


<p align="center">Indiana Department of Environmental Management</p>	<p>Status <i>Pending</i></p>	<p>Policy Number Water-021-NPD-R0</p>	
<p align="center">Agency Nonrule Policy Document</p> <p>Subject Permitting for the Placement of Fill Material into Isolated Wetlands</p>	<p>Authorized Brian Rockensuess, Commissioner</p>		
	<p>Supersedes <i>New</i></p>	<p>Issuing Office(s) Office of Water Quality, Surface Water and Operations Branch, Wetland Section</p>	
	<p>Effective Date TBD</p>	<p>Renewed or Revised Not applicable</p>	

Disclaimer: *This nonrule policy document (NPD) is being established by the Indiana Department of Environmental Management (IDEM) consistent with its authority under IC 13-14-1-11.5. It is intended solely to provide guidance and shall be used in conjunction with applicable rules or laws. It does not replace applicable rules and laws, and if it conflicts with these rules or laws, the rules or laws shall control. Pursuant to IC 13-14-1-11.5, this policy will be available for public inspection for at least 45 days prior to presentation to the appropriate State Environmental Board and may be put into effect by IDEM 30 days afterward. If the nonrule policy is presented to more than one board, it will be effective 30 days after presentation to the last. IDEM also will submit the policy to the Indiana Register for publication.*

1.0 PURPOSE

This policy describes the circumstances and steps to allow an applicant to pursue a state regulated wetland permit for the placement of dredge and fill material into an isolated wetland, in Indiana, without United States Army Corps of Engineers (USACOE) correspondence stating that the wetland is not subject to regulation under Section 404(a) of the Clean Water Act. This policy applies to applications for the placement of fill material into wetlands that are clearly state regulated wetlands.

2.0 SCOPE

The federal definition of Waters of the United States (WOTUS) has changed resulting in fewer wetlands subject to regulation under Section 404(a) of the federal Clean Water Act. Additionally, Indiana's state regulated wetland law, at IC 13-18-22 and relevant definitions at IC 13-11-2 have been amended creating inconsistencies with the Wetland Activity Permits rules at 327 IAC 17. Because many dredge and fill projects in Indiana are now happening in non-jurisdictional, isolated wetlands, the agency can confidently proceed with permitting for the placement of fill material into wetlands that are clearly state regulated wetlands. IDEM wetland program staff have the knowledge and expertise to make obvious wetland determinations and many wetlands can be determined to be isolated wetlands without USACOE involvement.

Note: The agency reserves the right to require correspondence from the USACOE for projects with wetlands that have characteristics or other ambiguities that may make them federally jurisdictional.

3.0 SUMMARY

To expedite State regulated wetland permitting projects proposing to impact non-jurisdictional, isolated wetlands, IDEM staff will review information, including a wetlands delineation, submitted by applicants and, unless it is a complex wetland and/or jurisdiction is unclear, verify impacts are limited to isolated wetlands thus allowing permitting to proceed without waiting for confirming correspondence from the USACOE.

4.0 DEFINITIONS

- 4.1. "Isolated wetland" - Per IC 13-11-2-112.5 "Isolated wetland", for purposes of IC 13-18, is a wetland that is not subject to regulation under Section 404(a) of the Clean Water Act.
- 4.2. "Nonrule policy document" - Is the term assigned by the Indiana Department of Environmental Management (IDEM) to those policies identified in IC 13-14-1-11.5 as any policy that: A. Interprets, supplements, or implements a statute or rule; B. Has not been adopted in compliance with IC 4-22-2; C. Is not intended by IDEM to have the effect of law; and D. Does not apply solely to the internal IDEM organization (is not an Administrative Policy.)
- 4.3. "State regulated wetland" - Per IC 13-11-2-221.5, for purposes of IC 13-18, an isolated wetland located in Indiana that is not an exempt isolated wetland.
- 4.4. "Wetlands" - For purposes of IC 13-18, areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include: (1) swamps; (2) marshes; (3) bogs; and (4) similar areas.
- 4.5. "Wetlands delineation" - For purposes of this chapter and [IC 13-18-22](#), "wetlands delineation" or "delineation" means a technical assessment of whether a wetland exists on an area of land; and if so, of the type and quality of the wetland based on the presence or absence of wetlands characteristics, as determined consistently with the Wetlands Delineation Manual, Technical Report Y-87-1 of the United States Army Corps of Engineers; and "delineated" describes property that has undergone wetlands delineation.

