

# Michigan Department of Environmental Quality's (DEQ) Missed Wetland Deadline Raises Questions for Farmers



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The July 2, 2013 amendments to Michigan's Wetland Statute (Part 303 of the Natural Resources and Environmental Protection Act), 2013 P.A. 98, among other things, required the **Michigan Department of Environmental Quality ("DEQ")** to "develop by October 1, 2013, and maintain a general permit for alteration of wetland for blueberry farming that includes minimal drainage and earthmoving..." This requirement was part of a larger compromise between the DEQ and farming interests on provisions in the wetland statute involving farming activities and wetlands that the **United States Environmental Protection Agency ("U.S. EPA")** had found to be inconsistent with the **Clean Water Act's** wetland program. Having to obtain any type of permit to put a wetland plant in a wetland that will remain a wetland is hard to swallow; at least the general permit is a quicker and less expensive permitting alternative, and most importantly does not contain a mitigation requirement (replacing impacted wetlands with created or preserved wetlands elsewhere).

The DEQ's failure to meet the October 1, 2013 deadline raises several issues concerning that compromise. First, the farming industry as part of this compromise gave up the right to convert wetlands to different types of wetlands or to uplands

through farming activities after October 1, 2013. Will the DEQ not enforce such activities after October 1, 2013 during the time that it has violated its obligations concerning the general permit? Without the general permit, blueberry farmers after October 1 are forced to either obtain an individual wetland permit (and its onerous minimum 1:5 to 1 mitigation requirement) or do nothing. Neither of these are feasible alternatives for many farmers.

Second, when will the DEQ comply with its statutory mandate? While the farming community has heard that the DEQ is working on the rules and expects to have them completed soon, the Clean Water Act requires that a state proposing a general permit must first submit it to the U.S. EPA for review. It provides U.S. EPA with 90 days for this review. The U.S. EPA's review will further delay the availability of the general permit.

Third, what does the DEQ's action mean for Act 98's obligation that the DEQ "propose new general permits for minor project categories for conversion of wetland to blueberry farming or other agriculture that includes more than minimal drainage or earthmoving"? Several farmers have put proposed farm expansion plans on hold pending development of these general permits. The DEQ's delay could cost them an entire growing season for these new fields.

Historically, the DEQ has not hesitated to bring enforcement action against farmers for alleged violations of Part 303. This summer, while the clock was ticking on its October 1 deadline, the DEQ was busy pursuing enforcement actions, including at least one for alleged violations resulting from this spring's record storm events. For property owners, the wetland statute imposes hard and fast requirements. The DEQ apparently does not view its obligations under the wetland statute in the same way.

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