

Unit Five

LAWS, RULES, and INSPECTIONS

Federal Laws

The Federal Clean Water Act (CWA) prohibits the discharge of any pollutant to navigable waters from a point source unless the discharge is authorized by a National Pollutant Discharge Elimination System (NPDES) permit. Furthermore, the 1987 amendments to the CWA recognized that storm water runoff was a significant source of water pollution. Thus, in the 1987 CWA amendments, Congress directed the United States Environmental Protection Agency (EPA) to develop regulations requiring permits for storm water discharges.

In 1990, in response to the 1987 CWA amendments, the EPA published its final rules for the NPDES Permit Program governing storm water. The program was to be implemented in two phases; the first phase, implemented in 1992, addressed sources of storm water runoff from designated groups, including construction activities disturbing five or more acres of land that have a direct discharge to waters of the state. In March, 2003, the Phase II NPDES Storm Water Program took effect, which lowered the size of regulated construction activities from five acres to one acre.

Administration of the NPDES Storm Water Program in Michigan was delegated to the Michigan Department of Environmental Quality (MDEQ), Water Bureau (WB).

State Laws

In 1994, the state legislature codified all state environmental laws into one, all inclusive statute known as the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). The WB utilizes two parts of the NREPA (Parts 31 and 91) to comply with the requirements of the federal construction storm water program. Parts 31 and 91 and the pertinent administrative rules (Rules) promulgated under those Parts can be found in Unit 6.

1. Part 91, Soil Erosion and Sedimentation Control (SESC), of the NREPA

Part 91 regulates soil erosion and off-site sedimentation from earth change activities. The primary goal of Part 91 is to protect adjacent properties and the waters of the state (lakes, streams, and wetlands regulated by Part 303, Wetlands Protection, of the NREPA) from sediment generated from unchecked erosion. Part 91 permits are generally required for any earth change that disturbs one or more acres of land or that is within 500 feet of the water's edge of a lake or stream. Permits must be issued to the landowner or easement holder.

Some earth change activities are exempt under Part 91 and do not require SESC permits. The exempted activities include, but not limited to, plowing and tilling for crop production, gas and oil exploration and development activities, earth changes that are

stabilized within 24 hours of the initial earth disturbance, and some logging and mining activities. Access roads to and from logging and mining sites; ancillary activities associated with logging and mining; and the removal of sand, gravel, clay, peat, or topsoil; are not included in the logging and mining exemptions and require SESC permits. Specific exemptions are identified in Sections 9115 and 9115a of Part 91 and in Rule 323.1705. Regardless if a permit is required or not, exempted activities are not exempt from enforcement actions authorized under Part 91 if the exempted activities result in a violation of Part 91.

Part 91 Agencies

The following agencies have responsibility for administering and enforcing Part 91 throughout the state:

1. Counties are required by statute to administer and enforce Part 91. The County Board of Commissioners of each county must designate an agency, referred to as a County Enforcing Agency (**CEA**), to be responsible for administering and enforcing Part 91 within the county. The county can administer its Part 91 SESC Program via a resolution or a SESC ordinance. If the county opts to administer its SESC Program by resolution, the county cannot require anything other than what is authorized in Part 91 and the Rules; whereas, if the county adopts a SESC ordinance, the program can be more restrictive than what is authorized by Part 91 and the Rules. The CEA is responsible to review SESC applications and plans, issue permits, inspect the permitted sites, and take any necessary compliance and enforcement actions to ensure that the sites remain in compliance with Part 91 and the Rules.
2. A municipality (defined as a city, village, charter township, and general law townships in counties with a population of 200,000 or more) may elect to administer and enforce its own SESC Program. In order for the municipality to administer its own program, the municipality must adopt a SESC ordinance and designate an agency, referred to as a Municipal Enforcing Agency (**MEA**), to administer and enforce Part 91 within the municipality. Upon approval of the ordinance by the MDEQ and designation as an MEA, the CEA no longer has authority to administer and enforce Part 91 within the municipality. The MEA assumes the same responsibilities that the CEA previously had in regards to plan review, permit issuance, inspections, and compliance and enforcement actions.
3. State, county, and municipal agencies that undertake earth change activities may apply to the MDEQ for designation as an Authorized Public Agency (**APA**). To be designated an APA, the agency must submit SESC procedures to the MDEQ that detail how it will minimize erosion and off-site sedimentation while undertaking earth change activities. Upon approval of the SESC procedures by the MDEQ and designation as an APA, the agency no longer has to apply to the CEA or MEA for SESC permits. It is the responsibility of the APA to develop SESC plans, implement the plans, conduct inspections, and take any necessary compliance and enforcement actions to ensure all sites are in compliance with Part 91 and the approved SESC procedures. The CEAs and MEAs have no oversight responsibility for APA projects; it is the responsibility of the MDEQ to

ensure that the APAs comply with Part 91 and their approved SESC procedures.

Part 91 Inspections, Inspection Frequency, and Documentation

Regardless if a project is permitted by a CEA or MEA or undertaken by an APA, the person conducting the inspections on behalf of the Part 91 agency must complete the SESC training required in Section 9123 of Part 91. Inspectors can be agency employees or contract employees. The inspector must be familiar with the project site, the SESC plan requirements, installation and maintenance details for the required SESC measures, and the requirements of Part 91, the Rules, and applicable SESC ordinance or APA SESC procedures.

The Part 91 inspector must regularly inspect (based on criteria and schedule determined by the Part 91 agency) the entire project site to determine if the SESC measures are properly installed and maintained in accordance with the SESC plan and if the SESC measures are effective in minimizing erosion and off-site sedimentation. Inspections should be conducted, at a minimum, just before or after earth work begins to ensure that temporary SESC measures are in place and functioning, routinely throughout the project during major changes in work activity, after major rainfall or snowmelt events, and prior to closing out the permit (or APA project) to ensure that the site is stabilized and completed in accordance with the SESC plan and permit conditions. It is recommended that the CEA or MEA inspect the proposed project site prior to issuing the permit; however, that inspection should be conducted by the agency person responsible for developing or approving the SESC plan and issuing the SESC permit.

