



MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY

Michigan's 404 Program

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Water Resources Division

- Protects and Monitors
 - 4 Great Lakes
 - 3,288 miles of Great Lakes shoreline
 - 11,000 inland lakes
 - 36,000 river miles
 - 6.5 million acres of wetlands
 - Groundwater



Michigan's Wetland Protection Act was written specifically to support state assumption of the federal Section 404 Program.



The Michigan Legislature clearly recognized the benefits of wetlands (functions and values) in legislative findings incorporated into Part 303.

A loss of a wetland may deprive the people of the state of some or all of the following benefits to be derived from the wetland:

- Flood and storm control
- Wildlife habitat
- Protection of subsurface water resources and recharging ground water supplies
- Pollution treatment
- Erosion control
- Nursery grounds and sanctuaries for fish



1972 – Michigan’s Inland Lakes and Streams Act was passed

This act regulates activities on inland lakes and streams.



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1977 – Federal Clean Water Act amended to allow State Administration of the Section 404 Program

1979 – Michigan’s Wetland Protection Act was passed

The law was passed with intention of assuming the Section 404 Program



1983- Michigan and USEPA sign MOA (revised in 2011) - Provided approval of assumption of the Section 404 Program.



1984- Michigan and the USACE sign MOA

Designated navigable waters over which the Section 404 authority is retained by the federal agencies.

1984 - MICHIGAN ASSUMES ADMINISTRATION OF ITS OWN REGULATORY PROGRAM FOR MOST WATERS

Section 404 Program Consistency

EGLE

**Natural Resource &
Environmental Protection
Act 451 OF 1994. (NREPA)**

- Part 303, Wetlands Protection
- Part 301, Inland Lakes and Streams
- Administrative Rules



**Section 404 of the Clean Water
Act (CWA)**

- **Title 40** – Protection of Environment. Code of Federal Regulations (40 C.F.R)
- 40 CFR-Part 230: 404 (B)(1) Guidelines -Specification of Disposal Sites for Dredged or Fill Material.
- 40 C.F.R. Part 230- Compensatory Mitigation for Losses of Aquatic Resources; Final Rule.
- 40 CFR-Part 232: Section 404 Program - Definitions and Permit Exemptions
- 40 CFR -Part 233: 404 State Program Regulations

Clearly defined regulated activities

- Deposit or permit the placing of fill material in a wetland.
- Dredge, remove, or permit the removal of soil or minerals from a wetland.
- Construct, operate, or maintain any use or development in a wetland.
- Drain surface water from a wetland



AN EGLE Permit provides the following authorizations:

- Authorization Under Section 404 of the Federal Clean Water Act
- Water Quality Certification under Section 401 of the Clean Water Act
- Coastal Zone Certification
- Screening and Coordination with State and Federal Endangered Species Program
- Screening and Coordination with the Federal Historic Preservation Program

Regulatory permitting comparison

MICHIGAN 404 PERMITS

- General Permits
- Minor Projects
(Both GP and MP's can only be issued for up to 5 years).
- Individual Permits

U. S. ARMY CORPS OF ENGINEERS PERMITS

- Nationwide Permits (NWP)
 - Every 5 years
- Regional General Permits (RGP)
 - Specific to Detroit USACE
- Individual Permits



Files Subject to EPA Review



- Draft General Permits
- Major Discharges
 - AFFECT 1 OR MORE ACRES OF WETLAND.
 - NEW BREAKWATERS OR SEAWALLS WITH TOTAL LENGTH **>1000 FEET**.
 - STREAM ENCLOSURES **> 300 FEET** OR MORE IN 1 OR MORE SEGMENTS
 - STREAM RELOCATION OR CHANNELIZATION **>1000 FEET** IN 1 OR MORE SEGMENTS.

Other Files Subject to EPA Review Per Federal Regulations



- Discharges located in proximity to a public water supply intake.
- Discharges within Critical Areas under state or federal laws such as:
 - NATIONAL AND STATE PARKS
 - FISH AND WILDLIFE SANCTUARIES, WILDERNESS AREAS AND PRESERVES,
 - NATIONAL AND HISTORIC MONUMENTS OR IDENTIFIED UNDER NATIONAL HISTORIC PRESERVATION ACT.
 - COMPONENTS OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM.

Other Files Subject to EPA Review Per Federal Regulations



- Discharges with reasonable potential to affect:
 - Threatened and Endangered (T&E) Species as determined by USFWS
 - Cause adverse impacts on waters of another State or Tribe
 - Contain known or suspected toxic pollutants in toxic amounts or hazardous substances in reportable quantities

Michigan's Permitting Program

Average Processing Timeframes Resource Program (approximately 5000 permit applications per year):

- Average time for determining completeness: 18 days
- Average processing time: 41 days

Budget:

- 82 full time employees
- 12.3 million per year, 20% is covered by fees



Consolidated Permit Processing

- Single permit application
- Single fee
- Simultaneous review under all pertinent authorities:
 - Floodplains,
 - Lakes and Streams,
 - Wetlands,
 - Dam Safety,
 - Shorelands,
 - Great Lakes, and
 - Critical Dunes



State - Federal Consistency

(e.g. exemptions, general permits, public notice procedures, criteria)

A state Section 404 Program must meet federal Clean Water Act standards,

- ...to protect interstate resources.
- ...to ensure a “level playing field” in the national wetland permit program.

