



Permitting for Environmental Results (PER)

NPDES Profile: Michigan and Indian Country

PROGRAM RESPONSIBILITY

State of Michigan: NPDES authority for base program, general permitting, federal facilities, pretreatment

EPA Region 5: NPDES authority for biosolids

EPA Region 5: NPDES authority for all facilities in Indian Country

Program Integrity Profile

This profile characterizes key components of the National Pollutant Discharge Elimination System (NPDES) program, including program administration and implementation, environmental outcomes, enforcement, and compliance. EPA considers profiles to be an initial screen of NPDES permitting, water quality, enforcement, and compliance programs based on self-evaluations by the States and a review of national data. EPA will use the profiles to identify program strengths and opportunities for enhancements. For more information, please contact Dan Dell, Michigan Department of Environmental Quality, at (517) 335-4130, or Peter Swenson, EPA Region 5, at (312) 886-0236.

Section I. Program Administration

1. Resources and Overall Program Management

The State of Michigan:

In Michigan the NPDES permit program is administered by the Michigan Department of Environmental Quality (MDEQ), Bureau of Water Quality (Bureau). Staff from the Bureau are geographically located either in MDEQ's central office, or in one of either district offices. In 2003, the State budgeted more than \$9 million and dedicated the equivalent of 104.4 full-time employees for administration of its NPDES program. The 2003 budget included more than \$4 million in federal funds. Starting in 2004, the State is implementing a permit fee system that is expected to bring in approximately \$3 million a year.

Approvals:

- Base NPDES Program: 1973
- Federal Facilities: 1978
- Pretreatment: 1983 (reapproved in 1985)
- General Permits: 1993
- Agency Reorganization: 1994
- Water Quality Guidance for the Great Lakes System (approval in substantial part): 2000

According to the Management Report, the State program covers 185 major facilities, 492 minor facilities with individual permits, and 1,195 non-stormwater minor facilities with general permits.

Training programs are in place for all Bureau staff. In addition to general Bureau training applicable to all staff, MDEQ provides training for inspectors (experienced staff mentor and train newer staff), intensive class training available through a variety of sources (such as MDEQ courses on wastewater treatment and lab procedures, EPA training), written division procedures in a number of areas, and manuals covering various topics (mostly EPA documents). The staff develops specific training plans to address job-related needs and personal goals. Permit writers receive training in all aspects of the NPDES program, including the regulatory framework of the NPDES program, the permitting process, the application process, technology-based effluent limits, water quality-based effluent limits, special conditions, and the administrative process.

All MDEQ staff members responsible for developing water quality-based permit conditions, including those for whole effluent toxicity (WET), are trained in the reasonable potential determination process set forth in the Great Lakes Initiative and in Michigan's water quality standards, as well as in the water quality-based permit development processes outlined in the State's Surface Water Quality Assessment Section Procedures #63 and #80. All Bureau staff responsible for conducting acute or chronic toxicity tests on industrial/municipal effluents at MDEQ's Aquatic Toxicology Laboratory receive training from a senior aquatic biologist/toxicologist or laboratory technician who is intimately familiar with WET test procedures. This staff training program includes careful review of all standard operating procedures that relate to WET testing and regulation.

EPA Region 5:

Although MDEQ has been authorized to implement the NPDES programs within Michigan, EPA Region 5 carries out direct implementation activities in two programs (Indian Country and biosolids).

Indian Country: EPA Region 5 is responsible for implementing federal NPDES programs in Indian Country within the State of Michigan (12 Tribes). Currently the Region has identified a total of 10 facilities within Indian Country in Michigan needing NPDES coverage. This total does not include stormwater permits covered under EPA-issued stormwater general permits. Region 5 has issued eight individual permits to facilities on Tribal lands in Michigan: one to a major discharger and seven to minor dischargers. The Region intends to issue permits to the remaining two facilities.¹

Biosolids: The Region maintains federal biosolids program responsibility in Michigan.

Resources: The NPDES Programs Branch has approximately 0.5 full-time equivalents (FTEs) committed to these programs in Michigan. This staffing is adequate for the current permit load (permits in Indian Country and limited biosolids permitting). Due to resource constraints, the Region includes biosolids requirements in permits that it issues within Indian Country but has not issued permits for other facilities. The Region estimates that an additional 1 FTE would be needed to issue biosolids

¹ The facilities with individual permits are not reflected in the National Data Sources column of the Management Report, measures #1 and #2, because they were not included on a list of EPA-issued permits provided by the Region for use in creating the backlog report that was used for the Management Report. The facilities covered under a general permit are not reflected in the National Data Sources column of the Management Report, measure #3, because they were not entered into ePIFT at the time data were pulled in March 2004.

permits for all facilities in Michigan. Additional enforcement and compliance staff would also be needed to monitor compliance. Additional resources would be needed if the Region does not continue to use general permits for stormwater discharges from construction activities.

The Region has not had any permit writer staff turnover in recent years. To ensure that quality permits continue to be written, additional staff are being trained by the senior staff.

2. State Program Assistance

Region 5 made significant progress in helping Michigan obtain biosolids program approval. The Region provided contract assistance for a review of Michigan's existing program, which helped to identify areas of the program that needed to be updated. The Region worked with MDEQ to update the identified areas, including State rules, and helped the State develop its biosolids program application, which was submitted in March 2002. The Region has been unable to approve the program because of Indian Country jurisdictional issues.

3. EPA Activities in Indian Country

Region 5 has fostered an excellent working relationship with the Tribes in Michigan by, among other things, hosting training sessions for new Tribal staff as needed. This training not only addresses permitting and enforcement but also includes other topics such as water quality standards, underground injection control, and total maximum daily loads (TMDLs). An added benefit for the Tribes is that the training provides an opportunity to make contacts in various program areas.

Region 5 has developed a set of training modules regarding permitting requirements for small regulated municipal separate storm sewer systems (MS4s). The modules have been provided to NPDES State permitting authorities and Tribes that operate small MS4s as "train-the-trainer" materials to be used to train others.

The Region maintains ongoing communication with the Tribes during the permitting process for activities in Indian Country. Regional permit writers go over the application information with the applicant and provide the Tribe with copies of the draft permit for review prior to public notice, as well as the draft permit made available for public comment. The Region discusses the Tribe's comments at all stages and informs the Tribe of the date the permit will be issued. In most cases, all Tribal concerns are addressed prior to public notice. For non-Tribal permits for discharges within Indian Country, the Region informs the Tribe of its intention to issue a permit and provides draft and public notice copies of the permit. The Tribes work with the Region to help identify additional non-Tribal facilities within Indian Country that need to be permitted.

4. Legal Authorities

EPA is currently conducting a comprehensive review of the State's legal authorities. This review has not yet been completed. As a result, EPA is currently reserving this section of the profile; when the legal reviews are complete, EPA will update profiles to include the results of the reviews.

On November 1, 1999, the Sierra Club (Mackinac Chapter), Michigan Land Use Institute, and Michigan Environmental Council filed a petition for withdrawal of Michigan's NPDES program. The petition,

which is still active, raised the following issues pertaining to concentrated animal feeding operations (CAFOs): permitting of CAFOs; implementation of inspection, enforcement, and monitoring programs; and public notice and public participation requirements.

5. Public Participation

An evaluation of the State's legal authorities regarding public participation will be included in the legal authority review. As noted above, the legal authority review section of this profile is reserved pending completion of the legal authority review.

The State of Michigan:

The State's public participation procedures include the use of fact sheets, public notices in daily or weekly newspapers circulated in the geographic area of the proposed discharge, a mailing list of interested parties, a Department "calendar and surface water bulletin," and procedures for public comments and public meetings. The MDEQ Web site (<http://www.michigan.gov/deq>) provides public access to information and services, including discharge and receiving water information for facilities covered under general permits.

MDEQ's public participation policy encourages public participation in, and knowledge of, its decision-making process. In addition to the requirements under the Clean Water Act, the following provide the framework for public participation under State statute and administrative rules:

- The Administrative Procedures Act, 1969 PA 306, as amended
- The Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, Part 31-Water Resources Protection
- Michigan Administrative Code, Part 21 Rules, R 323.2101 through 323.2195

MDEQ implements the public participation process as required by federal and State requirements. Meaningful public involvement is provided in the following key elements:

Public Notice: Fact sheets for NPDES permits are prepared consistent with title 40 of the Code of Federal Regulations (CFR) section 124.8. Fact sheets outline the derivation of the permit limits and contain all additional information required by federal regulations. NPDES permits are placed on public notice in accordance with EPA regulations and R 323.117, 2119, 2125, and 2130-2131. All proposed NPDES permits continue to undergo legal public notice by publication in daily or weekly newspapers circulated in the geographic area of the proposed discharge, and are available on the Internet.

A staff member's name, address, and phone number are included in the public notice and fact sheets so that the public can obtain further information or provide written or verbal comments about the proposed permit action.

As part of the public notice process, MDEQ continues to maintain and use a mailing list of interested parties who have requested copies of the proposed NPDES permits, fact sheets, or public notice documents. Parties receiving direct mailings include municipal, State, and federal agencies; public

interest groups; concerned citizens; property owners adjacent to the treatment and discharge site; and any other requestor.

Department Calendar: In addition to the public notice described above, the department calendar is available to any citizen or group that asks to be placed on the calendar mailing list. The calendar is published and mailed biweekly, and it provides a list of upcoming issues for consideration by MDEQ. The calendar provides the timetable for decisions on rules, fees, significant air and water permit applications, and other MDEQ activities. The calendar also lists the process under way, the timetable for actions, public involvement opportunities, contacts for additional information, and who will make the decision. A pending decision listed in the calendar will not be made until 7 days after publication in the calendar.

Surface Water Bulletin: MDEQ publishes the Surface Water Bulletin monthly. It is available to any party who asks to be placed on the mailing lists and is also on the MDEQ Web site. The Bulletin is an additional information source to inform the public about NPDES regulatory issues. It provides information about the following actions that occurred during the previous month: all NPDES individual and general permits issued, all certificates of coverage issued under a general permit, all notices of coverage issued for stormwater discharges from construction sites under permit-by-rule, all CWA Section 401 certification and all approvals of materials added to surface water for resource management under R 323.1097.

