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2024 WINTER CONFERENCE PREVIEW

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PRESIDENT'S MESSAGE

EVAN PRATT, PE

Washtenaw County

Water Resources Commissioner

Are you crazy busy?

Overwhelmed some days? Most days?

Feeling like that kitten in the “Hang on” poster?
Me too.

You probably already know in our line of work you're not alone. We're an association full of busy people who get overwhelmed from time to time—even when there are no surprises.

You're good at what you do; there is just more to do than you can handle every day.

I feel like any planning time I squeeze in is about deciding what I **WON'T** do rather than plowing through the things I want or need to do. And maybe you'd agree when you finally get to the most important things, interruptions make it harder to wrap up!

It's easy to get discouraged, realizing we can't get to everything that could make life better for customers. I'm always impressed that everyone can still smile when they are frustrated, and how you all keep at it. Getting the most important things done when they need to get done. Sure we love to vent frustrations to each other—that's our therapy!!

If you're a commissioner or supervisor, there is that extra responsibility of sensing when one of your team members is overwhelmed, then figuring out how to encourage, help, or maybe even shuffle that workload. Leaders must provide enough direction so the most important items do not slip. Sometimes a team member needs to hear it is ok to adjust a deadline or two, so the top priorities are handled. That might be all it takes to pop the stress balloon that affects performance. Sometimes we as leaders need to offer to help make that tough call or visit.

While we're not all 'the boss' we're all part of various teams—office, project, company, etc. For service excellence and customer satisfaction, every team member needs to be responsible for bringing up when and why you are overwhelmed, ideally with any ideas for how to get back to your best performing self. And every boss needs to make clear this input is welcomed.



I guess that sounds a little trite, but staying in touch with each other is at the heart of performance, successful organizations and most management training.

That doesn't mean every fear of delivering success can be accommodated. It means today we work in a world where change is more frequent than ever. Success in today's environment is about checking in more often. It's team members suggesting what's needed to meet commitments and leaders offering to help, finding help, or providing schedule breathing room when someone is overwhelmed for a prolonged period.

On top of that, we'll all retire someday. We'll all learn a lot between now and then—even if we already know a lot. It is especially important for leaders to prioritize growth of team members by making sure there are regular conversations about growth and training, and then making sure time is available.

And every team member needs to try to express to 'the boss' how you would like to grow and what type of training would put you on this path and energize you, or to ask for advice when you're not sure what kind of training would help you advance. All of this is a great thing to talk about regularly, whether the organization has a formal employee review program or not.

Learning is a priority! We all benefit by carving out time or allowing staff to carve out time to learn. If we have people who are growing and learning on our teams, we may still be overwhelmed from time to time, but we'll take pride that we're on a motivated team that accomplishes a lot together.

We'll also take pride that when we retire, the team and culture each of us has helped build will keep humming in the face of all the noise and adversity around us.

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‘RELEASE’ YOUR TALENT TO ENSURE A BRIGHT FUTURE FOR YOUR AGENCY

By: John M. Collins MA, SHRM-SCP, Critical Victories

Anyone who’s spent enough time in public-sector administration has probably witnessed firsthand the transformative power of developing good, robust talent within a government agency and watching this talent go on to do great things for the organization and its stakeholders. But that’s also enough time to witness the profound disappointment, and even despair, of seeing a once-promising professional fall short of the potential that seemed so within reach.

The primary goals of any organization are to attract, retain, and develop the future leaders and decision-makers that will allow the organization to thrive. This means that capable individuals must be positioned and empowered to one day

freedom to make the decisions that their current levels of knowledge and skill permit. They must be released into your strategic world safe in the knowledge that their honest mistakes will be treated as opportunities for learning rather than the basis for criticism.

THE ESSENCE OF "RELEASING" TALENT

“Releasing” talent is nothing short of a paradigm shift away from the traditional command-and-control approaches to influencing employees toward a more empowering, experiential form of talent development. Controlled employees learn to conform. Empowered employees learn to lead. The future is built by leaders, not conformers.

“Releasing” talent is about creating an environment where employees are encouraged to explore, innovate, and even falter in their pursuits.

face down the inevitable adversities that will require intelligent, thoughtful, and courageous action.

To create this kind of environment, however, many organizational leaders will have to consider a change of thinking about what it means to be in charge, because if being in charge simply means being in control, then the future will be left to the impulses of influencers who were never allowed to be in control of anything. They will be so accustomed to being controlled that they won’t have the will or confidence to assume control when circumstances will eventually require it.

The future of your organization is being built, right now, by the opportunities your top talent has to engage and learn while having the

“Releasing” talent is about creating an environment where employees are encouraged to explore, innovate, and even falter in their pursuits. It’s about understanding that true learning and development often come from hands-on experiences, including those that involve risk or discomfort and may not always yield immediate success. This is precisely the approach that fosters resilience, adaptability, and most importantly, the confidence that only comes from real-world problem-solving and decision-making.

