

## Unit Six

### REQUIREMENTS FOR ADMINISTERING AND ENFORCING PART 91 PROGRAMS

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#### **Summary of Law and Program Responsibilities**

Part 91 and the Rules promulgated there under (hereafter referred to as Part 91) regulate earth change activities. Each change is defined as human-made changes in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.

The primary intent of Part 91 is to protect the waters of the state and adjacent properties by minimizing erosion and controlling off-site sedimentation which result from earth changes.

The following material is intended to provide a synopsis of Part 91 for the reader. ***It does not encompass all requirements of Part 91, nor is it intended to increase or diminish the requirements set forth in the statute and administrative rules.*** You are expected to read and understand all requirements of Part 91 (Appendix 6A and 6B).

#### **Enforcing Agencies (EAs)**

Part 91 is a state law that delegates the responsibility for implementation to counties. Each county board must designate a County Enforcing Agency (CEA) to enforce the statute within its boundaries. The responsibility for oversight of all earth changes in the county falls to the CEA with two exceptions: (1) The CEA is not responsible for earth changes within the boundaries of a city, village, or township that has elected to pass a SESC ordinance and has been designated a Municipal Enforcing Agency (MEA) (2) The CEA or MEA is not responsible for earth changes undertaken by Authorized Public Agencies (APAs) within its boundaries.

The county can implement a Part 91 CEA program through either a resolution or an ordinance passed by the county board of commissioners. MEAs must pass an ordinance in order to have an approved program. Regardless if the EA is administering their program under a resolution or ordinance, the resolution or ordinance must be approved by the Michigan Department of Natural Resources and Environment (MDNRE). A resolution may not be more restrictive or less restrictive than Part 91. Essentially, under a resolution the county is accepting Part 91 as written. Should a CEA collect fines under a resolution, the funds are required to be returned to the state. Under an ordinance, any fines collected belong to the county or the municipality. There are also several other advantages to implementing the program under an ordinance. Ordinances may be more restrictive than Part 91, allowing the county to address specific challenges and limitations in Part 91. Also, ordinances can allow compliance and enforcement tools which are not available in Part 91, such as ticket writing authority for the CEA or MEA staff.

One of the primary roles of CEAs and MEAs is to issue and enforce SESC permits. However, soil erosion and sedimentation to waters of the state (lakes, streams, and wetlands) and adjacent properties from earth changes is the responsibility of the enforcing agency regardless of whether the site is under permit.

### **Key SESC Permitting and EA Facts**

**A. Permittee:** [Rules 1701(1) (c) and (e); Rule 1704(1)]

Permits must be issued to the landowner. A designated agent may apply for the permit with written authorization from the landowner.

**B. Activities Requiring Permits:** [Rule 1704(1)]

All *earth changes* as defined in Section 9101(1)(9) that disturb

1. One acre or more, or are
2. Within 500 feet of the water's edge of a *lake* or *stream* as defined in Rule 1701(1).

**Note:** Ordinances can be more restrictive than Part 91 thus allowing agencies to require permits for other activities than identified above; however, agencies cannot require permits for activities that are specifically exempted in Part 91. [Sections 9105(3) and 9106(1)]

**C. Permit Exemptions:** (Sections 9115 and 9115a; Rule 1705)

No permits shall be required for the following:

1. Plowing and tilling for crop production or harvesting of crops.
2. Mining and logging activities and integral activities associated with logging and mining. The logging and mining exemptions do not include (i.e. permits are required for) the following:
  - a) Access roads to and from the site where active mining and logging is taking place.
  - b) Ancillary activities associated with logging and mining.
  - c) The removal of clay, gravel, sand, peat, or topsoil.
3. Earth changes associated with well locations, surface facilities, flowlines, or access roads related to oil or gas exploration and development regulated under Part 615 of the NREPA, if the application for a permit to drill and operate under Part 615 contains a SESC plan approved by the MDNRE.
4. Normal road and driveway maintenance, such as grading and leveling, that does not increase the width or length of the road or driveway and that will not contribute sediment to lakes and streams.
5. An earth change of minor nature that is stabilized within 24 hours of the initial earth disturbance that will not contribute sediment to lakes or streams.
6. The following activities undertaken by the property owner on residential property if the earth change activity does not result in or contribute to soil erosion or sedimentation of the waters of the state or a discharge of sediment off-site:
  - a) Gardening, if the natural elevation of the area is not raised.

- b) Post holes for fencing, decks, utility posts, mailboxes, or similar applications, if no additional grading or earth change occurs for the use of the post holes.
- c) Removal of tree stumps, shrub stumps, or roots resulting in an earth change not to exceed 100 square feet.

**D. Documents:**

1. SESC Application: The EA must use an application form that contains state-prescribed information [*Rule 1706(3)*; Appendix 6C].
2. SESC Plan: The landowner or designated agent must submitted an SESC plan along with the application containing, at a minimum, *Rule 1703* information [*Rule 1706(2)*].
3. SESC Permit: The EA must use a permit form that contains state-prescribed information [*Rule 1707(3)*; Appendix 6D].
4. SESC Inspection Report: Part 91 does not require a specific form to be used to document site inspections; however, the MDNRE recommends that the form in Appendix 6E (or something similar) be used.

**E. Minimum SESC Plan Requirements: (Rule 1703):**

Each permitted site must have an SESC Plan approved by the EA that contains, at a minimum, the following information:

1. A map or maps at a scale of not more than 200 feet to the inch.
2. Legal description of the property.
3. Site location sketch.
4. Proximity to lakes and streams.
5. Predominant land features.
6. Contour intervals or slope description.
7. Soils survey or written description of soils types.
8. Physical limits of earth change.
9. Location of existing and proposed on-site drainage and dewatering facilities.
10. Timing and sequence of each proposed earth change.
11. Location and description for installing and removing proposed temporary SESC measures.
12. A description and location of all proposed permanent SESC measures.
13. A program for the maintenance of all permanent SESC measures.

**F. Other Earth Change Requirements: (Rule 1709)**

1. A person shall design, construct, and complete an earth change in a manner that limits the exposed area for the shortest period of time as determined by EA.
2. A person shall remove sediment caused by accelerated soil erosion from runoff water before it leaves the site of the earth change.
3. A person shall design temporary and permanent control measures to limit the water flow to non-erosive velocities.
4. Temporary SESC measures shall be installed before or upon the commencement of the earth change and shall maintain the measures on a daily basis.
5. Permanent SESC measures shall be installed within 5 calendar days after final grading.

**G. Inspections:**

The EA must conduct adequate inspections to assure minimization of soil erosion and off-site sedimentation [Sections 9105(6)(c) and 9106(3)(c)]. In most instances, this would include the following inspection frequency:

1. Prior to permit issuance
2. Immediately before or after work begins to ensure temporary SESC measures are in place and functioning.
3. Periodically during active construction – Prioritize inspections to take into account major rain or snowmelt events, major changes in construction activities, and on risk of property and water quality damage from permitted sites.
4. Prior to closing out the permit to ensure the site complies with all plan and permit conditions and is permanently stabilized.

**H. Compliance and Enforcement Options:**

1. May require surety bond, cash, certified check, or irrevocable letter of credit (Section 9108).
2. Court Injunction (Section 9113).
3. Cease and Desist (Rule 1713).
4. Municipal Civil Infractions/Appearance Tickets if authorized in an ordinance [Section 9121(1)(a)].
5. Fines up to \$25,000 per day [Sections 9121(2) and (3)].
6. EA may construct, implement, and maintain SESC measures to bring a site into conformance with Part 91 and/or the local ordinance (Section 9119).
7. EA may bill the landowner for all expenses incurred in #6 above. If the landowner does not pay, the EA may place a lien on the property (Section 9120).
8. Stop work orders (if authorized in ordinance).
9. Double permit fee for starting work without permit (if authorized by ordinance or resolution).

### **I. Other EA Requirements:**

1. The EA has 30 days to approve, disapprove, or require modification to a SESC plan or application [*Rule 1707(2)*].
2. Each individuals responsible for administering the EA's program who has decision-making authority for SESC plan development or review, inspections, permit issuance, or enforcement shall be trained by the MDNRE (*Section 91231*).

### **J. MDNRE Responsibilities:**

1. Promulgate rules to administer Part 91 [*Sections 9104(1) and 9114*].
2. Approve resolutions and ordinances [*Sections 9105(4) and 9106(2)*].
3. Initially approve EAs [*Sections 9105(6) and 9106(3)*].
4. Periodically conduct performance reviews at least every five years and approve or disapprove the agency. The reviews evaluate all of the following: resolution/ordinance, staff training, forms (application, permit, and inspection), funding, adequacy of the inspections, adequacy of compliance and enforcement actions, and on-site conditions [*Sections 9105(6) and 9106(3); Rule 1713*].
  - a) If a CEA is not approved, the MDNRE can place the agency on probation, contract with a consultant to administer the county's SESC program, and bill the county for the cost of the contract including a 10% contract administration fee [*Sections 9106(8) and (11) and Section 9112(7)*].
  - b) If a MEA is not approved, the MDNRE can rescind the agencies designation [*Sections 9106(4) and 9112(7)*].
5. Make determinations and issue orders or stipulations of agreement [*Section 9112(7)*].
6. Inspect sites for compliance or non compliance with Part 91 and go to court to seek an injunction against a person to restrain or prevent violations of Part 91 (*Section 9113*) or other violations and penalties (*Section 9121*).
7. Develop and offer SESC training courses (*Section 9123*).
8. Determine minimum information (state-prescribed) to be included on the SESC application and permit forms [*Rules 1706(3) and 1707(3)*].

