

Summary of Initial Findings on State Isolated Wetlands Regulations

Last Updated: 10-11-17

State	State D&F Program	Type of Regulation	Supporting Links
California	NEW, State D&F Program	Proposal of regulations to protect isolated wetlands	<ul style="list-style-type: none"> • https://www.huntton.com/images/content/2/7/v3/2704/california-proposes-far-reaching-policy.pdf • https://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.shtml • https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wrkplan_filing_gaps_wet_prot_9_24_04.pdf
Delaware	State D&F Program	<p><i>ASWM S&T 2013 Call:</i> Changes are under consideration to Delaware's Wetlands Act to cover loss of the federal protection of isolated non-tidal wetlands. (Status Unknown).</p> <p>However, website says: Activities in ephemeral channels (wet for only a short period of time after a rain event), roadside ditches, lateral or grid ditches in agricultural fields, and isolated ponds that are not connected to other surface waters, are not regulated under the Subaqueous Lands Act.</p>	<ul style="list-style-type: none"> • http://www.dnrec.delaware.gov/wr/information/regulations/Pages/WLSL%20What's%20Regulated.aspx • Of interest: http://udel.edu/~millerke/frec480/roj6/FREC480%20GIS%20Proposal.pdf
Florida	State D&F Program	<p><i>ASWM's S&T Report: Re use of the Corps 1987 Manual:</i> "Florida's methodology does apply to wetlands where there is no federal jurisdiction. The State of Florida does not have a concept of isolated wetlands as "non-regulatable". There are so many Section 10 waters in the state, that it does not make sense to just use the</p>	<ul style="list-style-type: none"> • https://www.aswm.org/pdf_lib/state_summaries/florida_state_wetland_program_summary_111615.pdf

		Corps 1987 manual."	
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Georgia	NO State D&F Program	From 2011 ASWM Report: "In certain cases Georgia has found mechanisms to recapture non-jurisdictional areas. The State has reached to use state law, beyond the definition of waters of the state, to work with other permits under erosion and sedimentation as well as mitigation for impacts in non-jurisdictional areas. However, if a single property holds isolated waters, Georgia is not able to capture those waters. The state has had more success related to Rapanos related areas over SWANCC related areas, in using its definition of waters of the state to recapture. The State is able to require mitigation even when the Corps does not require it in non-jurisdictional waters."	<ul style="list-style-type: none"> • https://www.aswm.org/pdf_lib/401_cert/georgia_case_study.pdf
Indiana	State D&F Program	The state's isolated wetlands, or those waters not subject to regulation under the Clean Water Act, are regulated under IC 13-18-22. This statute creates a category of waters of the state known as State Regulated Wetlands, which are defined as wetlands as delineated under the 1987 Corps of Engineers Wetlands Delineation Manual and are considered isolated and not subject to federal law. This law establishes a classification system for wetlands and a set of general permits, exemptions, and individual permitting authority	<ul style="list-style-type: none"> • http://www.in.gov/idem/wetlands/2343.htm
Kentucky	NO State D&F Program	From 2011 ASWM Report: "If a project destroys an isolated wetland that does not fall under the Corps jurisdiction, that is a violation of the state's water quality standards and the state can prosecute them even though they did not have the opportunity to apply for a permit. The state has not done this yet but they	<ul style="list-style-type: none"> • https://www.aswm.org/pdf_lib/401_cert/kentucky_case_study.pdf

		have this ability.”	
Maine	State D&F Program	Maine’s Vernal Pool Laws	<ul style="list-style-type: none">• http://www.maine.gov/dep/land/nrpa/vernalpools/index.html

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Maryland	State D&F Program	Development activities in isolated nontidal wetlands of less than one acre and having no significant plant or wildlife value require a letter of exemption from MDE	<ul style="list-style-type: none"> • http://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/001000/001471/unrestricted/20053877e.pdf
Nebraska	NO State D&F Program	<p>The state does not have a wetland permitting program. However, uniquely, Nebraska does have a state voluntary regulatory program. If a water is a non-404 water, the state sends a “letter of opinion” to the applicant saying that the state cannot issue a permit, but an activity might violate state water quality standards and the state will work with the applicant to avoid violation of these standards. The state refers to this approach as “resource advocacy through regulatory efforts.”</p> <p>Through this system, Nebraska DEQ regulates surface-water overflow wetlands and isolated wetlands. Isolated wetlands do not have a regular or periodic surface connection to an adjacent stream or lake. These wetlands are created from ground water or surface runoff. Isolated wetlands are protected for the beneficial uses the state recognizes for wetlands.</p>	<ul style="list-style-type: none"> • http://www.envcap.org/statetools/swift/swift2.cfm?st=NE
North Carolina	State D&F Program	General Permit is issued in conformity with the requirements of North Carolina Division of Water Quality (DWQ) Regulations in 15A NCAC 2H, Section .1300 for the discharge of fill material to isolated and other non-404 wetlands and isolated waters of the State of North Carolina.	<ul style="list-style-type: none"> • https://deq.nc.gov/401-sw • http://www.scstatehouse.gov/CommitteeInfo/IsolatedWetlandsandCarolinaBaysTaskForce/November132012Meeting/NC%20Isolated%20W%20Permit.pdf • https://www.coast

