Permit Coordination and Evaluation

Regulatory Project Managers
Corps Detroit District Regulatory Office
EGLE Bay City District Office
October 17, 2019
Permit Coordination and Evaluation

- Permit evaluation process
- General permits
- Individual permits
- Coordination with agencies/tribes
- Threatened and endangered species
- Historic properties
- Time extensions
- Modifications
- Compliance & enforcement
Permit Evaluation Flow-Chart

1. Pre-Application Meeting (optional)
2. Application
3. Evaluation/Coordination
4. Decision
Pre-Application Meetings

Streamline application process

- Program education
- Information requirements
- Factors weighing heavily in decision
- Impact reduction
Applying for a Permit

- Michigan Joint Permit Application
- MiWaters
- ELGE Permit Process
  - ELGE Permit Decision
- Corps Permit Process
  - Corps Permit Decision

Separate, independent review processes and decisions
Other Permit Requirements

- Most projects that require Corps permits also require state (EGLE) permits
  - Section 401 Water Quality Certification
  - Coastal Zone Management Consistency
- Check county/local requirements
Corps Permit Fees

- Application – no fee
- General Permits – no fee
- Letter of Permission – no fee
- Standard Permits
  - Government – no fee
  - Individual – $10.00
  - Commercial – $100.00

Fees charged at time of permit issuance
Corps Permit Evaluation
Approximate Timeframes

- From the time we receive a complete application
- May vary for complex projects
  - General permits – 89% < 60 calendar days
  - Individual permits – 74% < 120 calendar days
Types of EGLE Permits and fees

- General Permit $50
- Minor Project $100
- Individual Permit $500
- Major Projects $2000

Separate fees for:
- Revisions and transfers
- Marinas
- Critical Dunes
- High Risk Erosion
- Hydraulic reviews
- Dam Projects

Appendix C fees www.Michigan.gov/jointpermit or call your District office
MiWaters

Pre-Application Meeting (optional)

Applications

Complaints/Spills

Floodplain Elevations

Revisions/Transfers

Mitigation Reports

www.michigan.gov/miwaters
Types of Corps Permits

General Permits
- Nationwide
- Regional

Individual Permits
- Letter of Permission
- Standard Permit
  - Requires public notice
  - Requires EA
Corps Permit Types in Michigan

- Regional General Permits: 55%
- Nationwide Permits: 34%
- Letters of Permission: 7%
- Standard Permits: 4%
Corps General Permits

- Regional and Nationwide permits
- Corps verifies that work qualifies under terms and conditions of permits
- All require submission of a permit application
Corps Regional General Permits in Michigan

- Seawalls & Backfill: 21%
- Docks: 19%
- Boat Hoists: 14%
- Riprap: 14%
- Individual Dredging: 7%
- Spring Piles: 7%
- Removal of Structures: 10%
- Other RGPs: 8%
- Other: 7%
Corps Nationwide Permits in Michigan

- NWP 13 - Bank Stabilization: 34%
- NWP 3 - Maintenance: 22%
- NWP 18 - Minor Discharges: 8%
- NWP 19 - Minor Dredging: 5%
- NWP 14 - Linear Transportation Projects: 4%
- NWP 12 - Utility Line Activities: 4%
- NWP 7 – Outfall/Intake Structures: 3%
- NWP 27 - Aquatic Habitat Restoration/Enhancement: 3%
- NWP 29 - Residential Development: 2%
- Other NWPs: 15%
10. **Mooring Buoys.** Non-commercial, single-boat, mooring buoys. (Authority: Section 10)

**Detroit District NWP 10 Regional Conditions:**
- a. The application must provide the latitude and longitude (or UTM coordinates) of the buoy and the distance of the buoy offshore.
- b. The buoy must be clearly marked with the Corps of Engineers’ File Number in letters at least 3 inches high and of contrasting color to the background color of the buoy.
- c. The mooring buoy must be marked in accordance with all relevant U.S. Coast Guard requirements.

**MDEQ Water Quality Certification/CZMA consistency for NWP 10:** MDEQ granted certification based on the following conditions:
- a. The latitude and longitude of the buoy and a scaled site plan showing the distance of the buoy offshore must be provided.
- b. The buoy must be clearly marked with the MDEQ and Corps of Engineers’ File Numbers in letters and numbers at least one inch high and of contrasting color to the background color of the buoy.
- c. The buoy must meet all relevant United States Coast Guard requirements.

**Tribal Lands Water Quality Certification for NWP 10:** EPA granted certification based on all National and Regional conditions.

Project must meet all terms of the NWP or RGP...

...and all Detroit District Regional Conditions

If project meets terms for WQC/CZMA, Corps may issue before EGLE.