### **Authorized Public Agencies (APAs)**

State and local units of government which commonly undertake earth changes can be designated APAs by the MDNRE after training staff and adopting SESC procedures which meet the requirements of Part 91. APAs are not required to obtain permits from enforcing agencies. Essentially, APAs are self-regulating with regard to earth changes. However, the primary objective is the same; protect waters of the state and adjacent properties from the effects of soil erosion and off-site sedimentation. Common agencies that are APAs include: Road Commissions, Drain Commissioners, Municipal Department of Public Works, the Michigan Department of Transportation, the Michigan Department of Management and Budget, and the MDNRE.

## **Key APA Facts**

1. The agency must develop SESC Procedures, and submit them to the MDNRE for approval, detailing how the agency will address SESC on earth changes undertaken by the agency or on behalf of the agency [Section 9110(1)]. The SESC Procedures (and the APAs) must comply with all requirements of Part 91.
2. SESC plans that comply with *Rule 1703* requirements must be developed for all projects which would require a permit if the agency was not an APA; i.e. earth changes that disturb one or more acres; OR within 500 feet of the water's edge of a lake or stream. **Exception:** *For projects that are routinely undertaken by the agency, the agency may develop specific guidelines for undertaking those projects and if those guidelines are approved by the MDNRE, no SESC plans are required.*
3. APAs are exempt from obtaining permits from the EAs, but shall notify the EA of each proposed earth change [Rule 1706(4)].
4. Must perform and document inspections of earth changes [Section 9110(4)(c)].
5. Responsible for the actions of contractors and subcontractors for projects under the jurisdiction of the APA.
6. Each individual responsible for administering the APA's program who has decision-making authority for SESC plan development or review, inspections, or compliance and enforcement actions shall be trained by the MDNRE (Section 91231).

### ***MDNRE Responsibilities:***

1. Promulgate rules to administer Part 91 [Sections 9104(1) and 9114].
2. Approve SESC procedures and designate APAs [Sections 9110(2)].
3. Periodically conduct performance reviews at least every five years and approve or disapprove the agency [Section 9110(4); Rule 1713]. The reviews evaluate all of the following: SESC procedures, staff training, funding, adequacy of SESC plans, adequacy of inspections, compliance and enforcement efforts, and on-site conditions.
  - a) If the APA is not approved, the MDNRE can deny or revoke the agency's designation [Sections 9110(5) and 9112(7)].
4. Inspect sites for compliance or non-compliance with Part 91 and go to court to seek an injunction against a person to restrain or prevent violations of Part 91 (Section 9113).
5. Make determinations and issue orders or stipulations of agreement. [Section 9112(7)].
6. Pursue civil fines up to \$25,000 per day per violation for projects undertaken by APAs [Section 9121(3)].
7. Develop and offer SESC training courses (Section 9123).

## Appendix 6A

**PART 91, SOIL EROSION AND SEDIMENTATION CONTROL  
OF THE  
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT  
1994 PA 451, AS AMENDED**

(Includes all amendments through 11-17-11)

### **324.9101 Definitions; A to W.**

- Sec. 9101. (1) "Agricultural practices" means all land farming operations except the plowing or tilling of land for the purpose of crop production or the harvesting of crops.
- (2) "Authorized public agency" means a state agency or an agency of a local unit of government authorized under section 9110 to implement soil erosion and sedimentation control procedures with regard to earth changes undertaken by it.
- (3) "Conservation district" means a conservation district authorized under part 93.
- (4) "Consultant" means either of the following:
- (a) An individual who has a current certificate of training under section 9123.
  - (b) A person who employs 1 or more individuals who have current certificates of training under section 9123.
- (5) "County agency" means an officer, board, commission, department, or other entity of county government.
- (6) "County enforcing agency" means a county agency or a conservation district designated by a county board of commissioners under section 9105.
- (7) "County program" or "county's program" means a soil erosion and sedimentation control program established under section 9105.
- (8) "Department" means the department of environmental quality.
- (9) "Earth change" means a human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.
- (10) "Gardening" means activities necessary to the growing of plants for personal use, consumption, or enjoyment.
- (11) "Local ordinance" means an ordinance enacted by a local unit of government under this part providing for soil erosion and sedimentation control.
- (12) "Municipal enforcing agency" means an agency designated by a municipality under section 9106 to enforce a local ordinance.

- (13) "Municipality" means any of the following:
- (a) A city.
  - (b) A village.
  - (c) A charter township.
  - (d) A general law township that is located in a county with a population of 200,000 or more.
- (14) "Rules" means the rules promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
- (15) "Seawall maintenance" means an earth change activity landward of the seawall.
- (16) "Sediment" means solid particulate matter, including both mineral and organic matter, that is in suspension in water, is being transported, or has been removed from its site of origin by the actions of wind, water, or gravity and has been deposited elsewhere.
- (17) "Soil erosion" means the wearing away of land by the action of wind, water, gravity, or a combination of wind, water, or gravity.
- (18) "State agency" means a principal state department or a state public university.
- (19) "Violation of this part" or "violates this part" means a violation of this part, the rules promulgated under this part, a permit issued under this part, or a local ordinance enacted under this part.
- (20) "Waters of the state" means the Great Lakes and their connecting waters, inland lakes and streams as defined in rules promulgated under this part, and wetlands regulated under part 303.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001; -- Am. 2001, Act 227, Imd. Eff. Jan. 2, 2002 ;-- Am. 2005, Act 55, Imd. Eff. June 30, 2005

**324.9102, 324.9103 Repealed. 2000, Act 504, Imd. Eff. Jan. 11, 2001.**

**Compiler's Notes:** The repealed sections pertained to definitions and soil erosion and sedimentation control program.



**324.9104 Rules; availability of information.**

Sec. 9104. (1) The department, with the assistance of the department of agriculture, shall promulgate rules for a unified soil erosion and sedimentation control program, including provisions for the review and approval of site plans, land use plans, or permits relating to soil erosion control and sedimentation control. The department shall notify and make copies of proposed rules available to county enforcing agencies, municipal enforcing agencies, and authorized public agencies for review and comment before promulgation.

(2) The department shall make available to county enforcing agencies, municipal enforcing agencies, and authorized public agencies educational information on soil erosion and sedimentation control techniques and the benefits of implementing soil erosion and sedimentation control measures. County enforcing agencies and municipal enforcing agencies shall distribute this information to persons receiving permits under a county program or a local ordinance and to other interested persons.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

**324.9105 Administration and enforcement of rules; resolution; ordinance; interlocal agreement; review; notice of results; informal meeting; probation; consultant; inspection fees; rescission of order, stipulation, or probation.**

Sec. 9105. (1) Subject to subsection (6), a county is responsible for the administration and enforcement of this part and the rules promulgated under this part throughout the county except as follows:

- (a) Within a municipality that has assumed the responsibility for soil erosion and sedimentation control under section 9106.
- (b) With regard to earth changes of authorized public agencies.

(2) Subject to subsection (3), the county board of commissioners of each county, by resolution, shall designate a county agency, or a conservation district upon the concurrence of the conservation district, as the county enforcing agency responsible for administration and enforcement of this part and the rules promulgated under this part in the name of the county. The resolution may set forth a schedule of fees for inspections, plan reviews, and permits and may set forth other matters relating to the administration and enforcement of the county program and this part and the rules promulgated under this part.

(3) In lieu of or in addition to a resolution provided for in subsection (2), the county board of commissioners of a county may provide by ordinance for soil erosion and sedimentation control in the county. An ordinance adopted under this subsection may be more restrictive than, but shall not make lawful that which is unlawful under, this part and the rules promulgated under this part. If an ordinance adopted under this subsection is more restrictive than this part and the rules promulgated under this part, the county enforcing agency shall notify a person receiving a permit under the ordinance that the ordinance is more restrictive than this part and the rules promulgated under this part. The ordinance shall incorporate by reference the rules promulgated under this part that do not

conflict with a more restrictive ordinance and may set forth such other matters as the county board of commissioners considers necessary or desirable. The ordinance may provide penalties for a violation of the ordinance that are consistent with section 9121.

- (4) A copy of a resolution or ordinance adopted under this section and all subsequent amendments to the resolution or ordinance shall be forwarded to the department for the department's review and approval. The department shall forward a copy to the conservation district for that county for review and comment.
- (5) Two or more counties may provide for joint enforcement and administration of this part and the rules promulgated under this part by entering into an interlocal agreement pursuant to the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.
- (6) The department shall conduct a review of a county's program every 5 years. The review shall be conducted at least 6 months before the expiration of each succeeding 5-year period. The department shall approve a county's program if all of the following conditions are met:
  - (a) The county has passed a resolution or enacted an ordinance as provided in this section.
  - (b) The individuals with decision-making authority who are responsible for administering the county program have current certificates of training under section 9123.
  - (c) The county has effectively administered and enforced the county program in the past 5 years or has implemented changes in its administration or enforcement procedures that the department determines will result in the county effectively administering and enforcing the county program. In determining whether the county has met the requirement of this subdivision, the department shall consider all of the following:
    - (i) Whether a mechanism is in place to provide funding to administer the county's program.
    - (ii) Whether the county has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.
    - (iii) The effectiveness of the county's past compliance and enforcement efforts.
    - (iv) The adequacy and effectiveness of the applications and soil erosion and sedimentation control plans being accepted by the county.
    - (v) The adequacy and effectiveness of the permits issued by the county and the inspections being performed by the county.
    - (vi) The conditions at construction sites under the jurisdiction of the county as documented by departmental inspections.
- (7) Following a review under subsection (6), the department shall notify the county of the results of its review and whether the department proposes to approve or disapprove the county's program. Within 30 days of receipt of the notice under this subsection, a county may request and the department shall hold an informal meeting to discuss the review and the proposed action by the department.