MDEQ Web Site: The MDEQ Web site includes many important features designed to increase citizens' access to Michigan's services. Key features include organizational contacts, information and news, environmental grants and loans, laws and rules, online service, environmental permits, and program information. The Web site lists active NPDES permits, general NPDES permits, and permits on public notice (including the public notice, fact sheet, and draft permit). MDEQ is planning to expand the public notice portion of the site to include permit-specific applications and antidegradation demonstrations, if applicable.

Public Comments: Public participation opportunities during the NPDES permit process continue to be provided in accordance with State law, federal regulations, R 323.2219 and 2130, and MDEQ procedures. All draft permits proposed for issuance or denial undergo a public comment period of at least 30 days following legal public notice of the proposed action. Any person may provide comments to MDEQ in response to the proposed permit actions. MDEQ's procedures require that staff provide a briefing memorandum for the permit decision-maker, which includes a summary of all significant comments received during the public comment period. Significant comments include those addressing substantial and relevant issues, those indicating a high degree of public controversy, and those addressing issues bearing on the staff decision to propose issuance or denial of the permit. The briefing memoranda are part of the permit file and are available to the public.

Public Participatory Meetings: R 323.2130 allows any interested person or agency to request a public hearing on a draft permit. The Bureau evaluates whether a public meeting or public hearing will be held on the basis of a review of the issues raised and the amount of public interest. If a public hearing is requested, the Division may decide to hold a public meeting when that option is more likely to provide meaningful public input and provide a better opportunity for dialogue on the issues. A public meeting or hearing with the permit decision-maker is held when there are substantial and relevant unresolved issues following public participation on a permit.

The term “public” is not defined by State statute or regulation. However, R 23.2104 defines “person” as an individual, partnership, association, corporation, industry, or public body.

Documents are available to the public in a number of ways. Documents relating to NPDES permits are stored in the Surface Water Permits Section central files. In addition, the public can obtain most of these documents at the local district office and on the MDEQ Web site. The enforcement documents are stored centrally in the Field Operations Section files. All of these documents are subject to full disclosure except those determined to be confidential, part of litigation, or containing information entitled to protection as trade secrets of the applicant in accordance with 40 CFR 122.7 and R 323.2128. Michigan’s Freedom of Information Act, 1976 PA 442, as amended, prescribes how and when the State government must respond to requests for disclosure of public records.

EPA Region 5:

For direct implementation of the federal biosolids program, the Region follows the public participation requirements found at 40 CFR 124.10. The Region sends public notice to all persons on the mailing lists provided by the appropriate State agencies. Copies of the public notice, fact sheet or briefing memo, draft permit, and nondegradation review (if applicable) are posted on the Region’s Web page at <http://www.epa.gov/region5/water/npdestek/notices.htm>.

6. Permit Issuance Management Strategy

The State of Michigan:

Michigan has successfully implemented a strategy for timely issuance of permits, and the State has no pending applications. Under the strategy the State issues permits under a watershed approach, whereby all watersheds in the State have been placed into one of five groups and permits for all discharges to watersheds in a given group are issued in the same fiscal year. Michigan’s strategy includes the use of methods for streamlining the permit issuance process, including extensive use of general permits to authorize low-priority discharges as well as discharges that are substantially similar in nature. About 50% of non-stormwater discharges are authorized under general permits.

Major Facilities:

- There are four major dischargers with permits expired more than 2 years.
- There are no major dischargers with permits expired over 10 years.
- Ninety-six percent of the permits for major dischargers were current as of December 2003. Thus, Michigan surpassed EPA’s goal that 90% of major dischargers would have current permits as of December 2004.

As of July 2004, 78% of the major permits were current, based on data from the Permit Compliance System (PCS) database. Although this may appear to be a slippage from December 2003, it is rather an artifact of the way in which MDEQ issues permits. To implement the State’s watershed approach, all permits for discharges to a given watershed are written to expire on October 1 of the same year. The permits are then reissued over the period ending on September 30 of the next year. Persons who obtain permit status information from PCS should be aware that, although a data retrieval between October 1

and September 30 may show a backlog of expired permits greater than 10%, Michigan's strategy for permit issuance ensures that the backlog will be 10 percent or less on September 30 of any given year.

Minor Facilities: Ninety-eight percent of permits for minor dischargers were current as of September 2003. Thus, Michigan has surpassed EPA's goal that 90% of minor dischargers would have current permits as of December 2004.² Currently, nine minor permits have been expired for more than 2 years.

EPA Region 5:

Region 5 issues permits to facilities that discharge within Indian Country in Michigan. Of the 10 permittees in Indian Country, 6 are Tribal operations and 4 are non-Tribal operations. Currently, 1 of the 10 permits (a permit for a minor facility) is considered backlogged.³ In general, the priority for issuing permits is as follows:

1. Facilities that must be but are not now permitted, emphasizing those that pose the greatest threat to public health or the environment
2. Facilities that were permitted by the State
3. Instances where the Tribal government raises important considerations
4. Expired permits

Table 1: Percentage of Facilities Covered by Current Permits in Michigan
(State-issued permits)

	2000	Nat'l Avg.	2001	Nat'l Avg.	2002	Nat'l Avg.	2003	Nat'l Avg.
Major Facilities Covered by Individual Permits	78.5%	74%	82.5%	76%	96.8%	83%	95.7%	84%
Minor Facilities Covered by Individual Permits	79.1%	69%	83.5%	73%	96.9%	79%	97.0%	81%
Minor Facilities Covered by General Permits	N/A	N/A	N/A	N/A	98.8%	85%	98.6%	86%

Source: PCS, 12/31/00; 12/31/01; 12/31/02; 12/31/03. (The values in the National Data Sources column of the Management Report, measures #19 and #20, are PCS data as of 6/30/04.)

² As of the July 2004 Management Report, 96% of minor discharger permits were current.

³ The EPA backlog numbers are not reflected in the National Data Sources column of the Management Report, measures #19 and #20, because the permits were not included on the list of EPA-issued permits provided for the backlog report (see also section I.1 and measures #1 through #3).

7. Data Management

The State of Michigan:

The State uses two primary databases to manage the NPDES program: EPA's PCS and Michigan's NPDES Management System (NMS). At this time, NMS is in the final phase of database improvements, including capability for electronic discharge monitoring reports ("e-DMRs," discussed more fully below). Once all enhancements are complete, EPA believes the State will operate one of the leading NPDES program databases. As a result of efforts put into this database, resources have been redirected in part from updating PCS. Thus, certain data (e.g., compliance schedules, enforcement actions) are incomplete in PCS, particularly over the past 2 years. At this time, Michigan is developing an action plan to repopulate PCS with the missing data. The State currently uses NMS to manage information about NPDES permits; the applications on which they are based; and the facilities, outfalls, and monitoring points that they cover. In addition to permit status and facility information, NMS tracks all reporting information, whether for major facilities, minor facilities, or general permittees. It also tracks certain pretreatment program information. All required pretreatment program data are maintained in PCS for programs referred to as "federal pretreatment programs." Information relating to "Michigan pretreatment programs" is maintained in NMS. Please see discussion of the pretreatment program below for definitions of these two program categories. In addition, NMS is used to track notices of coverage for stormwater construction general permittees and notices of intent (NOIs) for industrial stormwater permittees. NMS also has the ability to track information from non-permitted entities, such as CAFOs and sanitary sewer overflows (SSOs), to monitor these sectors for potential unpermitted discharges and related enforcement actions.

The State is expanding NMS to include the tracking of inspections, enforcement activities, schedules of compliance, and permit violations. Because these modules are in the development stage, the State currently relies on PCS to track and manage this information. All enforcement modules became fully functional in NMS in the fall of 2004.

To support data entry into NMS and PCS, the State recently implemented the Electronic Environmental Reporting System (E2RS). The E2RS is a Web application that allows facilities to submit effluent monitoring data to the State electronically. Data received by the E2RS are uploaded to NMS, and subsequently into PCS through EPA's Central Data Exchange (CDX). (The data are converted to XML format, transferred to the Michigan node, then sent on to EPA's CDX and finally to PCS.) Data acceptance through this exchange is at approximately 90%. Data that are not accepted are manually entered, or the system is reprogrammed to permit electronic transfer. Quality assurance activities continued through the beginning of calendar year 2004. All discharge monitoring report (DMR) entry is now believed to be current.

The State plans to work with EPA to create an interface between NMS and ICIS-NPDES so that data will be shared between the two systems when ICIS-NPDES replaces PCS.

Data Quality: The State enters all Water Enforcement National Database (WENDB) data into PCS from NMS. With the advent of the electronic reporting discussed above, the State also enters DMR data for traditional minor facilities. NMS has many error-checking functions built in. For instance, information on latitude/longitude has metadata associated with it (whether the data are staff-generated, from the application, or from a global positioning system [GPS] unit). Staff can update information based on site-collected GPS coordinates. Latitude/longitude data are checked against quarter/quarter section data to

ensure consistency. There are many other error-identifying functions. In addition, with the advent of the E2RS electronic reporting system, it is expected that data entry errors for DMRs will be virtually eliminated.

The State also ensures the integrity of the data in PCS through controls on access to the E2RS. Access privileges for the E2RS are administered through the use of a username, password, and personal identification number (PIN). All submissions are verified via PIN authentication with software security. The combination of the username, password, and PIN has been determined to equate to an electronic signature. This electronic signature is as legally enforceable as an original signature on a paper document, pursuant to the provisions of Michigan Compiled Law 450.831.

The State collects latitude/longitude data at both the facility and outfall levels. Methods used to collect latitude/longitude data include the use of GPS units and mapping software or the use of the information provided on the application. As noted above, NMS has a validation routine that validates the latitude/longitude information with the quarter/quarter information entered into NMS. When these do not match, NMS does not allow the record to be saved. The State is availing itself of EPA contract support to enter these data into PCS and has recently provided the NMS data to EPA for this purpose.

EPA Region 5:

The Region uses the PCS to track activities for all Region-issued permits.

The Region enters most of the WENDB data elements, with the exception of latitude/longitude data and compliance schedules. The Region ensures that all permit limits and measurement data are entered into PCS.