Project must also meet all general conditions.
Corps General Permits
RGP – Seawalls and Backfill

Some key criteria:

- Replacement seawalls must be ≤1 foot waterward of existing seawall.
- Set maximum waterward extent for new seawalls.
- New seawalls: EGLE must issue first.
Some key criteria:

- No more than 300 feet of shoreline.
- No more than 5 feet waterward of OHWM.
- No placement in wetlands.
- Maximum 1V:1.5H slope.
  - EGLE must issue first if steeper than 1V:2H slope.
Nationwide Permit 13
Bank Stabilization

- Minimum amount of material needed for erosion protection
- No more than 500 feet of shoreline*
- No more than one cubic yard of fill per linear foot below OHWM*
- No fill in wetlands*
- Additional conditions apply

*These conditions may be waived by the Corps, after agency coordination (10-25 days).
Shore protection projects
Shore Protection
Impact Reduction Example

Original proposal

Impacts minimized
EGLE permitting tiers

- General Permits: $50
- Minor Projects: $100
- Public Notice Projects: $500
- Major Projects: $2000

MP/GP Criteria are available at: www.michigan.gov/jointpermit
EGLE General Permit Example

Y. Soil Borings

Category applies to:  
- [x] Part 301, Inland Lakes and Streams  
- [ ] Part 303, Wetlands Protection  
- [x] Part 325, Great Lakes Submerged Lands

Soil sample borings that meet all of the following:

- The outside diameter of the bore hole does not exceed 8 inches.
- Drilling is carried out either from a bridge or other existing structure, or from a barge anchored on a temporary basis, and is completed within a 48-hour period for each bore hole.
- After completion of drilling, the auger hole is backfilled, as appropriate, and any material remaining on the auger is disposed of in an upland location.
- Written authorization is obtained from any riparian property owners prior to drilling, other than soil borings carried out by or for a public agency within a public right-of-way or under appropriate authority.

The proposed project has to meet all of the criteria and only apply to the statues listed. If not, the project still may be permittable, just not as a GP.
The proposed project has to meet all of the criteria and only apply to the statues listed. If not, the project still may be permissable, just not as a MP.
EGLE Individual Permits

- Most other projects that do not meet a GP or MP category
- Public Notice – 20 days
- Public Hearing, if requested
<table>
<thead>
<tr>
<th>Project Description</th>
<th>Impact Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dredging of 10,000 yd³ or more</td>
<td>Filling of 1 acre of wetland</td>
</tr>
<tr>
<td>Seawalls, bulkheads 500 ft or more</td>
<td>Stream enclosures of 100 ft</td>
</tr>
<tr>
<td>Subdivisions or condos</td>
<td>Stream relocations of 500 ft</td>
</tr>
<tr>
<td>Filling of 10,000 yd³</td>
<td>New dredging in area of contamination</td>
</tr>
</tbody>
</table>
Corps Individual Permits

- **Letters of Permission**
  - Structures and work only

- **Standard Permits**
  - More intensive review process
Letters of Permission

- Structures and work only; no fill
- 15 day coordination period
- Often requires EGLE permit before Corps issuance
Standard Permits

- Public notice, typically 20 days
- Environmental assessment or EIS
  - Public interest review
  - 404(b)(1) Guidelines review
  - Alternatives analysis
Public Interest Factors

- Water Quality
- Shoreline Erosion/Accretion
- Floodplain Issues
- Navigation Concerns
- Aquatic Organisms
- Wildlife
- Conservation and Overall Ecology
- Visual aesthetics
- Wetlands
- Noise
- Historic Values
- Land Use
- Economics
- Property Ownership
- Others
Federally Threatened/Endangered Species
Saginaw Bay Area

Eastern Massasauga

Northern Riffleshell

Piping Plover

Eastern Prairie Fringed Orchid

Indiana Bat

Northern Long-eared Bat

Pitcher’s Thistle

Rufa Red Knot

Photo by Dick Dickinson

Photo by USFWS: Andrew King

Photo by USFWS

Photo by New York Department of Environmental Conservation: AI Ricks

Photo by Jeffery A. Gerdin
Federally Threatened/Endangered Species, Critical Habitat

- Are federally listed species or critical habitat present?
  - Survey may be required

- If present, will the proposed work affect them, and how?
Dwarf Lake Iris Survey
Avoidance possible?
Federally Threatened/Endangered Species, Critical Habitat

- Corps consultation with FWS

- Project modifications or special conditions may be required
Corps Historic Properties Review

- Identify historic properties
- Evaluate historic significance
- Determine effects
- Consultation
  - State Historic Preservation Officer (SHPO)
  - Tribal Historic Preservation Officer (THPO)
  - Consulting parties (public)
- Resolution of adverse impacts
Corps Historic Properties Review

- National Register of Historic Places
  - Listed or eligible for listing
  - Corps determines eligibility
  - Districts, sites, buildings, structures, objects
    - Shipwrecks
    - Archaeological or cultural resources
      - Archaeological surveys may be required for projects involving ground disturbance
Corps Historic Properties Review

Permit Area

Original proposal

Alternative
Corps Historic Properties Review
Resolution of Adverse Effects

- Minimization/Mitigation may include:
  - Limiting the magnitude of the undertaking
  - Modifying the project
  - Rehabilitation or repairing a structure
  - Documentation
  - Relocation
  - Data recovery
Corps 404(b)(1) Guidelines Review

- Projects involving discharges of dredged or fill material
- Only the least environmentally damaging practicable alternative is permittable.

