



May 9, 2018

House Natural Resources Committee
Lansing, MI

Re: HB 5854, 5855

Committee Members:

The Michigan Environmental Council (MEC), a coalition of 65 member groups across the Great Lake State, supports the restoration and protection of wetlands in Michigan, and would appreciate a process that allows for wetland restoration in a way that is simple and protective of our water resources. Despite an honorable goal of achieving more efficient wetland restoration, we still have many outstanding concerns about the bill. These are: risking our delegated wetland authority, creating more government costs, and potentially allowing unqualified organizations to qualify for an eased review process.

Delegated Wetland Permitting Authority

The current language of the bill package moves all applicable permitting authority dealing with voluntary wetland restoration (VWR) to the Department of Natural Resources (DNR) instead of its current location in the Department of Environmental Quality (DEQ). We have major concerns that this will create confusion among the federal government, state agencies, and permittees on who has authority to administer permits. Currently Michigan is one of only two states with delegated authority from USEPA to administer Section 404 of the Clean Water Act which regulates the discharge of dredged or fill material into the waters of the United States, including wetlands. This allows us to move much faster than the federal government on many wetland permits.

In Section 6 of HB 5854, the new language identifies several allowable activities for a VWR project that may include, the removal of accumulated sediments, the discharge of dredged or fill material to restore appropriate channel configuration, placement of in-stream habitat structures, modifications of stream beds or banks, and the installation of structures or fills necessary to restore stream hydrology. These, including other VWR activities outlined in the bill, would require Section 404 approval, currently delegated to DEQ, as they are related to fill material. Since the authority to administer the federal permit currently rests with DEQ, the state would need approval from USEPA, as outlined in our current Memorandum of Agreement (MOA) with the EPA, to allow DNR to administer the program for VWR projects. This would require the State, EPA, and the Army Corps of Engineers to renegotiate the MOA language of Michigan's delegated permitting authority.

Legally and administratively it is unclear if EPA could shift authority to the DNR for only VWR projects. Additionally, the bills are unclear on what permitting would fall

under the DNR for VWR projects and what would remain under the DEQ. As written, MEC believes the bills intend for DNR to administer all permits associated with wetland restoration. Under this scenario, if DNR is allowed to administer all permits, this legislation will have effectively created identical permitting authorities in two separate state agencies.

In a notably worse scenario, opening up the MOA to allow DNR to administer permits for voluntary wetland restoration may risk Michigan's delegated authority altogether. During renegotiation federal agencies may determine Michigan holds too much delegated authority and opt to scale back our jurisdictional control. Recently, more states have tried to get this same delegated authority, and the Army Corps has not been willing to delegate "navigable waters" – which if the Corps chooses to adopt that in a renegotiation, would leave Michigan with very little authority in this program. This would have major implications for other industries in Michigan that benefit from a faster, streamlined state permitting process.

While the permit review process for wetland restoration process may be slower than some stakeholders would like, the fact remains that the DEQ still approves almost all permit applications and does so in more timely fashion compared to the federal process. By risking our delegated authority these bills could result in a significantly longer permit review process for numerous stakeholders across the state.

DNR Permitting Authority

We are also concerned about the costs of shifting permitting authority to the DNR which currently does not administer permits. It is unclear if the Department has the resources to maintain the engineering, oversight, enforcement, and reporting requirements that are inherently assumed with HB 5854 and 5855. To properly administer the program, the DNR would have to hire enough staff to mirror the DEQ programs. Without proper appropriations the DNR program would likely suffer from the same permit review/approval delays that have plagued an understaffed and underfunded DEQ.

Furthermore, the DNR will now be required to establish an administrative appeal process that is compliant with the administrative procedures act. This would likely require dedicated administrative law judges for the DNR as well as internal staff to handle the legal and technical analysis required by the appeals process. This would again add more costs to duplicate a program the state already has in the DEQ.

Eligible entities

Finally, we are concerned by the eligible entities outlined in HB 5854. While we agree that more groups should promote restoring and preserving wetlands, we are concerned about granting this ability to groups and agencies with potentially minimal experience in wetland restoration. For instance, HB 5854 identifies any nongovernmental organization with a stated mission, purpose, or programs dealing with wetland restoration are eligible. This definition is vague given the ease of creating an NGO and/or changing one's mission statement to include "wetland restoration". The overly ambiguous language of

the bill potentially opens up restoration projects to inexperienced organizations or bad actors. Evaluating groups on a project by project basis, or creating a process to pre-approve organizations would help to ensure that only those with the proper expertise can benefit through this easier process.

Putting Michigan's federally delegated authority at risk should be unacceptable to anyone who benefits from the streamlined process the DEQ provides instead of relying on the EPA and Army Corps. To our knowledge, over the past twenty plus years the DEQ has only denied two permits for voluntary wetland restoration. While we can support streamlining the process for wetland restoration, these bills simply create a duplicative process that will cost the state more money, with no guarantee of streamlining the process at all.

Sincerely,

A handwritten signature in cursive script that reads "Sean Hammond".

Sean Hammond
Deputy Policy Director
Michigan Environmental Council

