



Water Resources Division

Soil Erosion and Sedimentation Control (SESC) Program Authorized Public Agency Program Periodic Review Guidance

The Michigan Department of Environmental Quality (MDEQ) conducts formal comprehensive program reviews (audits) of SESC agencies on a frequency of once every five years utilizing criteria outlined in Section 9110(4) of Part 91, (SESC), of the Natural Resources and Environmental Protection Act, as amended. The comprehensive program review will examine information collected during the preceding interval between reviews, including MDEQ inspections, APA compliance and enforcement efforts, and other agency performance parameters. This document has been developed to assist Part 91 authorized public agencies (APA) in operating and maintaining approvable programs.

Procedures

Section 9110 (4)(a) of Part 91 states that an APA must have adopted SESC procedures that are at least as restrictive as Part 91 and the administrative rules.

Therefore, in order to meet the program review expectations, an APA must have a current, adopted, and MDEQ approved procedure that reflects the practices of the APA. The MDEQ will review the procedure to determine if it still meets the minimum requirements of Part 91. The MDEQ must approve the procedures prior to formal adoption.

Training

Sections 9110(4)(b) of Part 91 states that all individuals with decision-making authority who are responsible for administering the SESC Program for the APA must have current certificates of training under Section 9123 of Part 91.

Therefore, in order to meet the program review expectations, all staff responsible for SESC Program decision-making must have current certificates of training from the MDEQ. At a minimum, this includes: inspectors, plan reviewers, and compliance and enforcement personnel.

The MDEQ's training program includes two levels of certification:

The MDEQ has determined that the Construction Storm Water Operator Certification is equivalent to inspector level training for SESC. For an APA, all individuals responsible for making decisions related to SESC are required to have a valid certificate of training at the inspector level. The Construction Storm Water Operator Certification is also the prerequisite for Comprehensive SESC Training.

Certification as a Construction Storm Water Operator allows you to:

- Inspect sites to determine compliance with an SESC Plan.
- Document inspections.
- Identify SESC measures that are failing or require maintenance.
- Identify areas where additional SESC measures may be necessary.
- Report to the landowner (or Comprehensive Certified individuals for employees or contractors for APAs) the findings of the inspection, including any corrective or additional action recommended.
- Certified Construction Storm Water Operators may be the same person responsible for installing and maintaining the SESC measures, however, this is not a required duty under the certification.

Those individuals responsible for plan review and/or design, permit issuance determinations, and decisions on enforcement actions are required to have valid certificates of Comprehensive SESC Training. Prior to taking the comprehensive exam, individuals MUST be certified storm water operators.

Provided you work for a Part 91 APA, comprehensive SESC certifications allow you to:

- Review and/or design SESC Plans.
- Make final decisions regarding SESC permit issuance or denial.
- Make determinations on whether or not to pursue enforcement action for noncompliance with Part 91 and the administrative rules.
- Make plan updates as an employee or contractor for an APA .
- Review and/or design SESC measures or make determinations that design assistance is needed for SESC measures (e.g. sediment basins, diversions, riprap sizing, etc.).

The MDEQ requires that each APA have at least one individual with the comprehensive SESC certification. The MDEQ recommends that each agency have at least two trained individuals so that program administration and efficiency will not be disrupted if one individual is absent.

Funding

Sections 9110(4)(c)(iv)(A) of Part 91 states that the MDEQ shall consider if the APA has submitted evidence that the funding to administer the SESC Program allows it to effectively administer and enforce the program.

While there are no specific funding requirements, the APA's bid process, selection, and annual budget must be adequate to administer the agency's program in a manner that enables them to implement all other aspects of an approvable SESC program outlined in this document.

Inspections

Sections 9110(4)(c)(iv)(B) of Part 91 states that APAs must conduct adequate inspections to assure minimization of soil erosion and off-site sedimentation. All inspections must be documented in order to be considered complete inspections during the program review.

Frequency

The APA must conduct adequate inspections to assure minimization of soil erosion and off-site sedimentation. If the APA has not developed an approved site prioritization matrix, the following matrix shall be used:

Earth changes greater than one acre with a discharge to waters of the state:

Must be inspected by a certified storm water operator at least once per week and within 24 hours of a precipitation event resulting in a discharge from the site.*

* Maintenance activities to restore the original grade or hydraulic capacity on projects of one to five acres of disturbance are exempt from Michigan's Permit-by-Rule requirements and inspection frequencies. However, maintenance projects of more than five acres are required to comply with all of Michigan's Permit-by-Rule requirements.

This inspection frequency is determined by Michigan's Permit-by-Rule.

Earth changes greater than one acre without a discharge to waters of the state or earth changes less than one acre, but within 500 feet of a lake or stream:

Shall be inspected by a certified storm water operator or SESC inspector an average of not less than once per month, but may be required more often if the nature of the work or the characteristics of the site is likely to cause off-site sedimentation.

This inspection frequency has been determined to be the minimum acceptable by MDEQ staff provided off-site sedimentation or discharges to waters of the state are not occurring, based on the Part 91 requirement to ensure inspections are conducted in a manner and frequency to assure minimization of off-site sedimentation and discharges to waters of the state.

Quality

The MDEQ will review completed inspections for documentation of site conditions, corrective measures that are necessary, and the overall quality of the inspections. Inspections should indicate, at a minimum, the date, the conditions of the site, corrective action that is necessary, and whether previous issues were corrected. The inspections must be signed by the inspector and maintained by the Part 91 agency for at least five years.