- (8) Following the meeting under subsection (7), if requested, and consideration of the review under subsection (6), if the department does not approve a county's program, the department shall enter an order, stipulation, or consent agreement under section 9112(7) placing the county on probation. In addition, at any time that the department determines that a county that was previously approved by the department under subsection (6) is not satisfactorily administering and enforcing the county's program, the department shall enter into an order, stipulation, or consent agreement under section 9112(7) placing the county on probation. During the 6-month period after a county is placed on probation, the department shall consult with the county on how the county could change its administration of the county program in a manner that would result in its approval.
- (9) Within 6 months after a county has been placed on probation under subsection (8), the county may notify the department that it intends to hire a consultant to administer the county's program. If, within 60 days after notifying the department, the county hires a consultant that is acceptable to the department, then within 1 year after the county hires the consultant, the department shall conduct a review of the county's program to determine whether or not the county program can be approved.
- (10) If any of the following occur, the department shall hire a consultant to administer the county's program:
  - (a) The county does not notify the department of its intent to hire a consultant under subsection (9).
  - (b) The county does not hire a consultant that is acceptable to the department within 60 days after notifying the department of its intent to hire a consultant under subsection (9).
  - (c) The county remains unapproved following the department's review under subsection (9).
- (11) Upon hiring a consultant under subsection (10), the department may establish a schedule of fees for inspections, review of soil erosion and sedimentation control plans, and permits for the county's program that will provide sufficient revenues to pay for the cost of the contract with the consultant, or the department may bill the county for the cost of the contract with the consultant. As used in this subsection, "cost of the contract" means the actual cost of a contract with a consultant plus the documented costs to the department in administering the contract, but not to exceed 10% of the actual cost of the contract.
- (12) At any time that a county is on probation as provided for in this section, the county may request the department to conduct a review of the county's program. If, upon such review, the county has implemented appropriate changes to the county's program, the department shall approve the county's program. If the department approves a county's program under this subsection, the department shall rescind its order, stipulation, or consent agreement that placed the county on probation.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001 ;-- Am. 2005, Act 55, Imd. Eff. June 30, 2005

### **324.9106 Ordinances.**

Sec. 9106. (1) Subject to subsection (3), a municipality by ordinance may provide for soil erosion and sedimentation control on public and private earth changes within its boundaries except that a township ordinance shall not be applicable within a village that has in effect such an ordinance. An ordinance may be more restrictive than, but shall not make lawful that which is unlawful under, this part and the rules promulgated under this part. If an ordinance adopted under this section is more restrictive than this part and the rules promulgated under this part, the municipal enforcing agency shall notify a person receiving a permit under the ordinance that the ordinance is more restrictive than this part and the rules promulgated under this part. The ordinance shall incorporate by reference the rules promulgated under this part that do not conflict with a more restrictive ordinance, shall designate a municipal enforcing agency responsible for administration and enforcement of the ordinance, and may set forth such other matters as the legislative body considers necessary or desirable. The ordinance shall be applicable and shall be enforced with regard to all private and public earth changes within the municipality except earth changes by an authorized public agency. The municipality may consult with a conservation district for assistance or advice in the preparation of the ordinance. The ordinance may provide penalties for a violation of the ordinance that are consistent with section 9121.

(2) An ordinance related to soil erosion and sedimentation control that is not approved by the department as conforming to the minimum requirements of this part and the rules promulgated under this part has no force or effect. A municipality shall submit a copy of its proposed ordinance or of a proposed amendment to its ordinance to the department for approval before adoption. The department shall forward a copy to the county enforcing agency of the county in which the municipality is located and the appropriate conservation district for review and comment. Within 90 days after the department receives an existing ordinance, proposed ordinance, or amendment, the department shall notify the clerk of the municipality of its approval or disapproval along with recommendations for revision if the ordinance, proposed ordinance, or amendment does not conform to the minimum requirements of this part or the rules promulgated under this part. If the department does not notify the clerk of the local unit within the 90-day period, the ordinance, proposed ordinance, or amendment shall be considered to have been approved by the department.

(3) A municipality shall not administer and enforce this part or the rules promulgated under this part or a local ordinance unless the department has approved the municipality. An approval under this section is valid for 5 years, after which the department shall review the municipality for reapproval. At least 6 months before the expiration of each succeeding 5-year approval period, the department shall complete a review of the municipality for reapproval. The department shall approve a municipality if all of the following conditions are met:

(a) The municipality has enacted an ordinance as provided in this section that is at least as restrictive as this part and the rules promulgated under this part.

- (b) The individuals with decision-making authority who are responsible for administering the soil erosion and sedimentation control program for the municipality have current certificates of training under section 9123.
  - (c) The municipality has submitted evidence of its ability to effectively administer and enforce a soil erosion and sedimentation control program. In determining whether the municipality has met the requirements of this subdivision, the department shall consider all of the following:
    - (i) Whether a mechanism is in place to provide funding to administer the municipality's soil erosion and sedimentation control program.
    - (ii) The adequacy of the documents proposed for use by the municipality including, but not limited to, application forms, soil erosion and sedimentation control plan requirements, permit forms, and inspection reports.
    - (iii) If the municipality has previously administered a soil erosion and sedimentation control program, whether the municipality effectively administered and enforced the program in the past or has implemented changes in its administration or enforcement procedures that the department determines will result in the municipality effectively administering and enforcing a soil erosion and sedimentation control program in compliance with this part and the rules promulgated under this part. In determining whether the municipality has met the requirement of this subparagraph, the department shall consider all of the following:
      - (A) Whether the municipality has had adequate funding to administer the municipality's soil erosion and sedimentation control program.
      - (B) Whether the municipality has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.
      - (C) The effectiveness of the municipality's past compliance and enforcement efforts.
      - (D) The adequacy and effectiveness of the applications and soil erosion and sedimentation control plans being accepted by the municipality.
      - (E) The adequacy and effectiveness of the permits issued by the municipality and the inspections being performed by the municipality.
      - (F) The conditions at construction sites under the jurisdiction of the municipality as documented by departmental inspections.
- (4) If the department determines that a municipality is not approved under subsection (3) or that a municipality that was previously approved under subsection (3) is not satisfactorily administering and enforcing this part and the rules promulgated under this part, the department shall enter an order, stipulation, or consent agreement under section 9112(7) denying the municipality authority or revoking the municipality's authority to administer a soil erosion and sedimentation control program. Upon entry of this order, stipulation, or consent agreement, the county program for the county in which the municipality is located becomes operative within the municipality.

- (5) A municipality that elects to rescind its ordinance shall notify the department. Upon rescission of its ordinance, the county program for the county in which the municipality is located becomes operative within the municipality.
- (6) A municipality that rescinds its ordinance or is not approved by the department to administer the program shall retain jurisdiction over projects under permit at that time. The municipality shall retain jurisdiction until the projects are completed and stabilized or the county agrees to assume jurisdiction over the permitted earth changes.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001 ;-- Am. 2005, Act 55, Imd. Eff. June 30, 2005

### **324.9107 Notice of violation.**

Sec. 9107. If a local unit of government has notice that a violation of this part has occurred within the boundaries of that local unit of government, including but not limited to a violation attributable to an earth change by an authorized public agency, the local unit of government shall notify the appropriate county enforcing agency and municipal enforcing agency and the department of the violation.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

### **324.9108 Permit; deposit as condition for issuance.**

Sec. 9108. As a condition for the issuance of a permit, the county enforcing agency or municipal enforcing agency may require the applicant to deposit with the clerk of the county or municipality in the form of cash, a certified check, or an irrevocable bank letter of credit, whichever the applicant selects, or a surety bond acceptable to the legislative body of the county or municipality or to the county enforcing agency or municipal enforcing agency, in an amount sufficient to assure the installation and completion of such protective or corrective measures as may be required by the county enforcing agency or municipal enforcing agency.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

### **324.9109 Agreement between public agency or county or municipal enforcing agency and conservation district; purpose; reviews and evaluations of agency's programs or procedures; agreement between person engaged in agricultural practices and conservation district; notification; enforcement.**

Sec. 9109. (1) An authorized public agency, county enforcing agency, or municipal enforcing agency may enter into an agreement with a conservation district for assistance and advice in overseeing and reviewing compliance with soil erosion and sedimentation control procedures and in reviewing existing or proposed earth changes, earth change plans, or site plans with regard to technical matters pertaining to soil erosion and sedimentation control. In addition to or in the absence of such agreements, conservation districts may perform periodic reviews and evaluations of the authorized public agency's, county enforcing

agency's, or municipal enforcing agency's programs or procedures pursuant to standards and specifications developed in cooperation with the respective districts and as approved by the department. These reviews and evaluations shall be submitted to the department for appropriate action.

