

# Unit Six

## STATUTE AND ADMINISTRATIVE RULES

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### STATUTE

#### PART 91, SOIL EROSION AND SEDIMENTATION CONTROL OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT 1994 PA 451, AS AMENDED

(Includes all amendments through 8-1-05)

#### 324.9101 Definitions; A to W.

- Sec. 9101. (1) "Agricultural practices" means all land farming operations except the plowing or tilling of land for the purpose of crop production or the harvesting of crops.
- (2) "Authorized public agency" means a state agency or an agency of a local unit of government authorized under section 9110 to implement soil erosion and sedimentation control procedures with regard to earth changes undertaken by it.
- (3) "Conservation district" means a conservation district authorized under part 93.
- (4) "Consultant" means either of the following:
- (a) An individual who has a current certificate of training under section 9123.
  - (b) A person who employs 1 or more individuals who have current certificates of training under section 9123.
- (5) "County agency" means an officer, board, commission, department, or other entity of county government.
- (6) "County enforcing agency" means a county agency or a conservation district designated by a county board of commissioners under section 9105.
- (7) "County program" or "county's program" means a soil erosion and sedimentation control program established under section 9105.
- (8) "Department" means the department of environmental quality.
- (9) "Earth change" means a human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.
- (10) "Gardening" means activities necessary to the growing of plants for personal use, consumption, or enjoyment.

- (11) "Local ordinance" means an ordinance enacted by a local unit of government under this part providing for soil erosion and sedimentation control.
- (12) "Municipal enforcing agency" means an agency designated by a municipality under section 9106 to enforce a local ordinance.
- (13) "Municipality" means any of the following:
  - (a) A city.
  - (b) A village.
  - (c) A charter township.
  - (d) A general law township that is located in a county with a population of 200,000 or more.
- (14) "Rules" means the rules promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
- (15) "Seawall maintenance" means an earth change activity landward of the seawall.
- (16) "Sediment" means solid particulate matter, including both mineral and organic matter, that is in suspension in water, is being transported, or has been removed from its site of origin by the actions of wind, water, or gravity and has been deposited elsewhere.
- (17) "Soil erosion" means the wearing away of land by the action of wind, water, gravity, or a combination of wind, water, or gravity.
- (18) "State agency" means a principal state department or a state public university.
- (19) "Violation of this part" or "violates this part" means a violation of this part, the rules promulgated under this part, a permit issued under this part, or a local ordinance enacted under this part.
- (20) "Waters of the state" means the Great Lakes and their connecting waters, inland lakes and streams as defined in rules promulgated under this part, and wetlands regulated under part 303.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001; -- Am. 2001, Act 227, Imd. Eff. Jan. 2, 2002 ;-- Am. 2005, Act 55, Imd. Eff. June 30, 2005

**324.9102, 324.9103 Repealed. 2000, Act 504, Imd. Eff. Jan. 11, 2001.**

**Compiler's Notes:** The repealed sections pertained to definitions and soil erosion and sedimentation control program.

**324.9104 Rules; availability of information.**

- Sec. 9104. (1) The department, with the assistance of the department of agriculture, shall promulgate rules for a unified soil erosion and sedimentation control program, including provisions for the review and approval of site plans, land use plans, or permits relating to soil erosion control and sedimentation control. The department shall notify and make copies of proposed rules available to county enforcing agencies, municipal enforcing agencies, and authorized public agencies for review and comment before promulgation.
- (2) The department shall make available to county enforcing agencies, municipal enforcing agencies, and authorized public agencies educational information on soil erosion and sedimentation control techniques and the benefits of implementing soil erosion and sedimentation control measures. County enforcing agencies and municipal enforcing agencies shall distribute this information to persons receiving permits under a county program or a local ordinance and to other interested persons.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

**324.9105 Administration and enforcement of rules; resolution; ordinance; interlocal agreement; review; notice of results; informal meeting; probation; consultant; inspection fees; rescission of order, stipulation, or probation.**

- Sec. 9105. (1) Subject to subsection (6), a county is responsible for the administration and enforcement of this part and the rules promulgated under this part throughout the county except as follows:
- (a) Within a municipality that has assumed the responsibility for soil erosion and sedimentation control under section 9106.
- (b) With regard to earth changes of authorized public agencies.
- (2) Subject to subsection (3), the county board of commissioners of each county, by resolution, shall designate a county agency, or a conservation district upon the concurrence of the conservation district, as the county enforcing agency responsible for administration and enforcement of this part and the rules promulgated under this part in the name of the county. The resolution may set forth a schedule of fees for inspections, plan reviews, and permits and may set forth other matters relating to the administration and enforcement of the county program and this part and the rules promulgated under this part.
- (3) In lieu of or in addition to a resolution provided for in subsection (2), the county board of commissioners of a county may provide by ordinance for soil erosion and sedimentation control in the county. An ordinance adopted under this subsection may be more restrictive than, but shall not make lawful that which is unlawful under, this part and the rules promulgated under this part. If an ordinance adopted under this subsection is more restrictive than this part and the rules promulgated under this part, the county enforcing agency shall notify a person receiving a permit under the ordinance that the ordinance is more restrictive than this part and the rules promulgated under this part. The ordinance shall incorporate by reference the rules promulgated under this part that do not conflict with a more restrictive ordinance and may set forth such other matters as the county

board of commissioners considers necessary or desirable. The ordinance may provide penalties for a violation of the ordinance that are consistent with section 9121.

- (4) A copy of a resolution or ordinance adopted under this section and all subsequent amendments to the resolution or ordinance shall be forwarded to the department for the department's review and approval. The department shall forward a copy to the conservation district for that county for review and comment.
- (5) Two or more counties may provide for joint enforcement and administration of this part and the rules promulgated under this part by entering into an interlocal agreement pursuant to the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.
- (6) The department shall conduct a review of a county's program every 5 years. The review shall be conducted at least 6 months before the expiration of each succeeding 5-year period. The department shall approve a county's program if all of the following conditions are met:
  - (a) The county has passed a resolution or enacted an ordinance as provided in this section.
  - (b) The individuals with decision-making authority who are responsible for administering the county program have current certificates of training under section 9123.
  - (c) The county has effectively administered and enforced the county program in the past 5 years or has implemented changes in its administration or enforcement procedures that the department determines will result in the county effectively administering and enforcing the county program. In determining whether the county has met the requirement of this subdivision, the department shall consider all of the following:
    - (i) Whether a mechanism is in place to provide funding to administer the county's program.
    - (ii) Whether the county has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.
    - (iii) The effectiveness of the county's past compliance and enforcement efforts.
    - (iv) The adequacy and effectiveness of the applications and soil erosion and sedimentation control plans being accepted by the county.
    - (v) The adequacy and effectiveness of the permits issued by the county and the inspections being performed by the county.
    - (vi) The conditions at construction sites under the jurisdiction of the county as documented by departmental inspections.
- (7) Following a review under subsection (6), the department shall notify the county of the results of its review and whether the department proposes to approve or disapprove the county's program. Within 30 days of receipt of the notice under this subsection, a county may request and the department shall hold an informal meeting to discuss the review and the proposed action by the department.
- (8) Following the meeting under subsection (7), if requested, and consideration of the review under subsection (6), if the department does not approve a county's program, the department shall enter an order, stipulation, or consent agreement under section 9112(7) placing the county on probation. In addition, at any time that the department

determines that a county that was previously approved by the department under subsection (6) is not satisfactorily administering and enforcing the county's program, the department shall enter into an order, stipulation, or consent agreement under section 9112(7) placing the county on probation. During the 6-month period after a county is placed on probation, the department shall consult with the county on how the county could change its administration of the county program in a manner that would result in its approval.

- (9) Within 6 months after a county has been placed on probation under subsection (8), the county may notify the department that it intends to hire a consultant to administer the county's program. If, within 60 days after notifying the department, the county hires a consultant that is acceptable to the department, then within 1 year after the county hires the consultant, the department shall conduct a review of the county's program to determine whether or not the county program can be approved.
- (10) If any of the following occur, the department shall hire a consultant to administer the county's program:
  - (a) The county does not notify the department of its intent to hire a consultant under subsection (9).
  - (b) The county does not hire a consultant that is acceptable to the department within 60 days after notifying the department of its intent to hire a consultant under subsection (9).
  - (c) The county remains unapproved following the department's review under subsection (9).
- (11) Upon hiring a consultant under subsection (10), the department may establish a schedule of fees for inspections, review of soil erosion and sedimentation control plans, and permits for the county's program that will provide sufficient revenues to pay for the cost of the contract with the consultant, or the department may bill the county for the cost of the contract with the consultant. As used in this subsection, "cost of the contract" means the actual cost of a contract with a consultant plus the documented costs to the department in administering the contract, but not to exceed 10% of the actual cost of the contract.
- (12) At any time that a county is on probation as provided for in this section, the county may request the department to conduct a review of the county's program. If, upon such review, the county has implemented appropriate changes to the county's program, the department shall approve the county's program. If the department approves a county's program under this subsection, the department shall rescind its order, stipulation, or consent agreement that placed the county on probation.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001 ;-- Am. 2005, Act 55, Imd. Eff. June 30, 2005

### **324.9106 Ordinances.**

Sec. 9106. (1) Subject to subsection (3), a municipality by ordinance may provide for soil erosion and sedimentation control on public and private earth changes within its boundaries except that a township ordinance shall not be applicable within a village that has in effect such an ordinance. An ordinance may be more restrictive than, but shall not make lawful that which is unlawful under, this part and the rules promulgated under this part. If an ordinance adopted under this section is more restrictive than this part and the rules promulgated under this part, the municipal enforcing agency shall notify a person receiving a permit under the ordinance that the ordinance is more restrictive than this part and the rules promulgated under this part. The ordinance shall incorporate by reference the rules promulgated under this part that do not conflict with a more restrictive ordinance, shall designate a municipal enforcing agency responsible for administration and enforcement of the ordinance, and may set forth such other matters as the legislative body considers necessary or desirable. The ordinance shall be applicable and shall be enforced with regard to all private and public earth changes within the municipality except earth changes by an authorized public agency. The municipality may consult with a conservation district for assistance or advice in the preparation of the ordinance. The ordinance may provide penalties for a violation of the ordinance that are consistent with section 9121.