The Region loads biosolids data into PCS for major facilities and Class 1 sludge management facilities, and it maintains biosolids data for other facilities in paper files. The Region provides preprinted DMRs for each Tribal and non-Tribal facility with a federally issued permit. This helps to facilitate the data entry process. However, not all facilities use the preprinted form or complete the form in its entirety, slowing the data entry process and possibly creating erroneous reporting or numeric violations.

Biosolids data entered in PCS are reviewed for compliance with the metal limits specified in the federal biosolids regulations. These data are also used for selecting smaller wastewater treatment plants (with flows of less than 5 million gallons per day) to provide assistance under the Regional biosolids community onsite assistance program.

Section II. Program Implementation

1. Permit Quality

The State of Michigan:

Permit Review: The State reviews all permits through multiple peer reviews, expert reviews, and unit supervisor reviews prior to issuance and uses a checklist. The Chief of the Surface Water Permits Section makes decisions on permits not involving substantial and relevant unresolved issues. The Chief of the Water Division or the Deputy Director of the Department makes decisions on certain permits.

MDEQ develops water quality-based effluent limits for toxic pollutants and for WET consistent with the procedures in the “Water Quality Guidance for the Great Lakes System” (40 CFR part 132). These include procedures for determining when there is reasonable potential that pollutants in a permittee’s discharge are present at levels that will cause or contribute to a violation of a water quality standard (including WET) and therefore require the development of a limit; procedures to account for background concentrations of pollutants in the development of permit limits; and procedures to address situations where discharges are to impaired water bodies where a TMDL has not yet been established.

EPA disapproved the State’s proposed procedures relating to determining “reasonable potential” for WET and subsequently over-promulgated procedures consistent with the Great Lakes Guidance. The State is required to follow these procedures. In one case during the past year, Region 5 raised questions related to the derivation of effluent limits in a proposed NPDES permit. Following discussions between Region 5 and MDEQ, the State agreed to modify the effluent limits in the final permit.

Permit Appeals: As of June 2002, 18 appeals of permits were unresolved. From June 2002 through early January 2004, the State received 17 new appeals. In that period, the State dismissed 18 appeals.

Whole Effluent Toxicity: Michigan’s water quality standards include a narrative standard to protect against instream toxicity. The State uses its permit development process to characterize and control discharges of WET. EPA reviewed Michigan’s administrative rules for WET implementation under the “Water Quality Guidance for the Great Lakes System” (40 CFR part 132). With the exception of Michigan’s procedures for determining whether a discharge of WET causes, has a reasonable potential to cause, or contributes to an excursion beyond water quality standards, EPA found Michigan’s water quality rules for the Great Lakes to be as protective as the “Guidance.” With respect to reasonable potential determinations for specific contaminants, Michigan uses part 8 rules for toxic pollutants. EPA disapproved Michigan’s procedures for determining the need for reasonable potential for WET limits, and the Agency promulgated the requirements of 40 CFR part 132 in their place. Michigan is in the process of adopting a WET reasonable potential procedure that is consistent with 40 CFR part 132.

The State has established the following types of conditions for WET in NPDES permits: limits (approximately 100), monitoring requirements, and requirements to conduct toxicity reduction evaluations. The Michigan Aquatic Toxicology Laboratory further ensures that water quality standards are met by monitoring WET in discharges from approximately 70 facilities each year. Unacceptable WET found during these tests can trigger the inclusion of new WET limits and/or monitoring

requirements in NPDES permits, immediate initiation of toxicity reduction evaluations, and/or enforcement actions.

In developing the “permit quality” section of the program profile, State permits were not independently evaluated or compared to a national standard. Rather, the discussion is based primarily on an assessment of the quality assurance/quality control procedures established by Michigan and routine permit quality reviews performed by Region 5.

EPA Region 5:

Permit Review: On a real-time basis, Region 5 reviews a sample of draft permits each year, with the aid of permit review checklists. The State gives EPA copies of the permit application, public notice, fact sheet, draft permit, and supporting documents. Public notices, fact sheets, and final issued permits are sent to EPA for all major permits and certain other permits. Michigan provides complete information, by means of fact sheets and additional information as needed, to explain the derivation of permit requirements.

Region 5 works with the State on a continuing basis to ensure that permits are current and to implement key program elements, including control of toxic pollutants (such as mercury and WET), combined sewer overflows, and CAFO manure and wastewater, and to establish effluent limitations based on wasteload allocations. In the past year, Region 5 reviewed seven NPDES permits in Michigan. A primary focus of such reviews is to ensure that effluent limits are correctly derived.

Permit Issuance: The Region believes the permits it issues in Indian Country are of high quality. Over 90% of the permits that the Region issues are for municipal dischargers. The technology standards have not changed in many years, and Regional permit writers are very comfortable in their applicability. To ensure that water quality standards are properly applied, the Region coordinates with the Tribes and the State of Michigan to determine where water quality standards apply and what limits are needed. The Region’s Water Quality Standards Branch also has an opportunity to review the permits prior to issuance. All Regional permit writers take EPA’s NPDES Permit Writers’ Training Course. All draft permits are reviewed by the senior permit writer. The Region has been able to withstand petitions to the Environmental Appeals Board. Over the past 5 years, three petitions for review have been received. All three have been denied by the Environmental Appeals Board. The Region uses data included in the application and from PCS in preparing the draft permit and requests additional data from the applicant if needed. The Region also uses the permit as a tool to collect additional data for use in future permit actions.

2. Pretreatment

The State of Michigan:

Michigan received authorization to administer the pretreatment program in 1983. Michigan distinguishes its POTWs with approved pretreatment programs using two categories: POTWs with design flows greater than 5 million gallons per day (MGD) (which the State refers to as “federal pretreatment programs”) and POTWs with design flows equal to or less than 5 MGD (which the State refers to as “State pretreatment programs”). Michigan identifies 35 POTWs in the “federal pretreatment program” category, which are reflected in the Management Report. The federal pretreatment regulations at 40 CFR 403.8(a) authorizes the Director of a State with an authorized pretreatment program to require pretreatment programs at POTWs in the “State” category where “the nature or volume of the industrial

influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant in order to prevent Interference with the POTW or Pass Through.” Michigan identifies more than 60 additional POTWs in the “State pretreatment program” category.⁴ These programs have fewer administrative requirements than “federal pretreatment programs.” Three POTWs are in the process of developing pretreatment programs.

3. Concentrated Animal Feeding Operations

The State of Michigan:

Permitting: Michigan has 125 CAFOs. The State issued a general permit for CAFOs on December 13, 2002. The permit contains effluent limitations based on the 1974 Effluent Limitations Guidelines and New Source Performance Standards, as well as water quality standards, and it requires implementation of a comprehensive nutrient management plan (CNMP). Facilities submit NOIs to be authorized under the permit, and the State issues notices of coverage (NOCs) when it determines that facilities are eligible for coverage. The State plans to reissue this permit when it expires in 2007. In June 2004 the State issued a general permit for new Large CAFOs. The permit contains effluent limitations based on the 2003 New Source Performance Standards, as well as water quality standards, and it requires implementation of a CNMP that meets the nine minimum measures included in the 2003 CAFO regulations.

As of July 2004, 15 Large CAFOs were authorized under a general or individual NPDES permit. An additional 87 CAFOs are participating in the Michigan Agriculture Environmental Assurance Program.

In the State regulations scheduled for amendment by January 2005, all CAFOs will be required to apply for permits (or seek a “no potential to discharge” determination) under a schedule that will begin upon promulgation and end in 2006.⁵

Compliance Evaluation: Michigan initiated a program for periodic, proactive inspection of CAFOs in 2002. The State completed 65 inspections in 2003 and directed 29 of the estimated 116 Large CAFOs to submit notices of intent to be authorized under the general permit. The State has committed to EPA that by December 2005 it will have inspected all animal feeding operations that are likely to be Large CAFOs. During inspections, Michigan determines the number of animals and looks for evidence of discharges. Early in 2004 Michigan initiated a review of the checklist it uses during inspection of animal feeding operations. It revised the checklist in June 2004. The revised checklist prompts inspectors to conclude whether a CAFO will discharge in the event of a storm less than the 25-year, 24-hour design storm. After 2005 the State will inspect CAFOs at least once every 5 years. Although the Region’s current inventory is probably incomplete, it indicates that there are eight animal feeding operations that (1) are located in or near Indian Country in Region 5 and (2) are or may be Large CAFOs. The Region has not performed any periodic (proactive) inspections of CAFOs in Indian Country in the Region.

⁴ These 60 State pretreatment programs are not reflected in the Management Report, measure #8, because the Pretreatment Program Required Indicator (PRET) field in PCS is not coded to indicate that the POTW has an approved pretreatment program (i.e., PRET is blank, rather than Y).

⁵ In the Management Report the National Data Sources column lists October 2004 as the expected date for CAFO rule revision. This estimate was made in March 2004 and has since been revised.

EPA Region 5:

Region 5 has not received any applications for permits from CAFOs in Indian Country within Michigan.

4. Stormwater

The State of Michigan:

Michigan has 13 permits in place to cover Phase II stormwater discharges in the State. All are current. Michigan also has 11 Phase I permits. All permits are current.

Construction: Michigan's NPDES general permit for stormwater runoff from construction activity is embodied in an administrative rule (i.e., permit-by-rule) promulgated in 1992 and amended in 2003. Under the permit-by-rule, persons who disturb 1 or more acres of land, or cause earth changes within 500 feet of a lake or stream, must obtain separate permit coverage under the soil erosion and sedimentation control (SESC) provisions of the State's Natural Resources and Environmental Protection Act. The SESC program is implemented on a local level, typically by the county or municipality. The NPDES permit-by-rule requires compliance with the SESC permit and the development and implementation of a stormwater pollution prevention plan, including practices to control erosion. Sites 5 acres and above are required to file an NOC for coverage under the NPDES permit-by-rule while smaller sites are automatically covered provided they have coverage under an SESC permit. The State implements an operator certification program that requires each site to have a certified operator to oversee stormwater control and inspect the site.

Industrial: Stormwater discharges associated with industrial activity are covered by 1 of 10 general permits, all of which are current. All the permits require, among other things, implementation of a stormwater pollution prevention plan. The 10 permits include 2 issued for each of the 5 groups of watersheds described in the Permit Issuance Management Strategy subsection of this profile. The State implements an operator certification program that requires each facility to have a certified operator to oversee stormwater control and inspect the site.

