



US Army Corps
of Engineers
Detroit District

Great Lakes Update

Permitting Issues on the Great Lakes

Water levels on the Great Lakes have resumed their downward trend and are expected to remain below average throughout the summer months. With continued low water levels, many shoreline property owners are raising questions about which construction and maintenance activities along the Great Lakes shoreline need permits and which do not. This Update Article discusses the types of activities that require permits, the process involved in obtaining permits, and also offers contact information to direct further questions. The article also contains the latest information on conditions across the basin, including snow and ice conditions of this past winter.

Laws Authorizing Permitting

The U.S. Army Corps of Engineers has been given authority to regulate certain activities on waters of the United States (including the Great Lakes and adjacent water bodies). The mission of the Corps' Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible, and balanced permit decisions. The Corps balances the reasonable foreseeable benefits and detriments of proposed projects against the

essential values of the Nation's aquatic ecosystems as well as the property rights of private citizens.

Two Federal laws give the Corps this regulatory authority—Section 10 of the 1899 Rivers and Harbors Act and Section 404 of the Clean Water Act. Under Section 10, a Corps permit is required for any structures or work in or affecting navigable waters of the United States. Structures or work are “in” these waters if they are conducted waterward of a line on the shore known as the Ordinary High Water Mark (OHWM). The OHWM is a fixed elevation contour. Although water levels on the Great Lakes fluctuate continuously and the shoreline changes from year to year, the OHWM remains fixed.

The Corps' jurisdiction extends to the OHWM even if property lines are platted to the “water's edge” or a meander line. Ownership of a lakebed will vary according to state law; however, private ownership of the underlying lands has no bearing on the existence or extent of the dominant Federal jurisdiction over a navigable waterbody. Shoreline property owners

must obtain permits for certain activities waterward of the line.

Some examples of structures or work that require Section 10 permits include boat ramps; breakwaters; bulkheads; dredging, filling, and/or discharging material; groins; jetties; mooring buoys; piers (seasonal or permanent); placement of riprap; boat hoists; pilings; and construction of marina facilities.

Section 404 requires a Corps permit for the discharge of dredged or fill material into waters of the United States, including adjacent wetlands. The Corps' jurisdiction extends landward of the OHWM to include the upland boundary of any wetlands adjacent to navigable waters. Projects involving discharges typically include placement of fill material for homes and landscaping, impoundments, causeways, road fill, dams and dikes, riprap, groins, breakwaters, revetments, and beach nourishment. Section 404 also regulates discharges of dredged material incidental to certain activities such as grading, mechanized landclearing, ditching or other excavation activity.

How to Apply for a Permit

The Regulatory permit process is designed to allow fair and equitable decisions that allow reasonable use of private property, infrastructure development, and growth of the economy while offsetting the authorized impacts to the waters of the U.S. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public.

For the regulated activities described in the previous section, a permit must be obtained from the U.S. Army Corps of Engineers, most states, and some local governments (e.g., county drainage boards, townships, cities). Depending on the magnitude of the project and the

completeness of the permit application, issuance of a permit could take anywhere from two weeks to four months or longer if the project is complex. The Corps is obligated to deny or modify projects that they determine are contrary to the public interest.

The vast majority of projects qualify for Corps' general permits. The time required to confirm authorizations is dictated by the completeness of your permit application and accompanying drawings. For details on general permits available in your area, contact the District that covers the work site. A list of contacts is provided at the end of this section. If you cannot scale your project to qualify for a general permit, you will need an individual permit that requires notification of interested parties and a more detailed evaluation. There is no guarantee that the permit will be issued and compensatory mitigation might be required.

Concerns Over Grooming Beaches and other Exposed Features

In the thousands of years since the last Ice Age, Great Lakes ecosystems have developed in bands of important habitat features that respond to fluctuations of water levels. Water levels over the past 30 years or so have been consistently above average on the middle lakes (Lakes Michigan, Huron, St. Clair, and Erie). During these extended high water conditions, the water continually inundated near-shore portions of boulder fields, embayments and areas with very shallow slope.

Since 1998, the water levels of the upper Great Lakes have dropped significantly. Nearshore areas that were previously open water now consist of exposed lakebed. In some protected areas with very little slope, the natural fringe marshlands that have adapted to this lake stage

have once again sprouted from dormant roots and seedbeds. In other areas, boulders and rocks are now also exposed.

Some shoreline residents who view the emergent vegetation as undesirable have taken a variety of measures to control the growth of this vegetation. Vegetation control methods that have been used include mowing, discing, grading, plowing, and raking of the vegetation. These control methods weaken or kill the vegetation and have or will cause serious long-term problems from a public values viewpoint by increasing erosion, decreasing water quality, or decreasing fish and wildlife habitat.

Some of these control methods such as plowing, discing, grading, raking, and/or dragging constitute discharges of dredged material under the Corps' Section 404 jurisdiction and as work under Section 10 jurisdiction. A Corps permit would be required for these types of activities.



In contrast, removing debris such as tires, logs, and bottles from lakebed areas does not require Corps authorization as long as such work is conducted without the above-noted discharges.

