

# APPENDIX D: General Permit Categories for Minor Activities in Wetlands in the State of Michigan

Issued June 14, 2002  
Issued Under Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, being Sections 324.30301 to 324.30323 of the Michigan Compiled Laws, Annotated

## BACKGROUND INFORMATION

### PURPOSE

Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), authorizes the Michigan Department of Environmental Quality (MDEQ), Land and Water Management Division (LWMD) to define types of regulated activities that would be expected to have only a minor impact on wetlands and that can, therefore, be reviewed through an expedited permit application process. This General Permit (GP) defines those activities that the LWMD has determined to be minor and also defines the legal authority and limitations for use of this process.

The purpose of this GP is to allow the LWMD to evaluate applications for permits for many minor activities in wetlands without the delays of unnecessary public noticing. The objective of this GP is to reduce the inconvenience and cost of the permit process for applicants proposing minor activities and to reduce the costs of administering the program while protecting the wetland resource.

Please note that this GP does not define projects that will be permitted, but only those that may be considered for expedited processing. Issuance of a permit will follow only if it is determined that the proposed activity is otherwise in accordance with the criteria and requirements of Part 303 and other applicable statutes.

### GENERAL PERMIT PROCEDURES

A person seeking authorization under this GP must submit a permit application on a form supplied by the LWMD. A preliminary determination of whether an application may be processed under this GP is made by LWMD staff when the application is received. Applications processed under GP procedures are reviewed without issuance of a public notice. The preliminary determination must be confirmed by a site inspection. If at any time in the review process it is determined that an application for a specific project does not meet all the general and specific GP criteria, or that the project should be subjected to public review, the applicant will be notified and the application will be returned to Lansing for processing as an individual permit application, including the issuance of a public notice. The processing as an individual permit application may require the applicant to provide additional information and an additional application fee. The LWMD may deny the individual permit if warranted.

### REGULATORY AUTHORITY

The LWMD, in accordance with Section 30312(1) of the NREPA, being Sections 324.30301 to 324.30323 of the Michigan Compiled Laws, Annotated; and the Administrative Rules for Wetlands Protection being R281.921 to R281.925, has determined that the activities listed in this GP meet the requirements given in Part 303 and the rules and, therefore, initially qualify for incorporation into this GP.

Section 30312(1) of the NREPA states, in part, "The department . . . may issue general permits . . . or a category of activities if the department determines that the activities are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment."

Rule 281.923(1) of the Part 303 Administrative Rules indicates that:

An application for a proposed activity which is within a general permit category may be processed and issued by the department without the noticing or hearings specified under section 30307 of the act. The department may process, by public notice, an application which would normally qualify under a general permit category to allow more opportunity for public review and comment. Categories of minor activities will be established in the general permit in accordance with section 30312 of the act. The factors set forth in sections 30302 and 30311 of the act shall be considered in determining whether such a permit is in the best interest of the public.

### GENERAL CRITERIA FOR PERMIT ISSUANCE

Section 30311 of the NREPA specifies the criteria that must be met before a permit may be issued. These general criteria, as well as the specific criteria detailed later in this GP, must be met before the LWMD can issue a permit under this GP.

Subsection (1) states that "A permit for an activity . . . shall not be approved unless the department determines that the issuance of the permit is in the public interest, that the permit is necessary to realize the benefits derived from the activity, and that the activity is otherwise lawful."

Subsection (4) states that "A permit shall not be issued unless it is shown that an unacceptable disruption will not result to the aquatic resources . . . A permit shall not be issued unless the applicant also shows either of the following:

- (a) The proposed activity is primarily dependent upon being located in the wetland.
- (b) A feasible and prudent alternative does not exist."

### LIMITATIONS

The types of activities described in this document can typically be processed as minor actions. However, some activities will not qualify for this type of processing even if the listed criteria are met. Applications will not qualify for consideration under these categories if:

- A) It is determined that the proposed project would constitute a "major discharge" subject to Federal review under any State-Federal memorandum of agreement;

B) The wetland is associated with sensitive natural resource areas including:

1. a Federally designated wild and scenic river,
2. a State designated natural river,
3. a State or Federally designated wilderness or environmental area,
4. a riverine floodway,
5. a State or Federally listed or proposed threatened or endangered species,
6. an identified historic or archeological area,
7. an identified recharge area for drinking water aquifers,
8. an identified rare or unique ecological type;

C) The LWMD determines that the decision making process would benefit from public review of the application;

D) The LWMD determines that a specific activity that would generally qualify as minor would, due to the proximity of other projects and the characteristics of the wetland, likely lead to adverse cumulative impacts;

E) The project also requires a permit under Parts 31, 301, or 325 but does not meet one of the minor categories under those Parts; or

F) The project also requires a permit under Parts 315, 323, or 353.

