301 – Inland Lakes and Streams
Today and Tomorrow

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MICHIGAN SHORELINE LAW

1) Introduction to Applicable Laws
2) Bioengineering MP
3) DNRE Permit Application
4) DNRE Pre-Application
Applicable Laws

- Part 301 Inland Lakes and Streams
  - Regulated Activities
  - Ordinary High Water Mark
  - Review Criteria
- Part 303 Wetlands Protection
  - How Do I Know if Wetland Exists?
- Part 91 Soil Erosion and Sedimentation Control
Part 301, Inland Lakes and Streams
Protects inland waters by regulating work in inland lakes and streams.

In 2009 the DNRE issued approximately 2,700 permits under Part 301.

Michigan has over 80,000 miles of streams, and 10,500 lakes, providing fish and wildlife habitat, and recreational opportunities.
PUBLIC TRUST

The paramount right of the public to navigate and fish in all inland lakes and streams that are navigable.

• The perpetual duty of the state to preserve and protect the public’s right to navigate and fish in all inland lakes and streams that are navigable.

• The duty of the state to protect the air, water, and other natural resources of this state against pollution, impairment, or destruction.
RIPARIAN RIGHTS:

The rights associated with riparian property owners (property contiguous to an inland lake or stream), including:

✓ Access to the navigable water.
✓ Dockage to boatable waters.
✓ Use of water for general purposes (bathing and domestic use).
What is a Lake?

A natural or artificial lake, pond, or impoundment with a surface area of 5 or more acres.
What is the Ordinary High-water Mark (OHWM)?

The OHWM is the line between upland and bottomland that persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly.
Ordinary High Water Mark

Change in vegetation indicates the OHWM.
Stain on seawall indicates the OHWM.
Regulated Activities

Biological Erosion Control
Materials Below OHWM

Recontouring Shoreline:
excavation or fill
Permit Review Criteria

• A structure or project will not adversely affect the public trust or riparian rights.

• Possible effects on uses for recreation, fish and wildlife, aesthetics, local government, agriculture, commerce, and industry.

• Whether a structure or project will impair or destroy any of the waters or other natural resources of the state.
Part 303, Wetlands Protection
Protects wetland functions and values by requiring permits for activities within wetlands.

What is a Wetland?

“’Wetland’ means land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh.”

Forested Wetland
What is a Wetland?

- Predominance of Wetland Vegetation
- Evidence of Hydrology
- Hydric Soils

Where do I go for help?

- [www.mi.gov/deqwetlands](http://www.mi.gov/deqwetlands)
- Wetland Identification Program; Wetland Inventory Maps; Pre-app Meetings.
Part 91, Soil Erosion and Sedimentation Control Permit

- Administered by Local or County Enforcing Agency

Go to
www.deq.state.mi.us/sesca/

- Required when earth-change occurs within 500 feet of lake, or is over 1 acre in size.
Bioengineering – Why?

“Seawalls are detrimental to lakes in many ways. They generally remove the natural slope of the shoreline and create barriers that prevent the free migration of mammals, reptiles, and amphibians between water and uplands. They remove the natural energy dissipating capacity of a sloped shoreline and natural vegetation, and this, in turn, causes increased erosive energy in other parts of the lake along with additional scour and deepening of the bottom and further removal of natural vegetation.” DNRE Fisheries, Special Report 38, 2006
Activities that may be authorized:

Placement of biological erosion control structures, including but not limited to fiber rolls, fiber mats, live stakes, brush mattresses, brush bundles, and plantings of native vegetation.

Limited placement of natural stone or rock riprap, covering no more than 25% of the length of the project allowing free growth of plants, if necessary to stabilize biological materials. Stone used for this purpose shall range from four to eight inches in diameter.

Temporary placement of fiber rolls or similar materials to serve as wave breaks or barriers placed not more than five feet from the existing shoreline, to facilitate establishment of biological control structures or plantings. Temporary wave breaks must be constructed of and anchored with materials that are 100% biodegradable.

Maintenance of previously authorized bioengineering structures.
DNRE Bioengineering Minor Project Category

Projects up to 300 feet in length along inland lake shorelines.

Projects where the top of the bank is not high than three feet.

All vegetation, including plantings and other viable materials such as live stakes, or brush bundles shall be comprised of plant native to Michigan.

