IDEM Regulatory Overview

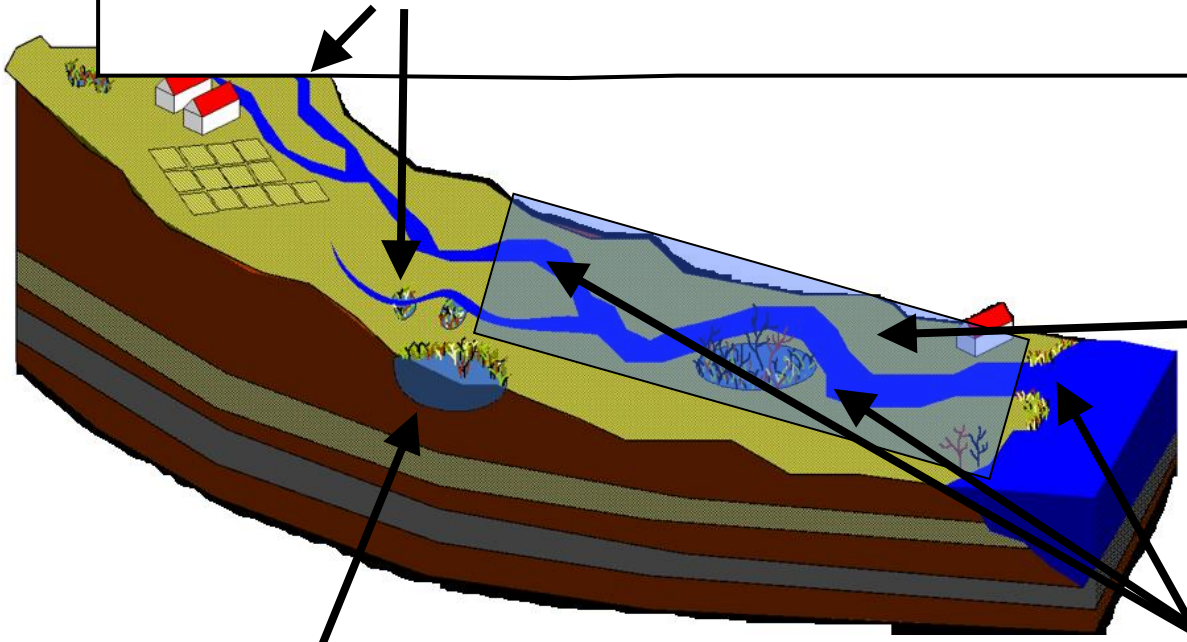
IDEM Permitting for Work in Waters of the State

Indiana Lakes Management Conference

April 9-10, 2020

Who Has Jurisdiction?

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



Floodway: IDNR

IDNR, USACE, & IDEM:
Navigable water,
open water,
floodways,
Streams.

State regulated wetland: IDEM

IDEM's Programs

- Section 401 Water Quality Certification Program
- State Regulated Wetlands Program

Note:
IDEM is only one of three agencies to potentially regulate a project proposing impacts to water resources.
The other agencies are:

- Indiana Department of Natural Resources (IDNR)
- U.S. Army Corps of Engineers (USACE)

Determining Jurisdiction

- Determined by USACE
- Applicant can concede via pre-jurisdictional determination
- Non-jurisidictional status only determined via USACE-approved jurisdictional determination reviewed by U.S. EPA

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 Regulated 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)

Indiana State Regulated 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)

What IDEM Regulates

- IDEM regulates the placement of dredged or fill material into Waters of the U.S. and nonexempt Waters of the State
- All Waters of the U.S. are Waters of the State
- A State Regulated Wetland is defined by state law as a wetland located in Indiana that is not an exempt state regulated wetland
- Nonexempt activities in “farmed” and “prior converted” wetlands
- Fill placed in a cropped wetland or forested wetlands subject to a change in use conversion

What Constitutes Fill

- Dirt, rock, sand, gravel, riprap, etc.
- Pipes and culvert structures (new and replacement structures)
- Dirt or rock placed into an old stream channel if the stream is relocated
- Mechanized land clearing in wetlands (bulldozing) involving removal of stumps
- Side casting of dredged material into wetlands
- Damming up streams/pump arounds
- Bank stabilization (streams and lakeshores)