All observations (good or bad) made during the inspections and any necessary corrective actions and timeframes to make those corrections, must be documented on an inspection report form such as the one provided in Appendix 5A. A copy of the inspection report should be given to the on-site person responsible for the project or mailed to the permittee.

In addition to verifying that prescribed SESC measures are properly installed and maintained, the inspector should continuously be looking for potential problems that may occur on the site during the next strong wind, rainfall, or snowmelt event. It is much more effective to prevent a sediment discharge from happening than fixing the problem after it occurs and damage is done. In other words, the inspector should be **proactive** and anticipate problems, not wait and react to problems after they occur. If corrective actions are necessary that require revisions to the approved plan or permit conditions, a copy of the inspection report must also be forwarded to the Part 91 agency staff person responsible for approving/developing the original SESC plan and/or issuing the SESC permit. Once the appropriate revisions are identified and/or made, the agency staff person shall forward copies of the revised plan and/or permit to the permittee and to the inspector.

If corrective actions are required, the Part 91 inspector must conduct timely follow-up inspections which coincide with the timeframes set forth in the inspection reports to ensure compliance with the requested corrective actions. "Timely" is a relative term and can range anywhere from immediately for discharges to the waters of the state, to 24 hours for "minor" maintenance issues to up to five days for corrections requiring major plan revisions and/or significant adjustments to existing SESC measures. The potential for resource damage would also influence the amount of time allowed to make the necessary corrective actions. Any time there is a discharge or a potential discharge of sediment to the waters of the state, corrective actions and follow-up inspections should be done immediately to within 24 hours of discovery. Rule 1709(4) requires that SESC measures be maintained on a daily basis. Therefore, the timeframe required for complying with general maintenance items or other minor adjustments should be no more than 24 hours; by the end of the work day is preferable. For other more substantial corrective actions, the maximum allowable time by law to comply is 5 days after notification (Section 9118 of Part 91). If corrective actions are not completed within the specified timeframes, the inspector should proceed in accordance with the Part 91 agency's compliance and enforcement procedures or guidelines.

Note: *Just because the inspector gives the permittee a specified time to correct a problem, the permittee is still liable for any sediment discharge and damage that may occur during that time.*

Part 91 Inspector Responsibilities

Regardless if the project is permitted by a CEA or MEA or undertaken by an APA, it is the responsibility of the Part 91 inspector to ensure that the permittee (or APA) complies with Part 91, the Rules, applicable SESC ordinance or SESC procedures, approved plans, and permit conditions. Part 91 inspectors are responsible for ensuring or verifying that:

- 1) Earth changes observed (when traveling to perform inspections) that require SESC permits, have SESC permits.
- 2) SESC permits are posted on site and the approved SESC plans are available on site.
- 3) Inspections (and follow-up inspections) are done in a manner and frequency to assure minimization of erosion and off-site sedimentation. This requires inspecting the entire permitted site, not just those areas that are easily accessible.
- 4) Inspections are properly documented.
- 5) SESC measures are properly installed and maintained per standard details or plan specifications and are effective. In addition, the inspector must be **proactive** and anticipate or assess potential problems that may occur as the site or weather conditions change instead of reacting to problems as they arise.

Note: *If being proactive requires that additional controls, not specified on the original plan, be installed on the site, the inspector must seek assistance from the person responsible for approving the plan if the inspector has only completed the Inspector Training and not the complete SESC training.*

- 6) Sediment caused by accelerated erosion does not leave the project site or discharge to waters of the state located within or off the site.
- 7) Water discharged from the site is at nonerosive velocities.
- 8) Temporary SESC measures are installed before or upon (not after) the commencement of the earth change activity.
- 9) Temporary SESC measures are maintained on a daily basis.
- 10) Permanent SESC measures are installed on all slopes, channels, ditches, or any disturbed land within 5 calendar days after final grading or the final earth change has been completed.
- 11) Projects (permitted or APA) are not closed out until the site is stabilized and the temporary SESC measures are removed. Stabilization is defined in the Rule 1701 as *the establishment of vegetation or proper placement, grading, or covering of soil to ensure its resistance to soil erosion, sliding, or other movement.*
- 12) Compliance and enforcement actions are taken in accordance with the Part 91 agency's compliance and enforcement procedures or guidelines, Part 91, and the Rules.

Any violation of Part 91, the Rules, applicable SESC ordinance, approved SESC procedures, approved SESC plans or SESC permit conditions subjects the permittee or APA to fines and penalties of up to \$25,000 per day of violation. In addition, lack of adequate inspections or compliance and enforcement actions can result in CEAs being placed on probation and MEAs and APAs having their Part 91 agency designation revoked.

2. Part 31, Water Resources Protection, of the NREPA

The primary goal of Part 31 is to protect and conserve the waters of the state. This includes the prohibition of pollution of the waters of the state and any obstruction or occupation of floodways. The Part 31 definition of waters of the state is much broader than the Part 91 definition; it includes all surface water and groundwater in the state, regardless of size.

Permit-by-Rule Promulgated Under Part 31

In response to the federal storm water regulations, the WB developed administrative rules (Permit-by-Rule) under the authority of Part 31 to permit storm water discharges from construction activities. Storm water permits are required for any construction activity that disturbs one or more acres of land and has a point source discharge to the surface waters of the state. A point source discharge is defined as a *“discharge that is released to the waters of the state by a discernable, confined, and discrete conveyance, including any of the following from which wastewater is or may be discharged: a pipe, a ditch, a channel, a conduit...”* Point source discharge also includes any runoff as a result of grading, regardless if it is sheet flow or concentrated flow.