In an era where government agencies face unprecedented challenges, this kind of experiential learning is not just beneficial but essential.



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RELEASE CONT.

THE ROLE OF LEADERSHIP IN FOSTERING TALENT

The leaders in our government agencies all across America play a crucial role in this process of empowerment. It is our responsibility as leaders to cultivate environments where experimentation is not just tolerated but encouraged. This involves a delicate balance – providing guidance and support, while also stepping back to allow your teams the autonomy to navigate their paths without direction. It's about being a mentor, not just a supervisor; a guide, not just a gatekeeper.

STRATEGIES FOR DEVELOPING FUTURE LEADERS

As you look within your organization to ensure that genuine experiences rather than simply commands or instructions are forming the basis of your talent development enterprises, here are some strategies to think about as you seek to develop your leaders of tomorrow:

- **Encourage a Culture of Experimentation:** Foster a workplace where trying new approaches is seen as a vital part of learning and growth. Celebrate innovative ideas and provide a safe space for reasonable risk-taking.
- **Implement Internal Mentorship Programs:** Create structured programs where experienced leaders share their knowledge and insights. These programs should also include opportunities for emerging leaders to lead projects and make decisions.
- **Balance Autonomy with Accountability:** While giving employees the freedom to engage and experiment, also establish clear expectations and accountability structures. This helps them understand the boundaries within which they can operate and learn. Boundaries are not the same as barriers, and it's important to appreciate the difference.
- **Promote Continuous Learning:** Encourage your team to pursue ongoing education and professional development. In a rapidly evolving world, staying abreast of new trends and technologies is key.

- **Recognize and Nurture Potential:** Keep an eye out for individuals who show promise and invest in their development. Sometimes, the best leaders are those who don't initially stand out but whose curiosity and vision give them the potential to grow.
- **Embrace Diverse Leadership Styles:** Understand that effective leadership can take many forms. Encourage diversity in leadership approaches based on individual talents, strengths, and personalities, as this can lead to more innovative and effective problem-solving.

MAKE IT WORK FOR YOU

The future of every government agency depends on the ability to develop leaders who are not only knowledgeable and skilled but also confident and adaptable. By “releasing” talent – allowing our employees to experiment, learn from failures, and grow through experience – we are investing in a robust and necessary leadership pipeline. This indeed is essential to navigating the complexities of modern governance and ensuring a bright future for our agencies. As leaders, it's our duty to foster this environment, shaping not just the present but the future of our governmental landscape.

*John M. Collins is an Authoritative Leadership and Expertise Coach at Critical Victories in Brighton, Michigan. He specializes in supporting clients in authoritative, high-stakes occupations requiring high levels of expertise to earn and retain the trust of the public or other consequential stakeholders. John shares some of his unique philosophies and insights on high-stakes leadership in his 2022 book, **The New Superior - A Better Way to Be the One in Charge** (www.thenewsuperior.com), available in hardcover and audio.*

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CONFERENCE SCHEDULE

Tuesday, February 13

1:30–3:00 PM	Legislative Meeting <i>Gillmore Boardroom</i>
3:00–5:00 PM	Board of Directors Meeting <i>Gillmore Boardroom</i>
12:00–6:00 PM	Exhibitor Set-up <i>Kalamazoo Room</i>

Wednesday, February 14

8:00 AM–2:00 PM	Exhibitor Set-up <i>Kalamazoo Room</i>
10:00 AM	Registration Opens <i>Pre KAC</i>
12:00 PM	Lunch on your own
1:10 PM	Call to Order and Welcome <i>Arcadia Ballroom</i>
1:15–3:00 PM	Educational Sessions <i>Arcadia Ballroom</i>
3:00–3:30 PM	Break/View Exhibits <i>Kalamazoo Room</i>
3:30–5:00 PM	Educational Sessions <i>Arcadia Ballroom</i>
6:00–7:00 PM	Reception/View Exhibits <i>Kalamazoo Room</i>

7:00–8:30 PM

Strolling Dinner/View Exhibits
Kalamazoo Room

8:30 PM

After Dinner Activities

Thursday, February 15

7:30–9:00 AM

Breakfast
Morning Dish

8:30 AM

Exhibit Area Open
Kalamazoo Room

9:15–10:30 AM

Educational Sessions
Arcadia Ballroom

10:30–11:00 AM

Break/View Exhibits
Kalamazoo Room

11:00–12:15 PM

Educational Session
Arcadia Ballroom

12:15–1:30 PM

Lunch/2024 Awards Program
Arcadia Ballroom

1:30–3:15 PM

Educational Sessions
Arcadia Ballroom

3:15–3:45 PM

Break/View Exhibits
Kalamazoo Room

3:40 PM

Silent Auction Ends
Kalamazoo Room

3:45 PM

Exhibitor Teardown
Kalamazoo Room

124TH WINTER CONFERENCE

February 14-16, 2024


Radisson Plaza Hotel | Kalamazoo, MI

Thursday, February 15 cont.

