

SECTION 2.1

OVERVIEW

Natural Streams and wetlands are of vital importance to the natural resources and environment of the State. Various local, State, and Federal programs have evolved to protect and safeguard these vital resources while promoting and allowing the use of these resources to enhance the public welfare.

Local governments, including counties, cities, river basin commissions, drainage districts, conservancy districts, and levee districts, are responsible for protecting and promoting the responsible use of water resources within their jurisdictions. Through the Drainage Code, the County Drainage Board and the County Surveyor of each county are responsible for the maintenance and proper functioning of all Regulated Drains, open and tiled, in the county. Each year, the Surveyor must report on the condition of each Regulated Drain and, if necessary, recommend maintenance or reconstruction projects to the Drainage Board. The Drainage Boards and Surveyors must also respond to petitions by the public to create or dedicate new Regulated Drains, reconstruct existing Regulated Drains, and perform regular maintenance activities. ■

The Indiana Department of Natural Resources (IDNR) is the advocate for and steward of the State's natural resources. The IDNR develops and implements policies and programs for the conservation, management, utilization, and protection of the State's natural resources. The IDNR is proactive in protecting the State's natural resources for use and enjoyment by future generations of Indiana. In general, the IDNR reviews and approves plans for any work within the floodway of a stream or along the shoreline of a public freshwater lake **before** work on the project may begin. The laws passed by the legislature and subsequent rules promulgated by IDNR have sought to protect the lives and property of individuals and the public and also the existing resources along and within Indiana's waters. The safety of the public at large and impacts to adjoining land owners are taken into account during the technical or engineering review of a proposed project. The integrity of fish, wildlife and botanical resources are also safeguarded through an environmental review of a proposed project. ■

The Indiana Department of Environmental Management (IDEM) is the water pollution control agency for the State of Indiana. IDEM has the responsibility and authority to prevent any pollution that is determined to be unreasonable and against the public interest in view of the conditions in any stream or any waters of the state. ■

The U.S. Army Corps of Engineers (COE) regulatory program is one of the oldest in the Federal Government. Initially it served a fairly simple, straightforward purpose: to protect and maintain the navigable capacity of the nation's waters. Changes to the initial legislation and the addition of new legislation have, over time, expanded the noted purpose to include the protection of the Nation's aquatic resources, including wetlands. The COE goal in implementing this program, has been to make authorizing decisions that recognize the rights of the property owner while protecting the interests of the public at large, and to do this in the shortest possible time. Through this program, consultation with state agencies, local agencies, and the public at large, the COE takes into account many factors in determining whether or not to approve projects which impact waters of the United States. ■

The U.S. Fish and Wildlife Service (USFWS) is charged with the stewardship of the nation's fish and wildlife resources. Although the primary legal focus of USFWS is on federally protected

species ("Trust Resources"), the mission of the USFWS is to provide the leadership to conserve, protect, and enhance fish and wildlife and their habitats for the continuing benefit of all citizens.

It is with this mission in mind that the U.S. Fish and Wildlife Service (USFWS) provides input to the regulatory process governing waters and freshwater wetlands. The USFWS reviews, investigates, and cooperates fully in providing ecological advice in the form of comments and recommendations on proposals for federal or federally permitted or assisted activities and developments in or affecting the nation's waters or wetlands. As a reviewer of federal agency actions that affect water resources, the USFWS operates primarily under the authority of the Fish and Wildlife Coordination Act which requires equal consideration of fish and wildlife resources with other project features. The USFWS also fulfills its mandates under Section 7 of the Endangered Species Act by reviewing permit applications to ensure that the continued existence of an endangered or threatened species is not further jeopardized, and/or that critical habitat for such species is not destroyed or adversely modified. ■

The Natural Resources Conservation Service (NRCS, formerly Soil Conservation Service or SCS) has been and continues to be the leading agency in developing and providing technical advice to farmers and others involved in activities related to soil and water resources throughout the Nation.

The Food Security Act (FSA) of 1985, through the "Swampbuster" provision, prohibits farmers who participate in USDA programs from converting wetlands and then producing an agricultural commodity on the converted wetland. The Food, Agriculture, Conservation and Trade Act (FACTA) of 1990 extended this prohibition such that a violation occurs when a wetland is converted even if an agricultural commodity has not been actually produced. The Food Security Act and the Food, Agriculture, Conservation and Trade Act also state that Prior Converted Cropland areas will not be classified as wetlands for regulation under the Clean Water Act. Through the passage of the above-noted acts, NRCS is now also involved in the delineation of wetlands for farmers participating in the U.S. Department of Agriculture (USDA) programs. Through an agreement with the Corps of Engineers (COE) and the Environmental Protection Agency (EPA), the wetland delineations made by NRCS personnel are accepted for determining jurisdictional wetland boundaries. ■

Whenever a project is to be undertaken within or near a channel, drain, waterway or tile, the applicant should first check the appropriate local, state, and federal regulations to see what type of permits and approvals may be necessary **before** the work may begin. The types of approvals and number of agencies to deal with will depend on the type of project, the project location, and the general size of the waterbody or channel involved. **A summary of required authorizations and processing methods for specific drainage improvement activities and practices is provided in Section 3.**

This Section will present the general processes, requirements, and procedures for the local, state, and federal agencies that are usually involved in the review of plans for **Drainage Improvement Projects**. Other agencies, such as the Federal Emergency Management Agency (FEMA), may also be involved at the applicant's discretion. There may also be laws and regulations which are not addressed in this handbook but can apply to drainage improvement activities. An example is 327 IAC 15-5 (Known as "Rule 5") which is administered by IDEM, with assistance from IDNR and SWCDs. "Rule 5" requires submission of erosion control plans and implementation of erosion control practices for projects that involve more than five acres of land-disturbing activity.

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