Municipal Systems: All MS4s subject to Phase I of the stormwater program are covered by current individual permits. Systems subject to Phase II must submit notices of intent to be covered under Michigan's jurisdiction- or watershed-based general permits. Both general permits require implementation of the six minimum measures EPA established in the Phase II regulations. To date, the State has issued 58 certificates of coverage under the jurisdiction-based permit and 350 under the watershed-based permit.

Michigan's NPDES Management System now has the capability to track NOCs under the general permit for stormwater discharges from construction activities as well as NOIs for coverage under the industrial stormwater general permits.

EPA Region 5:

The general permit for stormwater discharges from construction sites, which encompasses Indian Country in three Region 5 States, was issued on July 1, 2003. Region 5 has sent letters and NOI forms to operators of construction sites over 1 acre that began construction activities prior to the issuance of the permit, in accordance with EPA's interim stormwater permitting policy. New applicants may apply for coverage by submitting an NOI by mail or by accessing EPA's Electronic Notice of Intent (eNOI) Web site (<http://cfpub.epa.gov/npdes/stormwater/enoi.cfm>). Once a complete NOI is submitted, the permittee

may begin land-disturbing activities 7 days after the NOI appears on the eNOI system, as long as it complies with all requirements of the general permit.

Region 5 is continuing to work with EPA Headquarters on options for providing general permit coverage for stormwater discharges associated with industrial activities in Indian Country. Region 5 will work with the Tribes to identify all facilities in Indian Country that may need permits. Until a general permit option is available, Region 5 will focus its permitting efforts in Tribal areas on facilities with the greatest potential risk to the environment.

Construction operators and others can access the system and check for NOIs at <http://cfpub.epa.gov/npdes/stormwater/noi/noisearch.cfm>

5. Combined Sewer Overflows/Sanitary Sewer Overflows

The State of Michigan:

Combined Sewer Overflows: Twenty-five municipalities in Michigan have eliminated their combined sewer overflows (CSOs) by separating their sewers. Of the 46 permittees with combined sewers:

- 41 have approved long-term control plans (LTCPs).
- Those that do not yet have approved LTCPs are subject to enforceable permit schedules. Planning is being coordinated as part of the EPA-sponsored Rouge River Wet Weather Demonstration Project.
- All have initiated LTCPs and all are required to implement, and have implemented, the nine minimum controls contained in the 1994 CSO Control Policy.
- Most approved LTCPs are in advanced stages of implementation. In some cases the State does not consider the LTCP to be completely implemented because completion of the project has not been certified.

Michigan requires that CSOs be eliminated or that they be provided adequate treatment to meet water quality standards. In general “adequate treatment” includes:

- Providing full treatment for flows up to the 10-year, 1-hour storm
- Providing primary treatment and disinfection to additional flows up to the 25-year, 24-hour storm

Michigan has developed post-construction protocols to assess whether treated CSOs comply with applicable requirements after implementation of the LTCP, including elimination of raw sewage discharges, protection of public health, and meeting water quality standards. Post construction monitoring is included in permits reissued after completion of CSO controls. Permits for treated CSO discharges require that pathogen limits be met at end of pipe. In the case of sewer separation, instream monitoring is not required. Instead, communities must complete a project performance certification, based on sewer system flow monitoring, to assure that separation is successfully completed and overflows eliminated.

Sanitary Sewer Overflows: Michigan has implemented a strategy to eliminate SSOs to waters of the State. The strategy involves including long-term corrective action plans in enforceable administrative consent orders. The State also enacted a statute that requires the reporting of SSOs, including untreated or partially treated sewage discharges onto land or waters of the State. Municipalities must report SSOs to MDEQ, the local health department, and local newspapers. The statute also requires MDEQ to post information about the discharges on its Internet site.

Michigan is one of 18 States that has an electronic data system to track the volume, frequency, location, and cause of SSO discharges.

In accordance with section 324.3112a of the Michigan Act, if untreated sewage, including SSOs and CSOs, or partially treated sewage is directly or indirectly discharged from a sewer system onto land or into the waters of the State, the person responsible for the sewer system must immediately, within 24 hours after the discharge begins, provide notification by telephone that the discharge is occurring. MDEQ, local health departments, a daily newspaper of general circulation in the county in which the permittee is located, and a daily newspaper of general circulation in the county or counties in which the municipalities whose waters may be affected by the discharge must be notified.

At the conclusion of the discharge, written notification must be submitted in accordance with MDEQ's "CSO/SSO Reporting Form" or, alternatively for CSOs, in accordance with notification procedures approved by the Department.

In addition, in accordance with section 324.3112a of the Michigan Act, each time a discharge of untreated sewage or partially treated sewage occurs, the permittee is required to test the affected waters for E. coli to assess the risk to public health as a result of the discharge and to provide the test results to the affected local county health departments and to MDEQ. Test results are submitted with the written notification referenced above, or, if the results are not yet available, test results should be submitted as soon as they become available.

The information on CSOs and SSOs is found on the MDEQ Web site:
<http://www.DEQ.state.MI.us/csosso/>.

EPA Region 5:

The NPDES permits issued to publicly owned treatment works (POTWs) by the Region require notification of noncompliant discharges, including SSOs. Upon notification of an overflow, the Region determines whether public notification is needed on the basis of the location and quantity of the overflow.

There are no combined sewer systems (and therefore no CSOs) in Indian Country in Region 5.

6. Biosolids

The State of Michigan:

Michigan is not authorized to administer the federal program for biosolids. Even so, MDEQ has authority to regulate land application of biosolids under State law and regulations. The regulations Michigan promulgated in 1999 are consistent with the federal requirements at 40 CFR part 503. Permits for all POTWs require implementation of an approved program for management of biosolids, including

land application. Although the State is not authorized to administer the federal requirements, the State maintains a presence throughout Michigan and ensures implementation of federal biosolids requirements.

Compliance with federal and State requirements is evaluated in several ways, including POTW and field inspections and review of annual reports from each facility that generates and land-applies biosolids. The State employs a tiered approach for inspections consisting of a facility visit, biosolids “compliance recon,” biosolids audit, or any combination thereof. The State selects land application sites for inspection based on facility, contractor, or biosolids staff experience before, during, or after land application. Staff from MDEQ district offices track instances of noncompliance using a system of escalated enforcement until any issues are resolved.

EPA Region 5:

Region 5 carries out direct implementation of the federal biosolids program within Michigan. The level of effort has been reduced due to reduced funding for the program nationwide. Because of limited resources, the Region includes biosolids requirements only in permits issued within Indian Country. Other Regional activities include providing outreach to the regulated community, assisting the States in seeking program approval, and providing technical and compliance assistance. Michigan has submitted an application for partial authorization of the biosolids program (for land application). The Region has not acted on this application pending resolution of an Indian Country jurisdictional issue. Michigan has agreed to accept its facilities’ annual reports and to monitor compliance. Enforcement actions related to biosolids are typically initiated in response to complaints or are part of more comprehensive enforcement actions.

Increasing Regional management of the biosolids program will require additional resources and a renewed commitment from EPA Headquarters to implementation of the program.

Section III. NPDES Compliance Monitoring and Enforcement Response

In a separate initiative, EPA's Office of Enforcement and Compliance Assurance (OECA), EPA Regions, and the Environmental Council of the States have developed a tool for assessing State performance in enforcement and compliance assurance to ensure that States meet agreed-upon minimum performance levels and provide a consistent level of environmental and public health protection nationwide. OECA will use the State profiles to focus these efforts and identify areas needing further discussion and evaluation.

1. Enforcement Program

The State of Michigan:

As noted above, because of the development of a new NPDES program database, data in PCS, including those relating to enforcement, are incomplete, particularly since 2000. Thus Management Report measures based on PCS, including measures #32 through #38, might not fully reflect Michigan's activities. MDEQ maintains a separate enforcement tracking database, and information from this database is summarized in the following table.

Year	# Formal Enforcement Actions	Total Value of Civil Penalties	Total Value of Supplemental Environmental Projects
1999	12	\$111,000	\$464,000
2000	9	\$1,857,000	\$4,242,000
2001	58	\$249,200	\$155,500
2002	19	\$297,500	\$112,000
2003	11	\$68,800	\$31,750

A number of areas have received focus over the years (such as noncontact cooling water permits, groundwater cleanup permits, wastewater stabilization lagoons, and facilities in TMDL areas). These areas of focus may be driven by other program needs and are dependent upon available resources. A current focus is proactive inspections at potential CAFO facilities. In 2000, as reflected in the numbers above, MDEQ initiated expedited stormwater orders to enforce industrial stormwater permits. In addition, an SSO strategy was initiated to enforce the removal of illegal discharges of human sewage to waters of the State.

A continuing focus of compliance and enforcement actions is facilities in significant noncompliance (SNC) or chronic noncompliance.

The enhancements to NMS discussed above in the section on data management will significantly improve the State's ability to prioritize its enforcement and compliance assurance work. Historically, access to PCS data was cumbersome for the MDEQ District enforcement staff, and PCS did not contain nearly the amount of data on permittees as is or will be available through NMS. District staff will have

desktop access to the data in NMS, and central office enforcement staff will have desktop access to enforcement response of the District staff. In light of these new capabilities, MDEQ is developing criteria to define SNC for the entire universe of permittees (rather than just major facilities) and is also attempting to develop statewide performance measures or goals that will help determine priorities and measure the success of the program.

MDEQ implemented a Compliance and Enforcement Policy and Procedure (#04-003) dated May 30, 2001, to ensure consistency in compliance and enforcement responses statewide. MDEQ also follows its Compliance and Enforcement Management System (CEMS), Compliance and Enforcement Guidance for Permit and Non-Permit Programs, dated December 2001. The CEMS is used to train new staff and to provide guidance to other staff to ensure consistency and fairness in enforcement actions statewide. The CEMS forms the basis for MDEQ's determination of which of its available suite of enforcement tools may be the most appropriate to use in any given situation, defines violations, and provides for progressive enforcement responses as noncompliance continues. The compliance and enforcement process includes management review as part of the process. The Compliance and Enforcement Policy also contains general information regarding a penalty policy. In addition, written guidance for settlement penalties was implemented on December 5, 2000. This document provides staff with guidance in determining a penalty appropriate to the violation using a two-dimensional matrix. The two parameters applied in the matrix are (1) the extent of, or degree of, the violation and (2) the harm to the environment or public health caused by the violation.