- 3:45–4:45 PM **Educational Sessions**
Arcadia Ballroom
- 4:45 PM **Associate Member Meeting**
Arcadia Ballroom
- 6:00–7:00 PM **Reception**
Arcadia Prefunction
- 7:00 PM **Dinner**
Arcadia Ballroom
- 8:30 PM **After Dinner Activities**
Euchre Tournament
Old Burdick's

Friday, February 16

- 7:30–9:30 AM **Breakfast**
Morning Dish
- 9:30 AM **MACDC District Meetings**
Arcadia Ballroom
- 10:00 AM **Business Meeting/ Committee Reports**
Arcadia Ballroom
- 11:00 AM **Adjourn**



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CONFERENCE SESSIONS

Wednesday, February 14

1:15–2:00 PM

The Assertiveness Problem: How to Develop Bold Employees that Can Handle Pressure

John M. Collins, Critical Victories

This presentation will expose some contemporary barriers that are preventing our newest employees from developing an authoritative presence. We will discuss the damage this causes and how to formalize a better process for helping people become stronger and better prepared to deal with challenging situations.

2:00–2:30 PM

Don't be Shocked! Tips for saving time, headaches, and money by anticipating utility conflicts

Luke O'Brien & Steve Roznowski, Spicer Group, Inc.

Unexpected utility conflicts can cause significant delays and costs for construction projects. We all know to call Miss Dig before construction starts, but there are a number of other things you can do to anticipate, coordinate, and avoid utility conflicts. This session uses past experiences to highlight ways to better coordinate with utilities before and during construction.

2:30–3:00 PM

The Trouble with Easements!

John S. Brennan, Fahey Schultz Burzych Rhodes

In this session we'll explore some of the problems often encountered when acquiring easements for drain projects. Some of the topics we'll cover include private roads, plat dedications, public road rights-of-way, conflicting easements, and dealing with the reluctant property owner. Understanding these problems will assist you in planning projects and avoiding conflicts along the way.

3:30–4:15 PM

Communicate well for better project outcomes

Taylor Trapani & Stacey Trapani, Trapani Communications

This session will provide tips and tricks to effectively communicate during any initiative to maintain transparency and achieve your outcomes. The Trapani team works with clients ranging from Four Lakes Task Force to Fortune 50 companies and municipalities to manage communications for complex and controversial community projects. Their presentation will share examples from projects including millages, lake level special assessment districts, Super Fund sites and others to handle community and public outreach throughout your project.

4:15–5:00 PM

Legislative Update

Deena Bosworth, Michigan Association of Counties

MACDC lobbyist Deena Bosworth will give an update on bills affecting drain offices, as well as an overview of the legislative process.





Thursday, February 15

9:15–9:45 AM


Liabilities and Obligations Arising from PFAS Contamination in Drainage Systems and Effluent

Pat Larkin, Clark Hill

Public and private entities with responsibility for managing wastewater and stormwater facilities currently face multiple hits to operating costs, new and growing regulatory and operational requirements and potential CERCLA-type liability – all arising from third parties' historic (or ongoing) use and releases of PFAS:

- ▶ current or imminent obligation to perform expensive monitoring of intake and effluent flows for the presence of PFAS
- ▶ expanded permit duties or risk-based need to identify and engage with sources of PFAS releases
- ▶ enhanced treatment and disposal costs of system treatment residues
- ▶ potential liability for historic disposals or contaminated drainage systems.

This session will provide strategies to identify, monetize and mitigate (or transfer) the imminent risks and obligations of association members arising from PFAS contamination and discharge sources impacting drainage effluents.



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9:45–10:30 AM

Soil Erosion Updates

EGL staff will give updates on the SESC program and various happenings within the department.

11:00–11:30 AM

Social Media Management Best Practices

Trisha Bruzek & Brendan Hancsak, OCWR

During a time where social media is an integral part of our personal and professional lives, staying updated on best management practices is critical when it comes to the success of your organization's online presence. In this session we'll dive into the world of social media, providing you with tools and guidance on how to make the most of your efforts. Most importantly, we'll show you how to make social media fun for both you and your followers.



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WINTER CONFERENCE CONT.

Thursday, February 15 cont.

11:30 AM–12:15 PM

The YPC Show

Young Professionals Committee

Join the YPC for a fun and interactive session that tests your knowledge and Drain IQ!