Permit-by-Rule makes full use of Part 91 and avoids a double permitting situation. Prior to receiving authorization to discharge storm water, the applicant must first obtain coverage under Part 91 by securing: 1) an SESC permit from the appropriate CEA or MEA; 2) being designated an APA and having a site specific SESC plan for the project; or 3) securing permits under Part 615, Supervisor of Wells or Part 631, Reclamation of Mining Lands, of the NREPA. Under Permit-by-Rule, the permittee must be the landowner or easement holder.

Permit-by-Rule provides automatic storm water permit coverage for construction sites that disturb 1-5 acres with a point source discharge to the surface waters of the state, as long as the landowner has coverage under Part 91. No storm water application or permit fee is required for the 1-5 five acre sites; however, the permittee must comply with the requirements of Permit-by-Rule. Storm water coverage begins immediately upon obtaining the Part 91 coverage.

Owners of projects that disturb 5 acres or more of land that have a point source discharge to surface waters of the state must submit a Notice of Coverage (NOC) to the WB to receive coverage under Permit-by-Rule (Appendix 5B). In addition to the NOC, the landowner must also include a copy of the SESC permit (if not an APA), the SESC plan, a site location map, and appropriate application fee (\$400 in 2008). Coverage begins immediately upon the WB receiving a complete NOC, application fee, and other required documentation. Similar to the owners of the 1-5 acre sites, the permittee must comply with the requirements of Permit-by-Rule.

Permit-by-Rule Requirements

All permittees authorized to discharge storm water under Permit-by-Rule shall comply with the following:

- 1) Not directly or indirectly discharge any substance into the waters of the state in violation of Act 451(NREPA), Part 31 or the rules promulgated there under, such as Section 3109, which includes substances that are or may become injurious to any of the following:
 - a) To the public health, safety, or welfare.
 - b) To domestic, commercial, industrial, agricultural, recreational, or other uses that are being made or may be made of such waters.
 - c) To the value or utility of riparian lands.

- d) To livestock, wild animals, birds, fish, aquatic life, or plants, or to the growth, propagation, or the growth or propagation thereof be prevented or injuriously affected; or whereby the value of fish and game is or may be destroyed or impaired.
- 2) Be in compliance with the SESC permit for the site or, if the construction activity is carried out by an APA, the approved control plan, including the selected control measures that are applicable to the site.
- 3) Properly maintain and operate the SESC measures.
- 4) Have the SESC measures under the specific supervision and control of a storm water operator who has been certified by the MDEQ as properly qualified to operate the SESC measures.
- 5) Cause the construction site to be inspected by a certified storm water operator once per week and within 24 hours after precipitation events that result in a discharge from the site, and ensure that any needed corrective actions are carried out. A log of the inspections and corrective actions shall be maintained on file by the permittee for review and shall be retained for a period of three years from the date of the inspection or corrective action.
- 6) Be in accordance with the requirements for on-land facilities as set forth in spillage of oil and pollution materials, being Part 5 of these rules, the permittee provide facilities and comply with reporting procedures for containment of any accidental losses of oil or other pollution materials.
- 7) Dispose of solids, sediment, filter backwash, or other wastes that are removed from or results from the treatment of control of storm water in compliance with applicable state laws and regulations, and in a manner that prevents any waste from entering surface waters of the state.
- 8) Allow the MDEQ to enter upon the site at any reasonable time before the expiration of the authorization to discharge as set forth in Subrule (5) of this rule, upon presentation of credentials and other documents as may be required by law, for the purpose of inspecting conditions relating to the pollution of any waters or determining compliance with the provisions of this rule.
- 9) Upon request, make available for public inspection or provide to the MDEQ all reports or logs prepared pursuant to the provisions of this rule.
- 10) File a revised NOC before any expansion of the construction activity or change in the SESC measures that require a change in the SESC permit. **Note:** *The NOC automatically expires when the SESC permit expires so if the SESC permit will expire before the site is stabilized, both the SESC permit and NOC must be extended before they expire or the permittee will have to reapply for a new NOC.*

Extension or modification of the NOC must be done using the “Notice of Coverage Renewal” form (Appendix 5C).

Any violation of the terms and conditions of Permit-by-Rule is a violation of Section 3115 of Part 31 and subjects the permittee to fines and penalties of up to \$25,000 per day of violation.

Certified Storm Water Operator

A certified storm water operator can be any person who has a training certificate issued by the MDEQ pursuant to the provisions of Section 3110 of Part 31. Typically, the certified storm water operator is a staff person of the APA, a consultant, or the permittee. The primary difference between the Part 91 inspector and the certified storm water operator is that the Part 91 inspector is employed (staff or contract employee) by the Part 91 agency to oversee permitted (or APA) projects to ensure they are in compliance with Part 91; whereas, the certified storm water operator is the permittee, or employed by the permittee, to assist the permittee in complying with the requirements of Permit-by-Rule.

Although the permittee is ultimately responsible for complying with the requirements of Permit-by-Rule, the permittee relies on the certified storm water operator for assistance in meeting some or all of the Permit-by-Rule requirements. Prior to conducting the inspections, the certified storm water operator should meet with the permittee so they have a clear understanding of which of the above Permit-by-Rule requirements he/she is responsible for and who is responsible for the other requirements. Some certified storm water operators may be responsible for ensuring compliance with all 10 items; whereas, others may only be responsible for Items 2-5. There should also be a clear understanding regarding what authority the certified storm water operator has, or does not have, when it is necessary to take preventive or corrective actions to ensure compliance with Permit-by-Rule. Some certified storm water operators may be given complete authority to do whatever is necessary to ensure compliance with Permit-by-Rule; whereas, others may only have authority to inspect and report findings to the permittee or some other specified individual.

Permit by Rule Inspections, Inspection Frequency, and Documentation

Certified storm water operators are required to inspect all construction sites once per week and within 24 hours of a precipitation event that results in a discharge from the site. These inspections are conducted to ensure that SESC measures are properly installed and maintained and appropriate for the site conditions. When conducting the inspections, the entire site must be inspected, not just at the locations of the prescribed SESC measures. It is the duty of the certified storm water operator to keep the permittee informed of problems, potential problems, and necessary corrective actions.

