

Great Lakes High Water Permitting Options and Expectations for Contractors and Applicants

May 28, 2020

The Michigan Department of Environment, Great Lakes, and Energy's (EGLE) Great Lakes high water crisis response started on October 15, 2019. EGLE recognizes that high water across Michigan continues to cause significant impacts to shoreline property owners. In response, EGLE has implemented numerous actions to help property owners and others during the high water crisis, including:

- Expedited high water response permit reviews.
- Prioritized permit reviews based on risk to residences, critical infrastructure, and human health and safety.
- Provided flexible permitting options to assure that all impacted parties have a pathway to protect their homes and critical infrastructure.

Minor Project (MP) Categories for shoreline protection projects that avoid and minimize adverse impacts are available to applicants. Projects that meet these MP categories can be expedited by EGLE, do not require a public notice, and have reduced application fees for the applicant.

For most projects, a permit is also required from the U.S. Army Corps of Engineers (USACE). USACE has its own separate permitting process, but uses the same application that is submitted to EGLE. EGLE forwards the application to the USACE without additional actions from the applicant.

This document is intended to clarify the permit processing options available to applicants during the high water crisis response and identify expectations for interactions and communications between EGLE, contractors and applicants. In all situations, contractors and applicants are responsible for all the following:

1. Coordinating with EGLE on projects and getting proper permits and approvals before conducting work.
2. Submitting accurate and complete information to EGLE.
3. Being timely and thorough in response to information requests from EGLE.
4. Avoid and minimize negative impacts to the shoreline.

Expedited Permitting

In situations where there is not an immediate or impending threat to a residence or critical infrastructure, EGLE will expedite processing, but also complete all statutory requirements before issuing a permit. This will include public noticing if the applicant is not applying under a Minor Project Category. This is the best option for the applicants and EGLE because the permit approval is not conditional, and the applicant has all legal authorizations necessary to construct the project as it was permitted. The applicant's responsibilities in these situations are as follows:



1. Submit a complete application to EGLE. Include justification for expedited permitting.
2. Provide timely and thorough responses to information requests.
3. Monitor changing conditions at the property, and communicate those changes to EGLE, as necessary to avoid catastrophic failures.

Conditional Permitting

EGLE staff may elect to allow conditional permitting in situations where there is an impending threat to a residence or critical infrastructure, and the applicant cannot (a) wait for public noticing, or (b) obtain all the information necessary to complete an application in a timely manner. Conditional permitting provides applicants with legal authorization under state law to undertake the project. However, some of the statutory requirements are addressed after the conditional permit is issued. As a result, there is a small risk that something will be uncovered during those processes that requires the already built project to be changed or removed. It is then the applicant's responsibility to do so. Other applicant responsibilities include:

1. Document the site conditions (i.e., photographs) that warrant the use of conditional permitting.
2. Contact local EGLE permitting staff to request the processing of a conditional permit
3. Submit as complete an application as possible.
4. Provide timely and thorough responses to information requests.
5. Monitor changing conditions at the property, and communicate those changes to EGLE, as necessary to avoid catastrophic failures.

Regulatory Discretion

In cases where there is an immediate threat to a residence or critical infrastructure, EGLE field staff have been authorized to consider requests to use Regulatory Discretion (discretion). For instance, if a storm causes the erosion line to come within 5 to 10 feet of a home's foundation and immediate action is necessary to save the home, a permit can be issued after-the-fact. This permitting alternative carries the greatest amount of risk to applicants. If the applicant follows all conditions provided by EGLE staff, EGLE will not pursue enforcement for starting a project without a permit. However, the applicant is accepting the risk that the project may have to be modified or removed if it is not permissible after-the-fact. The applicant's responsibilities in these situations are as follows.

1. Document the site conditions (i.e. photographs) that warrant the use of Regulatory Discretion.
2. Contact local EGLE permitting staff to request discretion by EGLE, and the processing of an after-the-fact permit. EGLE will waive after-the-fact permit fees if the local staff have agreed to use discretion. EGLE will not waive after-the-fact fees if the applicant makes a unilateral decision to move ahead with the project without concurrence from EGLE. Fines and penalties are also possible, depending on the specific circumstances.
3. Follow any conditions provided by EGLE associated with using discretion. Potential examples:
 - a. Submission of photos and other documentation of the project.
 - b. Submit a partial application before, or immediately after, starting the project.
 - c. Submit a complete application within 14 days after starting the project.
 - d. Specified construction details and practices.

4. Follow-through on completing the application, and the permitting process in a timely and responsive manner.

Unpermitted Structures

EGLE is aware that some homeowners and contractors have proceeded to install regulated structures without applying for a permit or contacting permitting staff. These activities are illegal, and many of the construction methods used are highly likely to fail in the coming months. One of the important parts of the permitting process is to assure appropriate placement and design of structures. In addition, EGLE has made timely permitting process options (outlined above) available to contractors, so the excuses for not working with EGLE staff are limited.

To date, EGLE has largely chosen to focus on customers that want to protect their property legally. However, EGLE intends to pursue legal recourse against contractors that continue to operate without regard for the legal requirements and quality standards that most other knowledgeable contractors have chosen to abide by.

Individual property owners that currently have unpermitted structures are encouraged to contact EGLE. Our staff will work with you to find a solution that allows you to protect your home and bring the site into compliance. Some structures may be permitted after-the-fact with little or no modification.