EXHIBIT 9. Comparison of Trade-Offs Between Potential Wetland Program Funding Options

	Costs borne largely by			
	Direct beneficiaries	Indirect beneficiaries*	Political feasibility	Long-term, sustainable
Recommended Approach				
Unclaimed Bottle Deposit Fund		X	○	○
Moderate Increase in Wetland Permit Fees	X		○	○
Other Funding Options				
General Fund		X	○	○
Bond Funding		X	●	○
Severance Taxes	X	X	○	○
Special Purpose Sales Tax		X	●	○
Special or Transaction Fee Programs		X	○	○
Related Permit/License Fees	X	X	●	○
Real Estate Transfer Tax/Deed Recording Fees		X	○	○
Increased Federal Funding		X	●	○
Foundation Support		X	●	●

SOURCE: PSC, based on analysis of data and best practices

○ politically feasible; mostly steady, sustainable funding over a long period of time

○ some moderate to significant political challenges; somewhat steady, sustainable funding over the medium to long term

● substantial political obstacles; unsustainable, short term, or insufficient funds

References

Alexander, Jeff. October 27, 2011. "Is State Losing its Love of Fish?" *Bridge Magazine*. [Online, accessed 3/10/12.] Available: http://bridgemi.com/2011/10/is-state-losing-its-love-of-fish/#.T2eXg2WbtkR.

BallotPedia. June 30, 2011. *Iowa Natural Resources and Outdoor Recreation Trust Fund Amendment.* [Online, accessed 3/2/12.] Available: http://ballotpedia.org/wiki/index.php/Iowa_Natural_Resources_and_Outdoor_Recreation_Trust_Fund_Amendment,_Measure_1_%282010%29.

California Resources Agency (CRA). 1998. *Preserving California's Natural Heritage] Appendix 3: Conservation Efforts in Other States.* [Online, accessed 3/27/12.]Available: http://ceres.ca.gov/planning/conservation_guidebook/OtherStates.pdf.

———. 2012. California Proposition 84 Overview website. [Online, accessed 2/10/12.] Available: http://bondaccountability.resources.ca.gov/p84.aspx.

Environmental Law Institute (ELI). March, 2008. *State Wetland Protection: Status, Trends & Model Approaches.* A 50-state study by the Environmental Law Institute, with support from the U.S. Environmental Protection Agency. Washington, D.C.: Environmental Law Institute. [Online, accessed 2/1/12.] Available: http://www.elistore.org/reports_detail.asp?ID=11279&topic=Wetlands.

Federation of Tax Administrators. 2003. *Survey of State Income Tax Check Off Programs.* [Online, accessed 2/24/12.] Available: http://www.taxadmin.org/fta/rate/Checkoff03.html.

Fish, Kim, and Cindy Masterson, Michigan Department of Environmental Quality. Personal communications in December 2011, January and February, 2012.

Louisiana Department of Revenue. N.d. Severance taxes website. [Online, accessed 3/20/12.] Available: http://rev.louisiana.gov/sections/business/severance.aspx.

Michigan Initiated Law 1, 1976, Section 445.573c. [Online, accessed 3/15/12.] Available: http://www.legislature.mi.gov/%28S%285mvxzl45ldptzwezsa10dbfm%29%29/mileg.aspx?page=getObject&objectName=mcl-Initiated-Law-1-of-1976.

Michigan Department of Environment and Natural Resources (MDNRE, now the Michigan Department of Environmental Quality). 2010. *Michigan Guide to Environmental, Health and Safety Regulations.* 6th Ed. Lansing, Mich.: MDNRE.

Michigan Department of Environmental Quality (MDEQ). January 15, 2010. *An Overview of Michigan's Wetland Program.* Presentation to the Michigan Wetlands Advisory Council. Available on request from the MDEQ.

Michigan 95th Legislature. 2009. Public Act 120 of 2009. [Online, accessed 3/7/12.] Available: http://www.legislature.mi.gov/documents/2009-2010/publicact/pdf/2009-PA-0120.pdf.

Michigan State Budget Office. February 17, 2011. Executive Budget Fiscal Years 2012 and 2013. [Online, accessed 3/2/12.] Available: http://michigan.gov/documents/budget/1_345974_7.pdf.

———. N.d. Glossary of terms. [Online, accessed 3/12/12.] Available: http://www.michigan.gov/budget/0,1607,7-157-11460_11541---,00.html.

Michigan Wetlands Advisory Council, General Permitting, Program Funding, and Public Outreach Subcommittee. 2011. Minutes from June 9, 2011, and July 28, 2011, meetings. [Online, accessed 3/12/12.] Available: http://www.michigan.gov/documents/deq/wrd-wac-general-permitting-funding_367796_7.pdf

Minnesota Department of Natural Resources. 2012. Clean Water, Land, and Legacy Amendment. [Online, accessed 3/17/12.] Available: http://www.dnr.state.mn.us/news/features/amendment.html.

Minnesota Office of the Revisor of Statutes. 2012. Minnesota Session Laws. [Online, accessed 3/12/12.] Available: https://www.revisor.leg.state.mn.us/laws/?key=56967.

Montana Legislative Fiscal Division. September 2010. *Montana's Oil & Gas Production Tax Fiscal Pocket Guide*. [Online, accessed 3/20/12.] Available: http://www.leg.mt.gov/content/Publications/fiscal/leg_reference/Brochures/2010-Oil-and-Gas.pdf.

New York Department of Environmental Conservation. 2012. Freshwater Wetlands Permit Program: Application Procedures, Pre-Application Planning. [Online, accessed 2/15/12.] Available: http://www.dec.ny.gov/permits/6277.html.

New Jersey Division of Environmental Protection (NJDEP). March 2, 2012. Division of Land Use Regulation. [Online, accessed 2/27/12.] Available: http://www.nj.gov/dep/landuse/.

New Jersey Office of Management and Budget. February 21, 2012. *State of New Jersey: the Governor's FY 2013 Budget*. [Online, accessed 3/21/12.] Available: http://www.state.nj.us/treasury/omb/publications/13budget/.

Ohio Environmental Protection Agency. N.d. *Isolated Wetland Permits and 401 Water Quality Certifications in Ohio: State Fiscal Year 2010*. Online, accessed 3/15/12.] Available: http://www.epa.ohio.gov/portals/35/401/IWP_Rep_2010.pdf.

Public Opinion Strategies and Fairbank, Maslin, Maullin, and Associates. June 1, 2004. *Lessons Learned Regarding the Language of Conservation from the National Research Program.* Memorandum to The Nature Conservancy and Trust for Public Land. [Online, accessed 3/28/12]. Available: http://www.dnr.state.md.us/irc/conservationcoursedocs/lesson8/languageofconservation.pdf.

Sefton, Josh. July/August 2009. *A History of Michigan's Wetland Protection Program and Comparison with the Federal Program.* Lansing, Mich.: Senate Fiscal Agency.

State Environmental Resource Center. Conservation Funding Policy Issues Package. [Online, accessed 3/12/12.] Available: http://www.serconline.org/conservationfunding/legislation.html

Tennessee Parks and Greenways Foundation. Tennessee Parks and Greenways Foundation website. [Online, accessed 3/20/12.] Available:http://tenngreen.org/about-us/education-and-advocacy/forever-green/index.html.

U.S. Environmental Protection Agency, Water Division. March 21, 2012. Wetland Program Development Grants website. [Online, accessed 3/29/12.] Available: http://water.epa.gov/grants_funding/wetlands/grantguidelines/index.cfm.

U.S. Department of Commerce, National Oceanic and Atmospheric Administration.. Ocean & Coastal Resource Management (Coastal Zone Management Program website). [Online, accessed 3/29/12.] Available: http://coastalmanagement.noaa.gov/about/czma.html#section309U.S. Supreme Court.

January 2001. *Solid Waste Agency of Northern Cook County (SWANCC) v. United States Army Corps of Engineers (Corps),* 531 U.S. 159. [Online, accessed 4/2/12.] Available: http://supreme.justia.com/cases/federal/us/531/159/case.html.

Wisconsin Department of Natural Resources (WDNR). August 21, 2008. *Wisconsin's Wetland Regulatory Program.* [Online, accessed 2/15/12.] Available: http://dnr.wi.gov/wetlands/documents/OverviewWIRegulatoryProg.pdf

Wisconsin Legislature. February 29, 2012. 2011 Wisconsin Act 118 (takes effect July 1, 2012) [Online, accessed 3/28/12.] Available: https://docs.legis.wisconsin.gov/2011/related/acts/118.

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING

RICK SNYDER
GOVERNOR

DAN WYANT
DIRECTOR

MINOR PROJECT CATEGORIES IN THE STATE OF MICHIGAN

October 31, 2011

Established Under Part 301, Inland Lakes and Streams; Part 303, Wetlands Protection; and Part 325, Great Lakes Submerged Lands, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as Amended (NREPA)

BACKGROUND INFORMATION

PURPOSE

Part 301, Part 303, and Part 325 of the NREPA authorize the Department of Environmental Quality (DEQ), Water Resources Division (WRD), to define types of regulated activities that would be expected to have only minor impacts and that can, therefore, be reviewed through an expedited permit application process. This document defines those activities that the WRD has determined are Minor Project (MP) categories and also defines the legal authority and limitations for their use. These categories do not alter or replace current exemptions, but provide a mechanism for expedited processing of certain activities that are not exempt.

The purpose of the MP categories is to allow the WRD to evaluate applications for many minor activities without the delay of public noticing specific projects. The objective of the MP categories is to reduce the time and cost of the permit process for applicants proposing minor activities and to reduce the costs of administering the program while protecting aquatic resources.

Please note that the MP categories do not define projects that will be issued, but only those that may be considered for accelerated processing. Applications under an MP category may be issued, modified, or denied. Permits will be issued under an MP category only if it is determined that the proposed activity is in accordance with the criteria and requirements of the NREPA.

MINOR PROJECT PROCEDURES

A person seeking a permit under an MP category must submit a permit application on a form supplied by the WRD at www.michigan.gov/jointpermit. A preliminary determination of whether an application may be processed under an MP category is made by WRD staff when the application is received. Applications processed under MP procedures are typically reviewed without issuance of a public notice. However, before approving a specific project to proceed under an MP category, the WRD may provide public notice. A site inspection may also be conducted. The DEQ will provide written authorization for an approved project, or will otherwise notify the applicant in writing of the decision on the application.