(2) An ordinance related to soil erosion and sedimentation control that is not approved by the department as conforming to the minimum requirements of this part and the rules promulgated under this part has no force or effect. A municipality shall submit a copy of its proposed ordinance or of a proposed amendment to its ordinance to the department for approval before adoption. The department shall forward a copy to the county enforcing agency of the county in which the municipality is located and the appropriate conservation district for review and comment. Within 90 days after the department receives an existing ordinance, proposed ordinance, or amendment, the department shall notify the clerk of the municipality of its approval or disapproval along with recommendations for revision if the ordinance, proposed ordinance, or amendment does not conform to the minimum requirements of this part or the rules promulgated under this part. If the department does not notify the clerk of the local unit within the 90-day period, the ordinance, proposed ordinance, or amendment shall be considered to have been approved by the department.

(3) A municipality shall not administer and enforce this part or the rules promulgated under this part or a local ordinance unless the department has approved the municipality. An approval under this section is valid for 5 years, after which the department shall review the municipality for reapproval. At least 6 months before the expiration of each succeeding 5-year approval period, the department shall complete a review of the municipality for reapproval. The department shall approve a municipality if all of the following conditions are met:

- (a) The municipality has enacted an ordinance as provided in this section that is at least as restrictive as this part and the rules promulgated under this part.
- (b) The individuals with decision-making authority who are responsible for administering the soil erosion and sedimentation control program for the municipality have current certificates of training under section 9123.
- (c) The municipality has submitted evidence of its ability to effectively administer and enforce a soil erosion and sedimentation control program. In determining whether

the municipality has met the requirements of this subdivision, the department shall consider all of the following:

- (i) Whether a mechanism is in place to provide funding to administer the municipality's soil erosion and sedimentation control program.
  - (ii) The adequacy of the documents proposed for use by the municipality including, but not limited to, application forms, soil erosion and sedimentation control plan requirements, permit forms, and inspection reports.
  - (iii) If the municipality has previously administered a soil erosion and sedimentation control program, whether the municipality effectively administered and enforced the program in the past or has implemented changes in its administration or enforcement procedures that the department determines will result in the municipality effectively administering and enforcing a soil erosion and sedimentation control program in compliance with this part and the rules promulgated under this part. In determining whether the municipality has met the requirement of this subparagraph, the department shall consider all of the following:
    - (A) Whether the municipality has had adequate funding to administer the municipality's soil erosion and sedimentation control program.
    - (B) Whether the municipality has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.
    - (C) The effectiveness of the municipality's past compliance and enforcement efforts.
    - (D) The adequacy and effectiveness of the applications and soil erosion and sedimentation control plans being accepted by the municipality.
    - (E) The adequacy and effectiveness of the permits issued by the municipality and the inspections being performed by the municipality.
    - (F) The conditions at construction sites under the jurisdiction of the municipality as documented by departmental inspections.
- (4) If the department determines that a municipality is not approved under subsection (3) or that a municipality that was previously approved under subsection (3) is not satisfactorily administering and enforcing this part and the rules promulgated under this part, the department shall enter an order, stipulation, or consent agreement under section 9112(7) denying the municipality authority or revoking the municipality's authority to administer a soil erosion and sedimentation control program. Upon entry of this order, stipulation, or consent agreement, the county program for the county in which the municipality is located becomes operative within the municipality.
- (5) A municipality that elects to rescind its ordinance shall notify the department. Upon rescission of its ordinance, the county program for the county in which the municipality is located becomes operative within the municipality.
- (6) A municipality that rescinds its ordinance or is not approved by the department to administer the program shall retain jurisdiction over projects under permit at that time. The municipality shall retain jurisdiction until the projects are completed and stabilized or the county agrees to assume jurisdiction over the permitted earth changes.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001 ;-- Am. 2005, Act 55, Imd. Eff. June 30, 2005

**324.9107 Notice of violation.**

Sec. 9107. If a local unit of government has notice that a violation of this part has occurred within the boundaries of that local unit of government, including but not limited to a violation attributable to an earth change by an authorized public agency, the local unit of government shall notify the appropriate county enforcing agency and municipal enforcing agency and the department of the violation.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

**324.9108 Permit; deposit as condition for issuance.**

Sec. 9108. As a condition for the issuance of a permit, the county enforcing agency or municipal enforcing agency may require the applicant to deposit with the clerk of the county or municipality in the form of cash, a certified check, or an irrevocable bank letter of credit, whichever the applicant selects, or a surety bond acceptable to the legislative body of the county or municipality or to the county enforcing agency or municipal enforcing agency, in an amount sufficient to assure the installation and completion of such protective or corrective measures as may be required by the county enforcing agency or municipal enforcing agency.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

**324.9109 Agreement between public agency or county or municipal enforcing agency and conservation district; purpose; reviews and evaluations of agency's programs or procedures; agreement between person engaged in agricultural practices and conservation district; notification; enforcement.**

Sec. 9109. (1) An authorized public agency, county enforcing agency, or municipal enforcing agency may enter into an agreement with a conservation district for assistance and advice in overseeing and reviewing compliance with soil erosion and sedimentation control procedures and in reviewing existing or proposed earth changes, earth change plans, or site plans with regard to technical matters pertaining to soil erosion and sedimentation control. In addition to or in the absence of such agreements, conservation districts may perform periodic reviews and evaluations of the authorized public agency's, county enforcing agency's, or municipal enforcing agency's programs or procedures pursuant to standards and specifications developed in cooperation with the respective districts and as approved by the department. These reviews and evaluations shall be submitted to the department for appropriate action.

(2) A person engaged in agricultural practices may enter into an agreement with the appropriate conservation district to pursue agricultural practices in accordance with and subject to this part, the rules promulgated under this part, and any applicable local ordinance. If a person enters into an agreement with a conservation district, the conservation district shall notify the county enforcing agency or municipal enforcing

agency or the department in writing of the agreement. Upon entering into the agreement under this subsection, a person is not subject to permits required under this part, but is required to develop project specific soil erosion and sedimentation control plans and is subject to the remedies provided for in this part for violations of this part.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

**324.9110 Designation as authorized public agency; application; submission of procedures; variance; approval.**

- Sec. 9110. (1) Subject to subsection (4), a state agency or an agency of a local unit of government may apply to the department for designation as an authorized public agency by submitting to the department the soil erosion and sedimentation control procedures governing all earth changes normally undertaken by the agency. If the applicant is an agency of a local unit of government, the department shall submit the procedures to the county enforcing agency and the appropriate conservation district for review. The county enforcing agency and the conservation district shall submit their comments on the procedures to the department within 60 days. If the applicant is a state agency, the department shall submit the procedures to the department of agriculture for review, and the department of agriculture shall submit its comments on the procedures to the department within 60 days.
- (2) Subject to subsection (4), if the department finds that the soil erosion and sedimentation control procedures of the state agency or the agency of the local unit of government meet the requirements of this part and rules promulgated under this part, the department shall designate the agency as an authorized public agency.
- (3) Subject to subsection (4), after approval of the procedures and designation as an authorized public agency pursuant to subsection (2), all earth changes maintained or undertaken by the authorized public agency shall be undertaken pursuant to the approved procedures. If determined necessary by the department and upon request of an authorized public agency, the department may grant a variance from the provisions of this subsection.
- (4) A state agency or an agency of a local unit of government shall not administer and enforce this part and the rules promulgated under this part as an authorized public agency unless the department has approved the agency under this section. An approval under this section is valid for 5 years, after which the department shall review the agency for reapproval. At least 6 months before the expiration of each succeeding 5-year period, the department shall complete a review of the authorized public agency for reapproval. The department shall approve a state agency or an agency of a local unit of government if all of the following conditions are met:
- (a) The agency has adopted soil erosion and sedimentation control procedures that are at least as restrictive as this part and the rules promulgated under this part.
  - (b) The individuals with decision-making authority who are responsible for administering the soil erosion and sedimentation control procedures have current certificates of training under section 9123.
  - (c) The agency has submitted evidence of its ability to effectively administer soil erosion and sedimentation control procedures. In determining whether the

agency has met the requirement of this subdivision, the department shall consider all of the following:

- (i) Funding to administer the agency's soil erosion and sedimentation control program.
- (ii) The agency's plans for inspections to assure minimization of soil erosion and off-site sedimentation.
- (iii) The adequacy of the agency's soil erosion and sedimentation control procedures.
- (iv) If the agency has previously administered soil erosion and sedimentation control procedures, the agency has effectively administered these procedures or has implemented changes in their administration that the department determines will result in the agency effectively administering the soil erosion and sedimentation control procedures. In determining whether the agency has met the requirement of this subparagraph, the department shall consider all of the following:
  - (A) Whether the agency has had adequate funding to administer the agency's soil erosion and sedimentation control program.
  - (B) Whether the agency has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.
  - (C) The effectiveness of the agency's past compliance and enforcement efforts.
  - (D) The adequacy of the agency's soil erosion and sedimentation control plans and procedures as required by rule.
  - (E) The conditions at construction sites under the jurisdiction of the agency as documented by departmental inspections.