1:30–2:00 PM

Michigan's Protected Amphibians and Reptiles: Regulation, Conservation, and Best Management Practices

*David A. Mifsud, Senior Herpetologist,
Herpetological Resource and Management*

More than half of all reptiles and amphibians in Michigan are considered protected or declining. Several have recently been protected in the state, while others are being federally evaluated. This presentation will focus on the regulatory authority governing amphibians and reptiles, measures to conserve on drain projects, and ways to minimize impacts or improve habitat for these species through Best Management Practices.

2:00–2:30 PM

Treading Lightly

*Drew Stoffel, PE & Christine DeVries, LRE
Dallas Goldberg, Muskegon County Water Resources*

An overview of recommended Best Management Practices (BMPs) when working near sensitive habitats, including how to identify and address common invasive, threatened & endangered, and wetland plant species found along Michigan's Drains.

2:30–3:15 PM

Stormwater Management - Rules, Regulations, & Ordinances

*Cole Hedrick & Kyle O'Meara, Fahey Schultz
Burzych Rhodes
Dennis Chase, LRE*

Effective review and management of stormwater impacts is essential to ensuring sustainable development and protecting our communities. This presentation will highlight recommended rules/regulations, review and ordinance authority, and importance of local municipality coordination.

3:45–4:15 PM

Riding the Data Wave: Tech for Flood Response and Lake Level Management

Brandon Wong, CEO, Hyfi

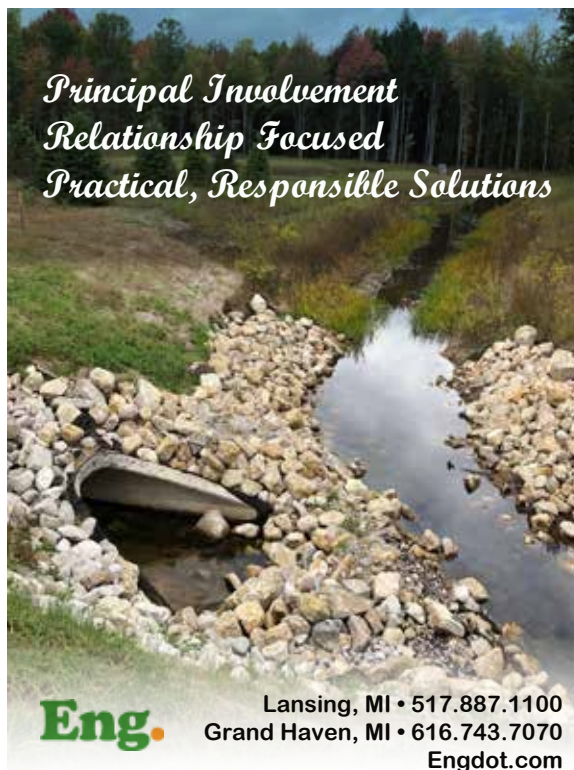
Discover how pioneering Michigan communities adopted monitoring technologies and data analytics to manage lake levels, enhance flood response, and actively engage with local residents. Join us for case studies from Dearborn and lakes across the state.

4:15–4:45 PM

EGLE Updates

Phil Roos, Director, EGLE

New EGLE Director, Phil Roos, will give updates on the department and EGLE's unique regulatory role in ensuring the Great Lakes and their connecting waters remain the vital cultural, recreational, ecological, and economic engines of the region. The agency also regulates air quality, waste management, drinking water, groundwater, oil and gas extraction, and contaminated site remediation.



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CLINTON COUNTY DRAIN OFFICE EMERGENCY SPILL RESPONSE

By: Renee McGrady and Jon Morrison, Clinton County Drain Office

If you are a Drain or Water Resources Commissioner overseeing a network of county drains, an emergency spill response is something to be prepared for. The Clinton County Drain Commissioner's Office learned this firsthand when a spilled pollutant threatened to enter their intercounty drain system.

On June 23, 2022, a tanker truck carrying 6,000 gallons of asphalt emulsion material was traveling southbound on US-127 when it struck a tractor, crashed through the guardrail,

“With Michigan’s extensive county drainage systems, it is not a matter of if an emergency will occur, but rather a matter of when.”

and plunged down a 20-foot embankment. It came to rest, upside down, spilling its contents approximately 120 feet from the Ferdon Intercounty Drain.

Within an hour the Clinton County Drain Commissioner's office was notified, and staff arrived on site, where they began assessing the situation. Asphalt emulsion was found to be entering the Ferdon Intercounty Drain (an intercounty drain between Clinton and Gratiot Counties) through an erosion gully in the bank. It was immediately clear that containment efforts must be employed to prevent emulsion from traveling some two miles downstream into Gratiot County and into the Maple River, a tributary of the Grand River. As such, Clinton County drain staff informed Gratiot County drain staff of the situation and indicated Clinton County's intent to follow through with a response.

