

**MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENVIRONMENT
WATER RESOURCES DIVISION**

**SECTION 404 PROGRAM ANNUAL REPORT
FISCAL YEAR 2020
September 26, 2022**

GENERAL INFORMATION

Michigan's Section 404 Program Overview

The State of Michigan has administered the federal Section 404 Permit Program since approval of the state program by the United States Environmental Protection Agency (USEPA) in August 1984. The Michigan Department of Environment, Great Lakes, and Environment (EGLE) is responsible for the program, which is operated under agreements with the USEPA¹ and with the United States Army Corps of Engineers (USACE). Administration of the Section 404 Program at the state level provides for efficient processing of permit applications, encourages the integration of wetland management with other state and local resource programs, and makes effective use of state and federal staff resources.

Under Michigan's agreement with the USEPA, direct federal review is provided only for the largest projects and for those projects which have the potential to impact critical areas (e.g., threatened and endangered species habitat). About one to two percent of all Section 404 applications received are subject to direct federal review. Applications are processed as individual permit applications (public noticed) or through an expedited application process for minor project (MP) and general permit (GP) activities.

This report summarizes activities taken under Michigan's Section 404 Program during fiscal year (FY) 2020 (from October 1, 2019 to September 30, 2020) in accordance with the requirements of the USEPA's state program regulations.

Status of Section 404 Program Review by the USEPA

The final results of the USEPA's review of Michigan's Section 404 Program were published on July 31, 2008, in the Federal Register (FRL-8697-3). The report was positive regarding EGLE's permit program administration; however, the report required a number of legal issues to be addressed in order to maintain consistency between state and federal Section 404 regulations. Since that report, EGLE has worked to address the identified issues required to maintain the

¹ A new Memorandum of Agreement (MOA) was signed by both agencies effective November 9, 2011, that revises the previous 1983 MOA.

SECTION 404 PROGRAM ANNUAL REPORT, FISCAL YEAR 2020

Page 2

September 26, 2022

state program and has completed most of the proposed corrective actions cited in USEPA's 2008 report.

In 2009, the Michigan Legislature created a Wetland Advisory Council (WAC) which was charged to evaluate Michigan's Wetland Program and provide recommendations to the Governor, the legislature, and EGLE. The WAC completed its final report in August 2012, including recommendations on the changes necessary to correct the identified deficiencies in Michigan's 404 Program. In follow-up to the WAC final report, EGLE created statutory amendment language to address the deficiencies. Michigan's Public Act 98 of 2013 was the result of the 5 year effort by Michigan to work with stakeholders, including business groups, drain commissioners, local, state and federal agencies, conservation and environmental protection groups, and other interested organizations, as well as the Michigan legislature, to develop amendments to address these issues.

The results of USEPA's review of Program Revisions to Michigan's Section 404 Program due to Michigan's Public Act 98 (PA 98) were published on December 13, 2016, in the Federal Register. USEPA found that the majority of revisions within PA 98 sections were consistent with the Clean Water Act (CWA) and approvable. There were some revisions found to be inconsistent with the CWA and not approvable, thus requiring additional corrective actions. EGLE has initiated corrective actions to address the findings of USEPA's review of PA 98, through coordination and outreach to stakeholders, and internal planning efforts, so that a legislative amendment language package can be pursued.

Summary of changes in program operations or procedures in FY 2020.

In April 2019, the Department of Environmental Quality (DEQ) was renamed to the Department of Environment, Great Lakes, and Energy (EGLE) by Executive Order 2019-2. This order also established the Interagency Environmental Justice Response Team, the Office of the Clean Water Public Advocate, the Office of Climate and Energy, the Office of the Great Lakes, the Office of the Environmental Justice Public Advocate and Science Review Boards within EGLE.

On March 16, 2020, employees of the State of Michigan began working remotely due to the Covid-19 pandemic. The challenges faced in this program, and all other state programs, were significant including adjusting to remote work, temporary layoffs, reduced access to in-office work resources and co-workers, public health concerns, limitations on in-person meetings and events, etc. During FY 2020, state employees were still working primarily remotely, with some lifting of restrictions on field work, occasional working in the office, and meetings.