- (5) If the department determines that a state agency or an agency of a local unit of government is not approved under subsection (4) or that a state agency or an agency of a local unit of government that was previously approved under subsection (4) is not satisfactorily administering and enforcing this part and the rules promulgated under this part, the department shall enter an order, stipulation, or consent agreement under section 9112(7) denying or revoking the designation of the state agency or agency of a local unit of government as an authorized public agency.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;-- Am. 2005, Act 55, Imd. Eff. June 30, 2005

**324.9111 Repealed. 2000, Act 504, Imd. Eff. Jan. 11, 2001.**

**Compiler's Notes:** The repealed section pertained to statements and certificates relating to plats.

**324.9112 Earth change; permit required; effect of property transfer; violation; notice; hearing; answer; evidence; stipulation or consent order; final order of determination.**

Sec. 9112. (1) A person shall not maintain or undertake an earth change governed by this part, the rules promulgated under this part, or an applicable local ordinance, except in accordance with this part and the rules promulgated under this part or with the applicable local ordinance, and except as authorized by a permit issued by the appropriate county enforcing agency or municipal enforcing agency pursuant to part 13.

- (2) The owner of property that is subject to a permit under this part is responsible for compliance with the terms of the permit that apply to that property.
- (3) Except as provided in subsection (4), if property subject to a permit under this part is transferred, both of the following are transferred with the property:
  - (a) The permit, including the permit obligations and conditions.
  - (b) Responsibility for any violations of the permit that exist on the date the property is transferred.
- (4) If property is subject to a permit under this part and a parcel of the property, but not the entire property, is transferred, both of the following are transferred with the parcel:
  - (a) The permit obligations and conditions with respect to that parcel, but not the permit itself.
  - (b) Responsibility for any violations of the permit with respect to that parcel that exist on the date the parcel is transferred.
- (5) If property subject to a permit under this part is proposed to be transferred, the transferor shall notify the transferee of the permit in writing on a form developed by the department and provided by the county enforcing agency or municipal enforcing agency. The notice shall inform the transferee of the requirements of subsection (2) and, as applicable, subsection (3) or (4). The notice shall include a copy of the permit. The transferor and transferee shall sign the notice, and the transferor shall submit the signed notice to the county enforcing agency or municipal enforcing agency before the property is transferred.
- (6) A county enforcing agency or municipal enforcing agency may charge a fee for the transfer of a permit under subsection (3) or (4). The fee shall not exceed the administrative costs of transferring the permit. Fees collected under this subsection shall only be used for the enforcement and administration of this part by the enforcing agency.
- (7) If in the opinion of the department a person, including an authorized public agency, violates this part, the rules promulgated under this part, or an applicable local ordinance, or a county enforcing agency or municipal enforcing agency fails to enforce this part, the rules promulgated under this part, or an applicable local ordinance, the department may notify the alleged offender in writing of its determination. If the department places a county on probation under section 9105, a municipality is not approved under section

9106, or a state agency or agency of a local unit of government is not approved under section 9110, or if the department determines that a municipal enforcing agency or authorized public agency is not satisfactorily administering and enforcing this part and rules promulgated under this part, the department shall notify the county, municipality, state agency, or agency of a local unit of government in writing of its determination or action. The notice shall contain, in addition to a statement of the specific violation or failure that the department believes to exist, a proposed order, stipulation for agreement, or other action that the department considers appropriate to assure timely correction of the violation or failure. The notice shall set a date for a hearing not less than 4 nor more than 8 weeks from the date of the notice of determination. Extensions of the date of the hearing may be granted by the department or on request. At the hearing, any interested party may appear, present witnesses, and submit evidence. A person who has been served with a notice of determination may file a written answer to the notice of determination before the date set for hearing or at the hearing may appear and present oral or written testimony and evidence on the charges and proposed requirements of the department to assure correction of the violation or failure. If a person served with the notice of determination agrees with the proposed requirements of the department and notifies the department of that agreement before the date set for the hearing, disposition of the case may be made with the approval of the department by stipulation or consent agreement without further hearing. The final order of determination following the hearing, or the stipulation or consent order as authorized by this section and approved by the department, is conclusive unless reviewed in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in the circuit court of Ingham county, or of the county in which the violation occurred, upon petition filed within 15 days after the service upon the person of the final order of determination.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004 ;-- Am. 2004, Act 565, Imd. Eff. Jan. 3, 2005

### **324.9113 Injunction; inspection and investigation.**

Sec. 9113. (1) Notwithstanding the existence or pursuit of any other remedy, the department or a county enforcing agency or municipal enforcing agency may maintain an action in its own name in a court of competent jurisdiction for an injunction or other process against a person to restrain or prevent violations of this part.

(2) At any reasonable time, an agent appointed by the department, a county enforcing agency, or a municipal enforcing agency may enter upon any private or public property for the purpose of inspecting and investigating conditions or practices that may be in violation of this part. However, an investigation or inspection under this subsection shall comply with the United States constitution and the state constitution of 1963.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001 ;-- Am. 2005, Act 55, Imd. Eff. June 30, 2005

### **324.9114 Additional rules.**

Sec. 9114. In order to carry out their functions under this part, the department and the department of agriculture may promulgate rules in addition to those otherwise authorized in this part.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995

**324.9115 Logging, mining, or land plowing or tilling; permit exemption; “mining” defined.**

Sec. 9115. (1) Subject to subsection (2), a person engaged in the logging industry, the mining industry, or the plowing or tilling of land for the purpose of crop production or the harvesting of crops is not required to obtain a permit under this part. However, all earth changes associated with the activities listed in this section shall conform to the same standards as if they required a permit under this part. The exemption from obtaining a permit under this subsection does not include either of the following:

- (a) Access roads to and from the site where active mining or logging is taking place.
- (b) Ancillary activities associated with logging and mining.

(2) This part does not apply to a metallic mineral mining activity that is regulated under a mining and reclamation plan that contains soil erosion and sedimentation control provisions and that is approved by the department under part 631.

(3) A person is not required to obtain a permit from a county enforcing agency or a municipal enforcing agency for earth changes associated with well locations, surface facilities, flowlines, or access roads relating to oil or gas exploration and development activities regulated under part 615, if the application for a permit to drill and operate under part 615 contains a soil erosion and sedimentation control plan that is approved by the department under part 615. However, those earth changes shall conform to the same standards as required for a permit under this part. This subsection does not apply to a multisource commercial hazardous waste disposal well as defined in section 62506a.

(4) As used in this section, “mining” does not include the removal of clay, gravel, sand, peat, or topsoil.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

**324.9115a Earth change activities not requiring permit; violations.**

Sec. 9115a. (1) A residential property owner who causes the following activities to be conducted on individual residential property owned and occupied by him or her is not required to obtain a permit under this part if the earth change activities do not result in or contribute to soil erosion or sedimentation of the waters of the state or a discharge of sediment off-site:

- (a) An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance.
- (b) Gardening, if the natural elevation of the area is not raised.
- (c) Post holes for fencing, decks, utility posts, mailboxes, or similar applications, if no additional grading or earth change occurs for use of the post holes.
- (d) Removal of tree stumps, shrub stumps, or roots resulting in an earth change not to exceed 100 square feet.
- (e) All of the following activities, if soil erosion and sedimentation controls are implemented, the earth change is stabilized within 24 hours of the initial earth disturbance, and soil erosion or sedimentation to adjacent properties or the waters of the state has not or will not reasonably occur:
  - (i) Planting of trees, shrubs, or other similar plants.
  - (ii) Seeding or reseeding of lawns of less than 1 acre if the seeded area is at least 100 feet from the waters of the state.
  - (iii) Seeding or reseeding of lawns closer than 100 feet from the waters of the state if the area to be seeded or reseeded does not exceed 100 square feet.
  - (iv) The temporary stockpiling of soil, sand, or gravel not greater than a total of 10 cubic yards on the property if the stockpiling occurs at least 100 feet from the waters of the state.
  - (v) Seawall maintenance that does not exceed 100 square feet.

(2) Exemptions provided in this section shall not be construed as exemptions from enforcement procedures under this part or the rules promulgated under this part if the exempted activities cause or result in a violation of this part or the rules promulgated under this part.