If at any time in the review process, it is determined that an activity in a proposed project, although within an MP category, is likely to cause more than minimal adverse effects on the environment or aquatic resources, including high-value aquatic habitats, the WRD may require the application be processed as an individual permit application. The processing as an individual permit application may require the applicant to provide additional information and an additional application fee.

REGULATORY AUTHORITY

Part 301 (Section 30105), Part 303 (Section 30312), and Part 325 (Section 32512a) provide that the WRD, after notice and opportunity for a public hearing, may establish MP categories of activities and projects that are similar in nature, have minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. An MP category cannot be valid for more than 5 years.

GENERAL CRITERIA FOR REVIEW

Part 301, Part 303, and Part 325 specify the criteria that must be met before a permit may be issued. These general criteria, as well as the specific criteria detailed later in the MP categories, must be met before the WRD can issue a permit under an MP category. Adverse impacts must be avoided and minimized to the greatest extent possible, and mitigation may be required.

EXCLUSIONS

The types of activities described in this document can typically be processed under MP procedures. However, some activities will not qualify for this type of processing even if the listed criteria are met. Applications will not qualify for consideration under these categories if:

A) It is determined that the proposed project would constitute a "major discharge of dredged or fill materials" subject to federal review as defined in the Memorandum of Agreement between the DEQ and the U.S. Environmental Protection Agency (U.S. EPA).

B) The activity is associated with sensitive natural resources including:

1. A federally designated wild and scenic river.
2. A state or federally designated wilderness or environmental area.
3. A federally designated marine sanctuary.
4. A state or federally listed or proposed threatened or endangered species (unless alternative procedures developed by the WRD are followed to coordinate with federal agencies, or the landowner has obtained a letter of no impact from the Department of Natural Resources [DNR]).
5. An identified historic or archeological area.
6. An identified recharge area for drinking water aquifers.
7. An identified rare or unique ecological type.

C) The activity will disturb sediments within an area known or suspected to contain toxic pollutants (unless testing in accordance with WRD procedures provided by the applicant shows that the material does not contain toxic pollutants).

D) The WRD determines that a specific activity that would generally qualify under an MP category would, due to the proximity of other projects and the characteristics of the aquatic resources, cause more than minimal adverse environmental impacts;

E) The project also requires a permit under Part 31, Water Resources Protection; Part 301; Part 303; Part 315, Dam Safety; or Part 325 of the NREPA but does not meet one of the GP or minor project (MP) categories under those parts.

F) The project also requires a permit under Part 323, Shorelands Protection and Management; or Part 353, Sand Dunes Protection and Management, of the NREPA.

NEED FOR OTHER PERMITS

A permit under an MP category does not remove the need for other applicable local, state, or federal permits.

EXPIRATION DATE

These MP categories modify and replace all existing MP categories under Part 301, Part 303, and Part 325 and shall expire on August 11, 2016, unless revoked or modified before that date.

Issued by: William Creal Date: 10/31/2011

William Creal, Chief
Water Resources Division
Department of Environmental Quality

INDEX OF MINOR PROJECT CATEGORIES

1. Bioengineering Practices for Stabilization of Inland Lake Shorelines 1
2. Bioengineering Practices for Streams 2
3. Boat Hoist 3
4. Boat Ramp 3
5. Cleanup of Hazardous and Toxic Waste 4
6. Completed Enforcement Actions 4
7. Cranberry Production - Expansion of Existing Operations 5
8. Culverts - Large 5
9. Culverts - Wetland Equalizer 6
10. Dock 7
11. Drawdown 7
12. Dredging - New 8
13. Driveway 8
14. Fences 9
15. Fills Associated with Residential Developments 9
16. Fills for Swim Areas 9
17. Fills - Minor 10
18. Fish and Wildlife Habitat Structures 10
19. Livestock Crossings 10
20. Maintenance of Drains 11
21. Maintenance Dredging on Inland Lakes and Streams 11
22. Maintenance Dredging on the Great Lakes and Section 10 Waters 12
23. Maintenance and Repair of Serviceable Structures 12
24. Mooring Buoy 13
25. Oil Spill Cleanup 13
26. Oil, Gas, and Mineral Well Access Roads 13
27. Outfall Structures and Associated Intake Structures 14
28. Pads for Farm Buildings 14
29. Pond: Inland Lakes and Streams 14

30. Pond: Wetlands 15
31. Public Transportation Projects 15
32. Removal of Structures 17
33. Replacement of Existing Seawalls 17
34. Reshaping Existing Drainage Ditches 18
35. Residential Construction on Properties Owned Prior to 1980 19
36. Reversion of Temporary Wetland Enhancement, Restoration, and Establishment 19
37. Riprap Shoreline Protection 20
38. Septic System Replacement 20
39. Small Dam Removal 21
40. Spring Piles and Piling Clusters 21
41. Storm Water Management Facilities: Inland Lakes and Streams 22
42. Storm Water Outfall Structures 22
43. Temporary Construction, Access, and Dewatering 22
44. Temporary Recreational Structures 23
45. Utility Line Activities 23
46. Wetland Habitat Restoration and Enhancement 25

General Conditions 27
Authorization Conditions 28

MINOR PROJECT CATEGORIES

The following activities are incorporated into this list of MP categories. The proposed activity must meet the specific criteria of a category in addition to the General Criteria, Exclusions, and General Conditions. Each category lists the statute(s) to which it applies.

1. Bioengineering Practices for Stabilization of Inland Lake Shorelines

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

Bioengineering practices (also known as "soft" or "green" engineering) are used to stabilize inland lake shorelines as needed to prevent erosion and restore natural shorelines while protecting and enhancing fish and wildlife habitat and other natural features associated with inland lakes. Bioengineering uses a combination of native plantings and natural or biodegradable materials to engineer shoreline protection that, to the extent possible, mimics and or enhances the natural landscape.

The specific practices included in this MP category are not recommended as the sole means of correcting existing erosion problems where wind and wave energy are excessive or where eroded banks exceed 3 feet in height. However, these measures will typically be suitable for habitat enhancement, prevention of erosion problems, or to stabilize eroding banks at locations where:

- The longest unobstructed distance across the lake from the proposed project site is less than one mile.
- The proposed project site is not adjacent to a heavily used boating access point or marina.
- The proposed project site is not located on an unprotected point, headland, or island where erosive forces are high.
- Site-specific conditions warrant bioengineering.

This MP category is not applicable to Great Lakes shoreline areas, streams, and rivers. It is also not applicable to inland lakes where shorelines are stable, and where natural wetland habitat would be degraded by installation of these structures.

This MP category includes installation of bioengineering practices on inland lakes as necessary to prevent or control erosion, using the following bioengineering practices:

- 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 and allowing for the free growth of plants, if necessary, to stabilize biological materials. Stone used for this purpose shall be a maximum 24-inch diameter rock and shall consist of natural field stone or rock (broken concrete is not allowed). Natural field stone or rock includes crushed quarry rock.
- Temporary placement of fiber rolls or similar materials to serve as wave breaks or barriers placed not more than 5 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.

The installation of bioengineering practices must meet all of the following:

- This MP category shall be limited to less than 500 linear feet of shoreline per project.
- Bioengineered shore protection structures shall not be permitted under this MP category where the top of the bank is more than 3 feet above the ordinary high water mark of the lake.
- Vegetation, including plantings and other potentially viable material such as live stakes, brush bundles, or other gathered woody material, shall be comprised only of plant species that are considered native to Michigan according to the Floristic Quality Assessment for the State of Michigan.

- Engineered plant material, such as jute and coconut fabric, shall be comprised of inert plant fiber that may be nonnative.
- Excavation and backfill shall be permitted under this MP category only to the extent necessary to stabilize slopes and to place bioengineering structures. Excavation or fill below the water's edge shall be authorized only to support the reestablishment of native vegetation, to install temporary wave breaks, or to restore and stabilize a severely eroded bank.
- All natural and engineered stabilization materials shall be firmly staked and otherwise secured using biodegradable materials to prevent movement due to wind, waves, high water, or ice.
- This MP category shall not be used to authorize the destruction or alteration of areas of existing native wetland or aquatic vegetation or the expansion of beach areas.

2. Bioengineering Practices for Streams

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

Bioengineering practices are used to stabilize stream banks where needed to prevent erosion, and to restore natural stream banks while protecting and enhancing fish and wildlife habitat and other natural features associated with streams. Bioengineering uses a combination of native plantings and natural or biodegradable materials to engineer shoreline protection that, to the extent possible, mimics and/or enhances the natural landscape.

This MP is not applicable to Great Lakes or inland lakes shorelines. It is also not applicable to streams where banks are stable, and where natural wetland habitat would be degraded by installation of these structures.

This MP category includes installation of bioengineering practices on streambanks as necessary to prevent or control erosion using the following bioengineering practices:

- Placement of biological erosion control structures, including but not limited to fiber rolls, fiber mats, joint plantings, branchpacking, live stakes, brush mattresses, tree revetments, brush bundles, live fascines, and plantings of native vegetation.
- Limited placement of natural stone or rock rip rap, covering no more than 300 feet of the length of the project and allowing for the free growth of plants, if necessary, to stabilize biological materials.
- Rock riprap placed at the toe of the streambank where needed to prevent scouring. Riprap shall be properly sized based on velocity and be limited to consist of natural field stone or rock (broken concrete is not allowed). Broken concrete, free of protruding metal, contaminants, and other foreign material, may be allowed in legally established drains, except those constituting mainstream portions of certain natural watercourses identified in rule.
- Maintenance of previously authorized bioengineering structures.

The installation of bioengineering practices must meet all of the following:

- This MP category shall be limited to less than 500 linear feet of streambank per project.
- Excavation and backfill shall be permitted under this MP category only to the extent necessary to stabilize slopes and to place bioengineering structures. Excavation or fill below the water's edge shall be authorized only to support the reestablishment of native vegetation or to restore and stabilize a severely eroded bank.
- Vegetation, including plantings and other potentially viable material such as live stakes, brush bundles, or other gathered woody material, shall be comprised only of plant species that are considered native to Michigan according to the Floristic Quality Assessment for the State of Michigan.
- Engineered plant material, such as jute and coconut fabric, shall be comprised of inert plant fiber that may be nonnative.
- This MP category shall not be used to authorize the destruction or alteration of areas of existing native wetland or aquatic vegetation or the expansion of beach areas.

