

Pipeline Permitting in Michigan

Citizen Involvement in the Decision-making Process



Contents

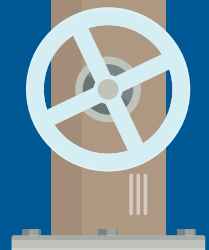
PIPELINE PERMITTING PLAYERS	4
SITING OF PIPELINES BY THE MICHIGAN PUBLIC SERVICE COMMISSION (MPSC)	5
THE CITIZEN'S ROLE IN PIPELINE SITING	8
STATE PERMITTING FOR WATER RESOURCE IMPACTS	12
FEDERAL PERMITTING FOR WATER RESOURCE IMPACTS	14
LOCAL PERMITS	15
THE CITIZEN'S ROLE IN WATER RESOURCE PERMITTING	16
FEDERAL ENERGY REGULATORY COMMISSION	
CERTIFICATES FOR NATURAL GAS PIPELINES	20
CITIZEN INVOLVEMENT GUIDELINES	21
RESOURCES	22
APPENDIX	24

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U.S. Department of Transportation
**Pipeline and Hazardous Materials
Safety Administration**



Introduction

Pipelines are considered to be the safest and most efficient way to transport oil and gas commodities. But that does not mean they are without risk. **A PIPELINE RUPTURE CAN BE DEVASTATING TO PUBLIC HEALTH AND SAFETY, THE ENVIRONMENT, AND THE ECONOMY.**

2 MAIN FUEL PIPELINES HAZARDOUS LIQUID NATURAL GAS

CRUDE OIL
unrefined petroleum product made of hydrocarbon deposits & organic materials

REFINED PETROLEUM PRODUCTS
gasoline, diesel, jet fuel, & home heating oil

HIGHLY VOLATILE LIQUIDS
butane, ethane, & propane

CARBON DIOXIDE & ANHYDROUS AMMONIA

94% methane
4% ethane
2% other gases
carbon dioxide & butane

Releases of products carried through pipelines can impact the environment and may result in injuries or fatalities as well as property damage. The risk associated with pipelines varies depending on a number of factors such as the product being transported in the pipeline, size, and operating pressure of the pipeline, as well as the population and natural resources near the pipeline.

For natural gas pipelines, the greatest risk is associated with fires or explosions caused by ignition of the natural gas. This can cause significant property damage and injuries or death. Additionally, the release of natural gas, primarily methane which is a very potent greenhouse gas, contributes to climate change. Some hazardous liquids, such as propane, also pose a near-term hazard of fire or explosion.

Other releases, such as crude oil, have greater

risks for the environment in both the short and long term. Crude oil spills can result in harm to human health and the environment, including injuries or fatalities to fish and wildlife, and contamination of drinking water supplies.

The Great Lakes region produces, refines, and transports substantial quantities of oil, natural gas, and other hazardous liquids. This makes the Great Lakes Basin particularly vulnerable to spills.

Community engagement is a vital part of many pipeline projects. Public participation contributes to better decisions because decision-makers have more complete information in the form of additional facts, values, and perspectives obtained through public input. Decision-makers can then incorporate the best information and expertise of all stakeholders. Ultimately, earlier and more productive involvement will lead to better project designs and can minimize the risks that pipelines pose.

Both State and Federal regulations provide opportunities for the public to participate in the regulatory processes for pipeline projects. Navigating through the various processes can often be overwhelming. This guidebook is designed to help navigate that process by providing basic information about permitting for pipeline projects in Michigan and how you can effectively participate in the public processes.

THE GREAT LAKES
5th OF THE WORLD'S FRESH SURFACE WATER
40 MILLION RELY ON the GREAT LAKES for DRINKING WATER

Pipeline Permitting Players

There are many different participants in pipeline projects. Recognizing the role each agency plays will help you understand who you will be dealing with for various aspects of a pipeline project.

KEY PERMITTING PLAYERS IN MICHIGAN INCLUDE THE FOLLOWING:

PERMITTING PLAYERS & THEIR ROLE

BUREAU OF LAND MANAGEMENT FOREST SERVICE (BLM/USFS)	issues easements on certain Federal public lands.
U.S. DEPARTMENT OF STATE (USDOS)	approves pipelines that cross international borders.
FEDERAL ENERGY REGULATORY COMMISSION (FERC)	charged by Congress with determining whether interstate natural gas transmission projects are in the public convenience and necessity.
MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY (EGLE)	regulates the impacts to inland lakes, streams, wetlands, and the Great Lakes from pipeline projects.
MICHIGAN DEPARTMENT OF NATURAL RESOURCES (MDNR)	minimizes harm to State threatened and endangered species, migratory birds, freshwater fish, and their supporting habitat.
MICHIGAN PUBLIC SERVICE COMMISSION (MPSC)	regulates rates/services of natural gas and electric utilities, authorizes energy infrastructure proposals, and monitors the safety of natural gas pipelines.
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA)	develops regulations to assure safety in design, construction, testing, operation, maintenance, and emergency response of pipeline facilities.
U.S. ARMY CORPS OF ENGINEERS (USACE)	permits pipeline work in the Great Lakes and connecting channels.
U.S. FISH AND WILDLIFE SERVICE (USFWS)	conducts consultations under the Endangered Species Act on any action that can jeopardize the existence of any species or result in destroying their habitat.
HISTORIC PRESERVATION OFFICES	ensures the preservation of the prehistoric and historic resources of the United States and Michigan.

Local government, including towns, cities, and counties, can coordinate and regulate development near pipelines with their land use authority. They can enact regulations governing the type of construction that can occur near existing pipelines, requiring consultation with the pipeline operator, establishing setbacks or a variety of other land use permit requirements. Local municipalities can also use land use authority for involvement with proposed new pipeline development within existing communities.