**History:** Add. 2005, Act 56, Imd. Eff. June 30, 2005

**324.9116 Reduction of soil erosion or sedimentation by owner.**

Sec. 9116. A person who owns land on which an earth change has been made that may result in or contribute to soil erosion or sedimentation of the waters of the state shall implement and maintain soil erosion and sedimentation control measures that will effectively reduce soil erosion or sedimentation from the land on which the earth change has been made.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995

### **324.9117 Notice of determination.**

Sec. 9117. If the county enforcing agency or municipal enforcing agency that is responsible for enforcing this part and the rules promulgated under this part determines that soil erosion or sedimentation of adjacent properties or the waters of the state has or will reasonably occur from land in violation of this part or the rules promulgated under this part or an applicable local ordinance, the county enforcing agency or municipal enforcing agency may seek to enforce a violation of this part by notifying the person who owns the land, by mail, with return receipt requested, of its determination. The notice shall contain a description of the violation and what must be done to remedy the violation and shall specify a time to comply with this part and the rules promulgated under this part or an applicable local ordinance.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

### **324.9118 Compliance; time.**

Sec. 9118. Within 5 days after a notice of violation has been issued under section 9117, a person who owns land subject to this part and the rules promulgated under this part shall implement and maintain soil erosion and sedimentation control measures in conformance with this part, the rules promulgated under this part, or an applicable local ordinance.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

### **324.9119 Entry upon land; construction, implementation, and maintenance of soil erosion and sedimentation control measures; cost.**

Sec. 9119. Except as otherwise provided in this section, not sooner than 5 days after notice of violation of this part has been mailed under section 9117, if the condition of the land, in the opinion of the county enforcing agency or municipal enforcing agency, may result in or contribute to soil erosion or sedimentation of adjacent properties or to the waters of the state, and if soil erosion and sedimentation control measures in conformance with this part and the rules promulgated under this part or an applicable local ordinance are not in place, the county enforcing agency or municipal enforcing agency, or a designee of either of these agencies, may enter upon the land and construct, implement, and maintain soil erosion and sedimentation control measures in conformance with this part and the rules promulgated under this part or an applicable local ordinance. However, the enforcing agency shall not expend more than \$10,000.00 for the cost of the work, materials, labor, and administration without prior written notice in the notice provided in section 9117 for the person who owns the land that the expenditure of more than \$10,000.00 may be made. If more than \$10,000.00 is to be expended under this section, then the work shall not begin until at least 10 days after the notice of violation has been mailed.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

**324.9120 Reimbursement of county or municipal enforcing agency; lien for expenses; priority; collection and treatment of lien.**

Sec. 9120. (1) All expenses incurred by a county enforcing agency or a municipal enforcing agency under section 9119 to construct, implement, and maintain soil erosion and sedimentation control measures to bring land into conformance with this part and the rules promulgated under this part or an applicable local ordinance shall be reimbursed to the county enforcing agency or municipal enforcing agency by the person who owns the land.

(2) The county enforcing agency or municipal enforcing agency shall have a lien for the expenses incurred under section 9119 of bringing the land into conformance with this part and the rules promulgated under this part or an applicable local ordinance. However, with respect to single-family or multifamily residential property, the lien for such expenses shall have priority over all liens and encumbrances filed or recorded after the date of such expenditure. With respect to all other property, the lien for such expenses shall be collected and treated in the same manner as provided for property tax liens under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 20

**324.9121 Violations; penalties.**

Sec. 9121. (1) A person who violates this part is responsible for either of the following:

(a) If the action is brought by a county enforcing agency or a municipal enforcing agency of a local unit of government that has enacted an ordinance under this part that provides a penalty for violations, the person is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than \$2,500.00.

(b) If the action is brought by the state or a county enforcing agency of a county that has not enacted an ordinance under this part, the person is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$2,500.00.

(2) A person who knowingly violates this part or knowingly makes a false statement in an application for a permit or in a soil erosion and sedimentation control plan is responsible for the payment of a civil fine of not more than \$10,000.00 for each day of violation.

(3) A person who knowingly violates this part after receiving a notice of determination under section 9112 or 9117 is responsible for the payment of a civil fine of not less than \$2,500.00 or more than \$25,000.00 for each day of violation.

(4) Civil fines collected under subsections (2) and (3) shall be deposited as follows:

(a) If the state filed the action under this section, in the general fund of the state.

(b) If a county enforcing agency or municipal enforcing agency filed the action under this section, with the county or municipality that filed the action.

(c) If an action was filed jointly by the state and a county enforcing agency or municipal enforcing agency, the civil fines collected under this subsection shall be divided in proportion to each agency's involvement as mutually agreed upon

by the agencies. All fines going to the department shall be deposited into the general fund of the state.

- (5) A default in the payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.
- (6) In addition to a fine assessed under this section, a person who violates this part is liable to the state for damages for injury to, destruction of, or loss of natural resources resulting from the violation. The court may order a person who violates this part to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.
- (7) This section applies to an authorized public agency, in addition to other persons. This section does not apply to a county enforcing agency or a municipal enforcing agency with respect to its administration and enforcement of this part and rules promulgated under this part.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 173, Imd. Eff. Apr. 18, 1996 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

### **324.9122 Severability.**

Sec. 9122. If any provision of this part is declared by a court to be invalid, the invalid provision shall not affect the remaining provisions of the part that can be given effect without the invalid provision. The validity of the part as a whole or in part shall not be affected, other than the provision invalidated.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995

### **324.9123 Training program; certificate; fees.**

- Sec. 9123. (1) Beginning 3 years after the effective date of the 2000 amendments to this section, each individual who is responsible for administering this part and the rules promulgated under this part or a local ordinance and who has decision-making authority for soil erosion and sedimentation control plan development or review, inspections, permit issuance, or enforcement shall be trained by the department. The department shall issue a certificate of training to individuals under this section if they do both of the following:
- (a) Complete a soil erosion and sedimentation control training program sponsored by the department.
  - (b) Pass an examination on the subject matter covered in the training program under subdivision (a).
- (2) A certificate of training under subsection (1) is valid for 5 years. For recertifications, the department may offer a refresher course or other update in lieu of the requirements of subsection (1)(a) and (b).

- (3) The department may charge fees for administering the training program and the examination under this section that are not greater than the department's cost of administering the training program and the examination. All fees collected under this section shall be deposited into the soil erosion and sedimentation control training fund created in section 9123a.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

**324.9123a Soil erosion and sedimentation control training fund; creation; disposition of funds; lapse; expenditures.**

Sec. 9123a. (1) The soil erosion and sedimentation control training fund is created within the state treasury.

- (2) The state treasurer may receive money or other assets from any source for deposit into the soil erosion and sedimentation control training fund. The state treasurer shall direct the investment of the soil erosion and sedimentation control training fund. The state treasurer shall credit to the soil erosion and sedimentation control training fund interest and earnings from fund investments.
- (3) Money in the soil erosion and sedimentation control training fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.
- (4) The department shall expend money from the fund, upon appropriation, only to administer the soil erosion and sedimentation control training program and examination under section 9123.

**History:** Add. 2000, Act 504, Imd. Eff. Jan. 11, 2001

## UNIT SIX Part 91 STATUTE REVIEW

1. "Department" means the \_\_\_\_\_.
2. "Earth change" means a \_\_\_\_\_-\_\_\_\_\_ change in \_\_\_\_\_ or \_\_\_\_\_ of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.
3. "Municipality" means a: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ or \_\_\_\_\_ township that is located in a county with a population of \_\_\_\_\_ or more.
4. The county is responsible for administering and enforcing Part 91 throughout the county except for the following two situations:
  - a. within a \_\_\_\_\_ that has assumed \_\_\_\_\_ for soil erosion and sedimentation control (SESC) under section 9106
  - b. with regard to earth changes of \_\_\_\_\_ agencies
5. A county can administer Part 91 by \_\_\_\_\_ or by adopting an \_\_\_\_\_. Both must be \_\_\_\_\_ and \_\_\_\_\_ by the Department.
6. An ordinance adopted by a county may be more \_\_\_\_\_ than Part 91 and the rules promulgated under Part 91.
7. After the initial review, the Department shall conduct a review of the county's program every \_\_\_\_\_ years.
8. If a county does not improve its SESC Program within six months of being placed on probation, the Department shall hire a \_\_\_\_\_.
9. A municipality can administer and enforce Part 91 by adopting an \_\_\_\_\_ that is \_\_\_\_\_ by the Department. Prior to approving the ordinance, the Department shall forward a copy of the proposed ordinance to the \_\_\_\_\_ agency and the appropriate \_\_\_\_\_ for review and \_\_\_\_\_.
10. The ordinance adopted by the municipality may be more \_\_\_\_\_ than Part 91 and the rules promulgated under Part 91.
11. A municipality shall not administer or enforce Part 91 unless the Department has \_\_\_\_\_ the municipality.
12. As a condition for the issuance of a permit, the county or municipal enforcing agency may require \_\_\_\_\_, a \_\_\_\_\_, an \_\_\_\_\_ of credit or a \_\_\_\_\_ bond in an amount sufficient to assure the installation and completion of protective or corrective measures.
13. A person engaged in agricultural practices may enter into an \_\_\_\_\_ with the appropriate \_\_\_\_\_ in lieu of obtaining a permit.

14. A state agency or an agency of a local unit of government may apply to the Department for designation as an \_\_\_\_\_ by submitting the SESC \_\_\_\_\_ governing all earth changes normally undertaken by the agency.
15. If the Department approves the program of a county enforcing agency, municipal enforcing agency, or authorized public agency, the approval is valid for \_\_\_\_\_ years.
16. The Department, a county enforcing agency, or municipal enforcing agency may go to court for an \_\_\_\_\_ or other process against a person to restrain or prevent violations of Part 91.
17. The following activities are not required to obtain a SESC permit:
  - a. a person engaged in the \_\_\_\_\_ industry, the \_\_\_\_\_ industry, or the \_\_\_\_\_ and \_\_\_\_\_ for the purpose of crop production
  - b. \_\_\_\_\_ mineral \_\_\_\_\_ regulated under Part 631 of the Natural Resources and Environmental Protection Act (NREPA)
  - c. activities related to \_\_\_\_\_ or \_\_\_\_\_ exploration or development regulated on Part 615 of the NREPA
18. Although a person engaged in the activities identified in 17a and 17c is not required to obtain a SESC permit, the activities shall conform to the \_\_\_\_\_ as if a permit was required.
19. As used in Part 91, mining does not include the removal of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, or \_\_\_\_\_. A SESC permit is required for these activities.
20. Within \_\_\_\_\_ days after notice of a violation, a person shall implement and maintain SESC measures in conformance with Part 91.
21. A person who violates Part 91 is responsible for a \_\_\_\_\_ or \_\_\_\_\_ civil infraction and may be ordered to pay a civil fine of not more than \_\_\_\_\_.
22. A person who knowingly violates this part is responsible for the payment of a civil fine of not more than \_\_\_\_\_ per \_\_\_\_\_ of violation. A person who knowingly violates this part after receiving a notice of determination is responsible for the payment of a civil fine of not less than \_\_\_\_\_ or more than \_\_\_\_\_ for each day of violation.
23. A certificate of training is valid for \_\_\_\_\_ years.

