

## FOR DISCUSSION ONLY

### THE DEPARTMENT OF ENVIRONMENTAL QUALITY'S WETLAND REFORM PROPOSAL

#### Wetland Program Reforms

Based on significant legislative interest, stakeholder input, and the need for continual efficiency improvements, the DEQ is proposing the following reforms to the Wetland Program (Program). These Program reforms, as well as reforms that are already underway, will improve the effectiveness and maintain consistency with the federal program while allowing innovative administration of the Program and enhancing the climate for economic development in Michigan.

- **Propose Statutory Exemption modifications**
  - **Expand utility exemptions to include municipalities and other types of utilities**
  - **Clarify agricultural exemptions**
  - **Clarify drain exemptions**
  - **Clarify road exemptions**
  - **Streamlines regulatory process when used with new minor project and general permit categories**

The United States Environmental Protection Agency (USEPA) has identified inconsistencies between state and federal laws that could result in revocation of Michigan's authority to administer Section 404 of the Clean Water Act. The DEQ is working with affected stakeholders to develop statutory amendments that would be consistent with federal requirements while retaining as much of the existing exemptions as possible. New Minor Project and General Permit categories, when used in conjunction with the proposed exemptions, will streamline permitting for routine projects that still require permits.

- **Issued new Minor Project/General Permit categories**
  - **Simplify permitting**
  - **Streamline permitting**
  - **Clarify categories**
  - **Established a three-tiered permit system**

The DEQ issued new expanded Minor Project and General Permit categories in August 2011 and October 2011. These new permit categories simplify and streamline the permit process for the most common types of projects.

- **Correct Minor Project/General Permit application fee**
  - **Reduce fees for Minor Project permit applications**
  - **Create consistent fees within regulations**

In 2009, statutory amendments required the creation of new Minor Project and General Permit categories; however, application fees for the new permit categories were not created, resulting in inappropriate and inconsistent fees. The DEQ is proposing to create

## FOR DISCUSSION ONLY

### THE DEPARTMENT OF ENVIRONMENTAL QUALITY'S WETLAND REFORM PROPOSAL

new fees which would reduce the current fees for Minor Project Permits, reflect the staff effort required to implement the new three-tiered permit structure, and create consistent fees for minor projects and general permits under Parts 301, 303, and 325.

- **Enhance mitigation banking**
  - **Increase service area size of banks**
  - **Release credits sooner for privately owned banks**
  - **Develop state backed low interest loans to municipalities**
  - **Release advance credits to municipalities as done with in lieu fees programs**
  - **Allow wetland preservation in areas where there are not wetland restoration opportunities**
  - **Devote a staff person to mitigation banking**

Stakeholders and the regulated community have expressed a need to establish incentives that would encourage the creation of more mitigation banks and ensure bank credits are available in developing areas. The DEQ is proposing to modify the banking rules to increase the size of bank services areas, thereby making privately owned banks more economically attractive. The DEQ also plans to evaluate ways of incentivizing the development of banks by municipalities, including providing state funding for low interest loans. In addition, the DEQ is also evaluating the current requirements for release of banking credits and the potential impact of changing the requirements with the goal of allowing more credits to be released sooner during development of the bank.

- **Improve flexibility in mitigation requirements**
  - **Reduce focus on on-site mitigation**
  - **Provide flexibility in mitigation ratios for uses of wetlands (e.g., farming) by allowing consideration of functions and values instead of a strict ratio**
  - **Allow consideration of ecologically beneficial additions**
  - **Assist local governments in prioritizing wetlands for use and protection, with an opportunity to engage outside partners**

The DEQ would like to develop wetland mitigation standards that allow for consideration of the wetland functions and values being impacted and the expected functions and values of the mitigation area, instead of the current strict mitigation ratio based solely on acreage. Consideration should be given to other innovative approaches such as providing credit for ecologically beneficial additions to mitigation areas.

The DEQ would also like to partner with local governments by providing assistance in identifying wetlands and water resources that should be protected because of the critical functions and benefits they provide within the community, while also identifying areas that may be suitable for development if compensatory mitigation were available.

## FOR DISCUSSION ONLY

### THE DEPARTMENT OF ENVIRONMENTAL QUALITY'S WETLAND REFORM PROPOSAL

This process could be married with the ideas discussed above to incentivize the establishment of mitigation banks within these communities. Ideally, the banks would provide mitigation credits to mitigate the expected impacts of future development and restore areas of lost wetlands that were providing critical functions such as flood storage, water quality improvement, and habitat. We could also engage outside partners such as Ducks Unlimited or The Nature Conservancy to partner with the communities to develop and manage mitigation banks in lieu of permittee responsible mitigation.

- **State Programmatic General Permit (SPGP)**
  - **Streamline permitting**
  - **Reduced federal permit requirements**

An SPGP is a type of permit that can be issued by the Corps of Engineers (Corps) upon agreement with the state for specified activities in waters and wetlands where the Corps retains regulatory jurisdiction. These are generally the navigable rivers and lakes, including the Great Lakes and the wetlands adjacent to these waters. An SPGP works as a type of automatic federal permit approval for applicants that have obtained a state permit. The issuance of SPGPs would reduce the regulatory burden for some applicants who currently have to obtain both state and federal permits.

The following amendment was added to the statute in 2009, which directs the state to pursue SPGP agreements with the Corps. "Sec. 30304b. (1) The department shall pursue an agreement with the United States army corps of engineers for the corps to issue state programmatic general permits under section 404(e) of title IV of the federal water pollution control act, 33 USC 1344, for activities regulated under this part in waters over which the corps retains jurisdiction under section 404(g)(1) of title IV of the federal water pollution control act, 33 USC 1344."

The DEQ is currently negotiating with the Corps to develop SPGP agreements.

- **Pursue federal funding to partially support the Program starting in FY2013.**

In 2009, \$2.0 million of GF/GP was eliminated from the Program and replaced with \$2.0 million a year for three years from the Environmental Protection Fund. This three year funding commitment ends in FY2012. The DEQ is requesting a combination of GF/GP and federal funding to support the Program in FY2013. The DEQ is also pursuing long-term federal funding support, but since that may require Congressional action and the federal budget process is currently dysfunctional, this is not a short-term option.

- **Signed a new Memorandum of Agreement with the USEPA**
  - **Clarifies roles and responsibilities for state and federal agencies**
  - **Reduces USEPA oversight of wetland permit decisions**