- (2) A person engaged in agricultural practices may enter into an agreement with the appropriate conservation district to pursue agricultural practices in accordance with and subject to this part, the rules promulgated under this part, and any applicable local ordinance. If a person enters into an agreement with a conservation district, the conservation district shall notify the county enforcing agency or municipal enforcing agency or the department in writing of the agreement. Upon entering into the agreement under this subsection, a person is not subject to permits required under this part, but is required to develop project specific soil erosion and sedimentation control plans and is subject to the remedies provided for in this part for violations of this part.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

**324.9110 Designation as authorized public agency; application; submission of procedures; variance; approval.**

Sec. 9110. (1) Subject to subsection (4), a state agency or an agency of a local unit of government may apply to the department for designation as an authorized public agency by submitting to the department the soil erosion and sedimentation control procedures governing all earth changes normally undertaken by the agency. If the applicant is an agency of a local unit of government, the department shall submit the procedures to the county enforcing agency and the appropriate conservation district for review. The county enforcing agency and the conservation district shall submit their comments on the procedures to the department within 60 days. If the applicant is a state agency, the department shall submit the procedures to the department of agriculture for review, and the department of agriculture shall submit its comments on the procedures to the department within 60 days.

- (2) Subject to subsection (4), if the department finds that the soil erosion and sedimentation control procedures of the state agency or the agency of the local unit of government meet the requirements of this part and rules promulgated under this part, the department shall designate the agency as an authorized public agency.
- (3) Subject to subsection (4), after approval of the procedures and designation as an authorized public agency pursuant to subsection (2), all earth changes maintained or undertaken by the authorized public agency shall be undertaken pursuant to the approved procedures. If determined necessary by the department and upon request of an authorized public agency, the department may grant a variance from the provisions of this subsection.
- (4) A state agency or an agency of a local unit of government shall not administer and enforce this part and the rules promulgated under this part as an authorized

public agency unless the department has approved the agency under this section. An approval under this section is valid for 5 years, after which the department shall review the agency for reapproval. At least 6 months before the expiration of each succeeding 5-year period, the department shall complete a review of the authorized public agency for reapproval. The department shall approve a state agency or an agency of a local unit of government if all of the following conditions are met:

- (a) The agency has adopted soil erosion and sedimentation control procedures that are at least as restrictive as this part and the rules promulgated under this part.
  - (b) The individuals with decision-making authority who are responsible for administering the soil erosion and sedimentation control procedures have current certificates of training under section 9123.
  - (c) The agency has submitted evidence of its ability to effectively administer soil erosion and sedimentation control procedures. In determining whether the agency has met the requirement of this subdivision, the department shall consider all of the following:
    - (i) Funding to administer the agency's soil erosion and sedimentation control program.
    - (ii) The agency's plans for inspections to assure minimization of soil erosion and off-site sedimentation.
    - (iii) The adequacy of the agency's soil erosion and sedimentation control procedures.
    - (iv) If the agency has previously administered soil erosion and sedimentation control procedures, the agency has effectively administered these procedures or has implemented changes in their administration that the department determines will result in the agency effectively administering the soil erosion and sedimentation control procedures. In determining whether the agency has met the requirement of this subparagraph, the department shall consider all of the following:
      - (A) Whether the agency has had adequate funding to administer the agency's soil erosion and sedimentation control program.
      - (B) Whether the agency has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.
      - (C) The effectiveness of the agency's past compliance and enforcement efforts.
      - (D) The adequacy of the agency's soil erosion and sedimentation control plans and procedures as required by rule.
      - (E) The conditions at construction sites under the jurisdiction of the agency as documented by departmental inspections.
- (5) If the department determines that a state agency or an agency of a local unit of government is not approved under subsection (4) or that a state agency or an agency of a local unit of government that was previously approved under subsection (4) is not satisfactorily administering and enforcing this part and the rules promulgated under this part, the department shall enter an order, stipulation, or consent agreement under section 9112(7) denying or revoking the



designation of the state agency or agency of a local unit of government as an authorized public agency.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;-- Am. 2005, Act 55, Imd. Eff. June 30, 2005

**324.9111 Repealed. 2000, Act 504, Imd. Eff. Jan. 11, 2001.**

**Compiler's Notes:** The repealed section pertained to statements and certificates relating to plats.

**324.9112 Earth change; permit required; effect of property transfer; violation; notice; hearing; answer; evidence; stipulation or consent order; final order of determination.**

Sec. 9112. (1) A person shall not maintain or undertake an earth change governed by this part, the rules promulgated under this part, or an applicable local ordinance, except in accordance with this part and the rules promulgated under this part or with the applicable local ordinance, and except as authorized by a permit issued by the appropriate county enforcing agency or municipal enforcing agency pursuant to part 13.

- (2) The owner of property that is subject to a permit under this part is responsible for compliance with the terms of the permit that apply to that property.
- (3) Except as provided in subsection (4), if property subject to a permit under this part is transferred, both of the following are transferred with the property:
  - (a) The permit, including the permit obligations and conditions.
  - (b) Responsibility for any violations of the permit that exist on the date the property is transferred.
- (4) If property is subject to a permit under this part and a parcel of the property, but not the entire property, is transferred, both of the following are transferred with the parcel:
  - (a) The permit obligations and conditions with respect to that parcel, but not the permit itself.
  - (b) Responsibility for any violations of the permit with respect to that parcel that exist on the date the parcel is transferred.
- (5) If property subject to a permit under this part is proposed to be transferred, the transferor shall notify the transferee of the permit in writing on a form developed by the department and provided by the county enforcing agency or municipal enforcing agency. The notice shall inform the transferee of the requirements of subsection (2) and, as applicable, subsection (3) or (4). The notice shall include a copy of the permit. The transferor and transferee shall sign the notice, and the transferor shall submit the signed notice to the county enforcing agency or municipal enforcing agency before the property is transferred.

- (6) A county enforcing agency or municipal enforcing agency may charge a fee for the transfer of a permit under subsection (3) or (4). The fee shall not exceed the administrative costs of transferring the permit. Fees collected under this subsection shall only be used for the enforcement and administration of this part by the enforcing agency.
- (7) If in the opinion of the department a person, including an authorized public agency, violates this part, the rules promulgated under this part, or an applicable local ordinance, or a county enforcing agency or municipal enforcing agency fails to enforce this part, the rules promulgated under this part, or an applicable local ordinance, the department may notify the alleged offender in writing of its determination. If the department places a county on probation under section 9105, a municipality is not approved under section 9106, or a state agency or agency of a local unit of government is not approved under section 9110, or if the department determines that a municipal enforcing agency or authorized public agency is not satisfactorily administering and enforcing this part and rules promulgated under this part, the department shall notify the county, municipality, state agency, or agency of a local unit of government in writing of its determination or action. The notice shall contain, in addition to a statement of the specific violation or failure that the department believes to exist, a proposed order, stipulation for agreement, or other action that the department considers appropriate to assure timely correction of the violation or failure. The notice shall set a date for a hearing not less than 4 nor more than 8 weeks from the date of the notice of determination. Extensions of the date of the hearing may be granted by the department or on request. At the hearing, any interested party may appear, present witnesses, and submit evidence. A person who has been served with a notice of determination may file a written answer to the notice of determination before the date set for hearing or at the hearing may appear and present oral or written testimony and evidence on the charges and proposed requirements of the department to assure correction of the violation or failure. If a person served with the notice of determination agrees with the proposed requirements of the department and notifies the department of that agreement before the date set for the hearing, disposition of the case may be made with the approval of the department by stipulation or consent agreement without further hearing. The final order of determination following the hearing, or the stipulation or consent order as authorized by this section and approved by the department, is conclusive unless reviewed in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in the circuit court of Ingham county, or of the county in which the violation occurred, upon petition filed within 15 days after the service upon the person of the final order of determination.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004 ;-- Am. 2004, Act 565, Imd. Eff. Jan. 3, 2005

### **324.9113 Injunction; inspection and investigation.**

Sec. 9113. (1) Notwithstanding the existence or pursuit of any other remedy, the department or a county enforcing agency or municipal enforcing agency may maintain an action in its own name in a court of competent jurisdiction for an

injunction or other process against a person to restrain or prevent violations of this part.

- (2) At any reasonable time, an agent appointed by the department, a county enforcing agency, or a municipal enforcing agency may enter upon any private or public property for the purpose of inspecting and investigating conditions or practices that may be in violation of this part. However, an investigation or inspection under this subsection shall comply with the United States constitution and the state constitution of 1963.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001 ;-- Am. 2005, Act 55, Imd. Eff. June 30, 2005

### **324.9114 Additional rules.**

Sec. 9114. In order to carry out their functions under this part, the department and the department of agriculture may promulgate rules in addition to those otherwise authorized in this part.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995

### **324.9115 Logging, mining, or land plowing or tilling; permit exemption; “mining” defined.**

Sec. 9115. (1) Subject to subsection (2), a person engaged in the logging industry, the mining industry, or the plowing or tilling of land for the purpose of crop production or the harvesting of crops is not required to obtain a permit under this part. However, all earth changes associated with the activities listed in this section shall conform to the same standards as if they required a permit under this part. The exemption from obtaining a permit under this subsection does not include either of the following:

- (a) Access roads to and from the site where active mining or logging is taking place.
  - (b) Ancillary activities associated with logging and mining.
- (2) This part does not apply to a metallic mineral mining activity that is regulated under a mining and reclamation plan or a mining, reclamation, and environmental protection plan if the plan contains soil erosion and sedimentation control provisions and is approved by the department under part 631 or 632, respectively.
  - (3) A person is not required to obtain a permit from a county enforcing agency or a municipal enforcing agency for earth changes associated with well locations, surface facilities, flowlines, or access roads relating to oil or gas exploration and development activities regulated under part 615, if the application for a permit to drill and operate under part 615 contains a soil erosion and sedimentation control plan that is approved by the department under part 615. However, those earth changes shall conform to the same standards as required for a permit under this

part. This subsection does not apply to a multisource commercial hazardous waste disposal well as defined in section 62506a.

