

Permit-by-Rule for Storm Water from Construction Activities

Frequently Asked Question (FAQ)

INTRODUCTION

Construction activities that disturb one or more acres of land and have a point source discharge of storm water to waters of the state (streams, rivers, lakes, and wetlands) are required to obtain a National Pollutant Discharge Elimination System (NPDES) permit from the Michigan Department of Environment, Great Lakes, and Energy's (EGLE) Water Resources Division (WRD). The WRD has adopted a process called "Permit-by Rule" ([Rule 323.2190, promulgated under Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended \[NREPA\]](#)) for issuing the necessary storm water coverage.

Permit-by Rule "streamlines" the permitting process and is dependent upon the applicant first obtaining Part 91 coverage (Part 91, Soil Erosion and Sedimentation Control, of the NREPA), i.e., obtaining a Soil Erosion and Sedimentation Control (SESC) permit from the appropriate Part 91 permitting agency or being designated an Authorized Public Agency (APA).

For sites disturbing one to five acres, the applicant/permittee receives automatic storm water coverage upon the applicant obtaining a Part 91 permit (or undertaking the project as an APA). Although the coverage is automatic, the permittee must comply with the requirements of Permit-by-Rule.

For sites disturbing five or more acres, the applicant/permittee must obtain a Part 91 permit (or undertake the project as an APA) and submit an application through [MiWaters](#) for Notice of Coverage (NOC) to the WRD. Along with the NOC application, the applicant/permittee must submit a copy of the SESC permit, approved SESC plan, site location map, and the \$400 permit fee. The permittee must also follow the requirements of Permit-by-Rule, including regular inspections of the soil erosion controls by a certified storm water operator.

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1. How do I know if my construction activities require a permit according to the federal Phase II Storm Water Regulations?

All construction activities that meet the following criteria are subject to Permit-by-Rule requirements:

1. There will be a total earth disturbance of one or more acres.
2. The site will have a point source discharge of storm water to waters of the state, either directly or through a separate storm sewer.

Note: Only construction activities that have land disturbances of five acres or more will need to apply for coverage under Permit-by-Rule from the State of Michigan. One to five acres are covered automatically. **Both scenarios require a site to have a certified construction storm water operator.**

2. What is considered an earth disturbance?

An earth disturbance means a man-made change in the natural cover or topography of the land. This may include such activities as road widening, complete road surfacing that disturbs the soil, new construction, cut and fill activities, construction on lands previously used for agriculture, and drain construction activities.

3. What is a Certified Storm Water Operator?

A Certified Storm Water Operator is an individual who has been certified by EGLE as having a minimum level of knowledge concerning the inspection and utilization of soil erosion and sedimentation control measures at construction sites.

4. How can I become a Certified Storm Water Operator?

The [training materials and written examinations](#) for certification are available online through EGLE Water Resources Division (WRD). Anyone who studies the material and passes the examination may become a Certified Storm Water Operator for construction activities. Training information and materials can be obtained from EGLE-WRD, Construction Storm Water and Soil Erosion and Sedimentation Control web page at Michigan.gov/SoilErosion.

5. Who will be responsible for hiring Certified Storm Water Operators for construction activities?

The permittee is responsible for providing a Certified Storm Water Operator for the construction site. The permittee may designate any individual certified by EGLE.

6. Under the federal Transportation Act of 1991, municipalities that serve populations of less than 100,000 were not required to get storm water discharge permits for any construction activity they owned or operated. Does this exemption still exist?

No. The exemption expired on March 10, 2003, with the implementation of Phase II of the federal Storm Water Regulations. All construction owned and operated by public entities (municipalities, school districts, etc.) with earth disturbances of one acre or more, with a

discharge to waters of the state are subject to the same regulation as privately owned developments.

7. Is a county drain or roadside ditch cleanout a regulated earth disturbance?

Maintenance activities to restore the original grade or hydraulic capacity on projects of one to five acres of disturbance are exempt from Permit-by-Rule requirements. However, maintenance projects of more than five acres are required to comply with Permit-by-Rule.

8. What is the application procedure for obtaining coverage under Permit-by-Rule for sites over five acres?

The applicant must first obtain the appropriate SESC Permit or be a Part 91 designated APA. The completed NOC form, site map, a copy of the SESC Permit, and permit fee must be received in MiWaters before any construction begins at the site. The permittee is deemed to have the required coverage if the NOC is administratively complete.