Siting of Pipelines by the MPSC

ACT 9

MCL 483.101 et seq.

grants siting authority for natural gas pipelines to the Michigan Public Service Commission (MPSC)

ACT 16

MCL 483.1 et seq.

grants siting authority to the MPSC for crude oil and petroleum product pipelines, and pipelines carrying certain substances consisting primarily of carbon dioxide

Jurisdictional Overlap of Siting

Jurisdictionally, there exists regulatory overlap for the pipelines in the State of Michigan between the MPSC and the Federal Energy Regulatory Commission (FERC). Concerning pipeline siting, the MPSC has jurisdiction over intrastate (wholly within the State of Michigan) Act 9 natural gas pipelines and both inter- and intrastate Act 16 liquid pipelines. The FERC holds jurisdiction over interstate (crosses over the boundaries of a single state) natural gas pipeline siting.

Ex Parte Cases

Once an Act 9 or Act 16 application is received, MPSC staff review the application and make a recommendation on if it can be handled on an ex parte basis. A determination of eligibility for ex parte treatment requires an application which does not result in an immediate increase in rates for the customers and does not need the right of eminent domain to secure right-of-way. An ex parte proceeding saves time and expense for all parties involved compared to a full contested case hearing process. In ex parte proceedings, MPSC staff work directly with the applicant to review the application. Staff also help draft an order for submission to the MPSC for consideration and final order.

	GAS PIPELINE		LIQUID PIPELINE	
	INTER-STATE	INTRA-STATE	INTER-STATE	INTRA-STATE
MPSC		X	X	X
FERC	X			

Siting of Pipelines by the MPSC C O N T I N U E D

Contested Cases

Applications for a project which requires new right-of-way acquisition, proposes increases to rates and/or costs to customers, or involves highly developed or environmentally sensitive areas require a formal administrative hearing, beginning with a prehearing conference. The MPSC, upon scheduling of the prehearing conference, sets forth noticing requirements the applicant must follow prior to the prehearing conference. The applicant is required to provide notice to each landowner from whom it will need to acquire the property rights for the proposed pipeline; as well as to all cities, incorporated villages, townships, and counties which may be traversed by the proposed pipeline. Additionally, the MPSC requires that the notice of hearing be published in daily newspapers in the counties that the proposed pipeline would traverse. During the prehearing conference, the schedule is set, petitions to intervene are reviewed, and public comments are heard. At the conclusion of the prehearing conference, an Administrative Law Judge (ALJ) sets a schedule for the case and rules on any petitions to intervene.

The hearing process proceeds according to the Rules for Practice and Procedure Before the Commission, R792.10401 et seq. After the evidentiary process, which includes the filing and review of testimony and exhibits and an opportunity for cross-examination, the Administrative Law Judge files a Proposal for Decision to be considered by the MPSC for a final decision and issuance of a final order in the case. At any point after an application is filed, you can comment in either written or verbal form. Comments are posted to the e-docket or included in the hearing transcript.

Staff Review and MPSC Decision

During a contested case process, staff reviews pipeline siting applications, along with included applicant testimony and exhibits related to the proposed pipeline. Staff then works with the applicant to obtain supplementary information regarding the application and proposal through audit and discovery requests. Throughout the review, staff focuses on the proposed route, project necessity, engineering specifications of the pipeline, and environmental impact concerns to determine its position either for recommendation to the MPSC for approval or disapproval of the proposed pipeline application. Additionally,

during the review, should it be determined that the project warrants it, staff will make recommendations to the MPSC related to additional requirements or alternative pipeline routes.

In 2012, the MPSC issued an order in docket no. U-17020, which stated, "...the Commission will grant an application pursuant to Act 16 when it determines that (1) the applicant has demonstrated a public need for the proposed pipeline, (2) the proposed pipeline is designed and routed in a reasonable matter, and (3) the construction of the pipeline will meet or exceed current safety and engineering standards." The MPSC applies similar criteria in Act 9 cases.

Act 9 also requires natural gas pipeline operators to submit an application to the MPSC, including a map or plat of the proposed line or lines, showing the dimensions and character, its compressor stations, control valves and connections; an estimate of the cost of the project; an estimate of the proven reserves of gas available for transportation through the proposed line; and an estimate of the anticipated revenue, operating expenses and earnings of the project for a 5-year period. MPSC must make a determination into the necessity and practicability of the transmission line or lines and that such line or lines will, when constructed and in operation, serve the convenience and necessities of the public. In other words, "public convenience and necessity" is demonstrated when an operator proves that the pipeline will provide some kind of benefit to the surrounding community or Michigan as a whole.



Public Participation and Comments

Anyone may attend and participate in the prehearing conference. You may file a petition to intervene in the case within the time frame designated in the notice of hearing, which by rule is at least seven days before the prehearing. Additionally, you may comment on the proposed pipeline application without petitioning for intervention.

If you wish to appear at the hearing to make a statement of position without becoming a party to the case, you may participate after disclosing your identity and interest in the case. You must attend the hearing and advise the presiding ALJ of your wish to make a statement of position. Although your statement of position is not part of the official record, all information submitted to the MPSC becomes public information, and thus available on the MPSC's website, and subject to disclosure. It is advised not to disclose information during public comments that you wish to remain private.

E-Docket System

The Michigan Public Service Commission's Electronic Docket Filings System (E-Docket) provides for the electronic submission of documents and online access of documents submitted in cases before the MPSC. The E-Docket can be accessed at mi-psc.force.com/s/. To electronically file documents, you need to register for a MILogin ID and request access to the E-Dockets application. Searches can also be conducted by filing type, date, filed by, company name, and filing number.

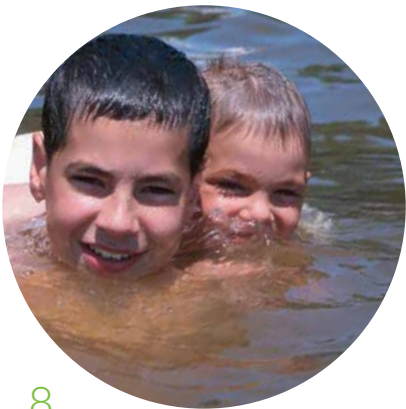
Petitions for Intervention

To determine whether a proposed intervenor has established standing, the MPSC has consistently adhered to a two-prong test. Under this test, the intervenor must show: 1) that it has or will suffer an injury in fact and 2) that its affected interests fall within the zone of interest to be protected or regulated by statute or the constitutional guarantee in question. (See, Opinion and Order, *In re Michigan Consolidated Gas Company*, MPSC Case No. U-10150 (December 8, 1992)).

