



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



STEVEN E. CHESTER
DIRECTOR

March 31, 2009

Ms. Lisa Jackson, Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW (1101A)
Washington, DC 20460

Dear Ms. Jackson:

SUBJECT: State of Michigan Withdrawal of the State Program Under Section 404 of the Clean Water Act

As part of her executive budget recommendation for fiscal year 2009-2010 which begins on October 1, 2009, Governor Jennifer M. Granholm has proposed elimination of the state general funding for support of the Michigan Department of Environmental Quality's (MDEQ) wetlands protection program. Without general fund support and increased fee support, the wetlands program cannot be maintained at an even minimally functional level. This recommendation will, by necessity, also require the repeal of Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), or at least the MDEQ's role in administration of a wetlands program. Should this occur, the State of Michigan will no longer have an approvable program under Section 404.

In reviewing the requirements under 40 CFR 233, specifically Subpart F – Federal Oversight, Section 233.53, there is a requirement to provide 180 days notice to the Administrator of the United States Environmental Protection Agency (USEPA). Section 233.53 outlines specific actions that should be taken to effectuate the transfer and indicates that, with the agreement of the administrator, another approach can be taken. As the 180-day deadline for notification of your office prior to the transfer of the program could occur as soon as April 1, 2009, this letter is being transmitted to outline an alternative transfer scenario for your consideration.

Since the Governor's release of her budget proposal, the recommendation to eliminate the wetlands program is receiving a great deal of attention. There are several efforts underway within the legislature to fully consider the impacts of this proposal and the potential for various alternatives to allow the MDEQ to retain the authority to manage the wetlands program. Due to the uncertain nature of the outcome of these legislative efforts, the MDEQ is seeking an alternative transfer scenario. It is hoped that this alternative will allow the transfer to take place, if necessary, yet minimize the burden upon staff in the USEPA, United States Army Corps of Engineers (USACE), and the MDEQ, should the program be maintained.

Division and program management within the MDEQ's Land and Water Management Division (LWMD) have already had very preliminary conversations with USEPA regional wetlands program staff and Detroit district regulatory staff within the USACE. These representatives have been developing a list of questions that are being evaluated by MDEQ

management to identify transition issues and priorities. If acceptable to the USEPA, we would like to move towards a more formal process with the region and Detroit district staff to identify the most efficient way to assure a minimally disruptive transfer for all parties involved.

Initially, the items that need to be addressed include the handling of permit decisions that are in process and pending enforcement cases. The status of our grant commitments and the related funding associated with incomplete grant projects will need to be clearly identified, including a mechanism to return any grant funding that cannot be spent before loss of program staff to accomplish the work. The status of those holding active permits or an approval under MDEQ's general permitting authority will then need to be determined. Many of these permit holders may be associated with activities in wetlands that are not under federal jurisdiction.

The agencies will need to determine how to best contact current and potential permit applicants to advise them of the change in authority and guide them to the proper contacts. Discussions on how Michigan will relate with the USACE relative to Section 401 certification without a state wetland program will be necessary. The status of the Joint Permit Application will need to be evaluated to determine if it has continued applicability or if both the USACE and MDEQ will need to develop updated application forms.

Other issues such as land that is currently under conservation easement as a result of permit or enforcement negotiations, status of mitigation site development and the associated financial assurance mechanisms that are in place and the federal acceptability of mitigation banks that have been established at the state level will need to be determined.

Longer term issues relative to access to historical permit and enforcement records can be worked out after the transfer date, should it occur.

The MDEQ has been fortunate to have had a very positive and supportive relationship with both USEPA and USACE staff with whom our LWMD staff works. We anticipate that this relationship will help all parties work through this unique process. Ms. Elizabeth (Liz) Browne, the Chief of LWMD, will be our point person for coordinating this effort. She can be reached at 517-335-6947 or brownee@michigan.gov with any questions you may have relative to this process.

Sincerely,



Steven E. Chester
Director
517-373-7917

cc: Mr. Pete Geren, Secretary of the United States Army
Governor Jennifer M. Granholm
Mr. Terrence Salt, Principal Deputy Assistant Secretary of the Army, USACE
BG John W. Peabody, Commander, USACE
Lieutenant Colonel James B. Davis, USACE
Ms. Meg Gaffney-Smith, USACE
Mr. Michael White, USACE
Mr. Michael Montone, USACE
Mr. Michael O'Bryan, USACE
Mr. David Evans, USEPA
Mr. Kevin Pierard, USEPA
Mr. Jim Sygo, Deputy Director, MDEQ
Mr. Frank J. Ruswick, Jr., Senior Policy Advisor, MDEQ
Ms. JoAnn Merrick, Chief of Staff, MDEQ
Ms. Elizabeth M. Browne, MDEQ
Ms. Peg Bostwick, MDEQ