9. What activities require a SESC Permit?

A permit is required for any earth changes that disturbs one or more acres or is within 500 feet of a lake or stream. Exempted activities include plowing and tilling for crop production and some logging and mining activities. Access roads to the logging and mining sites and ancillary activities associated with logging and mining operations are not exempt. The removal of clay, gravel, sand, peat, or topsoil is not considered metallic mineral mining and therefore requires a permit.

10. Who do I contact to get an SESC Permit for my construction activities?

The responsibility for enforcing the SESC Program has been delegated to the County Enforcement Agency (CEA). In some cases, this responsibility has been taken over locally by cities or townships, which are known as Municipal Enforcement Agencies (MEA). If you do not know who issues SESC permits in your area, you can contact local governmental units such as county drain commissioners, road or building departments, or you can contact your [district EGLE staff](#).

11. Is there a different application procedure for obtaining coverage under Permit-by-Rule for sites of less than five acres?

Yes, construction sites that disturb between one and five acres, or are less than one acre but are part of a total plan of development or sale between one and five acres, do not need to meet the submittal requirements of the Permit-by-rule (i.e., NOC permit application and permit fee). These sites have automatic coverage under the Permit-by-Rule requirements if they have an SESC permit or APA status. However, these sites must still meet the compliance requirements of Permit-by-Rule.

12. Is there a fee for storm water coverage when you submit a NOC for sites over five acres?

Yes, there is a one-time fee of \$400 for each NOC request submitted to EGLE. Authorization to discharge storm water does not begin until the administratively complete NOC application, one-time fee, copy of the SESC Permit and site map have been received by EGLE (through MiWaters).

Note: Storm water fees are established by state statute and are subject to change.

13. Is there a fee for storm water coverage for sites that are less than five acres in size?

There is no EGLE permit fee for sites less than five acres in size, but there may be fees required by the SESC Agency.

14. Will I have to submit any forms to EGLE for sites that are less than five acres in size?

It is not necessary to submit a NOC to EGLE for site that are less than five acres in size; however, the permittee is required to keep inspection logs for up to three years and must submit them to EGLE for review, if requested.

15. Under Permit-by-Rule, who must be the permittee?

The construction permittee must be the landowner or the recorded easement holder of the property or APA of the construction activity is under the control of an APA.

16. When should I obtain Permit-by-Rule coverage?

The NOC may be submitted any time prior to the start of construction. Permit-by-Rule begins immediately upon submittal of an administratively complete NOC application.

17. Are sand and gravel mining activities covered under the Permit-by-Rule?

These operations are ineligible for coverage under Permit-by-Rule if materials are transported from the site to be used at other locations. Such operations will need to apply for industrial storm water coverage if the storm water that comes in contact with overburden or raw materials discharges to waters of the state. Coverage can be usually obtained under the Industrial General Storm Water Permit.

18. Do I need Permit-by-Rule coverage for areas where excavated soils are deposited off site?

Yes, a storm water discharge permit is needed if the off-site spoil piles disturb one or more acres.

19. Can I apply for the United States Environmental Protection Agency (USEPA) General Permit for construction activities?

EGLE is the NPDES storm water permitting authority in Michigan. The USEPA does not issue permits for construction activities in Michigan.

20. If someone other than the landowner or recorded easement holder currently holds the SESC Permit for a construction site, can the site obtain coverage under Permit-by-Rule?

No. The SESC Permit must be transferred to the landowner's name, and an NOC must be submitted to EGLE for coverage under the Permit-by-Rule as soon as possible. The SESC Permit requires the permit to be issued to the landowner or easement holder.

21. What is the permittee responsible for under Permit-by-Rule?

The permittee must comply with all of Michigan's Permit-by-Rule requirements; however, two core requirements are:

1. The permittee must be in compliance with the requirements of their SESC Permit
2. They must have the soil erosion control measures at the site inspected by a Certified Storm Water Operator to ensure that they are working correctly. The inspections of the soil control measures once per week and within 24 hours of a precipitation event that results in a storm water discharge from the site. If there is a rain event inspection conducted during the week, this can substitute for the regular weekly inspection. Logs or records of the inspection must be kept, indicating the condition of the controls and any corrective actions taken.

Note: This applies to all sites with earth disturbances of greater than one acre with a discharge to the waters of the state.

22. Do weekly inspections need to be performed during periods when construction has ceased, and the site has been stabilized for the winter, and the soil is frozen?

EGLE recognizes that during inactive periods when the construction site has been stabilized for the winter and temperatures below freezing predominate, runoff and subsequent erosion are not likely to occur. During these periods, the construction permittee may certify in the construction log, without performing an on-site inspection, that weather and soil conditions are such that runoff from the site are not likely to occur. Because of the stabilization nature of the site and the inactivity, EGLE will consider the requirement for inspection of the construction site to be met by this evaluation of weather and soil conditions at the site. On-site inspections shall resume as soon as there is any change in conditions that may allow runoff to occur.