3. Boat Hoist

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

The construction of boat hoist for single-family residential, recreational watercraft use that meets all of the following:

- This MP is limited to one permanent boat hoist serving one single-family residential property.
- The structure shall allow for the flowage of littoral materials and water.
- The structure will not unreasonably interfere with the navigability or boatability of the water involved or interfere with the riparian rights or use of the waters by others.
- The structure shall not have permanent covers, sides, or roofs. Temporary covers made of canvas or fabric can be included.
- The structure shall be placed in the center of the property or at least 1.5 times the boat hoist length from any property lines, unless it is not feasible based on site conditions.
- For Great Lakes and Section 10 waters under the federal Rivers and Harbors Act, the length from the shoreline or size of the proposed structure is not greater than the length or size of similar structures in the vicinity and on the waterbody.
- For inland lakes and streams, the boat hoist shall be placed in boatable water or at a length from the shoreline that is not greater than the length of similar structures in the vicinity and on the waterbody, whichever is the minimum necessary. Inland lake and stream boat hoists shall not occupy more than 400 square feet for the entire structure including walkways.

4. Boat Ramp

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

Boat ramp activities that are either:

1. Construction of a noncommercial boat ramp that meets all of the following:

   - This MP is limited to one boat ramp serving one single family residential property.
   - The placement of fill material does not exceed 25 cubic yards of rock, crushed stone, or gravel placed into forms, or precast concrete planks or slabs.
   - The boat ramp does not exceed 12 feet in width.
   - Dredging for construction of the boat ramp is limited to 25 cubic yards. Dredging for access channels is not included in this category.
   - The ramp shall be placed in the center of the property or at least 20 feet from any property lines, unless it is not feasible based on site conditions.
   - This category is not allowed within a wetland.
   - Public boat launches should be utilized as an alternative when available.

2. Improvement of an existing public boat ramp that meets all of the following:

   - The property is owned by a local, state, or federal agency.
   - All construction is limited to the existing footprint.
   - The placement of fill material does not exceed 25 cubic yards of rock, crushed stone, or gravel placed into forms, or precast concrete planks or slabs.
   - Dredging for construction of the boat ramp is limited to 25 cubic yards. Dredging for access channels is not included in this category.
   - This category is not allowed within wetland.

3. Maintenance of a boat ramp that meets all of the following:

   - The maintenance is in-place and in-kind with no design or materials modification.
   - The placement of fill material does not exceed 25 cubic yards of rock, crushed stone, or gravel placed into forms, or precast concrete planks or slabs.
   - Dredging for construction of the boat ramp is limited to 25 cubic yards. Dredging for access channels is not included in this category.
   - This category is not allowed within a wetland.

5. Cleanup of Hazardous and Toxic Waste

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

Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are either:

1. Performed, ordered, or sponsored by a government agency with established legal or regulatory authority, or

2. Court ordered remedial action plans or related settlements.

This category does not include the establishment of new disposal sites or the expansions of existing sites used for the disposal of hazardous or toxic waste. The plan shall minimize, to the most practicable extent possible, impacts to waters or wetlands.

The waters of the state, including wetlands, must be restored to the most practicable extent possible.

The DEQ will coordinate with U.S. EPA 404 Program staff and DEQ solid and hazardous waste management program staff on all applications submitted under this category.

6. Completed Enforcement Actions

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

Completed enforcement actions for mitigation, restoration, or environmental benefit in compliance with either:

1. The terms of a final written nonjudicial settlement agreement entered into between the DEQ and the applicant resolving a violation notice or order to restore issued by the DEQ for unauthorized activities, provided that both:

   - The unauthorized activity affected less than 1/3 acre of wetlands; and
   - The nonjudicial settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity covered by this MP category.

2. The terms of a final state court decision, consent decree, or judicial settlement agreement resulting from an enforcement action brought by the DEQ. The State of Michigan must be a party to the law suit or have reviewed and approved the consent or settlement agreement.

For either item 1 or 2 above, compliance is a condition of this MP category itself. Any authorization issued under this MP category may be revoked if the permittee does not comply with the terms of this MP category or the terms of the nonjudicial settlement agreement or of the court decision, consent decree, or judicial settlement agreement or if the permittee fails to complete the work by the specified completion

date. This MP category does not apply to any activities not subject of the court decision, decree, settlement agreement, or nonjudicial settlement agreement that are not for the purpose of mitigation, restoration, or environmental benefit.

The DEQ will coordinate with U.S. EPA 404 Program staff in accordance with the Memorandum of Agreement between the DEQ and the U.S. EPA.

7. Cranberry Production - Expansion of Existing Operations

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

The dredging, flooding, filling, and clearing of wetlands at established cranberry production operations where the total acreage of disturbance (including areas flooded and/or excavated for reservoir expansion) does not exceed 10 acres of wetlands for the following specified activities:

- Expansion of existing cranberry beds.
- Squaring-off existing cranberry beds.
- Construction of new cranberry beds adjacent to existing beds.
- Rehabilitation of abandoned beds (clearing, leveling, etc.)
- Construction of a dike for subdivision of an existing reservoir.
- Construction/extension of dikes for reservoir expansion.
- Construction of new water control structures.

The proposed activity must meet all of the following:

- The activity must not result in a net loss of wetland acreage (cranberry beds and associated cranberry production areas shall not be counted as wetland acreage for the no net loss determination).
- This category is only available for impacts greater than 0.1 acre if the use of approved wetland mitigation banking credits is proposed by the applicant and it successfully replaces lost functions and values taking into account features such as watershed location, wetland type, habitat diversity, and future land use. Purchase of the approved mitigation banking credits will be required prior to issuance of the permit. This category cannot be used in service areas where approved mitigation banking credits are not available.
- Only 1 permit under this and future MP categories may be granted per cranberry production operation. For the purposes of this MP, cranberry production operation is defined as a group of (usually) contiguous beds and the water storage and handling system that serves them, all of which are managed as a unit.
- This MP does not include any dredging or filling related to other cranberry production activities such as warehouses, processing facilities, or parking areas.
- This MP does not include any connection (inlet or outlet) to inland lakes, streams, or Great Lakes waters.

8. Culverts - Large

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

New or replacement culverts 100 feet or less in length that meet all of the following:

- The culvert must be bottomless (3-sided), or if the structure has a bottom then the invert elevation must be buried below the stream bottom 1/6 of the bankfull width up to a maximum buried depth of 2 feet.

- Structures shall be set on the same slope as the deepest part of the riffle channel measured from the upstream riffle to a downstream riffle outside of the effects of any existing culvert, or for legally established drains, at an approved design slope. For stream crossings with a slope of 3% or greater and more than 3 feet in span, a bottomless (3-sided) structure or bridge is required to meet this category.
- The structure must span a minimum of the bankfull width of the stream.
- For the replacement of perched culvert (i.e., a culvert with an outlet invert elevated above the downstream water surface, allowing a freefall condition), grade control structures may be required.
- The structure shall be installed to align with the centerline of the stream at both the inlet and outlet ends. If needed, up to 25 feet of the channel at either end can be reshaped to allow for a smooth transition. The bankfull width must be maintained for any reshaped areas. Meanders upstream or downstream of the culvert shall not be eliminated when creating a smooth transition.
- The structure will allow passage of watercraft that could be expected to navigate the water involved.
- The placement of riprap shall be limited to the minimum necessary to ensure proper stabilization of the side slopes and fill in the immediate vicinity of the culvert. Riprap shall not extend upstream or downstream of the culvert more than 25 feet on each end. Riprap shall be properly sized based on velocity and consist of natural field stone or rock (broken concrete is not allowed). Broken concrete, free of protruding metal, contaminants, and other foreign material, may be allowed in legally established drains except those constituting mainstream portions of certain natural watercourses identified in rule.

Bankfull is the width of the stream that corresponds to the depth where water fills a main channel to the point of overflowing. In instances where the applicant is unsure of the bankfull width, it is recommended that the applicant contact DEQ staff and request a preapplication site review. In legally established drains (except those constituting mainstream portions of certain natural watercourses identified in rule), if bankfull indicators are not present, the structure span may be determined by calculating the 1.5-year stream width at the 1.5-year flow that is based on a stable stream width and depth.

For stream crossing locations where the drainage area is 2 square miles or greater, the crossing must meet one of the following:

1. The applicant must submit, and receive DEQ approval of, a certification by a licensed engineer with supporting hydraulic computations stating that either the replacement structure, including any weir flow, is designed with equal or greater hydraulic capacity that does not cause a harmful interference OR a new structure, including weir flow, is designed to pass the 100-year flood without causing a harmful interference.
2. For replacement culverts:
   - The proposed structure must have an equal or greater hydraulic capacity when compared to the existing culvert.
   - The proposed road grade shall not exceed that of the existing road grade by more than 4 inches, unless the road grade has been shown to be above the 100-year floodplain elevation.
3. For new culverts:
   - The fill over the culvert is not more than 1.5 feet.
   - The approach fill slopes to natural ground elevations within 10 feet of either side of the structure, unless the fill has been shown to be above the 100-year floodplain elevation.

9. Culverts - Wetland Equalizer

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

The installation of equalization culverts in wetlands that meet all of the following:

- The culvert is a minimum diameter of 18 inches.

- The culvert is installed at the proper elevation for the purpose of water level equalization and must be buried 20% of the culvert diameter.
- The culvert provides for the free flow of surface water or the movement of organisms between portions of a wetland system.
- The culvert shall not increase drainage of any existing wetland areas.

10. Dock

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

The construction of a dock for single-family residential, recreational watercraft use that meets all of the following:

- This MP is limited to 1 permanent dock serving 1 single family residential property.
- The structure will not unreasonably interfere with the navigability or boatability of the water involved or interfere with the riparian rights or use of the waters by others.
- The structure shall be a linear single pier with no perpendicular extensions.
- The structure shall not have roofs, sides, platforms, or decks.
- The structure shall allow for the flowage of littoral materials and water.
- The structure shall be placed in the center of the property or at least 1.5 times the dock length from any property lines, unless it is not feasible based on site conditions.
- For Great Lakes and Section 10 waters under the federal Rivers and Harbors Act, the length or size of the proposed structure is not greater than the length or size of similar structures in the vicinity and on the waterbody.
- For inland lakes and streams, the structure shall be of reasonable length to boatable water or at a length from the shoreline that is not greater than the length of similar structures in the vicinity and on the waterbody, whichever is the minimum necessary. The structure shall not exceed a width of 4 feet unless the applicant demonstrates their need for construction of a wider dock.