## ANSWERS TO UNIT SIX PART 91 STATUTE REVIEW

1. "Department" means the **Department of Environmental Quality**.
2. "Earth change" means a **human-made** change in **natural cover** or **topography** of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.
3. "Municipality" means a: **city, village, charter township, or general law township** that is located in a county with a population of **200,000** or more
4. The county is responsible for administering and enforcing Part 91 throughout the county except for the following two situations:
  - a. within a **municipality** that has assumed **responsibility** for soil erosion and sedimentation control (SESC) under section 9106
  - b. with regard to earth changes of **authorized public** agencies
5. A county can administer Part 91 by **resolution** or by adopting an **ordinance**. Both must be **reviewed** and **approved** by the Department.
6. An ordinance adopted by a county may be more **restrictive** than Part 91 and the rules promulgated under Part 91.
7. After the initial review, the Department shall conduct a review of the county's program every **five** years.
8. If a county does not improve its SESC Program within six months of being placed on probation, the Department shall hire a **consultant**.
9. A municipality can administer and enforce Part 91 by adopting an **ordinance** that is **approved** by the Department. Prior to approving the ordinance, the Department shall forward a copy of the proposed ordinance to the **county enforcing** agency and the appropriate **conservation district** for review and **comment**.
10. The ordinance adopted by the municipality may be more **restrictive** than Part 91 and the rules promulgated under Part 91.
11. A municipality shall not administer or enforce Part 91 unless the Department has **approved** the municipality.
12. As a condition for the issuance of a permit, the county or municipal enforcing agency may require **cash**, a **certified check**, an **irrevocable bank letter** of credit or a **surety** bond in an amount sufficient to assure the installation and completion of protective or corrective measures.
13. A person engaged in agricultural practices may enter into an **agreement** with the appropriate **conservation district** in lieu of obtaining a permit.

14. A state agency or an agency of a local unit of government may apply to the Department for designation as an **authorized public agency** by submitting the **SESC procedures** governing all earth changes normally undertaken by the agency.
15. If the Department approves the program of a county enforcing agency, municipal enforcing agency, or authorized public agency, the approval is valid for **five** years.
16. The Department, a county enforcing agency, or municipal enforcing agency may go to court for an **injunction** or other process against a person to restrain or prevent violations of Part 91.
17. The following activities are not required to obtain a SESC permit:
  - a. a person engaged in the **logging** industry, the **mining** industry, or the **plowing** and **tilling** for the purpose of crop production
  - b. **metallic** mineral **mining** regulated under Part 631 of the Natural Resources and Environmental Protection Act (NREPA)
  - c. activities related to **oil** or **gas** exploration or development regulated on Part 615 of the NREPA
18. Although a person engaged in the activities identified in 17a and 17c is not required to obtain a SESC permit, the activities shall conform to the **same standards** as if a permit was required.
19. As used in Part 91, mining does not include the removal of **clay, gravel, sand, peat, or topsoil**. A SESC permit is required for these activities.
20. Within **five** days after notice of a violation, a person shall implement and maintain SESC measures in conformance with Part 91.
21. A person who violates Part 91 is responsible for a **municipal** or **state** civil infraction and may be ordered to pay a civil fine of not more than **\$2500**.
22. A person who knowingly violates this part is responsible for the payment of a civil fine of not more than **\$10,000** per **day** of violation. A person who knowingly violates this part after receiving a notice of determination is responsible for the payment of a civil fine of not less than **\$2500** or more than **\$25,000** for each day of violation.
23. A certificate of training is valid for **five** years.

# ADMINISTRATIVE RULES FOR PART 91

## DEPARTMENT OF ENVIRONMENTAL QUALITY WATER BUREAU

(By authority conferred on the department of environmental quality by sections 9104 and 9114 of 1994 PA 451, MCL 324.9104 and 324.9114.)

(Includes all amendments through 10-8-07)

### SOIL EROSION AND SEDIMENTATION CONTROL

#### R 323.1701 Definitions.

Rule 1701. (1) As used in this part:

- (a) "Accelerated soil erosion" means the increased loss of the land surface that occurs as a result of human activities.
- (b) "Acceptable erosion and sediment control program" means the activities of a county or local enforcing agency or authorized public agency that are conducted in accordance with these rules and part 91 regarding staff training, developing and reviewing plans, issuing permits, conducting inspections, and initiating compliance and enforcement actions to effectively minimize erosion and off-site sedimentation.
- (c) "Designated agent" means a person who has written authorization from the landowner to sign the application and secure a permit in the landowner's name.
- (d) "Lake" means the Great Lakes and all natural and artificial inland lakes or impounds that have definite banks, a bed, visible evidence of continued occurrence of water, and a surface area of water that is equal to, or greater than 1 acre. "Lake" does not include sediment basins and basins constructed for the sole purpose of storm water retention, cooling water, or treating polluted water.
- (e) "Landowner" means the person who owns or holds a recorded easement on the property or who is engaged in construction in a public right-of-way in accordance with sections 13, 14, 15, and 16 of Act No. 368 of the Public Acts of 1925, as amended, being §§247.183, 247.184, 247.185, and 247.186 of the Michigan Compiled Laws.
- (f) "Non-erosive velocity" means a speed of water movement that is not conducive to the development of accelerated soil erosion.
- (g) "Part 91" means Part 91 of Act No. 451 of the Public Acts of 1994, as amended, being §§324.9101 to 324.9123 of the Michigan Compiled Laws.
- (h) "Sediment basin" means a naturally occurring or constructed depression used for the sole purpose of capturing sediment during and after an earth change activity.
- (i) "Stabilization" means the establishment of vegetation or the proper placement grading or covering of soil to ensure its resistance to soil erosion, sliding, or other earth movement.
- (j) "Storm water retention basin" means an area which is constructed to capture surface water runoff and which does not discharge directly to a lake or stream through an outlet. Water leaves the basin by infiltration and evaporation.
- (k) "Stream" means a river, creek, or other surface watercourse which may or may not be serving as a drain as defined in Act No. 40 of the Public Acts of 1956, as amended, being §281.1 et seq. of the Michigan Compiled Laws, and which has

definite banks, a bed, and visible evidence of the continued flow or continued occurrence of water, including the connecting waters of the Great Lakes.

- (l) "Temporary soil erosion and sedimentation control measures" means interim control measures which are installed or constructed to control soil erosion and sedimentation and which are maintained after project completion.
- (m) "Permanent soil erosion and sedimentation control measures" means those control measures which are installed or constructed to control soil erosion and sedimentation and which are maintained after project completion.

(2) The terms defined in Part 91 have the same meanings when used in these rules.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

### **R 323.1702 Earth change requirements generally.**

Rule 1702. (1) A person shall conduct an earth change in a manner that will effectively reduce accelerated soil erosion and resulting sedimentation.

- (2) A person engaged in an earth change identified in R 323.1704 shall plan, implement, and maintain acceptable soil erosion and sedimentation control measures in conformance with Part 91, which effectively reduce accelerated soil erosion and off-site sedimentation.
- (3) A person shall set forth Soil erosion and sedimentation control measures in a plan as prescribed by R 323.1703. A person shall make the plan available for inspection at all times at the site of the earth change. The department or its designated representative may require the county or local enforcing agency to file a copy of the plan with the department.
- (4) A person shall obtain a permit containing state prescribed information, as required by R 323.1707 and make the permit available for inspection at the site of the earth change.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

### **R 323.1703 Soil erosion and sedimentation control plan requirements.**

Rule 1703. A person shall prepare a soil erosion and sedimentation control plan for any earth change identified in R 323.1704. A person shall design the plan to effectively reduce accelerated soil erosion and sedimentation, and shall identify factors that may contribute to soil erosion or sedimentation or both. The plan shall include, but not be limited to, all of the following:

- (a) A map or maps at a scale of not more than 200 feet to the inch or as otherwise determined by the county or local enforcing agency. A map shall include a legal description and site location sketch that includes the proximity of any proposed earth change to lakes or streams, or both; predominant land features; and contour intervals or slope description.
- (b) A soils survey or a written description of the soil types of the exposed land area contemplated for the earth change.
- (c) Details for proposed earth changes including all of the following:
  - (i) A description and the location of the physical limits of each proposed earth change.
  - (ii) A description and the location of all existing and proposed on-site drainage and dewatering facilities.
  - (iii) The timing and sequence of each proposed earth change.
  - (iv) The location and description for installing and removing all proposed temporary soil erosion and sedimentation control measures.
  - (v) A description and location of all proposed permanent soil erosion and sediment control measures.
  - (vi) A program proposal for the continued maintenance of all permanent soil erosion and sediment control measures that remain after project completion, including the designation of the person responsible for the maintenance. Maintenance responsibilities shall become a part of any sales or exchange agreement for the land on which the permanent soil erosion control measures are located.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

### **R 323.1704 Permit requirements.**

Rule 1704. (1) A land owner or designated agent who contracts for, allows or engages in an earth change in this state shall obtain a permit from the appropriate enforcing agency before commencing an earth change which disturbs 1 or more acres of land, or which is within 500 feet of the water's edge of a lake or stream, unless exempted in R 323.1705.

