

Appendix F - Isolated Wetlands - Changes in the Regulatory Process

This appendix includes a Focus Sheet developed by Ecology to help clarify the regulatory process for isolated wetlands. This document was published in 2001 (Ecology Publication #01-06-020). Some of the information provided in the Focus Sheet has since become out-of-date. The text has been modified to provide up-to-date information (edits are shown in *italics* and ~~strikethrough~~).

Focus

Isolated Wetlands Changes in the Regulatory Process

Supreme Court Decision

A U.S. 2001 Supreme Court decision last January regarding how wetlands are regulated has generated a lot of questions by landowners and developers.

The court ruled that the federal Clean Water Act does not apply to those “isolated” wetlands where the only interstate commerce connection is use by migratory birds. This ruling overturned 15 years of regulation of isolated wetlands by the U.S. Army Corps of Engineers. While the court did not define the term “isolated,” the Corps ~~has previously considered~~ *generally considers* isolated wetlands to be those that are not adjacent to or ~~connected via surface water~~ *do not have a sufficient hydrologic connection* to a navigable water body, such as a river, lake or marine waters.

Changes in Regulatory Process

Based on the Supreme Court’s ruling, federal agencies no longer have regulatory oversight of these important environmental resources. More specifically, landowners no longer need a permit from the U.S. Army Corps of Engineers to fill in most isolated wetlands - although a Corps permit is still required for isolated wetlands with other interstate commerce use (recreation, industrial, etc.) as well as wetlands that are connected to a navigable water body. *Corps policy regarding the definition and regulation of isolated wetlands is currently in flux, and future court or administrative decisions may further change how isolated wetlands are regulated by the federal government.*⁴⁶

However, the Supreme Court ruling did not change Washington state laws on wetlands. The state Clean Water Act (90.48 RCW) makes no distinction between types of wetlands. Rather, all “waters of the state” are covered by the law, and isolated wetlands are considered waters of the state.

It’s not always easy to tell if a wetland is isolated. Landowners who want to develop an isolated wetland should contact the Corps of Engineers and request a formal jurisdictional determination to avoid any future legal problems and fines.

Why Regulate Isolated Wetlands?

Isolated wetlands in Washington perform many of the same important environmental functions as other wetlands, including recharging streams and aquifers, storing flood waters, filtering pollutants from water, and providing habitat for a host of plants and

⁴⁶ Check the following web pages for updates <http://www.ecy.wa.gov/programs/sea/pac/iso-wetlands.html> or via the Corps regulatory web page at <http://www.nws.usace.army.mil/> (Regulatory, Waters & Wetlands Information).

animals. Many wildlife species, including amphibians and waterfowl, are particularly dependent on isolated wetlands for breeding and foraging.

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- Any project that calls for filling or altering a wetland determined by the Corps to be isolated will still be subject to regulation by the state. The state's process for reviewing projects that involve isolated wetlands will be different from the 401 Water Quality Certification process that is triggered by the Corps' 404 permit. Rather, Ecology will use administrative orders to regulate projects that will have impacts to isolated wetlands. The standards of review will remain the same as under 401 water-quality certifications - that is, the state water-quality standards for surface waters (WAC 173-201A). Anyone who wants more information about the review standards should obtain the following two publications: *Water Quality Guidelines for Wetlands*, Publication # 96-06, and *How Ecology Regulates Wetlands*, Publication #97-112. This can be obtained by contacting Jean Witt at 360-407-7472.

To seek an administrative order for a project that involves isolated wetlands, landowners should contact the ~~Permit Assistance Center~~ *Office of Regulatory Assistance* at the Department of Ecology, where our staff will guide you through the regulatory process. The phone number is 800-917-0043 or 360-407-7037, and the e-mail address is ecypac@ecy.wa.gov.

GMA Regulations

Additionally, applicants should be aware that isolated wetlands in Washington also are regulated under the state's Growth Management Act. Thus, projects with impacts to isolated wetlands typically will require approval from the applicable city or county.