IDEM Permitting 101
An overview of IDEM permitting for work in Waters of the State
Who Regulates What?

USACE & IDEM
Wetlands adjacent to streams
Streams with less than one square mile drainage

Non-wetland floodway: IDNR

IDNR, USACE, & IDEM
Navigable water
Open Water
Floodways
Streams

Isolated wetland: IDEM
What Activities Does IDEM Regulate?

• Impacts to:
  – waters of the U.S.
  – nonexempt waters of the state

• Conversion via stump removal in a forested wetland
IDEM’s Programs

• 401 Water Quality Certification
• State Isolated Wetlands

NOTE:
Water resource impacts are regulated by:
• IDEM
• IDNR
• U.S. Army Corps of Engineers (USACE)
Section 401 of the Clean Water Act

• Implemented by IDEM
• Water Quality Certifications issued
• Ensures activities authorized by federal permits or licenses maintain the:
  – chemical,
  – physical, and
  – biological integrity of Indiana’s waters
IDEM and the Law
IDEM’s Regulatory Authority

• Section 401 of the Clean Water Act:
  – Implemented by IDEM
  – Requires a Water Quality Certification (WQC) from the state before a federal permit or license can be issued

• State Water Quality Standards (327 IAC 2)

• State Isolated Wetlands Law (IC 13-18-22):
  – Establishes General and Individual Permits for impacts in Class I, Class II and Class III wetlands (327 IAC 17)
Methods of Water Quality Certification

• Individual
• General:
  – Nationwide Permits (NWP)
  – Regional General Permit (RGP)
General Certifications

• Use RGP form
• 401 WQC for projects with “minimal impact”
• USACE is the lead agency and determines if a project falls under a general permit
• Four Common General Permits:
  – RGP
  – NWP 3 Maintenance
  – NWP 12 Utility line activities
  – NWP 33 Temporary construction, access, and dewatering
Regional General Permit (RGP) Notification

• Two pages
• 401 WQC for projects with “minimal impact”
• 30-day review time frame
• Automatic approval unless there is a problem
• Applicants must meet the terms and conditions of the IDEM RGP
RGP Major Thresholds

• Impacts to streams/shorelines must be less than 300 linear feet
• Impacts to wetlands/open water must be less than 0.10 acre
• Stream encapsulation must be for the purposes of a constructing a crossing:
  – Must be less than 150 feet in length
  – Requirements for oversizing/embedding
Individual 401 WQC

• For projects requiring a site-specific individual 401 WQC (projects exceeding RGP conditions)
• Nine-page form
• 120-day review period
• Public Notice required
• Avoidance and minimization required
• Mitigation often required
Indiana State Isolated Wetlands Law: IC 13-18-22

- Regulates wetlands outside of Federal Clean Water Act jurisdiction - passed in 2004
- Provides regulatory oversight and mitigation requirements through IDEM - based on wetland class and acreage
- Exempts certain activities ("normal farming") and certain wetlands based on size (smaller than ¼ or ½ acre depending on class)
- Isolated wetlands located on land enrolled in a federal farm program under Swampbuster are exempt
Isolated Wetland Exemptions

• The State Isolated Wetlands Law states that an exempt isolated wetland is an isolated wetland that:
  – Is a Class I wetland with an area, as delineated, of 0.50 acre or less
  – Is a Class II wetland with an area, as delineated, of 0.25 acre or less

• There are two options for determining exemptions on sites with potentially multiple exempt wetlands
Isolated Wetland Exemptions

Option 1:

- Class I Wetlands - take the largest Class I wetland on the tract that is less than or equal to 0.50 acre in size and take this as your Class I wetland exemption
- Class II Wetlands - take the largest Class II wetland on the tract that is less than or equal to 0.25 acre in size (as described above) and declare that wetland to be exempt
Isolated Wetland Exemptions

Option 2 - Class I Wetlands:

• Step 1: If you have several Class I wetlands on a tract, add up the acreages of each Class I wetland that is less than or equal to 0.50 acre in size