The Clinton County drain staff deemed it prudent to do everything they could to prevent the obvious plume from extending downstream. Working quickly, and with the assistance of the responding fire department, county staff first placed absorption booms downstream from the spill site. Next, they placed sandbags at culverts upstream of the spill in an effort to slow the advancement of the plume. Following these initial efforts, it was determined that further restricting the water flow would be the most

effective means of restraining further extension of the potential contamination downstream. An excavation company was brought on scene to construct two earthen dams upstream, cutting flow going to the site, and another dam downstream to contain the advancing plume. At the temporary dam installed downstream, water filtration equipment was set up and put into operation. Filtered water was then discharged downstream of the dam.

With some containment in place, efforts to communicate information about the spill were initiated. EGLE had been notified of the accident through the Pollution Emergency Alert System, and the Clinton County Drain Office had also contacted environmental cleanup companies. Both EGLE and engineering firm Spicer Group arrived on scene to begin to assess the extent of the contamination and perform water sampling

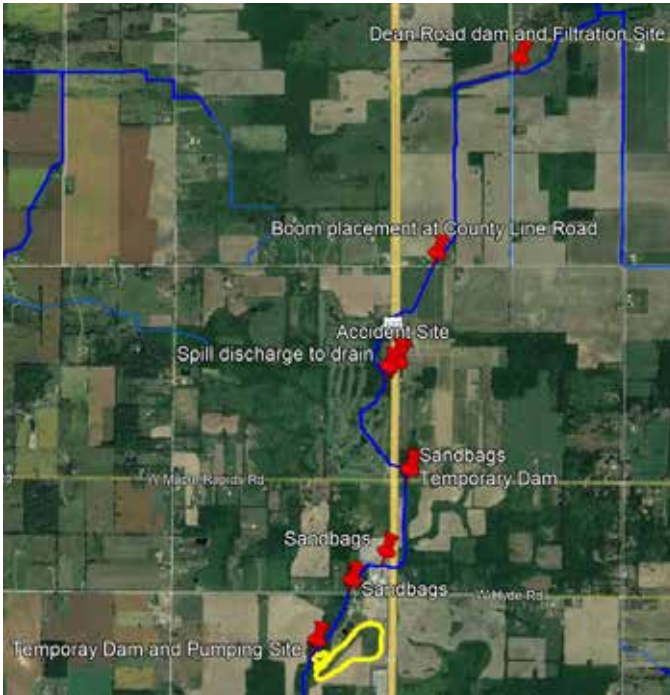
SPILL RESPONSE CONT.



Overturned tanker spilling asphalt emulsion that would eventually reach the Ferdon Intercounty Drain.

in order to better understand the nature of the plume. Drain staff notified a farmer who owned cattle grazing on the drain downstream of the potential contamination, hoping to avoid any

harm to the livestock. The Clinton County Drain Commissioner also began coordinating with the Mid Michigan District Health Department and the Clinton County Emergency Manager to facilitate messaging to area residents about the situation.



Map of key sites in spill response.

Within a few hours it became clear that the installed filtration system would not be capable of handling the advancing flow and the newly constructed dam began to overtop. It was thought that by implementing bypass pumping upstream of the spill, flow could be reduced through the spill area to a rate at which the filtration equipment could keep pace. Drain staff began tackling the question of where to safely divert the water, and the search began for equipment with the capacity to handle the task. Gratiot County Drain Commissioner, Bernie Barnes, was able to obtain an agricultural manure pump that had the ability to move drain water to a constructed wetland on the property next to the upstream dam. The pump was installed and began to discharge water from the drain into the containment area. During the night, the containment area was



Mobile filtration system set up at downstream dam to clean flow affected by initial spill plume. Filtered water was discharged downstream.

filled to capacity, and water was then pumped to an adjoining property. The pumping effectively intercepted upstream flow, leaving just spring and surface flows keeping the creek bed from going completely dry. This was sufficient to allow the filtering equipment to keep up with the water flow. Pumping continued for four full days while clean-up efforts were underway.

By Monday, June 27, the tar and sediment that had entered the drain had been removed. Additionally, the original water samples taken by Spicer Group and EGLE immediately following the incident were found to be void of any volatile organic compounds (VOCs). This indicated that the nature of the plume was not as noxious as first feared and that further treatment was unnecessary. The pump was shut down and the dam downstream was removed. On June 28, five days after the spill, the removal of the upstream dams was completed, sandbags were removed, and the pump site was restored.

