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SUPPLEMENTARY INFORMATION: On October 16, 1984, EPA approved the regulatory permitting program that the State of Michigan had submitted pursuant to the requirements and guidelines contained in subsections 404(g) and 404(h) of the Clean Water Act, 33 U.S.C. 1344(g) and (h). (See 49 FR 38947, October 2, 1984.) In that notice of approval, EPA noted that the Administrator was required to approve a program submitted by a state pursuant to subsection 404(g) of the CWA unless that program does not meet the requirements of subsection 404(h) of the CWA, and EPA then stated that it had determined that the program submitted by the State of Michigan met those statutory requirements. The components of the approved program are stated at 40 CFR 233.70. When EPA initially approved the program, Michigan did not have authority to carry out the program in Indian lands. EPA now concludes, as set forth more fully in the Report, that Michigan remains without authorization to carry out the program in Indian lands, which EPA defines to be the same as Indian Country as defined by statute (18 U.S.C. 1151).

The Michigan state agency authorized in 1984 to administer the approved section 404 program was the Department of Natural Resources. Later, the State of Michigan reorganized its agencies and transferred authority to administer the approved section 404 program to the Department of Environmental Quality (MDEQ). EPA approved this transfer on November 14, 1997 (62 FR 61173, November 14, 1997). The State of Michigan was the first state in the nation, and currently is one of only two states, to be authorized to administer a CWA section 404 permit program within its borders.

Recently EPA decided to perform an informal review of Michigan's approved section 404 program and the program's administration by MDEQ. EPA so decided, among other reasons, because since 1984 there have been a number of

changes to the relevant federal and state statutes and regulations, and because a body of State of Michigan judicial and administrative opinions relevant to permitting under the section 404 program had developed. In addition, in recent years EPA has received a number of comments and complaints about Michigan's administration of the approved section 404 program. Among these was the February 1997 submission by the Michigan Environmental Council and the Lone Tree Council which requested that EPA either ensure reform of Michigan's section 404 program or withdraw approval of the section 404 program. EPA responded that it was treating the February 1997 request as a petition to withdraw, and committed to performing an informal review of that petition's allegations, as provided for by 40 CFR 233.53(c)(1). See documents published at 62 FR 14846, March 28, 1997, and 62 FR 61173, 61174, November 14, 1997. The federal regulations allow EPA to conduct an informal review of allegations made in a petition to withdraw a section 404 program approval, 40 CFR 233.53(c).

In deciding to informally review Michigan's section 404 program, however, EPA decided to comprehensively review all aspects of Michigan's administration of the section 404 program—both with respect to permit processing and permit decision making and with respect to enforcement of the provisions of CWA section 404 and section 404 permits issued by MDEQ—and to comprehensively review the adequacy of Michigan's current legal authorities which establish and embody Michigan's section 404 program. Thus, EPA did not limit itself to reviewing the few matters of concern mentioned in the petition submitted by the Michigan Environmental Council and the Lone Tree Council.

The Regional Administrator of Region 5, EPA, informed the Director of MDEQ of the commencement of the section 404 program review in a letter of January 22, 1998.

To perform its program review, EPA requested that the State of Michigan provide an updated program description (40 CFR 233.11); a new Attorney General's Statement confirming that state laws and regulations provide adequate authority to administer the section 404 program and addressing the other subjects mentioned at 40 CFR 233.12; and a compilation of all current, relevant Michigan laws and regulations. The State of Michigan submitted these materials to EPA in June 1999, and submitted new and updated information to EPA between June 1999 and the date of this Notice.

As well as reviewing and analyzing the documents submitted by the State of Michigan, during its program review EPA reviewed hundreds of permitting files, enforcement files, and citizen complaint files that MDEQ generated between 1995 and 1999, visiting all thirteen MDEQ district offices and the central MDEQ office in Lansing, Michigan. EPA also conducted numerous interviews of MDEQ personnel in the field and central offices. Additionally, EPA reviewed most of MDEQ's written decisions issued in contested permitting cases between January 1994 and early 1999. The contested case decisions represent final agency action by MDEQ in matters involving individual permits processed under the approved state program. Also as part of its program review, EPA consulted with offices of the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers which interact with MDEQ during its administration of the program. Finally, during January and May of 1999 EPA held four availability sessions to receive comments from interested persons.

EPA now has completed its review and analysis of all materials. EPA has preliminarily concluded that the review findings do not warrant a recommendation to the Administrator to initiate formal program withdrawal proceedings, but do warrant corrective action on the State's part. In arriving at this conclusion, EPA analyzed whether the circumstances for program withdrawal which are set forth at 40 CFR 233.53(b) exist and, with respect to those areas of concern to EPA, whether the State of Michigan has indicated its willingness to take timely corrective actions to address EPA's concerns. In performing the program review, EPA also reviewed the criteria for initial section 404 program approval which are set forth in subsection 404(h) of the CWA.

EPA has found both deficiencies and strengths in Michigan's legal authorities establishing the approved section 404 program and in the program's administration by MDEQ. These strengths, deficiencies, and proposed corrective actions are identified in the document titled *Results of the U.S. Environmental Protection Agency Region 5 Review of Michigan Department of Environmental Quality's Section 404 Program*, and other documents that are contained in the public docket that supports this Notice. To address the deficiencies, EPA will be requesting that the State of Michigan perform certain corrective actions; EPA already has consulted with the State of Michigan about the nature of those