Interest in a proceeding's outcome is insufficient to support intervention. The MPSC has further held that a claimed future injury is insufficient to fulfill the injury in fact requirement, finding that to satisfy that component an injury must be real and immediate and not conjectural. (See, Order, *In re ZFS Ithaca, LLC*, MPSC Case No. U-20198 (November 8, 2018)). Permissive intervention has also been granted where a proceeding "raises novel questions and important issues of policy" and the intervenor will "bring a unique perspective" to the case. This may be appropriate if the proposed intervenor's involvement in the case can provide useful information to the MPSC.

If you wish to intervene and become a party to a case, you need to electronically file a petition to intervene with the MPSC. Petitions to intervene may also be filed using the traditional paper format. Petitions to intervene shall be served upon the applicant along with a proof of service. Your petition to intervene needs to set out clearly and concisely the facts supporting your alleged right or interest, the grounds of the proposed intervention, and the position of the petitioner in the proceeding to fully and completely advise the parties and the MPSC of the specific issues of fact or law to be raised. If affirmative relief is sought, the petition to intervene needs to specify that relief.





The Citizen's ROLE in Pipeline Siting

At any point after an application is filed, the MPSC welcomes public comment in either written or verbal form. Comments are posted to the e-docket or are included in the hearing transcript.



WRITTEN COMMENTS can be sent to the MPSC at the following address:

Executive Secretary
Michigan Public Service Commission
P.O. Box 30221
7109 West Saginaw Highway
Lansing, Michigan 48909

E-MAIL COMMENTS can also be sent to mpscedockets@michigan.gov.

If you want to become an official party to the case, you must file a Petition to Intervene with the MPSC by the date provided in the Notice of Hearing and follow the other guidelines described in the notice.

PUBLIC PARTICIPATION IS VITAL IN SITING OF NEW PIPELINES.

The public, nonprofits, and local governments can provide valuable input on energy needs, community concerns, and environmental considerations. This input will help make decisions that meet the needs of and are supported by the citizens of Michigan.

The Citizen's ROLE in Pipeline Siting CONTINUED

1 UNDERSTAND THE APPLICATION PROCESS

There are important pieces of information of which you need to be aware.

These pieces of information include:

The case or docket number

(this number should be included in any correspondence)

The project location and proposed route

(this is helpful when trying to identify alternate routes)

The type and extent of the proposed activity

(this is critical when assessing project impacts)

The schedule

(this is important for knowing when to comment or intervene in a case)

2 GATHER INFORMATION

Any individual or group commenting on an application should have first-hand knowledge of the pipeline route in order to determine the potential project impacts. Environmental factors, local zoning ordinances, and public health and safety risks, like emissions/proximity to vulnerable populations, should be identified.

3 APPLY THE REGULATORY STANDARDS

The effectiveness of your comments will depend upon how relevant they are to the criteria the MPSC has to consider.

For natural gas pipelines, there is no specific definition of “public convenience and necessity.” However, there are a number of factors for you to consider in your comments.

- **Alternative routes** – are there alternative routes that are feasible and reasonable?
Can environmentally sensitive areas, such as waterways, be avoided?
- **Local zoning** – is there a zoning ordinance that prohibits or regulates the location or development of any portion of a proposed route?
- **Public health or safety** – does the pipeline present an unreasonable threat to public health or safety?
Are there sensitive or vulnerable populations near the proposed route?
- **Environmental laws** – does the pipeline fail to comply with all applicable state/federal environmental standards, laws, and rules?

There are primarily two questions for the public to evaluate for oil pipelines:

- **Is there a public need for the proposed pipeline?** This requirement is broad and includes a wide array of variables. Liquid pipelines are generally proposed to either replace aging infrastructure, or to satisfy a market imbalance by constructing additional infrastructure. In some cases, both needs may be met by a single project. The “public need” of a project is generally described as the short and long term local, statewide, regional, or national benefits to a project.
- **Is the proposed pipeline designed and routed in a reasonable manner?** When evaluating what is “reasonable,” the Michigan Environmental Protection Act requires the MPSC to consider: whether the proposed project would impair the environment; whether there was a feasible and prudent alternative to the impairment; and, whether the impairment was consistent with the promotion of the public health, safety, and welfare in light of the State’s paramount concern for the protection of its natural resources from pollution, impairment, or destruction.

Environmental impacts that may be associated with construction and operation of a pipeline include tree clearing, interruptions to farming or other land use, waterbody crossings, any other impacts to a previously undisturbed area, and some amount of environmental risk due to the potential for a rupture or spill in the future.

4 TAKE ACTION

After answering the questions above, you must determine whether or not to take action by filing comments or petitioning to intervene. If the project has no feasible alternative route, is in the public interest/need, and will not have an unreasonable threat to public health and safety and the environment, then there is no need for further involvement. However, this is seldom the case. In practically all cases, you can provide comments that improve the decision-making process and overall outcome. Written comments should always indicate the case/docket number as this ensures that the comments will be considered for the appropriate application. Written comments should be straightforward and factual. Opposition to approval or suggestions for modifications should be stated clearly. Comments should include information on environmental impact and statutory compliance, including local ordinances.

State Permitting for Water Resource Impacts

Many pipeline projects take place on or near a land/water interface including, a lake, river, Great Lake, pond, dam, wetland, floodplain, drain, ditch, swamp, shoreline, stream, creek, or marshland. These projects are regulated by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) Water Resources Division.



MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

The main laws for pipeline projects that impact water resources are:

- *Part 301 Inland Lakes and Streams, of the Natural Resources and Environmental Protection Act (Act 451 of 1995), requires permits to dredge, fill, or construct or place structures below the ordinary high water mark and connect any waterway to an inland lake or stream.*
- *Part 303, Wetland Protection, of the Natural Resources and Environmental Protection Act (Act 451 of 1995), requires a permit to fill, dredge or remove soil from a wetland, construct, operate, or maintain a use in a wetland, or drain surface water from a wetland.*
- *Part 325 Great Lakes Submerged Lands, of the Natural Resources and Environmental Protection Act (Act 451 of 1995), regulates construction activities along the Great Lakes shoreline and the over 38,000 square miles of Great Lakes bottomlands, including coastal marshes.*

While each law has its own language and specific provisions, in general, all of the statutes are designed so that permitted pipeline projects avoid and minimize potential adverse impacts to Michigan's water resources and mitigate for those impacts that do occur.

Each law requires that pipeline projects consider the following:

- *Alternatives - prohibits issuance of a permit for projects where feasible, less environmentally damaging alternatives are available.*
- *Adverse Impacts - prohibits issuance of a permit for projects which would cause or contribute to significant adverse impacts to the aquatic environment.*
- *Water Quality - prohibits issuance of a permit for projects which would violate any applicable State water quality standard.*
- *Mitigation - requires project applicants to eliminate avoidable impacts and to minimize and compensate for unavoidable impacts.*

Under Part 301, Inland Lakes and Streams, there is a rule (R 281.832) which exempts horizontal directional drilling for lake and stream crossings if the top of the pipeline is at least 10 feet below the bottom of the lake or stream and the entry and exits points are far enough away to not cause bank disturbances and are outside any natural river designation setback requirements. This exemption is only allowed up to 10,000 feet.



Public Notice for State Permit Applications

The first step of participating in the water resources permit process for pipeline projects in Michigan is to obtain information regarding permit applications and public processes with opportunity for public comment. Most public notices, unfortunately, go virtually unnoticed by the general public until it is too late.

However, there are ways for you to be aware of permit applications. The Michigan Department of Environment, Great Lakes, and Energy (EGLE) has an online permit tracking system called MiWaters. From the home page, you can access the Water Resource Division's permitting programs, including public notice and public hearing listings, search active or past permit records, access permit applications, and report complaints (e.g., placing fill in wetlands), spills, or pollution events (e.g., petroleum products in water). It allows you to search for permit applications using criteria such as year, county, township, waterbody, file number, and applicant name. The MiWaters home page can be accessed by following this link: miwaters.deq.state.mi.us/miwaters

In addition to MiWaters, EGLE has an interactive environmental calendar designed to provide timely information on decisions before the Office of the Director, proposed settlements of contested cases, administrative rules promulgation, public hearings, meetings and comment deadlines, and environmental conferences, workshops, and training programs. You can subscribe to receive calendar updates via email at: eventactions.com/eventactions/deq-events#/subscribe

Often, pipeline permit applications will be processed as a general or minor permit. General and minor permits are not subject to public notice, and subsequently, not able to be commented on. There is a general permit for "Pipeline Safety Program Designated Time Sensitive Inspections and Repairs," (see page 24) which is for the maintenance and repair of oil and gas pipelines that cross inland lakes, streams, and wetlands, in particular, as required by the provisions of the Pipeline Safety Improvement Act of 2002, under certain conditions. There is also a minor project category for activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in wetlands, inland lakes, and streams (see page 24). EGLE may choose to issue a public notice and call for comments even if an activity is otherwise covered by a general or minor permit. This is done for permit applications of great interest to the public, such as Enbridge Line 5 permit applications. The opportunity for public comment is provided for if EGLE issues a formal public notice. A public notice is issued for individual applications. Once the public notice is issued, the public has 20 days to submit written comments on the proposed pipeline project.

Contested Case Hearings

All citizens are provided the opportunity to file an administrative appeal to contest any action or inaction of a





State agency. The contested case hearing process is commonly used by applicants to contest permit denials, but can also be used to contest permit issuances or other regulatory activities (often called "third party contested cases"). Contested cases are presided over by an Administrative Law Judge (ALJ) from the Michigan Office of Administrative Hearings and Rules (MOAHR). The contested case hearing process is governed by the Administrative Procedures Act (MCL 24.201 et seq.) and administrative rules (R 324.1 et seq.).

DRAWBACKS TO **CONTESTED CASE HEARINGS**

1 They **DO NOT** provide injunctive relief; this means rather than offering money as payment for a wrong in a civil action, it is a court order for the defendant to stop a specified act or behavior.

2 **THEY TAKE A LONG TIME.** As a result, third party contested cases can be filed, but the contested activities done in compliance with an issued permit can still continue until the process is complete. For this reason, lawsuits requesting injunctive relief are usually filed along with the contested case hearing request.

Federal Permitting for Water Resource Impacts



The U.S. Army Corps of Engineers (USACE) has authority to issue permits for activities regulated under Section 10 of the Rivers and Harbors Act and on select waters under Section 404 of the Clean Water Act. Section 10 of the Rivers and Harbors Act of 1899 provides the USACE with jurisdiction over work waterward of the Ordinary High Water Mark (OHWM) of navigable waters. Additionally, the USACE jurisdiction may extend to the landward side of the OHWM of navigable waterbodies if activities in those areas could affect the course, location, or condition of the waterbody so as to impact its navigable capacity. A tunnel, pipeline, electric line, or other structures or work over or under a navigable water is considered to have an impact on the navigable capacity of the waterbody. For regulatory purposes, the OHWM is the elevation along the shoreline where a permit is required. The elevation reference system used to define Great Lakes water levels is the 1985 International Great Lakes Datum.

THE OHWM ELEVATIONS FOR THE GREAT LAKES ARE PROVIDED. NOTE THAT THE USACE AND EGLE HAVE DIFFERENT OHWM ELEVATIONS.

