

The background of the slide features a dense pattern of vibrant green leaves in the upper portion, transitioning into clear, rippling water in the lower portion. The overall aesthetic is natural and environmental.

# EPA'S ROLE IN THE 404 PROGRAM

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# EPA AUTHORITIES UNDER SECTION 404

- Policy; Guidance; Environmental Criteria
- Scope of 404 Jurisdiction & Exemptions
- Provide comment to COE on IP & NWP<sub>s</sub>

# AUTHORITIES continued:

- “VETO” Authority
- Enforcement
- Approval and Oversight of State Assumed Section 404 Programs

# MICHIGAN ASSUMED THE SECTION 404 PROGRAM IN 1984





# EPA'S OVERSIGHT ROLE OF ASSUMED PROGRAMS

- Permit by Permit
- Programmatic

# Permit by Permit Review

- EPA reviews and provides combined Federal comments on a subset of Public Notices
- Federal Agencies include:
  - Fish and Wildlife Service
  - Corps of Engineers
  - Forest Service

# Programmatic Oversight

- Ensure any changes in legal authorities or administration of Michigan's program are consistent with the Federal 404 program
- Review of Annual reports submitted by MDEQ
- Review of Minor and General permit categories when re-authorized



# Comprehensive Review of Michigan's 404 program

- Review of Administration of Section 404 Program which included:
- Review of permit decisions
- Review of Enforcement Actions
- Review of Legal Authorities
- Review of Judicial Decisions
- Included Public Comment

# Review Completed in 2008

## Findings:

- MDEQ staff doing a good job of administering the Section 404 Program
- Exemptions broader in scope than the federal program:
  - Farming activities
  - Drainage activities
  - Road Maintenance
  - Tailings Basins
- Scope of Jurisdiction Comparable



# Compliance with the CWA 404(b)(1) Guidelines

- MDEQ needed to incorporate CWA Section 404 requirements in permit decisions made under both 301 and 303 Authorities
- Administrative Law Judges and MDEQ's final decision makers were not always applying Michigan law in a manner consistent with the 404(b)(1) Guidelines

# Final Conclusion

- EPA will not initiate Program withdrawal proceedings at this time
- Corrective actions are necessary to make Michigan's Program equivalent to the Federal Section 404 Program

# Corrective Actions

- MDEQ has agreed to take 20 corrective actions which include:
  - Statutory Changes
  - Promulgation of rules
  - Revision of MOA with EPA
- Schedule for completion of Actions
- Some actions completed
- 2009 Amendment of Michigan Law

# Questions?