Seasonal docks to facilitate private noncommercial recreational use of the water do not require a permit if the dock does not unreasonably interfere with the use of the water by others or interfere with water flow.

11. Drawdown

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

Drawdown of inland lakes and impoundments for court orders, inspections, repairs, or emergencies that are one of the following:

1. A temporary drawdown for the purpose of inspecting the integrity of the impounding structure. Drawdown time shall be no longer than necessary to complete the activity with a maximum of 30 days.

2. An emergency drawdown required by the DEQ under Part 315 or the Federal Energy Regulatory Commission.

3. A temporary drawdown for minor repairs of an impounding structure. Drawdown time shall be no longer than necessary to complete the activity with a maximum of 45 days, including any inspection time.

4. A drawdown authorized by court order under the provisions of Part 307, Inland Lake Levels, of the act if the court has incorporated the DEQ requirements into the court order or concurred in department recommendations to address environmental concerns under Part 301 and Part 303.

The drawdown must meet all of the following:

- The drawdown and refill rate shall not exceed 6 inches per day. Refill must begin when inspection or repair is complete.
- The drawdown and refill shall not negatively impact the downstream receiving waters, habitat, or structures.
- The applicant shall notify affected property owners prior to drawdown.
- The applicant will monitor the drawdown and rescue stranded fish and mussels.

12. Dredging - New

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

New dredging that meets all of the following:

- Dredging shall be a maximum of 25 cubic yards and 1000 square feet.
- The activity will not disturb sediments in an area known or suspected to contain toxic pollutants (unless testing accordance with WRD procedures provided by the applicant shows that the material does not contain toxic pollutants).
- All dredged or excavated materials shall be disposed of in an identified upland (nonfloodplain, nonwetland) site.
- The applicant has defined the purpose of the project and demonstrated that impacts have been avoided and minimized.
- This MP category does not include dredging in wetlands.

13. Driveway

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

Construction of a new driveway or the widening of an existing driveway that meets all of the following:

- Any upland on the property or other alternatives, such as obtaining a permanent easement for access from adjacent upland if available or shared driveway, is utilized to the greatest degree possible.
- The location of the driveway is at the least damaging place on the property (e.g., as close to any upland edge as possible or terminating in the upland nearest to the road access) and the driveway crosses the shortest wetland area or area of least impact.
- This MP category cannot be used to authorize a wetland crossing to achieve proximity to lakes, streams, or other features if an upland building site is available without crossing the wetland.
- The portion or portions of the driveway that pass through wetlands are restricted to a total of 16 feet in base width (includes the width of any existing drive and associated fill), or are of clear span or open pile construction, and are no more than a total of 200 linear feet.
- The driveway may be wider than 16 feet at the intersection with the public road if the applicant provides proof that the additional width is a requirement of a public transportation agency.
- No ditches may be placed in the wetland in association with the driveway.
- The driveway must terminate at a buildable upland site.
- Culverts shall be placed to maintain the free flow of surface and subsurface water and the movement of organisms and otherwise meet Category 9. Culverts - Wetland Equalizer.
- Fill shall be placed on filter fabric, or equivalent material, if warranted by soil conditions.

14. Fences

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

Construction of fences around residential, agricultural, airport, and other security areas that are one of the following:

1. Residential Fences. Residential open construction fences elevated above the wetland on poles to allow for migration of reptiles, amphibians, and other small wildlife. Fences shall be limited to 5 feet in height and 150 feet in total length through a wetland.

2. Livestock Fences. Open construction wire, plastic, or wooden fences elevated above the wetland on poles, with or without electric wires, designed to control livestock and limited to 5 feet in height through wetlands.

3. Airport and Other Security Fences. Perimeter fences placed for security and safety purposes at airports as mandated by the Federal Aviation Administration, at other facilities as mandated by the U.S. Department of Homeland Security, or at military bases. Mowing of up to 12 feet on either side of the fence is allowed under this subcategory.

This MP category does not include:

- Fences that impact any inland lake or stream.
- Fences designed to exclude wildlife from wetlands.
- Fences to provide cervidae or swine enclosures.
- Placement of fill for access roads, berms, or any similar purpose, nor does it authorize excavation for drainage ditches.

15. Fills Associated with Residential Developments

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

Minor fills for roads and utilities associated with residential developments that meet all of the following:

- The placement of a maximum of 0.10 acres of wetland fill for the construction of roads and utilities associated with a multiple unit residential development or a residential subdivision.
- All upland on the property shall be utilized to the greatest degree possible.
- The development must be designed and constructed to avoid and minimize impacts to wetlands.
- Culverts shall be placed to maintain the free flow of surface and subsurface water and the movement of organisms.
- This MP does not include the placement of fill for lot development, houses, pole barns, driveways, parking lots, yards, storm water management, ditches, garages, lawns, storage sheds, deck foundations, septic fields, or access paths.
- This category does not apply to wetlands that are contiguous to the Great Lakes or connecting waters or wetlands that border inland lakes or streams.

16. Fills for Swim Areas

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

Minor fills for the creation, maintenance, or improvement of swimming areas in lakes and impoundments that meet all of the following:

- Swim areas shall not exceed 800 square feet with a maximum fill depth of 6 inches and a water depth of 4 feet.
- The fill shall consist of at least 50% peastone with the balance being sand.
- The width of the swim area is limited to half the lot width or 40 feet wide, whichever is smaller.
- Only 1 permit under this MP category may be authorized on the same parcel of property within any 5-year period. Subsequent fill requests for swim areas on the same parcel shall be limited to the previously permitted swim area.
- This MP category does not include filling in wetlands.

17. Fills - Minor

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

Minor fills for buildings, structures, or public trails or pathways that meet all of the following:

- The quantity of fill material does not exceed 25 cubic yards.
- The fill will not impact more than 1,000 square feet.
- All upland on the property shall be utilized to the greatest degree possible.
- This category can be used only once on a parcel of land.
- This category does not apply to wetlands that are contiguous to the Great Lakes or connecting waters or wetlands that border an inland lake or stream.

18. Fish and Wildlife Habitat Structures

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

Fish and wildlife habitat structures that meet all of the following:

- The property is owned and managed by a state or federal resource agency or by a private landowner who has received written support from the appropriate DNR, Fisheries Division and/or Wildlife Division biologist.
- The amount of excavation or fill shall be limited to minimum volumes necessary.
- The structure shall be anchored.
- The structure shall not interfere with navigation or adversely impact the natural flow of the stream.

This MP category does <u>not</u> include:

- Weirs or other structures that impede the flow of water or alter the water elevation on a site.
- Construction (i.e., excavation/dredging) of ponds or placement of berms or other structures that require placement of a significant volume of fill.
- The construction of haul roads or temporary access roads.

19. Livestock Crossings

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

The placement of riprap, concrete forms, and other suitable materials to facilitate the movement of livestock across a stream that meets all of the following:

- The width of the crossing for livestock to enter the stream shall not exceed 16 feet.
- The riprap, concrete forms, or other suitable material shall be placed to maintain the existing stream bottom and bank elevation. Excavation shall be limited to the minimum necessary to construct the crossing.
- Riprap shall extend to the top of bank or a minimum of 3 feet, whichever is greater.
- Riprap shall be appropriately sized and limited to the minimum amount necessary to accomplish the project and shall consist of natural field stone or rock (broken concrete is not allowed). Broken concrete, free of protruding metal, contaminants, and other foreign material, may be allowed in legally established drains, except those constituting mainstream portions of certain natural watercourses identified in rule.
- Swinging gates may be used to temporarily create a crossing for containing livestock.
- Riprap shall not be placed in any wetland areas or in any manner that impairs surface water flow into or out of any wetland areas.
- This category does not include livestock crossings for cervidae.

20. Maintenance of Drains

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

Nonexempt maintenance activities in legally established drains that meet all of the following:

- Maintenance shall not alter the cross section, depth, or location of the drain as originally constructed.
- Maintenance is limited to the removal of sediment, vegetation, or other obstructions.
- The work must be performed under the jurisdiction of a drain commissioner or drainage board as a maintenance activity pursuant to the drain code.
- Activities in the drain do not cumulatively exceed more than 1 linear mile total for a complete project.
- The area and extent of current wetlands will not be diminished.
- All dredged materials, including sediment deposits in structures (e.g., culverts), must be collected and disposed of outside of floodplains, unless exempt under Part 31, and wetlands, unless placed on top of existing spoil piles. Placement of dredged materials in wetlands on top of existing spoil piles shall not exceed 0.1 acre.
- This MP category does not apply to mainstream portions of certain natural watercourses identified in rule.

21. Maintenance Dredging on Inland Lakes and Streams

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

Excavation and removal of accumulated sediment for maintenance of previously dredged areas that meet all of the following:

- Dredging shall be a maximum of 1,000 cubic yards per 5-year period.
- Dredging shall be limited to previously authorized depths or controlling depths for ingress/egress, whichever is less.
- Only 1 permit under this MP category may be authorized on the same parcel of property within any 5-year period.
- The activity will not disturb sediments in an area known or suspected to contain toxic pollutants (unless testing in accordance with WRD procedures provided by the applicant shows that the material does not contain toxic pollutants).

- All dredged or excavated materials shall be disposed of in an identified upland (nonfloodplain, nonwetland) site.
- This MP category does not include dredging in wetlands.

22. Maintenance Dredging on the Great Lakes and Section 10 Waters

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

Excavation and removal of accumulated sediment for maintenance of previously dredged areas that meet all of the following:

- For Part 301, this MP includes only Section 10 waters under the federal Rivers and Harbors Act of 1899.
- Dredging shall be a maximum of 5,000 cubic yards per 5-year period.
- Dredging shall be limited to previously authorized depths or controlling depths for ingress/egress, whichever is less.
- Only 1 permit under this MP category may be authorized on the same parcel of property within any 5-year period.
- The activity will not disturb sediments in an area known or suspected to contain toxic pollutants (unless testing in accordance with WRD procedures provided by the applicant shows that the material does not contain toxic pollutants).
- All dredged or excavated materials shall be disposed of in an identified upland (nonfloodplain, nonwetland) site.
- This MP category does not include dredging in wetlands.