Engineered plant materials, coconut fabric, shall be composed of inert plant material that may not be native.

Excavation and backfill shall be limited to the extent necessary to stabilize slopes and place bioengineering structures.

All materials shall be firmly staked and otherwise secured using biodegradable materials.

All raw areas resulting from construction shall be promptly stabilized with native vegetation.
Bioengineering Minor Project – 2010 Permitted Projects

Ford Lake

Gull Lake

Kip Cronk, DNRE
Permit Application

Michigan is 1 of 2 states in the country approved to administer the Federal Section 404 Permit Program.

This means that unlike other states, only 1 permit is necessary (except in coastal areas).

JOINT PERMIT APPLICATION & INSTRUCTIONS:
www.mi.gov/jointpermit
PERMIT CATEGORIES:

- Projects meeting a General Permit or Minor Project category have minimal environmental impact, are subject to lower application fees, and typically require less review time.

- Larger projects that have more potential to impact natural resources are public noticed (copied to other agencies and adjacent property owners for review).
Permit Application Processing

When an application is complete, staff:

• Conduct a site inspection.
• Review the project according to statutory criteria.
• Work with the applicant on any needed modifications.
• Make a decision to permit, modify or deny the application.
• Require permit conditions to minimize impacts.
The status of permit applications is at www.deq.state.mi.us/ciwpis
Pre-application Meetings:
We are available to assist you with planning your project.

Additional information can be found at:

www.mi.gov/jointpermit
Part 301, What is in the future?

- Rule Amendments
- Update General Permit (GP) and Minor Project (MP) categories
Part 301 – Rule Amendments

Rule amendments are in response to the US EPA’s review of Michigan’s 404 Program.

• Define maintenance in a manner that is consistent with the federal definition.

• Ensure that cumulative impacts are considered in the establishment of minor project categories.

• Incorporate 404(b)(1) guidelines by reference.

• Require staff to consider impacts to listed species during permit review.

• Set a 5 year permit limit.

• Clarify that a permit becomes effective on the date this it is signed by both parties.

• Clarify authority of the DNRE to revoke a permit.
“For difficult to replace resources (e.g. bogs, fens, springs, streams, Atlantic white cedar swamps) if further avoidance and minimization is not practicable, the required compensations should be provided, if practicable, through in-kind rehabilitation, enhancement, or preservation since there is greater certainty that these methods of compensation will successfully offset permitted impacts.” (40 CFR §230.93(e)(3))

Section 404(b)(1) Guidelines provide guidance on: preservation, mitigation plans (14 components), performance standards, monitoring and site management – this guidance will all be incorporated into Michigan’s Stream Mitigation requirements.

DNRE plans to place stream mitigation requirements directly into the 301 Rules and providing guidance documents. DEADLINE: July 31, 2012
Part 303, Wetlands Protection, Section 30312b:

(2) The department shall propose new or maintain existing general permits or minor project categories equivalent to the following nationwide permits, to the extent that the nationwide permits are applicable to wetland, subject to additional limitations based on best management practices and necessary to ensure that adverse environmental effects are minimal or based on other statutes, which limitations may be established by the department after providing notice and an opportunity for public comment:
(a) Outfall structures and associated intake structures.
(b) Minor discharges.
(c) Utility line activities.
(d) Expansion of existing cranberry production activities.
(3) The department shall propose new or maintain existing general permits or minor project categories for the following:
(a) Temporary recreational structures.
(b) Linear transportation projects.
(c) Aquatic habitat restoration, establishment, and enhancement activities, including reversion of temporary wetland restorations.
(d) Residential developments.
(e) Completed enforcement actions.
(f) Temporary construction, access, and dewatering.
(g) Cranberry production activities.
(h) Agricultural activities.
(i) Reshaping existing drainage ditches.
(j) Recreational facilities.

Part 303, Wetlands Protection, Section 30312

(6) The department shall coordinate general permit and minor project categories under this part and parts 301 and 325 consistent with nationwide permits, as appropriate.
Questions?

ADDITIONAL INFORMATION:

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Inland Lakes and Streams: www.mi.gov/dnreinlandlakes

Wetlands: www.mi.gov/deqwetlands

Permit Application & Instructions: www.mi.gov/jointpermit