Mowing vegetation does not require a Corps permit as long as the mowing does not physically

disturb the bottomland substrate or soils. Pulling vegetation by hand, hand shoveling and burying organic debris or dead fish in a shovel-dug trench or pit, and hand raking vegetation are examples of work that are outside of the Corps jurisdiction as they typically do not involve discharges of material. Building sand castles or any similar recreational activity is not considered "work" as defined in our regulations, and therefore, a permit is not required.

Coastal wetlands of the Great Lakes have a unique and valuable character. They support diversity of fish and wildlife, they help to reduce erosion and improve water quality. Coastal wetlands are renewed and flourish during periods of low water levels such as we are now experiencing on the Great Lakes. It is important the coastal residents understand and respect the value of these unique coastal habitats.

If you have questions about what activities require permits, it is best to check first. You can contact the U.S. Army Corps of Engineers to discuss your particular situation or activity. Contact information is given below:

In Minnesota and Wisconsin, call the St. Paul District Regulatory office at (651) 290-5375 or visit www.mvp.usace.army.mil/regulatory.

In Illinois, call Chicago District Regulatory office at (312) 846-5530 or visit www.lrc.usace.army.mil/co-r/.

In Indiana and Michigan, call the Detroit District Regulatory office at (313) 226-2432 or visit www.lre.usace.army.mil/regulatory.

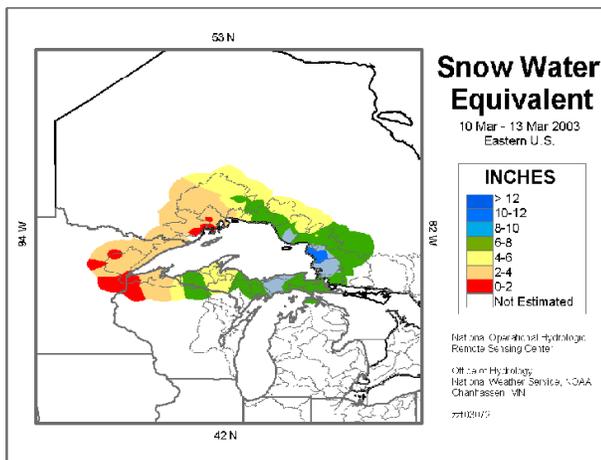
In Ohio, Pennsylvania, and New York, call the Buffalo District Regulatory office at (716) 879-4330 or visit www.lrb.usace.army.mil/orgs/reg.

Additional information can be found at www.usace.army.mil/inet/functions/cw/cecwo/reg/.

Expected Conditions This Summer

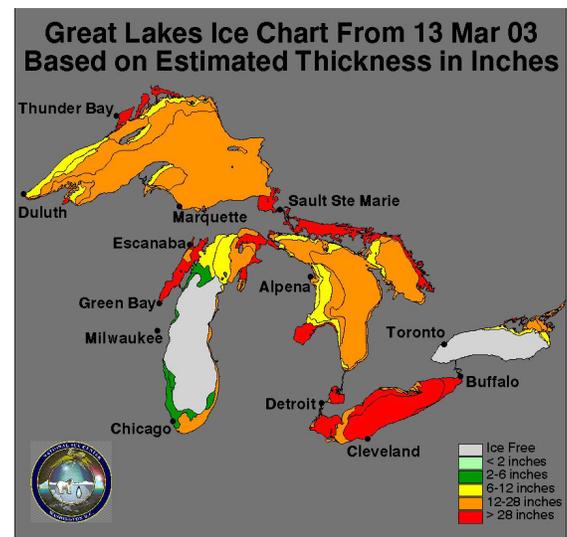
Water levels on all five Great Lakes declined more than average this winter due to the very dry conditions over the basin. Over the next six months, water levels are forecasted to be lower than last year's levels and well below average.

The U.S. Army Corps of Engineers funds the National Weather Service's National Operational Hydrologic Remote Sensing Center (NOHRSC) to conduct a snow water equivalent survey of the Lake Superior basin every March. This survey measures the amount of water contained in the snowpack in the Lake Superior basin. The results can be used to get an indication of the amount of recharge the Lake Superior system will receive from snowmelt in the spring. The results of the survey conducted March 10-13, 2003 are shown below.



The survey showed that the amount of snow water equivalent in the Lake Superior basin was slightly above average for this time of year. Heavy snow was concentrated in the eastern portion of the basin, which receives a significant amount of lake effect snow. The western portion of the basin received below average snowfall this past winter. The overall above average snow water equivalent will help replenish some of the moisture lost to evaporation this past fall.

Because of the cold temperatures experienced across the basin this winter, ice conditions on the Great Lakes were more extensive than experienced in decades. Lakes Superior, Huron, and Erie froze over by late February. According to the Great Lakes Environmental Research Laboratory, the last time that these three lakes froze completely was 1994. However, these lakes have not had as extensive (thickness and length of time) an ice cover since the late 1970s.



When the lakes develop a solid ice cover, lake effect snow is no longer a factor, and evaporation is limited. This helps to retain water in the lake system. Over the past several years, the Great Lakes have had little ice cover and evaporation continued through the winter months.

Higher evaporation and lower precipitation are the primary reasons that the lakes are in their current downward trend. However, because the lakes had already dropped significantly by the time the ice cover formed, it could do little to improve the lake levels for this year. A return of plentiful precipitation and more normal evaporation are needed to bring the lake levels back up near average. The timing of this is the uncertain element.