

Impact of Sackett vs. EPA on Michigan's Water Programs

Teresa Seidel

Director, Water Resources Division

Michigan EGLE

Michigan EGLE - Water Resources Division

Protect and Monitor

- 💧 4 Great Lakes and Lake St. Clair
- 💧 11,000 inland lakes
- 💧 76,000 river and stream miles
- 💧 6.5 million acres of wetlands
- 💧 74,000 acres of coastal dunes
- 💧 Groundwater

For swimming, fishing, drinking water, and aquatic ecosystems.



Two Programs, One Answer

- Michigan does not expect the Sackett decision to impact its fully delegated 402 program or the assumed 404 program. Michigan has a stable program and clear definitions of which wetlands and streams are regulated that are unlikely to be affected by this SCOTUS case.





Michigan's Water Resources Program (404)

- Since the mid-1970's, special resources that exist at the interface between land and water have been protected by Michigan's Water Resources Program.
- Includes both regulatory and non-regulatory programs.
- Protects public trust resources and the surface waters of the state.
- One of 3 states (Michigan, New Jersey, and recently Florida) to assume Section 404 of the Clean Water Act.

Michigan's Section 404 Program

- Has served as a national model of natural resource protection and streamlining of state, federal, and local regulations for almost 40 years.
- Michigan's Wetland Protection Act was written specifically to support state assumption of the federal Section 404 Program.
- The U.S. EPA is responsible for oversight of Michigan's Administration of the 404 Program to ensure that it is operated in a manner that is consistent with federal law



The USACE retains jurisdiction over traditionally navigable waters including the Great Lakes, connecting channels, other waters connected to the Great Lakes where navigational conditions are maintained, and wetlands directly adjacent to these waters.

Activities in these waters require a joint permit application from EGLE and USACE which minimizes time and effort for applicants.



Part 325, Great Lakes Submerged Lands

Protects the Great Lakes through the regulation
of construction activities



Michigan has over 39,000 square miles of Great Lakes public trust bottomlands and 3,288 miles of Great Lakes shoreline that provide fish and wildlife habitat and commercial and recreational opportunities.

Part 303, Wetlands Protection

Protects wetland functions and values by requiring permits for activities within wetlands.



Part 303, Wetlands Protection

Protects wetland functions and values by requiring permits for activities that may have impacts to wetlands

What is a wetland?

Wetland means a land or water feature characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh.



Wetlands are regulated if:

- Is a WOTUS
- Connected to or located within 1,000 feet of one of the Great Lakes or Lake St. Clair.
- Connected to or located within 500 feet of an inland lake, pond, river, or stream.
 - More than 5 acres in size
 - Documented presence of an endangered or threatened species
- Is a Rare and Imperiled Wetland

Part 301, Inland Lakes and Streams

Protects inland waters by regulating work in inland lakes and streams.



Michigan has over 36,000 miles of streams, and more than 11,000 lakes and ponds, providing fish and wildlife habitat, and recreational opportunities.

Part 301, Inland Lakes and Streams

Protects inland waters by regulating work in inland lakes and streams.

Inland Lakes

- Natural or artificial
- Lake, pond, or impoundment
- Surface area of 5 or more acres

NOT Great Lakes or Lake St. Clair



Streams

A river, stream, creek, drain, or any other body of water with:

1. Definite banks,
2. A bed
3. Visible evidence of continued flow or continued occurrence of water

Includes the St. Mary's, St. Clair, and Detroit Rivers.



Benefits of Michigan's 404 Program

- ✓ Effective resource protection
- ✓ Provides clear definitions for regulation
- ✓ Provides timely permit decisions
- ✓ Reduces regulatory burden through a consolidated state permit process and a joint permit application with the USACE
- ✓ Simultaneous review of CZM and 401 certification, screening and review of state and federal threatened and endangered species, and screening and review for historic and archaeological sites
- ✓ Maintains state control while remaining consistent with federal regulations
- ✓ Local field staff provide direct interaction with applicants
- ✓ Provides a court-style formalized appeal process
- ✓ Provides a stable and predictable regulatory framework



Sackett Ruling – Impact on Michigan’s Program

- Michigan operates its programs under state law, so the wetlands and streams that are regulated are not affected by the Sackett ruling.
- This ruling, as well as the instability and lack of regulatory clarity at the federal level over the last decade, reinforces the importance of having a comprehensive and stable state program in Michigan.

However...

- The Sackett decision does impact how waters are regulated in Great Lakes basin and will likely have long-term impacts throughout the region and on the Great Lakes.
- Michigan’s program has operated successfully for almost 40 years, in part because of the strong partnership between the state and federal agencies and strong federal protection.

Michigan's Section 402 program

- Michigan was one of the first states delegated the 402 program (NPDES) in 1973
- State law (PA 451) define waters of the state as; groundwaters, lakes, rivers, and streams and all watercourses, including the Great Lakes, within the jurisdiction of this state
- State rules (Part 4 of PA 451) define surface waters of the state as; the Great Lakes, all inland lakes, rivers, streams, impoundments, open drains, wetlands, other surface bodies of water within the confines of the state. Exclusions include drainage ways and ponds used solely for wastewater conveyance, treatment, or control

Benefits of Michigan's Section 402 program



Michigan's state law and rules are protective of all surface waters and groundwaters as defined by the state. These state waters are more inclusive than WOTUS as defined by the Sackett Ruling



Michigan rules (Part 21 of PA 451) allow for issuance of NPDES permits or equivalent document or requirements, for discharges into surface waters as defined by the state

Sackett
Ruling –
impact on
Michigan's
402
program

- This ruling will not impact Michigan's ability to issue discharge permits to all waters of the state. Michigan's will issue NPDES permits for all discharges to surface waters
- If EPA determines in situations that NPDES permits can only be enforced to jurisdictional waters (defined as WOTUS), then the state can issue state discharge permits