

## CHAPTER 2: LAWS & ORDINANCES

The following section will briefly describe the federal, state, and local laws currently in effect that have some impact on stormwater management. The purpose of this section is not to give a detailed analysis of each law, but to give a brief description of the law and how it may impact stormwater management. If additional information is needed about the law, it would be advisable to obtain a copy of the specific Act and the accompanying administrative rules.

### FEDERAL LEGISLATION

One of the first national pieces of legislation that dealt with water quality was the Federal Pollution Control Act of 1948. In 1972, amendments to the Act (PL 92 -500) shifted responsibility from the state and local governments to the federal government. The amendment required National Pollutant Discharge Elimination System (NPDES) permits for all point source discharges in the United States. Due to limitations, the primary focus was on industrial and wastewater treatment plant discharges.

Section 404 of the Clean Water Act regulates the placement of fill in waters or wetlands of the United States. The Michigan Department of Environmental Quality (DEQ) administers a permit program under this section for interior portions of the state; in coastal areas, 404 permits must be obtained from the U.S. Army Corps of Engineers.

Section 405 of the Water Quality Act of 1987, amended section 402 of the Clean Water Act of 1972 by requiring the EPA to produce regulations requiring permit applications, no later than February 4, 1989, for stormwater discharges from industrial activity, and storm sewers from municipalities with populations of 250,000 people or more. February 1, 1992, the requirements included municipalities with populations of 100,000 people or more.

The industries that will be required to apply for permits under this Act cover a wide range. One notable industry is the construction industry, for activities that will disturb more than 5 acres of land. A notable exemption to the Act is the agriculture industry.

As a result of the amendments to the Water Quality Act, there will be an increased effort to eliminate non-storm water discharges into storm drains. There will also be an effort to reduce the discharge of pollutants through management, controls, and engineering methods. However, at this time, it is not known how the Act will be administered.

This legislation will increase awareness for stormwater management, non -point source pollution, and BMPs over the next few years. Specifics on the legislation can be obtained from the Surface Water Quality Division of the Michigan Department of Environmental Quality at 517-373-1949, or EPA Region V, 77 West Jackson Blvd., Chicago, Illinois 60604.

### STATE LEGISLATION

**Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).** The Act was created to protect and conserve the water resources of the state. This includes the prohibition of pollution of the state's waters, and to prohibit the obstruction and occupation of the floodways, and prohibit activity that would harmfully interfere with the stage discharge characteristics of the rivers and streams of the state.

The "quantity" portion of Part 31 focuses on the floodway occupation and the harmful interference aspects, and does not specifically regulate stormwater runoff. The "harmful interference" portion of Part 31 may be a factor in a stormwater management design that involves in-line detention. The construction of structures which restrict or detain water must not increase the flooding potential onto another person's property without compensation. There are currently no state regulations that specifically address stormwater runoff. To date stormwater regulation has remained at the local level.

The administration of the "quality" portion of Part 31 has primarily focused on point source pollution. In the past, it had been considered not economically practical to monitor and regulate the sources of non-point pollution, since it can come from such a wide range of areas and sources. However, in recent years, Part 31 has been increasingly used for the regulation of non-point source pollution.

**Part 91, Soil Erosion and Sedimentation Control, of NREPA** Part 91 provides for the control of soil erosion, and protects the waters of the state from sedimentation. Part 91 is applicable to earth changes of one acre or greater and all earth changes within 500 feet of a lake or stream, regardless of the size of the area disturbed.

Part 91 is enforced at three different levels of government: local (city, village, or charter township), county, or state. In some instances some public agencies, such as road commissions and drain commissions are self-enforcing. The primary responsibility for administering Part 91 is with the county. The State's primary role is to oversee the overall operations of the State and local agencies.

Part 91 may not specifically address stormwater runoff; however, the methods for minimizing erosion have a significant impact on the amount of runoff as well as controlling sediments. Since sedimentation is estimated to be a pollutant in about 95% of the watersheds in Michigan, Part 91 is very important in controlling a high percentage of the non-point source pollution problem.

**Part 301, Inland Lakes and Streams, of NREPA** Part 301 was created to regulate inland lakes and streams; and to protect riparian rights and the public trust in inland lakes and streams. The numerous public trust values include fisheries and wildlife habitat, public recreation, and water quality.

A permit must be obtained under Part 301 whenever bottomlands are dredged or filled and adequate soil erosion control measures are a condition of the permit. As noted above, the control of erosion and sedimentation is essential to begin to solve non-point source pollution.

**Part 303, Wetland Protection, of NREPA** Part 303 provides for the preservation, management, protection, and use of wetlands. A permit is required for alteration or use of a wetland. Part 303 applies to wetlands that are contiguous (connected) to a lake, pond, river, or stream; or isolated wetlands that are greater than five acres in size in counties with a population of 200,000 or greater; or is determined to be essential to the preservation of the natural resources of the state from pollution, impairment, or destruction.

Part 303 indicates that the following benefits may be derived from a wetland:

1. Flood and storm control by the absorption of water and storage capacity.
2. Pollution treatment by serving as a biological and chemical oxidation basin.
3. Erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.

When a wetland will be used as a part of a stormwater management project, it is imperative that the project be closely coordinated with the District Office of the Land & Water Management Division, Michigan Department of Environmental Quality. (Appendix A gives the address and telephone number of the District Offices throughout the state).

