



# Stream and Wetland Permitting Basics

Office of Water Quality

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## Introduction

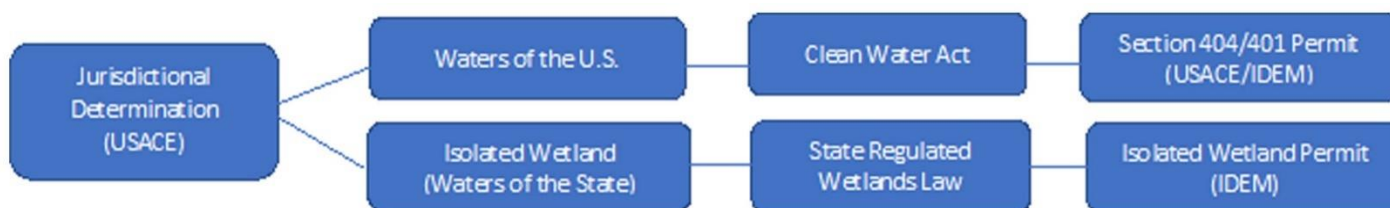
The Clean Water Act (CWA) was enacted in 1972 and is the primary federal law governing water pollution. The CWA's main objective is to maintain and restore the biological, chemical and physical functions of our nation's navigable waters or "Waters of the United States" (WOTUS). Section 404 of the Clean Water Act regulates the placement of dredged or fill material into WOTUS. Fill material includes riprap, concrete, earth moving, stream encapsulation or relocation, and other materials and activities. A Section 404 permit is issued by the United States Army Corps of Engineers (USACE), and the United States Environmental Protection Agency (U.S. EPA) issues relevant rules, guidelines and policies. Section 401 of the Clean Water Act requires any person who wishes to conduct an activity that requires a USACE Section 404 permit for discharge of dredge or fill into a WOTUS to first obtain a Water Quality Certification (WQC) which certifies that the activity authorized by the federal permit will meet state water quality standards. The Section 401 permit is administered by Indiana Department of Environmental Management (IDEM).

If the USACE determines that wetlands or other water features are present, but determines that they are not WOTUS, then they may be considered "Waters of the State". State regulated wetlands, often called isolated wetlands (those wetlands not regulated under the federal Clean Water Act) are Waters of the State and are regulated under Indiana's State Regulated Wetlands law (Indiana Code 13-18-22). Impacts to isolated wetlands require permits from IDEM.

## Identifying Wetlands and Streams

A USACE jurisdictional determination (JD) is a two-step process of 1) identifying and locating waters (including wetlands) on a property and 2) determining whether those areas are WOTUS regulated by the USACE. Conducting a JD is a formal process that includes documentation.

- A consultant may be hired by the property owner to conduct a wetland delineation to determine the presence and extent of wetlands and streams within a project area. The USACE will then determine whether certain wetlands or stream features on a project site are either WOTUS, and therefore under their jurisdiction, or are isolated features that may be regulated by IDEM.
- If the site owner intends to impact (drain, fill, build on, clear, or pipe) the wetland or stream features, the owner must apply for the appropriate permit(s) with the appropriate agencies as shown in the below diagram. IDEM and USACE can assist the property owner in determining whether permits are necessary and provide guidance on preparing an application.



## Permitting Proposed Impacts

If a permit(s) is/are required, the appropriate waterway permit will need to be sought and issued by the appropriate regulatory agency prior to impacts. This requires a permit application process that asks for details about the specific activities being proposed, the precautions being taken to limit impacts, and the plans to mitigate for the impacts. Pending the JD, the regulatory agencies that may be involved for impacts to waterways in Indiana include the USACE, IDEM, and the Indiana Department of Natural Resources (IDNR).

## Types of Permits

Indiana has four distinct levels of permitting based on the magnitude and type of the proposed impacts. Typically, any project impacts greater than 0.1 acre of wetland (or 300 feet of stream) require mitigation. However, if a resource is determined to be high quality, rare, or certain activities are proposed, mitigation could be required for any impact. In addition, the USACE may have different mitigation thresholds than IDEM based on the cumulative impacts of a project. If a project exceeds these impact thresholds, applicants are required to conduct an alternatives analysis to avoid or minimize impacts. Mitigation can be very costly; therefore, it is in the applicant's best interest to reduce impacts.



- **Nationwide Permit (NWP):** These USACE permits, and their associated water quality certifications, are streamlined for minor projects that are not likely to significantly impact WOTUS. A list of project types is pre-approved if general and specific conditions are met.
- **Regional General Permit (RGP):** Streamlined permits that require a level of review to determine resource significance and mitigation for WOTUS. The impact limits for a federal RGP are slightly different than the state level RGP. If conditions cannot be met, an individual water quality certification will then be required.
- **Individual Permit (IP):** Permits that require a higher level of review by the regulatory agencies, as impacts are determined to be significant to WOTUS. A public notice is published seeking public and resource agency comments.
- **Isolated Wetland Permit:** Permits for state regulated wetlands may either be approved as a general permit or individual permit based on the class of wetland to be impacted and amount of impacts proposed.

## Mitigating Proposed Impacts

Mitigation is proposed to offset the functional impacts to wetlands and streams. Mitigation ratios are used to help offset what is lost within the watershed. In addition, ratios are used to offset temporal loss and difficulty in achieving the desired replacement outcome. Typically, in Indiana, mitigation ratios for each 1 acre of wetland impact (or linear foot of streams) are as follows:

- Open Water Wetland: 1 to 1 ratio
- Emergent Wetland: 2 to 1 ratio
- Scrub-Shrub Wetland: 3 to 1 ratio
- Forested Wetland: 4 to 1 ratio
- Stream: 1 to 1 ratio



**Caution:** Mitigation requirements vary based on regulatory jurisdiction and wetland type. Isolated wetland impacts have separate mitigation ratios and some wetland types may require higher ratios (or may not be allowed impacts) if the wetland is determined to be a significant resource due to its rarity and quality.

Mitigation can be achieved in three ways. The regulatory agencies recommend that the applicant choose the mitigation option, listed in order of preference below, that is available in the project location:

1. **Mitigation Bank:** Permittee (applicant) purchases "credits" from an established mitigation bank. Mitigation banks are not available in all areas of the State and/or may not have all types of mitigation credits available.
2. **In-Lieu Fee:** Permittee purchases "credits" from the *Indiana Stream and Wetland Mitigation Program* (IN SWMP) in lieu of performing the mitigation themselves.
3. **Permittee Responsible:** The permittee is responsible for finding, purchasing, designing, building, monitoring, maintaining, and achieving the long-term success of the mitigation site. Guidance for preparing a mitigation plan is available from IDEM and USACE.

Mitigation banks and In-lieu fee credits can be found through the Regulatory In-Lieu Fee and Bank Information Tracking System (RIBITS) maintained by the USACE at <https://ribits.ops.usace.army.mil/ords/f?p=107:2>

**Contact IDEM as soon as possible if you have a project that proposes dredge or fill of waters.** IDEM staff are here to answer questions, give input, and help throughout the process, and the agency encourages pre-application meetings. Best of all, these services are free!

## Additional Resources

IDEM Wetland Regulation website <https://www.in.gov/idem/wetlands/index.htm>

Indiana Stream and Wetland Mitigation Program (in-lieu fee) <https://www.in.gov/dnr/heritage/9751.htm>

USACE Regulatory Program <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/>