

## Appendix L State Regulated Wetlands

### I. Introduction

A state-regulated wetland (SRW) is an isolated wetland that is not an exempt isolated wetland (327 IAC 17-1-3 (10)). It is feature that is classified as a wetland under the 1987 Corps Wetlands Delineation manual and the appropriate regional supplement. This includes features that meet the three wetland criteria (hydrophytic vegetation, hydric soils and hydrology) and problematic wetlands. The USACE, through the approved jurisdiction determination process, has not taken jurisdiction of the feature(s) under Section 404(a) of the Clean Water Act (CWA). Under 327 IAC 17 (Wetland Activity Permits) the state may take jurisdiction of the feature(s) as an isolated wetland.

### II. Process

**Step 1.** Wetlands delineation completed based on the 1987 Corps Wetland Delineation manual and the appropriate regional supplement. The entire isolated wetland must be delineated, to include off ROW.

**Step 2.** USACE, through the approved Jurisdiction Determination (JD) process, does not take jurisdiction of the feature under CWA Section 404(a).

**Step 3.** Determine whether the features qualifies as an exempt isolated wetland under 327 IAC 17.

a. Determine the feature(s) that meet the definition of exempt isolated wetland under 327 IAC 17-1-3 (7). All exempt features must be contained entirely within the INDOT permanent ROW.

1. Does the wetland qualify for a size exemption?
  - i. Is the feature eligible/not eligible for the exemption based on size?
    - Class I wetlands are eligible to be considered for a size exemption if  $\leq 0.50$  acre (see 327 IAC 17-1-3 (7)(E))
    - Class II wetlands are eligible to be considered for a size exemption if  $\leq 0.25$  acre (see 327 IAC 17-1-3 (7)(F))
  - ii. Calculate total acreage by class and determine available exempt acreage by class.
    - Class I exemption - 50% of the cumulative acreage of eligible Class I wetlands.
    - Class II exemption - 33 1/3% of the cumulative acreage of eligible Class II wetlands.
  - iii. Determine the features to be claimed as exempt up to the exemption acreage limit.
    - Whole features must be selected to add up to the exemption acreage. Portions of wetlands cannot be classified as exempt.
    - Any wetland that extends beyond the permanent ROW is not eligible for a size exemption.

2. Does the feature qualify for an exemption because it is an incidental feature?
  - Is the wetland an incidental feature in a roadside ditch or other location listed in 327 IAC 17-1-3 (7)(B) (definition)?
  - Did the feature arise spontaneously as a result of damp soil conditions incidental to the function or use of the property or facility? (See 327 IAC 17-1-3 (7)(H)(CC) (test)).
  - Document justification.
3. Subtract the acreage of exempt features from the total acreage to determine the total acreage on the project site subject to permitting under the isolated wetland law.

b. Record determination in the table. Complete table to determine acreage available for exemption and non-exempt acreage requiring mitigation.

**State Regulated Wetland Table**

Wetland ID #	Total Delineated (ac)	Total w/in Permanent ROW	Class			Exempt/Authority	
			I	II	III	Yes	No

Wetland ID # - Should correspond to identification number used on the wetland data sheets and waters report.

Total Delineated Acres = Total w/in Permanent ROW - Wetland does not extend outside of ROW and is eligible for an exemption if under the size threshold.

Exemption/Authority -

<u>Exemption</u>	<u>Authority</u>
Incidental	327 IAC 17-1-3 (7)(B)
Fringe wetland associated w/ an isolated pond	327 IAC 17-1-3 (7)(C)
Isolated wetland associated w/ manmade body of surface water created by excavation and/or diking	327 IAC 17-1-3 (7)(D)
Class I < 0.50	327 IAC 17-1-3 (7)(E)
Class I (largest individual IsolW)	327 IAC 17-1-3 (7)(I)
Class II < 0.25 %	327 IAC 17-1-3 (7)(F)
Class II (largest individual IsolW)	327 IAC 17-1-3 (7)(J)

**Step 4.** IDEM verification/classification of features as exempt isolated wetlands and as Class I, II, and III wetlands.

**Step 5.** Estimate mitigation acreage and class based on 327 IAC 17-1-5.

Wetland Class	Replacement Class	On-Site Ratio	Off-Site Ratio
Class I	Class II or III	1 to 1	1 to 1
Class I	Class I	1.5 to 1	1.5 to 1
Class II	Class II or III	1.5 to 1 Nonforested 2 to 1 Forested	2 to 1 Nonforested 2.5 to 1 Forested
Class III	Class III	2 to 1 Nonforested 2.5 to 1 Forested	2.5 to 1 Nonforested 3 to 1 Forested

The compensatory mitigation ratio is lowered to 1:1 if it is completed before the initiation of the wetland impacting activity under 327 IAC 17-1-5 (b).

### Terminology - See also Appendix A Glossary and Acronyms.

**Class I Wetland.** An isolated wetland described by one (1) or both of the following:

- (A) At least 50 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.

*Source: 327 IAC 17-1-3 (1)*

**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 [327 IAC 17-1-3 (3)] that would meet the definition of Class I wetland if the wetland were not a rare or ecologically important type.

*Source: 327 IAC 17-1-3 (2)*

**Class III Wetland.** 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.

*Source: 327 IAC 17-1-3 (3)*

**Exempt isolated wetland.**

- (A) An isolated wetland that is a voluntarily created wetland unless:
  - (i) the wetland is:
    - (AA) approved by the department for compensatory mitigation purposes in accordance with a permit issued under Section 404 of the Clean Water Act or IC 13-1822; or
    - (BB) reclassified as an SRW under IC 13-18-22-6(c); or
  - (ii) the owner of the wetland declares, by a written instrument:
    - (AA) recorded in the office of the recorder of the county or counties in which the wetland is located; and
    - (BB) filed with the department; 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:
  - (i) A residential lawn.
  - (ii) A lawn or landscaped area of a commercial or governmental complex.
  - (iii) Agricultural land.
  - (iv) A roadside ditch.
  - (v) An irrigation ditch.
  - (vi) 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:
  - (i) excavating;
  - (ii) diking; or
  - (iii) 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 (1/2) acre or less.
- (F) An isolated wetland that is a Class II wetland with an area, as delineated, of one-fourth (1/4) acre or less.
- (G) An isolated wetland that is located on land:
  - (i) 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
  - (ii) used for agricultural or associated purposes allowed under the rules referred to in this clause.
- (H) For purposes of clause (B), an isolated wetland exists as an incidental feature:
  - (i) if:

- (AA) the owner or operator of the property or facility described in clause (B) does not intend the isolated wetland to be a wetland;
- (BB) the isolated wetland is not essential to the function or use of the property or facility; and
- (CC) the isolated wetland arises spontaneously as a result of damp soil conditions incidental to the function or use of the property or facility; and
- (ii) if the isolated wetland satisfies any other factors or criteria established in rules that are:
  - (AA) adopted by the water pollution control board; and
  - (BB) 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:
  - (i) The acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in clause (E).
  - (ii) 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:
  - (i) The acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in clause (F).
  - (ii) Thirty-three and one-third percent (33 $\frac{1}{3}$ %) 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).

*Source: 327 IAC 17-1-3 (7)*