In Michigan, under Section 404 of the Clean Water Act, the USACE regulates discharging dredged and/or fill material into navigable waters used for international and interstate commerce, such as the Great Lakes and connecting channels, and in any wetlands adjacent to those waters. Often times, the State and Federal permits are submitted together under a “Joint Permit Application.” Just like the State, the USACE Detroit District has an online permit tracking system for public notices. You can request to be added to the Public Notice Electronic Mailing List. This allows you to receive Public Notices by email for the select county(s) that you have requested. You can access the USACE Public Notices for Michigan, along with the form to the Electronic Mailing List, at: <https://www.Lre.usace.army.mil/Missions/Regulatory-Program-and-Permits/Public-Notices/>.

The USACE also has the authority to issue general permits which may not be public noticed. The USACE has a Nationwide Permit (NWP) 12, which authorizes activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project, subject to certain conditions (see page 25). There is also a Regional Permit for submerged utility line crossings across federal navigable waterways (see page 27). Regional Permits authorize activities of a minor nature in approximately five to 15 work days, provided the application is administratively complete, and reduces costs, delays, and paperwork for the applicant and USACE.

Just as the State, the USACE may choose to issue a public notice and call for comments even if an activity is otherwise covered by the NWP 12 or Regional Permit K for permit applications that may be controversial or of significant public interest.

	USACE OHWM	EGLE OHWM
Lake Erie	573.4'	572.2'
Lake St. Clair	576.3'	575.3'
Lake Michigan/Huron	581.5'	580.5'
Lake Superior	603.1'	602.6'

Local Permits

Local permits are generally applied for and acquired during the initial phase of a pipeline construction project. Many city and counties, especially in the more urban areas, have planning departments that regulate most types of construction. New construction projects must undergo a filing and approval process before a planning commission or zoning board. Check with your local municipality if there is a pipeline project proposed in your community.



The Citizen's ROLE in Water Resources Permitting

YOUR ROLE IN EVALUATING PERMIT APPLICATIONS IS VERY IMPORTANT TO THE WETLANDS AND WATER RESOURCES PROTECTION PROCESS.



**Michigan Department of Environment,
Great Lakes, and Energy Water Resources Division**

Lansing District Office 525 W. Allegan
(Constitution Hall, 1S) P.O. Box 30242
Lansing, MI 48909-7742
517-284-5567
michigan.gov/wrd

**US Army Corps of Engineers,
Detroit District Regulatory Office**

477 Michigan Avenue Detroit, MI 48226-2550
(800) 493-6838 or (313) 226-2218
Regadmin.LRE_RegAdmin@usace.army.mil
www.lre.usace.army.mil
/Missions/Regulatory-Program-and-Permits

Not only do citizens provide valuable information, but they also serve as a reminder to agency staff that the purpose of the regulations is to protect the public's interest in Michigan's water resources. In this sense, public participation helps to ensure that regulatory staff are accountable to the public interest. The steps described on the following pages present a simple procedure to help you analyze public notices and describes how to effectively participate in State and Federal water resources permitting.

1 UNDERSTAND THE APPLICATION PROCESS

Assuming you have taken the steps to receive a public notice, there are important pieces of information contained in the public notice of which you need to be aware.

These pieces of information include:

The date the public notice was issued and the date comments are due by

(EGLE will receive public comment for 20 calendar days from the issue date)

The application file or submission number

(this number should be included in any correspondence)

The project location

(this is helpful when trying to investigate the site)

Adjacent landowners

(these individuals are often helpful in providing information about the site)

The type and extent of the activity

(this is critical when assessing project impacts)

The purpose of the proposed activity

(this is critical when determining if there are available alternatives)

2 GATHER INFORMATION

To be most effective, any individual or group commenting on an application should have first-hand knowledge of the water resources of each site in order to determine the potential project impacts. Fish and wildlife values, shoreline stabilization values, hydrologic values, endangered or threatened plants and animals, nutrient and sediment retention capabilities, recreational uses, and any other impacts should be identified.

4 TAKE ACTION

If the project has no alternatives, is in the public interest, and will have an acceptable disruption on the aquatic resources, then there is no need for further involvement. However, this is seldom the case. In practically all cases, you can provide comment valuable to the permitting process. The most effective ways to provide comment are through letters and at public hearings. Written comments should always indicate the application or submission number and be addressed to the contact person in the public notice, as this ensures that the comments will be considered for the appropriate application. Written comments to the EGLE or USACE should be straightforward and factual. Opposition to issuance of a permit or suggestions for modifications should be stated clearly. Comments should include information on environmental impact and statutory compliance, including local ordinances. If a project violates a local code, EGLE may deny the permit. When submitting written comments, you may choose to request a public hearing.

3 APPLY THE REGULATORY STANDARDS

The effectiveness of your comments will depend upon how relevant they are to the regulatory standards that the agency staff must apply.

In reviewing both the USACE and EGLE public notices, there are three main questions you should always consider. These questions effectively summarize the regulatory standards.

Do feasible and prudent (or “practicable” in USACE permits) alternatives exist? If the project is not dependent upon being placed in a wetland or water resource, then less damaging alternatives are presumed to exist. Although by law the applicant has the burden of proving that no alternatives exist, often the alternatives analysis provided by the applicant is very superficial. Common alternatives that minimize impacts include the use of upland building sites, alternate methods of construction to minimize fill, or using different techniques such as horizontal directional drilling. Remember, alternatives can also include practicable alternate locations not presently under the applicant’s control but reasonably available. Local knowledge regarding alternatives can be very important. Because local citizens are familiar with the area in question, they may know about alternatives (such as available land or other access sites) that are not apparent to the regulatory staff.

Is the project in the public interest? The degradation of wetlands and water resources harms the public by effectively eliminating the functions and values that those waterbodies provide. When determining if a project is in the public interest, consider the following questions: Is there a demonstrable need in the community for the project? Will the benefits of the project to the community outweigh the negative harm to the public?

Will an unacceptable disruption to the aquatic resources result? When trying to assess the disruption to the aquatic resources, consider the following questions: What individual and cumulative impacts will the proposed project have on public and private uses? Is the area for endangered, threatened, rare, or special concern plants and animals? Have the impacts been minimized to the greatest extent possible? Will negative impacts be appropriately mitigated by the applicant?

