



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

WW-16J

Steven E. Chester, Director
Michigan Department of Environmental Quality
525 West Allegan Street
P.O. Box 30473
Constitution Hall
Lansing, Michigan 48909-7973

Dear Mr. Chester:

This letter is in response to your March 31, 2009, letter to Ms. Lisa Jackson, Administrator of the U.S. Environmental Protection Agency, regarding Michigan's possible voluntary transfer of administration of the Clean Water Act Section 404 program back to the Secretary of the Army. Your letter was forwarded from Administrator Jackson to me for a response. Your letter stated that due to budget constraints, Michigan Governor Jennifer Granholm has recommended elimination of state general funding support for administration of the Michigan Department of Environmental Quality's (MDEQ) wetland protection program; which would also necessitate repealing Michigan's Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. Your letter also states that the Michigan Legislature is considering alternatives to allow the MDEQ to retain the authority to administer the wetland protection program but that the outcome of these discussions, at this point in time, is uncertain. You requested that we move towards a more formal process regarding the potential transfer of the Section 404 program. EPA is willing to engage in more formal discussions and is ready to work with the MDEQ and the Corps of Engineers to make sure a transfer of the program, if necessary, proceeds as smoothly as possible.

As you indicated in your letter, there are regulatory requirements under 40 CFR 233.53, regarding the voluntary transfer of Section 404 program responsibilities back to the Secretary of the Army. The regulations require the state to submit a plan for the transfer of all relevant program information to the Secretary of the Army and EPA that is necessary for the Secretary to administer the program. Your letter acknowledges that there is a 180 day notice requirement for the transfer, but with the approval of the Administrator, the transfer may proceed in another manner. Due to the uncertain outcome of legislative discussions, you stated MDEQ is requesting the Administrator consider an alternative program transfer scenario to the process in the regulations. However, no details describing such a scenario have been provided for consideration.

In the event MDEQ is required to return the wetland program to the Corps of Engineers, it will be imperative that the transfer proceeds in a manner which continues to protect waters of the United States, including wetlands, and provides for a clear and orderly transfer process minimizing confusion and processing delays for Michigan's regulated community.

The first step will be the development of a plan by the MDEQ that clearly identifies what program information is needed by the Corps of Engineers to operate the program and identify how and when the necessary information will be transferred to the Corps of Engineers. This information at a minimum should include: pending permit files, issued permits, information on enforcement activities, information on jurisdictional determinations (as appropriate), and how authority for finalizing pending permit decisions and enforcement actions will be transferred.

Any alternative transfer process Michigan proposes for the Administrator's consideration, different from that which is laid out in the regulations, must allow enough time for the Administrator and the Secretary of the Army to evaluate the plan, identify any additional information needed, and provide enough time to publish notice of the program transfer in the Federal Register 30 days prior to the effective date of the transfer. We anticipate that federal review of the plan would take a minimum of 60 days with an additional 7 days to draft and publish the Federal Register notice.

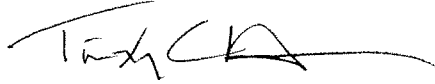
In order to develop a successful transfer process it will be imperative for the MDEQ to work closely with EPA and the Corps of Engineers during plan development. To ensure any potential program transfer occurs smoothly, it is essential that MDEQ keep both the Corps of Engineers and the EPA up to date on the progress being made in reaching a final determination regarding voluntary transfer of the program to the Secretary of the Army.

As we have stated in the past, Michigan has done a good job of administering the Section 404 program and provided sound protection of the state's aquatic resources since assuming the program in 1984. In light of this success, we hope Michigan decides to continue to administer the Section 404 program. In the event the state does return the program to the Corps of Engineers, EPA is committed to working with both the MDEQ and the Corps of Engineers to ensure the program transfer occurs in an organized and efficient manner.

If you have any questions regarding this matter please feel free to contact me. Ms. Sue Elston, of the Watersheds and Wetlands Branch will continue to be the MDEQ's point of contact regarding Michigan's Section 404 program and she will coordinate with

EPA headquarters and the Corps of Engineers' Detroit District on this effort. Ms. Elston can be reached at 312-886-6115.

Sincerely,

A handwritten signature in black ink, appearing to read "Tinka G. Hyde", with a long horizontal flourish extending to the right.

for Tinka G. Hyde
Director, Water Division