• Step 2: Take that total acreage and divide it in half:
  – You now have an acreage that is fifty percent of the cumulative acreage of your Class I wetlands on the site that are individually less than or equal to 0.50 acre in size
  – Fifty percent of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the individual Class I acreage exemption described can be applied toward exemptions
Isolated Wetland Exemptions

Option 2 - Class II Wetlands:

• Step 1:
  – Add the acreages of all Class II wetlands that qualify for Option 1

• Step 2:
  – Determine maximum Class II acreage that can be exempt.
    – Equal to [Step 1] ÷ 3

• Step 3:
  – Pick which wetlands will be exempt.
  – Total exempt acreage may be as close to the number in Step 2 as possible without exceeding it
Waters of the U.S. Mitigation Ratios

- 4:1 Ratio for forested wetlands
- 3:1 Ratio for scrub-shrub Wetlands
- 2:1 Ratio for emergent Wetlands
- 1:1 Ratio for open water
- 1:1 Ratio for streams
# Isolated Wetland Mitigation Ratios

<table>
<thead>
<tr>
<th>Wetland Class</th>
<th>Replacement Class</th>
<th>On-site Ratio</th>
<th>Off-site Ratio</th>
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<tr>
<td>Class I</td>
<td>Class II or III</td>
<td>1:1</td>
<td>1:1</td>
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<tr>
<td>Class I</td>
<td>Class I</td>
<td>1.5:1</td>
<td>1.5:1</td>
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<tr>
<td>Class II</td>
<td>Class II or III</td>
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<td>2:1 Non Forested&lt;br&gt;2.5:1 Forested</td>
</tr>
<tr>
<td>Class III</td>
<td>Class III</td>
<td>2:1 Non Forested&lt;br&gt;2.5:1 Forested</td>
<td>2.5 to 1 Non Forested&lt;br&gt;3:1 Forested</td>
</tr>
</tbody>
</table>
Mitigation Options

- Compensatory mitigation must off-set the effect of the activity
- Options:
  - Banks
  - In-lieu fee
  - Permittee responsible
Mitigation Criteria

• Must include a monitoring plan sufficient to measure the mitigation site’s performance in relation to the success criteria

• The amount of mitigation proposed must offset the risk failure or temporal loss of wetland function
Minimum Criteria
Water-010-NPD

- Wetland meets or exceeds size and class
- Little reed canary, cattail, open water, or bare ground
- No purple loosestrife, common reed, or water milfoil
- Natives must have 70% areal cover
- If forested: 200 trees per acre
- If forested or shrub: 436 shrubs and vines per acre
IDEM’s Compliance and Technical Assistance Program (CTAP)
The Compliance and Technical Assistance Program (CTAP) provides assistance to help Indiana businesses understand and comply with environmental regulations. It is important to note the following about CTAP assistance:

- **Non-Regulatory** – CTAP staff are not regulators and do not have regulatory authority. Therefore, businesses will not be penalized for reporting relevant environmental information to CTAP staff when requesting assistance.

- **Free & Confidential** – While the CTAP serves as a liaison between the regulatory agencies and businesses, no details about the company working with CTAP is provided to regulators, as the information is protected under IC 13-28-3-4.
• **Assistance** – CTAP provides assistance through an on-site visit or via phone and will provide a full compliance review or just target a single issue. It also develops training programs, brochures, and webinars to help businesses understand the state and federal environmental regulations that affect them.

• **Multi-Media** – CTAP staff are knowledgeable in air, water, land and Community Right to Know regulations and are happy to answer questions in these areas.

The CTAP provides assistance to businesses that contact it directly, to businesses referred to it by regulatory inspectors or permit writers, and to businesses the CTAP identifies may be impacted by a new EPA or state regulation.

**Contact us if you need assistance**

Hotline: 800-988-7901  
Email: CTAP@idem.in.gov  
Website: http://www.in.gov/idem/ctap/
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To File a Wetland Complaint or Report a Violation: 800-451-6027, Ext 2-4484
http://www.in.gov/idem/5274.htm

Map Produced by: USGS
Map Data: USGS NAD83

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