The Clinton County Drain Commissioner's office learned several things during this incident:

- It is important to be informed of the substance that you are dealing with early on. Does it pose a risk to humans or wildlife? What impact could the substance have on the environment? A Safety Data Sheet would have been extremely helpful and could have impacted the emergency response and actions taken. In this case the Clinton County Drain Commissioner was not informed of the Safety Data Sheet until four days following the spill.
- It is crucial to have the proper supplies available for an initial response. In this instance, when the Clinton County Drain Office determined that there was a pollution concern, they were able to utilize absorption booms that are carried on Drain Office vehicles.
- It is beneficial to have a list of contractors and equipment that are available for mobilization on short notice. Establish relationships with reliable, trusted contractors that you can depend on as well as officials in your neighboring counties. In

SPILL RESPONSE CONT.

this case, the Gratiot County Drain Office helped to locate vital pumping equipment that was not readily available in Clinton County. Their cooperation, along with the quick action of dependable contractors, was essential to a streamlined response.

- It is important to understand the roles of other agencies. Maintain a reference manual with this key information:
 - The name and contact for the emergency management coordinator in your area. Each county in Michigan has an emergency management coordinator who is equipped for hazard mitigation and emergency response. Make it a priority to get to know the emergency manager in your county or municipality. They will be your link to various public safety agencies and non-governmental resources in the event of a disaster.
 - EGLE's spill and release reporting requirements. A quick guide to Michigan's notification requirements is available at the QR code to the right.
 - The names and numbers of key individuals within local law enforcement, the local health department and transportation divisions on the federal, state and local levels. Most of these individuals are fellow local government representatives. Make time to cultivate relationships with them.
- Tackling an emergency takes a team. It was "all hands on deck" as property owners and individuals from various agencies, counties and industries came together to prevent this spill from potentially becoming a disaster. Clear communication, willing cooperation, and quick response times can make all the difference in an emergency.

With Michigan's extensive county drainage systems, it is not a matter of if an emergency will occur, but rather a matter of when. Making reasonable preparations will help you minimize the uncertainty and stress involved and allow you to provide an effective response.

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WORKING WITH UTILITY COMPANIES TO PROTECT COUNTY DRAINS

By: Lauren Burton, Attorney, Clark Hill and Ron Hoeft, PE, PEA Group

Drain commissioners and drainage boards are tasked with the ongoing responsibility to protect the county and intercounty drains under their jurisdiction. This responsibility includes responding to, and working with, utility companies to allow utility crossings of drains. These utility crossings must adhere to the permit requirements of the drain commissioner or drainage board with jurisdiction. The most common utilities include pipelines, communication cables, sanitary sewer lines, water mains, and electrical lines.

For new utility crossing requests, drain commissioners and drainage boards should review the proposed project as no two projects are the same and determine appropriate permit requirements. Depending on the utility company, utility crossing projects could be limited to a sole crossing of a drain or could include multiple crossings spanning a single or several drainage districts.

To initiate the permit review process, a drain commissioner or drainage board may choose to hire consultants to review the project plans.

“..utility crossings must adhere to the permit requirements of the drain commissioner or drainage board with jurisdiction.”

Existing utility crossings that were constructed under a permit should be reviewed for compliance with the permit requirements. Permits should be kept on file in the office of the drain commissioner for future compliance reviews. If found to be out of compliance, the Michigan Drain Code authorizes drain commissioners and drainage boards the authority to demand compliance or compel the removal of the utility. Similarly, if utilities are constructed in drain rights-of-way without a permit, the utility is considered an obstruction of the drain and the drain commissioner or drainage board has the authority to compel its removal.

Several factors should be considered during plan review, such as the scope of the project, the length of proposed construction, and whether the drain is open channel or enclosed pipe. These factors play a role in determining permit requirements such as deposits or inspection fees, minimum depth requirements, and construction methods. For example, jack and bore vs. directional drill vs. open cut. Permits should also cover appropriate site restoration requirements and may provide for adequate security in order for the drain commissioner or drainage board to perform site restoration if the utility company fails to do so.



Jack & Bore crossing of the Locke Drain, City of Perry, Shiawassee County.

As the landowners and public corporations within a drainage district should not be responsible for the costs to review proposed utility crossings, permits should require the utility company to cover any engineering, inspection, administrative, legal, and recording costs. In addition, permits should require the utility company to agree to indemnify the drainage district for any damages to persons or property resulting from the construction of their utility.

During construction of the utility crossing, the drain commissioner or drainage board should have a competent inspector on site in order to

ensure the crossing is being performed pursuant to the permit requirements and that no illicit discharges enter the drain.

Lastly, it is crucial to require the utility company to provide as-built drawings after construction is completed. These drawings should be kept on file in the office of the drain commissioner for future compliance review and notice to future drain commissioners that there are utility crossings present.



Open cut through Dietz Creek Drain approximately 25 feet deep to install 36-inch gas pipeline.



