

Isolated Wetland – Definitions, Classes, and Exemptions.

As per 327 IAC 17-1-3, the following are definitions of the three classes of isolated wetlands.

“Class I wetland” means an isolated wetland described by one (1) or both of the following:

(A) At least fifty percent (50%) of the wetland has been disturbed or affected by human activity or development by one (1) or more of the following:

(i) Removal or replacement of the natural vegetation.

(ii) Modification of the natural hydrology.

(B) The wetland supports only minimal wildlife or aquatic habitat or hydrologic function because the wetland does not provide critical habitat for threatened or endangered species listed in accordance with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the wetland is characterized by at least one (1) of the following:

(i) The wetland is typified by low species diversity.

(ii) The wetland contains greater than fifty percent (50%) areal coverage of nonnative invasive species of vegetation.

(iii) The wetland does not support significant wildlife or aquatic habitat.

(iv) The wetland does not possess significant hydrologic function.

“Class II wetland” means either of the following:

(A) An isolated wetland that is not a Class I or Class III wetland.

(B) A type of wetland listed in subdivision (3)(B) that would meet the definition of Class I wetland if the wetland were not a rare or ecologically important type.

“Class III wetland” means an isolated wetland:

(A) that:

(i) is located in a setting undisturbed or minimally disturbed by human activity or development; and

(ii) supports more than minimal wildlife or aquatic habitat or hydrologic function; or

(B) unless classified as a Class II wetland under subdivision (2)(B), that is of one (1) of the following rare and ecologically important types:

- (i) Acid bog
- (ii) Acid seep
- (iii) Circumneutral bog
- (iv) Circumneutral seep
- (v) Cypress swamp
- (vi) Dune and swale
- (vii) Fen
- (viii) Forested fen
- (ix) Forested swamp
- (x) Marl beach
- (xi) Muck flat
- (xii) Panne
- (xiii) Sand flat
- (xiv) Sedge meadow
- (xv) Shrub swamp
- (xvi) Sinkhole pond
- (xvii) Sinkhole swamp
- (xviii) Wet floodplain forest
- (xix) Wet prairie
- (xx) Wet sand prairie

Exempted Isolated Wetland. Certain isolated wetlands have been deemed as “exempt isolated wetland” by the General Assembly and IDEM and thus require no permit. The language below reflects the definition of “exempt isolated wetland” as set forth in 327 IAC 17-1-3(7).

- A. An isolated wetland that is a voluntarily created wetland unless:
 - (1) the wetland is approved by the department for compensatory mitigation purposes in accordance with a permit issued under Section 404 of the Clean Water Act or IC 13-18-22 or reclassified as an SRW [State Regulated Water] under IC 13-18-22-6(c); or
 - (2) the owner of the wetland declares, by a written instrument recorded in the office of the recorder of the county or counties in which the wetland is located and filed with the IDEM, that the wetland is to be considered in all respects to be an SRW.
- B. An isolated wetland that exists as an incidental feature in or on any of the following:
 - (1) A residential lawn.
 - (2) A lawn or landscaped area of a commercial or governmental complex.
 - (3) Agricultural land.
 - (4) A roadside ditch.
 - (5) An irrigation ditch.
 - (6) A manmade drainage control structure.

- C. An isolated wetland that is a fringe wetland associated with a private pond.
- D. An isolated wetland that is, or is associated with, a manmade body of surface water of any size created by:
- (1) excavating;
 - (2) diking; or
 - (3) excavating and diking;
- dry land to collect and retain water for or incidental to agricultural, commercial, industrial, or aesthetic purposes.
- E. An isolated wetland that is a Class I wetland with an area, as delineated, of one-half ($\frac{1}{2}$) acre or less.
- F. An isolated wetland that is a Class II wetland with an area, as delineated, of one-fourth ($\frac{1}{4}$) acre or less.
- G. An isolated wetland that is located on land:
- (1) subject to regulation under the United States Department of Agriculture wetland conservation rules, also known as Swampbuster (16 U.S.C. 3801-3862), because of voluntary enrollment in a federal farm program; and
 - (2) used for agricultural or associated purposes allowed under the rules referred to in this section.
- H. For purposes of clause (B), an isolated wetland exists as an incidental feature:
1. if:
 - a. the owner or operator of the property or facility described in clause (B) does not intend the isolated wetland to be a wetland;
 - b. the isolated wetland is not essential to the function or use of the property or facility; and
 - c. the isolated wetland arises spontaneously as a result of damp soil conditions incidental to the function or use of the property or facility; **and**
 2. if the isolated wetland satisfies any other factors or criteria established in rules that are adopted by the water pollution control board and not inconsistent with the factors and criteria described in this clause.
- I. The total acreage of Class I wetlands on a tract to which the exemption described in clause (E) may apply is limited to the larger of the following:
1. The acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in clause (E).
 2. Fifty percent (50%) of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in clause (E) but for the limitation of this subdivision.

J. The total acreage of Class II wetlands on a tract to which the exemption described in clause (F) may apply is limited to the larger of the following:

1. The acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in clause (F).
2. Thirty-three and one-third percent (33%) of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in clause (F) but for the limitation of this subdivision.

K. An isolated wetland described in clause (E) or (F) does not include an isolated wetland on a tract that contains more than one (1) of the same class of wetland until the owner of the tract notifies the department that the owner has selected the isolated wetland to be an exempt isolated wetland under clause (E) or (F) consistent with the applicable limitations *described in clauses (I) and (J).