			alreview.org/2014/06/isolated-wetlands-a-primer/
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State	State D&F Program	Type of Regulation	Supporting Links
Ohio	State D&F Program	Isolated Wetland Permits (Level 1, 2,3)	<ul style="list-style-type: none"> • http://www.epa.ohio.gov/Portals/35/401/IWPs_and_401WOCs_SFY2014.pdf; • http://www.epa.ohio.gov/dsw/401/permitting.aspx
Pennsylvania	State D&F Program	<p>Vernal pools are protected in Pennsylvania under 25 PA Code Chapter 105, Dam Safety and Waterway Management³. Vernal pool habitats are not specifically identified in the code, but the Department of Environmental Protection (DEP) includes them in the "body of water" category as defined in Section 105.1 as "a natural or artificial lake, pond, reservoir, swamp, marsh or wetland." Chapter 105 protects Pennsylvania's waters from encroachments including any structure or activity which changes the course, current, or cross section of a body of water. DEP has regulatory authority over the wetland itself but cannot enforce a protective upland buffer.</p> <p>A DEP permit is needed to directly impact ANY wetland by fill or excavation, regardless of the size. Section 105.20a⁴ sets wetland replacement criteria for wetland losses. Mitigation (wetland replacement) is only required for alteration of wetlands over 0.05 acres in size. When a permit is granted for destruction of a wetland over 0.05 acres, it must be mitigated at a minimum 1:1 ratio. If a permit is granted for wetland losses after-the-fact a minimum 2:1 mitigation ratio is required.</p> <p>Wetlands under 0.05 acres in size are considered 'deminimus' (for scale, a square with 47 feet per side is ~0.05 acres). Permittees are not required to mitigate the loss of these very small wetlands which include many vernal pools. But their acreage is added to the total acreage of wetlands lost. Pennsylvania has a 'net wetland gain' policy⁵ and has programs to create new wetlands to offset all lost acreage. The DEP also implemented the Pennsylvania Wetland Replacement Project (PWRP)^{6,7} to</p>	<ul style="list-style-type: none"> • http://www.naturalheritage.state.pa.us/VernalPool_Regulation.aspx

		address issues specific to small wetlands. Wetlands under 0.50 acres are eligible to participate in this project.	
State	State D&F Program	Type of Regulation	<ul style="list-style-type: none"> • Supporting Links
South Carolina	Coastal Only	Before any isolated wetland area is filled in a permit must be obtained through S.C. DHEC, which is given the authority to issue such permits under the state's Pollution Control Act.	<ul style="list-style-type: none"> • http://www.postandcourier.com/news/court-rules-on-isolated-wetlands/article_c8898571-d6d5-5ce6-9a4b-ab0e3f1c6e63.html
Tennessee	State D&F Program	Appear yes, but can't find reference to isolated wetlands specifically - <i>ASWM S&T Report</i> : "Since the definition of waters of the state in The Tennessee Water Quality Control Act of 1977 is much broader than the federal definition of waters of the U.S., many wetlands not subject to federal regulation are still protected by state law and regulations. The state is currently implementing"	<ul style="list-style-type: none"> • https://www.aswm.org/pdf_lib/state_summaries/tennessee_state_wetland_program_summary_083115.pdf
Virginia	State D&F Program	Since 1992, the Virginia Water Protection Permit Program has served as the Commonwealth's Section 401 Certification process for both tidal and nontidal impacts permitted under Section 404 of the Clean Water Act. In 2000, the General Assembly removed the dependence of the State nontidal wetlands program on the issuance of a Federal permit, thus enabling DEQ to use the Virginia Water Protection Permit Program to regulate activities in wetlands. Such activities as certain types of excavation in wetlands and fill in isolated wetlands (which may not be under Federal jurisdiction) were added to the activities already regulated through the Section 401 Certification process.	<ul style="list-style-type: none"> • http://www.deq.virginia.gov/Programs/Water/Wetlands/Streams/Regulations.aspx
Washington State	State D&F Program	Isolated wetland protected under state law	<ul style="list-style-type: none"> • https://fortress.wa.gov/ecy/publications/documents/O106020.pdf • http://www.ecy.wa

			<ul style="list-style-type: none">.gov/programs/sewa/wetlands/isolated.htmlhttps://fortress.wa.gov/ecy/publications/summarypages/ecy070394.html
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State	State D&F Program	Type of Regulation	Supporting Links
West Virginia	State D&F Program	<p><i>ASWM S&T Report:</i> Isolated wetlands are considered “waters of the state” in West Virginia and are regulated according to §401 standards. The state uses the same ratios and assessments for isolated waters as for federal jurisdictional waters.</p> <p>Note text on official 401 Cert Webpage: “For federally non-jurisdictional (or isolated) waters, the West Virginia Division of Water and Waste Management may require a WV State Waters Permit.”</p>	<ul style="list-style-type: none"> • https://www.aswm.org/pdf_lib/state_summaries/west_virginia_state_wetland_program_summary_083115.pdf • http://www.dep.wv.gov/WWE/Programs/Pages/401Certification.aspx
Wisconsin	State D&F Program	2001 Wisconsin Act 6 (non-federal wetlands) If the wetland is determined to be a non-navigable, intrastate, and isolated wetland according to SWNCC	<ul style="list-style-type: none"> • http://docs.legis.wisconsin.gov/2001/related/acts/6.pdf • http://dnr.wi.gov/topic/wetlands/documents/OverviewWIRegulatoryProg.pdf

Other links of interest:

- Useful Article: *Look Again. Using Existing Statutory Authority to Protect Wetlands* (National Wetland News): <https://elr.info/sites/default/files/seay.pdf>
- MD Court Case over isolate wetlands: https://www.washingtonpost.com/archive/local/1999/08/27/us-drops-case-against-developer-of-md-wetlands/0c4399ef-d985-434b-8666-4af7a31323b8/?utm_term=.e310ac5cc47f