**Part 305, Natural Rivers, of NREPA**, includes zoning ordinances and rules that can limit construction of stormwater management facilities through restrictions such as building setbacks, limitations on land alteration in areas of high ground water, maintenance of natural vegetation strips, and similar controls.

**Michigan Environmental Protection Act (MEPA), 1970 P.A. 127**, is an extremely important piece of legislation, as it provides protection of the air, water, and other natural resources, and the public trust associated with these resources. The Act also gives the right to any person in the State to bring action against another person, agency, corporation, or political subdivision for conduct that may pollute, impair, or destroy the air, water, or natural resources.

In regard to stormwater management, MEPA could be used as a means to require detention/retention, to reduce the amount of runoff or the amount of pollutants being added to a waterbody.

**Land Division Act, 1967 PA 288, as amended.** The Act was passed to regulate the subdivision of land; and to promote the public health, safety, and general welfare. Among the provisions of the Act (Section 192) is the review by the county drain commissioner, or the governing municipality for adequate storm water facilities within the proposed subdivision. At this time, there is no statewide standard that is being used in regard to quality and quantity issues. As a result, a standard, if it exists, will vary among communities and counties.

**Michigan Drain Code, 1956 P.A. 40, as amended.** The Act was passed with the primary objective of improving the drainage of agricultural lands. Over the years as these areas have become developed, the flooding problems faced by the county drain commissioner have increased.

The establishment of drains or improvements on existing drains is initiated by petition from either a percentage of landowners in the drainage district or two or more public bodies. Under Chapter 8 of the Drain Code, one municipality may petition the drain commissioner. Once drainage districts are established, assessments may be levied to finance drain improvements. In the past, county drain projects have typically consisted of drain enclosures and clean-outs. However, in recent years stormwater management has become a primary focus in various counties around the state.

**Part 315, Dam Safety, of NREPA** Part 315 requires a dam construction permit for the construction of a structure that will be six feet or more in height and will impound five

surface acres or more at the design flood elevation. Depending on size, some detention ponds may fall under the authority of Part 315.

Part 315 requires dams to have a specified spillway capacity, based on the hazard rating of the dam. As an example, “low -hazard potential” dams must have a spillway capacity that is capable of passing the 100-year flood, or the flood of record whichever is greater. “Low-hazard potential” dams are located in areas where failure would pose little to no danger to individuals, and damage would be limited to agriculture, uninhabited buildings, structures, or township or county roads and where environmental degradation would be minimal. Other dam classifications with a height of less than 40 feet would require a spillway that is capable of passing the 200-year flood, or the flood of record whichever is greater.

For additional information on the classification of dams or Part 315, please contact the Dam Safety Unit of the Land & Water Management Division, MDEQ, at (517) 373-1170.

## **LOCAL ORDINANCES**

As of July 1999, a comprehensive stormwater management law does not exist in Michigan, and stormwater management regulations have been left up to local government. The following are elements that would typically be included in local storm water management zoning ordinances (reference 9):

1. **Statement of Authority to Regulate** (What statute gives the community the authority to enact the ordinance.)
2. **Goals and Objectives** of the Stormwater Management Program.
3. **Definitions of terms** used in the ordinance.
4. **Relationship between current and existing legislation** should be included to avoid conflict.
5. **Stormwater Management Plan Review**
  - a) Specifications (Descriptions, standard format and certifications that are required.)
  - b) Evaluation of Plans (The agency that will evaluate the plans, and the criteria that will use for the evaluation.)
  - c) Zoning Approval (The proposal must meet current zoning requirements.)
  - d) Review Fees (The fee schedule for review and evaluation.)
6. **Permits**
  - a) When State and Local Permits are Required (The situations that will require permits should be specifically spelled out.)
  - b) Waivers (Circumstances in which permit requirements are waived.)
  - c) Appeals (An appeal procedure must be present to handle denials of a permit or waiver.)
  - d) Expiration and Renewal (The permit should be given an expiration date. There should also be a method to apply for an extension or renewal.)
  - e) Suspension or Revocation of Permit (To ensure that the construction and implementation of the stormwater management plan is completed.)

- f) Fees (Any permit fees should be listed.)
- g) Performance Bonds (To ensure the completion of the project.)
- h) Compliance (The responsibility of completing the project should be clearly designated to the owner.)
- i) Liability Insurance (An alternative to a performance bond, the liability insurance would allow the project to be completed even if the developer is not financially able.)

## **7. Design Criteria**

- a) Acceptable Methods of Stormwater Management
- b) Performance Standards (List the amount of protection or control that is expected. Such as no increase in 100-year runoff.)
- c) Acceptable Methods of Evaluating Stormwater Management Facilities
- d) Reference List (Stormwater management technical references.)
- e) Safety and Aesthetics (When the use of fencing is required.)
- f) Emergency Spillways (When design conditions are exceeded, how the emergency spillway will function.)

## **8. Maintenance and Inspection**

- a) Access to Site (Access to the site must be guaranteed during and after construction.)
- b) Inspection During and After Construction
- c) Responsibility of Maintenance (The responsibility should be noted in the ordinance. If given to landowner, the property title must indicate that the responsibility will transfer if the land is sold.)
- d) How Funds for Maintenance will be Collected

9. **Severability** (If one portion of the ordinance is found to be unenforceable, the other provisions will remain in effect.)