- (2) An earth change activity that does not require a permit under subrule (1) of this rule is not exempt from enforcement procedures under Part 91 or these rules, if the activity exempted by subrule (1) of this rule causes or results in a violation of Part 91 or these rules.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

### **R 323.1705 Permit exemptions and waivers.**

Rule 1705. (1) A permit is not required for any of the following:

- (a) A beach nourishment project permitted under Part 325 of Act No. 451 of the Public Acts of 1994, as amended, being S324.32501 et seq. of the Michigan Compiled Laws.
  - (b) Normal road and driveway maintenance, such as grading or leveling, that does not increase the width or length of the road or driveway and that will not contribute sediment to lakes or streams.
  - (c) An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance and that will not contribute sediment to lakes or streams.
  - (d) Installation of oil, gas, and mineral wells under permit from the supervisor of wells if the owner-operator is found by the supervisor of wells to be in compliance with the conditions of Part 91.
- (2) A county or local enforcing agency may grant a permit waiver for an earth change after receiving a signed affidavit from the landowner stating that the earth change will disturb less than 225 square feet and that the earth change will not contribute sediment to lakes or streams.
- (3) Exemptions provided in subrules (1) and (2) of this rule shall not be construed as exemptions from enforcement procedures under Part 91 or these rules, if the activities exempted by subrules (1) and (2) of this rule cause or result in a violation of Part 91 or these rules.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

### **R 323.1706 Application for permit.**

Rule 1706. (1) A landowner or designated agent shall submit an application for a permit to the appropriate enforcing agency.

- (2) A landowner or designated agent shall submit, with the application a soil erosion and sedimentation control plan and any other document that the appropriate enforcing agency may require.
- (3) The county or local enforcing agency shall provide an application requiring state prescribed information to the applicant.

- (4) An authorized public agency is exempt from obtaining a permit from a county or local enforcing agency but shall notify the county or local enforcing agency of each proposed earth change.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

### **R 323.1707 Application review and permit procedures.**

Rule 1707. (1) A person who is designated by the county or local enforcing agency who is trained in soil erosion and sedimentation control methods and techniques shall review and approve a soil erosion and sedimentation control plan.

- (2) The appropriate enforcing agency shall approve, disapprove, or require modification of an application for an earth change permit within 30 calendar days following receipt of the application. The enforcing agency shall notify an applicant of by first-class mail. If an applicant is disapproved, then the enforcing agency shall advise the applicant by certified mail of its reasons for disapproval and conditions required for approval. The enforcing agency need not notify an applicant of approval or disapproval by mail if the applicant is given written approval or disapproval of the application in person. A permit given to the applicant either in person or by first-class mail constitutes approval.
- (3) A permit that contains state prescribed information shall be used by each county or local enforcing agency and shall include any additional provisions required by the county or local enforcing agency. The permit shall be available at the site of the earth change for inspection.
- (4) Upon a determination that a permit applicant has met all of the requirements of these rules, Part 91 and the local ordinance, if applicable, the appropriate enforcing agency shall issue a permit for the proposed earth change.

**Note:** *On October 8, 2007, subsection (3) was rescinded and the remaining subsections were renumbered. Prior to the amendment, the Department of Environmental Quality was responsible for issuing SESC permits for projects that crossed between two or more permitting agencies; now each permitting agency is responsible for issuing a SESC permit for the portion of the project within its respective jurisdiction.*

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998; 2007 MR 19, Eff. Oct. 8, 2007.

### **R 323.1708 Soil erosion and sedimentation control procedures and measures generally.**

Rule 1708. A person who applies for an earth change permit shall incorporate the soil erosion and sedimentation control procedures and measures prescribed by R 323.1709 and R 323.1710 into the soil erosion and sedimentation control plan and shall apply the procedures and measures to all earth changes identified in the plan, unless the person preparing the plan shows to the satisfaction of the appropriate enforcing agency that altering of the control procedures or measures, or including other control procedures or measures, will prevent accelerated soil erosion and sedimentation during the earth change.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

**R 323.1709 Earth change requirements: time; sediment removal; design installation, and removal of temporary or permanent control measures.**

Rule 1709. (1) A person shall design, construct, and complete an earth change in a manner that limits the exposed area of any disturbed land for the shortest possible period of time as determined by the county or local enforcing agency.

- (2) A person shall remove sediments caused by accelerated soil erosion from runoff water before it leaves the site of the earth change.
- (3) A person shall design a temporary or permanent control measure that is designed and constructed for the conveyance of water around, through or from the earth change area to limit the water flow to a non-erosive velocity.
- (4) A person shall install temporary soil erosion and sedimentation control measures before or upon commencement of the earth change activity and shall maintain the measures on a daily basis. A person shall remove temporary soil erosion and sedimentation control measures after permanent soil erosion measures are in place and the area is stabilized. A person shall stabilize the area with permanent soil erosion control measures under approved standards and specifications as prescribed by R 323.1710.
- (5) A person shall complete permanent soil erosion control measures for all slopes, channels, ditches or any disturbed land area within 5 calendar days after final grading or the final earth change has been completed. If it is not possible to permanently stabilize a disturbed area after an earth change has been completed or if significant earth change activity ceases, then a person shall maintain temporary soil erosion and sedimentation control measures until permanent soil erosion control measures are in place and the area is stabilized.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

**R 323.1710 Standards and specifications.**

Rule 1710. A person shall complete all temporary and permanent erosion and sedimentation control measures according to the approved plan or operating procedures.

- (1) A person shall install and maintain control measures in accordance with the standards and specifications of all of the following:
  - (a) The product manufacturer.
  - (b) The local conservation district.
  - (c) The department.
  - (d) The Michigan department of transportation.
  - (e) The enforcing agency, if applicable and formally adopted.
- (2) If a conflict exists between the standards and specifications, the enforcing agency or authorized public agency shall determine which specifications are appropriate for the project.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

**R 323.1711 Building permits.**

Rule 1711. (1) A local agency or general law township that issues building permits shall notify the county or local enforcing agency immediately upon receipt of an application for a building permit that requires an earth change which disturbs 1 or more acres or which located within 500 feet of a lake or stream.

- (2) A local agency or general law township shall not issue a building permit to a person engaged in an earth change if the change requires a permit under Part 91 or these rules until the county or local enforcing agency has issued the required state prescribed permit for the earth change.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

**R 323.1712 Enforcement.**

Rule 1712. The county or local enforcing agency may issue a cease and desist order or revoke a permit upon its finding that there is a violation of Part 91, these rules, or an approved local ordinance, or a finding that there is a violation of a permit or an approved soil erosion and sedimentation control plan.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

**R 323.1713 Periodic review.**

Rule 1713. The department shall conduct an ongoing comprehensive review and evaluation of all soil erosion and sedimentation control programs that operate under Part 91 and these rules. The department shall notify county and local enforcing agencies and authorized public agencies as to the acceptability of their soil erosion and sedimentation control programs. The department shall make available a report of its findings of the review and evaluation of all enforcing agencies and authorized public agencies.

**History:** 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

**R 323.1714 Availability of documents.**

Rule 1714. Copies of the local conservation district standards and specifications for soil erosion and sedimentation control, as referred to in R 323.1710 are available at each local conservation district office at a nominal cost. Copies of the department's standards are available from the surface water quality division's Lansing office. Department of transportation standards are available at the Lansing office for a fee. Information on other standards may be available from product manufacturers and the enforcing agencies.

**History:** 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

## UNIT SIX ADMINISTRATIVE RULES FOR PART 91 REVIEW

1. "Accelerated soil erosion" means the \_\_\_\_\_ loss of the land surface that occurs as the result of \_\_\_\_\_ activities.
2. "Lake" means the Great Lakes and all natural and \_\_\_\_\_ inland lakes and impoundments that have definite \_\_\_\_\_, a \_\_\_\_\_, visible evidence of a continued occurrence of water, and a surface area of water that is equal to, or greater than, \_\_\_\_\_ acre.
3. "Stream" means a river, creek, or other \_\_\_\_\_ which may or may not be serving as a \_\_\_\_\_ (established under 1956 PA 40, as amended), and which has definite banks, a bed, and visible evidence of the continued flow or continued \_\_\_\_\_ of water, including the connecting waters of the Great Lakes.
4. A person engaged in an earth change shall \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ acceptable SESC measures in conformance with Part 91, which effectively \_\_\_\_\_ accelerated soil erosion and off-site sedimentation.
5. A person shall obtain a permit \_\_\_\_\_ commencing an earth change which disturbs \_\_\_\_\_ or more acres of land or which is within \_\_\_\_\_ feet of a \_\_\_\_\_ or \_\_\_\_\_.
6. An earth change activity that does not require a permit is not \_\_\_\_\_ from \_\_\_\_\_ procedures under Part 91.
7. An authorized public agency is \_\_\_\_\_ from obtaining a permit from the county or local enforcing agency, but shall \_\_\_\_\_ the county or local enforcing agency of each proposed earth change.
8. If an earth change crosses between two or more local (municipal) or county enforcing agencies, then \_\_\_\_\_ agency shall issue a permit for the portion of project within its jurisdiction.
9. A person shall design, construct, and complete an earth change in a manner that \_\_\_\_\_ the exposed area of any disturbed land for the \_\_\_\_\_ possible period of time as \_\_\_\_\_ by the county or local enforcing agency.
10. A person shall \_\_\_\_\_ sediment caused by accelerated soil erosion from \_\_\_\_\_ water \_\_\_\_\_ it leaves the site of the earth change.

