

# SOIL EROSION AND SEDIMENTATION CONTROL PERMIT REQUIREMENTS FOR ROAD IMPROVEMENT ACTIVITIES

## GUIDANCE

This document addresses the permitting requirements for both Part 91, Soil Erosion and Sedimentation Control (SESC), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) and the Part 21, Wastewater Discharge Permits (Part 21 Rules), promulgated pursuant to Part 31, Water Resources Protection, of the NREPA; specifically Permit by Rule (R 323.2190) because construction storm water coverage is dependent upon first having SESC coverage. **This document *DOES NOT* address the need for other permits required under the NREPA.**

### PART 91 PERMIT REQUIREMENTS

Permits are required for most earth changes that disturb one or more acres or are located within 500 feet of a lake or stream (regardless of size of disturbance). The landowner (or easement holder) must secure the SESC permits from the appropriate enforcing agency. The enforcing agency can help determine if a project meets any of the Part 91 exemptions.

Part 91 allows for state, county, and municipal agencies to request designation as an authorized public agency (APA). Once an agency is designated an APA, it no longer needs to apply for SESC permits. The approved APA must undertake all earth change activities in accordance with the approved SESC procedures and the site-specific SESC plan developed for the project. The Michigan Department of Transportation and many of the State's county road commissions are APAs, and as such, do not have to obtain SESC permits for their routine maintenance projects; however, they must comply with the requirements of their approved SESC procedures and site-specific SESC plans. SESC sites may also have storm water requirements.

### STORM WATER REQUIREMENTS

Storm water coverage is obtained through Permit-by-Rule and is required for any construction activity disturbing one or more acres that has a discharge to the surface waters of the state. Projects disturbing from *one acre to less than five acres* receive automatic coverage if a landowner or easement holder has developed a site-specific SESC plan and has obtained Part 91 permit coverage or is designated an APA under Part 91. For a construction activity disturbing *five acres or larger*, the landowner or easement holder must submit a Notice of Coverage (NOC) application, \$400 fee, site location map, and a copy of the site-specific SESC plan to the Michigan Department of Environment, Great Lakes, and Energy's (EGLE) Water Resources Division.

*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. Section 122.26(a)....” (see R 323.2102[k])

Regardless of whether the landowner or easement holder receives automatic coverage or submits an NOC, the landowner or easement holder must *follow all requirements* of Permit-by-Rule including, but not limited to, having a certified storm water operator conduct weekly inspections and inspections within 24 hours after a rain event that results in a discharge.

#### STORM WATER REQUIREMENTS – EXCEPTION

Maintenance activities that are limited to the restoration of roadside ditches to the original grade or hydraulic capacity disturbing one to five acres are exempt from Permit-by-Rule requirements.

## GENERAL ROAD IMPROVEMENT CATEGORIES

1. **Milling:** This is a process where the existing hot mix asphalt (HMA) is ground off to a specified depth and replaced with a new layer of HMA. The road base course is not disturbed and generally there is no shoulder work associated with milling. No storm water coverage is necessary. However, if additional earth work is done in conjunction with the milling project, such as working on the shoulders, side slopes, or intersections, storm water coverage may be required depending upon the amount of disturbed area (see storm water requirements).
2. **Crush and Shape:** (Milling may occur prior to crushing and shaping). This operation involves crushing/grinding the existing HMA including the top 1-2 inches of aggregate base into pieces less than 1.5 inches. Occasionally, this process results in excess material that must be hauled away or used elsewhere on the project. Typically associated with this activity is raising the roadbed, changing the alignment, or correcting the superelevation. The crush and shape operation may result in the disturbance of the shoulders and foreslopes. Storm water coverage is required if the project disturbs one or more acres and there is a discharge to surface waters. The area of disturbance is calculated by adding the disturbance of the roadbed (see exception below) along with the area of disturbed shoulders and foreslopes. The project will be considered stable once the new layer of HMA is placed and all other earth disturbances associated with the project are vegetated or covered with erosion resistant material.

**Crush and Shape - Exception:** If the roadbed is graded and compacted the *same day* that the crushing and shaping occurs, the area of the compacted areas (shoulder point to shoulder point) of the roadbed does not have to be included in the area of disturbance calculations as long as there is no substantial change in elevation (such as vertical

realignment or grade lifts associated with changing the road footprint that would require ditches to be relocated, etc.). Those areas of the roadbed that have been substantially raised, lowered, or realigned must be included in the area of disturbance calculations regardless of when the roadbed will be graded and compacted.

3. **Concrete Rubblizing:** This process involves breaking down the existing concrete pavement into pieces less than six inches in size to be used as a base course for HMA. If HMA is over concrete, the HMA must be milled or removed by other means prior to rubblizing. The rubblized area must be adequately compacted prior to placing the HMA.
  - a. If only rubblizing is done and there is no additional earthwork on the shoulders, foreslopes and intersections, no storm water coverage is required.
  - b. If the grade is raised after rubblizing, storm water coverage is required if it meets the permit triggers described under Storm Water Requirements. The size of the disturbance is calculated by adding up the area of the raised surface and the associated disturbed shoulders and foreslopes.
4. **Trenching:** This process involves removing a rectangular-shaped (usually four feet wide) area of shoulder (which is loaded on a truck via conveyer) and replaced with compacted shoulder aggregate all within the *same day*. No storm water coverage is required.
5. **Converting Paved Roads to Gravel:** This operation involves crushing/grinding the existing HMA including the top 1-2 inches of aggregate base into pieces less than 1.5 inches, road surface shaping, and possible placement of a new wearing course of gravel. Occasionally, this process results in excess material that must be hauled away or used elsewhere on the project. The crush and shape portion of the operation may result in the disturbance of the shoulders and foreslopes. Storm water coverage is required if the project disturbs one or more acres and there is a direct discharge to surface waters. The area of disturbance is calculated by adding the disturbance of the roadbed (see exception below) along with the area of disturbed shoulders and foreslopes. The project will be considered stable once the final course of gravel is placed, shaped, and compacted and all other earth disturbances associated with the project are vegetated or covered with erosion resistant material.

**Converting Paved Roads to Gravel - Exception:** If the roadbed is graded and compacted the *same day* that the crushing and shaping occurs, the compacted area (shoulder point to shoulder point) of the roadbed does not have to be included in the area of disturbance calculations as long as there is no substantial change in elevation (such as vertical realignment or grade lifts associated with changing the road footprint that would require ditches to be relocated, etc.). Those areas of the roadbed that have been substantially raised, lowered, or realigned must be included in the area of disturbance calculations regardless of when the roadbed will be graded and compacted.

## WHERE TO GO FOR HELP

Information regarding Part 91 can be found at [Michigan.gov/SoilErosion](https://www.michigan.gov/SoilErosion). For more information on SESC permits and Storm Water Coverage, contact your WRD storm water staff ([EGLE Soil Erosion and Construction Storm Water Staff Map](#)), or call 800-662-9278.

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