

# Environmental Laws, Permits and WLA Rules

## Forward

Those who are planning on making improvements to their homes and land should be aware of the special laws and permit requirements that regulate such activities near bodies of water.

The following is intended to provide a basic overview and awareness of some of the environmental regulations that may affect WLA members and others that live near bodies of water. Like most aspects of law, environmental regulations are complex and constantly changing, so readers should always contact the appropriate governmental agencies to determine the exact regulations and permit requirements that apply to their specific projects. None of this article should be construed as legal advice.

## State Laws and EGLE

The primary source of environmental regulations in Michigan is the Natural Resources and Environmental Protection Act (NREPA Act 451 of 1994). While there are various parts to this act, the parts that regulate activities that involve land/water features are likely the most relevant to WLA members. These include Part 301 (Inland Lakes and Streams), Part 303 (Wetlands Protection), Part 33 (Aquatic Nuisance Control) and Part 91 (Soil Erosion and Sedimentation Control).

Parts 301, 303 and 33 are administered by the Michigan Department of Energy Great Lakes and Environment (EGLE), whereas part 91 is administered locally by the Livingston County Drain Commissioner.

Part 301 (Inland Lakes and Streams) is intended to protect the quality of lakes and streams. In short, **Part 301 specifies that a permit is required for any activity that involves dredging or placing fill, or placing or modifying any structure below the ordinary high water mark of a lake or stream.** Swim area sanding and shoreline modifications, such as seawalls and rock shorelines, are common examples of such regulated activities. Per WLA rules, **WLA/LGCC approval is also required for any activity that requires a part 301 permit involving Winans Lake.** It should be noted that EGLE and the WLA strongly discourage the installation of new concrete or steel seawalls in favor of more natural and environmentally friendly shoreline stabilization methods.

**Part 303 (Wetlands Protection)** is intended to protect the functions and values wetlands provide such as flood and storm control, wildlife habitat, clean subsurface water, pollution treatment, erosion control, nutrient cycling, etc. **Any activities that involve dredging, filling, draining, placing structures within or otherwise modifying any wetland area requires a permit under part 303.** If there is any question as to whether a particular area is considered wetland, a wetland delineation study can be ordered to determine if a wetland exists and the corresponding boundaries.

**Part 33 (Aquatic Nuisance Control)** requires a permit to chemically treat any waters of the state if water is visibly present or contained in the area of impact at the time of chemical treatment. Members should note that **any chemical treatment of the lake by anyone other than those authorized by the WLA/LGCC is prohibited by WLA rules. Members are expressly not authorized to obtain treatment permits or to perform any treatments on their own.**

**Part 91 (Soil Erosion and Sedimentation Control)** provides for the control of soil erosion to protect land and waters from sedimentation, which is known to be a major threat to the quality of our lakes and streams. **Part 91 specifies that a permit is generally required for any earth change that disturbs one or more acres, or is within 500 feet of a lake or stream.** Among other protections, a part 91 permit will help ensure that proper sediment barriers, soil stabilization and other safeguards are utilized throughout the course of a project.

State permitting on wetlands, lakes, and streams is implemented through a tiered permitting system where the level of permitting, cost and oversight is related to the scope and impact of the project. At the lowest level are exempt activities such as placing a seasonal dock, placing small amounts of sand above the water line and small-scale hand removal of plants. The next level includes general and minor permit categories. These cover activities have relatively low impact, such as placing fill in a swim area, and can be processed with a lower fee (typically \$50-\$100) and a faster timeline. Larger impact activities that don't qualify for exempt or lower permit categories require an individual permit. These typically cost \$500 and require a public notice and comment period, as well as a more thorough assessment of impacts and alternatives.

In addition to state-level regulations there are also township zoning and land use regulations. Typically, these involve setbacks and other building restrictions that provide a buffer between structures and shorelines to help protect water quality and the aesthetics of properties around water. Members should check with the Hamburg Township Zoning Administrator for more info.

### **WLA Rules**

Members should also be aware that WLA rules state that **“any beach, shoreline, or lake bottom modifications or other related activities that require state permitting shall also require WLA Board approval.”** This rule helps ensure that the WLA and LGCC are aware of activities that can affect the lake and that those activities are consistent with the character, quality and management goals of the lake. To some extent, the WLA relies on EGLE to evaluate and approve these activities since they have the authority, resources and expertise to do so.

It is important for members to ensure that they have WLA/LGCC approval well before applying for any permits, otherwise they risk loss of the application fee in the unlikely event the activity does not get approved by the WLA/LGCC. In addition, **EGLE permits require written LGCC authorization as part of any permit application involving the lake**, since LGCC owns the lake bottom. Members are not authorized to obtain any permits involving the lake any more than other property that they do not own. **Members with questions related to permit requirements are urged to contact EGLE, Livingston County, Hamburg Township and the WLA board well in advance of undertaking any property improvements to avoid unnecessary costs and delays.**

When it comes to working with contractors, it is important to know that **the property owner is the one who is legally responsible for obtaining and complying with any required permits and is liable for any violations, not the contractor.** Violations can lead to hefty fines, restoration costs and civil/criminal penalties. Contractors are generally focused on profit and, thus, completing projects with the least amount of cost, time and effort. Accordingly, they are frequently willing to dismiss the need for permits, conduct work without them, or otherwise violate the provisions or scope of a permit because, again, it is the **property owner that is legally responsible for permits and compliance.** It is common practice for a contractor to pull a minor permit, such as for beach sanding, and then exceed the scope of the permit by re-contouring the shoreline or adding rip-rap seawalls. This is a violation for which the property owner is liable. Members should note that it has been the policy of the WLA to investigate and report any activity that can affect water quality.

### Summary

- **Any activity below the ordinary high water mark (seawalls, shoreline changes, sanding, filling, dredging, chemical treatments, etc.) requires WLA/LGCC authorization in addition to EGLE permits.**
- **Any activity that is not below the high water mark but involves significant earth change or is within 500ft of water or wetland does not require WLA/LGCC authorization but typically does require EGLE and/or county and township permits.** While not requiring WLA authorization, this type of activity may be reported if it appears to be lacking the appropriate permits or water quality safeguards.
- **Property owners, not contractors, are legally responsible for obtaining and complying with permits.** Failing to comply can lead to fines, restoration costs and civil/criminal penalties.
- **Members should contact EGLE, Livingston County and Hamburg Township well in advance of any projects to determine what permits are required and then contact the WLA board before applying for any permits that involve the lake or shoreline.**

## **Information Resources**

EGLE Land/Water Interface Activities

<https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Regulatory-Assistance/Guidebooks/MI-Guide-to-Environmental-Regulations/MI-Guide-Environmental-Regulations-Ch8-Land-Water.pdf?rev=f7907d4ad4004df4ac7158c37fccfb2>

EGLE Inland Lakes and Streams Protection

<https://www.michigan.gov/egle/about/organization/water-resources/inland-lakes-and-streams>

Permit Decision Tree

<https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/WRD/Wetlands/JPA-Decision-Tree.pdf?rev=a55a1660cb1645cd9998342ee6e07dd1>

PART 91, SOIL EROSION AND SEDIMENTATION CONTROL (SESC) FAQ

<https://milivcounty.gov/wp-content/uploads/Part-91-SESC-FAQ-Sheet.pdf>