23. Maintenance and Repair of Serviceable Structures

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

The maintenance and repair of any previously permitted, currently serviceable structure that meet all of the following:

- This serviceable structure was previously permitted under Part 301 or Part 325. Serviceable means usable as is or with minor repair, but not so degraded as to essentially require reconstruction.
- The maintenance or repair does not alter the original use.
- Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make the repair are included in this MP category provided that the environmental impacts resulting from the entire repair are minimal. The total impact of the maintenance or repair cannot exceed the impacts originally authorized for the previously permitted structure.
- The repair will not adversely affect public trust values or interests, including, but not limited to, navigation, recreation, fish migration, or water quality.
- This MP may not be used to authorize any alteration of drains, which are not considered serviceable structures.
- This MP may not be used to construct, maintain, repair, or replace shore protection structures.

24. Mooring Buoy

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

One noncommercial mooring buoy that meets all of the following:

- The mooring buoy serves 1 single family residential property.
- The entire circular area swept out by the vessel moored at the buoy under all wind conditions will not interfere with navigation and the riparian rights associated with the adjacent riparian properties.
- The applicant must own a riparian parcel located landward of the buoy location (i.e., provide proof of ownership or warranty deed to the DEQ).
- The latitude and longitude of the buoy and a scaled site plan showing the distance of the buoy offshore has been provided to the DEQ.
- The buoy must be clearly marked with the DEQ and U.S. Corps of Engineers' file numbers in letters and numbers at least 1-inch high and of contrasting color to the background color of the buoy.
- The buoy must meet all relevant U.S. Coast Guard requirements and the requirements of Part 801, Marine Safety, of the NREPA.

25. Oil Spill Cleanup

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

Oil spill cleanup activities required for:

1. The containment and cleanup of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (Title 40 of the Code of Federal Regulations [CFR], Part 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR, Section 112.3, and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action.

2. The cleanup of oil releases in waters of the state from electrical equipment that are governed by the U.S. EPA's polychlorinated biphenyl spill response regulations at 40 CFR, Part 761.

The spill shall be reported as required by the Part 5 Rules, Spillage of Oil and Polluting Materials, promulgated pursuant to Part 31 of the NREPA.

The waters of the state, including wetlands, must be restored to the most practicable extent possible. Permanent loss of wetlands shall not exceed 0.1 acre.

The DEQ will coordinate with the U.S. EPA 404 Program staff on all applications submitted under this GP category.

26. Oil, Gas, and Mineral Well Access Roads

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

An access road for oil/gas drilling or mineral well drilling activities, where angle drilling from upland is not feasible and where the activity is of minor impact to the wetland on both an individual and cumulative basis, that meet all of the following:

- The access road where constructed in wetlands shall not exceed 20 feet in base width and 225 feet in length, and shall be placed on filter fabric or equivalent material.
- Culverts will be required, where necessary, to provide for the free flow of surface or subsurface water or to avoid restricting low flows and the movement of aquatic organisms.
- Immediately upon plugging the well, all fill material shall be removed, the original wetland contours restored, and the site stabilized with wetland seed native to Michigan and mulched if necessary.
- The applicant shall provide a restoration plan, including a construction sequence and timeline, defining how any permitted wetland fill will be removed and the site restored. The applicant shall notify the WRD prior to initiation of the restoration plan.

27. Outfall Structures and Associated Intake Structures

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

Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized or is otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System (NPDES) Program (Part 31 of the NREPA) and that meets all of the following:

- The construction of intake structures is not included in this category unless they are directly associated with an authorized outfall structure.
- The face of the outfall shall conform to the side slope of the bank and not extend into the receiving water to impair navigation or create shoreline pockets capable of trapping debris.
- Intake structures are not included in this category under Part 303.

28. Pads for Farm Buildings

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

Construction of building pads for farm buildings impacting a maximum of 0.50 acre of wetland within areas that have been in existing, ongoing agricultural production since at least 1980.

This category is only available for impacts greater than 0.1 acre if the use of approved wetland mitigation banking credits is proposed by the applicant and it successfully replaces lost functions and values taking into account features such as watershed location, wetland type, habitat diversity, and future land use. Purchase of the approved mitigation banking credits will be required prior to issuance of the permit. This category cannot be used in service areas where approved mitigation banking credits are not available.

29. Pond: Inland Lakes and Streams

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

Construction or enlargement of ponds and similar artificial waterways within 500 feet of an inland lake or stream that meets all of the following:

- The artificial watercourse (i.e., pond) has a surface area of less than 5 acres.
- The pond is not within an inland lake or stream (i.e., inline).
- All outflow structures shall meet the Storm Water Outfall Structures MP category.

- All dredged or excavated materials shall be disposed of in an identified upland (nonfloodplain, nonwetland) site.

30. Pond: Wetlands

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

Construction of a pond (or ponds) impacting a total of not more than 1/3 acre of wetland, or maintenance dredging of man-made ponds up to 1 acre in size that were previously permitted under Part 301 or Part 303, that meet all of the following:

- The pond is not within (i.e., inline) or directly connected to an inland lake or stream.
- All dredged or excavated materials shall be disposed of in an identified upland (nonfloodplain, nonwetland) site.
- This MP category does not allow impacts to forested wetlands, locally uncommon wetlands types, or wetlands that are of a rare or unique ecological type on a statewide basis.
- Only 1 permit under this MP category may be authorized on the same parcel of property within any 5-year period.

31. Public Transportation Projects

1. Linear Transportation Projects

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

Public road projects contained within the existing right-of-way where all practical means have been used to minimize the wetland impact, and all components of the project will impact no more than 1 acre of wetland. This category shall be further restricted to the following safety improvements, after a finding of necessity by the public transportation agency is determined to be required for safety reasons and for which the wetland fill will not exceed 1/3 acre per wetland:

a) Flattening of road slopes to meet the minimum safety standard.
b) Construction of standard shoulder widths.
c) Installation of guardrail flares.
d) Intersection improvements.
e) Elimination of roadside obstacles, such as sign platforms and utility poles.
f) Addition of a lane for safety reasons.
g) Open construction highway fencing elevated above the wetland on poles limited to 5 feet in height.
h) Wetland equalizer culvert extensions.

Mitigation for impacts that exceed 0.1 acre will be required unless the Transportation Review Unit supervisor determines in writing that some other form of mitigation would be more environmentally appropriate. This mitigation must be at a minimum of a 1-to-1 ratio but may be of any wetland type and done on a statewide basis.

2. Culverts - Large

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

Culverts: New or replacement culverts 100 feet or less in length that meet all of the following:

- The culvert must be bottomless (3-sided), or if the structure has a bottom, then the invert elevation must be buried below the stream bottom 1/6 of the bankfull width up to a maximum buried depth of 2 feet.
- Structures shall be set on the same slope as the stream. For stream crossings with a slope of 3% or greater, a bottomless (3-sided) structure or bridge is required to meet this category.
- The structure must span a minimum of the bankfull width of the stream.
- For the replacement of perched culvert (i.e., a culvert with an outlet invert elevated above the downstream water surface, allowing a freefall condition), grade control structures may be required.
- The structure shall be installed to align with the centerline of the stream at both the inlet and outlet ends. If needed, up to 25 feet of the channel at either end can be reshaped to allow for a smooth transition. The bankfull width must be maintained for any reshaped areas. Meanders upstream or downstream of the culvert shall not be eliminated when creating a smooth transition.
- The structure will allow passage of watercraft that could be expected to navigate the water involved.
- The placement of riprap shall be limited to the minimum necessary to ensure proper stabilization of the side slopes and fill in the immediate vicinity of the culvert. Riprap shall not extend upstream or downstream of the culvert more than 25 feet on each end. Riprap shall be properly sized based on velocity and consist of natural field stone or rock unless it is determined by the DEQ that broken concrete can be allowed based on site conditions. Broken concrete, free of protruding metal, contaminants, and other foreign material, may be allowed in legally established drains except those constituting mainstream portions of certain natural watercourses identified in rule.

Bankfull is the width of the stream that corresponds to the depth where water fills a main channel to the point of overflowing. In instances were the applicant is unsure of the bankfull width, it is recommended that the applicant contact DEQ staff and request a preapplication site review. In legally established drains (except those constituting mainstream portions of certain natural watercourses identified in rule), if bankfull indicators are not present, the structure span may be determined by calculating the 1.5-year stream width at the 1.5-year flow that is based on a stable stream width and depth.

For stream crossing locations where the drainage area is 2 square miles or greater, the crossing must meet one of the following:

1. The applicant must submit, and receive DEQ approval of, a certification by a licensed engineer with supporting hydraulic computations stating that either the replacement structure, including any weir flow, is designed with equal or greater hydraulic capacity that does not cause a harmful interference OR a new structure, including weir flow, is designed to pass the 100-year flood without causing a harmful interference.
2. For replacement culverts:
   - The proposed structure must have an equal or greater hydraulic capacity when compared to the existing culvert.
   - The proposed road grade shall not exceed that of the existing road grade by more than 4 inches, unless the road grade has been shown to be above the 100-year floodplain elevation.
3. For new culverts:
   - The fill over the culvert is not more than 1.5 feet.
   - The approach fill slopes to natural ground elevations within 10 feet of either side of the structure, unless the fill has been shown to be above the 100-year floodplain elevation.

3. Riprap Scour Protection

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

The placement of riprap for scour protection by public transportation agencies around structures to meet federal highway critical scour protection requirements that meets all of the following:

- Riprap shall be properly sized based on velocity and consist of natural field stone or rock unless it is determined by the DEQ that broken concrete can be allowed based on site conditions. Broken concrete, free of protruding metal, contaminants, and other foreign material, may be allowed in legally established drains, except those constituting mainstream portions of certain natural watercourses identified in rule.
- The riprap may not extend above the normal (nonscoured) channel invert.
- Excavation shall be limited to the amount necessary for scour protection.