An important part of the certified storm water operator’s responsibility is to know how to properly install and maintain the SESC measures identified on the plans. All construction plans should identify the location of all prescribed SESC measures. One method of denoting the SESC measures is to write the names of each control on the

plan where they are to be located; another more common method is to use a number, symbol, or other unique descriptor that represents a specific SESC measure. It is also equally important that the certified storm water operator know the sequence of when each control measure should be installed and removed. Being familiar with the construction plans, the requirements of Permit-by-Rule and expectations of the permittee will make the certified storm water operator's job easier and more effective.

The certified storm water operator must complete an inspection report or keep a written log of all inspections. The inspection report or log must contain information regarding the conditions of the control measures and any corrective actions that need to be taken. The inspection log should be kept on the construction site at all times and must be available for public inspection. The inspection log shall be maintained on file by the construction permittee for a minimum of three years.

In conjunction with the inspection log, it is recommended that the certified storm water operator use a sketch or a reduced photocopy of the site plan showing the location and type of control measures. Problems observed at these locations, or at other locations on the construction site, should be highlighted and any corrective measures undertaken should be drawn in and noted in detail on the front side of the form.

The "observations" in the site log should include as much detail as possible about the control measures, even if they are working properly. This is important because they could be working one week and fail the next. Also include observations of areas other than where control measures are installed. Any problems on the site must be documented. Refer to the site plan or sketch as much as possible to make sure it is clear where the problems are. The more detail the better.

The "Corrective Action Taken/Needed" should include anything that is needed to repair or improve the prescribed control measures. This can include regular maintenance activities, additional measures installed (after conferring with the person responsible for developing/approving the plan), or emergency situations. (For example: there may have been a control that failed the week before that has since been repaired. These repairs should be noted). This section is also the place to put any suggestions for improvements, or for correcting a bad soil erosion situation. It is not required by the MDEQ that a certified storm water operator make suggestions, but the permittee may expect such help.

Permit by Rule Reporting

The certified storm water operator is responsible to communicate to the permittee what corrections need to be made. To ensure the site remains in compliance with the permit, the reporting of all problem areas for the entire site is necessary.

This communication is often accomplished through the written inspection log. This log may be the only contact between the certified storm water operator and the permittee. Since the permittee is the person responsible for the site, they must be kept well

informed. When conducting site inspections, it is very important to keep detailed records.

The certified storm water operator is required to conduct site inspections, keep a written log of the inspections, and record corrective actions that need to be performed by the permittee. They are not responsible for designing, installing, or maintaining the controls. It is the responsibility of the permittee to keep the site in compliance with the permit. However, the permittee may turn to the certified storm water operator for help. In addition, there may be instances where the permittee may delegate authority to others on site in order to make the project run more efficiently. Thus, the details of each permittee/certified storm water operator relationship will need to be worked out by the individuals involved. As the expectations may change from job to job, it is important to discuss them at the onset of each project.

Controls can be structural, vegetative, and managerial tools used to prevent or control storm water and subsequent erosion and sedimentation. There may be times when problems occur at locations other than those specified on the SESC plan. In these instances, the permittee will need to revise the SESC plan to install additional control measures. A good certified storm water operator will become familiar with the installation and maintenance requirements of commonly used controls in order to identify potential problems on site. Improper installation and poor of maintenance are the major reasons for why SESC measures fail.

Site Stabilization and Site Termination

It is the responsibility of the permittee to ensure that the required inspections and documentation are continued until the site is stabilized and the authorization to discharge storm water is terminated. A site is considered to be stabilized only after:

1. Permanent control structures have been installed (Part 91 requires that permanent controls be installed within 5 days of completing final grade);
2. Good growth of vegetation or other permanent controls have been established
3. Maintenance for permanent controls have been arranged;
4. Temporary SESC controls or BMPs have been removed

For sites disturbing 1-5 acres, Permit-by-Rule coverage (*or the authorization to discharge storm water*) terminates when the Part 91 inspector determines the site is stabilized and closes out the permit or when the SESC permit expires. For APA projects with no permits, it is when the Part 91 inspector (*or certified storm water operator*) determines that the site is stabilized or five years from the start of the project, whichever is sooner. The certified storm water operator must continue conducting inspections until the site is stabilized.

For sites disturbing 5 or more acres, Permit-by-Rule coverage (*or authorization to discharge storm water*) terminates when the permittee (including APA projects) sends a Notice of Termination (Appendix 5D) to the WB or when the SESC permit expires or five years from the start of the project, whichever is sooner. The certified storm water operator must continue conducting inspections until the NOC is terminated. **Note:** If

coverage is terminated before the site is stabilized, the owner will be violation of Part 31 for discharging without a permit. In addition, the owner will have to reapply for coverage which means submitting a new NOC, application fee, and other pertinent documents.

Unit Five Review

1. The Federal _____ (CWA) prohibits the discharge of any pollutant (*including storm water*) to navigable waters from point source discharges unless the discharge is authorized by a National Pollutant Discharge Elimination System (NPDES) permit.
2. In 1994, the state legislature codified all state environmental laws into one, all inclusive statute known as the _____, 1994 PA 451, as amended (NREPA).
3. The primary goal of Part 91 (of the NREPA) is to protect _____ properties and the _____ of the state from _____ generated from unchecked erosion.
4. Part 91 permits are generally required for any earth change that disturbs _____ or more acres of land or that is within _____ feet of the water's edge of a lake or stream.
5. SESC permits must be issued to the _____ or _____ holder.
6. The three types of agencies responsible for administering and enforcing Part 91 are _____, _____, and _____.
7. The _____ and _____ issue SESC permits whereas the _____ undertake earth change activities in accordance with procedures submitted to the MDEQ.
8. The Part 91 inspector must regularly _____ the project site to determine if the SESC measures are properly _____ and _____ in accordance with the SESC plan and if the SESC measures are _____ in minimizing erosion and off-site sedimentation.
9. Part 91 inspectors are responsible for ensuring or verifying that:
 - a) SESC permits are _____ on site.
 - b) Inspections are done in a manner and _____ to assure minimization of _____ and off-site _____.
 - c) Inspections are properly _____.
 - d) SESC measures are properly installed and maintained per standard details or plan _____ and are _____. In addition, the inspector must be _____ and anticipate or assess potential problems that may occur.
 - e) Sediment caused by accelerated erosion does not _____ the project site.

