

US EPA ARCHIVE DOCUMENT

MEMORANDUM OF AGREEMENT

Between the

State of Michigan

Department of Natural Resources

and the

United States Environmental Protection Agency

This Memorandum of Agreement between the State of Michigan Department of Natural Resources, hereinafter referred to as the MDNR, and the United States Environmental Protection Agency, hereinafter referred to as the USEPA, is entered into to enable the State to carry out the policies, regulations and procedures necessary to administer the permit program established pursuant to Section 404 of the Clean Water Act (CWA), 33 U.S.C. 1251, et. seq., and hereinafter referred to as the "404 program".

WHEREAS, Section 404(g) provides for State administration of the 404 program regulating discharges of dredged or fill material into certain navigable waters; and

WHEREAS, the MDNR has proposed a State program fully in accordance with the requirements of Section 404(g) and 40 CFR Part 233; and

WHEREAS, the USEPA has approved the state program pursuant to Section 404(h),

NOW, THEREFORE, IT IS AGREED THAT:

- (1) The MDNR shall administer and enforce the 404 program in accordance with the State Section 404 Program Assumption Regulations (40 CFR Part 233), the 404(b)(1) Guidelines (40 CFR Part 230), and provisions contained in memoranda and agreements between the USEPA and MDNR.

(2) The State will take timely and appropriate enforcement action against persons in violation of permit conditions for all permits issued under the State 404 program, and against persons conducting unauthorized discharges of dredged or fill material into waters of the United States over which the MDNR has assumed jurisdiction under the State 404 program. In instances where the USEPA determines that the MDNR has not initiated timely and appropriate enforcement action against a State 404 program permit violation or an unauthorized discharge, USEPA shall proceed with any or all of the enforcement options available under Section 309 of the CWA. Prior to proceeding with Federal enforcement action against a State 404 program permit violator or an unauthorized discharger, and for purposes of providing notice only, USEPA shall inform the MDNR that Federal enforcement action is to be initiated forthwith. This notification shall be in the form of a telephone or written communication, by USEPA to the Director of MDNR or his designee, and, except in the exercise by USEPA of its emergency power under Section 504 of the CWA, such notification shall be provided in all cases of Federal enforcement action regardless of the existence or extent of previous communication between USEPA and the MDNR on the matter. It is expected that preliminary staff discussions will take place between USEPA and MDNR representatives before institution of Federal enforcement action.

(3) The USEPA, U.S. Fish and Wildlife Service (FWS), and the Corps of Engineers (Corps) shall, pursuant to Section 404(j) of the CWA,

review each permit application received by MDNR except for those categories of discharges for which such review has been waived in accordance with Section 404(k) of the CWA. The primary purpose of such review shall be to monitor and evaluate MDNR's administration of the State 404 program. It is fully expected that the categories of discharges for which the requirements of Section 404(j) are waived will expand as MDNR demonstrates proficiency in the administration of the 404 program.

- (4) The USEPA, after consultation with the Corps and the FWS, shall waive the requirements of Section 404(j) for all but the following classes or categories of discharges:
  - (a) Discharges of dredged or fill material proposed to be authorized by general permit.
  - (b) Major discharges of dredged or fill material as defined in this agreement.
  - (c) Discharges of dredged or fill material into critical areas established under state or federal law, including fish and wildlife sanctuaries or refuges; national and historical monuments; wilderness areas and preserves; national and state parks; components of the National Wild and Scenic Rivers system; the designated critical habitat of threatened or endangered species; sites identified or proposed under the National Historic Preservation Act; and sites identified by USEPA in advance under provisions of the 404(b)(1) Guidelines.

- (d) Discharges of dredged or fill material which may affect the waters of a state other than Michigan.
- (5) "Major discharges of dredged or fill material" are herein defined as:
  - (a) Discharges known or suspected to contain toxic pollutants as identified by Section 307(a)(1) of the CWA, hazardous substances identified pursuant to Section 311 of the CWA and Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et. seq., toxic substances as defined by Section 3 of the Toxic Substances Control Act, 15 U.S.C. 2601, et. seq., and hazardous waste as defined by Section 1004(5) of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et. seq..
  - (b) Discharges into areas identified by USEPA, in consultation with the Corps and FWS, which could have the following impacts:
    - i. Significant adverse effects on areas of waters which are unique for a particular geographic region.
    - ii. Significantly reduce the commercial or recreational values of a significant area of waters of the United States.
    - iii. Affect a federally-listed or proposed endangered or threatened species.
  - (c) Wetland fills involving more than 10,000 cubic yards of material.
  - (d) New construction of breakwaters or seawalls that exceed 1,000 feet in total length.

