



May 16, 2013

Senate Committee on Natural Resources, Environment and Great Lakes

RE: Joint Testimony from MEC and Tip of the Mitt Watershed Council on Senate Bill 163 and the Michigan Wetland Protection Program

Dear Senators:

Michigan Environmental Council and Tip of the Mitt Watershed Council thanks you for the opportunity to submit the following testimony regarding Senate Bill 163. We and our members fully support the assumption of the Federal program by the state of Michigan. Wetlands are extremely important in maintaining the water quality of the Great Lakes and provide valuable services to communities across the state. We cannot support the bill as currently drafted because we think it fails to comply with the federal Clean Water Act in a number of important ways. In addition, many of the changes unnecessarily increase program costs and reduce revenue being raised from those parties that utilize and benefit from the program.

As the bill is written, we have 3 main concerns:

- creation of exemptions that we think will jeopardize the program assumption
- mitigation issues
- contiguous language

Specifically, we believe the following points need to be addressed:

**Part 13** – as we have noted in earlier discussions, the proposed changes to Part 13 are much broader than the Wetland Protection Act. The impetus for these amendments is an EPA audit of Michigan's administration of the federal 404 program as well as recommendations from the Wetland Advisory Council. As such, the amendments should stick solely to those areas impacted by the EPA review and not interfere with the implementation of other programs. These proposed changes to Part 13 would affect at least 40 other unrelated programs, by our count. The burdensome and vague requirements under the proposed changes would impact all of the industries above. The language has extremely broad implications and altering the permitting system for all of these industries would only

serve to hurt Michigan's business and our economy. It is important to note, that any burdens placed on the department will become requirements of the permit application and increase the cost of wetland related work in Michigan.

## **Exemptions**

The **Agricultural Drain** maintenance section is problematic (pages 6-8). The language added July 1, 2014 as the cutoff date for restrictions to go into effect. This adds an additional field season for Michigan to be out of compliance with the EPA program.

The proposed "general permit" for Drain Commissioners will not be considered a general permit by the federal government and provides insufficient oversight of the program. It is a list of activities the Drain Commissioner submits at the end of the year, for work already done, with zero oversight by the Department. This is an after-the-fact permit that essentially gives them broad authority with no opportunity for the Department to prevent damage.

Additionally, a new exemption was created for "controlled access of livestock to streams for watering" if constructed in accordance with federal standards. This has been a problem in the past in Northern Lower Peninsula which has the potential to significantly impact water quality in an area of the State that relies on tourism. We object to the creation of a new exemption that also creates a new problem for certain areas of the state.

The proposed **exemptions for utility activities** have no federal equivalent and should be reworked into a general permit. The review of the state program indicated concern with respect to exemptions for utility lines. The concern is that the state program is broader because the state exempts the activities whereas the federal government requires a Nationwide Permit for the construction, maintenance, and repair of utility lines. To maintain the equivalent, the state needs to require a permit for such activities. The permit exemption is not equivalent to the federal permitting system because a discharger must give advance notice to the Corps if the work entails a certain aerial extent and because the permit establishes specific limitations on the manner of the work's performance. Therefore, the exemptions would be broader than the federal 404 program and is not allowed by the EPA for the state to maintain assumption of the program. If provisions are not removed, the DEQ needs to require that dischargers give advance notice to MDEQ that is similar to the notice required by Nationwide Permit 12 as well as establish BMPs in rules for the activities per the EPA Audit.

## **Mitigation**

We strongly object to the section on pages 26-27 that reduces the importance of local mitigation of wetland impacts and allows agricultural activities to "reduce or replace" mitigation requirements. The purpose of mitigation is to replace the functions and values lost when wetlands are impacted by development. The proposed language allows the applicant to "make a payment into a stewardship fund" created to mitigate impacted sites. However, it is unclear how this directly mitigates the impact made at specific sites. It also allows a conservation easement to be created for the impacted site – after restoration – but

this section is confusing and unclear about how this mitigates the original loss, and what mitigation provides for loss of functions and values while the site is impacted.

For proposed **blueberry** activities, a general permit or minor permit category should be created, and there should be mitigation requirements for larger impacts.

### **Contiguous**

In the past, the department has used a simple straight forward method for determining whether a wetland is contiguous to the Great Lakes (1000 feet) or an inland lake (500 feet). This provides certainty to the regulated community and was easy to administer by the department. New provisions will make this less clear, with the applicant being able to request the department do a determination of hydrologic connection between the wetland and the surface water body. This is an expensive undertaking and will not be able to be performed by the department at the costs currently included in the rules for making such a determination. The burden of making such a determination should rest with the applicant, or the department should be able to recover actual costs of performing such work.

### **Funding**

Finally, we are concerned about the long-term stability of the program, so we are naturally worried about funding. This bill requires more work by DEQ and yet, we are not increasing funding to the Department to accomplish this additional work. Any improvements made on programmatic efficiencies, or on correcting the EPA audit deficiencies will not be effective, if the program is continuously underfunded or in question. We urge you to support a bill that also provides a stable source of funding for this important program.

We appreciate this opportunity to comment, but cannot support the legislation as currently proposed. We urge members to oppose the bill at this time. Please feel free contact us with any questions or concerns: or.

Sincerely,



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