- f) Water discharged from the site is at _____ velocities.
 - g) Temporary SESC measures are installed _____ or upon _____ of the earth change activity.
 - h) Temporary SESC measures are maintained on a _____ basis.
 - i) Permanent SESC measures are installed on all slopes, channels, ditches, or any disturbed land within _____ calendar days after final grading.
 - j) Projects are not closed out until the site is _____ and the temporary SESC measures are _____.
 - k) Compliance and enforcement actions are taken in accordance with Part 91 agency's _____ and _____ procedures or guidelines, Part 91 and the Rules.
10. Any violation of Part 91, the Rules, applicable SESC ordinance approved SESC procedures, approved SESC plans or SESC permit conditions subjects the permittee or _____ to fines and penalties up to _____ per day of violation.
11. In addition to the fines and penalties, lack of adequate inspections or compliance and enforcement actions can result in CEAS being placed on _____ and MEAs and APAs having their Part 91 agency designation _____.
12. The primary goal of Part 31 is to _____ and _____ the waters of the state.
13. In response to the _____ storm water requirements, the WB developed administrative rules (Permit-by-Rule) under the authority of Part 91 to permit storm water _____ from construction activities.
14. Storm water permits are required for any construction activity that disturbs _____ or more acres of land and has a _____ discharge to the surface waters of the state.
15. In addition to including a discernable, confined and discrete conveyance, point source discharge includes any runoff as a result of _____, regardless if it is sheet flow or concentrated flow.
16. Permit-by-Rule provides _____ storm water permit coverage for construction sites that disturb _____ - _____ acres with a point source discharge to the surface waters of the state as long as the landowner has coverage under Part 91. However, the permittee must comply with the requirements of Permit-by-Rule.
17. Owners of projects that disturb _____ acres or more of land that have a point source discharge to surface waters of the state must submit a _____ (_____) [along with other required documents and fees] to the WB to receive coverage under Permit-by-Rule. The permittee must also comply with the requirements of Permit-by-Rule.

18. All permittees authorized to discharge storm water under Permit-by-Rule shall comply with the following: (**Note:** Although it is ultimately the permittee's responsibility to comply with all of the following, the certified storm water operator is responsible for only those requirements that are specifically assigned to him/her by the permittee which may include as few as two to all of the responsibilities.)

- a) Not directly or indirectly _____ any _____ into waters of the state in violation of the NREPA, Part 31 or the rules promulgated there under which includes substances that are or _____ become injurious to specified uses.
- b) Be in compliance with the _____ or, if the construction activity is carried out by an APA, the _____ control plan, including the selected control measures that are applicable to the site.
- c) Properly _____ and _____ SESC measures.
- d) Have the SESC measures under the specific supervision and control of a _____ who has been certified by the MDEQ.
- e) Cause the construction site to be inspected by a certified storm water operator _____ per week and within _____ hours after precipitation events that result in a discharge from the site and ensure that needed _____ are carried out.
- f) Ensure that a log of the _____ and corrective actions shall maintained on file by the permittee for review and shall be retained for a period of _____ years from the date of inspection or corrective action..
- g) Be in accordance with the requirements for on-land facilities as set forth in spillage of _____ and _____ materials, being Part 5 of the NREPA rules.
- h) Dispose of solids, _____, filter backwash, or other _____ that are removed from or results from the treatment of control of storm water in compliance with applicable state laws and regulations.
- i) Allow the MDEQ to enter upon the site at any _____ time.....
- j) Upon request, make available for _____ inspection or provide to the MDEQ all _____ or _____ prepared pursuant to the provisions of this rule.
- k) File a _____ NOC before any expansion of the construction activity or _____ in the SESC measures that require a change in the SESC permit.

19. Any violation of the terms and conditions of Permit-by-Rule subjects the permittee to fines and penalties of up to _____ per day of violation.

20. A certified storm water operator can be _____ person who has a _____ issued by the MDEQ pursuant to the provisions of Part 31.

21. The Part 91 inspector is employed by the Part 91 agency to oversee _____ (or APA) projects to ensure they are in compliance with Part 91; whereas, the certified storm water operator is the _____, or employed by the _____, to assist the permittee in complying with the requirements of Permit-by-Rule.

22. A site is considered stabilized only after:

- a) _____ control structures have been _____;
- b) Good growth of _____ or other permanent controls have been established;
- c) _____ for permanent controls have been arranged;
- d) _____ SESC measures or BMPs have been removed.

23. For sites disturbing 5 or more acres, Permit-by-Rule terminates when the permittee sends a _____ of _____ to the WB or when the SESC permit _____ or _____ years from the start of the project, whichever is sooner.