A written statement should be prepared in advance of the hearing, and the major points of the statement should be presented at the hearing. Oral comments at a hearing need to be concise and to the point as you are generally limited to three to five minutes to provide your comments. Your written statement should be left with the hearing officer for the official record. Any opposition to the project should be explained and justified, factually and succinctly. Additional comments may be submitted after the hearing if necessary. It is important to understand that public hearings have their shortcomings. These shortcomings arise from the disparity between agency staff obligations and citizen expectations. The technical purpose of a public hearing is for the agencies to gather public comment on only those issues that are pertinent to the specific statute being implemented. The public often requests a public hearing because they desire a public forum to discuss all aspects of a proposed project. They are frustrated when the USACE or EGLE hearing officer does not answer their question or consider relevant those comments that are not germane to the statute. An alternative to this is to call for, and in many cases coordinate, a public meeting. This provides the opportunity for you to discuss all issues related to the project.

Federal Energy Regulatory Commission Certificates for NATURAL GAS PIPELINES

The Federal Energy Regulatory Commission (FERC) has the authority to grant certificates for the construction and operation of interstate natural gas pipelines. In so doing, a "Certificate of Public Convenience and Necessity" pursuant to Section 7 of the Natural Gas Act is issued. Prior to the certificate, however, a proposed project must undergo an extensive pre-filing and filing process that includes the approval of the route, review of new lines, environmental assessments, and coordination with various other federal and state agencies.

YOU CAN MAKE A DIFFERENCE BY SUBMITTING YOUR SPECIFIC COMMENTS OR CONCERNS ABOUT THE PROJECT. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be.

FERC offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to www.ferc.gov/docs-filing/esubscription.asp.

The FERC encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or FercOnlineSupport@ferc.gov.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the FERC's Rules of Practice and Procedures (18 CFR 385.214). Only intervenors have the right to seek rehearing or judicial review of the FERC's decision. The FERC may grant affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

3 METHODS TO SUBMIT COMMENTS TO THE FERC

1

File comments electronically using the eComment feature, which is located on the FERC's website (www.ferc.gov) under the link to Documents and Filings. Using eComment is an easy method for submitting brief, text-only comments on a project.

2

File comments electronically by using the eFiling feature, located on the website (www.ferc.gov) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; a comment on a particular project is considered a "Comment on a Filing."

3

File a paper copy of comments by mailing them to:
Secretary, Federal Energy Regulatory Commission
888 First Street NE, Washington, DC 20426

Citizen Involvement Guidelines

CITIZEN INVOLVEMENT IS CRITICAL TO PROTECTING MICHIGAN'S WATER RESOURCES.

Developing Comments

Be Brief and Objective: State your opinion in a straightforward and objective manner. Your comment will become part of the public record.

Identify your Experience, if applicable: If you are commenting in your capacity as a professional (scientist, engineer, attorney, doctor, elected official, etc.), or as an official representative for an organization, say so. Provide a brief overview of your organization, its size, and its interest in the matter.

Be Polite and Respectful: As a general rule, the tone of the comments should be respectful. Those reviewing comments are public servants tasked with a job, and they deserve the same respect and professional treatment that you and other citizens expect in return.

Be Specific and Relevant: Your comments should relate to the pipeline facility/activity being permitted and you should state clearly the reason for your position. General comments that state an action will have “significant environmental effects” will not help an agency make a better decision unless the relevant causes and environmental effects are explained. Comments are most effective when you explain how they relate to the requirements that apply to the facility. Include a citation or a quote of the specific text or regulation you are referring to. Typical comments that may require further review and consideration of the permit application include:

- *Applying the wrong standards or regulations.*
- *Making errors in the data or calculations. Cite reference materials to support your position.*
- *Using improper methodology, calculations, and/or analysis.*
- *Failing to comply with other State, Federal, or local regulations.*

Identify Solutions and Alternatives: Comments that are solution-oriented and provide specific examples will be more effective than those that simply oppose the proposed project. Comments that contribute to developing alternatives that address the purpose and need for the action are also effective.

General Guidelines

It is important that you take this role seriously and participate with integrity. Even though you may feel like the “deck is stacked against you,” following certain guidelines will ensure that public participation is given the respect that it deserves. Although each of us go about protecting water resources in our own way, these general guidelines help ensure that public participation is taken seriously:

- *Base your position on solid technical information and sound policy analysis.*
- *Gather information in legal ways.*
- *Respect the legal rights of others, including the agency staff and the applicant.*
- *Don't use water resource protection as a “red herring” to further other goals that have nothing to do with water resources.*
- *Raise issues with the agency at the earliest possible stage in the process. Agencies are much more likely to evaluate a new alternative or address a concern if it is raised in a timely manner.*
- *Remember that commenting is not a form of “voting” on an alternative. The number of negative comments an agency receives does not prevent an action from moving forward.*
- *Similarly, numerous comments that repeat the same basic message of support or opposition will typically be responded to collectively. It is best to provide individual comments than submit a form letter.*
- *Continually work to improve and expand your knowledge of pipelines and the regulations that govern them.*



LAWS Pertaining to Pipeline Permitting in Michigan

- *Clean Water Act, Section 404*
www.epa.gov/cwa-404/overview-clean-water-act-section-404
- *Michigan Crude Oil and Petroleum Act, Act 16 of 1929*
legislature.mi.gov/doc.aspx?mcl-Act-16-of-1929
- *Michigan Natural Gas Act, Act 9 of 1929*
legislature.mi.gov/doc.aspx?mcl-act-9-of-1929
- *Michigan Wetland Protection Act, Part 303*
legislature.mi.gov/doc.aspx?mcl-451-1994-III-1-INLAND-WATERS-303
- *Michigan Inland Lakes and Streams Act, Part 301*
legislature.mi.gov/doc.aspx?mcl-451-1994-iii-1-inland-waters-301
- *Michigan Great Lakes Submerged Lands Act, Part 325*
legislature.mi.gov/doc.aspx?mcl-451-1994-III-1-THE-GREAT-LAKES-325
- *Rivers and Harbor Act, Section 10*
www.epa.gov/cwa-404/section-10-rivers-and-harbors-appropriation-act-1899

