

## Michigan Municipal Separate Storm Sewer System (MS4) Permit Construction Storm Water Runoff Control

### Watershed and Jurisdictional General Permit Language

The Department of Natural Resources and Environment (Department) has determined that Part 91 of the Michigan Act and Michigan's Permit by Rule (Rule 323.2190) are qualifying local programs for the control of wet weather discharges from construction activities that result in a land disturbance of greater than or equal to one (1) acre, or disturb less than one (1) acre that is part of a larger common plan of development or sale. A qualifying local program provides control for soil erosion, off-site sedimentation, and other construction-related wastes, consistent with Federal Phase 2 storm water control requirements for Municipal Separate Storm Sewer System (MS4) permittees.

To ensure adequate protection of the MS4, the permittee shall develop and implement the following:

- a) A procedure to provide notice as follows when pollutants are discharged from construction activity in violation of Section 9116 of Part 91 of the Michigan Act, Michigan's Permit by Rule at R 323.2190(2) (a), or the prohibition of non-storm water discharges in Watershed General Permit, Part I.A.4.b.3.a., page 12, and Jurisdictional General Permit, Part I.A.7.a.2, page 8, and the pollutants enter the MS4 owned or operated by the permittee:

- (1) Notify the Part 91 permitting entity and the Department when soil and sediment are discharged.
- (2) Notify the Department when other wastes are discharged.

If the permittee suspects the discharge may endanger public health or the environment, the violations shall be reported in accordance with Watershed and Jurisdictional General Permit, Part I.B.2.a., pages 24 and 19, respectively.

- b) A procedure to ensure adequate allowance for soil erosion and sedimentation controls on preliminary site plans, as applicable (Watershed General Permit, Part I.A.4.b.5.b., page 17).

A procedure to ensure that preliminary site plans adequately allow space for future soil erosion and sedimentation controls, as applicable (Jurisdictional General Permit, Part I.A.9.b., page 13).

- c) A procedure for the receipt and consideration of complaints or other information submitted by the public regarding construction activities discharging wastes to the MS4.

### Discussion

In Michigan, Soil Erosion and Sedimentation Control (SESC) permits for land disturbances of one acre or more or within 500 feet of a lake or stream are issued by County Enforcing Agencies (CEAs) or Municipal Enforcing Agencies (MEAs), also referred collectively as "Enforcing Agencies." These programs serve as the qualifying local program for the construction portion of the MS4 permits. All counties are required to have a CEA, which means that there are existing



qualifying local programs statewide. Obtaining MEA status is optional for cities, villages and townships. Therefore, some MS4 permittees do not issue SESC permits for their own jurisdiction. Regardless of CEA or MEA status, all MS4 permittees have certain responsibilities to ensure that pollutants are not discharged from construction activities to the MS4. *Please note that this compliance assistance document only discusses Part 91 as it relates to MS4 permittees. This document does not include a complete explanation of Part 91.*

If soil and sediment are being discharged from construction activities into the MS4, the permittee is required to notify both the Department and the appropriate Enforcing Agency. If other wastes (see Frequently Asked Question number 5 below) are discharged from construction activities, the Department must be notified.

The permittee shall verbally notify the Department within 24 hours of becoming aware of any discharge to or from the MS4 that the permittee suspects may endanger public health or the environment.

The permits include a requirement to ensure adequate allowance for soil erosion and sedimentation controls on preliminary site plans, as appropriate. The purpose of this requirement is to ensure that adequate physical space is provided in the site design for implementation of soil erosion and sedimentation control measures. If an MS4 permitted municipality is not an Enforcing Agency, the Enforcing Agency that handles that municipality, in most cases the CEA, will cover this requirement.

#### Frequently Asked Questions:

##### 1. *What is the difference between an APA, CEA, and MEA?*

CEAs are responsible for administering and enforcing Part 91 throughout the county except for the following situations:

- a. Within a municipality that has assumed responsibility for administering Part 91 under Section 9106.
- b. With regard to earth changes conducted by Authorized Public Agencies (APAs).

The CEA is responsible for issuing permits for regulated earth change activities that occur within the county, conducting inspections and performing compliance and enforcement activities. A county can administer Part 91 by resolution or by adopting an ordinance approved by the Department.

MEAs include cities, villages, and townships which administer Part 91 within the municipal boundaries by adopting an ordinance that is approved by the Department. MEAs do not enforce Part 91 with regard to earth changes conducted by APAs.

APAs are state or local units of government which are approved by the Department to conduct earth change activities consistent with established procedures on their own property. APAs are not required to obtain Part 91 permits from a CEA or MEA. APAs do not issue Part 91 permits to other entities. Some examples of APAs include: county road commissions, municipalities and Michigan Department of Transportation.