EPA data show that the numbers pertaining to formal enforcement actions (FEAs) are very low. FEAs against major sources were as follows: seven in FY2000, five in FY2001, and four in FY2002. Percentages of facilities in SNC addressed with FEAs are as follows: 4% in FY2000, 1% in FY2001, and 0% in FY2002. These figures appear very low when compared with the national trend for these years, which was approximately 14%. These facts are somewhat tempered by the effort that the State has put into several enforcement initiatives for minor facilities. For example, in late 2000 MDEQ initiated an expedited stormwater order (ESO) to enforce industrial stormwater permits. Approximately 44 of those cases were settled in 2001, which occupied much staff time. Penalties for these cases involved a flat rate for cost reimbursement and a consistently calculated civil penalty for all ESO cases. Also in 2000, MDEQ initiated an SSO strategy to enforce against illegal discharges of human sewage to waters of the State, which accounts for a slight increase in enforcement actions against minor facilities in the year 2001. Penalties for the SSO cases also involved a flat rate for cost reimbursement and were consistently calculated using the penalty matrix. In 2001 the Enforcement Unit was fully staffed.

Of the NPDES permit violation cases settled in 2000, 75 percent of the cases involved a local municipality; in 2001, 50 percent involved a local municipality. Supplemental environmental projects were included in approximately 40 percent of the cases settled in 2000 and 2001 to offset a portion of the civil penalty assessed, and stipulated penalties were included in approximately 75 percent of cases settled to act as a deterrent to violating a compliance program contained in an administrative consent order or judicial order.

Environmental outcomes are generally measured by the number of facilities that are returned to compliance. The reduction in pollutant loading generally falls into that category but is not specifically measured. Another measurement is the reduction in the number of SSOs from NPDES or non-NPDES facilities into waters of the State under MDEQ's SSO strategy. MDEQ also tracks the status of

enforcement cases in a database and holds twice-monthly staff meetings to discuss enforcement case status and strategies.

EPA Region 5:

The Region is generally relied upon to lead the nation in the number of administrative and judicial enforcement actions taken. The Region targets its efforts to ensure base program integrity and maximize the environmental benefits of its actions. In terms of the base program, the Region monitors the quarterly non-compliance report and the active exceptions list to ensure that they remain below 10% and 2 %, respectively. These targets are routinely met. Generally, since most NPDES program elements have been delegated, State enforcement action is the primary mechanism for managing against these goals; EnPPA agreements and annual workplans contain language that indicates that where these goals are not met, federal enforcement action will be a priority. Currently, a high priority for the Region is enforcement relating to CSOs and SSOs. In particular, 42% of the nation's CSO permittees are in the Region, and enforcement related to this pollution source has been a priority. The Region has had a CSO strategy since 1986, and it was most recently updated in 2003. The Region's focus is on those CSOs impacting high-priority beaches, drinking water sources, or other environmentally sensitive areas. The Region is also targeting other wet-weather sources of pollution. To this end, the Region has also developed a CAFO permitting and enforcement strategy and is updating its stormwater strategy. It is in the early stages of developing a strategy to address failing on-site systems.

The Region has direct implementation responsibilities for the federal biosolids program in Michigan. It also has direct implementation responsibilities within Indian Country. Enforcement actions related to biosolids are generally complaint-driven. Region 5 works with appropriate Tribal governmental entities to address compliance assistance and enforcement actions in Indian Country.

EPA's NPDES program has had an enforcement management system since the 1980s. This system is out of date, and development of new operating procedures has been a priority for completion by the end of 2004.

The Water Division has a manual system, maintained by the enforcement process manager, for monitoring the status of cases within the pipeline. A monthly meeting is held to update the status of all proposed actions. In addition, meetings are scheduled with the Office of Regional Counsel approximately every 6 weeks to go over the status of cases and potential bottlenecks. In 2002 the Division also consolidated a number of databases, which were used to track permittee progress in complying with enforcement actions, and made a concerted effort to review all open cases and close out those where it was appropriate. Approximately 40% of the open cases were closed out as a result of this effort.

2. Record Keeping and Reporting

The State of Michigan:

Michigan maintains data for the majority of the State's permittees in the NMS database, as described previously. This database is accessible by all enforcement staff. Facility information (e.g., permit issuance date, permittee location) is available publicly through MDEQ's Web site. There is potential that DMR data will be available through the Web site in the future. Due to legislative action, annual reports of CSO/SSO discharges are also available on this site.

EPA Region 5:

The Region develops formal administrative records in accordance with 40 CFR 124.18 for all permits issued by the Region.

3. Inspections

The State of Michigan:

Generally, the State does not inspect all major facilities each year. Rather, the State focuses its inspections on facilities in a predefined set of watersheds (in accordance with the watershed plan) and on those facilities which have been identified as needing additional oversight because of historic noncompliance. Some districts are able to inspect facilities on a more frequent basis (including yearly inspections of all major facilities). The goal of the inspection program is to:

- inspect all major facilities annually
- inspect minor facilities at least once every 5 years
- inspect problem facilities more frequently
- allow for major/minor facility trade-offs as appropriate

A concern for EPA and the State is the relatively low number of inspections performed each year. Data provided in PCS show that the State has not been able to meet its commitment to inspect 70% of its major facilities and averaged about 50% coverage between 2000 and 2003. EPA believes that these low numbers may in part be explained by MDEQ's not having entered all inspections into PCS. In addition, the State has prepared a draft inspection strategy, which is under review by EPA. This strategy will document EPA's and MDEQ's agreement regarding appropriate levels of inspection coverage. Finally, MDEQ's inspection program has recently been given a boost through legislative action providing an additional five inspectors for non-stormwater inspections. (As discussed below, additional staff were separately authorized for the stormwater program.)

With respect to traditional minor facilities, the State attempts to conduct inspections at least once every 5 years, with reconnaissance inspections as needed. Staff members review DMRs for compliance problems and look for trends that might indicate future problems. In the near future, NMS will electronically flag noncompliance for staff review.

In the pretreatment program, facilities under the Federal Industrial Pretreatment Program (FIPP) have audits conducted once every 5 years. In addition, MDEQ staff members attempt to perform yearly inspections at all FIPPs and Michigan Industrial Pretreatment Programs (MIPPs).

The State has devoted considerable effort to its stormwater program. Approximately 10% of the 3,500 industrial facilities with stormwater were inspected in 2003, and the State is attempting to increase this to 20% per year. The objective is to inspect all industrial facilities to ensure compliance prior to permit reissuance the following year. In addition, the State inspects annually at least 10% of the 1,200 permitted construction activities. Inspections are complaint-driven, and priority is given to those involving impacts on high-quality waters.

The State believes that most SNC problems in Michigan are the result of an inadequate field presence by MDEQ. The State believes that the regulated community is aware of the State's limited resources and as a result may violate the administrative requirements of the general permit. This is expected to improve in FY2004. In response to inadequate staffing levels and permit fees, the State legislature has just authorized an additional \$1,162,500 annually, which will support 11 additional field staff for the stormwater program.

MDEQ has recently begun a program to inspect and permit CAFOs. All CAFOs will be inspected by December 2005. In addition, some animal operations may be allowed to participate in the Michigan Agriculture Environmental Assurance Program (MAEAP) if they have not had a discharge, in accordance with the Environmental Council of the States' agreement between MDEQ and EPA. This information will be tracked in Michigan's NMS.

Michigan generally participates in new EPA initiatives. The State has been a leader in CSO/SSO control and has a very robust stormwater program. As mentioned previously, enhancements to NMS will now allow the State to be much more aggressive in developing compliance/enforcement strategies and objectives, and in tracking performance against those objectives.

EPA Region 5:

The Region has developed a Clean Water Act inspection strategy that describes the manner in which inspections are prioritized and agreed to between the States and EPA. As described in this strategy, a variety of factors influence selection of inspection targets, including national and regional priorities, case close-out needs, multimedia initiatives, complaints, and coverage requirements. The Region requests that the States perform all coverage inspections, though most of them have had difficulty in meeting these commitments in recent years. The Region is working with the States to increase the number of inspections they perform, but it does not have the resources to backstop any State shortfalls. In addition, the Region is concerned that the current requirements for coverage inspections may impede the States and EPA from focusing on those inspections which might result in the greatest environmental benefit and believes that this is an issue that warrants policy discussion at the national level.

4. Compliance Assistance

The State of Michigan:

The State provides compliance assistance through its issuance of construction permits under part 41 of the NREPA. These permits authorize the construction of wastewater collection and treatment facilities to serve the public. Plans and specifications are reviewed to ensure that the design is adequate, the system has adequate capacity, acceptable materials have been specified, and adequate installation and testing procedures have been specified.

In addition, MDEQ has an Environmental Science and Service Division (ESSD) that provides training to various parties. One part of that division focuses on providing assistance to regulated facilities in the operation of their wastewater treatment systems, through both scheduled courses on operational issues and site-specific problem solving. The ESSD also administers the Retired Engineer Technical Assistance Program (RETAP), which provides pollution prevention technical assistance to Michigan businesses.

Michigan also has provided extensive compliance assistance to stormwater Phase II permittees.

The State does not have a specific program for assessing outcomes from compliance assistance, but relies on apparent reduction in SNC rates, and overall improvement in ambient condition of waterways.

EPA Region 5:

The Region generally provides extensive compliance assistance when new federal regulations are promulgated. In recent years, considerable effort has been placed on compliance assistance relating to implementation of both the CAFO regulations and the Phase II stormwater regulations. This assistance includes workshops, formal presentations, development and distribution of guidance and technical documents, and individual site visits.

Within the first year after the new biosolids regulations were published, the Region hosted a satellite broadcast to explain the regulation and its requirements, reaching nearly half of the regulated community. The Region has also instituted a small community compliance assistance program for biosolids, modeled after the operation and maintenance evaluation program. For the small community assistance program, the Region evaluates compliance assistance activities by reviewing annual reports for regulatory compliance.