Federal Energy Regulatory Commission

1-202-502-6088 (local)

1-866-208-3372 (toll-free)

customer@ferc.gov

www.ferc.gov

Michigan Department of Environment, Great Lakes, and Energy

Water Resources Division

517-284-5567

www.michigan.gov/wrd

Michigan Public Service Commission

517-284-8330

www.michigan.gov/mpsc

MiWaters

miwaters.deq.state.mi.us/miwaters/external/home

Pipeline and Hazardous Materials Safety Administration

Office of Pipeline Safety

phmsa.pipelinesafety@dot.gov

202-366-4595

www.phmsa.dot.gov/about-phmsa/offices/office-pipeline-safety

U.S. Army Corps of Engineers

Detroit District Regulatory Office

1-800-493-6838

Regadmin.LRE_RegAdmin@usace.army.mil

www.lre.usace.army.mil

GENERAL PERMIT CATEGORIES IN THE STATE OF MICHIGAN:

S. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs

Category applies to: *Part 301, Inland Lakes and Streams* | *Part 303, Wetlands Protection* | *Part 325, Great Lakes Submerged Lands*
Maintenance and repair of oil and gas pipelines that cross inland lakes, streams, and wetlands, in particular, as required by the provisions of the Pipeline Safety Improvement Act of 2002, that meet all of the following:

- The repair and replacement using the best available construction technologies that are necessary to avoid and minimize impact when considering the wetlands and waters involved. Additional precautions and construction techniques may be necessary in areas of high quality resources.
- Stream crossing shall use dry ditch open trenching, and shall be limited to 50 feet per crossing (bank to bank) and a cumulative total of 200 feet per application.
- Wetland crossings using open trenching shall be limited to total cumulative crossing length of 500 feet per application.
- All pipeline repair and maintenance projects shall follow the relevant and appropriate procedures and best management practices (BMPs) outlined in the Federal Energy Regulatory Commission's "Wetland and Waterbody Construction and Mitigation Procedures," dated May 2013, or an equivalent manual of procedures and BMPs approved in advance by the WRD. Site access and preparation, pipeline repair or installation, and site restoration must be sequenced and carried out in accordance with these procedures and BMPs in order to minimize soil erosion and siltation, the introduction of nonnative and invasive species, drainage of wetlands via the pipeline conduit, and other adverse impacts to aquatic resources. The specific repair procedure that will be used once a pipeline is exposed at a given crossing does not have to be identified in advance of authorization under this GP category as long as such procedures are included in the approved BMP manual. This GP category does not mandate the presence of environmental inspectors at all times, but an inspector must be available to ensure compliance with BMPs.
- Damaged pipeline must be replaced in the same location where it is feasible and prudent to do so, unless it can be demonstrated that relocation of the pipeline will result in an overall reduction of adverse impacts to aquatic resources. Where damaged pipeline must be replaced in a new location, that location must be selected to minimize overall environmental impact of the project.
- Where drilling mud is being used, 2 properly installed rows of silt fencing must be installed around entry/exit points of the bore. A plan for preventing and controlling the loss of drilling mud into any waters of the state must be submitted. The plan should include steps that will be taken to minimize any impacts to any waters of the state caused by an accidental release of drilling mud. Any unintended release of drilling mud shall be immediately reported to WRD staff, and additional drilling shall be discontinued while the material that was released is controlled. Cleanup of drilling mud that impacts water resources, including wetlands, shall be initiated and completed in an expeditious manner.
- When a plowing-in method is used in wetlands (greater than 6 inches in size), the area must be immediately restored to grade after installation.
- All revegetation of wetland sites must be with plant species that are native to Michigan according to the Floristic Quality Assessment for the State of Michigan.
- The construction of new permanent access roads is not included under this GP category. Where needed, timber construction mats may be authorized under this category.

This GP category does not alter or replace current exemptions, but provides a mechanism for authorization of repairs for pipelines that do not meet the criteria for exempt activities and, in particular, coordinates authorization of pipeline repairs that impact both wetlands and other waterbodies.

MINOR PROJECT CATEGORIES IN THE STATE OF MICHIGAN:

47. Utility Line Activities

Category applies to: *Part 301, Inland Lakes and Streams* | *Part 303, Wetlands Protection* | *Part 325, Great Lakes Submerged Lands*
Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in wetlands, inland lakes, and streams.

A "utility line" is any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the State, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

This category includes:

1. Installation, maintenance, repair, and removal of utility lines provided there is no change in the preconstruction grade, that meet all the following:

- Crossing locations shall be selected to minimize the impact to the wetlands, inland lakes and streams.
- The outside diameter of the pipe, cable, encasement, etc. shall not exceed 36 inches.
- A minimum of 36 inches of cover will be maintained between the top of the cable or pipe and the soil surface. Access areas (e.g., sealed manholes) may be allowed in wetlands if impacts are avoided and minimized. The installation shall use the best available construction technologies that are necessary to avoid and minimize impact when considering the wetlands and waters involved. Additional precautions and construction techniques may be necessary in areas of high quality resources. Use of directional drilling/jack and bore should be given

particular emphasis in any area that is prone to erosion, on slopes upgradient from cold water streams, in forested wetland habitat, in high quality wetlands or wetland types that are locally or regionally uncommon. Stream crossing shall use dry ditch open trenching, and shall be limited to 50 feet per crossing (bank to bank) and a cumulative total of 200 feet per application.

- Wetland crossings using open trenching shall be limited to total cumulative crossing length of 500 feet per application.
- All revegetation of wetland sites must be with plant species that are native to Michigan according to the Floristic Quality Assessment for the State of Michigan.
- The construction of new permanent access roads is not included under this MP category.