*2. Does the permittee need to issue SESC permits for construction activity with the potential to discharge to the MS4?*

Enforcing Agencies: Yes, a Part 91 permit is required if there is a soil disturbance of one acre or more. Please note that some Enforcing Agencies have ordinances that are more restrictive than the Part 91 requirements, and do require SESC permits for sites under one acre if there's a discharge to the MS4.

Other Permittees: Permittees that are not Enforcing Agencies do not issue Part 91 permits. These permittees are encouraged, however, to take measures to insure that construction site owners obtain Part 91 permit coverage through the appropriate Enforcing Agency. For example, there could be a check box for Part 91 permit coverage as part of an application for a building permit. The requirement to obtain Part 91 permit coverage for sites with a discharge to the MS4 would depend on the size of soil disturbance and local ordinances, as described above.

*3. Does a permittee need to have APA, CEA or MEA status?*

No, only if the permittee is a county. Counties are required by statute to administer and enforce Part 91.

*4. Does the Department permit construction sites directly?*

Yes, the Department directly regulates storm water discharges from construction sites with one acre or more of soil disturbance and a discharge to surface water under Michigan's Permit by Rule (Rule 323.2190). A Notice of Intent form and fee are required only for construction sites with five acres or more of soil disturbance, and a discharge to surface water. Sites with at least one acre but less than five acres of soil disturbance with a surface water discharge are required to follow the provisions of the Permit by Rule, but do not need to notify the Department of the construction activity. The Permit by Rule requirement is in addition to the requirement for construction site owners to obtain SESC permit coverage through the local Enforcing Agency.

*5. What types of wastes from construction activities, other than soil and sediment, requires notification to the Department?*

Other types of wastes include oils and greases, construction debris, concrete washout, paint, fertilizers and pesticides, and any other polluting materials.

*6. How does the permittee deal with construction sites with less than one acre of soil disturbance and a discharge to the MS4?*

A discharge of sediment or other polluting materials from these smaller sites would be dealt with under the permittee's Illicit Discharge Elimination Program (IDEP). In some cases, CEAs and MEAs have ordinances that are more restrictive than the Part 91 requirements, and may require SESC permits for sites under one acre with a discharge to the MS4 system.

7. *Can the IDEP reporting system be used to record public complaints regarding construction activities discharging to MS4s?*

Enforcing Agencies: Yes, however, the Enforcing Agency should first verify whether the complaint is related to a permitted site under their jurisdiction. If so, the Enforcing Agency should take direct action to require compliance according to Part 91 of the Natural Resources and Environmental Protection Act (NREPA). If the complaint is not related to a permitted site under the Enforcing Agency's jurisdiction, an MS4 permittee's current IDEP reporting system can meet this permit requirement. In these situations, complaints should be investigated and addressed as illicit discharges, using the illicit discharge elimination process.

Other Permittees: Yes, an MS4 permittee's current IDEP reporting system can meet this permit requirement. However, a report of the discharge must also be forwarded to the CEA or MEA. As stated above, if the complaint is related to a permitted site the enforcing agency should take direct action to require compliance under Part 91 of the NREPA; otherwise these complaints should be investigated and addressed as illicit discharges, using the permittee's illicit discharge elimination process.

8. *What type of procedure should be used to notify the Part 91 permitting entity and the DNRE when soil and sediment or other construction wastes are being discharged into the MS4?*

The procedure should utilize communication methods such as phone calls and e-mails. Written documentation, in either files or electronic format, is also needed to confirm appropriate notifications were made to provide long-term documentation of the incident and to confirm that corrective actions that were taken. An effective notification procedure will require a quick turnaround. Discharges of pollutants into the MS4 need to be halted immediately in order to protect water quality. In some cases a remedial action such as sending a vactor truck to clean out a catch basin, implementing soil erosion and sedimentation control measures, or repairing existing soil erosion and sedimentation control measures will be required.

If the permittee suspects the discharge may endanger public health or the environment, the violations shall be reported to the Department within 24 hours in accordance with Part I.B.2.a. of both permits.

9. *What types of documents and records are required to be maintained:*

Enforcing Agencies: Maintain records consistent with the implementation of their Part 91 program. In most instances these documents and records are already established (e.g., approved ordinance or resolution for SESC, inspection records and forms, written enforcement procedures, etc).

Other Permittees: Primarily records of communication to confirm that appropriate notifications are being made to Part 91 enforcing agencies and the Department. For complaints that require follow up according to the permittee's IDEP reporting system, written documentation would be required to confirm that the permittee's IDEP is being followed.