#### NEED FOR OTHER PERMITS

Issuance of a permit pursuant to GP procedures does not remove the need for other applicable local, State, or Federal permits.

#### GENERAL PERMIT CATEGORIES

The following activities are incorporated into this list of GP categories.

##### A) **Small ponds and Shallow Water Development for Wildlife.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria.

Construction or maintenance of water bodies less than one acre in size providing that dredge spoils including organic and inorganic soils, vegetation and debris shall be placed at an upland site, leveled and stabilized with sod, or seeded and mulched in such a manner as not to erode into any waterbody or wetland, and not be located in a floodway or harmfully interfere with flood flows. Direct connection to an existing inland lake or stream will not qualify for consideration under GP categories.

##### B) **Simple Elevated or Floating Structures.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria.

1. Boardwalks. Open pile or floating boardwalks on steel or timber posts not to exceed 6 feet in width except for widening to allow passage of wheel chairs, etc., at 150 foot intervals and with a maximum cumulative length through wetlands of 500 feet.
2. Platforms. Open pile or floating platforms on steel or timber posts not to exceed 120 square feet of surface area.
3. Safety Fences. Residential open wire safety fences elevated above the wetland on poles, placed to prevent children, pets, etc., from entering the wetland, and limited to 4 feet in height and 150 feet in total length through wetland.

##### C) **Walkways.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria.

Filling for walkways or footpaths not to exceed 6 feet in base width and 200 feet in length where boardwalks or elevated walkways are not feasible or practical. Culverts will be required where necessary to provide for the free flow of surface water. If in a floodplain, the grade elevation change shall not exceed six inches.

##### D) **Driveways.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria.

Construction of new driveways or the widening of existing driveways, provided that:

1. Any upland on the property or other alternatives, such as obtaining a permanent easement for access from adjacent upland if available or shared driveway, is utilized to the greatest degree possible;
2. The location of the driveway is at the least damaging place on the property (e.g., as close to any upland edge as possible) and the driveway crosses the shortest wetland area or area of least impact;
3. The portion or portions of the driveway that pass through wetland are restricted to a total of 16 feet in base width (includes the width of any existing drive and associated fill) and a total of 200 linear feet. The driveway may be wider than 16 feet at the intersection with the public road if the applicant provides proof that the additional width is a requirement of a public transportation agency. No ditches may be placed in the wetland in association with the driveway.
4. The driveway must terminate at a buildable upland site.

Culverts shall be placed as necessary to provide for the free flow of surface water and the movement of organisms. Fill shall be placed on filter fabric, or equivalent material if warranted by soil conditions. If in a floodplain, the grade elevation change shall not exceed six inches.

##### E) **Utilities.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria. The placement of utilities through wetland, including activities such as,



Sewer and water line construction;  
Electric transmission and telephone poles and lines;  
Underground utility lines; or  
Oil/gas pipelines with outside diameter larger than six inches;

provided that the following conditions are met:

1. Crossing sites shall be selected so as to minimize the impact on the wetland.
2. Construction shall be completed using construction methods, equipment, and materials that will minimize the impact on the wetland;
3. If excavated material is contaminated based on sediment leachate data, it may not be used as backfill and it shall be removed from the wetland and placed in a licensed landfill;
4. Project design features shall assure that backfill used in an excavated trench will not result in drainage of the wetland;
5. A minimum of 30 inches of cover shall be maintained between the top of the cable, pipe, encasement, etc., to the existing grade of the wetland;
6. The outside diameter of the pipe, cable, encasement, etc., shall not exceed 20 inches;
7. The top 6 inches to 12 inches of the trench shall be backfilled with topsoil from the trench. If material is contaminated, it shall be handled as indicated under 3. above, and uncontaminated, clean topsoil shall be brought in to fill the trench;
8. Excavated material sidcast or stockpiled in the wetland shall not remain for over 30 days and must be utilized as backfill or removed before completion of the project;
9. Excess excavated material must be removed from the wetland and disposed of at an upland site and stabilized to prevent erosion; and,
10. The applicant shall restore the disturbed area to preconstruction contours and conditions within 30 days of the completion of the project and revegetate the disturbed area.

**F) Oil, Gas, and Mineral Well Access Roads.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria.

Access roads for oil/gas drilling or mineral well drilling activities where angle drilling from upland is not feasible and where the activity is of minor impact, on both an individual and cumulative basis, to the wetland. Access roads shall not exceed 20 feet in base width on filter fabric or equivalent material. Culverts will be required, where necessary, to provide for the free flow of surface water or to avoid restricting low flows and the movement of aquatic organisms. Immediately upon plugging the well, all fill material shall be removed, the original wetland contours restored, and the site stabilized with a wetland seed source and mulched if necessary.