When these methods are used, the following additional criteria apply:

Plowing-in/Knifing-in for Wetlands Only (greater than 6 inches in diameter)

- This method is not allowed for crossing wetlands with open water, streams, or lakes.
- There is no limit on the distance of crossing wetland areas using Plowing-in/Knifing-in methods.
- This category cannot be used in forested wetlands where trees need to be removed to conduct the activity.
- All impacted areas shall be immediately restored to grade.
- No additional fill materials (other than the utility itself) shall be placed in the wetland.
- Rutting or other soil disturbance shall be restored and stabilized.

Open Trenching

- Project design and construction features shall assure that backfill used in the excavated trench will not result in the drainage of wetlands. Clay plugs shall be shown in the construction plans and shall be placed at the wetland/upland boundary in all instances and as needed throughout the trench system.
- Construction mats shall be utilized to the greatest extent possible to minimize ground compaction and disturbance to waters of the state.
- For wetlands, excavated materials shall be stockpiled and used to backfill the trench area with the top 12 inches of topsoil being stockpiled separately to backfill the top portion of the trench. ▪ Any excavated materials that are sidecast or stockpiled in the wetlands shall be contained to the minimal amount of area feasible and shall not remain in the wetland for more than 30 days. Excess excavated materials shall be disposed of in an identified non-wetland site.
- Stockpiling or sidecasting is not allowed in any inland lakes and streams.
- All disturbed areas shall be restored no later than 30 days after completion. Restoration shall include restoring the area to original grade, decompacting the soils, and seeding and plantings native to Michigan to re-establish the preconstruction wetland type.

NATIONWIDE PERMIT 12 WITH REGIONAL CONDITIONS:

12. Utility Line Activities

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Utility lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of utility lines, including outfall and intake structures. There must be no change in pre-construction contours of waters of the United States. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads.

Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the utility line activity.

Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites.

Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre- construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) The activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10- acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where the utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: For utility line activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Utility line activities must comply with 33 CFR 330.6(d).

Note 3: Utility lines consisting of aerial electric power transmission lines crossing navigable waters of the United States (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

Note 4: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 5: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

Note 6: This NWP authorizes utility line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 7: For overhead utility lines authorized by this NWP, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 8: For NWP 12 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre- construction notification (see paragraph (b) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Detroit District NWP 12 Regional Conditions:

- a. For substations and permanent access roads, no discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions.
- b. Impacts for substations and permanent access roads are limited to 1/4 acre in wetlands adjacent to navigable waters of the U.S. Applicants must demonstrate that upland alternatives are not practicable.
- c. Impacted wetlands outside of permanently maintained rights of way shall be restored to the same or more valuable wetland type (e.g., forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by the Corps.
- d. For utility lines placed across the channel of an authorized Federal navigation project, the following conditions apply: 1) The line must be embedded at least 6 feet below the authorized Federal channel depth; 2) Existing and proposed elevation information on precise plan and section scale drawings are required; 3) Within 60 days after construction, an as-built survey must be provided indicating the points of entry and exit of the installation.
- e. The application must provide the latitude and longitude (or UTM coordinates) of each end of the utility line at the limits of Corps jurisdiction (OHWM or upland limit of wetlands), and for each point between where the utility changes direction.
- f. All excavated and dredged material, other than that used to backfill the trench as authorized pursuant to NWP 12, shall be disposed of on uplands.

MDEQ Water Quality Certification/CZMA consistency for NWP 12: MDEQ granted certification based on the following conditions:

- a. For substations and access roads, no discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions.
- b. Impacts for substations and access roads are limited to 0.10 acre. Applicants must demonstrate that upland alternatives are not practicable. Permanent access roads shall not be authorized.
- c. Impacted wetlands outside of permanently maintained rights-of-way shall be restored to the same or more valuable wetland type (e.g., forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by the MDEQ and the USACE.
- d. All excavated and dredged material, other than that used to backfill the trench as authorized pursuant to NWP12, shall be disposed of in uplands.
- e. All revegetation of wetland sites must be with plant species that are native to Michigan according to the Floristic Quality Assessment for the State of Michigan.
- f. The USACE must conduct agency coordination with the MDEQ for overall projects proposing more than two crossings of waters of the United States and/or more than 1 acre of impacts to waters of the United States.

Tribal Lands Water Quality Certification for NWP 12: EPA granted certification based on all National and Regional conditions.

REGIONAL PERMIT:

K. Submerged Utility Line Crossings

- 1) Utility lines placed across the channel of an authorized Federal navigation project must be embedded at least 6 feet below the authorized Federal channel depth. Existing and proposed elevation information on precise plan and section scale drawings must be provided. Within sixty (60) days after construction, an as-built survey must be provided indicating the points of entry and exit of the installation.
- 2) Uncontaminated gravel, rock or other non-erosive material is proposed as backfill or bedding in utility line trenches. In wetlands, the top 6 to 12 inches of the trench should generally be backfilled with topsoil from the trench. The trench shall not be backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect).
- 3) If the material resulting from trench excavation is proposed for temporary sidecasting into waters of the United States, it would not remain for more than three (3) months, and the material would not be placed in such a manner that it will be dispersed by currents or other forces. Any sidecast material would not create turbidity plumes nor degrade the water quality of the receiving water. All excess dredged or fill material would be removed to an upland disposal area and the waterway bottom must be restored to its pre-construction contour.
- 4) The applicant has demonstrated that upland alignments were investigated and that they are not available. The area of waters of the United States that is disturbed must be limited to the minimum necessary to construct the utility line.
- 5) If using directional-drilling method of utility line installation, the applicant has provided a detailed narrative describing water supply intake(s) and recapture and disposal methods for used drilling fluids. A plan has been submitted describing the correctional steps to be taken in the event of a leak, either through the substrate into the waterbody or waterway, or onto the upland area with possible return to the waterbody or waterway. Methods for containment must be detailed.

MDEQ Water Quality Certification/CZMA Consistency for RP K: MDEQ granted certification based on the following condition: (a) The MDEQ has issued a permit for the regulated activities.

Protecting Lakes, Streams, Wetlands and Groundwater Since 1979



WATERSHEDCOUNCIL.org
231.347.1181
Tip of the Mitt Watershed Council
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Petoskey, Michigan 49770