

## DEQ and NRCS/USDA Wetland Programs FAQs

There is often confusion between state and federal wetland program determinations. This document contains Frequently Asked Questions that are intended to clarify how wetland determinations are made and applied for in both the Michigan Department of Environmental Quality (DEQ) Wetlands Program and the Natural Resources Conservation Service (NRCS) Wetland Conservation Compliance Program.

| Question  | DEQ Wetlands Program Answer*   | NRCS Wetlands Program Answer**   |
|---|--|--|
| <p><b>What laws authorize and direct the program?</b></p> | <p>Michigan’s wetland statute, Part 303, Wetlands Protection of the Natural Resources and Environmental Protection Act, PA 451, 1994 as amended. (MCL 324.303)</p> <p>In 1979, Michigan legislature passed the Goemare-Anderson Wetlands Protection Act, which is now Part 303, and sets forth wetland regulations in Michigan. In 1984, Michigan received authorization from the federal government to administer Section 404 of the Clean Water Act, and is one of two states in the nation to do so. The state program must be consistent with, and as stringent as, the federal Clean Water Act.</p>   | <p>Code of Federal Regulations Title 7 Part 12</p> <p>This part sets forth the terms and conditions under which a person who produces an agricultural commodity on highly erodible land or designates such land for conservation use, plants an agricultural commodity on a converted wetland, or converts a wetland shall be determined to be ineligible for certain benefits provided by the United States Department of Agriculture (USDA) and agencies and instrumentalities of USDA, namely Farm Service Agency (FSA), Natural Resources Conservation Service (NRCS), and Risk Management Agency (RMA).</p> |
| <p><b>What is the main purpose of the program?</b></p>    | <p>Michigan’s wetland statute recognizes numerous benefits that wetlands provide to the public such as flood control, wildlife habitat, groundwater protection, pollution treatment, and erosion control. The DEQ is charged with the duty to protect these benefits since they play a vital role in recreation, tourism, and the economy in Michigan, by requiring permits for impacts to any regulated wetland. Part 303 regulates wetlands that are ANY of the following:</p> <ul style="list-style-type: none"> <li>• greater than 5 acres in size</li> <li>• connected to or within 500 feet of an inland lake, pond or stream</li> <li>• connected to or within 1,000 feet of a Great Lake or Lake St. Clair</li> <li>• Determined to be essential to the preservation of the state’s natural resources as set forth by specific criteria in statute.</li> </ul> | <p>The purpose is to remove certain incentives administered by USDA and its agencies FSA, NRCS, and RMA, for persons to produce agricultural commodities on highly erodible land or converted wetland and to thereby:</p> <ul style="list-style-type: none"> <li>• Reduce soil loss due to wind and water erosion;</li> <li>• Protect the Nation's long-term capability to produce food and fiber;</li> <li>• Reduce sedimentation and improve water quality; and</li> <li>• Assist in preserving the values, acreage, and functions of the Nation's wetlands.</li> </ul>  |

\*DEQ information found at [www.michigan.gov/wetlands](http://www.michigan.gov/wetlands)

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<http://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/programs/farmbill/>

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| <b>Does one program have authority over the other?</b>               | <b>No. Both programs are operated independently under the context of different laws and authority.</b>   |  |
| <b>What types of determinations are made by the program and why?</b> | DEQ makes wetland determinations on all lands, regardless of uses, to identify the actual boundaries and types of wetlands in the field. Wetland determinations include a wetland delineation and jurisdictional assessment to identify if a permit would be required from the state for impacts to regulated wetlands.  | NRCS technical wetland determinations are made on farmland to identify the presence of Highly Erodible Land (HEL), Wetlands (W), Converted Wetlands (CW), Prior Converted Wetlands (PC) and Manipulated Wetlands (Wx).   |
| <b>How are wetland determinations made and what criteria apply?</b>  | <p>DEQ makes wetland determinations through the state Wetland Identification Program (WIP), for a fee that is based on the area of land requested in the determination. DEQ utilizes the 1987 Army Corps of Engineers Wetland Delineation Manual and Regional Supplements in completing wetland determinations. Wetland determinations can only be completed in the field, and evidence of all three of the following criteria must be observed when identifying wetland boundaries:</p> <ul style="list-style-type: none"> <li>▪ Hydric Soils</li> <li>▪ Hydrology</li> <li>▪ Hydrophytic Vegetation</li> </ul> <p>For state permitting purposes, wetland determinations do not need to be completed by the state. Wetland delineations may also be completed by a qualified consultant and be used in applying for a permit application.</p> | <p>Technical determinations are initially made by NRCS in the office utilizing the following information:</p> <ul style="list-style-type: none"> <li>• FSA Crop History Slides, FSA Master Photos, Hydric Soils Maps, NWI Maps, Topo Maps, Determinations made prior to 1996 (Legacy Determinations)</li> </ul> <p>Field inspection typically occurs when NRCS receives a Request for Reconsideration or Mediation of a determination, or if the determination is in connection to a violation.</p> <p>When wetland determinations are made in the field, the NRCS uses field methodology outlined in the 1987 Army Corp of Engineers Wetland Delineation Manual and Regional Supplements all three of the following criteria must be present:</p> <ul style="list-style-type: none"> <li>▪ Hydric Soils</li> <li>▪ Hydrology</li> <li>▪ Hydrophytic Vegetation</li> <li>▪ Review of aerial photographs to determine the appropriate for the wetland label.</li> </ul> |