Section IV. Related Water Programs and Environmental Outcomes

1. Monitoring

The State of Michigan:

Michigan has developed and implemented a water monitoring strategy (“A Strategic Environmental Quality Monitoring Program for Michigan’s Surface Waters”) that serves as a focal point for MDEQ surface water monitoring programs. The strategy document covers rivers, streams, inland lakes, and the Great Lakes connecting channels. The State uses a 5-year rotating basin cycle and various fixed station and targeted designs. Roughly 40 percent of the monitoring program is devoted to measuring temporal and spatial trends in surface water quality. The State is considering adding a streams probabilistic component to its monitoring design to assist in tracking long-term trends. In addition, the State is participating in the national probabilistic stream survey as part of a five-state consortium.

MDEQ participates in the EPA-USGS Great Lakes Whole Fish Trend Monitoring program and the federal-State Chinook and Coho Salmon Fillet Trend Monitoring programs.

At this time, Michigan’s strategy document does not describe a comprehensive program as outlined in EPA’s guidance “Elements of a State Water Monitoring and Assessment Program.” The document does not address wetlands or groundwater, and the State does not assess all designated uses comprehensively. Michigan has developed its program significantly since the strategy document was written in 1997 and has committed to providing EPA with an expanded description of its monitoring program by the end of FY2004. Region 5 is also working with the State to identify any enhancements that should be included to meet the “Elements” guidance.

Michigan’s monitoring program devotes a significant amount of resources to supporting and evaluating the effectiveness of the NPDES permit program. Data for supporting permitting needs are collected primarily on a rotating watershed basis in Michigan. Two years prior to permit reissuance, the State collects data, including biological data, caged fish studies, whole effluent (and ambient) testing, contaminant sampling, sediment and water chemistry sampling, modeling, and flow measurements. In many cases, Michigan collects upstream/downstream data for use in the permit program.

Water quality trends are available from fixed station sites on the Great Lakes and major tributaries, and from fish and wildlife contaminant monitoring programs. In 1998 Michigan initiated partial implementation of its Water Chemistry Trend Monitoring Project. It analyzed connecting channel water quality, including nutrients, conventional pollutants, base/neutral organic compounds, volatile organic compounds, mercury, and trace metals, for the Detroit River (1992-2000), the St. Clair River (1998-2000), and the St. Mary’s River (1998-2000). Findings from the Detroit River show the following: nutrient concentrations have declined significantly since the 1960s; phosphorus and ammonia concentrations have fluctuated seasonally, with a slight increase in total phosphorus and a slight decrease in ammonia concentrations since the 1990s; data collected from 1998 to 2000 show there is no apparent spatial or temporal trend in metals concentrations with the exception of mercury, which exhibited a significant decrease from upstream to downstream; and PCB and DDT concentrations increased from upstream to downstream on the Detroit River.

MDEQ began monitoring environmentally persistent and toxic chemicals in bald eagles nesting near the Great Lakes and inland lakes in 1999. As a top-level predator, the bald eagle has a significant reliance on the aquatic food web and feeds primarily on fish and water birds. Example trends identified through testing feathers and blood include the following: 4,4'-DDE was detected in 98% of the samples and was the most common DDT metabolite found in eaglet blood; 4,4'-DDE concentrations measured in 2000 were generally lower than those measured in 1987-1992; total PCB concentrations measured in 2000 were less than those measured in 1987-1992.

Trends are also available from Michigan's Fish Contaminant Trend Monitoring Network. Whole fish fixed station trend monitoring data collected since 1990 were reviewed, and temporal trend conclusions for the Great Lakes and connecting channels are summarized as follows: total DDT concentrations changed in 14 data sets collected from 9 locations with an average decline of 6.2% per year; total chlordane concentrations changed in 14 data sets collected from 9 locations with an average decline of 9.1% per year; and dioxin and furan concentrations declined 5.4% per year in Thunder Bay lake trout.

EPA Region 5:

To date, the Region has not coordinated its permitting with the State's monitoring program. Because the Region coordinates with the State prior to drafting permits, available data are used to write permits. In most cases if a wasteload allocation is needed for the dischargers on a given receiving stream, the State will have included the Region's permittees in addition to the State's in the development of the wasteload.

2. Environmental Outcomes

The State of Michigan:

In 2002 Michigan assessed 45% of the total stream miles in the State for aquatic life, swimming, and fish consumption. Of the assessed stream miles, 96% fully support aquatic life use, 97% fully support swimming, and 93% fully support fish consumption. The State also assessed 21,890 miles for drinking water, and 100% of these fully support the use. Michigan assessed 57% of the lake acres for aquatic life, swimming, and fish consumption. Of the assessed lake acres, 99% fully support aquatic life use, 99% fully support swimming, and 35% fully support fish consumption (due to fish consumption advisories for PCBs and mercury). Michigan assessed 100% of the Great Lake shoreline miles for aquatic life, swimming, fish consumption, and drinking water. Of the assessed shoreline miles, 100% fully support aquatic life, 100% fully support swimming, 0% fully support fish consumption (due to PCB fish consumption advisories in Lakes Huron, Michigan, and Superior), and 98% support drinking water. According to MDEQ's 2004 Integrated Report, it has assessed 79% of perennial stream miles for designated use attainment.⁶

3. Water Quality Standards

The State of Michigan:

Michigan has integrated the water quality standards and NPDES programs in part by conducting timely reviews of its water quality standards and having no outstanding EPA disapprovals of standards. Permit

⁶ In its water quality reports, Michigan reports assessments on perennial miles only; in this discussion and in the NPDES Management Report, total perennial and intermittent miles are used to maintain consistency in comparisons with other States across the country, including those in Region 5.

fact sheets explain the basis for each water quality-based effluent limit, and additional information is maintained in facility-specific files which are available for public review.

All of Michigan's surface waters are designated for fish, aquatic life, other wildlife and recreational uses, among other uses. Michigan's water quality standards do not authorize changes to designated uses other than for wetlands as supported by a use attainability analysis or by changes to the administrative rules.

Michigan has adopted E. coli criteria for the protection of recreational uses consistent with federal guidance and the requirements of the BEACH Act. Michigan's water quality standards require that phosphorus be controlled from point source discharges to achieve 1 milligram per liter (mg/L) of total phosphorus as a maximum monthly effluent concentration unless another limit is deemed appropriate. In addition, Michigan's water quality standards include a narrative standard requiring nutrients to be limited to the extent necessary to protect designated uses. This narrative standard has been frequently used as the basis for low-level (i.e., less than 1 mg/L) phosphorus effluent limits. Michigan has also submitted a final plan for developing nutrient criteria. EPA has concurred with this plan.⁷

Michigan implements antidegradation provisions consistent with its adopted rules at R 323.1098. Michigan regularly reviews and updates its water quality standards.

MDEQ develops water quality-based effluent limits for toxic pollutants and for WET consistent with the procedures in the "Final Water Quality Guidance for the Great Lakes System" (40 CFR part 132). These include procedures for determining when there is reasonable potential that pollutants in a permittee's discharge are present at levels that will cause or contribute to a violation of a water quality standard (including WET) and therefore require the development of a limit; procedures to account for background concentrations of pollutants in the development of permit limits, and procedures to address situations where discharges are to impaired waterbodies where a TMDL has not yet been established.

Michigan uses a variety of approaches to assess water quality. For example, the State strives to assess 80% of the perennial stream miles through its rotating basin approach, has approximately 31 fixed stations located on Great Lake tributaries, and monitors about 80 lakes per year. As the additional nutrients, bacteria, and sediment monitoring occurs, the percent of waters identified as impaired may rise. Increased monitoring of fish tissue contaminants could also increase the number of waters with identified impairments. The inclusion of additional water body types (large rivers, headwater streams) could also result in increased identification of impaired waters.

EPA Region 5:

Currently, all Tribes in Region 5 are being encouraged to develop a report similar to the water quality inventories prepared under Clean Water Act section 305(b), regardless of whether their water quality standards have been approved by EPA. Currently, there are no Tribes within Michigan that have federally approved water quality standards. EPA proactively meets with Tribes preparing water quality standards for EPA final action to discuss potential permitting issues.

⁷ The National Data Sources column in the Management Report suggests that Michigan does not have nutrient criteria plan in place. This was based on information prior to EPA's concurrence with Michigan's nutrient criteria plan.

4. Total Maximum Daily Loads

Michigan incorporates wasteload allocations into NPDES permits as they are expressed in the TMDL (as a load or a concentration). Michigan's watershed approach allows all permits in a watershed to be reviewed at the same time, and ensures that wasteload allocations are appropriately incorporated into permits. The State keeps an updated list of completed and approved TMDLs (available on the Internet) and reviews it regularly to ensure that water quality concerns are addressed in the permit review process. Discharges that are subject to a TMDL are identified in this process so that proper effluent limits are included in the permits. Michigan is a key participant in a workgroup with EPA to help develop better linkages of TMDLs to general permits.

MDEQ has met TMDL commitments for the past 3 years. To date, 38 final TMDLs addressing 38 impairments have been submitted to EPA for approval. MDEQ expects to address all TMDLs within the appropriate time frame, and the EPA agrees that this is likely. Few of MDEQ's TMDLs are delayed; MDEQ uses a simplified TMDL development process that allows TMDLs to be developed in a relatively short period of time. Point sources are generally not a major source of pollutant loading in the TMDLs developed to date, although point source wasteload allocations will likely become more common in future TMDLs. MDEQ uses its Antidegradation Rule (Rule 98 of its water quality standards) to control permitting of impaired waters without a TMDL.

