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LANSING



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DIRECTOR

TO: S. Peter Manning, Acting Assistant in Charge
Environment, Natural Resources, and Agriculture Division
Department of Attorney General

FROM: Diana Klemans, Chief, Surface Water Assessment Section
Water Bureau

DATE: January 10, 2006

SUBJECT: *Rapanos v United States*, No. 04-1034
Carabell v United States Army Corps of Engineers (USACE), No. 04-1384

This is in response to your request for information related to waters designated as “traditionally navigable” or “Section 10” waters by the USACE. Your questions and our responses follow:

- What percentage of river/stream miles in Michigan are not Section 10 waters?

An estimated 99 percent of river/stream miles in Michigan are not Section 10 waters. The Memorandum of Agreement between the State of Michigan and the Department of the Army dated April 2, 1984, regarding Michigan’s assumption of the Clean Water Act Section 404 Program includes an attachment listing the “navigable waters of the United States in the United States Army Engineer District, Detroit” (i.e., Section 10 waters). This document identifies waters the state did not assume jurisdiction over under Section 404 by reference to specific water bodies or portions of those water bodies. The USACE estimates that approximately 496 river/stream miles remain under their Section 10 jurisdiction (electronic mail communication from Don Reinke, Detroit District, USACE, to Martin Jannereth, Michigan Department of Environmental Quality [MDEQ]). Michigan has approximately 54,300 total river/stream miles according to the MDEQ report, “Water Quality and Pollution Control in Michigan: 2004 Sections 303(d) and 305(b) Integrated Report.” This figure was estimated from the National Hydrograph Dataset (United States Geological Survey [USGS], 2000 Version, developed by the United States Environmental Protection Agency and the USGS).

- What percentage of the National Pollutant Discharge Elimination System (NPDES) permits are for water bodies not within the USACE’s Section 10 jurisdiction?

Approximately 60 percent of NPDES permits issued in Michigan are for discharges to water bodies that are not within the USACE’s Section 10 jurisdiction. Our NPDES permit data management system is not able to query for discharges to Section 10 waters, nor are Section 10 waters delineated in a fashion to facilitate a response to this question. Therefore, the statewide percentage was estimated from a detailed review of and an extrapolation from the percentage of the Saginaw River/Saginaw Bay area NPDES permits that are not within Section 10 waters. The NPDES permitted discharges to waters not

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identified as Section 10 waters include municipal discharges from cities like Flint, Lansing, Pontiac, and Battle Creek, which include treated sanitary and industrial/commercial wastes, and industrial/commercial discharges, including noncontact cooling water, groundwater cleanups, and treated industrial process wastewaters. Other NPDES permitted discharges to waters not identified as Section 10 waters include industrial storm water, nonindustrial sanitary discharges, construction storm water, municipal separate storm sewers, and concentrated animal feeding operations.

Please contact me if you have questions or require additional information.

dk:rm

cc: Stanley F. Pruss, Deputy Director, MDEQ
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