32. Removal of Structures

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

Physical removal that is either:

1. Removal of man-made structures in wetlands, inland lakes or streams, or the Great Lakes that meet all of the following:

   - The structure to be removed does not control the water level of an inland lake or stream, or the water level in the adjacent wetland.
   - All removed materials, including footings and pilings, shall be disposed of in an identified upland (non-floodplain, non-wetland) site.
   - The site must be restored to its original condition or to a condition that is consistent with the surrounding area. Any bare soil or disturbed areas shall be promptly stabilized to prevent erosion. Plants and seed native to Michigan shall be used in the restoration.
   - Upon completion of structure removal, the site does not constitute a safety or navigational hazard.

2. Removal of natural obstructions (e.g., log jams, beaver dams, etc.) in streams that meet all of the following:

   - All removed materials shall be disposed of in an identified upland (nonfloodplain, nonwetland) site.
   - The site must be restored to its original condition or to a condition that is consistent with the surrounding area. Any bare soil or disturbed areas shall be promptly stabilized to prevent erosion. Plants and seed native to Michigan shall be used in the restoration.
   - The fisheries and wildlife habitat values of the natural obstruction shall be considered.
   - The drawdown shall not negatively impact the downstream receiving waters, habitat, or structures.

This MP category does not include:

- More than de minimus excavation of soil and sediment or the use of water jetting to remove structures.
- The removal of man-made dams (or weirs).
- Maintenance dredging, dredging of sediments in order to recover vessel, shoal removal, or riverbank snagging. Natural obstruction does not apply to shoal material or sediment.
- Abandoned property as defined in Part 761, Aboriginal Records and Antiquities, of the NREPA.

33. Replacement of Existing Seawalls

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

The replacement of existing serviceable seawalls that meet all of the following:

- The replacement seawall is limited to 200 linear feet or less in total length and installed within 1-foot of the existing seawall.
- The replacement seawall shall have toe stone (i.e., riprap) placed waterward along 100% of the length to prevent undercutting by wave action, to mitigate for the loss of habitat, and to provide a use for fish and other aquatic life. The toe stone shall be placed at a 1-on-2 slope (e.g., 1-foot vertical to 2 feet horizontal) or gentler. Toe stone shall be properly sized and consist of natural field stone or rock (broken concrete is not allowed). The toe stone shall extend from the lake/stream bottom to at least 6 inches above the ordinary high water mark but cannot extend more than 6 feet into the water. This toe stone shall be placed unless it is determined by the DEQ that less toe stone is required based on site conditions, navigation, or mooring.
- The structure or any associated fill will not be placed in wetland or in any manner that impairs surface water flow into or out of any wetland area.
- Only 1 permit under this MP category may be authorized on the same parcel of property within any 5-year period.
- This MP category does not allow new seawalls.

34. Reshaping Existing Drainage Ditches

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

The following activities when carried out in conjunction with routine management of county and intercounty drains established pursuant to the Drain Code of 1956, if the work is performed by county drain commissioners or their agents:

1. Reshaping of banks for the purposes of increasing bank stability. This category may be used to authorize activities such as flattening of slopes where the banks of drains have been historically maintained with an excessively steep grade; establishing low flow channels within a drain; and installing bioengineered bank stabilization materials. The purpose of the project must be to modify the cross section of currently serviceable drainage ditches to improve water quality by reducing bank erosion, and may not result in drainage of wetlands beyond the immediate project area.

   A project authorized under this MP is limited to 1 mile of drain impact (cumulatively) for the entire authorized project, and alteration of the drain cross section may not directly impact more than 1/3 acre of wetland outside of the existing channel. All new slopes must be stabilized with vegetation native to Michigan or bioengineering materials. This subcategory does not include deepening of the drain beyond its original constructed depth, or relocation of the drain, or significant change in the location of the centerline of the drain. Excavated materials must be disposed of and stabilized in an identified upland, nonfloodplain, location, except when a berm is needed along the ditch to minimize adjacent wetland drainage.

2. Minor repair/stabilization of streambank above the ordinary high water mark in wetland. Placement of up to five cubic yards of clean fill per repair in wetlands above the ordinary high water mark to stop streambank erosion, or to repair damage from falling trees or similar events. The area filled must not significantly exceed the elevation of the original streambank, and must be stabilized with vegetation native to Michigan or other appropriate material to prevent further erosion.

35. Residential Construction for Properties Owned Prior to 1980

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

Construction or expansion of a single family residence on properties owned since 1980 that meet all of the following:

- The total impact area in wetlands shall not exceed 0.1 acre for all phases of the residential construction, including a driveway, a 1- or 2-car garage, small storage shed (not to exceed 100 square feet), foundation fill, and all waste treatment facilities.
- The ownership of the parcel of land shall have been maintained within the immediate family (the original owners or their children) prior to October 1, 1980. This category can be used only once on a parcel of land that existed prior to October 1, 1980, and only 1 permit can be granted to a family. This category cannot be used on parcels established on or after October 1, 1980. Only 1 permit under this category may be granted to a person.
- No fill shall be placed in any part of a wetland that is inundated by water and provides fish habitat functions at any time.
- All upland on the property shall be utilized to the greatest degree possible.
- The proposed fill in wetlands shall be at the least damaging location on the property.
- All necessary actions shall be taken to minimize on-site and off-site impacts including sewage treatment systems that pump back to uplands where feasible.
- The filled area surrounding building foundations will not be greater than 15 feet from the edge of the foundation to the toe of the slope. Fill slopes shall not be flatter than 1 vertical to 4 horizontal. Additional fill for purposes such as landscaping or recreational facilities will not qualify under this category.
- This category cannot be used in conjunction with Category 13, Driveway, or Category 17, Fills - Minor.

36. Reversion of Temporary Wetland Enhancement, Restoration, and Establishment

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

Reversion of temporary wetland enhancement, restoration, and establishment that meet all of the following:

- The original wetland enhancement, restoration, and establishment activity must be in accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. Fish and Wildlife Service, the Natural Resources Conservation Service, the Farm Service Agency, or their designated state cooperating agencies. The binding contract/agreement between the landowner and the federal agency must be provided.
- The reversion plan shall include restoring the prior wetland area and ecological type. Restoration activities may include dredging, filling, or draining activity associated with the reversion of the area to its documented prior condition and use (i.e., immediately prior to the restoration, enhancement, or establishment activities). The reversion plan shall not increase the drainage of wetlands that existed before the restoration, enhancement, or establishment.
- The prior condition must be documented in the original DEQ permit application and permit or, if no permit was required for the original work, the applicant must provide a federal agency binding agreement that documents the prior conditions of the site. This documentation must include all of the following:
  - A project description, including construction plans and location map.
  - A prerestoration, enhancement, or establishment wetland delineation for all areas potentially impacted by the proposed reversion activities. This delineation shall be in compliance with the wetland delineation standards under Part 303, including appropriate data sheets. The DEQ has a fee-based Wetland Identification Program to assist the

public in identifying wetland and nonwetland areas on their property. In cases where no delineation exists, the reversion activity will not meet this category.
    - In instances where a DEQ permit is required for the restoration, enhancement, or establishment activity, the property owner must provide written indication of any intent of using this reversion MP after expiration of their limited-term wetland restoration or establishment agreement or permit.
- The permit application for the proposed reversion must be submitted prior to the expiration date of the limited term wetland restoration or establishment agreement.

Once an area has reverted to its prior physical condition, it will be subject to whatever regulatory requirements are applicable to that type of land at the time. Except for the activities described above, this MP category does not authorize any future dredging or filling associated with the reversion of the area to its prior condition.

37. Riprap Shoreline Protection

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

The placement of riprap to facilitate bank stabilization activities that meets all of the following:

- The placement of riprap does not exceed 300 linear feet of shoreline and extend more than 5 feet below the ordinary high water mark. The riprap shall be placed at a 1-on-2 slope (e.g., 1-foot vertical to 2 feet horizontal) or gentler. This category does not include vertical rock walls.
- There is evidence of ongoing erosion.
- Riprap shall consist of natural field stone or rock (broken concrete is not allowed). For inland lakes, the riprap shall be a maximum of 24-inch diameter rock. For streams, riprap shall be properly sized based on velocity. Broken concrete, free of protruding metal, contaminants, and other foreign material, may be allowed in legally established drains, except those constituting mainstream portions of certain natural watercourses identified in rule.
- Geotextile may be placed and tied in before installation of the riprap.
- Vegetation, including plantings and other potentially viable material such as live stakes, brush bundles, or other gathered woody material, comprised of plant species that are considered native to Michigan is encouraged.
- Riprap shall not be placed in any wetland areas or in any manner that impairs surface water flow into or out of any wetland areas.

38. Septic System Replacement

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

Replacement of a failed on-site septic tank and/or drain field system, providing that it is required by and meets design standards of the local health department and meets the following:

- When possible the replacement tank and field system must be in the same location as the original system.
- Where the option is available, pump-back systems to upland will be required in place of mounded systems in order to qualify for construction under this MP category.
- Expansion of a septic system may be allowed under this category if required by the local health department.
- A copy of the local health department permit or permission must be submitted to the DEQ at the time of application.

39. Small Dam Removal

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

Removal of small dams and associated restoration activities for restoring stream habitat in Michigan that meets all of the following:

- The height of the dam is no more than 2 feet.
- The impoundment from the dam covers less than 2 acres.
- The dam does not serve as the first dam upstream from the Great Lakes or their connecting waterways.
- The dam is not serving as a sea lamprey barrier.
- There are no known areas of contaminated sediments in the area that will be impacted by the project.
- Excavation and fill in wetlands is allowed for purposes of dam removal, stream channel establishment, and bank stabilization only and must be minimized to the greatest extent possible. Impacts to wetlands from extraction and fill activities are limited to no more than 1/3 acre.
- The DEQ has received written permission for the removal of the dam from all riparian property owners adjacent to the dam's impoundment including public transportation agencies with right-of-ways adjacent to the impoundment or the applicant has documented legal right to remove the dam.

Applications for authorization under this MP must include a dam removal plan that includes the following information:

- A description of the upstream and downstream impacts of the dam removal, including impacts to fish and wildlife and recreational uses.
- Dam removal/excavation methods and a schedule and timeline of the proposed impoundment drawdown.
- A description of sediments behind the dam, including a sediment handling (and if necessary, disposal) plan and methods to minimize release of sediments and downstream siltation.
- A stream channel restoration plan, including a planting and stabilization plan for all disturbed areas (e.g., drawdown areas and stream banks).
- A plan view of the area of wetlands to be drained or impacted by the dam removal.

