Permit Coordination and Evaluation

Regulatory Project Managers

Corps Detroit District Regulatory Office

EGLE Grand Rapids District Office

August 28, 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

MiWaters

Michigan Joint Permit Application

ELGE Permit Process

Corps Permit Process

EGLE Permit Decision

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](http://www.Michigan.gov/jointpermit) or call your District office
MiWaters

Pre-Application Meeting (optional)

Applications

Complaints/Spills

Revisions/Transfers

Mitigation Reports

Floodplain Elevations

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

NWP 13 - Bank Stabilization: 34%
NWP 3 - Maintenance: 22%
Other NWPs: 15%
NWP 29 - Residential Development: 2%
NWP 27 - Aquatic Habitat Restoration/Enhancement: 3%
NWP 7 - Outfall/Intake Structures: 3%
NWP 12 - Utility Line Activities: 4%
NWP 14 - Linear Transportation Projects: 4%
NWP 19 - Minor Dredging: 5%
NWP 18 - Minor Discharges: 8%
Corps General Permits

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.
Corps General Permits
RGP - Riprap

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 Resource Permits

EGLE issued 4,778 Resource permits in 2018
EGLE General Permit Example

Y. Soil Borings

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

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.
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EGLE Individual Permits

- Most other projects that do not meet a GP or MP category
- Public Notice – 20 days
- Public Hearing, if requested
EGLE Major Projects

Projects with a significant amount of impact proposed

- Dredging of 10,000 yd³ or more
- Filling of 1 acre of wetland
- Seawalls, bulkheads 500 ft or more
- Stream enclosures of 100 ft
- Subdivisions or condos
- Stream relocations of 500 ft
- Filling of 10,000 yd³
- New dredging in area of contamination
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 and Critical Habitat in Kent, Ottawa and Muskegon Counties

- **Eastern Massasauga**
- **Snuffbox**
- **Karner Blue Butterfly**
- **Piping Plover**
- **Piping Plover Critical Habitat**
- **Northern Long-eared Bat**
- **Indiana Bat**
- **Pitcher’s Thistle**
- **Rufa Red Knot**

- In the background, Indiana bats are drinking from water that has condensed on the cave wall. Photo by USFWS; Andrew King

- The population of the snuffbox mussel, in terms of range and numbers, appears to have declined by at least 90 percent. Photo by G. Thomas Watters, Ohio State University

- Photo by New York Department of Environmental Conservation; AMRaka
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

Permit Area
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 vs. 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.
EGLE Public Trust

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
Great Lakes lease review criteria

The Department may permit, by lease or agreement, projects...

- In the public interest
- Which will not impair or substantially injure the public trust
- Have terms and conditionals that are just and equitable
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.
EGLE Part 353 - 35304

Critical Dune review criteria

The Department shall issue a permit unless...

- The project will significantly damage the public interest by significant and unreasonable depletion or degradation of
  - Diversity
  - Quality
  - Function

- Special exception review for impacts to slopes >33.3%
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.
“It is important to view enforcement as one of the tools available to achieve compliance. Enforcement in and of itself is not a goal – compliance is the goal.”

-EGLE C&E Policy & Procedure
Types of Enforcement

Administrative  Civil  Criminal
Administrative

- Identification of a violation by EGLE.
- EGLE is required to document the violation.
  - Compliance Communication
  - Violation Notice
  - Request for Information
- This is the 1st opportunity to make corrective actions!
Violation Notices

CERTIFIED MAIL

Mr. John Smith
123 Main Street
Lansing, Michigan 48909

Dear Mr. Smith:

SUBJECT: Second Violation Notice

The Department of Environmental Quality Violation Notice, VN No. 0010123 on the Water Resources Protection Act, NREPA, as amended, of the MCL promulgated thereunder being 2005,

Company has not returned to comply with the Notice.

ENFORCEMENT NOTICE

SUBJECT: Enforcement Notice -- ABC Company

The Department of Environmental Quality (DEQ), Water Resources Division (WRD), Lansing, has issued a Notice of Violation (No. 10123) to the

requiring immediate correction. This Notice is based on observed violations of laws and regulations as described herein.

Please take immediate corrective action to address the issues identified in this Notice. Failure to comply with this Notice may result in enforcement actions, including potential civil penalties.

EGL
Escalated Enforcement Pathways

Enforcement Notice

- Administrative Consent Agreement
- Civil Litigation
  - Consent Judgment
  - Trial
- Criminal Prosecution
Civil Enforcement

- Large Resource impacts
- AG will be involved
- Process escalates as needed
- Restoration is primary consideration
- May involve financial penalties
- Generally, settle by a Mutual Agreement (ACO)
CIVIL LITIGATION

- EGLE refers the matter to the Attorney General’s Office
- Attorney General files a complaint
- Resolution is in the form of a Consent Judgment or Trial
Criminal Prosecution

- Referral to Environmental Investigation Section (EIS)
- Civil Prosecution not warranted
- Misdemeanor
- May involve financial penalties
- Generally settled through Court Order or Jury Verdict
Summary

- The EGLE’s Enforcement Process is usually progressive.
- The best option is to correct violations quickly and completely.
- Violations have to be documented by EGLE staff.
- If a matter ends up in civil enforcement, a mutual agreement is usually better for all parties involved.
- The purpose of enforcement to ensure and encourage compliance with State Laws.
Questions?