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SIGNIFICANT CHANGES TO RENEWABLE ENERGY PROJECTS

**By: Ross K. Bower, Matthew A. Kuschel, and Kyle A. O'Meara
Fahey Schultz Burzyk Rhodes**

House Bills 5120/5121 and Senate Bills 271, 273, and 277 were introduced and advanced quickly as complementary policy. In particular, once the House Bills were introduced in October, both sets of bills were approved and sent to the Governor in less than a month. Promptly, Governor Whitmer signed the legislation creating Public Acts 229, 230, 233, 234, and 235. Together they are a seismic shift in regulation and siting of renewable energy systems with significant state, county, and local impacts.

The Senate bills require a 100% clean energy standard by 2040. Different mixes of energy production can reach the target—including nuclear power. Generally, “renewable” energy is targeted as 60% of generation with “traditional” energy (e.g., nuclear or natural gas with carbon capture) making up the remaining 40%. To support the 60% target, the House bills cover utility scale projects in wind and solar energy and even utility scale batteries or other energy storage systems.

In the words of the House Fiscal Agency Analysis, the new process is designed to “preempt local zoning or regulation” of wind and solar energy facilities. Rather than requiring zoning approval from local governments, renewable energy facility producers can obtain a certificate from the Michigan Public Service Commission (MPSC) to move forward with the construction of their projects. The legislation outlines requirements for the certificate application, though the MPSC has discretion over sufficiency to award a certificate. If the project satisfies the MPSC requirements and the MPSC issues a certificate, then local municipal regulation is preempted.

Utility scale renewable energy projects will have statewide uniform requirements or limits for material aspects of development. A project is “utility scale” and covered by the legislation if it has certain “nameplate capacity,” namely: 1) Solar projects: 50 megawatts or more; 2) Wind projects: 100 megawatts or more; and 3) Energy Storage Facilities: energy discharge capability of 200 megawatt hours or more. Smaller installations (e.g., an onsite solar array to offset electrical needs at a family farm) would follow the local process. Each type of utility project will have different setbacks and regulations. Generally, these are:



SOLAR

- Setbacks
 - 300-foot setback from building on nonparticipating properties.
 - 50-foot setback from the edge of a public road.
 - 50-foot setback from the property line of a nonparticipating property.
- National Electric Code compliant fencing.
- Maximum height of 25 feet when solar arrays are at full tilt.



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ENERGY CONT.

- No louder than 55 average hourly decibels on the A-weighted scale at the wall of the nearest nonparticipating dwelling.
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WIND



- Setbacks
 - 2.1 times the maximum blade tip height from residences on nonparticipating properties.
 - 1.1 times the maximum blade tip height from buildings on participating properties.
 - 1.1 times the maximum blade tip height from the center line of an overhead utility line easement
 - 1.1 times the maximum blade tip height from the center line of a public roadway.
- No more than 30 hours of shadow flicker on nonparticipating residences.
- Maximum height is only limited by a Determination of No Hazard to Air Navigation by the Federal Aviation Administration.
- No louder than 55 average hourly decibels on the A-weighted scale at the wall of the nearest nonparticipating dwelling.
- Light-mitigating technology—which may vary by project.

ENERGY STORAGE

- Match the setback and noise requirements for Solar projects.
- Comply with NFPA 855: “Standard for the Installation of Stationary Energy Storage Systems.”

[See Section 226(8)]

The MPSC may adopt “any” more stringent requirements but “must determine that the requirements are necessary for compliance with state or federal environmental regulations.”

Since it is focused on local zoning, the legislation should not change permits and agreements for proposed impacts within county and intercounty drain easements. The legislation does have specific requirements for stormwater assessment as well as coordination with County Drain Commissioners. When applying to the MPSC, an applicant must include a “stormwater assessment.” Section 225(1)(p). This assessment is described as a “plan to minimize, mitigate, and repair any drainage impacts.” The broad phrase “any drainage impacts” is undefined in the legislation. A broad reading could require the assessment to consider impacts to public and private drainage infrastructure. A narrow construction could require impacts to drainage infrastructure only within the boundaries of the project itself.

Drain Commissioners will also have an active role in any applications to the MPSC. Before an application is submitted to the MPSC, the applicant “shall make reasonable efforts to consult with the county drain commissioner.” Section 225(1)(p). The applicant must also “include evidence of those efforts in its application.” Thus, the consultation with the Drain Office should not be perfunctory but rather carry substance. In this way, even if there is no local government review, the MPSC review contemplates functional involvement of the Drain Office.

