Office of Water Quality
Briefing Paper
Water-009-NPD

Title
Determining when Compensatory Mitigation is Complete

Description of Need
Under IC 13-18-22-6(b), a 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.

Since the passage of the isolated wetland statutes in 2004, many have questioned what IC 13-18-22-6(b) meant by "complete". One view has been that "complete" means when construction of the compensatory mitigation site has been finished. Another view has been that "complete" means when the mitigation site reaches a state equivalent to mature examples of the wetland ecosystem being replaced. Defining "complete" as "construction being finished" entails the risk of failure and is in conflict with the stated legislative goals. However, accepting "complete" as achieving equivalency with examples of mature ecosystems of the type being replaced may require decades of monitoring by the applicant and oversight by IDEM.

Therefore, IDEM has indicated that a wetland compensatory mitigation site is "complete" when it is demonstrated to successfully offset the loss of wetlands authorized by the permit. IDEM determined that the demonstration of "success" occurred through monitoring the site and comparing its performance against a set of success criteria included in an IDEM approved mitigation plan.

Proposed Policy Resolution
For the purposes of determining "complete" with respect to compensatory mitigation, "complete" is defined to mean that compensatory wetland mitigation site construction is finished and that the success criteria in the IDEM approved mitigation plan have been achieved for a period of two (2) consecutive years.

Information Used to Develop NPD
In the development of this NPD, IDEM employed State Law (IC 13-18-22) and rules (327 IAC 17) concerning state regulated wetlands and wetland activity permits. IDEM also utilized information from the following reference documents:

Eliot, W. 1985. Implementing mitigation policies in San Francisco Bay: a critique. California State Coastal Conservancy, Oakland, CA, USA.

Gallihugh, J. L. 1998. Wetland mitigation and 404 permit compliance. Vol. 2. U.S. Fish and Wildlife Service, Chicago, IL, USA.

Gwin, S. E., M. E. Kentula, and P. W. Shaffer. 1999. Evaluating the effects of wetland regulation through hydrogeomorphic classification and landscape profiles. Wetlands 19:477—489.

Magee, T. K., T. L. Ernst, M. E. Kentula, and K. A. Dwire. 1999. Foristic comparison of freshwater wetlands in an urbanizing environment. Wetlands 19:517—534.

Mockler, A., L. Casey, M. Bowles, N. Gillen, and J. Hansen. 1998. Results of monitoring King County wetland and stream mitigations. King County Department of Development and Environmental Services, Renton, WA, USA.

Race, M. S. 1985. Critique of present wetlands mitigation policies in the United States based on an analysis of past restoration projects in San Francisco Bay. Environmental Management 9:71—82.

Robb, J. T. 2002. Assessing wetland compensatory mitigation sites to aid in establishing mitigation ratios. Wetlands 22:435—440.

Strom, L. and J. Stellini. 1994. Interagency follow-through investigation of compensatory wetland mitigation sites. Joint Agency Staff Report, U.S. Environmental Protection Agency, Region 10, Water Division, Wetlands Section, Seattle, WA, USA and U.S. Fish and Wildlife Service, Ecological Services, Washington, DC, USA. EPA 910-R-94-013.

Informal Process for NPD Review
IDEM distributed the draft NPD to the Wetlands Policy workgroup for review and development.

Request for Public Comments
This notice requests the submission of comments on Water-009-NPD. Mailed comments should be addressed to:

Rebecca Schmitt, Rulewriter
Rules Development Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the twelfth floor reception desk, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-8406, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the

timely receipt of faxed comments by calling the Office of Water Quality, Rules Development Section at (317) 233-8903.

Comment Period Deadline
The comment period ends forty-five (45) days after the draft NPD is posted to the website.

Contact
Technical information regarding this draft NPD may be obtained from James Robb, Wetlands Special Projects Manager, Office of Water Quality, (317) 233-8802.

Presentation to the Board
Following the forty-five (45) day comment period, this NPD will be presented to the Water Pollution Control Board at the meeting on August 9, 2006, time and location to be determined.