Answers to Unit Five Review

1. The Federal **Clean Water Act** (CWA) prohibits the discharge of any pollutant (*including storm water*) to navigable waters from point source discharges unless the discharge is authorized by a National Pollutant Discharge Elimination System (NPDES) permit.
2. In 1994, the state legislature codified all state environmental laws into one, all inclusive statute known as the **Natural Resources and Environmental Protection Act**, 1994 PA 451, as amended (NREPA).
3. The primary goal of Part 91 (of the NREPA) is to protect **adjacent** properties and the **waters** of the state from **sediment** generated from unchecked erosion.
4. Part 91 permits are generally required for any earth change that disturbs **one** or more acres of land or that is within **500** feet of the water's edge of a lake or stream.
5. SESC permits must be issued to the **landowner** or **easement** holder.
6. The three types of agencies responsible for administering and enforcing Part 91 are **CEAs**, **MEAs**, and **APAs**.
7. The **CEAs** and **MEAs** issue SESC permits whereas the **APAs** undertake earth change activities in accordance with procedures submitted to the MDEQ.
8. The Part 91 inspector must regularly **inspect** the project site to determine if the SESC measures are properly **installed** and **maintained** in accordance with the SESC plan and if the SESC measures are **effective** in minimizing erosion and off-site sedimentation.
9. Part 91 inspectors are responsible for ensuring or verifying that:
 - a. SESC permits are **posted** on site.
 - b. Inspections are done in a manner and **frequency** to assure minimization of **erosion** and off-site **sedimentation**.
 - c. Inspections are properly **documented**.
 - d. SESC measures are properly installed and maintained per standard details or plan **specifications** and are **effective**. In addition, the inspector must be **proactive** and anticipate or assess potential problems that may occur.
 - e. Sediment caused by accelerated erosion does not **leave** the project site.

- f. Water discharged from the site is at **nonerosive** velocities.
 - g. Temporary SESC measures are installed **before** or upon **commencement** of the earth change activity.
 - h. Temporary SESC measures are maintained on a **daily** basis.
 - i. Permanent SESC measures are installed on all slopes, channels, ditches, or any disturbed land within **5** calendar days after final grading.
 - j. Projects are not closed out until the site is **stabilized** and the temporary SESC measures are **removed**.
 - k. Compliance and enforcement actions are taken in accordance with Part 91 agency's **compliance** and **enforcement** procedures or guidelines, Part 91, and the Rules.
10. Any violation of Part 91, the Rules, applicable SESC ordinance approved SESC procedures, approved SESC plans or SESC permit conditions subjects the permittee or **APA** to fines and penalties up to **\$25,000** per day of violation.
11. In addition to the fines and penalties, lack of adequate inspections or compliance and enforcement actions can result in CEAS being placed on **probation** and MEAs and APAs having their Part 91 agency designation **revoked**.
12. The primary goal of Part 31 is to **protect** and **conserve** the waters of the state.
13. In response to the **federal** storm water requirements, the WB developed administrative rules (Permit-by-Rule) under the authority of Part 91 to permit storm water **discharges** from construction activities.
14. Storm water permits are required for any construction activity that disturbs **one** or more acres of land and has a **point source** discharge to the surface waters of the state.
15. In addition to including a discernable, confined and discrete conveyance, point source discharge includes any runoff as a result of **grading**, regardless if it is sheet flow or concentrated flow.
16. Permit-by-Rule provides **automatic** storm water permit coverage for construction sites that disturb **1- 5** acres with a point source discharge to the surface waters of the state as long as the landowner has coverage under Part 91. However, the permittee must comply with the requirements of Permit-by-Rule.
17. Owners of projects that disturb **5** acres or more of land that have a point source discharge to surface waters of the state must submit a **Notice of Coverage (NOC)** *[along with other required documents and fees]* to the WB to receive coverage under Permit-by-Rule. The permittee must also comply with the requirements of Permit-by-Rule.

18. All permittees authorized to discharge storm water under Permit-by-Rule shall comply with the following: (**Note:** *Although it is ultimately the permittee's responsibility to comply with all of the following, the certified storm water operator is responsible for only those requirements that are specifically assigned to him/her by the permittee which may include as few as two to all of the responsibilities.*)

- a. Not directly or indirectly **discharge** any **substance** into waters of the state in violation of the NREPA, Part 31 or the rules promulgated there under which includes substances that are or **may** become injurious to specified uses.
- b. Be in compliance with the **SESC plan** or, if the construction activity is carried out by an APA, **the approved** control plan, including the selected control measures that are applicable to the site.
- c. Properly **maintain** and **operate** SESC measures.
- d. Have the SESC measures under the specific supervision and control of a **storm water operator** who has been certified by the MDEQ.
- e. Cause the construction site to be inspected by a certified storm water operator **once** per week and within **24** hours after precipitation events that result in a discharge from the site and ensure that needed **corrective actions** are carried out.
- f. Ensure that a log of the **inspections** and corrective actions shall maintained on file by the permittee for review and shall be retained for a period of **three** years from the date of the inspection or corrective action.
- g. Be in accordance with the requirements for on-land facilities as set forth in spillage of **oil** and **pollution** materials, being Part 5 of the NREPA rules.
- h. Dispose of solids, **sediment**, filter backwash, or other **wastes** that are removed from or results from the treatment of control of storm water in compliance with applicable state laws and regulations.
- i. Allow the MDEQ to enter upon the site at any **reasonable** time.....
- j. Upon request, make available for **public** inspection or provide to the MDEQ all **reports** or **logs** prepared pursuant to the provisions of this rule.
- k. File a revised NOC before any expansion of the construction activity or **change** in the SESC measures that require a change in the SESC permit.

19. Any violation of the terms and conditions of Permit-by-Rule subjects the permittee to fines and penalties of up to **\$25,000** per day of violation.

20. A certified storm water operator can be **any** person who has a **training certificate** issued by the MDEQ pursuant to the provisions of Part 31.

21. The Part 91 inspector is employed by the Part 91 agency to oversee **permitted** (or APA) projects to ensure they are in compliance with Part 91; whereas, the certified storm water operator is the **permittee**, or employed by the permittee, to assist the permittee in complying with the requirements of Permit-by-Rule.
22. A site is considered stabilized only after:
- a. **Permanent** control structures have been **installed**;
 - b. Good growth of **vegetation** or other permanent controls have been established;
 - c. **Maintenance** for permanent controls have been arranged;
 - d. **Temporary** SESC measures or BMPs have been removed.
23. For sites disturbing **5 or more acres**, **Permit-by-Rule terminates when the permittee sends a Notice of Termination** to the WB or when the SESC permit **expires** or 5 years from the start of the project, whichever is sooner.