23. If storm water discharges from a construction site for several days following a rain event, does the site need to be inspected each day this occurs?

Only one inspection is required following a rain event (within 24 hours of the occurrence), regardless of the length of time it takes for all of the runoff to leave the site. However, it may be in the permittee's best interest to continue checking the SESC measures in place to ensure proper performance as the Part 91 Rules require that SESC measures be maintained daily, and Permit-by-Rule requires that the site be in compliance with the SESC permit at all times and that the SESC measures be properly maintained.

24. Will SESC agents have increased responsibilities under the Permit-by-Rule?

No, compliance responsibilities regarding Permit-by-Rule are enforced through EGLE, not the local SESC agent.

25. Will County and Municipal Enforcing Agencies of the SESC Program be responsible for notifying EGLE of violations of Water Quality Standards or the Permit-by-Rule?

There is nothing in the Permit-by-Rule that increases the responsibility of an SESC agent or agency. However, voluntary submittal of such information is welcomed.

26. If I violate the SESC Permit, am I automatically violating the Permit-by-Rule?

Yes. Compliance with the Permit-by-Rule requires the permittee to be in compliance with their SESC permit or their APA control plan for the site.

27. When is the construction site considered to be stabilized?

The site is considered stabilized when all permanent control structures haven been installed, maintenance for the permanent controls have been arranged, vegetation is well established, and temporary controls have been removed.

28. Under Permit-by-Rule, what am I responsible for after the construction activity is completed?

Once the site has been stabilized and the SESC Permit has been terminated, the permittee must submit a Notice of Termination (NOT) in MiWaters. This terminates coverage under Permit-by-Rule. The inspections can be discontinued at that time. Logbooks of the inspections must be kept on file and available for inspection for three years following termination.

29. What are the requirements under the Permit-by-Rule if I do not submit a NOT?

You will be in violation of Permit-by-Rule, and you must continue to Utilize a Certified Storm Water Operator for weekly inspections until the NOT is submitted.

30. What if the SESC Permit expires or is terminated before the construction site is stabilized?

The NOC would also expire, and all discharges of storm water from the site to waters of the state would be in violation of Part 31, Water Resources Protection, of the NREPA. A new SESC Permit, as well as an NOC, should be submitted to obtain the appropriate coverage.

31. How long is the Notice of Coverage effective?

Coverage under Permit-by-Rule expires after five years, as long as the SESC Permit has remained active. However, as most SESC Permits expire after one year, SESC Permits need to be renewed prior to the expiration and the updated SESC Permit submitted through MiWaters for the renewal of the NOC. The SESC Permit will need to be renewed until the site has been stabilized.

32. What is meant by a “larger common plan of development or sale”?

A “larger common plan of development or sale” is a contiguous area where multiple separate and distinct construction activities may be taking place at different schedules under one plan. For example, if a developer buys a 20-acre lot and builds roads, installs pipes, and runs electricity with the intention of constructing homes or other structures sometime in the future, this would be considered a common plan of development or sale. If the land is parceled off or sold, and construction occurs on plots that are less than five acres by separate, independent builders, this activity would still be subject to storm water permitting requirements if the smaller plots were included on the original site plan.

33. Does construction activity encompass repaving of roads?

Repaving or grinding the road surface is not regulated under the Storm Water Program unless one or more acres of underlying and/or surrounding soils are cleared, graded, or excavated as part of the operation.

34. Is clearing of lands specifically for agricultural or silvicultural purposes a regulated construction activity under 40 CFR 122.26 (b) (14)(x)?

No. Although the clearing of the land may be greater than one acre, any amount of clearing for agricultural or silvicultural activities (orchards, cultivated crops, pastures, range lands, and forest lands) is not required to obtain coverage under Permit-by-Rule. However, this exemption only applies if the clearing of the land is solely for agricultural or silvicultural activities. This exclusion does not include earth disturbances from the construction of barns, buildings, or from Concentrated Animal Feeding Operations.

35. Is the installation of conservation practices to control non-point source pollution activities from agricultural or silvicultural activities a regulated construction activity under 40 CFR 122.26 (b)(14)(x)?

No. Earth disturbances associated with the installation of conservation practices associated with agricultural or silvicultural activities are not required to obtain coverage under Permit-by-Rule. Examples of these practices may include grassed waterways, diversions, water and sediment control basins, terraces, grade stabilization structures, lined waterways, and forest harvest trails and landings.

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