- Mitigation sequence:
  - Avoidance
  - Minimization
  - Compensatory mitigation
Corps 404(b)(1) Guidelines Review

- **Practicable**: Available and capable of being done after taking into consideration:
  - Cost
  - Existing technology
  - Logistics

  in light of overall project purposes
Corps 404(b)(1) Guidelines Review

Project Purpose

- Key factor in 404(b)(1) Guidelines analysis
- Basic project purpose
  - Water dependency
- Overall project purpose
  - Alternatives analysis
Alternatives analysis

Original proposal

Alternative
Alternatives analysis

Original proposal

Alternative

- Realign marina

- Reduce size of fishing dock; locate gazebo in upland
Alternatives analysis

Original proposal:
Locate condos, driveways and parking in uplands

Alternative:
Open-pile boardwalk crosses wetland and stream
Alternatives analysis

Original proposal

Alternative

Excavate upland area for recreational beach

Protect shoreline only where necessary
Alternatives analysis

Original proposal

Alternative

Directional drill for utilities instead of trenching
Cumulative Impacts

- Aggregate effects of individual projects
- Past, present, and reasonably foreseeable future projects
Permit Evaluation Decision

- Issued as proposed
- Issued with modifications and/or special conditions
- Denied
EGLE review process

- GP, MP, Individual and Major projects are all reviewed based on the applicable statues.

- Each statue has slight different review criteria.
Perpetual duty of state to secure to its people the prevention of pollution, impairment, or destruction of its natural resources, and rights of navigation, fishing, hunting, and use of its lands and waters for other public purposes.
Riparian rights

- Access to navigable waters
- Dockage to boatable waters, known as wharfage
- Use of water for general purposes, such as bathing or domestic use
- Title to natural accretions
EGLE Part 301 - 30106

- The department shall not issue a permit if the project...
  - will adversely affect the public trust or riparian rights
  - will unlawfully impair the waters or other natural resources of the state

- The department will consider the possible effects on the inland lake or stream and its uses...including uses for recreation, fish and wildlife, aesthetics, local government, agriculture, commerce, and industry.
EGLE Part 301 - 30106a

Marina review criteria

► Riparian interest area
► Navigation
► Slip lengths
► Ingress and egress for maneuverability
EGLE Part 303 - 30311

Wetland review criteria

- A permit for an activity listed in Section 30304 shall not be approved unless...
  - The project is in the public interest
  - Permit is necessary to realize the benefits
  - Activity is lawful
  - No unacceptable disruption to aquatic resources
  - The project is wetland dependent
  - A feasible and prudent alternative does not exist.
EGLE Part 323 - 32305

High Risk Erosion review criteria

► Readily movable need to meet the calculated 30yr setback.

► Non-readily movable need to meet the calculated 60yr setback.
Floodplain review criteria

- Harmful interference for projects in floodway
- No habitation of the floodway
- Proper elevations above the floodplain
- Cut/fills for projects over 300 cubic yards
  - Goal: no loss of floodplain storage
Corps Time Extensions

- No changes to project
- A explanation of delay and proposed timeline for the completion is provided
- Submit request at least one month before permit expires
Corps Permit Modifications

- Don’t wait until the last minute
- Change in project purpose may require permit modification or new evaluation
Permit Details

- Be sure all necessary permits are obtained prior to the start of work.
  - Ensure that all proposed work in jurisdictional areas is covered.

- Provide all parties involved with the project a copy of the permit.
  - All persons involved are responsible parties charged with permit compliance.
Compliance and Enforcement

Inspections on authorized projects are conducted on a regular basis
Compliance and Enforcement

Permit non-compliance
- Work is not in accordance with a permit
- Resolutions
  - Restoration of work that exceeds permit
  - Permit modification
  - Suspend/revoke permit -- civil or criminal action
Compliance and Enforcement

Reporting Potential Unauthorized Activities

Complainants are anonymous

Information about the activity

- Nature of the activity?
- Location?
- Contractor/person involved?
- Is the activity on-going?
- When did the activity start?
Compliance and Enforcement

Investigate reports of unauthorized activities

- Does the activity require a permit?
- Has a permit been issued?
- Does the activity comply with the permit?
Compliance and Enforcement

Unauthorized Activity

- Resolutions
  - Voluntary restoration -- partial or full
  - After-the-fact permit -- partial or full
  - Civil litigation -- can have consent decree
  - Criminal litigation -- flagrant knowing violator
Corps ATF Permits

- After-the-fact permits may be issued in some cases.
  - If not, order to restore may be required.

- Coordination with EGLE
  - In many instances, the Corps cannot issue an ATF without prior authorization from EGLE.
Questions?