“Any approved State Program shall, at all times, be conducted in accordance with the requirements of the [Clean Water] Act and of this Part.

While States may impose more stringent requirements, they may not impose any less stringent requirements for any purpose.”

40 CFR §233.1

EPA has overseen and audited EGLE’s 404 program throughout the years and found areas needing to be addressed. EGLE has fixed many of these but is still in the process of fixing others.

State - Federal Coordination....

also addresses other state responsibilities

- State “404” permits are issued under *state* law
- Public Trust responsibilities and riparian rights
- Policies and procedures specific to state needs while federally consistent



Expedited permit process for minor activities

General permit and minor project categories that:

- Coordinate categories under multiple statutes.
- Provide clarity on the best management practices that must be met for each category.
- Can be processed in an accelerated manner like the NWP's, without the issuance of an individual public notice or public hearing.



MiWaters – Water Resources Information and Forms

Create and manage **Permit Applications** and **Service Requests**

Why Create a MiWaters Account?

If you are planning on any of the following:

— Building on a sensitive area, such as a dune or a wetland?

— Discharging wastewater of any kind?

— Applying pesticides to a water body?

... or similar activities, you'll need to [create a MiWaters account](#).

Logged in as **Jerrod Sanders**

CONTINUE TO MIWATERS APPLICATION ➔

[Sign in as a different user](#)

Public Information and Services

Keep informed with our online tools — **no account necessary**

👁 SITE MAP EXPLORER

📄 PUBLIC NOTICE SEARCH

⚠ REPORT SPILLS, POLLUTION,
UNAUTHORIZED ACTIVITIES

MiWaters:

- Web-based
- Serves external customers, internal staff, and the general public
- Went live in August 2015
- Replaced 25+ existing databases

Benefits

- Permits, inspections, financials, compliance, and filing all in one place
- Anywhere, anytime access
- Tracking and reminders
- Modern cyber security protections
- Allows the public to view applications and public notices.
- Interactive permit application

Strengths of Michigan's 404 Program

- ✓ Effective resource protection
- ✓ Provides clear definitions for regulation
- ✓ Provides faster permit decisions
- ✓ Reduces regulatory burden through a consolidated state permit process and a joint permit application with the USACE, as well as simultaneous review of CZM and 401 certification, screening and review of state and federal threatened and endangered species, and screening and review for historic and archaeological sites
- ✓ Maintains state control while remaining consistent with federal regulations
 - ✓ Local field staff provide direct interaction with applicants
 - ✓ Provides a court-style formalized appeal process
 - ✓ Provides a stable and predictable regulatory framework



Clear Definitions

Wetland means a land or water feature, commonly referred to as a bog, swamp, or marsh, inundated or saturated by water at a frequency and duration sufficient to support, and that under normal circumstances does support, hydric soils and a predominance of wetland vegetation or aquatic life.



Wetlands are regulated if they are any of the following:

- Connected to other waters
- Within 500 feet of inland waters, or 1000 feet of the Great Lakes
- More than 5 acres in size
- Have state or federal threatened species or are rare and imperiled wetlands
- Are WOTUS under the federal CWA

Timeframes



Unlike the federal permit program, Michigan's wetland permit processing is completed within a deadline mandated by the statute.



An action must be taken by the department within 90 days of receipt of a completed application (or within 150 days if a public hearing is held).

Administrative completeness reviews must be completed within 30 days of receipt of an application.

Effective Resource Protection

- Michigan currently has about 6,465,109 million acres of wetlands.
- Michigan contained approximately 10.7 million acres of wetland prior to European settlement, but that number had dropped to about 6,506,044 million acres in 1978.
- Since the passage of Michigan's wetland protection law in 1979, the rate of wetland loss has declined dramatically:
 - The total decline of wetland since 1978 is estimated at 41,000 acres
 - the rate of decline slowed to approximately 1,642 acres of loss per year between the period of 1978 and 1998
 - the rate of decline slowed further to approximately 1,157 acres of loss per year between the period of 1998 to 2005

Streamlining wetland protection

(Recommendations from the Assoc. of State Wetland Managers)

1. Legislative exemptions
 2. Consolidate permitting under multiple state authorities
 3. Coordinate with federal permitting / assume authority where possible
 4. Expedite processing for minor activities
 5. Technological efficiencies
- ✓ *Michigan does all of these*





Michigan's wetland
Regulatory program has served as a national model of
natural resource protection and streamlining of state,
federal, and local regulations for over 35 years.

Michigan Department of
Environment, Great Lakes, and Energy

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