Compliance and Enforcement Efforts

Section 9110(4)(c)(iv)(C) of Part 91 states that an APA must have effective compliance and enforcement efforts. The MDEQ will assess the compliance and enforcement effectiveness of an agency based on collected/submitted APA documentation such as: contract documents, punch tickets, and language in contract documents which include: Acquisition of cash, certified check, an irrevocable bank letter of credit or a surety bond to assure the installation and completion of protective measures, and/or site restoration.

The APA should ensure that all contract documents include a clear description of the contractor's responsibilities including: compliance with Part 91 and the administrative rules and the SESC plan, installation of materials, and ongoing monitoring and maintenance of site specific SESC measures by the contractor until all disturbed areas are stabilized and temporary SESC measures are removed. The contract document should provide the ability to adapt,

adjust, and add SESC measures necessary to maintain a level of control required to comply with Part 91, and the administrative rules.

Contract documents should clearly state the authority of the APA to enforce compliance with Part 91, and the administrative rules, and the consequences for non-compliance. It is recommended that contract documents include one or more of the following:

- Acquisition of cash, certified check, irrevocable bank letter of credit, or surety bond acceptable to the APA in the amount sufficient to assure the installation and completion of such protective or corrective measures, and/or site restoration, as may be required by the APA to comply with part 91, and the administrative rules.
- The ability of the APA to expend these funds, if in the opinion of the APA, the site may result in or contribute to soil erosion and sedimentation of adjacent properties or to waters of the state, if the SESC measures required in the SESC plan are not properly installed or maintained, or if the site is not in compliance with Part 91, or the administrative rules.
- The ability of the APA to assess costs for site restoration, site stabilization, and/or restore or repair off- site damages if the contractor does not comply with their contract, Part 91, or the administrative rules.

The APA is responsible to demonstrate an effective compliance and enforcement program. To demonstrate an adequate program, the APA must have an enforcement procedure that defines the enforcement steps that will be taken in an event of a violation. This procedure should include the process for acting on the contract provisions utilized by the agency, should such action become necessary. The enforcement procedure can allow for the skipping of enforcement steps if the APA decides this using their enforcement discretion. The APA will be expected to be in compliance with the procedures on an ongoing basis and during future periodic reviews. Documentation of efforts to return a site to compliance shall be maintained with the permit file.

Compliance and Enforcement Procedure

A written compliance and enforcement procedure should clearly outline the steps that will be taken by the APA to return the site to compliance. While different agencies have a wide array of compliance and enforcement options under Part 91, at a minimum, the procedure shall include a series of escalating steps from verbal and written notification, up to court action, and/or the APA taking corrective actions at the site, if necessary.

Adequacy of Plans

Sections 9110(4)(c)(iv)(D) and 9106(3)(c)(iii)(D) of Part 91 state that agencies shall have adequate and effective plans as required by the rule.

The agency can incorporate routine maintenance guidelines or procedures into their operating procedures in lieu of SESC plans. These guidelines or procedures can be used for the routine maintenance projects that are listed within the operating procedures. Projects not meeting the descriptions of routine, maintenance will be required to have a SESC plan.

Plans

All site plans approved by the APA must be appropriate for site conditions.

As outlined in Rule 1703 of the Administrative Rules promulgated under Part 91, all plans must include the following:

- a) A map or maps at a scale of not more than 200 feet to the inch.
- b) A legal description of the site.
- c) A site location sketch that includes proximity of any proposed earth change to lakes and streams, or both.
- d) Predominant land features.
- e) Contour intervals or slope description.
- f) Soil survey or a written description of the soils types of the exposed land area contemplated for the earth change.
- g) A description and the location of the physical limits of each proposed earth change.
- h) A description and the location of all existing and proposed on-site drainage and dewatering facilities.
- i) The timing and sequencing of each proposed earth change.
- j) The location and description for installing and removing all proposed temporary SESC measures.
- k) A description and location of all proposed permanent erosion and sedimentation control measures.
- l) A program proposal for the continued maintenance of all permanent SESC measures that remain after project completion, including the designation of the person responsible for maintenance.

During the audit, selected plans shall be reviewed to ensure that all required plan elements are included in approved plans and that the plan is adequate for site conditions. A sample checklist including all of the required elements of a Part 91 plan is available from your MDEQ District Office.

The MDEQ uses a database to collect information about on site condition inspections and plan review inspections conducted by the MDEQ. These inspections may be completed on an ongoing basis during the period between MDEQ's periodic comprehensive program reviews. The plans may be collected from the Part 91 agency directly, or from MDEQ Notice of Coverage (NOC) permit files. The inspection results can be queried from the database and utilized to determine the adequacy of the program for the upcoming periodic program reviews. If these inspections are performed in the interim between the agency comprehensive reviews, the results of the review inspections will be transmitted to the APA after the inspection, giving the agency the opportunity to make corrective actions before the time of the actual periodic review.

Site Conditions

Section 9110(4)(c)(iv)(E) of Part 91 states that the MDEQ shall consider conditions at construction sites under the jurisdiction of the APA in evaluating the overall effectiveness of the program.

Site condition evaluations conducted at the time of the comprehensive program review and throughout the period between reviews may be used to evaluate the overall effectiveness of the program.