



Development within Cropland

Exemptions to Regulation-State Regulated Wetlands

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Background

- The applicability of the State Regulated Wetland cropland exemption applies only to wetlands not regulated by the U.S. Army Corps of Engineers (USACE) and only the USACE can determine whether a wetland is federally regulated.
- The Highly Erodible Land Conservation and Wetland Conservation Compliance provisions of the Food Security Act, introduced in the 1985 Farm Bill with amendments in 1990, 1996 and 2002 are most commonly known as “Swampbuster”. Swampbuster provides incentives for the preservation of lands from excessive soil erosion in agricultural settings, including provisions to protect wetlands, and to prevent the manipulation of wetlands.
- Wetland determinations conducted by the NRCS are for the purposes of the Food Security Act only¹. While the NRCS may determine there are no wetlands regulated by the Food Security Act, there may be wetlands that are regulated by the EPA in coordination with the USACE under the Clean Water Act or vice versa.

Exemption for Development in Cropland-Five Years Preceding

- Per IC 13-18-22-1(d)(1) activities which will result in the discharge of dredged or fill material into a State Regulated Wetland for the purposes of developing on cropland which has been used in the preceding five years for agricultural purposes does not require a State Regulated Wetland Permit.
- Determinations of applicability of the exemption will require the areas proposed for development to be outlined on a map by the project proponent.
- Only those areas which meet the definition of “cropland” as defined in IC 13-11-2-48.5 may be considered under this exemption:
 - Sec. 48.5
 - (a) “Cropland”, for purposes of IC 13-18-22-1(d) means farmland:
 - (1) That is cultivated for agricultural purposes; and
 - (2) From which crops are harvested
 - (b) The term includes:
 - (1) orchards;
 - (2) farmland used to produce row crops, close-grown crops, or cultivated hay; and
 - (3) farmland intentionally kept out of production during a regular growing season (summer fallow).
 - (c) The term does not include pastureland unless pastureland is in active rotation with cultivated crops for purposes of soil maintenance or improvement.
- Tracts of land which contain both cropland and non-cropland should clearly depict both on the map. Non-cropland areas which may contain wetlands may require a formal delineation if discharges are expected to any non-cropped land wetland.
- Staff will use aerial imagery from Google Earth to review the preceding five years to verify the area was in active agricultural production.
- For follow up verification, the website Cropscape may be referenced (<https://nassgeodata.gmu.edu/CropScape/>).

¹ NRCS Manual <https://directives.sc.egov.usda.gov/RollupViewer.aspx?hid=29340>

- A delineation of any wetlands on cropland is not necessary to meet the exemption.
- Submission of development plans for the areas should be included.

Exemption for Development in Cropland-Ten Years Preceding

- Per IC 13-18-22-1(d)(2) activities which will result in the discharge of dredged or fill material into a State Regulated Wetland for the purposes of developing on cropland which has been used in the preceding ten years for agricultural purposes does not require a State Regulated Wetland Permit provided the USACE has issued an Approved Jurisdictional Determination confirming that the cropland does not contain wetlands subject to federal jurisdiction under Section 404 of the Clean Water Act for the areas to be developed.
- Determinations of applicability shall follow the same procedures used to determine exemptions under the five-year time frame, but the evaluation would include a review of aerial imagery for the preceding ten years.

IDEM's Role

- IDEM is responsible for preserving and protecting the chemical, physical and biological integrity of Indiana's waters, including wetlands.
- IDEM is responsible for the implementation of the State Regulated Wetland Law.

Citizen's Role

- Property owners enrolled in farm conservation programs through or funded by the NRCS should coordinate with the NRCS on the applicability of the Swampbuster provisions.
- Property owners should always seek out confirmation of regulation applicability through the USACE and IDEM.

More Information

- For information about IDEM's wetland regulations visit: <https://www.in.gov/idem/wetlands/index.htm>.
- For additional information regarding Swampbuster visit: <https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/water/wetlands/?cid=stelprdb1043554>
- For information about the U.S. Army Corps of Engineers visit:
 - Louisville District: <https://www.lrl.usace.army.mil/Missions/Regulatory.aspx>
 - Detroit District: <https://www.lre.usace.army.mil/Missions/Regulatory-Program-and-Permits/>
 - Chicago District: <https://www.lrc.usace.army.mil/Missions/Regulatory.aspx>