SECTION 404 PROGRAM ANNUAL REPORT, FISCAL YEAR 2020

Page 3

September 26, 2022

GP and MP Categories

On November 15, 2019, EGLE Water Resources Division (WRD), issued a new Minor Project Category for Sandbags for Temporary Great Lakes Shoreline Protection during High Water. The categories are only effective on the shoreline of the Great Lakes where the U.S. Army Corps of Engineers retains Section 404.

Program Development

In 2019, Public Act 561 and Public Act 562 were passed which included revisions to Part 303 Section 30312 (f), which created a Voluntary Wetland Restoration (VWR) Program and established criteria for VWR projects. This program is focused on streamlining the permitting process for agencies and partners focused on wetland restoration projects. EGLE has a dedicated staff member in the Wetlands, Lakes and Streams Unit responsible for implementation of this program, including the review and processing of all permit applications for the VWR Program. This program is implemented in partnership with the Department of Natural Resources (DNR), through joint review of proposed projects, field visits, Early Coordination Requests, and permit conditions, with the goal of streamlining the process and encouraging restoration of wetland quantity and quality in Michigan. Final decisions on applications are made by EGLE, consistent with Michigan's Section 404 Program.

As of September 30, 2020, Michigan had 43 approved Wetland Mitigation Banks, 10 of which were approved during this reporting period, FY 2020. The 10 new banks established during this reporting period include LCRC Perry Wetland Mitigation Bank, Kalamazoo River Watershed Bank/124th Avenue, Pennell Road/Belle River Watershed Mitigation Bank, Potato Creek Wetland Mitigation Bank, Allegan State Game Area Wetland Mitigation Bank, Grand River State Game Area Wetland Mitigation Bank, Krummrey Wetland Mitigation Bank, Parma Wetland Mitigation Reserve II, Wittman Wetland Mitigation Bank, and the Michigan Department of Transportation (MDOT) St. Joseph River Watershed Bank. EGLE's current Wetland Mitigation Bank Registry can be found at Michigan.gov/EGLE/About/Organization/Water-Resources/Wetlands/Mitigation-Banking.

The WRD continues to progress in the development of the Michigan Wetland Monitoring Program (MIWM). From 2010 through 2012, WRD implemented a National Wetland Condition Assessment (NWCA) Intensification project and partnered on the long-term ongoing Great Lakes Restoration Initiative (GLRI) Coastal Wetland Monitoring project. The 2010 to 2012 NWCA Intensification project between the EGLE and Central Michigan University (CMU), funded through the Wetland Program Development Grant Program, included sampling of 70 Great Lakes coastal wetland sites over a three-year period. WRD staff is also coordinating with CMU and the other partners involved in the GLRI Coastal Wetland Monitoring Project, to facilitate communication between the academic researchers and various state agencies throughout the Great Lakes region. From 2016 through 2020 WRD officially launched the MIWM, which included implementation of the NWCA and another NWCA Intensification Project funded with Section 106 Monitoring grant funds, as well as state-only monitoring under a Wetland Program Development grant. In combination, these projects included monitoring of 97

SECTION 404 PROGRAM ANNUAL REPORT, FISCAL YEAR 2020

Page 4

September 26, 2022

wetland sites between 2016-2020 in the first cycle of the MIWM. This work was also completed in partnership with CMU. The final reports for the Section 106 grant and the Wetland Program Development grant that funded this work were submitted in 2020.

Also, from 2016 to 2020, WRD partnered with DNR and CMU on a GLRI-funded project focused on improving management of high quality state-owned coastal wetlands, using monitoring data. This project resulted in development of management plans for four priority state-owned Great Lakes coastal wetlands, including Epoufette Bay, Fish Point, Munuscong Bay, and Seiners Point. The final report for this project was submitted in 2020.

Other recent program improvements include development of the Application Screening Table and associated GIS spatial layers in MiWaters, implementation of the Bat Tool, Eastern Massasauga Tier 1 layers, and Mussel Protocols in coordination with United States Fish and Wildlife Service (USFWS) to enhance screening for threatened and endangered species.

FY 2020 Permitting Activities

During the period from October 1, 2019 to September 30, 2020, EGLE received 4,208 permit applications for projects proposing impacts to inland lakes, streams, and wetlands subject to Michigan’s Section 404 Program jurisdictions. These applications are processed under Part 301 and Part 303.