11. A person shall design a temporary or permanent measure that is designed and constructed for the conveyance of water around, through, or from the earth change area to \_\_\_\_\_ the water flow to a \_\_\_\_\_ velocity.
12. A person shall install temporary SESC measures \_\_\_\_\_ or upon \_\_\_\_\_ of the earth change activity and shall \_\_\_\_\_ the measures on a \_\_\_\_\_ basis.
13. A person shall remove \_\_\_\_\_ SESC measures after \_\_\_\_\_ soil erosion measures are in place and the area is \_\_\_\_\_.
14. A person shall complete permanent soil erosion control measures for all slopes, ditches, or any disturbed land area within \_\_\_\_\_ calendar days after \_\_\_\_\_ grading or the final earth change has been completed.
15. A local agency or general law township \_\_\_\_\_ issue a \_\_\_\_\_ permit to a person engaged in an earth change if the change requires a permit under Part 91 or the rules until the county or local enforcing agency has issued the Part 91 permit.
16. A county or local enforcing agency may issue a \_\_\_\_\_ and \_\_\_\_\_ order or \_\_\_\_\_ a permit upon its finding that there is a violation of Part 91.

## ANSWERS TO UNIT SIX ADMINISTRATIVE RULES FOR PART 91 REVIEW

1. "Accelerated soil erosion" means the **increased** loss of the land surface that occurs as the result of **human** activities.
2. "Lake" means the Great Lakes and all natural and **artificial** inland lakes and impoundments that have definite **banks**, a **bed**, visible evidence of a continued occurrence of water, and a surface area of water that is equal to, or greater than, **one** acre.
3. "Stream" means a river, creek, or other **surface watercourse** which may or may not be serving as a **drain** (established under 1956 PA 40, as amended), and which has definite banks, a bed, and visible evidence of the continued flow or continued **occurrence** of water, including the connecting waters of the Great Lakes.
4. A person engaged in an earth change shall **plan, implement, and maintain** acceptable SESC measures in conformance with Part 91, which effectively **reduce** accelerated soil erosion and off-site sedimentation.
5. A person shall obtain a permit **before** commencing an earth change which disturbs **one** or more acres of land or which is within **500** feet of a **lake** or **stream**.
6. An earth change activity that does not require a permit is not **exempt** from **enforcement** procedures under Part 91.
7. An authorized public agency is **exempt** from obtaining a permit from the county or local enforcing agency, but shall **notify** the county or local enforcing agency of each proposed earth change.
8. If an earth change crosses between two or more local (municipal) or county enforcing agencies, then **each** agency shall issue a permit for the portion of the project within its jurisdiction.
9. A person shall design, construct, and complete an earth change in a manner that **limits** the exposed area of any disturbed land for the **shortest** possible period of time as **determined** by the county or local enforcing agency.

10. A person shall **remove** sediment caused by accelerated soil erosion from **runoff** water **before** it leaves the site of the earth change.
11. A person shall design a temporary or permanent measure that is designed and constructed for the conveyance of water around, through, or from the earth change area to **limit** the water flow to a **non-erosive** velocity.
12. A person shall install temporary SESC measures **before** or upon **commencement** of the earth change activity and shall **maintain** the measures on a **daily** basis.
13. A person shall remove **temporary** SESC measures after **permanent** soil erosion measures are in place and the area is **stabilized**.
14. A person shall complete permanent soil erosion control measures for all slopes, ditches, or any disturbed land area within **five** calendar days after **final** grading or the final earth change has been completed.
15. A local agency or general law township **shall not** issue a **building** permit to a person engaged in an earth change if the change requires a permit under Part 91 or the rules until the county or local enforcing agency has issued the Part 91 permit.
16. A county or local enforcing agency may issue a **cease** and **desist** order or **revoke** a permit upon its finding that there is a violation of Part 91.

**MICHIGAN'S PERMIT-BY-RULE FOR CONSTRUCTION ACTIVITIES**  
(Promulgated under Part 31)

**R 323.2190 National permit for storm water discharge from construction activity.**

Rule 2190. (1) Unless the Department has required an individual national permit pursuant to the provisions of subrule (3) or (4) of this rule, a point source discharge of storm water from a construction activity will be deemed to have a national permit authorizing the discharge if the criteria of subdivisions (a) and (b) of this subrule is met. Exception: after March 10, 2003, small construction activities, meaning 1 to 5 acres of disturbed soil as defined in R 323.2102(h)(ii) or (iii), are automatically deemed to have a national permit authorizing discharge of storm water in accordance with this rule and are not required to meet the filing requirements of subdivision(a) or (b) of this subrule, subrule (2)(j) of this rule, and subrule(5)(b) of this rule. The construction permittee shall do both of the following:

- (a) File with the Department, on a form approved by the Department, notice of coverage pursuant to the provisions of this rule before the initiation of construction activity. The notice of coverage shall include all of the following:
  - (i) A copy of the individual soil erosion and sedimentation control permit for the site as issued to the construction permittee; or if the construction activity is to be carried out by an authorized public agency, certification by the authorized public agency that an approved control plan exists; or, for Part 615 or Part 631 permits, a copy of the permit, along with any forms or diagrams pertaining to soil erosion and sedimentation control that were part of the permit application.
  - (ii) Acknowledgement by the construction permittee that any discharge that is made pursuant to the provisions of this rule shall be in compliance with Part 31 of the Act and the rules promulgated thereunder.
  - (iii) A location map and a description of the nature of the construction activity.
  - (iv) The location of the proposed discharge and identification of the receiving water.
  - (v) The total area of the site and the area of the site that is expected to undergo construction activity during the life of the project.
  - (vi) Name and certification number of a certified storm water operator responsible for inspection of the construction activity in accordance with subrule (2)(e) of this rule.
  
- (b) Provide a valid signature of the construction permittee or authorized representative on the notice of coverage. If the construction permittee is a partnership, association, corporation, industry, municipality, state agency, or interstate body, the valid signatory for the notice of coverage shall be determined in accordance with R 323.2114.

- (2) A construction permittee that has authorization to discharge under a national permit pursuant to subrule (1) of this rule shall comply with all of the following provisions:
- (a) Not directly or indirectly discharge wastes such as discarded building materials, concrete truck washout, chemicals, lubricants, fuels, litter, sanitary waste, or any other substance at the construction site into the waters of the state in violation of Part 31 of the Act or rules promulgated thereunder.
  - (b) Be in compliance with a soil erosion and sedimentation control permit for the site or, if the construction activity is carried out by an authorized public agency, the approved control plan, including the selected control measures that are applicable to the site.
  - (c) Properly maintain and operate the soil erosion control measures.
  - (d) Have the soil erosion control measures under the specific supervision and control of a storm water operator who has been certified by the Department as properly qualified to operate the soil erosion control measures. The certification shall be done in accordance with the requirements of R 323.1251 et seq.
  - (e) Cause the construction activity to be inspected by a certified storm water operator once per week, and within 24 hours after every precipitation event that results 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 construction permittee for review and shall be retained by the construction permittee for a period of 3 years from the date of the inspection or corrective action.
  - (f) In accordance with the requirements for on-land facilities as set forth in spillage of oil and polluting materials, being Part 5 of these rules, provide facilities and comply with reporting procedures for containment of any accidental losses of oil or other polluting materials.
  - (g) Dispose of solids, sediment, filter backwash, or other waste that is removed from or results from the treatment or control of storm water in compliance with applicable state laws and regulations and in a manner that prevents any waste from entering waters of the state.
  - (h) Allow the Department 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.
  - (i) Upon request, make available for public inspection or provide to the Department all reports or logs prepared pursuant to the provisions of this rule.
  - (j) File a revised notice of coverage in compliance with the provisions of subrule (1) of this rule before any expansion of the construction activity or

change in the soil erosion control measures that requires a change in the soil erosion and sedimentation control permit.

- (3) The Department may require that discharges from a construction activity be authorized by an individual national permit if it has been determined by the Department that unlawful pollution cannot be adequately guarded against, and there is or may be water quality degradation that will violate the commission act unless requirements in addition to those in the soil erosion and sedimentation control permit are imposed. A determination by the Department for an individual national permit or other additional control constitutes grounds for revocation of the authorization to discharge pursuant to the provisions of this rule.
- (4) The Department may require that discharges from a construction activity be authorized by an individual national permit if it has been determined by the Department that the responsible Part 91 permitting entity or authorized public agency is not carrying out a program that is adequate to ensure that the requirements of Part 91 of the Act are complied with.
- (5) The authorization to discharge pursuant to the provisions of this rule expires as follows:
  - (a) When the soil erosion and sedimentation control permit expires, or is revoked or terminated by the Part 91 permitting entity in accordance with the provisions of Part 91 of the Act and 1969 PA 306, MCL 24.201 et seq., or when the authorized public agency determines that the project has been completed by the stabilization of earth change activity.
  - (b) Five years from the date of the notice that is filed pursuant to the provisions of subrule (1)(a) of this rule, if the authorization to discharge has not previously expired pursuant to subdivision (a) of this subrule. This authorization may be extended by filing a new notice in compliance with the provisions of subrule (1)(a) of this rule. The construction permittee shall file a notice of termination with the Department, on a form approved by the Department, when authorization to discharge expires as set forth in accordance with subdivision (a) of this subrule. The notice of termination shall include the name and address of the construction permittee, the location of the construction site, and the mailing address, if available, and certification that stabilization of earth change activity has been completed or, if the certification cannot be made, the reason why the authorization to discharge has expired.
- (6) The Department may revoke authorization to discharge pursuant to the provisions of this rule if an individual national permit is required pursuant to the provisions of subrule (3) of this rule or in compliance with R 323.2159.
- (7) Nothing in this rule shall be construed to preclude the institution of any legal action or relieve the construction permittee from any responsibilities, liabilities, or

penalties to which the construction permittee may be subject pursuant to Part 31 of the Act or rules promulgated thereunder.