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| <p><b>What are the outcomes of a wetland determination?</b></p> | <p>As part of a WIP assessment, the DEQ issues a letter describing the site conditions at the time of the determination, and creates a map depicting the wetland boundary and state jurisdictional status under Part 303. The letter will provide a guarantee that the DEQ lacks jurisdiction under Part 303 over areas identified as non-wetland (i.e., upland) and non-regulated wetland for a period of three years.</p> <p>There are three levels of wetland identification services provided by DEQ:</p> <ul style="list-style-type: none"> <li>• Level 1 is a mapping only service provided by the Wetlands Map Viewer on the DEQ website, and indicates only potential presence for wetland.</li> <li>• Level 2 service provides a wetland delineation by DEQ staff on areas up to 5 acres in size.</li> <li>• Level 3 service provides a verification of a wetland boundary delineated by a wetland consultant on any size property.</li> </ul> <p>A wetland delineation completed by a wetland consultant typically includes a letter and a map depicting the site conditions and wetland boundaries, but exact services may vary widely depending on the consultant. Keep in mind that a consultant letter does not provide a guarantee because the DEQ holds the authority on regulatory status of wetlands in Michigan</p> | <p>NRCS designates and maps Wetland Types, Wetlands (W), Converted Wetlands (CW), Prior Converted Wetlands (PC) or Manipulated Wetlands (Wx). for determination of eligibility for federal farm incentive programs.</p> <p>A Converted Wetland (CW) is:</p> <ul style="list-style-type: none"> <li>• An area drained, dredged, filled, leveled, or otherwise manipulated (including removal of woody vegetation and stumps). CW will cause USDA program ineligibility until the wetland is restored or mitigated, unless an exemption applies.</li> <li>• Was formerly wetland converted after December 23, 1985 for the purpose or to have the effect of making the production of an agricultural commodity possible. If manipulation was not for agricultural commodity production, a designation of Wx is given (Manipulated Wetland).</li> <li>• Is designated as CW + Year of conversion</li> </ul> <p>A Prior Converted (PC) Wetland is:</p> <ul style="list-style-type: none"> <li>• An area manipulated before December 23, 1985 and: <ul style="list-style-type: none"> <li>▪ Planted to annual commodity crop once prior to that date</li> <li>▪ Capable of producing a crop on that date</li> <li>▪ Once a PC designation is made, that land is always considered to be PC.</li> </ul> </li> <li>• FSA makes program eligibility determinations based on the NRCS technical determinations and maintains the official USDA records both in GIS and the automated farm and tract records.</li> </ul> |

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| <b>Can a determination made by one program be applied to another program?</b> | No. Determinations are made by each agency separately and for different reasons. NRCS determinations are based on farming conversion dates and are used to indicate federal subsidy program eligibility. DEQ wetland determinations are based on current field conditions for the purposes of identifying regulated resources, typically in conjunction with a proposed impact.  |   |
| <b>Who can request a wetland determination?</b>                               | Any landowner may request a wetland determination through the WIP program.   | Technical determinations for the Wetland Conservation Compliance Program can be requested via FSA or producer. DEQ findings as recorded on ACE wetland determination and delineation data sheets may be used by NRCS in some circumstances.   |
| <b>How long is a determination good for?</b>                                  | A wetland determination through the Wetland Identification Program (WIP) is good for a period of three years, after which it is no longer valid.   | A certified wetland determination is binding on NRCS until a subsequent NRCS determination is made. <ul style="list-style-type: none"> <li>Once an area has been determined to be PC, it will always be considered to be so by NRCS for the purposes of the Food Security Act wetland conservation provisions.</li> </ul>   |
| <b>What happens if wetland is determined to be present?</b>                   | If wetland is determined to be regulated under Part 303, then a permit would need to be obtained from the state in order to fill, dredge, drain, or maintain a use within the wetland. The NRCS term "Prior Converted" (PC) does not exist in Part 303. A wetland that has been designated PC by NRCS might still be a regulated wetland under state law. However, Part 303 lists specific state exemptions for normal farming <i>activities</i> that do not require a wetland permit. In addition to these specific exempt activities, state law indicates that if a wetland has been effectively drained for farming prior to October 1, 1980 and has continued to be effectively drained as part of an ongoing farming operation, then that wetland is not subject to regulation according to Part 303(3). This is because the wetland no longer exhibits all three wetland determination criteria.<br><br>A permit for non-exempt activities can be sought by submitting a complete Joint Permit Application to DEQ. | To be in compliance with the Wetland Conservation provisions, producers must fill out and sign a form certifying that they will not: <ul style="list-style-type: none"> <li>Plant or produce and agricultural commodity on a converted wetland (wetland converted after 1985); or</li> <li>Convert a wetland which makes the production of an agricultural commodity possible.</li> </ul> |

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| <p><b>What happens if there is a violation?</b></p> | <p>If there is a potential violation of Part 303, the DEQ typically contacts the landowner and subsequently makes a determination on if there was indeed a violation. Typically DEQ tries to seek a resolution with the landowner through a restoration order or issuing an after-the-fact permit. In cases where this is not possible, court proceedings may follow and fines may be issued.</p> | <p>A producer who violates HEL or WC provisions is ineligible for applicable FSA and NRCS benefits for the year(s) in violation. If a producer received program benefits and is later found to be non-compliant, the producer may be required to refund all benefits received and/or may be assessed a penalty. Non-compliance may affect the following types of USDA program benefits:</p> <ul style="list-style-type: none"> <li>• FSA loans and disaster assistance payments</li> <li>• NRCS and FSA conservation program benefits</li> <li>• Federal crop insurance premium subsidies</li> </ul> |

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