

	WATER RESOURCES DIVISION POLICY AND PROCEDURE		DEPARTMENT OF ENVIRONMENTAL QUALITY
Original Effective Date: April 18, 2006 Revised Date: Reformatted Date: November 19, 2013	Subject: Parts 301 and 303 - Water Withdrawals		Category: <input type="checkbox"/> Internal/Administrative <input type="checkbox"/> External/Non-Interpretive <input checked="" type="checkbox"/> External/Interpretive
	Program Name: Water Resources Program		
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A Department of Environmental Quality (DEQ) Policy and Procedure cannot establish regulatory requirements for parties outside of the DEQ. This document provides direction to DEQ staff regarding the implementation of rules and laws administered by the DEQ. It is merely explanatory; does not affect the rights of, or procedures and practices available to, the public; and does not have the force and effect of law.

Note: This policy and procedure was previously numbered as 301-303-06-01.

PURPOSE:

To provide direction to Water Resources Division (WRD) staff with implementing the recently passed water use legislation (Senate Bill 850) and how it affects our administration of Part 301, Inland Lakes and Streams, and Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).

BACKGROUND:

Part 301 requires a permit to "create, enlarge, or diminish" an inland lake or stream [Section 30102 (d)]. The WRD has historically maintained the position that Part 301 did not regulate groundwater withdrawals as long as there were no surface water impacts. The WRD, however, has regulated activities such as permanent and seasonal lake and stream drawdowns, diversions, and other activities that have the potential to adversely affect riparian owners and public trust resources. Senate Bill 850 amended Part 301 to exempt the withdrawal of water "for any purpose." Part 303 was not amended.

INSTRUCTIONS:

The WRD will continue administering Part 301 and Part 303 as follows:

Regulation of Water Withdrawal Structures Under Part 301

A permit under Part 301 is required to "construct, enlarge, extend, remove, or place a structure on bottomland." The placement of structures such as pumps, pipelines, and culverts below the ordinary high watermark (OHWM) remains regulated under Part 301, even if the purpose of such structures is the withdrawal of water.

Stream Relocation

Alteration of the existing channel of a stream including straightening, relocation, and enclosure of the channel are all regulated under Part 301. The transfer of water from an existing stream channel to a new, altered, or enclosed stream channel is not considered a "withdrawal" of water as defined in Section 30103(2). Stream channelization, relocation, and enclosure remain regulated under Part 301.

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Lake and Stream Drawdowns

The drawdown of a lake or impoundment for a variety of purposes has historically been regulated under Part 301 (Section 30102). A minor permit category exists for certain lake drawdowns [R 281.816(1)(o)]. It is our interpretation that the drawdown of a lake or stream; i.e., discharging from a lake or stream to downstream waters on either a temporary or permanent basis, does not constitute a withdrawal and will continue to be regulated under Part 301.

Ordinary High Water Mark

The OHWM is defined in Section 30101(i). This definition refers to the "natural" and long standing OHWM, and it is our interpretation that this elevation is not altered by the artificial withdrawal of water from a lake or stream. Any activity regulated by Part 301 that occurs below the OHWM will continue to be regulated whether or not the withdrawal of water results in exposure of bottomland. Should a withdrawal remove all the water from a lake or stream, the bottomlands remain regulated under Part 301.

Addition of Water to Lakes or Streams

Part 301 requires a permit to "create, enlarge, or diminish" an inland lake or stream. Thus, a permit is required for the transfer of water to an inland lake or stream to augment existing lake levels (including diversion of water from another lake or stream) or for any other purposes. These activities continue to be regulated under Part 301.

Water Use by Non-riparian Owners

Part 327, Great Lakes Preservation, and Part 328, Aquifer Protection, of the NREPA state that "This part shall not be construed as affecting, intending to affect, or in any way altering or interfering with common law water rights or the applicability of other laws providing for the protection of natural resources or the environment." We interpret this statement to mean that non-riparian owners do not have a right to withdraw water from a lake or stream, even though a Part 301 permit is not required for a water withdrawal.

Drainage of Wetlands, Generally

Senate Bill 850 does not amend Part 303. The surface and subsurface drainage of wetlands is regulated under Part 303, and this activity is prohibited without a permit from the DEQ.

Drainage of Shallow Water Wetlands, Lakes, and Streams

Wetlands include areas both above and below the OHWM of lakes and streams. Regulation of the alteration of the littoral zone of lakes and streams, including areas of marsh or other wetlands, falls under the overlapping jurisdiction of Parts 301 and 303. Historically, Part 301 has been used as the primary regulatory mechanism below the OHWM of lakes or streams, but Part 303 regulatory criteria also applies.

The definition of wetlands in Part 303 includes inundated areas that under normal circumstances support wetland vegetation or aquatic life. Although this definition does not specify a depth to which wetlands extend, we routinely identify areas below the OHWM as wetlands. Consistent with past practice, the statutory definition, and the federal classification

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system (Cowardin 1979), Part 303 regulates drainage of shallow water wetlands above and below the OHWM. We do not expect that small volume withdrawals, or withdrawals for normal riparian use, would be regulated under Part 303. However, major drawdowns that lead to actual drainage of wetlands, such as those that have historically been regulated by the WRD, would continue to require authorization under Part 303.

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