

Army Corps of Engineers Issues Michigan Regional Permit for Leveling of Sand

The United States Army Corps of Engineers (Corps) has issued a Regional Permit, effective until May 14, 2007, that provides an expedited process (within 5 to 15 days after application) for Corps approval of “the redistribution of unstable and unconsolidated sand that is repeatedly being deposited, through wind and/or wave action, landward of the Ordinary High Water Mark, against bulkheads and/or being deposited up onto riparian property owners’ landscaped lawns,” in areas adjacent to “waters of the United States.”

In order to be considered for approval under the Regional Permit, the following conditions must be met:

- an applicant must have an application, including a map, plan view, and written description of work, approved before commencing work;
- the sand to be relocated must originate landward of the Ordinary High Water Mark (OHWM), work must not take place waterward of the water’s edge, and both the original and relocated sand areas must be non-wetland areas that have no vegetation under normal circumstances;
- the sand to be relocated is unstable sand that is “constantly shifting” and provides little habitat for wildlife;
- the amount of sand to be relocated does not exceed two cubic yards per linear foot of the applicant’s water frontage, and the relocation will take place, at a maximum, one time per year;
- the Michigan Natural Features Inventory has been consulted and Standard Local Operating Procedures for Endangered Species (SLOPES) procedures have been followed to avoid impacts to endangered or threatened species; and

- Corps personnel have inspected the site, or alternatively, the applicant has submitted detailed photographs showing parcel conditions.

The Regional Permit does not apply to activities:

- that would impact historical, cultural, or archaeological resources;
- within areas designated under the Michigan Shorelands Protection and Management Act, the Natural River Act, or the Wilderness and Natural Areas Act;
- that would affect federally listed endangered, threatened, or proposed species;
- that would occur in areas named as National Wildlife Refuges, National Rivers, National Wild and Scenic River System components, National Wilderness Areas, National Recreation Areas, National Lakeshores, National Parks, or National Monuments;
- that would occur in wetlands considered unsuitable for discharge; and
- that would occur in “critical dune areas” designated under MCL §324.35301 *et seq.*

The Regional Permit also attaches several definitions of relevant terms. The OHWM is defined, as it is under Michigan law, in accordance with the 1985 International Great Lakes Datum contour line. “Wetlands” are defined in the same fashion as they are under section 404 of the Clean Water Act. The term “waters of the United States,” which delineates federal jurisdiction over the regulated activities, is not explicitly defined in the Regional Permit, however.

H. Kirk Meadows