EGLE issued a total of 3,792 permits, and denied 37 applications, under Parts 301 and 303 during FY 2020. Of the Section 404 permit actions taken during this reporting period:

- 1,146, or 30%, were processed through the public notice process
- 2,359, or 62%, were processed as MPs under Parts 301 and 303
- 324, or 8%, were processed as GPs under Parts 301 and 303

The remainder of the applications received were either incomplete or awaiting final decision. Actions taken are summarized below:

Table 1 FY 2020 Section 404 Application and Permit Actions

	Public Notices	MPs	GPs	Total Actions
Issued	1,146	2359	324	3792
Issued - Modified or Revised	230	171	12	413
Issued ATF	-	-	-	130
Denied	-	-	-	37

Table 2 FY 2020 USEPA Comments on Section 404 Red Files

USEPA No Comment	13
USEPA No Objection Provided Certain Conditions Are Met	17
USEPA Objection	1
TOTAL	31

FY 2020 Permit Actions Having Impacts Greater Than One Acre

Pursuant to the MOA between the EGLE and the USEPA , the following projects involved impacts in excess of one surface acre per project. Eleven (11) permits were issued impacting one acre or more of wetlands.

Table 3 FY 2020 Section 404 Permits for Wetland Impacts Exceeding 1 Acre

Permits with >1 acre Permanent Impact	Total Permanent Impact
WRP024429	18.5 Acres
WRP021563	6.22 Acres
WRP020013	14.06 Acres
WRP021850	3.49 Acres
WRP011498	3.17 Acres
WRP022823	2.89 Acres
WRP020764	2.31 Acres
WRP023830	3.29 Acres
WRP018455	2.1 Acres
WRP021235	1.59 Acres
WRP022638	1.12 Acres

Table 4 Section 404 Permits for Wetland Impacts in Excess of 1 Acre and Mitigation Total

Year	# of Permits	Acres of impact	Acres of mitigation
2020	11	58	364.51

SECTION 404 PROGRAM ANNUAL REPORT, FISCAL YEAR 2020

Page 6

September 26, 2022

Table 5 FY 2020 Section 404 Permanent Permitted Impacts by Waterbody Type

Waterbody Type	Acres	Linear Feet
Wetland	124.5	NA
Inland Lake	26,082	131,867
Stream	3,126	262,692

**Individual, minor project, general permits*

Table 6 FY 2020 Section 404 Restoration and Temporary Impacts

Type	Acres	Linear Feet
Wetland Restoration	372	NA
Temporary Wetland Impacts or Conversion Only Impacts*	2568	NA

**Temporary wetland impacts, or conversion of wetland type impacts, including seismic survey impacts, are included in this category.*

Table 7 FY 2020 Section 404 Wetland Mitigation

Waterbody Type	Acres Permitted Requiring Mitigation	Linear Feet Permitted Requiring Mitigation	Acres of Mitigation Required	Acres of Preservation as Mitigation	Linear Feet Mitigation Required	Number of Permits Requiring Mitigation
TOTAL WETLAND	174.24*	0	120.65	2,341.83	0	58
Wetland - Forested	128.49	0	82.31	2,038.74	0	31
Wetland – Scrub Shrub	24.44	0	5.52	197.4	0	14
Wetland - Emergent	18.68	0	27.86	100.95	0	31
Wetland – Wet Meadow	2.31	0	4.96	0	0	1
Wetland – Borders Inland Lake	0.32	0	0	4.74	0	1
TOTAL STREAM	0	3,995	0	0	4,794*	6

**Some temporary and conversion wetland impacts required mitigation. One permit requiring stream mitigation approved alternative stream mitigation methods in the form of structure*

replacement and flow improvements, which is not accounted for in the linear feet of stream mitigation required in this figure.

FY 2020 Compliance and Enforcement Activities

During the period from October 1, 2019 to September 30, 2020, EGLE took compliance enforcement actions on a total of 361 complaints and violations of Parts 301 and 303.