- (8) The provisions of this rule are severable, and if any provision of this rule or the application of any provisions of this rule to any circumstances is held invalid, the application of the provisions of this rule to other circumstances and the remainder of this rule shall not be affected by the invalidity.
- (9) The construction permittee shall take all reasonable steps to minimize any adverse impact to the surface or groundwaters of the state that result from noncompliance with any of the conditions specified in this rule.
- (10) If, for any reason, the construction permittee does not comply with, or will be unable to comply with, any of the conditions that are specified in this rule, the construction permittee shall provide the Department with the following information, in writing, within 5 days of becoming aware of the noncompliance or inability to comply:
  - (a) A description of the noncompliance and its cause.
  - (b) The period of noncompliance, including exact dates and times, or, if the noncompliance is not corrected, the anticipated time that the noncompliance is expected to continue and the steps taken to reduce, eliminate, and prevent recurrence of the noncompliance.
- (11) The provisions of this rule do not convey any property rights in either real or personal property, or any exclusive privileges, authorize any pollution, impairment, or destruction of the natural resources of the state, or the violation of any federal, state, or local laws or regulations, or obviate the necessity of obtaining permits or approvals from other units of government as may be required by law.
- (12) The provisions of this rule do not exempt the construction permittee from giving notice to public utilities and complying with each of the requirements of 1974 PA 53, MCL 460.701 et seq.
- (13) This rule shall not provide authorization to discharge storm water from construction activity which is mixed with non-storm water, or which is subject to an existing national permit or general permit.

## **DEFINITIONS AS USED IN THE PERMIT-BY-RULE**

“Act” means 1994 PA 451, MCL 324.3101 et seq., and the rules promulgated under the Act.

“Applicant” means a person who applies to the Department for a state or national permit to discharge waste or wastewaters into the waters of the state by an NPDES application form or a state permit application form.-

“Application” means either the uniform national NPDES application form, including subsequent additions, revisions, or modifications thereof, promulgated by the

administrator of EPA and adopted for use by the Department or a state permit application form for applying for a permit.

“Approved control plan” means the plan which is prepared by an authorized public agency, which is approved by the Department pursuant to the provisions of section 9110 of Part 91 of the Act, and which contains the soil erosion and sedimentation control procedures that govern all construction activities normally undertaken by the authorized public agency.

“Authorized public agency” means a state, local, or county agency that is designated pursuant to the provisions of section 9110 of Part 91 of the Act to implement soil erosion and sedimentation control requirements with regard to construction activities undertaken by the agency.

“Authorized representative” means a person who has written authorization from the construction permittee to sign the notice of coverage in the name of the construction permittee.

“Certified storm water operator” means an individual who has been certified by the Department pursuant to the provisions of section 3110 of Part 31 of the Act as properly qualified to operate treatment or control facilities for storm water discharges.

“Construction activity” means a man-made earth change or disturbance in the existing cover or topography of land for which a national permit is required pursuant to the provisions of 40 C.F.R. §122.26(a) (2000) and which is any of the following:

- (i) Five acres or more in size and defined as a construction activity pursuant to the provisions of 40 C.F.R. §122.26(b)(14)(x) (2000).
- (ii) One acre or more in size and defined as a small construction activity pursuant to the provisions of 40 C.F.R. §122.26(b)(15) (2000).
- (III) Less than 1 acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more.

The term includes clearing, grading, and excavating activities. The term does not include the practices of clearing, plowing, and tilling soil and harvesting for the purpose of crop production.

“Construction permittee” means a person who is deemed to have a national permit pursuant to the provisions of R 323.2190 and who owns or holds a recorded easement on the property where a construction activity is located, is constructing in a public right-of-way in accordance with the provisions of sections 13, 14, 15, and 16 of 1925 PA 368, MCL 247.183, 247.184, 247.185, and 247.186 , or is the authorized public agency if a construction activity is carried out by the authorized public agency.

“Department” means the director of the Department of Environmental Quality or his or her designee to whom the director delegates a power or duty by written instrument.

“Discharge” means any direct or indirect discharge of any waste, waste effluent, wastewater, pollutant, or any combination thereof into any of the waters of the state or upon the ground.

“Discharger” means any person who discharges, directly or indirectly, any substance defined by section 3109 of Part 31 of the Act, any treated or untreated waste, waste effluent, wastewater, or pollutant; or cooling waters into any of the waters of the state or upon the ground.

“EPA” means the United States Environmental Protection Agency.

“General permit” means a national permit issued authorizing a category of similar discharges.

“National permit” means an NPDES permit, or equivalent document or requirements, issued by the Department to a discharger pursuant to sections 3106 and 3112 of Part 31 of the Act for discharges into surface waters.

“NPDES” means the national pollutant discharge elimination system established by the Federal Act.

“NPDES form” means any issued permit and any uniform national form which is used by the Department, which is developed for use in the NPDES, and which is prescribed in regulations promulgated by the administrator of EPA, including an NPDES application and a reporting form.

“Part 91 permitting entity” means an agency that is designated by a county board of commissioners pursuant to the provisions of section 9105 of Part 91 of the Act; an agency that is designated by a city, village, or township in accordance with the provisions of section 9106 of Part 91 of the Act; or the Department if the construction activity is under the jurisdiction of 2 or more municipal or county enforcing agencies; or the Department for soil erosion and sedimentation activities under Part 615 or Part 631 pursuant to the provisions of section 9115 of Part 91 of the Act.

“Person” means an individual, partnership, association, corporation, industry, or public body.

“Point source discharge” means a discharge that is released to the waters of the state by a discernible, confined, and discrete conveyance, including any of the following from which wastewater is or may be discharged:

- (i) A pipe.
- (ii) A ditch.
- (iii) A channel.

- (iv) A tunnel.
- (v) A conduit.
- (vi) A well.
- (vii) A discrete fissure.
- (viii) A container.
- (ix) A concentrated animal feeding operation.
- (x) A vessel or other floating craft.

The term does not include a legally established county or intercounty drain, except for a county or intercounty drain that has a POTW designated as part of the drain or a discharge otherwise required to be authorized by a national permit.

“Site” means the area where a construction activity is physically located or conducted, including adjacent land that is used in connection with the construction activity.

“Soil erosion and sedimentation control permit” means a permit that is issued pursuant to the provisions of Part 91 of the Act by a part 91 permitting entity.

“Soil erosion control measures” means the measures or procedures to prevent or reduce the pollution of waters of the state that are required in the soil erosion and sedimentation control permit for the site or the selected control measures from the approved control plan that are applicable to the site.

“Stabilization of earth change activity” means the proper placement, grading, or covering of soil or rock at a construction activity to ensure subsequent resistance to soil erosion, sliding, or other earth movement.

“Storm water” means storm water runoff, snow melt runoff, and surface runoff and drainage.

## **OTHER RULES REFERENCED IN THE PERMIT-BY-RULE**

R 323.2114 Permit applications and other NPDES forms; valid signatories.

Rule 2114. A state or national permit application form or any other NPDES form submitted to the Department pursuant to these rules shall be signed as follows:

- (a) For a corporation, by a principal executive officer of at least the level of vice president, or his or her designated representative, if the representative is responsible for the overall operation of the facility from which the discharge described in the permit application or other NPDES form originates.
- (b) For a partnership, by a general partner.
- (c) For a sole proprietorship, by the proprietor.
- (d) For a municipal, state, or other public facility, by either a principal executive officer, the mayor, village president, city, or village manager, or other duly authorized employee.

R 323.2159 State and national permits; modification or revocation by the Department. Rule 2159. (1) The Department may modify any term or condition, including a schedule of compliance, of a permit, or may revoke a permit upon its finding of any of the following:

- (a) There is a change in any condition that requires a temporary or permanent reduction or elimination of a permitted discharge or constituent thereof.
- (b) The administrator of EPA issues a regulation prescribing a restriction or prohibition of a waste or wastewater constituent which is not covered by the terms and conditions of a permit, or the regulation is more stringent than any limitation imposed on a wastewater constituent in a permit.
- (c) A modification of the terms and conditions of a permit or a time schedule thereon is necessary because of an act of God or other conditions beyond the control of the permittee.
- (d) In the case of discharges from publicly owned treatment works, federal treatment works grant funds are not available or are not sufficient to allow construction of the treatment works in a time schedule set forth in the permit.
- (e) There is a violation of any term or condition of the permit.
- (f) The permittee has obtained a permit by misrepresentation or has failed to disclose all relevant facts to the commission.
- (g) A toxic effluent standard or prohibition, including any schedule of compliance specified therein, is established pursuant to section 307(a) of the Federal Act for a toxic waste or wastewater constituent which is present in the permittee's discharge and the standard or prohibition is more stringent than any limitation upon the waste or wastewater constituent in the permit.
- (h) The POTW receives wastewater from a nondomestic source and the development of a pretreatment program is necessary to control the introduction of regulated pollutants.
- (i) When a request for removal credits is approved in accordance with R 323.2313(a).

(2) The Department shall notify the regional administrator of any change in status or condition of a permit and he or she shall have an opportunity to object thereto, in writing, within 45 days before the effective date of the modification. If the regional administrator objects in writing, then the objection shall be resolved before the modification is approved by the Department, unless the right to object is waived, in writing, by the regional administrator.

(3) A permittee who is affected by a modification of a permit by the Department shall be notified not less than 90 days before the effective date of the modification and, upon petition therefore, shall have a hearing thereon pursuant to section 3112 of Part 31 of the Act.

(4) If the Department modifies an effluent limitation or a schedule of compliance in a permit, notice of the modification shall be mailed to all persons on the Department mailing list for public notices and fact sheets as prescribed by R 323.2124, and any interested person may comment thereon within 30 days following the date of notification.

**PERMIT-BY-RULE REVIEW: See Review Questions 13- 23 in Unit 5 (page 5-12).**