- (4) As used in this section, "mining" does not include the removal of clay, gravel, sand, peat, or topsoil.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;<sup>3</sup>/<sub>4</sub>Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;<sup>3</sup>/<sub>4</sub>Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

### **324.9115a Earth change activities not requiring permit; violations.**

Sec. 9115a. (1) A residential property owner who causes the following activities to be conducted on individual residential property owned and occupied by him or her is not required to obtain a permit under this part if the earth change activities do not result in or contribute to soil erosion or sedimentation of the waters of the state or a discharge of sediment off-site:

- (a) An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance.
- (b) Gardening, if the natural elevation of the area is not raised.
- (c) Post holes for fencing, decks, utility posts, mailboxes, or similar applications, if no additional grading or earth change occurs for use of the post holes.
- (d) Removal of tree stumps, shrub stumps, or roots resulting in an earth change not to exceed 100 square feet.
- (e) All of the following activities, if soil erosion and sedimentation controls are implemented, the earth change is stabilized within 24 hours of the initial earth disturbance, and soil erosion or sedimentation to adjacent properties or the waters of the state has not or will not reasonably occur:
  - (i) Planting of trees, shrubs, or other similar plants.
  - (ii) Seeding or reseeded of lawns of less than 1 acre if the seeded area is at least 100 feet from the waters of the state.
  - (iii) Seeding or reseeded of lawns closer than 100 feet from the waters of the state if the area to be seeded or reseeded does not exceed 100 square feet.
  - (iv) The temporary stockpiling of soil, sand, or gravel not greater than a total of 10 cubic yards on the property if the stockpiling occurs at least 100 feet from the waters of the state.
  - (v) Seawall maintenance that does not exceed 100 square feet.

- (2) Exemptions provided in this section shall not be construed as exemptions from enforcement procedures under this part or the rules promulgated under this part if the exempted activities cause or result in a violation of this part or the rules promulgated under this part.

**History:** Add. 2005, Act 56, Imd. Eff. June 30, 2005

### **324.9116 Reduction of soil erosion or sedimentation by owner.**

Sec. 9116. A person who owns land on which an earth change has been made that may result in or contribute to soil erosion or sedimentation of the waters of the state

shall implement and maintain soil erosion and sedimentation control measures that will effectively reduce soil erosion or sedimentation from the land on which the earth change has been made.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995

### **324.9117 Notice of determination.**

Sec. 9117. If the county enforcing agency or municipal enforcing agency that is responsible for enforcing this part and the rules promulgated under this part determines that soil erosion or sedimentation of adjacent properties or the waters of the state has or will reasonably occur from land in violation of this part or the rules promulgated under this part or an applicable local ordinance, the county enforcing agency or municipal enforcing agency may seek to enforce a violation of this part by notifying the person who owns the land, by mail, with return receipt requested, of its determination. The notice shall contain a description of the violation and what must be done to remedy the violation and shall specify a time to comply with this part and the rules promulgated under this part or an applicable local ordinance.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

### **324.9118 Compliance; time.**

Sec. 9118. Within 5 days after a notice of violation has been issued under section 9117, a person who owns land subject to this part and the rules promulgated under this part shall implement and maintain soil erosion and sedimentation control measures in conformance with this part, the rules promulgated under this part, or an applicable local ordinance.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

### **324.9119 Entry upon land; construction, implementation, and maintenance of soil erosion and sedimentation control measures; cost.**

Sec. 9119. Except as otherwise provided in this section, not sooner than 5 days after notice of violation of this part has been mailed under section 9117, if the condition of the land, in the opinion of the county enforcing agency or municipal enforcing agency, may result in or contribute to soil erosion or sedimentation of adjacent properties or to the waters of the state, and if soil erosion and sedimentation control measures in conformance with this part and the rules promulgated under this part or an applicable local ordinance are not in place, the county enforcing agency or municipal enforcing agency, or a designee of either of these agencies, may enter upon the land and construct, implement, and maintain soil erosion and sedimentation control measures in conformance with this part and the rules promulgated under this part or an applicable local

ordinance. However, the enforcing agency shall not expend more than \$10,000.00 for the cost of the work, materials, labor, and administration without prior written notice in the notice provided in section 9117 for the person who owns the land that the expenditure of more than \$10,000.00 may be made. If more than \$10,000.00 is to be expended under this section, then the work shall not begin until at least 10 days after the notice of violation has been mailed.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001  
**324.9120 Reimbursement of county or municipal enforcing agency; lien for expenses; priority; collection and treatment of lien.**

Sec. 9120. (1) All expenses incurred by a county enforcing agency or a municipal enforcing agency under section 9119 to construct, implement, and maintain soil erosion and sedimentation control measures to bring land into conformance with this part and the rules promulgated under this part or an applicable local ordinance shall be reimbursed to the county enforcing agency or municipal enforcing agency by the person who owns the land.

(2) The county enforcing agency or municipal enforcing agency shall have a lien for the expenses incurred under section 9119 of bringing the land into conformance with this part and the rules promulgated under this part or an applicable local ordinance. However, with respect to single-family or multifamily residential property, the lien for such expenses shall have priority over all liens and encumbrances filed or recorded after the date of such expenditure. With respect to all other property, the lien for such expenses shall be collected and treated in the same manner as provided for property tax liens under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 20

### **324.9121 Violations; penalties.**

- Sec. 9121. (1) A person who violates this part is responsible for either of the following:
- (a) If the action is brought by a county enforcing agency or a municipal enforcing agency of a local unit of government that has enacted an ordinance under this part that provides a penalty for violations, the person is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than \$2,500.00.
  - (b) If the action is brought by the state or a county enforcing agency of a county that has not enacted an ordinance under this part, the person is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$2,500.00.
- (2) A person who knowingly violates this part or knowingly makes a false statement in an application for a permit or in a soil erosion and sedimentation control plan is responsible for the payment of a civil fine of not more than \$10,000.00 for each day of violation.

- (3) A person who knowingly violates this part after receiving a notice of determination under section 9112 or 9117 is responsible for the payment of a civil fine of not less than \$2,500.00 or more than \$25,000.00 for each day of violation.
- (4) Civil fines collected under subsections (2) and (3) shall be deposited as follows:
  - (a) If the state filed the action under this section, in the general fund of the state.
  - (b) If a county enforcing agency or municipal enforcing agency filed the action under this section, with the county or municipality that filed the action.
  - (c) If an action was filed jointly by the state and a county enforcing agency or municipal enforcing agency, the civil fines collected under this subsection shall be divided in proportion to each agency's involvement as mutually agreed upon by the agencies. All fines going to the department shall be deposited into the general fund of the state.
- (5) A default in the payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.
- (6) In addition to a fine assessed under this section, a person who violates this part is liable to the state for damages for injury to, destruction of, or loss of natural resources resulting from the violation. The court may order a person who violates this part to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.
- (7) This section applies to an authorized public agency, in addition to other persons. This section does not apply to a county enforcing agency or a municipal enforcing agency with respect to its administration and enforcement of this part and rules promulgated under this part.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 173, Imd. Eff. Apr. 18, 1996 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

### **324.9122 Severability.**

Sec. 9122. If any provision of this part is declared by a court to be invalid, the invalid provision shall not affect the remaining provisions of the part that can be given effect without the invalid provision. The validity of the part as a whole or in part shall not be affected, other than the provision invalidated.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995

### **324.9123 Training program; certificate; fees.**

- Sec. 9123. (1) Beginning 3 years after the effective date of the 2000 amendments to this section, each individual who is responsible for administering this part and the rules promulgated under this part or a local ordinance and who has decision-making authority for soil erosion and sedimentation control plan development or review, inspections, permit issuance, or enforcement shall be trained by the department. The department shall issue a certificate of training to individuals under this section if they do both of the following:
- (a) Complete a soil erosion and sedimentation control training program sponsored by the department.
  - (b) Pass an examination on the subject matter covered in the training program under subdivision (a).
- (2) A certificate of training under subsection (1) is valid for 5 years. For recertifications, the department may offer a refresher course or other update in lieu of the requirements of subsection (1)(a) and (b).
- (3) The department may charge fees for administering the training program and the examination under this section that are not greater than the department's cost of administering the training program and the examination. All fees collected under this section shall be deposited into the soil erosion and sedimentation control training fund created in section 9123a.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

**324.9123a Soil erosion and sedimentation control training fund; creation; disposition of funds; lapse; expenditures.**

- Sec. 9123a. (1) The soil erosion and sedimentation control training fund is created within the state treasury.
- (2) The state treasurer may receive money or other assets from any source for deposit into the soil erosion and sedimentation control training fund. The state treasurer shall direct the investment of the soil erosion and sedimentation control training fund. The state treasurer shall credit to the soil erosion and sedimentation control training fund interest and earnings from fund investments.
  - (3) Money in the soil erosion and sedimentation control training fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.
  - (4) The department shall expend money from the fund, upon appropriation, only to administer the soil erosion and sedimentation control training program and examination under section 9123.