5. Safe Drinking Water Act

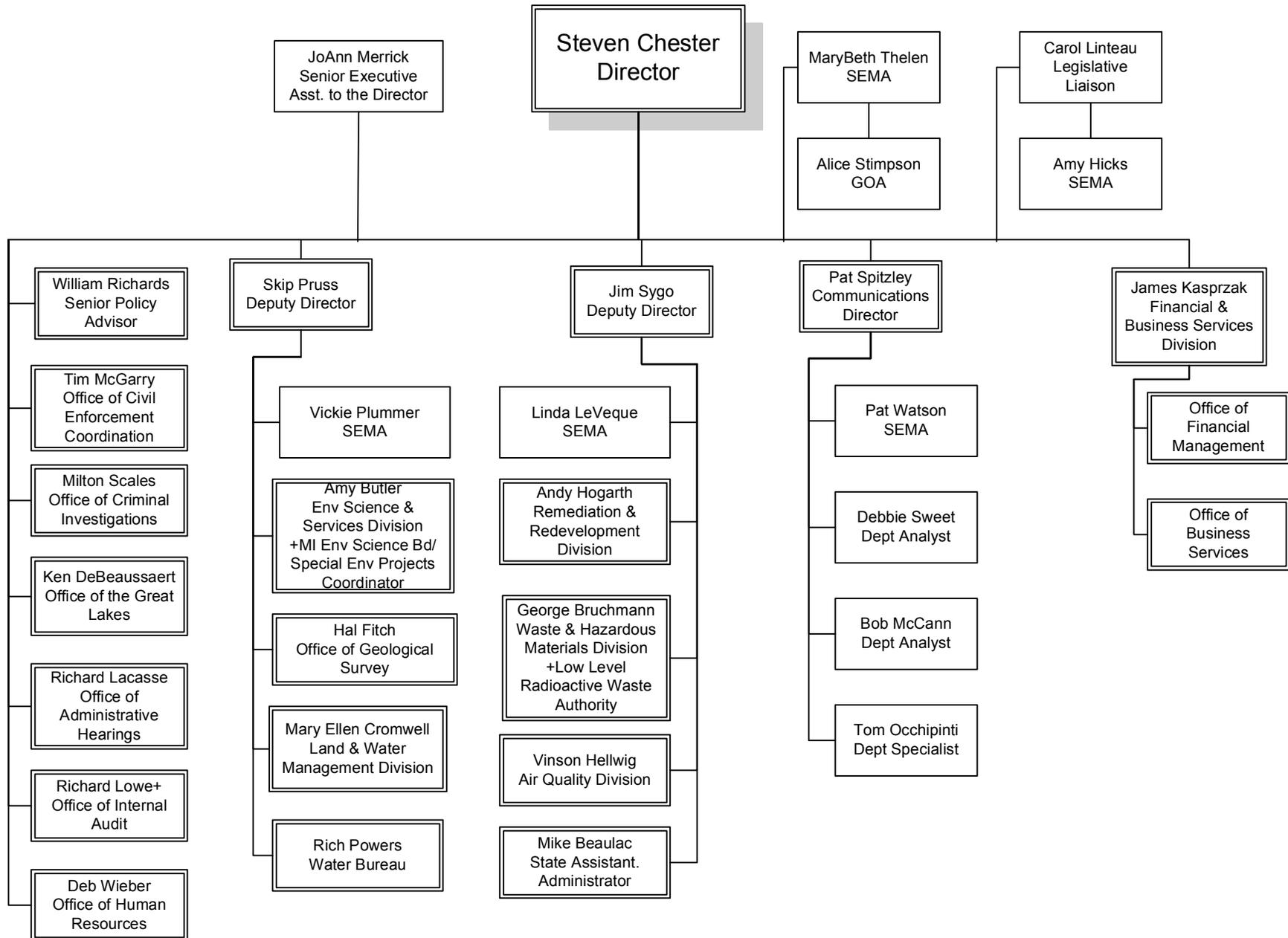
The State of Michigan:

MDEQ is completing source water assessments as required by the 1996 amendments to the Safe Drinking Water Act. The State considers drinking water intakes in the development of water quality standards, wasteload allocations, and water quality-based effluent limits under the Final Water Quality Guidance for the Great Lakes System.

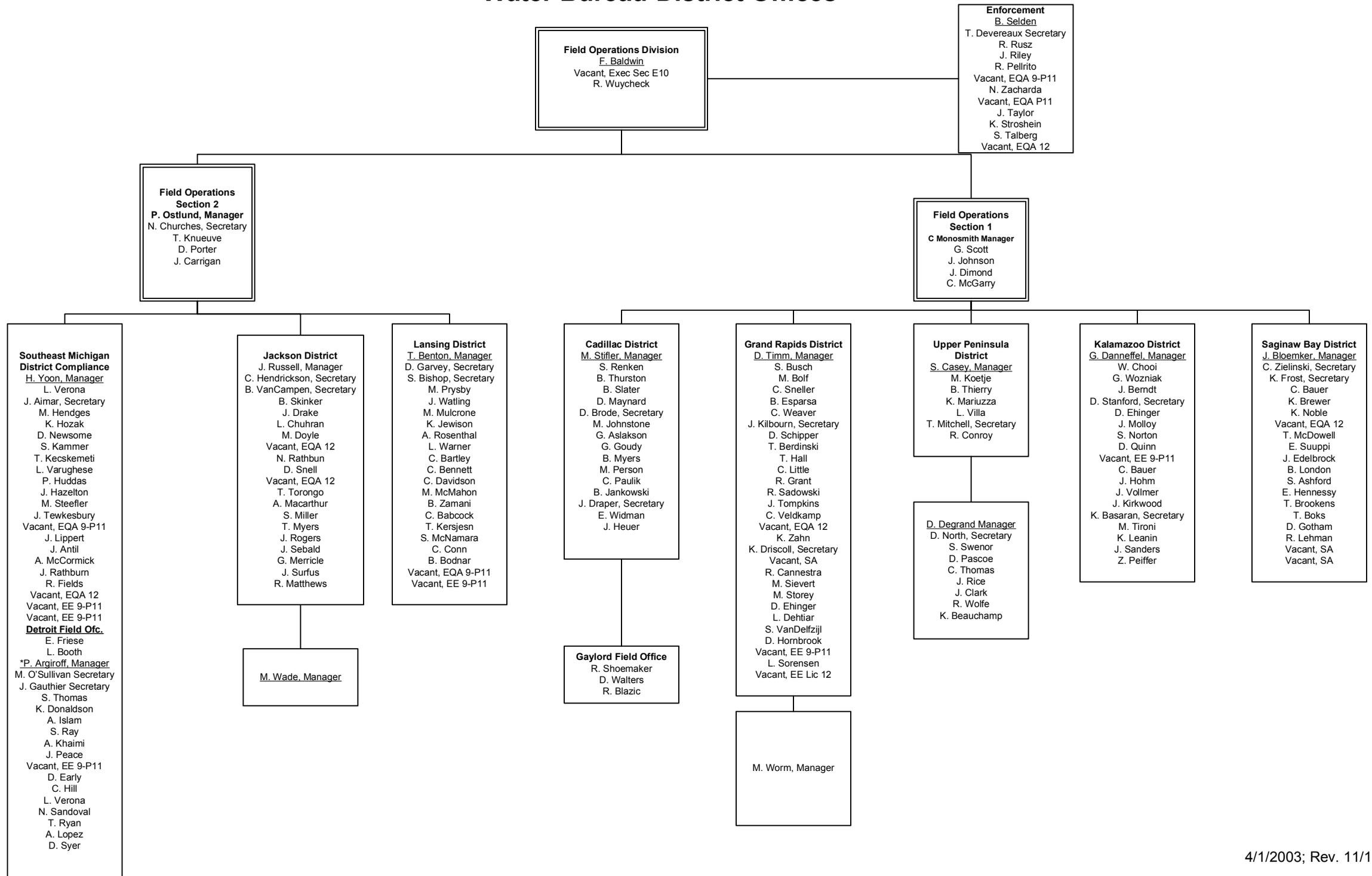
EPA Region 5:

The Region is not aware of any drinking water intakes in close proximity to permitted discharges in Indian Country. Should any be discovered, they would be taken into consideration in the development of appropriate effluent limits, including the need for disinfection.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY



Water Bureau-District Offices



WATER BUREAU

RICH POWERS
 Bureau Chief

Mary Ann Hanifan,
SEMA

L. Smith, Secretary

Lansing Operations
 J. Cleland
 M. Bushouse

R. Babcock

Drinking Water & Env. Health
Wm E. Brown, Manager
 B. Ray, Secretary
 J. Lahti
 R. Van Til

Surface Water Permits
 William Creal, Manager
 Susan Ashcraft, Secretary

Surface Water Quality Assessment
 D. Klemans, Manager

Administration
K. Duling, Manager
 T. Hettinger
 C. Sinicropi, Secretary

Wellhead Protection Unit
S. Ross, Manager
 B. Fisher
 W. Kukuk
 A. LeBaron
 R. Page
 D. Bailey
 C. Fox
 H. Tolson
 D. Diebolt
 C. Pung
 S. Davio

Contamination & Investigation
J. Lovato, Manager
 A. Mankel, Secretary
 J. Crigier
 L. Graham
 J. Ratliff
 C. Rubitschun
 A. Pahl

Lakes Erie & Huron Permits
M. Bray, Manager
 J. Woodcock
 A. Quraishi
 M Fife
 J. Jones
 D. Drullinger
 A. Malvetis
 K. Cook
 T. Buckmaster
 C. Alwin
 K. Lauterbach
 K. Hughson

Nonpoint Source
E. Alexander, Manager
 R. Mascho, Secretary
 T. Cleary
 R. Reznick
 J. Rathbun
 P. Vincent
 Vacant, EQA 9-P11
 T. Kitchel
 S. Holden
 K. Manning

Lake MI Unit
B. Sayles, Manager
 M. Rippke
 J. Wuycheck
 C. Alexander
 J. Cooper
 M. Alexander
 D. Brunsen
 M. Walterhouse
 S. Wolf
 D. Rockafellow
 M. Staron
 S. Heaton
 K. Goodwin
 D. Trapp
 T. Lipsey
 K. Roush
 E. Sunday
 B. Kiely
 J. Hansen
 E. Thelen
 S. Wright

Budget & Adm Services
C. Emmons, Manager
 C. Byam
 K. Benjamin
 E. Rolon
 Vacant, Dept Anly 12

Noncommunity Unit
R. Overmyer, Manager
 S. Wirth, Secretary
 J. Chickering
 D. Dettweiler
 H. Mercer

Well Construction Unit
M. Gaber, Manager
 C. Pettis, Secretary
 J. McEwan
 A. Ladouceur
 Vacant, Res Anly 12
 D. DeYoung
 K. Holdwick
 Vacant, EQA 9-P11
 L. Lepeak
 C. Miller

Lakes Michigan & Superior Permits
D. Dell, Manager
 D. Carlson
 N. Ayers, Secretary
 B. Burns
 A. Lam
 M. Bitondo
 S. Syts
 C. Parker
 J. Fischer
 K. Kissane
 T. Scott
 R. Hayes
 K. Kimble
 E. Cameron Wooley