Table 8 FY 20 Section 404 Compliance Actions

Number of Complaints Closed/Resolved Part 301	67
Number of Complaints Closed/Resolved Part 303	82
Total Compliance Enforcement Actions Taken (All legal Parts)	361
Compliance communication sent	15
Enforcement Notice	15
Violation Notice (VN) Civil Liability	59
VN request for Information	109
SVN request for Information	8
VN	9
VN Order to restore	71
Second Violation Notice (SVN) Order to restore	13
VN After the Fact Permit	37
SVN After the Fact Permit	6
Administrative Consent Agreement	14
Civil Litigation	4
Criminal Referral	1

Cumulative Impacts

Michigan's wetland law requires that "the probable impact of each proposal in relation to the cumulative effect created by other existing and anticipated activities in the watershed," be considered in determining whether a permit should be issued. A permit allowing wetland losses may be issued only when it has been shown that there is no feasible and prudent alternative to the project as proposed, and that the project will not result in an unacceptable disruption to the aquatic resources. Cumulative impacts are addressed broadly through consideration of other permitted impacts in the vicinity of a proposed project, and also through mitigation measures including the use of conservation easements.

SECTION 404 PROGRAM ANNUAL REPORT, FISCAL YEAR 2020

Page 8

September 26, 2022

Administrative rules outlining mitigation requirements under Part 301, Inland Lakes and Streams, and Part 303, Wetlands Protection, of the NREPA, require compensatory mitigation for inland lake and stream and wetland impacts as necessary to offset losses resulting from proposed projects.

Compensatory wetland mitigation can include restoration of former wetland, creation of wetland, or in certain circumstances preservation of existing wetland. Mitigation ratios are defined by administrative rule, with the minimum being 1.5 to 1. Compensatory mitigation for impacts for permits issued during this year are reported above.

In addition to preservation of high-quality wetlands to mitigate for wetland impacts, EGLE staff may accept preservation of remaining wetlands onsite to minimize cumulative and secondary impacts associated with issuance of a permit. This type of preservation is not counted as mitigation credit but is included in the total preservation acreage numbers.

EGLE uses conservation easements as a tool to provide permanent, long-term protection both for compensatory wetland mitigation sites and for preservation of remaining undeveloped wetlands on a project site. In the latter instance, the protection of wetlands is viewed as a means of avoiding cumulative impacts; that is, in some instances, a permit may be issued in part based on the assurance that cumulative future impacts will be avoided by protection of remaining wetlands under a permanent conservation easement.

Table 9 Total Acreage Under Easement per year

Year	# of Recorded CE Agreements	Total Acreage Under Easement
1980-89	30	373
1990	18	210
1991	16	186
1992	34	526
1993	27	577
1994	37	727
1995	20	122
1996	25	661
1997	16	117
1998	14	185
1999	49	482
2000	91	935
2001	119	1,596
2002	154	1,145
2003	132	1,676
2004	148	3,601

SECTION 404 PROGRAM ANNUAL REPORT, FISCAL YEAR 2020

Page 9

September 26, 2022

2005	201	2,447
2006	136	2,269
2007	139	1,891
2008	102	882
2009	91	1,320
2010	46	1151
2012	43	835
2013	34	1947
2014	34	759
2015	47	773
2016	50	970
2017	38	418
2018	45	523
2019	28	1,028
2020	42	1,125
Total	2,006	31,457

Status and Trends of Michigan's Wetlands

EGLE has analyzed wetland inventories from three time periods, 1978 to 1981, 1997 to 1999, and 2000 to 2005, to evaluate wetland trends over the last 30 years in Michigan. Based on the analysis of these inventories, Michigan currently has approximately 6,465,109 million acres of wetlands. Michigan originally contained approximately 10.7 million acres of wetland prior to European settlement, but by 1978, that number had dropped to approximately 6,506,044 million acres. Since the passage of Michigan's wetland protection law in 1979, the rate of wetland loss has declined dramatically. The total decline of wetland since 1978 is estimated at 41,000 acres, with the rate of decline slowing between the periods 1978-1998 (loss of approximately 1,642 acres per year) and 1998-2005 (loss of approximately 1,157 acres per year). More information on this analysis can be found in EGLE's report [Status and Trends of Michigan's Wetlands: Pre-European Settlement to 2005](#).

The Wetland Status and Trends Tool, incorporated into EGLE's Wetlands, Lakes and Streams Map Viewer, provides users the ability to compare historic wetland data to current information. It also allows statistical data to be generated for acreage and a variety of wetland functions where available. The information can be provided at the watershed, City/Township, or County level.