**G) Stormwater Outfalls.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria.

Stormwater outfalls provided that the outlet is riprapped or otherwise stabilized to prevent soil erosion and that the stormwater will be pretreated by incorporating permanent Best Management Practices or otherwise meet State water quality standards and applicable discharge permit requirements.

**H) Culverts.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria.

Culverts, if installed for water level equalization, i.e., to provide for the free flow of surface water between portions of a wetland system, and to equalize the static water pressure.

**I) Emergency Drain Maintenance.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria.

Projects not otherwise exempt under Section 30305(2)(h) involving maintenance, repair, or operation of an existing drain where necessary to alleviate flooding on an emergency basis, providing that:

1. The activity does not otherwise require a permit under Part 301, Inland Lakes and Streams, of the NREPA;
2. The area and extent of current wetlands will not be diminished; and
3. The activity is limited to restoring the drain to depths and widths that do not exceed historic dimensions as defined by the original permit issued under Parts 301 and/or 303, or by the original engineering design in the instance of a drain constructed prior to the effective date of Part 301.

**J) Septic System Replacement.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria.

Replacement of a failed on-site septic tank and/or drain field system providing that it is required by and meets design standards of the local health department. When possible the replacement tank and field system must be in the same location as the original system. Where the option is available, pump-back systems to upland will be required in place of mounded systems in order to qualify for construction under this GP category. A copy of the local health department permit or permission must be submitted to the LWMD at the time of application.

**K) Repairs to Serviceable Structures.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria.

Repairs to a serviceable structure that is not otherwise exempt from permits under Part 303 provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated in the original design. This category applies to structures in existence on October 1, 1980, or constructed pursuant to Part 303. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, current construction codes, or safety standards, that are necessary to make repairs may still be considered under this category providing that the environmental impacts resulting from the entire repair are minimal. Serviceable means useable as is or with minor repair, but not so degraded as to essentially require reconstruction. Serviceable structures damaged by storms, floods, fire, or other discrete events are included under this category provided that the repairs are commenced or under contract to commence within one year of the date of the damage.

This GP category cannot be used to authorize any alteration of drains, which are not considered "serviceable structures" for purposes of these regulations.

**L) Completed Enforcement Actions.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria.

Any structure, work, or discharge of dredged or fill material undertaken in accordance with, or remaining in place in compliance with, the terms of a final court decision, consent decree, or formal written settlement agreement resolving a violation of Part 303, provided that:

1. No more than five acres of wetland are impacted, and;
2. Resolution of the violation will provide environmental benefits equal to or greater than the environmental detriments caused by the violation.

The use of this GP does not preclude the requirement for mitigation or creation of a conservation easement in the decision, decree, or agreement.

**M) Emergency Spill Cleanup.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria.

Activities required for the emergency containment and cleanup of oil and hazardous substances provided that:

1. The work is done in accordance with State or Federal contingency plans;
2. The MDEQ division or Federal agency responsible for requiring the spill cleanup concurs with the proposed containment and cleanup actions, and the applicant provides some proof of this concurrence with the application; and
3. The wetland will be fully restored to its original condition prior to the discharge or spill.

**N) Cleanup of Hazardous Substances and Hazardous and Toxic Waste.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria.

Specific activities required to affect the containment, stabilization, or removal of hazardous substances or hazardous or toxic waste materials that are performed, ordered, or sponsored by the U.S. Environmental Protection Agency or the MDEQ provided that the plan prevents, to the extent feasible, any impacts to water or wetlands. The application must include a delineation of the affected wetland and a letter from the agency requiring the cleanup confirming the need for and explaining the scope of the cleanup. Court-ordered remedial action plans or related settlements also qualify under this category. This category does not include the establishment of new disposal sites, nor does it include improvements or expansions of existing sites, such as caps, leachate collection ponds, access roads, etc., that are used for the disposal of hazardous or toxic wastes, all of which will be processed as individual permit applications.

**O) Maintenance Dredging of Man-made Stormwater and Wastewater Treatment Ponds and Lagoons.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria.

Excavation and removal of accumulated sediment for maintenance of functional, active, and legally constructed stormwater detention or detention basins, sediment basins, treatment ponds and lagoons, or other man-made water treatment or retention areas created for those sole purposes, provided that the dredged material is placed in an upland site outside of regulated floodplains and stabilized with sod, or seeded, mulched, or ripped, as necessary, to prevent soil erosion into any inland lake, stream, or wetland, or dredged material that is placed in a licensed landfill based on sediment leachate analysis of the material. The applicant shall submit the analytical results and sampling locations with the application. The upland disposal sites or licensed landfill must be identified in the plans.