5.0 ROLES

- 5.1. IDEM wetland program managers shall:
 - A. Review the wetland information provided by the applicant and other relevant sources to evaluate and verify proposed dredge and fill will impact only non-jurisdictional, isolated wetlands.
 - B. Provide a verification when proposed dredge and fill will only impact non-jurisdictional, isolated wetlands.
 - C. When impacts are clearly limited to non-jurisdictional, isolated wetlands, proceed with the review process for permitting the proposed impacts.
 - D. In situations where IDEM cannot make a determination that the wetland impacts are only to non-jurisdictional, isolated wetlands, notify the applicant that correspondence from the USACOE on the jurisdictional status of the wetland is necessary prior to proceeding with the review process for permitting.
- 5.2. Applicants requesting state regulated wetland permits shall:
 - A. Provide to IDEM, a complete wetland delineation and description of proposed dredge and fill impacts with an application for permit coverage for the proposed impacts.
 - B. Timely respond to IDEM requests for additional, clarifying information regarding the proposed impacts.

6.0 POLICY

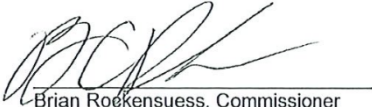
- 6.1. IDEM may proceed with permitting for the placement of fill material into wetlands that are clearly state regulated wetlands without correspondence from the United States Army Corps of Engineers (USACOE) that states that the wetland is not subject to regulation under Section 404(a) of the Clean Water Act.
- 6.2. IDEM's choice to proceed with permitting for the placement of fill material into State regulated wetlands is not to be construed as jurisdictional determination of WOTUS. If the USACOE determines that the wetlands proposed to be impacted are federally jurisdictional WOTUS,

then the applicant requesting permit coverage must apply for a federal 404 permit from the USACOE and a 401-water quality certification from IDEM.

7.0 REFERENCES

- 7.1. Federal Laws
 - A. 33 U.S.C. § 1344 (Section 404 of the Clean Water Act)
https://www.govregs.com/uscode/title33_chapter26_subchapterIV_section1344
- 7.2. Federal Policies
 - A. Wetlands Delineation Manual, Technical Report Y-87-1 of the United States Army Corps of Engineers
https://www.sac.usace.army.mil/Portals/43/docs/regulatory/1987_wetland_delineation_manual_reg.pdf
 - B. United States Army Corps of Engineers Regulatory Guidance Letter No. 16-01 dated October 2016
<https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll9/id/1256>
- 7.3. Indiana Statutes:
 - A. [IC 13-18-22, State Regulated Wetland](#)
 - B. [IC 13-11-2, Definitions](#)
- 7.4. Indiana Administrative Codes:
 - A. [327 IAC 17, Wetland Activity Permits](#)
- 7.5. Agency Policies:
 - A. [Water-011-NPD Reasons for Denial of the Issuance of State Regulated Wetland Permits or §401 Water Quality Certifications](#)

8.0 SIGNATURES



Brian Roekensuess, Commissioner
Indiana Department of Environmental Management

7/24/24
Date



Martha Clark Mettler, Assistant Commissioner
Office of Water Quality

7/24/2024
Date



Nancy King, General Counsel

7/24/2024
Date

This policy is consistent with agency requirements.



Quality Assurance Program
Office of Program Support
Indiana Department of Environmental Management

7-24-24
Date