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DEPARTMENT OF THE ARMY
DETROIT DISTRICT, CORPS OF ENGINEERS
BOX 1027
DETROIT, MICHIGAN 48231-1027

April 23, 2002

MEMORANDUM TO

Engineering & Technical Services
Regulatory Office
File No. 80-200-001-6

James A. Barcia
G-5409 W. Pierson Road
Flushing, Michigan 48433

Dear Representative Barcia:

In response to the request from Mark Salazar, of your Flushing, Michigan office for a clarification of U.S. Army Corps of Engineers jurisdiction on Lake Huron waters, as well as what activities require a Department of the Army permit, we offer the following information. Under Section 10 of the 1899 Rivers and Harbors Act (Section 10), a Corps permit is required for any structures or work in navigable waters of the United States waterward of a line on the shore known as the Ordinary High Water Mark (OHWM). Some typical examples of structures or work requiring Section 10 permits within this jurisdictional area include beach nourishment, boat ramps, breakwaters, bulkheads, dredging, filling or discharging material such as sand, gravel or stones, groins and jetties, mooring buoys, piers (seasonal or permanent), placement of tripap for wave protection or streambank stabilization, boat hoists, pilings and construction of marina facilities.

Section 404 of the 1977 Clean Water Act (Section 404) requires a Corps permit for the discharge of dredged or fill material into waters of the United States including adjacent wetlands. The area of Corps jurisdiction under Section 404 extends to the OHWM, and landward of this to the upland boundary of any wetlands adjacent to navigable waters. Projects involving discharges typically include placement of fill material for homes and landscaping, impoundments, causeways, road fills, dams and dikes, tripap, groins, breakwaters, revetments, and beach nourishment. Section 404 also regulates discharges of dredged material incidental to certain activities such as grading, mechanized landclearing, ditching or other excavation activity.


Saginaw Bay is part of Lake Huron, which is a navigable water of the United States. The OHWM of Lake Huron extends to the existing 581.5 foot contour line using the 1985 International Great Lakes Datum elevation reference. The OHWM is a fixed contour and is used to define the shoreward limit of the Corps' regulatory jurisdiction. Although Saginaw Bay's water levels and shorelines constantly fluctuate, the Corps' jurisdiction over activities in Saginaw Bay is tied to the location of this contour line.

For the past 30 years or so, the Great Lakes have been at very high levels. The high water continually inundated near-shore portions of Saginaw Bay and gradually thinned out the above-water portions of vast beds of bulrushes and cattails in the 1970s. The roots, rhizomes, and seeds of these emergent wetland plants could not germinate under conditions of constant inundation and, as such, much of Saginaw Bay's emergent marsh habitat resembled open water areas by the mid-1980s. Since 1998, the water levels of the Great Lakes dropped significantly. The current low-water conditions are responsible for changing formerly open-water areas along Saginaw Bay's shoreline into a mosaic of exposed sand and mud flats and shallow water areas. The plants that were unable to germinate during the many years of inundation are rapidly sprouting and growing in these flats and shallow water areas. Low-water conditions have allowed for the reemergence of vegetated marshes along much of Saginaw Bay's shoreline.

Vegetation control methods that involve the action of redistributing soil on Saginaw Bay bottomlands—such as mechanized plowing, discing, grading, raking, and/or dragging—constitute discharges of dredged material under the Corps' Section 404 jurisdiction and as work under Section 10 jurisdiction. A Corps permit is required for any activity involving discharges of dredged material as described above. Mowing vegetation does not require a Corps permit as long as the mowing does not physically disturb the bottomland substrate or soils. Hand-pulling of vegetation and use of hand tools such as shovels, rakes, hoes, etc., do not require a Corps permit, so long as they do not change contours. A Corps permit for mowing vegetation is required under Section 10 in situations where a tractor, pulling a mower or brush-hog, creates deep ruts in the bottomland substrate. We have several minor-project permits in place that can allow property owners to access the water or to clean up the shoreline in ways that can only minimally disturb Saginaw Bay's shoreline marshes. Vegetation control work that will have more than minimal individual or cumulative adverse effects on Saginaw Bay's environment or is otherwise contrary to the public interest is not eligible for our minor-project permits and must be evaluated under our standard permit process.

Should you have any questions, please contact Bob Deroche at the above address or telephone (313) 226-6813. Please refer to File Number: 80-200-001-6.

Sincerely,


Gary R. Nannetto
Chief, Regulatory Office
Engineering & Technical Services