

Are Michigan's Beach Grooming Initiatives Rotten to the Corps?

By: Joseph E. Quandt

With the June, 2003 passage of amendments to the Wetlands Statute and the Great Lakes Submerged Lands Act, it seemed as if Michigan shoreline landowners were finally free to conduct certain activities to maintain their beaches in light of the receding Great Lakes water levels that exposed significant expanses of Great Lakes bottomlands. These bottomlands often become overgrown with vegetation and are pockmarked with shallow pools of stagnant water, rendering access to the shoreline at times, impossible.

The amendments allowed landowners in specified areas to conduct certain beach maintenance activities in the land between the ordinary high watermark of the Great Lakes and the water's edge on exposed bottomlands without the need for obtaining a permit from the Michigan Department of Environmental Quality (MDEQ). The activities allowed included manual or mechanized leveling of sand in areas predominantly free of vegetation, mowing of vegetation, grooming of the uppermost 4" of sand to remove debris without the disturbance of plant roots, small scale or "de minimus" hand pulling or removal of vegetation, and construction of temporary pathways to access open water. Through a Letter of Approval from the MDEQ, landowners are also permitted to remove certain types of vegetation from exposed bottomlands in designated pilot areas, namely Grand Traverse Bay and Saginaw Bay. Although MDEQ approval was needed for the removal of vegetation, and specified criteria had to be met, a landowner had only to wait a maximum of 10 days after a request to receive approval or denial from the department. The Letters of Approval issued under the new provisions are valid through June 4th, 2006. From all outward appearances, it seemed that a balance had been struck that both protected the bottomlands and allowed landowners, resort owners, and beach goers continued use and enjoyment of area Great Lakes beaches in the wake of the past decade of receding lake levels.

Now, almost a year after the promulgation of the amendments, the reality is much different. The exposed Great Lakes bottomlands are considered to be regulated wetlands under both State and Federal Law, thus, the Great Lakes shoreline and exposed bottomlands are regulated by both the MDEQ and the US Army Corps of Engineers. According to the Corps, the activities allowed under Michigan law are illegal without a permit from the Army Corps under Part 404 of the Federal Water Pollution Control Act. As a result, any leveling of sand, mechanized or manual beach grooming, removal of any vegetation, or path construction all still require a permit from the Corps before landowners engage in such activity. The only activities allowed by the Army Corps without a permit are the mowing of vegetation; the removal of debris such as tires, logs, dead fish or bottles from bottomland areas; the hand shoveling or burying of organic debris; the use of wheelbarrows and/ or other mechanized vehicles to transport debris to upland areas; and the building of sand castles.

In addition, the Corps is under no obligation to timely approve or deny a permit for beach maintenance activities. Permits submitted to the Corps for beach grooming activities have been languishing since last July, with the Corps seemingly in no hurry to allow Great Lakes shoreline owners and residents to conduct beach grooming activities. It seems that the Corps is at the least intentionally delaying any approval for beach grooming activities and at worst, attempting to undermine the Michigan amendments. It is the Corps' position to prosecute landowners who, in full

compliance of Michigan law, engage in beach grooming activities without acquiring an Army Corps permit first. Thus, although the amendments seemed promising in at least lessening the expanse of red tape involved in dealing with receding lake levels and beach maintenance, landowners who believed they were following the law were suddenly subject to federal prosecution. Not only have individual landowners been affected in their goal to conduct beach grooming activities on their own properties, but business owners who saw the amendments as an opportunity to fill a newly created niche faced federal scrutiny.

In sum, the new amendments have been rendered essentially worthless for Great Lakes shoreline landowners. Without an Army Corps permit, the beach grooming activities allowed under Michigan law cannot be conducted. Thus it seems that although Michigan Representatives were effective in changing Michigan law, it matters little if federal law still precludes beach grooming and maintenance activities. To date, only one bill has been introduced at the federal level to allow for beach maintenance activities. H.R. 2684, introduced by Representative Bart Stupak on July 9th, 2003, would permit the issuance of a general permit in Michigan to allow beach maintenance and grooming for the Great Lakes Systems and Lake Saint Clair along bottomland areas in accordance with the Michigan amendments. The last major action on the bill was on July 10th, 2003, when the proposed bill was referred to the Subcommittee on Water Resources and Environment.

In sum, even though Michigan law allows for specified beach grooming or maintenance activities without the need for a permit, activities beyond mowing, debris removal, or sand castle construction must still be authorized via a permit from the Army Corps. Until a bill is passed coordinating both Michigan and federal law, landowners who undertake beach grooming activities authorized under Michigan law face potential federal prosecution.

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