

Dock Permits on Michigan Lakes Tied Into the Great Lakes

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For inland lakes in Michigan with no inlet or outlet tied into the Great Lakes, government regulation of docks and piers is relatively straightforward. Apart from road ends, county governments generally do not have jurisdiction over docks or piers on private riparian properties. While some local governments (townships, cities, and villages) have local ordinances regulating docks and piers, the majority do not. Even where a local ordinance is in effect, rarely does the local municipality require a permit or license for a seasonal dock, although there may be significant regulations on such things as dock size and placement, permanent docks, and multifamily or commercial moorings.

At the state level, what was formerly called the Michigan Inland Lakes and Streams Act (now Part 301 of the Michigan Natural Resources and Environmental Protection Act) regulates docks and piers. See MCL 324.30101 et seq. If a dock or pier is seasonal (i.e., not permanent) and limited to single-family use, a riparian property owner normally does not need a state permit. However, if a dock or pier is permanent, for multi-family or commercial use, or has certain other characteristics, a state permit must be obtained from the Michigan Department of Environmental Quality (MDEQ), formerly part of the Michigan Department of Natural Resources and Environment (MDNRE). Normally, the federal government (through the U.S. Army Corps of Engineers) does not assert jurisdiction over docks or piers on Michigan inland lakes, unless the lakes are directly tied into the Great Lakes.

There are a number of lakes in Michigan that are directly tied, via an inlet or outlet, into one of the Great Lakes. Examples of such lakes include Lake Macatawa, Spring Lake, Muskegon Lake, White Lake, Lake Charlevoix, Burt Lake, Mullet Lake, Mona Lake, and Pigeon Lake. With regard to these and other similarly situated lakes, the state MDEQ has jurisdiction over docks and piers as mentioned above. In addition, however, the federal government, through the U.S. Army Corps of Engineers, has concurrent jurisdiction with the State of Michigan. And, absent one of the statutory or

regulatory exceptions, the U.S. Army Corps of Engineers takes the position that every dock and pier on an inland lake in Michigan directly tied into the Great Lakes is subject to approval by the United States government.

The federal government's jurisdiction over docks and piers on lakes tied directly into the Great Lakes derives from Section 10 of the federal Rivers and Harbors Act of 1899, 33 USC § 403 (the "Act"), which provides:

The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor or refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same.

Federal regulations promulgated under the Act, found at 33 CFR Part 322, make clear that permits are required under Section 10 for structures or work in or affecting navigable waters of the United States. The term "structure" includes, but is not limited to, any pier, boat dock, boat ramp, permanent mooring structure, or any other obstacle or obstruction. But the federal government has a "special policy" regarding structures for small boats, which provides, in part, that "[i]n the absence of overriding public interest, favorable consideration will generally be given to applications from riparian owners for permits for piers, boat docks, moorings, platforms and similar structures for small boats." 33 CFR § 322.5(d).

In general, the U.S. Army Corps of Engineers considers lawful docks and piers that were installed prior to December 1968 as being "grandparented." However, any significant modification to those docks or piers, or any

docks or piers first installed after December 1968 require a federal permit.

From what the Michigan Lake and Stream Association, Inc. ("MLSA") can ascertain, the enforcement by the U.S. Army Corps of Engineers regarding federal dock and pier requirements has been spotty, at best, throughout Michigan. Quite often, enforcement of the federal permitting system is prompted by citizen complaints or is contingent upon the time and resource constraints of the local federal enforcement officer. Enforcement seems to occur extensively on some lakes but not others. The pattern of enforcement (or non-enforcement) is confusing.

Some riparians question whether the federal government has the authority under the Act to regulate single-family docks, piers, or boat cradles. Further, some question not only the scope of the Act, but also whether there may be constitutional issues (such as equal protection and due process) regarding the sometimes erratic enforcement or application of the Act by the federal government. However, given the expense of litigation, it is likely beyond the financial means of one or two riparians to challenge the applicability of the Act to a conventional single family dock, pier or boat cradle. In most cases, a riparian will simply choose to apply for the appropriate federal permit, especially given that a person who violates the Act may be found guilty of a misdemeanor and punished by a fine of up to \$2,500, or up to one year imprisonment, or both. 33 USC § 406. In addition, a court may order the removal of any structures or parts of structures erected in violation of the Act.

In fact, if a riparian property owner receives a notice from the U.S. Army Corps of Engineers indicating that no permit is on file for the riparian's dock or pier and stating that a permit is required, the permit application process is relatively straightforward. Dock application forms can be obtained online. Furthermore, the dock permit fee (at least for 2010) is a relatively modest \$10 for individual (non-commercial) users, and \$100 for commercial or industrial users. Riparians are cautioned, however, that given the limited resources of the U.S. Army Corps of Engineers in this area, the time lag between the filing of a permit application and the issuance of a permit could be several months or longer. ♦