**History:** Add. 2000, Act 504, Imd. Eff. Jan. 11, 2001



## UNIT SIX Part 91 STATUTE REVIEW

1. "Department" means the \_\_\_\_\_.
2. "Earth change" means a \_\_\_\_\_-\_\_\_\_\_ change in \_\_\_\_\_ or \_\_\_\_\_ of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.
3. "Municipality" means a: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ or \_\_\_\_\_ township that is located in a county with a population of \_\_\_\_\_ or more.
4. The county is responsible for administering and enforcing Part 91 throughout the county except for the following two situations:
  - a. within a \_\_\_\_\_ that has assumed \_\_\_\_\_ for soil erosion and sedimentation control (SESC) under section 9106
  - b. with regard to earth changes of \_\_\_\_\_ agencies
5. A county can administer Part 91 by \_\_\_\_\_ or by adopting an \_\_\_\_\_ by the Department. Both must be \_\_\_\_\_ and \_\_\_\_\_ by the Department.
6. An ordinance adopted by a county may be more \_\_\_\_\_ than Part 91 and the rules promulgated under Part 91.
7. After the initial review, the Department shall conduct a review of the county's program every \_\_\_\_\_ years.
8. If a county does not improve its SESC Program within six months of being placed on probation, the Department shall hire a \_\_\_\_\_.
9. A municipality can administer and enforce Part 91 by adopting an \_\_\_\_\_ that is \_\_\_\_\_ by the Department. Prior to approving the ordinance, the Department shall forward a copy of the proposed ordinance to the \_\_\_\_\_ agency and the appropriate \_\_\_\_\_ for review and \_\_\_\_\_.
10. The ordinance adopted by the municipality may be more \_\_\_\_\_ than Part 91 and the rules promulgated under Part 91.
11. A municipality shall not administer or enforce Part 91 unless the Department has \_\_\_\_\_ the municipality.
12. As a condition for the issuance of a permit, the county or municipal enforcing agency may require \_\_\_\_\_, a \_\_\_\_\_, an \_\_\_\_\_ of credit or a \_\_\_\_\_ bond in an amount sufficient to assure the installation and completion of protective or corrective measures.

13. A person engaged in agricultural practices may enter into an \_\_\_\_\_ with the appropriate \_\_\_\_\_ in lieu of obtaining a permit.
14. A state agency or an agency of a local unit of government may apply to the Department for designation as an \_\_\_\_\_ by submitting the SESC \_\_\_\_\_ governing all earth changes normally undertaken by the agency.
15. If the Department approves the program of a county enforcing agency, municipal enforcing agency, or authorized public agency, the approval is valid for \_\_\_\_ years.
16. The Department, a county enforcing agency, or municipal enforcing agency may go to court for an \_\_\_\_\_ or other process against a person to restrain or prevent violations of Part 91.
17. The following activities are not required to obtain a SESC permit:
  - a. a person engaged in the \_\_\_\_\_ industry, the \_\_\_\_\_ industry, or the \_\_\_\_\_ and \_\_\_\_\_ for the purpose of crop production
  - b. \_\_\_\_\_ mineral \_\_\_\_\_ regulated under Part 631 of the Natural Resources and Environmental Protection Act (NREPA)
  - c. activities related to \_\_\_\_\_ or \_\_\_\_\_ exploration or development regulated on Part 615 of the NREPA
18. Although a person engaged in the activities identified in 17a and 17c is not required to obtain a SESC permit, the activities shall conform to the \_\_\_\_\_ as if a permit was required.
19. As used in Part 91, mining does not include the removal of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, or \_\_\_\_\_. A SESC permit is required for these activities.
20. Within \_\_\_\_ days after notice of a violation, a person shall implement and maintain SESC measures in conformance with Part 91.
21. A person who violates Part 91 is responsible for a \_\_\_\_\_ or \_\_\_\_\_ civil infraction and may be ordered to pay a civil fine of not more than \_\_\_\_\_.
22. A person who knowingly violates this part is responsible for the payment of a civil fine of not more than \_\_\_\_\_ per \_\_\_\_\_ of violation. A person who knowingly violates this part after receiving a notice of determination is responsible for the payment of a civil fine of not less than \_\_\_\_\_ or more than \_\_\_\_\_ for each day of violation.
23. A certificate of training is valid for \_\_\_\_\_ years.

## ANSWERS TO UNIT SIX PART 91 STATUTE REVIEW

1. "Department" means the **Department of Environmental Quality**.
2. "Earth change" means a **human-made** change in **natural cover** or **topography** of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.
3. "Municipality" means a: **city, village, charter township, or general law township** that is located in a county with a population of **200,000** or more
4. The county is responsible for administering and enforcing Part 91 throughout the county except for the following two situations:
  - a. within a **municipality** that has assumed **responsibility** for soil erosion and sedimentation control (SESC) under section 9106
  - b. with regard to earth changes of **authorized public** agencies
5. A county can administer Part 91 by **resolution** or by adopting an **ordinance**. Both must be **reviewed** and **approved** by the Department.
6. An ordinance adopted by a county may be more **restrictive** than Part 91 and the rules promulgated under Part 91.
7. After the initial review, the Department shall conduct a review of the county's program every **five** years.
8. If a county does not improve its SESC Program within six months of being placed on probation, the Department shall hire a **consultant**.
9. A municipality can administer and enforce Part 91 by adopting an **ordinance** that is **approved** by the Department. Prior to approving the ordinance, the Department shall forward a copy of the proposed ordinance to the **county enforcing** agency and the appropriate **conservation district** for review and **comment**.
10. The ordinance adopted by the municipality may be more **restrictive** than Part 91 and the rules promulgated under Part 91.
11. A municipality shall not administer or enforce Part 91 unless the Department has **approved** the municipality.
12. As a condition for the issuance of a permit, the county or municipal enforcing agency may require **cash**, a **certified check**, an **irrevocable bank letter** of credit or a **surety** bond in an amount sufficient to assure the installation and completion of protective or corrective measures.

13. A person engaged in agricultural practices may enter into an **agreement** with the appropriate **conservation district** in lieu of obtaining a permit.
14. A state agency or an agency of a local unit of government may apply to the Department for designation as an **authorized public agency** by submitting the SESC **procedures** governing all earth changes normally undertaken by the agency.
15. If the Department approves the program of a county enforcing agency, municipal enforcing agency, or authorized public agency, the approval is valid for **five** years.
16. The Department, a county enforcing agency, or municipal enforcing agency may go to court for an **injunction** or other process against a person to restrain or prevent violations of Part 91.
17. The following activities are not required to obtain a SESC permit:
  - a. a person engaged in the **logging** industry, the **mining** industry, or the **plowing** and **tilling** for the purpose of crop production
  - b. **metallic** mineral **mining** regulated under Part 631 of the Natural Resources and Environmental Protection Act (NREPA)
  - c. activities related to **oil** or **gas** exploration or development regulated on Part 615 of the NREPA
18. Although a person engaged in the activities identified in 17a and 17c is not required to obtain a SESC permit, the activities shall conform to the **same standards** as if a permit was required.
19. As used in Part 91, mining does not include the removal of **clay, gravel, sand, peat, or topsoil**. A SESC permit is required for these activities.
20. Within **five** days after notice of a violation, a person shall implement and maintain SESC measures in conformance with Part 91.
21. A person who violates Part 91 is responsible for a **municipal** or **state** civil infraction and may be ordered to pay a civil fine of not more than **\$2500**.
22. A person who knowingly violates this part is responsible for the payment of a civil fine of not more than **\$10,000** per **day** of violation. A person who knowingly violates this part after receiving a notice of determination is responsible for the payment of a civil fine of not less than **\$2500** or more than **\$25,000** for each day of violation.
23. A certificate of training is valid for **five** years.

## Appendix 6B

### ADMINISTRATIVE RULES FOR PART 91

#### DEPARTMENT OF ENVIRONMENTAL QUALITY WATER BUREAU

(By authority conferred on the department of environmental quality by sections 9104 and 9114 of 1994 PA 451, MCL 324.9104 and 324.9114.)

(Includes all amendments through 10-8-07)

#### SOIL EROSION AND SEDIMENTATION CONTROL

##### R 323.1701 Definitions.

Rule 1701. (1) As used in this part:

- (a) "Accelerated soil erosion" means the increased loss of the land surface that occurs as a result of human activities.
- (b) "Acceptable erosion and sediment control program" means the activities of a county or local enforcing agency or authorized public agency that are conducted in accordance with these rules and part 91 regarding staff training, developing and reviewing plans, issuing permits, conducting inspections, and initiating compliance and enforcement actions to effectively minimize erosion and off-site sedimentation.
- (c) "Designated agent" means a person who has written authorization from the landowner to sign the application and secure a permit in the landowner's name.
- (d) "Lake" means the Great Lakes and all natural and artificial inland lakes or impounds that have definite banks, a bed, visible evidence of continued occurrence of water, and a surface area of water that is equal to, or greater than 1 acre. "Lake" does not include sediment basins and basins constructed for the sole purpose of storm water retention, cooling water, or treating polluted water.
- (e) "Landowner" means the person who owns or holds a recorded easement on the property or who is engaged in construction in a public right-of-way in accordance with sections 13, 14, 15, and 16 of Act No. 368 of the Public Acts of 1925, as amended, being §§247.183, 247.184, 247.185, and 247.186 of the Michigan Compiled Laws.
- (f) "Non-erosive velocity" means a speed of water movement that is not conducive to the development of accelerated soil erosion.
- (g) "Part 91" means Part 91 of Act No. 451 of the Public Acts of 1994, as amended, being §§324.9101 to 324.9123 of the Michigan Compiled Laws.
- (h) "Sediment basin" means a naturally occurring or constructed depression used for the sole purpose of capturing sediment during and after an earth change activity.
- (i) "Stabilization" means the establishment of vegetation or the proper placement grading or covering of soil to ensure its resistance to soil erosion, sliding, or other earth movement.