- (e) Culvert enclosure of more than 100 feet with more than 200 cubic yards of fill in waters regulated by MDNR or channelization of more than 500 feet of a river or stream.
- (6) The USEPA retains the right to terminate, at any time, in whole or in part, any waiver of the requirements of Section 404(j) by sending written notice of termination to the MDNR.
- (7) The MDNR shall promptly submit the classes or categories of permit applications identified in section 4 of this agreement to the Regional Administrator of the USEPA for review, coordination and, where applicable, objection in accordance with Section 404(j). The submission shall include:
  - a) A copy of all complete permit applications for those activities identified in section 4(b-d) of this agreement. Where Michigan law requires preparation of an environmental impact statement (EIS), or similar documents and such EIS or other document is available, the EIS or other document shall accompany the permit application when transmitted to the Regional Administrator;
  - b) Notice of every significant action taken by the MDNR related to the consideration of any permit application for which the requirements of Section 404(j) have not been waived;
  - c) A copy of each draft general permit. A draft general permit will be prepared by MDNR whenever MDNR intends to issue a general permit;
  - d) A copy of every final application action including a copy of every

permit issued, modified or denied, along with any and all conditions and requirements.

(8) The MDNR shall comply with the draft permit requirements of the appropriate sections of 40 CFR Part 233 for those discharges listed under section 4 of this agreement which require draft permits. For discharges which require a draft permit, public and USEPA review shall be based on the draft permit. For those discharges listed in section 4 of this agreement which do not require a draft permit, public and USEPA review shall be based on the permit application and other documentation outlined in section 7(a) of this agreement.

(9) The Regional Administrator of the USEPA shall, not later than 30 days from the date of receipt of a permit application from MDNR, notify MDNR of his intent to provide written comments on the application. If the Regional Administrator intends to provide written comments, he shall review, coordinate with the Corps of Engineers and U.S. Fish and Wildlife Service, and submit comments to MDNR in accordance with the requirements of and in the time frames specified in Section 404(j). The MDNR shall respond to any such comments received from USEPA in the manner specified in Section 404(j) and appropriate sections of 40 CFR Part 233.

(10) The MDNR shall submit quarterly noncompliance reports for Section 404 discharges containing the following information:

(a) Name, location and permit number of each noncomplying permit or the name, location and circumstances of each unauthorized discharge;

(b) A brief description and date of each instance of noncompliance which will include the following:

- (i) any unauthorized discharges of dredged or fill material subject to Michigan's jurisdiction or any noncompliance with permit conditions, and
- (ii) a description of investigations conducted and of any enforcement actions taken or contemplated.

(11) The MDNR shall submit to the Regional Administrator of the USEPA an annual report assessing the cumulative impacts of Michigan's permit program on the integrity of the state regulated waters. This report shall include:

- (a) The number and nature of individual and general permits issued, reissued, modified, revoked and denied by the MDNR during the year;
- (b) The number of acres of each of the categories of state regulated waters (lakes, streams, wetlands) which were filled or received any discharges of dredged or fill material during the year (by either authorized or known unauthorized activities) in excess of one surface acre per project;
- (c) The number and nature of permits issued under emergency conditions as provided in appropriate sections of 40 CFR Part 233; and
- (d) An approximation of the number of persons in the state discharging dredged or fill material under general permits, and an estimate of the cumulative impacts of these activities.

- (12) On the last working day of May, August, November, and February, the MDNR shall submit to the Regional Administrator of the USEPA information concerning noncompliance with state 404 permit requirements for all discharges subject to the State 404 program. The period for the annual report shall be for the calendar year ending December 31, with the report completed and available to the public no more than 60 days later.
- (13) The USEPA may, in accordance with Section 404(i), conduct periodic evaluations of Michigan's permit program.
- (14) This agreement does not limit, diminish or constitute an expressed or implied waiver of the authority of the USEPA to prohibit certain discharges pursuant to Section 404(c).
- (15) This agreement shall be reviewed jointly at least annually by MDNR and USEPA during the preparation of the annual State Water Pollution Control Program Plan, as required by Section 106 of the Clean Water Act.
- (16) Amendments to the memorandum of agreement shall be in writing. They may be proposed by either party, following the procedures required for the original agreement, and shall be effective upon the signature of both parties.

(17) This memorandum of agreement shall become effective upon approval by the Administrator of the USEPA.

United States Environmental  
Protection Agency

Valdas V. Adamkus  
Valdas V. Adamkus  
Regional Administrator, Region V

Date December 9<sup>th</sup>, 1983.

Michigan Department of  
Natural Resources

Ronald O. Skoog  
Ronald O. Skoog  
Director, Michigan Department  
of Natural Resources

Date 30 Mar 83