a decision on a permit application by the deadline under this subsection or subsection (f), a permit is considered to have been issued by the department in accordance with the application.

(b) A general permit under section 4 of this chapter becomes effective with respect to a proposed wetland activity that is within the scope of the general permit on the thirty-first day after the department receives a notice of intent from the person proposing the wetland activity that the wetland activity be authorized under the general permit.

(c) Except as provided in subsection (d), a permit to undertake a wetland activity in a Class I wetland under section 7(b)(2) of this chapter is considered to have been issued to an applicant on the thirty-first day after the department receives a notice of registration submitted under section 7(b)(2) of this chapter if the department has not previously authorized the wetland activity.

(d) The department may deny a registration for a permit for cause under subsection (c) before the period specified in subsection (c) expires.

(e) The department must support a denial under subsection (a) or (d) by a written statement of reasons.

(f) The department may notify the applicant that the completed

application referred to in subsection (a) is deficient. If the department fails to give notice to the applicant under this subsection not later than fifteen (15) days after the department's receipt of the completed application, the application is considered not to have been deficient. After receipt of a notice under this subsection, the applicant may submit an amended application that corrects the deficiency. The department shall make a decision to issue or deny an individual permit under the amended application within a period that ends a number of days after the date the department receives the amended application equal to the remainder of:

- (1) one hundred twenty (120) days; minus
- (2) the number of days the department held the initial application before giving a notice of deficiency under this subsection.

*As added by P.L.282-2003, SEC.38. Amended by P.L.52-2004, SEC.10.*

### **IC 13-18-22-9**

#### **Designation of Class III wetland as outstanding state protected wetland; rules; restrictions on wetland owner; rescission of designation**

Sec. 9. (a) The owner of a Class III wetland may petition the board for designation of the wetland as an outstanding state protected wetland. Upon verification by the board that the wetland is a Class III wetland and that the petitioner is the owner of the wetland, the board shall conduct a proceeding under IC 4-22-2 and IC 13-14 to adopt a rule designating the wetland as an outstanding state protected wetland.

(b) A rule adopted by the board under subsection (a) must specifically identify each wetland to be designated as an outstanding state protected wetland, including:

- (1) the wetland type;
- (2) a legal description of the wetland as delineated; and
- (3) other information considered necessary by the board.

(c) The owner of a Class III wetland designated as an outstanding state protected wetland under this section shall:

- (1) not cause or allow any anthropogenic activities on the property on which the wetland is located that may adversely affect or degrade the wetland, except for activities with minimal and short term effect, such as construction of an observation pathway or installation of an underground pipeline that are:
  - (A) authorized by rules adopted by the board; or
  - (B) approved by the department in the absence of rules under clause (A); and
- (2) provide for the long term assurance of the protections described in subdivision (1) through:
  - (A) a restrictive covenant that is recorded with respect to the property on which the delineated wetland is located; or
  - (B) a grant of title to or a conservation easement in the property on which the delineated wetland is located to:

- (i) the department of natural resources; or
- (ii) a nonprofit entity with demonstrated ability in the maintenance and protection of wetlands.

(d) Notwithstanding the designation of a wetland under this section by the board as an outstanding state protected wetland, the owner of a Class III wetland may petition the board for rescission of the designation if the owner can demonstrate important social or economic needs that warrant adverse effects to the wetland. In its review of the petition, the board shall give great weight to a resolution of the legislative body of the municipality or county in which the Class III wetland is located describing important social or economic needs, the accomplishment of which would necessitate adverse effects to the wetland.

*As added by P.L.282-2003, SEC.38.*

### **IC 13-18-22-10**

#### **Department authority over wetlands**

Sec. 10. (a) Except as provided in subsection (b), the department has no authority over the:

- (1) filling;
- (2) draining; or
- (3) elimination by other means;

before January 1, 2004, of a wetland that would have been an isolated wetland.

(b) The department has authority over wetland activities in an isolated wetland, including an exempt isolated wetland, that are subject to the provisions of:

- (1) a National Pollutant Discharge Elimination System (NPDES) permit issued by the department under 33 U.S.C. 1342;
- (2) an agreed order under IC 13-30-3-3, consent order, or consent decree executed by the department and the regulated party;
- (3) an order issued under IC 13-30-3-4; or
- (4) a judgment of a court enforcing or upholding an enforcement order or decree described in subdivision (2) or (3);

that became effective before January 1, 2004.

*As added by P.L.282-2003, SEC.38. Amended by P.L.52-2004, SEC.11.*

### **IC 13-18-22-11**

#### **Applicability of chapter to certain isolated wetlands**

Sec. 11. When land referred to in IC 13-11-2-74.5(a)(7) is no longer subject to United States Department of Agriculture wetland conservation rules:

- (1) isolated wetlands located on the land are subject to this chapter; and
- (2) any past wetland activities in the isolated wetlands located on the land become subject to this chapter, unless the wetland activities were in compliance with United States Department of Agriculture wetland conservation rules.

*As added by P.L.282-2003, SEC.38.*