Michigan’s Public Act 98 of 2013

Changes to:
Part 13, Permits
Part 301, Inland Lakes and Streams
Part 303, Wetlands Protection
Part 325, Great Lakes Submerged Lands
of the Natural Resources and Environmental Protection Act, PA451 of 1994, as amended

Can the State maintain Federal Section 404 Permitting authority with these changes?
Part 301, Inland Lakes and Part 303, Wetlands Protection Changes

Purpose of Parts: Federal Section 404 Program

The DEQ powers are limited to those given to it by the legislature based on “its determination of what is in the best interest of the citizens of this state” Sec. 30101A and 30328.
Part 13, Permits

- Appears to increase the documentation and “scientific” standards required for permit application reviews (both denial and approvals).

- How will this applied?
  - DEQ believes this standard is already being met.
  - May require applicants to conduct more detailed environmental/ecological assessments as part of applications to required “sufficient facts and data.”
Federal Section 404 Assumption in Michigan

In 1984, Michigan received approval to assume Section 404 of Federal permitting authority.

- Only one of two states with 404 assumption
- 34 other States (7 of 8 Great Lakes states) have wetland programs where both state and federal approvals are needed for most projects.

Benefits of 404 assumption:

- State control and final permit authority over 99% of applications in Michigan’s inland waters (EPA reviews ~1%)
- Review of impacts to multiple natural resources under one application.
- Incorporation of Federal CWA Section 401, Threatened and Endangered Species, and historic site impact reviews.
- State has statute established timelines.

A state Section 404 Program must meet federal Clean Water Act standards both to protect interstate resources and to ensure a “level playing field” in the national wetland permit program. In 2008, the USEPA published findings from a ten-year review of Michigan’s 404 Program. The USEPA identified changes needed to maintain federal consistency.
Part 301, Inland Lakes and Part 303, Wetlands Protection Changes

EPA Required Changes:

- Limit/Clarify Maintenance Activities
  - Drains (county and agricultural)
  - Utility Lines
  - Roads
- “Ongoing” Farming
- No conversion of wetland to nonwetland or a different use
Part 301, Inland Lakes and Part 303, Wetlands
Protection Changes

Changes not EPA Required:

- **Agricultural**
  - Livestock crossings and fencing
  - Agricultural Drains Defined
  - Blueberry Operations
  - Propose new General Permits

- **Drains (established before 1973)**
  - As constructed or modified before July 1, 2014
  - Culvert replacement and extensions
  - Emergency reconstruction
  - Propose new General Permits procedures
  - Placement of spoils in wetland
Part 301, Inland Lakes and Part 303, Wetlands Protection Changes

Changes not EPA Required:

- Other Misc.
  - Utility – direction drilling, boring, knifing in, poles, drawdowns of FERC Impoundments
  - Placement of “Biological Residues”
  - Refund fee for denials
  - Sand, Gravel, and Mineral Operations
  - “not contiguous”
  - Specific project “feasible and prudent alternatives”
  - Fees – established consistency
  - Compensatory Mitigation Changes
    - Agricultural Mitigation (incl. stewardship fund)
    - Mitigation Banking Rules (must be submitted in 1 yr.)
Agricultural Drain Defined

a) Does not have continuous flow.
b) Flows primarily as a result of precipitation-induced surface runoff or groundwater drained through subsurface drainage system.
c) Serves agricultural production
d) Was constructed before January 1, 1973 or was constructed in compliance with this part or former 1979 PA 203
Can Michigan Maintain 404 Authority?

- State must regulate all waters of the US.
  - Ag Drains, Gravel Mining, “Not contiguous”
- Mitigation
  - Farming/use, Stewardship Fund
  - Mitigation banking rules
- Fills
  - Spoils along drains
  - Livestock Crossings
  - Culvert placement
  - Utility installations

Part 303 is repealed 160 days after notice of withdrawal is published in Federal Register
Contact Information

Todd M. Losee
tlOSEE@niswander-env.com
Niswander Environmental, LLC
9436 Maltby Road
Brighton, MI 48116
810-225-0539 office
810-962-0190 cell
810-225-0653 fax
www.niswander-env.com