UP Unit
G. Saalfeld, Manager
 Y. Glasscoe, Secretary
 B. Day
 G. Kohlhepp
 B. Dimond
 J. Suppnick
 W. Taft
 B. Walker
 D. Butler
 C. Aiello
 J. Smith
 S. Holden
 J. Bohr
 G. Schmitt
 K. Edly
 K. Thelen
 E. Thelen

Lake Erie & Huron Unit
 Vacant, Env Mgr 13
 Vacant, EE 9-P11

Community Drinking Water
R. Benzie, Manager
 D. Reck, Secretary
 B. Howard
 K. Phillip
 P. Cook
 J. Shekter

Manufactured Housing Program & Recreation Resources
B. McGeachy, Manager
 N. Allen, Secretary
 D. Graves
 Vacant, P.E., Env Eng Lic 12
 S. Grinwis
 D. Ostrander
 T. Fry
 P. Sisson
 D. McCuen
 M. Joseph
J. Fiero, Manager

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 S. Thelen, Secretary
 Vacant, Sec. 9 JS
 I. Scott, Secretary
 B. Deatrick
 G. List
 D. Thompson
 J. Bailey
 J. Beauboeuf
 T. Weston
 E. Chatterson
 J. Warner
 D. Simmons
 R. Kirby
 Vacant, Geo 9-P11
 J. Makries

Water Toxics Unit
Dennis Bush, Manager
 C. Hull
 E. Weingartz
 S. Briggs
 D. Page, Secretary
 A. Perbeck

Inland Lakes & Remedial Action
R. Hobria, Manager
 A. Nelson, Secretary
 R. Bednarz
 S. Baker
 L. Esman
 E. Bacon
 Vacant, EQA 12
 M. Preisser
 L. Huberty
 S. Draheim
 J. Schultz
 J. Sims
 G. Ross

Accounting Unit
 Vacant, Acct Spl 13
 R. Banker
 L. Schafer

Land Div. & Local Health Dept
R. Falardeau, Manager
 D. Ladouceur
 D. Sandahl
 M. Campbell
 S. Nalepka
 D. Simmons

Soil Erosion & Sedimentation Program Coordinator
 R. Mikula

Field Operations
 Division
 2nd. Page

NPDES Management Report, Fall 2004

Michigan

			Profile Section	GPRA Goal	Nat. Avg.	National Data Sources		Additional Data	
						State Activities	EPA Activities	State Activities	EPA Activities
NPDES Progress									
Universe	1	# major facilities (6,690 total)	I.1		n/a	185	0		1
	2	# minor facilities covered by individual permits (42,057 total)	I.1		n/a	492	1		6
	3	# minor facilities covered by non-storm water general permits (39,183 total)	I.1		n/a	1,195	0		3
	4	# priority permits (TBD)	I.6			--	--		
	5	# pipes at facilities covered by individual permits (142,761 total)	I.7		n/a	1,303	--		
	6	# industrial facilities covered by individual permits (32,505 total)	I.1		n/a	380	4		
	7	# POTWs covered by individual permits (15,197 total)	I.1		n/a	260	3		
	8	# pretreatment programs (1,482 total)	II.2		n/a	35	--		
	9	# Significant Industrial Users (SIUs) discharging to pretreatment programs (22,158 total)	II.2		n/a	1,051	--		
	10	# Combined Sewer Overflow (CSO) permittees (831 total)	II.5		n/a	46	--		
	11	# CAFOs (current and est. future) (17,672 total)	II.3		n/a	125	--		
	12	# biosolids facilities (TBD '05)	II.6			--	--		
NPDES Program Administration	13	State or Region assessment of State NPDES program (none (N)/assessment (A)/profile (P))	I.1	50 states 2004	n/a	A, P	P		
	14	% pipes at facilities covered by individual permits w/ lat/long in PCS	I.7		46.3%	23.0%	--		
	15	State CAFO legal authority expected (mo/yr)	II.3	2005	n/a	10/04	n/a	1/05	
	16	# Withdrawal petitions/legal challenges (22 total)	I.4		n/a	1	n/a		
	17	DMR data entry rate	I.7		95%	89%	--		
	18	# permit applications pending (1,011 total)	I.6		n/a	0	--		
NPDES Program Implementation	19	% major facilities covered by current permits	I.6	90%	83.7%	77.8%	n/a	100.0%	
	20	% minor facilities covered by current individual or non-storm water general permits	I.6	90% 12/04	87.0%	95.7%	100.0%	88.9%	
	21	# major facilities w/permits expired >10 yrs. (56 total)	I.6		n/a	0	0		
	22	% priority permits issued as scheduled (TBD '05)	I.6	95% 2005		--	--		
	23	% pretreatment programs inspected/audited during 5 yr. inspection period	II.2		85.3%	97.1%	--		
	24	% SIUs w/control mechanisms	II.2		99.2%	99.0%	--		
	25	% of CSO permittees with long-term control plans developed or required	II.5	75% 2008	82.2%	100.0%	--		
	26	% CAFOs covered by NPDES permits	II.3		35%	12%	--		
	27	% biosolids facilities that have satisfied part 503 requirements (TBD '05)	II.6			--	--		
	28	# Phase I storm water permits issued but not current (76 total)	II.4		n/a	0	0		
	29	# Phase I storm water permits not yet issued (5 total)	II.4		n/a	0	0		
	30	Phase II storm water small MS4 permits current (Y/N/D (draft) (35 States)	II.4	100% states 2008	n/a	Y	n/a		
	31	Phase II storm water construction permit current (Y/N/D (draft) (49 States)	II.4	100% states 2008	n/a	Y	Y		
NPDES Compliance Monitoring and Enforcement Response	32	% major facilities inspected	III.3		71%	52%	0%		
	33	(inspections at minors) / (total inspections at majors and minors)	III.3		76%	70%	100%		
	34	% major facilities in significant non-compliance (SNC)	III.1		20%	32%	--		
	35	% SNCS addressed by formal enforcement action (FEA)	III.1		14%	2%	--		
	36	% SNCS returned to compliance w/o FEA	III.1		70%	54%	--		
	37	# FEAs at major facilities (666 total)	III.1		n/a	0	3		
	38	# FEAs at minor facilities (1,660 total)	III.1		n/a	0	4		

Explanation of Column Headers:

Profile Section: For each measure, this column lists the section of the profile where the program area (including any additional data for the measure) is discussed.

National Data Sources: The information in these two columns is drawn from two types of sources:

(1) EPA-managed databases of record for the national water program, such as PCS, the National Assessment Database, and the National TMDL Tracking System. NPDES authorities are responsible for populating PCS with required data elements and for assuring the quality of the data. EPA is working to phase in full use of NAD and NTS as national databases.

(2) Other tracking information maintained by EPA Headquarters for program areas such as CAFOs, CSOs, and storm water.

The [definitions document](#) accompanying this Management Report provides a detailed definition of each data element in the National Data Sources columns.

Additional Data: These columns provide additional data in cases where information from other data sources differs from information in the National Data Sources column for reasons such as different timing of the data "snapshot." Additional data should generally adhere to the same narrative definitions as data in the National Data Sources, and should be derived using similar processes and criteria. Our goal is to work with the States on these discrepancies to ensure consistent and accurate reporting. A State contact is available who can respond to queries. The profiles discuss each additional data element.

State Activities: Information in these columns reflects activities conducted by the State program. (Shaded cells in these columns indicate that the work may not be entirely the State's responsibility, but a breakdown of the data into EPA and State responsibilities is unavailable.)

EPA Activities: Information in these columns reflects activities conducted by the EPA Region within the State.

NPDES Management Report, Fall 2004

Michigan

		Profile Section	GPRA Goal	Nat. Avg.	National Data Sources		Additional Data		
					State Activities	EPA Activities	State Activities	EPA Activities	
Water Quality Progress									
Universe	39	River/stream miles (3,419,857 total)	IV.2		n/a	49,136	n/a		
	40	Lake acres (27,775,301 total)	IV.2		n/a	889,600	n/a		
	41	Total # TMDLs in docket at end of FY 2003 (52,795 total)	IV.4		n/a	522	--		
	42	# TMDLs committed to in FY 2003 management agreement (2,435 total)	IV.4		n/a	13	0		
	43	# Watersheds (2,341 total)	IV.2		n/a	--	--		
Water Quality Administration	44	On-time Water Quality Standards (WQS) triennial review completed (42 States)	IV.3		n/a	Y	n/a		
	45	# WQS submissions that have not been fully acted on after 90 days (32 total)	IV.3	<25% submissions	n/a	n/a	0		
Water Quality Implementation	46	State is implementing a comprehensive monitoring strategy (Y/N) (TBD)	IV.1	all states 2005	--	--	--		
	47	% river/stream miles assessed for recreation	IV.2		13.8%	45.0%	n/a		
	48	% river/stream miles assessed for aquatic life	IV.2		22.0%	45.0%	n/a		
	49	% lake acres assessed for recreation	IV.2		49.4%	57.0%	n/a		
	50	% lake acres assessed for aquatic life	IV.2		48.5%	57.0%	n/a		
	51	# outstanding WQS disapprovals (23 total)	IV.3		n/a	0	n/a		
	52	WQS for E. coli or enterococci for coastal recreational waters (12 States)	IV.3	35 states 2008	n/a	Y	n/a		
	53	WQS for nutrients or Nutrient Criteria Plan in place (13 States)	IV.3	25 states 2008	n/a	N	n/a	Y	
	54	Cumulative # TMDLs completed through FY 2003 (10,807 total)	IV.4		n/a	38	--		
	55	# TMDLs completed in FY 2003 (2,929 total)	IV.4		n/a	13	0		
Environmental Outcomes	56	# TMDLs completed through FY 2003 that include at least one point source WLA (5,036 total)	IV.4		n/a	18	--		
	57	% Assessed river/stream miles impaired for swimming in 2000	IV.2		--	3.9%	n/a		
	58	% Assessed lake acres impaired for swimming in 2000	IV.2		--	--	n/a		
	59	# Watersheds in which at least 20% of the water segments have been assessed and, of those assessed, 80% or more are meeting WQS (440 total)	IV.2	600 2008	n/a	--	--		

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