Methods of Water Quality Certification

- General
  - Programmatic General Permit (PGP)
  - Nationwide Permit (NWP)
  - Regional General Permit (RGP)
- Individual

Programmatic General Permit

- Authorizes activities of a minor nature in public freshwater lakes
- Commonly authorized activities include shore protection, boat ramps, beach construction, filling of boat wells, and general license activities
- Notification to IDEM is not required if a project possesses the required IDNR authorization and the project meets the terms and conditions of the PGP

Regional General Permit Notification

- Two pages
- 401 Water Quality Certification (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 Regional General/Nationwide Permits

RGP/PGP/NWP 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 constructing a crossing:
  - Must be less than 150 feet in length
  - Requirements for oversizing/embedding

Individual 401 Water Quality Certification

- For projects requiring a site-specific Individual 401 WQC (projects exceeding Regional General/Nationwide Permit conditions)
- Nine-page form
- 120-day review period
- Public notice required
- Mitigation often required

Common Projects

- Projects Typically Regulated by IDEM:
  - Seawalls
  - Underwater Beaches
  - Bank Stabilization (open water and streams)
  - Construction in wetlands
  - Pipe or culvert placement/replacement in streams
  - Stream relocations or stream piping

Seawalls and Underwater Beaches

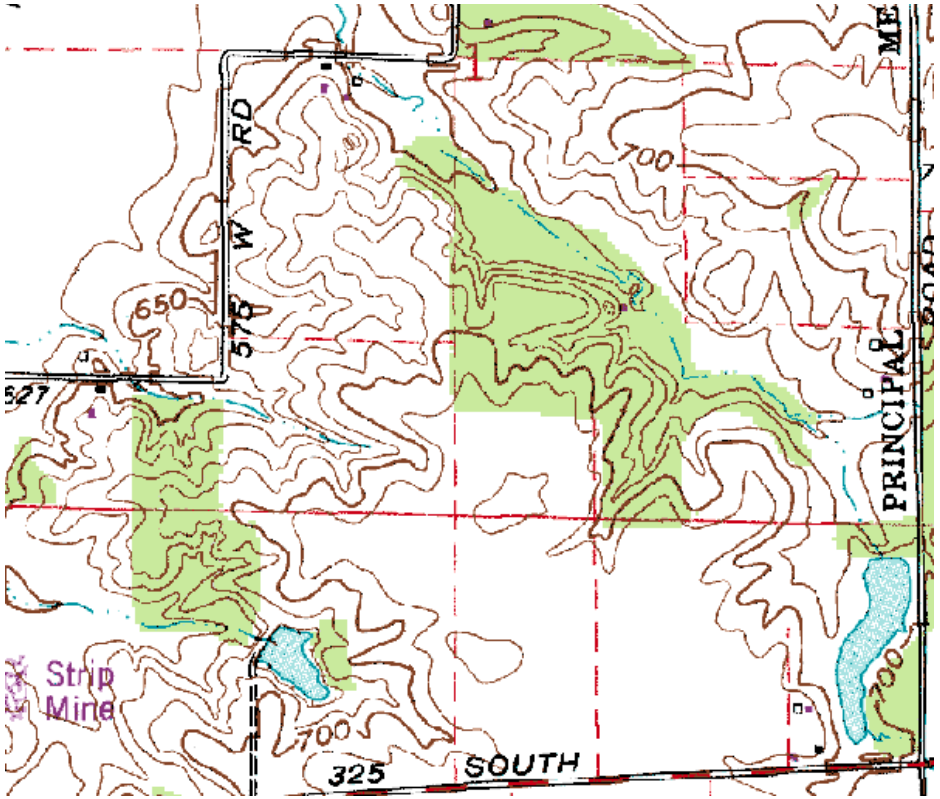
Bank Stabilization

Construction in Wetlands

Stream Culverts, Piping, and Relocations

Common Regulatory Myths

- Blue-line vs. nonblue-line streams
- Accuracy of the National Wetland Inventory maps
- Confusion over which agencies regulate streams



Regulatory Myth One

MYTH:

Only blue-line streams on topographic maps are regulated

FACT:

- Many streams do not show up as a blue- line on a topographic map
- Streams do NOT have to be flowing to be regulated

FACT:
• Even dry streams may be regulated

Regulatory Myth Two

MYTH:

- All wetlands appear on the National Wetland Inventory
- (NWI) maps

FACT:

- Many wetlands do NOT show up on the NWI maps
- The only way to know if wetlands are present is to have a wetland delineation completed for a site

Regulatory Myth Three

MYTH:

- Only DNR regulates streams

FACT:

- IDEM regulates all intermittent and perennial streams, large or small, flowing or dry, regardless of drainage area
- IDNR regulates some streams, but not all streams (drainage area greater than 1 square mile)
- Even if you don't need an IDNR Construction in a Floodway permit, you still need IDEM authorization to work in a stream

Interagency Collaboration

- Indiana waterways inquiries
- IDEM/IDNR collaboration
- Project-specific
- Directs applicants to required permits
- Feedback from both agencies

INDIANA WATERWAYS

Useful Information for Site Evaluation

Soils maps

- County soil survey from Natural Resources Conservation Service www.in.nrcs.usda.gov

National Wetlands Inventory

- Wetlands mapper www.fws.gov/wetlands/Data/mapper.html
- Google Earth www.google.com/earth/index.html

Blue-Line Streams/V-shaped Contours

National Wetland Inventory area

V-shaped contours: typical of streams

IDEM Online

Applications

- IDEM application forms
  www.idem.IN.gov/wetlands/2342.htm

Program Staff

- Project manager map
  www.idem.IN.gov/wetlands/2347.htm

Wetlands Information

- All about wetlands
  www.wetlands.IN.gov

Planning a Project?

Call us!

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State Regulated Wetlands and
Section 401 Water Quality Certification Programs

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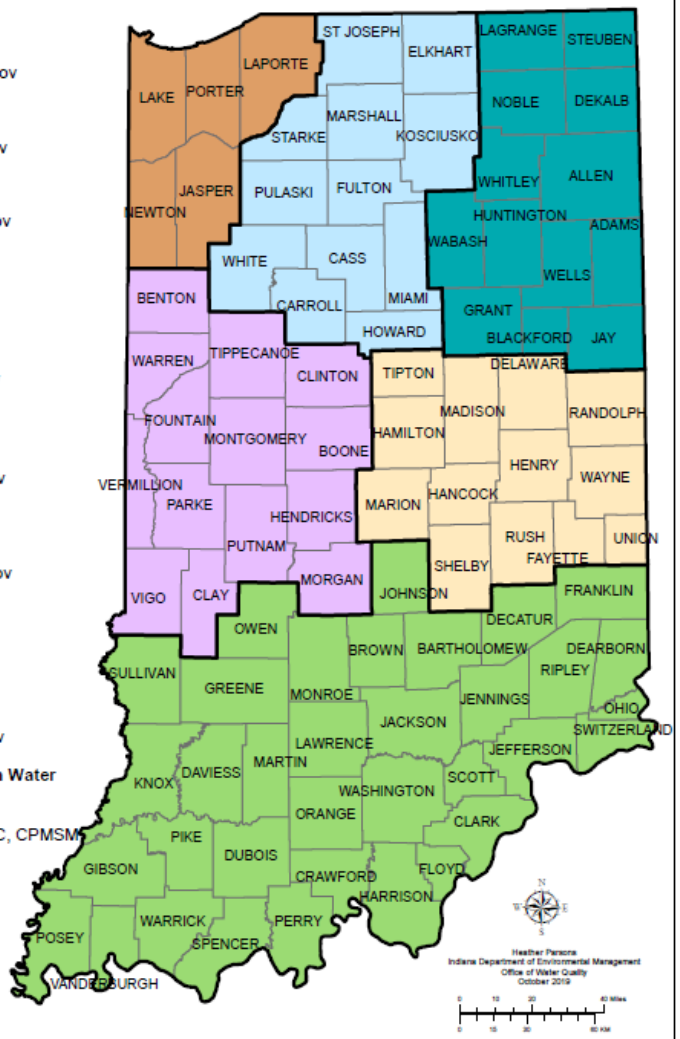

To File a Wetland Complaint or Report a Violation: 800-451-6027, Ext 2-4464
http://www.in.gov/idem/5274.htm

Non Orthophotography Data
- Obtained from the State of Indiana Geographical Information Office (GIO) Library

Map Projection: UTM Zone 16 N
Map Datum: NAD83

Questions?

www.wetlands.IN.gov