



## Water Resources Division

# Soil Erosion and Sedimentation Control (SESC) Program Enforcing Agency Program Periodic Review Guidance

The Michigan Department of Environmental Quality (MDEQ) conducts formal comprehensive program reviews (audits) of SESC agencies on a frequency of once every five years utilizing criteria outlined in Section 9105(6) or Section 9106(3) of Part 91, SESC, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. The comprehensive evaluation will examine information collected during the preceding interval between reviews, including MDEQ inspections, enforcing agency compliance and enforcement efforts, and other agency performance parameters. This document has been developed to assist Part 91 enforcing agencies in operating and maintaining approvable programs.

### **Resolution or Ordinance**

Section 9105(6)(a) of Part 91 states that a county enforcing agency (CEA) must have passed a resolution or enacted an ordinance that is at least as restrictive as Part 91 and the administrative rules. Section 9106(3)(a) of Part 91 states that a municipal enforcing agency (MEA) must have enacted an ordinance that is at least as restrictive as Part 91 and the administrative rules.

Therefore, in order to meet the program review expectations, a CEA must have a current, adopted, and MDEQ approved resolution or ordinance enabling Part 91 and an MEA must have a current, adopted, and MDEQ approved ordinance enabling Part 91. The MDEQ will review the ordinance or resolution to determine if it meets the minimum requirements of Part 91. The ordinance or resolution in place must, at a minimum, adopt the current statute and rules by reference. Examples of approvable ordinances are available from the MDEQ upon request.

### **Training**

Sections 9105(6)(b) and 9106(3)(b) of Part 91 state that all individuals with decision-making authority who are responsible for administering the SESC Program for the agency have current certificates of training under Section 9123 of Part 91.

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

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

The MDEQ has determined that the Construction Storm Water Operator Certification is equivalent to inspector level training for SESC. All individuals working for a Part 91 enforcing agency that are responsible for making decisions related to SESC are required to have a valid certificate of training at the inspector level. The construction storm water operator certification is also the prerequisite for comprehensive SESC training.

Certification as a construction storm water operator allows you to:

- Inspect sites to determine compliance with an SESC Plan.
- Document inspections.
- Identify SESC measures that are failing or require maintenance.
- Identify areas where additional SESC measures may be necessary.
- Report to the landowner (or comprehensive certified individuals for employees or contractors for Part 91 enforcing agencies) the findings of the inspection, including any corrective or additional action recommended.
- Certified construction storm water operators may be the same person responsible for installing and maintaining the SESC measures, however, this is not a required duty under the certification.

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

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

- Review and/or design SESC plans.
- Make final decisions regarding SESC permit issuance or denial.
- Make determinations on whether or not to pursue enforcement action for noncompliance with Part 9 and the administrative rules.
- Request plan updates of permittees.
- Review and/or design SESC measures or make determinations that design assistance is needed for SESC measures (e.g., sediment basins, diversions, riprap sizing, etc).

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

## **Funding**

Sections 9105(6)(c)(i) and 9106(3)(c)(i) of Part 91 state that the MDEQ shall consider if the enforcing agency has submitted evidence that the funding to administer the SESC Program allows it to effectively administer and enforce the program.

While there are no specific funding requirements, the enforcing agency's fees or other funding mechanisms must be adequate to administer the enforcing agency's program in a manner that enables them to implement all other aspects of an approvable SESC program outlined in this document.

## **Inspections**

Sections 9105(6)(c)(ii) and 9106(3)(c)(iii)(B) of Part 91 state that enforcing agencies must conduct adequate inspections to assure minimization of soil erosion and off-site sedimentation. All inspections must be documented in order to be considered complete inspections during the program review. In addition, when inspections find that soil erosion or sedimentation of adjacent properties or waters of the state has or is likely to occur, the permittee (landowner) must be notified in writing. The notice shall include a description of the violation or potential violation, what must be done to remedy it, and shall specify a time in which compliance must be achieved (Section 9118 of Part 91 states that compliance must be achieved within five days). The MDEQ recommends that landowners are notified of the results of all inspections, not just those in which violations were noted.

### Frequency

If the enforcing agency has not developed an approved site prioritization matrix (as described below), adequate inspection frequency is, generally, an average of one inspection per month per site. Please note, however, that site specific characteristics may require more frequent inspections of particular sites to ensure minimization of soil erosion and off-site sedimentation.

As an alternative, enforcing agencies may develop a written site prioritization matrix which assigns inspection frequencies based on site factors that affect control mechanisms and potential problems on-site. If an inspection frequency determined by a site prioritization matrix is the option chosen by the enforcing agency, a written site prioritization system shall be submitted to the MDEQ for review and approval. If this option is selected, the enforcing agency will be expected to be in compliance with the inspection frequencies identified in the matrix on an ongoing basis and during future periodic reviews.

Inspections must also be conducted throughout the duration of the earth change, from initial earth change until final stabilization.

### Quality

The MDEQ will review completed inspections for documentation of site conditions, corrective measures that are necessary, and the overall quality of the inspection. The MDEQ uses a database to record inspection data from MDEQ inspections of Part 91 permitted construction sites. This data will be used in conjunction with Part 91 agency inspection documentation and program review site condition observations to evaluate the quality and effectiveness of the Part 91 enforcing agency's inspection program.