- (j) "Storm water retention basin" means an area which is constructed to capture surface water runoff and which does not discharge directly to a lake or stream through an outlet. Water leaves the basin by infiltration and evaporation.
- (k) "Stream" means a river, creek, or other surface watercourse which may or may not be serving as a drain as defined in Act No. 40 of the Public Acts of 1956, as amended, being §281.1 et seq. of the Michigan Compiled Laws, and which has definite banks, a bed, and visible evidence of the continued flow or continued occurrence of water, including the connecting waters of the Great Lakes.
- (l) "Temporary soil erosion and sedimentation control measures" means interim control measures which are installed or constructed to control soil erosion and sedimentation and which are maintained after project completion.
- (m) "Permanent soil erosion and sedimentation control measures" means those control measures which are installed or constructed to control soil erosion and sedimentation and which are maintained after project completion.

(2) The terms defined in Part 91 have the same meanings when used in these rules.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

### **R 323.1702 Earth change requirements generally.**

Rule 1702. (1) A person shall conduct an earth change in a manner that will effectively reduce accelerated soil erosion and resulting sedimentation.

- (2) A person engaged in an earth change identified in R 323.1704 shall plan, implement, and maintain acceptable soil erosion and sedimentation control measures in conformance with Part 91, which effectively reduce accelerated soil erosion and off-site sedimentation.
- (3) A person shall set forth Soil erosion and sedimentation control measures in a plan as prescribed by R 323.1703. A person shall make the plan available for inspection at all times at the site of the earth change. The department or its designated representative may require the county or local enforcing agency to file a copy of the plan with the department.
- (4) A person shall obtain a permit containing state prescribed information, as required by R 323.1707 and make the permit available for inspection at the site of the earth change.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

### **R 323.1703 Soil erosion and sedimentation control plan requirements.**

Rule 1703. A person shall prepare a soil erosion and sedimentation control plan for any earth change identified in R 323.1704. A person shall design the plan to effectively reduce accelerated soil erosion and sedimentation, and shall identify factors that may contribute to soil erosion or sedimentation or both. The plan shall include, but not be limited to, all of the following:

- (a) A map or maps at a scale of not more than 200 feet to the inch or as otherwise determined by the county or local enforcing agency. A map shall include a legal description and site location sketch that includes the proximity of any proposed earth change to lakes or streams, or both; predominant land features; and contour intervals or slope description.
- (b) A soils survey or a written description of the soil types of the exposed land area contemplated for the earth change.
- (c) Details for proposed earth changes including all of the following:
  - (i) A description and the location of the physical limits of each proposed earth change.
  - (ii) A description and the location of all existing and proposed on-site drainage and dewatering facilities.
  - (iii) The timing and sequence of each proposed earth change.
  - (iv) The location and description for installing and removing all proposed temporary soil erosion and sedimentation control measures.
  - (v) A description and location of all proposed permanent soil erosion and sediment control measures.
  - (vi) A program proposal for the continued maintenance of all permanent soil erosion and sediment control measures that remain after project completion, including the designation of the person responsible for the maintenance. Maintenance responsibilities shall become a part of any sales or exchange agreement for the land on which the permanent soil erosion control measures are located.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

### **R 323.1704 Permit requirements.**

Rule 1704. (1) A land owner or designated agent who contracts for, allows or engages in an earth change in this state shall obtain a permit from the appropriate enforcing agency before commencing an earth change which disturbs 1 or more acres of land, or which is within 500 feet of the water's edge of a lake or stream, unless exempted in R 323.1705.

- (2) An earth change activity that does not require a permit under subrule (1) of this rule is not exempt from enforcement procedures under Part 91 or these rules, if the activity exempted by subrule (1) of this rule causes or results in a violation of Part 91 or these rules.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

**R 323.1705 Permit exemptions and waivers.**

Rule 1705. (1) A permit is not required for any of the following:

- (a) A beach nourishment project permitted under Part 325 of Act No. 451 of the Public Acts of 1994, as amended, being S324.32501 et seq. of the Michigan Compiled Laws.
  - (b) Normal road and driveway maintenance, such as grading or leveling, that does not increase the width or length of the road or driveway and that will not contribute sediment to lakes or streams.
  - (c) An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance and that will not contribute sediment to lakes or streams.
  - (d) Installation of oil, gas, and mineral wells under permit from the supervisor of wells if the owner-operator is found by the supervisor of wells to be in compliance with the conditions of Part 91.
- (2) A county or local enforcing agency may grant a permit waiver for an earth change after receiving a signed affidavit from the landowner stating that the earth change will disturb less than 225 square feet and that the earth change will not contribute sediment to lakes or streams.
- (3) Exemptions provided in subrules (1) and (2) of this rule shall not be construed as exemptions from enforcement procedures under Part 91 or these rules, if the activities exempted by subrules (1) and (2) of this rule cause or result in a violation of Part 91 or these rules.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

**R 323.1706 Application for permit.**

Rule 1706. (1) A landowner or designated agent shall submit an application for a permit to the appropriate enforcing agency.

- (2) A landowner or designated agent shall submit, with the application a soil erosion and sedimentation control plan and any other document that the appropriate enforcing agency may require.
- (3) The county or local enforcing agency shall provide an application requiring state prescribed information to the applicant.
- (4) An authorized public agency is exempt from obtaining a permit from a county or local enforcing agency but shall notify the county or local enforcing agency of each proposed earth change.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.



### **R 323.1707 Application review and permit procedures.**

Rule 1707. (1) A person who is designated by the county or local enforcing agency who is trained in soil erosion and sedimentation control methods and techniques shall review and approve a soil erosion and sedimentation control plan.

- (2) The appropriate enforcing agency shall approve, disapprove, or require modification of an application for an earth change permit within 30 calendar days following receipt of the application. The enforcing agency shall notify an applicant of by first-class mail. If an applicant is disapproved, then the enforcing agency shall advise the applicant by certified mail of its reasons for disapproval and conditions required for approval. The enforcing agency need not notify an applicant of approval or disapproval by mail if the applicant is given written approval or disapproval of the application in person. A permit given to the applicant either in person or by first-class mail constitutes approval.
- (3) A permit that contains state prescribed information shall be used by each county or local enforcing agency and shall include any additional provisions required by the county or local enforcing agency. The permit shall be available at the site of the earth change for inspection.
- (4) Upon a determination that a permit applicant has met all of the requirements of these rules, Part 91 and the local ordinance, if applicable, the appropriate enforcing agency shall issue a permit for the proposed earth change.

**Note:** *On October 8, 2007, subsection (3) was rescinded and the remaining subsections were renumbered. Prior to the amendment, the Department of Environmental Quality was responsible for issuing SESC permits for projects that crossed between two or more permitting agencies; now each permitting agency is responsible for issuing a SESC permit for the portion of the project within its respective jurisdiction.*

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998; 2007 MR 19, Eff. Oct. 8, 2007.

### **R 323.1708 Soil erosion and sedimentation control procedures and measures generally.**

Rule 1708. A person who applies for an earth change permit shall incorporate the soil erosion and sedimentation control procedures and measures prescribed by R 323.1709 and R 323.1710 into the soil erosion and sedimentation control plan and shall apply the procedures and measures to all earth changes identified in the plan, unless the person preparing the plan shows to the satisfaction of the appropriate enforcing agency that altering of the control procedures or measures, or including other control procedures or measures, will prevent accelerated soil erosion and sedimentation during the earth change.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

**R 323.1709 Earth change requirements: time; sediment removal; design installation, and removal of temporary or permanent control measures.**

- Rule 1709. (1) A person shall design, construct, and complete an earth change in a manner that limits the exposed area of any disturbed land for the shortest possible period of time as determined by the county or local enforcing agency.
- (2) A person shall remove sediments caused by accelerated soil erosion from runoff water before it leaves the site of the earth change.
  - (3) A person shall design a temporary or permanent control measure that is designed and constructed for the conveyance of water around, through or from the earth change area to limit the water flow to a non-erosive velocity.
  - (4) A person shall install temporary soil erosion and sedimentation control measures before or upon commencement of the earth change activity and shall maintain the measures on a daily basis. A person shall remove temporary soil erosion and sedimentation control measures after permanent soil erosion measures are in place and the area is stabilized. A person shall stabilize the area with permanent soil erosion control measures under approved standards and specifications as prescribed by R 323.1710.
  - (5) A person shall complete permanent soil erosion control measures for all slopes, channels, ditches or any disturbed land area within 5 calendar days after final grading or the final earth change has been completed. If it is not possible to permanently stabilize a disturbed area after an earth change has been completed or if significant earth change activity ceases, then a person shall maintain temporary soil erosion and sedimentation control measures until permanent soil erosion control measures are in place and the area is stabilized.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

**R 323.1710 Standards and specifications.**

Rule 1710. A person shall complete all temporary and permanent erosion and sedimentation control measures according to the approved plan or operating procedures.

- (1) A person shall install and maintain control measures in accordance with the standards and specifications of all of the following:
  - (a) The product manufacturer.
  - (b) The local conservation district.
  - (c) The department.
  - (d) The Michigan department of transportation.
  - (e) The enforcing agency, if applicable and formally adopted.
- (2) If a conflict exists between the standards and specifications, the enforcing agency or authorized public agency shall determine which specifications are appropriate for the project.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

**R 323.1711 Building permits.**

Rule 1711. (1) A local agency or general law township that issues building permits shall notify the county or local enforcing agency immediately upon receipt of an application for a building permit that requires an earth change which disturbs 1 or more acres or which located within 500 feet of a lake or stream.

