



## Water Resources Division

### Determining When Coverage under Michigan's Permit-by-Rule for Construction Sites is Necessary

#### **Coverage Triggers:**

Any site that is equal to or greater than 1 acre in earth disturbance and that has a point source discharge to waters of the state must comply with Michigan's Permit-by-Rule for Construction Sites (Permit-by-Rule).

Sites between 1 and 5 acres in total earth disturbance are automatically covered under Permit-by-Rule provided they have obtained a Part 91, Soil Erosion and Sedimentation Control (Part 91) Permit from the local enforcing agency or if the entity conducting the earth change is an authorized public agency. To comply with Permit-by-Rule, these sites must comply with and maintain the Part 91 Permit, throughout construction until the site is stabilized. During this time, the site must also be inspected by a Certified Construction Storm Water Operator, once per week and within 24 hours of a rain event resulting in a discharge of storm water from the site.

Sites 5 acres or greater in earth disturbance with a point source discharge to waters of the state must submit an application for Notice of Coverage to be authorized under Permit-by-Rule. The application fee is \$400. To comply with Permit-by-Rule, these sites must comply with and maintain the Part 91 Permit, throughout construction until the site is stabilized. During this time, the site must also be inspected by a Certified Construction Storm Water Operator, once per week and within 24 hours of a rain event resulting in a discharge of storm water from the site.

#### **Determining a Point Source Discharge to Waters of the State:**

Waters of the state include lakes, rivers, streams, wetlands, and all other watercourses and waters within the jurisdiction of the state and also the Great Lakes bordering the state. A discharge of storm water from the construction site to waters of the state at any point during construction, from initial earth disturbance to final stabilization, constitutes a point source discharge. Sites that have determined that they will not discharge to waters of the state need not comply with Permit-by-Rule; however, if the site is found by the Michigan Department of Environmental Quality (MDEQ) to in fact discharge to waters of the state, the landowner will be in violation of Michigan's Permit-by-Rule.

Should the landowner wish additional assurance, he or she may submit form No. EQP9213, No Potential to Discharge, for Exclusion of Coverage under the National Pollutant Discharge Elimination System Storm Water Discharges Associated with Construction Activity (No Potential to Discharge). This certification indicates that the proposed earth change has been evaluated by a professional engineer or professional soil scientist and demonstrates that with infiltration best management practices and storage there will be no direct or indirect discharge to surface waters resulting from a 25-year/24-hour event (use 3.9 inches of rain in 24 hours, a Soil Conservation Service Type II rainfall distribution, start the event with normal soil moisture during growth conditions - April through October). Further, there must be adequate infiltration on-site to dewater any stored flow to groundwater so that a subsequent rain event with a 1-month recurrence (use 0.6 inches in a 24-hour period) that occurs 72 hours after the end of the 25-year/24-hour event will also not cause a discharge to surface waters. If a site that has submitted a No Potential to Discharge is found by the MDEQ to in fact discharge to waters of the state, enforcement discretion will be considered, provided a valid No Potential to Discharge form was submitted.

The No Potential to Discharge form (EQP9213), Notice of Coverage, Permit-by-Rule, and Part 91 information can be found at [www.michigan.gov/soilerosion](http://www.michigan.gov/soilerosion).