## **Compliance and Enforcement Efforts**

Sections 9105(6)(c)(iii) and 9106(3)(c)(iii)(C) of Part 91 state that an enforcing agency must have effective compliance and enforcement efforts. The MDEQ will assess the compliance and enforcement effectiveness of an enforcing agency based on collected/submitted agency documentation such as: guidance documents, informal letters, notice of violation/determination letters, and formal enforcement actions such as levied fines, cease and desist orders, stop work orders, and financial sureties. The enforcing agency is responsible to demonstrate an effective compliance and enforcement program. To demonstrate an adequate program, the enforcing agency must have a set of enforcement procedures that define the enforcement steps that will be taken in an event of a violation. The enforcement

procedure can allow for the skipping of enforcement steps if violations identified on-site are particularly egregious. The enforcing agency will be expected to be in compliance with the procedures on an ongoing basis and during future periodic reviews. Documentation of efforts to return a site to compliance shall be maintained with the permit file.

### Procedure

A written compliance and enforcement procedure should clearly outline the steps that will be taken by the enforcing agency to return sites to compliance. While different agencies have a wide array of compliance and enforcement options under Part 91 and the administrative rules, at a minimum, the procedure shall include a series of escalating steps from verbal and written notification, up to court action and/or the enforcing agency taking corrective actions at the site, if necessary. Compliance and enforcement options under Part 91 or an ordinance enacted under Part 91 may include: verbal notification, informal letters, notice of determination letters, surety bonds, irrevocable letters of credit, enforcing agencies making on-site corrections at the owners expense, cease and desist orders, stop work orders, court injunctions, ticketing, and fines of up to \$25,000 per day.

### **Applications and Plans**

Sections 9105(6)(c)(iv) and 9106(3)(c)(iii)(D) of Part 91 state that enforcing agencies shall accept adequate and effective applications and plans as required by the rule.

#### Applications

At a minimum, applications must include all components of the state-prescribed application. The application template and selected permit applications will be reviewed to determine if these components are included.

The landowner of record, or his or her designated agent, must submit the application. If a designated agent is used, the agency must maintain, in the permit file, written authorization of the agent's designation by the landowner.

#### Plans

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

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

- a) A map or maps at a scale of not more than 200 feet to the inch.
- b) A legal description of the site.
- c) A site location sketch that includes proximity of any proposed earth change to lakes and streams, or both.
- d) Predominant land features.
- e) Contour intervals or slope description.
- f) Soil survey or a written description of the soils types of the exposed land area contemplated for the earth change.
- g) A description and the location of the physical limits of each proposed earth change.
- h) A description and the location of all existing and proposed on-site drainage and dewatering facilities.
- i) The timing and sequencing of each proposed earth change.

- j) The location and description for installing and removing all proposed temporary SESC measures.
- k) A description and location of all proposed permanent erosion and sedimentation control measures.
- l) A program proposal for the continued maintenance of all permanent SESC measures that remain after project completion, including the designation of the person responsible for maintenance.

As part of the audit, selected plans shall be reviewed to ensure that all required plan elements are included in approved plans and that the plan is adequate for site conditions. A sample checklist, including all of the required elements of a Part 91 plan, is available from your MDEQ District Office. In addition, the MDEQ recommends that enforcing agencies charge a plan review fee to facilitate an internal or external engineering review of permitted sites over five acres. This is not a requirement, however, it can help assure that plan components are adequate, while freeing up agency staff to complete other tasks. If engineering review for larger sites is not selected, please contact MDEQ staff for suggested resources to assist in determining appropriate placement, installation, and limitation of SESC measures.

### **Permits**

Sections 9105(6)(c)(v) and 9106(3)(c)(iii)(E) of Part 91 state that the enforcing agencies must have adequate and effective permits. At a minimum, permits must include all components of the state-prescribed permit. The permit template will be reviewed by MDEQ staff to determine if these components are included.

The permit must be issued in the name of the landowner of record regardless of whether or not a designated agent was used to apply for the permit.

The MDEQ will review selected permits to confirm that exemptions and waivers are being granted appropriately as outlined in Section 9115, Section 9115a, and Rule 1705. The MDEQ uses a database to collect information about permit review inspections conducted by MDEQ. These inspections may be done on an ongoing basis during the period between MDEQ's periodic agency comprehensive reviews. The permits may be collected from the Part 91 agency directly, or from MDEQ Notice of Coverage (NOC) permit files which include the SESC permit for the site. The inspection results can be queried from the database and utilized to determine the adequacy of permits for upcoming periodic reviews. If these inspections are performed in the interim period between audits, the results of the permit review inspections will be transmitted to the enforcing agency after the inspection, giving the agency the opportunity to make corrective actions before the time of the actual periodic review.

### **Site Conditions**

Sections 9105(6)(c)(vi) and 9106(3)(c)(iii)(F) of Part 91 state that the MDEQ shall consider conditions at construction sites under the jurisdiction of the enforcing agency in evaluating the overall effectiveness of the program.

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