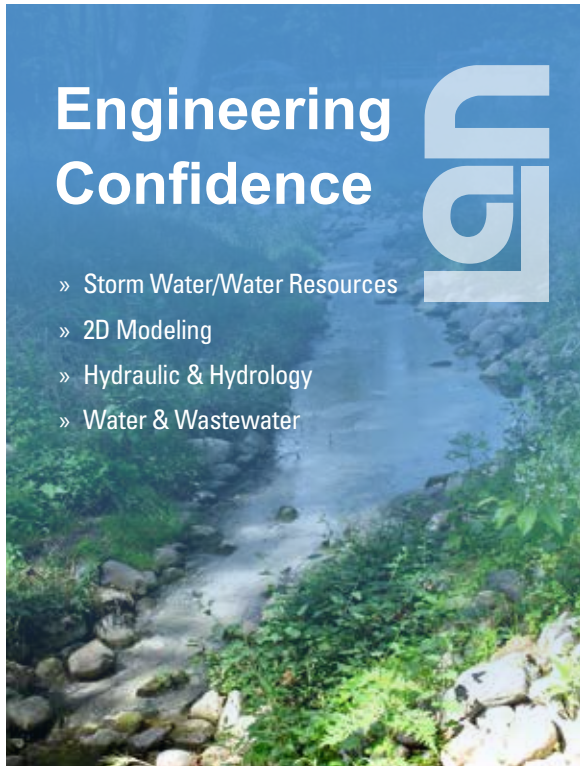
Additionally, the MPSC is directed to consider the percentage of land within the municipality dedicated to energy generation as a component when considering whether to grant an application. It is further directed to determine that a project “will not unreasonably diminish prime or other farmland.” Again, the statute says little, leaving it for the MPSC, developers, municipalities, and stakeholders to work out the scope of these factors.

Finally, townships and cities can adopt a “compatible ordinance” to retain a seat at the table. Such an ordinance is defined as one that “provides for the development of energy facilities” containing “requirements of which are no more restrictive than the provisions included in section 226(8).” If a municipality has such an ordinance, then they will process the application and not the MPSC. Municipalities likely must follow the setback, noise, and height limitations set forth in the legislation. They may also have to follow and incorporate future rules and regulations adopted by the MPSC. If additional

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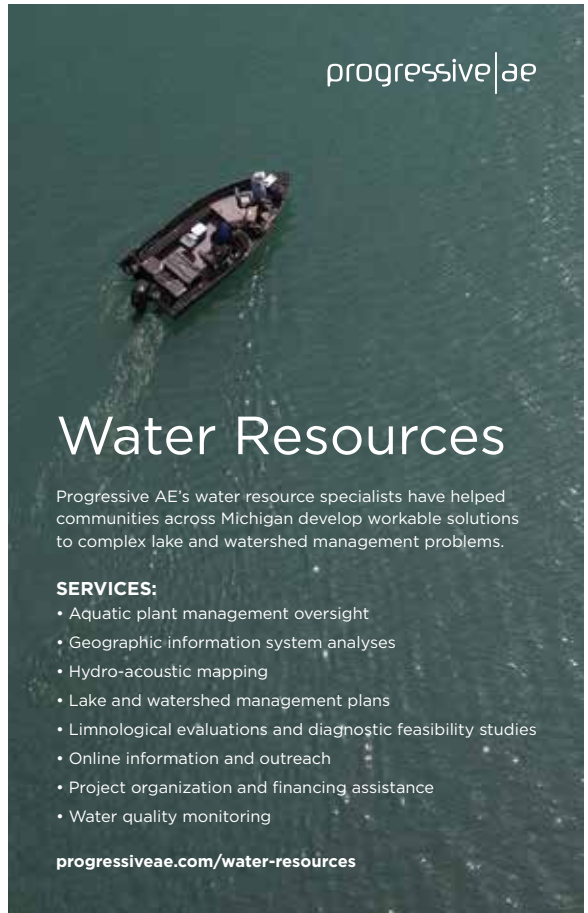
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ENERGY CONT.

local concerns may be expressed in a compatible ordinance, the scope and extent of possible customization is also unclear.

If the ordinance is ultimately determined to not be a “compatible ordinance,” then the project may proceed before the MPSC. When submitting to the MPSC, a developer must provide a grant to local governments in an amount determined by the MPSC to cover costs for a contested case proceeding within the MPSC. The maximum amount is \$75,000.00 per affected local unit and no more than \$150,000.00 total to all units. Affected local units are defined as units of “local government” where the energy facility will be located.

This is a significant change to local zoning authority and will present a different process for Drain Offices with several unknowns to be resolved. The legislation is not yet officially operative. After the 90-day delay following the last day of the legislative session, these public acts are not effective until February 13, 2024. Additionally, Public Act 233 takes effect one year later. Developers, the MPSC, and Drain Offices have until approximately February 2025 to prepare.



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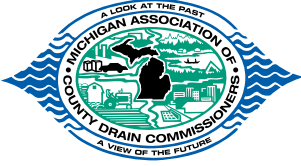
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