40. Spring Piles and Piling Clusters

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

Spring piles and pile clusters for the purpose of mooring of water craft or prevention of ice damage to docks and other structures that meet all the following:

- The location and number of proposed spring piles or pile clusters shall be consistent with similar structures in the vicinity.
- The location and placement will not create an obstruction to navigation.
- The location and placement will not adversely impact the rights of adjacent riparian property owners.

41. Storm Water Management Facilities: Inland Lakes and Streams

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

Construction and maintenance of storm water management facilities, including the excavation of storm water ponds/facilities, detention basins, and retention basins, and the maintenance dredging of existing storm water management ponds/facilities and detention and retention basins that meet all of the following:

- Construction and maintenance activities are limited to facilities of not more than 5 acres, which were designed for the primary purpose of storm water detention, retention, and/or treatment.
- All outflow structures and discharges shall meet the conditions of the Storm Water Outfall Structures MP category.
- The storm water management facilities are not within an inland lake or stream (i.e., inline).
- Any contaminated materials shall be appropriately handled and disposed.

42. Storm Water Outfall Structures

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

Construction, maintenance, or modification of storm water outfall structures that meet all of the following:

- Discharges shall meet state water quality standards or the effluent from the outfall is otherwise in compliance with regulations issued under the NPDES Program (Part 31 of the NREPA). The discharge has been passed through storm water treatment devices (i.e., best management practices) to maximize the removal of sediments and other contaminants (e.g., oil, grit, trash, heavy metals, etc.) using the best available and practicable technologies that are necessary when considering the receiving waters and associated aquatic resources.
- The face of the outfall structure shall conform to the side slope of the bank and not extend into the receiving water to impair navigation or create shoreline pockets capable of trapping debris.
- The outfall shall not result in changes in the ecological type of the wetland. Changes to the wetland watershed area and impacts from water storage shall be minimized.
- The outlet shall be stabilized to prevent soil erosion. Excavation and riprap shall be limited to the minimum necessary to ensure proper stabilization. Riprap shall consist of natural field stone or rock (broken concrete is not allowed). Broken concrete, free of protruding metal, contaminants, and other foreign material, may be allowed in legally established drains, except those constituting mainstream portions of certain natural watercourses identified in rule.

43. Temporary Construction, Access, and Dewatering

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

Temporary structures, construction mats, and fill, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites that meet all of the following:

- Temporary fill impacts shall not exceed a maximum of 1,000 square feet and the placement of no more than 25 cubic yards of fill material. The placement of temporary structures or construction mats shall be limited to 0.1 acre.
- The temporary structures, construction mats, and fill must be removed immediately after use has been discontinued or within 90 days of initiation of the authorized activity, whichever is shorter.
- Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows.

- Geotextile shall be placed prior to temporary fill. Following completion of construction, temporary fill must be entirely removed to upland areas and the affected areas must be restored to preconstruction grade and wetland type. A restoration plan showing how all temporary fills and structures will be removed and the area restored to preconstruction grade and wetland type shall be provided by the applicant. Any revegetation shall use seeds and plants native to Michigan.
- Cofferdams shall be maintained in good working order throughout the duration of the project. Upon project completion the accumulated materials shall be disposed of in an identified upland (nonfloodplain, nonwetland) site.
- All slurry resulting from any dewatering operation shall be discharged through a filter bag or pumped to a sump located away from wetlands and surface waters and allowed to filter through natural upland vegetation, gravel filters, or other engineered devices for a sufficient distance and/or period or time necessary to remove sediment or suspended particles.
- A construction sequence with dates when the structures will be installed and removed must be provided by the applicant. Structures left in place after construction are not included under the MP.
- This MP category does not include the use of cofferdams to dewater wetlands or other aquatic areas to permanently alter or change their use.
- Temporary culverts and bridges shall be limited to other MP and GP categories for those activities.

44. Temporary Recreational Structures

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

Temporary buoys, markers, floating docks, platforms, and similar structures placed for recreational use during specific events (e.g., water skiing competitions and boat races) that meet all of the following:

- Structures are removed immediately after use has been discontinued.
- The applicant shall provide dates when the structure will be installed and removed. The structure shall not be in place for more than 30 days.
- Structures shall not impede navigation of the waterway.

A Marine Event Permit under Part 801 may be required (DNR, Law Division).

45. Utility Line Activities

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

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in wetlands, inland lakes, and streams.

A "utility line" is any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the State, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

This category includes:

1. Installation, maintenance, repair, and removal of utility lines provided there is no change in the preconstruction grade, that meet all the following:

    - Crossing locations shall be selected to minimize the impact to the wetlands, inland lakes and streams.

- The outside diameter of the pipe, cable, encasement, etc. shall not exceed 20 inches.
- A minimum of 36 inches of cover will be maintained between the top of the cable or pipe and the soil surface. The installation shall use the best available construction technologies that are necessary to avoid and minimize impact when considering the wetlands and waters involved. Additional precautions and construction techniques may be necessary in areas of high quality resources. Use of directional drilling/jack and bore should be given particular emphasis in any area that is prone to erosion, on slopes upgradient from coldwater streams, in forested wetland habitat, in high quality wetlands or wetland types that are locally or regionally uncommon. Stream crossing shall use dry ditch open trenching, and shall be limited to 50 feet per crossing (bank to bank) and a cumulative total of 200 feet per application.
- Wetland crossings using open trenching shall be limited to total cumulative crossing length of 500 feet per application.
- All re-vegetation of wetland sites must be with plant species that are native to Michigan according to the Floristic Quality Assessment for the State of Michigan.
- The construction of new permanent access roads is not included under this MP category.

When these methods are used, the following additional criteria apply:

Plowing-in/Knifing-in for Wetlands Only

- This method is not allowed for crossing wetlands with open water, streams, or lakes.
- There is no limit on the distance of crossing wetland areas using Plowing- in/Knifing-in methods.
- This category can not be used in forested wetlands where trees need to be removed to conduct the activity.
- All impacted areas shall be immediately restored to grade.
- No additional fill materials (other than the utility itself) shall be placed in the wetland.
- Rutting or other soil disturbance shall be restored and stabilized.

Open Trenching

- Project design and construction features shall assure that backfill used in the excavated trench will not result in the drainage of wetlands. Clay plugs shall be shown in the construction plans and shall be placed at the wetland/upland boundary in all instances and as needed throughout the trench system.
- Construction mats shall be utilized to the greatest extent possible to minimize ground compaction and disturbance to waters of the state.
- For wetlands, excavated materials shall be stockpiled and used to backfill the trench area with the top 12 inches of topsoil being stockpiled separately to backfill the top portion of the trench.
- Any excavated materials that are sidecast or stockpiled in the wetlands shall be contained to the minimal amount of area feasible and shall not remain in the wetland for more than 30 days. Excess excavated materials shall be disposed of in an identified upland (non-floodplain, non-wetland) site.
- Stockpiling or sidecasting is not allowed in any inland lakes and streams.
- All disturbed areas shall be restored no later than 30 days after completion. Restoration shall include restoring the area to original grade, decompacting the soils, and seeding and plantings native to Michigan to re-establish the preconstruction wetland type.

2. The construction and maintenance of utility line associated facilities in wetlands that are not contiguous to the Great Lakes or connecting waters, that are either:

   a) Substations: The construction, maintenance, or expansion of utility line substation facilities associated with a power line or utility line in wetlands, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 0.10 acre of wetlands.

   b) Foundations: Construction or maintenance of foundations for overhead utility line towers, poles, and anchors in wetlands, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible and the single and complete project does not result in the loss of greater than 0.10 acre of wetlands.

46. Wetland Habitat Restoration and Enhancement

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

For the purposes of this category:

Restoration is the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or altered wetland. Restoration is either one of the following:

a. Reestablishment is the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to former wetland. Reestablishment results in rebuilding a former wetland and results in a gain in wetland acres.

b. Rehabilitation is the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions of altered wetlands.

Enhancement is the manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for a purpose such as a water quality improvement, flood water retention, or wildlife habitat improvement. Enhancement results in a change in wetland function(s), but does not result in a gain in wetland acres.

Altered wetlands include areas that have been partially or fully drained by ditching, tiling, and/or pumping; or partially or fully filled by direct placement of material or significant sedimentation; or where other land use conversions have resulted in significant alteration of the original character of the site.

Former wetland is an area that once was a wetland but it has been modified to the point it no longer has the hydrologic characteristics of a wetland. Former wetlands are not regulated under Part 303.

Dredged or excavated spoils or fill material shall not be located in a floodway or harmfully interfere with flood flows in any streams regulated under Part 31. Spoils must be removed from and fill shall not be placed in any floodplain regulated under Part 31 unless it meets the criteria for an MP under that part to be included in this category. Construction of a dike, berm, or embankment that is 6 feet or more in height and that impounds an area of 5 acres or more during a design flood; such activity requires authorization under Part 315 and may not be authorized under this category.

This category includes projects that restore or enhance wetland functions, provided that a project results in net increase of wetland acreage or functions and services and is conducted by or in cooperation with local, state or federal conservation agencies or nonprofit conservation organizations, and are any of the following:

1. Excavation of shallow water areas for wildlife in altered wetlands that meets all of the following:

   - At least 50% of the surface area of the excavated area shall have a water depth of no more than 18 inches and no more than 15% can be deeper than 48 inches.
   - The excavated area shall not be constructed within or physically touching an inland lake or stream.
   - The excavated area in wetlands shall not exceed 0.5 acres.
   - All excavated spoils including organic and inorganic soils, vegetation, and debris shall be placed at an upland site in such a manner as not to erode into any waterbody or wetland, unless this material is used to reestablish microtopography. The establishment of microtopography is allowed within the excavated areas, but any microtopography areas shall be a maximum of 12 inches above the normal design water elevation and continue to meet the definition of a wetland under Part 303. Excavated topsoil may be placed back into the excavated area to aid in plant establishment.
   - For excavated areas within 500 feet of a cold or cold-transitional stream, the applicant must provide written documentation of concurrence on the project from the DNR, Fisheries Division

2. Rehabilitation and Enhancement of Altered Wetlands. Projects that serve to negate or minimize the negative impacts of historic efforts to drain, fill, or destroy wetlands. Projects authorized under this subcategory include:

   - Rehabilitation (to the extent possible) of the original or natural wetland hydrology, vegetation, and/or functions of altered wetlands.
   - Enhancement of certain characteristics of a wetland in a manner not consistent with original conditions (e.g., increased hydrology, alteration of vegetation or wetland functions) only in wetlands that are dominated by invasive species (e.g., reed canary grass or Phragmites).