PART 91 SITE INSPECTION REPORT

Project Name		
Address	City	Township
Permit No.	Inspection No.	Date of Inspection

A GENERAL

Is permit posted at site?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are approved plans available?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is sediment properly contained on project site?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is earth change confined to areas specified on plans?	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
Is there a potential for sediment to leave project site?	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes

B CONTROL MEASURES

Are controls installed per plans?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Are controls adequate for this site?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are controls properly maintained?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Are storm sewers being protected?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

C INSPECTOR'S COMMENTS

Specific on site conditions:

Weather conditions:

Documentation (photos, samples, measurements, etc.):

Recommendations:

Corrections (if any) must be made by _____/_____/_____ (date)

Persons attending inspection:

D ACTION TAKEN

<input type="checkbox"/> Report left on-site with _____	<input type="checkbox"/> Report mailed to _____
<input type="checkbox"/> Violation notice recommended _____	<input type="checkbox"/> Copies sent to _____
_____	_____
Inspector's Signature	Date



NPDES No.:
Receipt No.:
Permit Id:

NOTICE OF COVERAGE

FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
STORM WATER DISCHARGES FROM CONSTRUCTION ACTIVITY

By Authority of R 323.2190 of Act 451, Public Acts of 1994, as amended
Failure to comply with the terms and provisions of R 323.2190 may result in fines up to \$25,000
per day and the possibility of imprisonment.

Filing of this Notice of Coverage with the Michigan Department of Environmental Quality is required before initiation of construction activities **that disturb 5 acres or more of land or is part of a larger common plan of development or sale** that requires a national permit pursuant to the provisions of 40 C.F.R. Section 122.26(a). This constitutes notice that the construction permittee is authorized under R 323.2190 to discharge storm water associated with the construction activities. The construction permittee must be the land owner or the recorded easement holder of the property where the construction activity is located, or the Authorized Public Agency if the construction activity is carried out by an Authorized Public Agency.

INSTRUCTIONS AND FEE INFORMATION: Soil Erosion and Sedimentation Control (SESC) coverage is required from the appropriate Part 91 permitting entity (Act 451, Part 91) before submitting this Notice of Coverage. Submittal of a Notice of Coverage requires payment of a **\$400 fee**, made payable to the State of Michigan. The construction permittee will be deemed to have an NPDES permit for storm water discharges from a construction site when the Michigan Department of Environmental Quality receives the completed Notice of Coverage, **a copy of the appropriate SESC coverage, a copy of the approved SESC Plan, a site map and the \$400 fee.** These must be received before construction begins. This authorization expires when the SESC Permit expires, is revoked or terminated by the Part 91 permitting entity or when the authorized public agency determines that the project has been completed by the stabilization of earth change activity.

CONSTRUCTION PERMITTEE INFORMATION (Landowner, easement holder, or Authorized Public Agency)					
LANDOWNER/PERMITTEE			AGENT FOR LANDOWNER (OPTIONAL)		
CONTACT PERSON (FIRST AND LAST NAME)			CONTACT PERSON (FIRST AND LAST NAME)		
E-MAIL ADDRESS (OPTIONAL FOR FASTER SERVICE)			E-MAIL ADDRESS		
MAILING ADDRESS			MAILING ADDRESS		
STREET			STREET		
CITY	STATE	ZIP	CITY	STATE	ZIP
PROJECT INFORMATION					
PROJECT NAME			COUNTY	TOWNSHIP	
STREET			$\frac{1}{4}$	$\frac{1}{4}$	SECTION
CITY	STATE	ZIP	TOWN (T)	RANGE (R)	
OR OTHER DESCRIPTION			For Cashier's Use Only: 37000-40512-9091-481001-01		

SITE DESCRIPTION			
TOTAL ACRES OF SITE	ACRES OF DISTURBANCE	RECEIVING WATERS	
CERTIFIED OPERATOR			
NAME		CERTIFICATION NUMBER	
PART 91 SESC PERMITTING ENTITY INFORMATION			
NAME OF PART 91 SESC PERMITTING ENTITY OR APA AGENCY			
E-MAIL ADDRESS (OPTIONAL FOR FASTER SERVICE)		PHONE NUMBER	
ADDRESS		SESC PERMIT NUMBER OR APA STATUS	
CITY	STATE	ZIP	DATE OF ISSUE

CERTIFICATION - Michigan regulations require this form be signed as follows:

Corporation: a principal executive officer of at least the level of vice president, or his designated representative, if the representative is responsible for the overall operation of the facility from which the discharge described in this form originates.

Partnership: a general partner.

Sole Proprietorship: the proprietor.

Municipal, state, or other public facility: either a principal executive officer, the mayor, village president, city or village manager, or other duly authorized employee.

I certify that all provisions of R 323.2190 pursuant to Act 451, Part 31, of 1994, as amended, have been complied with and that all information submitted under the Rule and contained in this Notice of Coverage is, to the best of my knowledge and belief, true, accurate and complete. I acknowledge that any discharge that is made pursuant to Rule 323.2190 shall be in compliance with Act 451, Part 31, and the rules promulgated thereunder. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment. I certify under penalty of law that I possess full authority on behalf of the legal landowner/permittee to sign and submit this Notice of Coverage.

SIGNATURE (original signature required) X	DATE	TELEPHONE
PRINTED NAME	TITLE	

MAKE CHECK OR MONEY ORDER FOR \$400 PAYABLE TO: STATE OF MICHIGAN

MAIL COMPLETED APPLICATION, WITH LOCATION MAP, SESC PERMIT & PLAN, AND FEE OF **\$400**, TO:
 MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
 CASHIERS OFFICE - WB-SW1
 P O BOX 30657
 LANSING, MI 48909-8157

ADDRESS FOR OVERNIGHT MAILING: MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
 CASHIERS OFFICE - WB-SW1
 525 WEST ALLEGAN 5TH FLOOR SOUTH
 LANSING, MI 48913

IF YOU HAVE ANY QUESTIONS ABOUT THE PREPARATION OF THIS FORM, CALL 517-335-4137.