**P) Public Road Projects.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria.

Public road projects contained within the existing right-of-way where all practical means have been used to minimize the wetland impact, and all components of the project will impact no more than two acres of wetland. This category shall be further restricted to the following:

1. **Safety Improvements.** The following projects which, after a finding of necessity by the public transportation agency, are determined to be required for safety reasons and for which the wetland fill will not exceed one-third acre per wetland.

- a) Flattening of road slopes to meet the minimum safety standard.
- b) Construction of standard shoulder widths.
- c) Installation of guardrail flares.
- d) Intersection improvements.
- e) Elimination of roadside obstacles, such as sign platforms and utility poles.
- f) Addition of a lane for safety reasons.



2. **Roadside Ditch Maintenance.** Re-establishment of existing roadside ditches to the original size, shape, and location where the draining of adjacent wetlands will not occur. Excavated materials must be disposed of and stabilized on upland, except when a berm is needed along the ditch to minimize adjacent wetland drainage.

3. **Equalizer Culverts.** Replacement, extension, or maintenance of an existing equalizer culvert that is required to maintain a hydraulic connection and static water pressure between parts of a wetland severed by an existing roadway where the extension will not exceed the toe of slope on either side of the fill.

4. **Temporary Work Pads.** Temporary work pads where the site will be restored to its preconstruction condition within one year.

**Q) Minor Fills.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria.

Minor fills for the construction or expansion of single family residences with the total fill area in wetlands not exceeding one-quarter acre for all phases of the residential construction, including driveways (this GP category cannot be used in conjunction with Category D. Driveways) garages, small storage sheds (not to exceed 100 square feet), and all waste treatment facilities, provided that:

1. No fill shall be placed in any part of a wetland that is inundated by water and provides fish and/or wildlife habitat functions at any time.
2. All upland on the property shall be utilized to the greatest degree possible.
3. The proposed fill in wetlands shall be at the least damaging location on the property.
4. All necessary actions shall be taken to minimize on-site and off-site impacts including sewage treatment systems that pump back to uplands where feasible.
5. The filled area surrounding building foundations will not be greater than 15 feet from the edge of the foundation to the toe of the slope. Fill slopes shall not be flatter than 1 vertical to 4 horizontal. Additional fill for purposes such as landscaping or recreational facilities will not qualify under this category.
6. The ownership of the parcel of land shall have been maintained within the immediate family (the original owners or their children) since October 1, 1980.

Note: This minor fill GP can be used only once on a parcel of land that existed prior to October 1, 1980, and only one permit can be granted to a family. It cannot be used on parcels established on or after October 1, 1980. Only one permit under this minor fill provision of the GP may be granted to a person.

**R) Restoration of Altered Wetland Areas.**

In addition to the General Criteria and Limitations outlined above, the proposed activity must meet the following specific criteria.

This category applies only to projects that serve to restore or enhance wetland hydrology, vegetation, and functions of altered wetlands. Altered wetlands include areas that have been partially or fully drained, or where other land use conversions have resulted in significant alteration of the original character of the site. This category does not include the conversion of unaltered wetlands or other stable beneficial wetland ecosystems to another aquatic use, such as the creation of a pond or impoundment where a wet meadow, fen, or forested wetland exists. Projects under this category are limited to the restoration of altered wetlands by State, Federal, and nonprofit conservation agencies and organizations.

Such activities include:

1. Installation and maintenance of small water control structures, dikes, and berms;
2. Removal or blocking of existing drainage structures; and,
3. Construction of small nesting islands.

Wetland fill for dikes, nesting islands, and other structures shall not exceed two acres. The purpose of such fill shall be to increase the functions and value of wetland resources and shall not result in a net loss of wetland acreage or function.

The following activities cannot be authorized under this General Permit category; individual permits are required:

1. Construction of a dike or berm that is six feet or more in height and that impounds an area of five acres or more during a design flood; such activity requires authorization under Part 315, Dam Safety of the NREPA.
2. Any encroachment of a floodplain, floodway, or stream channel that drains over two square miles except for those activities meeting the minor project categories listed the State's Floodplain Regulatory Authority found in Part 31, Water Resources Protection, of the NREPA.
3. Any alteration of a lake or stream requiring approval under Part 301, Inland Lakes and Streams, of the NREPA, except those activities meeting minor project categories listed in the Administrative Rules for Part 301.
4. Any alteration of Great Lakes submerged bottomlands requiring approval under Part 325, Submerged Lands, of the NREPA, except those activities meeting the minor project categories listed in Part 325.
5. Projects that require a permit under Part 323, Shorelands Protection and Management of the NREPA.
6. Projects that require a permit under Part 353, Sand Dune Protection and Management, of the NREPA.

This GP modifies and replaces the June 18, 1997 General Permit Categories for Minor Activities in Wetlands in the State of Michigan and shall expire on June 14, 2007, unless revoked or modified before that date.