   This subcategory does not include conversion of unaltered wetlands to another aquatic use, such as the creation of a pond or impoundment, the alteration of a wetland identified as a rare or unique ecological type, or the conversion of unaltered forested wetlands to another habitat type.

   Specific wetland restoration and enhancement activities that may be authorized under this subcategory include:

   - Installation and construction of water control structures, dikes, berms, and embankments. Wetland fill for dikes, berms, embankments, and other structures shall not exceed 2 acres. The purpose of such fill shall be to restore the hydrological function of the altered wetland. The 2-acre size limit refers only to the wetland area on which fill is placed and not to the broader disturbance area or restored basin size.
   - Existing drainage structures may be removed or altered (e.g., tile breaks, pump removal, etc.) to restore (to the extent possible) the original or natural wetland hydrology, vegetation, and/or functions of the wetland.
   - Excavation of accumulated sediment or fill to the original hydric soil surface.
   - Use of soil cultivation equipment (e.g., harrows, discs, and plows) or other earth moving equipment, to reestablish microtopography. Microtopography establishment shall be a maximum of 12 inches above the normal design water elevation and the area must continue to meet the definition of a wetland under Part 303.
   - Ditch plugs with or without water flow controls if the purpose is to reestablish the hydrology to previously drained areas and if all impacted parties acknowledge and provide their written authorizations. The applicant must provide written documentation of concurrence on the project from the DNR, Fisheries Division.

3. Maintenance and improvement of existing, functional dikes and berms within areas managed for wildlife that meets all of the following:

   - Wetland fill for dikes, berms, or embankments for maintenance and improvement shall not exceed 2 acres. The purpose of such fill shall be to restore or maintain the hydrological function of the wetland.
   - Side slopes on dikes or berms shall be 1-on-4 slope (e.g., 1-foot vertical to 4 feet horizontal) or steeper.
   - The base width of the dike or berm shall not be increased by more than 50%.
   - The top width of the dike or berm shall not exceed 12 feet.
   - Dredging shall be limited to other MP and GP subcategories for shallow water areas for wildlife.
   - Water control structures may be replaced or maintained to original design. No other dredging or filling activities below the ordinary high water mark of lakes or streams are included under this subcategory.

4. Dredging for creation of berms or water controls impacting a total of not more than 1/3 acre of wetland that meet all of the following:

   - The dredging is not within (i.e., inline) or directly connected to an inland lake or stream.
   - All dredged or excavated materials shall be disposed of in an identified upland (nonfloodplain, nonwetland) site or for berm construction under this category.
   - This MP category does not allow impacts to forested wetlands, locally uncommon wetlands types, or wetlands that are of a rare or unique ecological type on a statewide basis.

- Only 1 permit under this MP subcategory may be authorized on the same parcel of property within any 5-year period.
- The dredged areas shall be located to minimize impacts to wildlife movement (e.g., breaks in the dredged areas that allow unimpeded wildlife movement).

For all activities within this MP category, stumps, trunks, and limbs may be placed in wetlands for establishing wildlife habitat structure. This category does not include the conversion of a stream or wetland to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands.

GENERAL CONDITIONS

The following general conditions must be complied with for any permit to be issued under an MP category:

1. Navigation and Riparian Rights: No activity may cause more than a minimal adverse effect on navigation. The activity shall not interfere with the riparian rights or use of the waters by others.
2. Aquatic Life Movements: No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water.
3. Spawning Areas: Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
4. Migratory Bird Breeding Areas: Activities in waters of the state that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. Shellfish Beds: No activity may occur in areas of concentrated native shellfish populations (mussels).
6. Suitable Material: No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or fill must be free from toxic pollutants in toxic amounts.
7. Water Supply Intakes: No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
8. Adverse Effects from Impoundments: If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow, must be minimized to the maximum extent practicable.
9. Management of Water Flows: To the maximum extent practicable, the preconstruction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the preconstruction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
10. Removal of Temporary Fills: Temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations within 90 days of initiation of the authorized activity unless otherwise approved by the DEQ. The affected areas must be revegetated and reseeded with species native to Michigan appropriate to the site.
11. Proper Maintenance: Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.
12. Tribal Rights: No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
13. Mitigation: The DEQ will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal: (a) the activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the state to the maximum extent practicable; and (b) mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.
14. Water Quality: The project must comply with state water quality standards.

15. Coastal Zone Management: The project must comply with the enforceable statutes in Michigan's coastal zone management plan.
16. Case-By-Case Conditions: The activity must comply with conditions that may have been added by the DEQ and with any case-specific conditions added for Section 401 Water Quality Certification or Coastal Zone Management Act consistency determination.
17. Use of Multiple MP Categories: The use of more than 1 MP category for a single and complete project is allowed unless it is prohibited within a specific MP category. The DEQ may issue a permit under an MP category that may include activities authorized under a GP. When using multiple categories, fill can not exceed 0.1 acre or the highest acreage limit.
18. Compliance Certification: Each permittee who received a permit under an MP category must submit a signed certification regarding the completed work and any required mitigation within 1 week after the completion of the authorized activity. The certification form must be mailed to the DEQ with the permit number and shall include: (a) a statement that the authorized work was done in accordance with the permit, including any general or specific conditions; (b) a statement that any required mitigation was completed in accordance with the permit conditions; and (c) the signature of the permittee certifying the completion of the work and mitigation.
19. Single and Complete Project: The activity must be a single and complete project. The same MP category cannot be used more than once for the same single and complete project.

AUTHORIZATION CONDITIONS

The following additional conditions will also apply to all permits issued under all MP categories:

A. Initiation of any work on the permitted project confirms the permittee's acceptance and agreement to comply with all terms and conditions of the permit.
B. The permittee in exercising the authority granted by the permit shall not cause unlawful pollution as defined by Part 31.
C. The permit shall be kept at the site of the work and available for inspection at all times during the duration of the project or until its date of expiration.
D. All work shall be completed in accordance with the plans and the specifications submitted with the application and/or plans and specifications attached to the permit.
E. No attempt shall be made by the permittee to forbid the full and free use by the public of public waters at or adjacent to the structure or work approved.
F. It is made a requirement of the permit that the permittee give notice to public utilities in accordance with Act 53 of the Public Acts of 1974 and comply with each of the requirements of that act.
G. The permit does not convey property rights in either real estate or material; nor does it authorize any injury to private property or invasion of public or private rights; nor does it waive the necessity of seeking federal assent, all local permits, or complying with other state statutes.
H. The permit does not prejudice or limit the right of a riparian owner or other person to institute proceedings in any circuit court of this state when necessary to protect his or her rights.
I. The permittee shall notify the DEQ within 1 week after the completion of the activity authorized by the permit.
J. The permit shall not be assigned or transferred without the written approval of the DEQ.
K. Failure to comply with conditions of the permit may subject the permittee to revocation of the authorization and criminal and/or civil action as cited by the specific state act, federal act, and/or rule under which this permit is granted.
L. All dredged or excavated materials shall be disposed of in an upland site (outside of floodplains, unless exempt under Part 31, and wetland).
M. In issuing an authorization under this permit, the DEQ has relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of an authorization, such information and data prove to be false, incomplete, or inaccurate, the DEQ may modify, revoke, or suspend the permit, in whole or in part, in accordance with the new information.
N. The permittee shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, employees, agents, and representatives for any and all claims or causes of action arising from acts or omissions of the permittee, or employees, agents, or representatives of the permittee, undertaken in connection with this permit. This permit shall not be construed as an indemnity by the State of Michigan for the benefit of the permittee or any other person.

O. Noncompliance with these terms and conditions, and/or the initiation of other regulated activities not specifically authorized shall be cause for the modification, suspension, or revocation of this permit, in whole or in part. Further, the DEQ may initiate criminal and/or civil proceedings as may be deemed necessary to correct project deficiencies, protect natural resource values, and secure compliance with statutes.

P. If any change or deviation from the permitted activity becomes necessary, the permittee shall request, in writing, a revision of the permitted activity from the DEQ. Such revision requests shall include complete documentation supporting the modification and revised plans detailing the proposed modification. Proposed modifications must be approved, in writing, by the DEQ prior to being implemented.

Q. An authorization under this permit may be transferred to another person upon written approval of the DEQ. The permittee must submit a written request to the DEQ to transfer the permit to the new owner. The new owner must also submit a written request to accept transfer. The new owner must agree, in writing, to accept all conditions of the authorization. A single letter signed by both parties that includes all the above information may be provided to the DEQ. The DEQ will review the request and if approved, will provide written notification to the new owner.

R. Prior to initiating construction authorized, the permittee is required to provide a copy of the authorization to the contractor(s) for review. The property owner, contractor(s), and any agent involved in exercising the authorization are held responsible to ensure the project is constructed in accordance with all drawings and specifications. The contractor is required to provide a copy of the authorization to all subcontractors doing work authorized by the authorization.

S. Construction must be undertaken and completed during the dry period of the wetland. If the area does not dry out, construction shall be done on equipment mats to prevent compaction of the soil.

T. Authority granted by an authorization does not waive permit requirements under Part 91, Soil Erosion and Sedimentation Control, of the NREPA, or the need to acquire applicable permits from the County Enforcing Agent.

U. Authority granted by this permit does not waive permit requirements under the authority of Part 305, Natural Rivers, of the NREPA. A Natural Rivers Zoning Permit may be required for construction, land alteration, streambank stabilization, or vegetation removal along or near a natural river.

V. The permittee is cautioned that grade changes resulting in increased runoff onto adjacent property is subject to civil damage litigation.

W. Unless specifically stated in an authorization under this permit, construction pads, haul roads, temporary structures, or other structural appurtenances to be placed in a wetland or on bottomland of the waterbody are not authorized and shall not be constructed unless authorized by a separate permit or permit revision granted in accordance with the applicable law.

X. For projects with potential impacts to fish spawning or migration, no work shall occur within fish spawning or migration timelines (i.e., windows) unless otherwise approved in writing by the DNR, Fisheries Division.