OFFICIAL USE ONLY
PERMIT ID
NPDES NUMBER

NOTICE OF COVERAGE RENEWAL

FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
STORM WATER DISCHARGES FROM CONSTRUCTION ACTIVITY

By Authority of R 323.2190 of Act 451, Public Acts of 1994, as amended
Failure to comply with the terms and provisions of R 323.2190 may result in fines up to \$25,000
per day and the possibility of imprisonment.

Filing of this Notice of Coverage Renewal with the Michigan Department of Environmental Quality (MDEQ) is required **prior** to any ownership change or revision of the permitted construction activity, change in the Soil Erosion and Sedimentation Control (SESC) plan, or expiration of the SESC permit. Authorization to discharge storm water may be extended (up to five years after original issuance date) by submitting a revised or extended SESC permit to the MDEQ **prior** to the NOC expiration. If the SESC permit number changes, expires, is revoked or terminated, prior to the complete stabilization of the site, a **new** administratively complete NOC and all the requirements, including the fee must be submitted to obtain storm water authorization.

CONSTRUCTION PERMITTEE INFORMATION (Landowner or easement holder)			
LANDOWNER		CONTACT PERSON (FIRST AND LAST NAME)	
STREET		E-MAIL ADDRESS (OPTIONAL FOR FASTER SERVICE)	
CITY	STATE	ZIP	CURRENT NPDES NUMBER (REQUIRED)
PROJECT INFORMATION			
PROJECT NAME		STREET	
COUNTY	ACRES OF SITE		ACRES OF DISTURBANCE
STORM WATER CERTIFIED OPERATOR			CERTIFICATION NUMBER
SESC PERMITTING ENTITY (PART 91)			

I certify that all provisions of R 323.2190 pursuant to Act 451, Part 31, of 1994, as amended, have been complied with and that all information submitted under the Rule and contained in this Notice of Coverage Renewal is, to the best of my knowledge and belief, true, accurate and complete. I acknowledge that any discharge that is made pursuant to Rule 323.2190 shall be in compliance with Act 451, Part 31, and the rules promulgated thereunder. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment. I certify under penalty of law that I possess full authority on behalf of the legal landowner/permittee to sign and submit this Notice of Coverage.

SIGNATURE (ORIGINAL SIGNATURE REQUIRED) X	DATE	TELEPHONE
PRINTED NAME	TITLE	

MAKE SURE TO INCLUDE A COPY OF THE UPDATED SESC PERMIT AND PLAN (*plans only required if revised). TO AVOID LAPSE IN COVERAGE, PLEASE SUBMIT 30 DAYS PRIOR TO NPDES EXPIRATION DATE.

MAIL OR E-MAIL COMPLETED FORM TO:
E-mail: PLOEHNK@MICHIGAN.GOV

KELLY PLOEHN
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER BUREAU – 2ND FLOOR NORTH
525 WEST ALLEGAN
PO BOX 30273
LANSING, MI 48909

IF YOU HAVE ANY QUESTIONS ABOUT THE PREPARATION OF THIS FORM, CALL 517-335-4137.



MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
 WATER BUREAU
NOTICE OF TERMINATION
 FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
 Storm Water Discharges from Construction Activities
By Authority of R 323.2190 of Act 451, PA 1994, as amended

Submission of this Notice of Termination constitutes notice that the authorization to discharge storm water from the construction site identified below has expired.

PERMIT INFORMATION	NPDES PERMIT NUMBER:
REASON FOR TERMINATION: (check all that apply) list month, day and year for all dates	
<input type="checkbox"/> The Soil Erosion and Sediment Control (Act 451, Part 91) permit will expire on: <input type="checkbox"/> The Soil Erosion and Sediment Control (Act 451, Part 91) permit was revoked/terminated on: <input type="checkbox"/> The project was completed by stabilization of the earth change activities on: <input type="checkbox"/> Other: Explain:	

Print or type in the spaces provided

CONSTRUCTION PERMITTEE INFORMATION		
NAME		
MAILING ADDRESS		
STREET		
CITY	STATE	ZIP CODE

CONSTRUCTION SITE INFORMATION		
PROJECT NAME		
MAILING ADDRESS		
STREET		
CITY	STATE	ZIP CODE

DESCRIPTION

CERTIFICATION

Michigan state regulations require this form be signed as follows:
Corporation: a principal executive officer of at least the level of vice president, or his designated representative, if the representative is responsible for the overall operation of the facility from which the discharge described in this form originates.
Partnership: a general partner.
Sole proprietorship: the proprietor.
Municipal, state, or other public facility: either a principal executive officer, the mayor, village president, city or village manager, or other duly authorized employee.

I certify that all information submitted in this Notice of Termination is, to the best of my knowledge and belief, true, accurate, and complete, and that all storm water discharges associated with construction activities from the site identified above that were authorized by R 323.2190 have been eliminated because of the reason(s) indicated above. I understand, by submitting this Notice of Termination, I am no longer authorized to discharge storm water associated with construction activities at this site and that discharging pollutants in storm water associated with construction activities without authorization is unlawful. I also understand that submittal of this Notice of Termination does not release the permittee from liability for any prior violations of R 323.2190.		
SIGNATURE OF CONSTRUCTION PERMITTEE OR AUTHORIZED REPRESENTATIVE	DATE	TELEPHONE #
PRINTED NAME	TITLE	

MAIL COMPLETED APPLICATION TO:

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
 WATER BUREAU, STORM WATER ADMINISTRATION
 P O BOX 30273
 LANSING MI 48909-7938

IF YOU HAVE ANY QUESTIONS ABOUT THE PREPARATION OF THIS FORM, CALL 517-335-4137.

EQP 4662 (Rev 9/04)