- (2) A local agency or general law township shall not issue a building permit to a person engaged in an earth change if the change requires a permit under Part 91 or these rules until the county or local enforcing agency has issued the required state prescribed permit for the earth change.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

**R 323.1712 Enforcement.**

Rule 1712. The county or local enforcing agency may issue a cease and desist order or revoke a permit upon its finding that there is a violation of Part 91, these rules, or an approved local ordinance, or a finding that there is a violation of a permit or an approved soil erosion and sedimentation control plan.

History: 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

**R 323.1713 Periodic review.**

Rule 1713. The department shall conduct an ongoing comprehensive review and evaluation of all soil erosion and sedimentation control programs that operate under Part 91 and these rules. The department shall notify county and local enforcing agencies and authorized public agencies as to the acceptability of their soil erosion and sedimentation control programs. The department shall make available a report of its findings of the review and evaluation of all enforcing agencies and authorized public agencies.

**History:** 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

**R 323.1714 Availability of documents.**

Rule 1714. Copies of the local conservation district standards and specifications for soil erosion and sedimentation control, as referred to in R 323.1710 are available at each local conservation district office at a nominal cost. Copies of the department's standards are available from the surface water quality division's Lansing office. Department of transportation standards are available at the Lansing office for a fee. Information on other standards may be available from product manufacturers and the enforcing agencies.

**History:** 1954 ACS 81, Eff. Jan. 1, 1975; 1979 AC; 1998 MR 7, Eff. July 15, 1998.

## UNIT SIX ADMINISTRATIVE RULES FOR PART 91 REVIEW

1. "Accelerated soil erosion" means the \_\_\_\_\_ loss of the land surface that occurs as the result of \_\_\_\_\_ activities.
2. "Lake" means the Great Lakes and all natural and \_\_\_\_\_ inland lakes and impoundments that have definite \_\_\_\_\_, a \_\_\_\_\_, visible evidence of a continued occurrence of water, and a surface area of water that is equal to, or greater than, \_\_\_\_\_ acre.
3. "Stream" means a river, creek, or other \_\_\_\_\_ which may or may not be serving as a \_\_\_\_\_ (established under 1956 PA 40, as amended), and which has definite banks, a bed, and visible evidence of the continued flow or continued \_\_\_\_\_ of water, including the connecting waters of the Great Lakes.
4. A person engaged in an earth change shall \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ acceptable SESC measures in conformance with Part 91, which effectively \_\_\_\_\_ accelerated soil erosion and off-site sedimentation.
5. A person shall obtain a permit \_\_\_\_\_ commencing an earth change which disturbs \_\_\_\_\_ or more acres of land or which is within \_\_\_\_\_ feet of a \_\_\_\_\_ or \_\_\_\_\_.
6. An earth change activity that does not require a permit is not \_\_\_\_\_ from \_\_\_\_\_ procedures under Part 91.
7. An authorized public agency is \_\_\_\_\_ from obtaining a permit from the county or local enforcing agency, but shall \_\_\_\_\_ the county or local enforcing agency of each proposed earth change.
8. If an earth change crosses between two or more local (municipal) or county enforcing agencies, then \_\_\_\_\_ agency shall issue a permit for the portion of project within its jurisdiction.
9. A person shall design, construct, and complete an earth change in a manner that \_\_\_\_\_ the exposed area of any disturbed land for the \_\_\_\_\_ possible period of time as \_\_\_\_\_ by the county or local enforcing agency.
10. A person shall \_\_\_\_\_ sediment caused by accelerated soil erosion from \_\_\_\_\_ water \_\_\_\_\_ it leaves the site of the earth change.

11. A person shall design a temporary or permanent measure that is designed and constructed for the conveyance of water around, through, or from the earth change area to \_\_\_\_\_ the water flow to a \_\_\_\_\_ velocity.
12. A person shall install temporary SESC measures \_\_\_\_\_ or upon \_\_\_\_\_ of the earth change activity and shall \_\_\_\_\_ the measures on a \_\_\_\_\_ basis.
13. A person shall remove \_\_\_\_\_ SESC measures after \_\_\_\_\_ soil erosion measures are in place and the area is \_\_\_\_\_.
14. A person shall complete permanent soil erosion control measures for all slopes, ditches, or any disturbed land area within \_\_\_\_\_ calendar days after \_\_\_\_\_ grading or the final earth change has been completed.
15. A local agency or general law township \_\_\_\_\_ issue a \_\_\_\_\_ permit to a person engaged in an earth change if the change requires a permit under Part 91 or the rules until the county or local enforcing agency has issued the Part 91 permit.
16. A county or local enforcing agency may issue a \_\_\_\_\_ and \_\_\_\_\_ order or \_\_\_\_\_ a permit upon its finding that there is a violation of Part 91.

## ANSWERS TO UNIT SIX ADMINISTRATIVE RULES FOR PART 91 REVIEW

1. "Accelerated soil erosion" means the **increased** loss of the land surface that occurs as the result of **human** activities.
2. "Lake" means the Great Lakes and all natural and **artificial** inland lakes and impoundments that have definite **banks**, a **bed**, visible evidence of a continued occurrence of water, and a surface area of water that is equal to, or greater than, **one** acre.
3. "Stream" means a river, creek, or other **surface watercourse** which may or may not be serving as a **drain** (established under 1956 PA 40, as amended), and which has definite banks, a bed, and visible evidence of the continued flow or continued **occurrence** of water, including the connecting waters of the Great Lakes.
4. A person engaged in an earth change shall **plan, implement, and maintain** acceptable SESC measures in conformance with Part 91, which effectively **reduce** accelerated soil erosion and off-site sedimentation.
5. A person shall obtain a permit **before** commencing an earth change which disturbs **one** or more acres of land or which is within **500** feet of a **lake** or **stream**.
6. An earth change activity that does not require a permit is not **exempt** from **enforcement** procedures under Part 91.
7. An authorized public agency is **exempt** from obtaining a permit from the county or local enforcing agency, but shall **notify** the county or local enforcing agency of each proposed earth change.
8. If an earth change crosses between two or more local (municipal) or county enforcing agencies, then **each** agency shall issue a permit for the portion of the project within its jurisdiction.
9. A person shall design, construct, and complete an earth change in a manner that **limits** the exposed area of any disturbed land for the **shortest** possible period of time as **determined** by the county or local enforcing agency.

10. A person shall **remove** sediment caused by accelerated soil erosion from **runoff** water **before** it leaves the site of the earth change.
11. A person shall design a temporary or permanent measure that is designed and constructed for the conveyance of water around, through, or from the earth change area to **limit** the water flow to a **non-erosive** velocity.
12. A person shall install temporary SESC measures **before** or upon **commencement** of the earth change activity and shall **maintain** the measures on a **daily** basis.
13. A person shall remove **temporary** SESC measures after **permanent** soil erosion measures are in place and the area is **stabilized**.
14. A person shall complete permanent soil erosion control measures for all slopes, ditches, or any disturbed land area within **five** calendar days after **final** grading or the final earth change has been completed.
15. A local agency or general law township **shall not** issue a **building** permit to a person engaged in an earth change if the change requires a permit under Part 91 or the rules until the county or local enforcing agency has issued the Part 91 permit.
16. A county or local enforcing agency may issue a **cease** and **desist** order or **revoke** a permit upon its finding that there is a violation of Part 91.



**OFFICE USE ONLY**

Permit Number
Date Issued
Expiration Date
File Number

**PERMIT APPLICATION  
for Part 91  
SOIL EROSION AND  
SEDIMENTATION CONTROL**

**1. APPLICANT** (Please check if applicant is the landowner or designated agent\*)

Name	Landowner	Designated Agent	
Address			
City	State	Zip Code	Area Code/Telephone Number

**2. LOCATION**

Section	Town	Range	Township	City/Village	County
Subdivision	Lot No.	Tax ID Number	Street Address		

**3. PROPOSED EARTH CHANGE**

Project Type:	Residential Industrial	Multi-family Land Balancing	Commercial
Describe Project			Size of Earth Change (acres or square feet)
Name of and Distance to Nearest Lake, Stream, or Drain		Date Project to Start	Date Project to be Completed

**4. SOIL EROSION AND SEDIMENTATION CONTROL PLAN** (Refer to Rule 323.1703)

<b>Note: ___ complete sets of plans must be attached.</b>	Estimated Cost of Erosion and Sediment Control
	Plan Preparer's Name and Telephone Number      Area Code (      )

**5. PARTIES RESPONSIBLE FOR EARTH CHANGE**

Name of Landowner (if not provided in Box No. 1 above)		Address		
City	State	Zip	Area Code/Telephone Number	
Name of Individual "On Site" Responsible for Earth Change			Company Name	
Address	City	State	Zip Code	Area Code/Telephone Number

**6. PERFORMANCE DEPOSIT** (If required by the permitting agency)

Amount Required \$ _____	Cash	Certified Check	Irrevocable Letter of Credit	Surety Bond
Name of Surety Company				
Address	City	State	Zip Code	Area Code/Telephone No.

I (we) affirm that the above information is accurate and that I (we) will conduct the above described earth change in accordance with Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, applicable local ordinances, and the documents accompanying this application.

Landowner's Signature	Print Name	Date
Designated Agent's Signature*	Print Name	Date

\* Designated agent must have a written statement from landowner authorizing him/her to secure a permit in the landowner's name

**SOIL EROSION AND SEDIMENTATION CONTROL PERMIT**

(Issued under the authority of Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended)

Permittee: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Permit No.:	_____
Issued:	_____
Expires:	_____
Extended:	_____

On-Site Responsible Person: Name: \_\_\_\_\_

Company: \_\_\_\_\_ Telephone Number: (\_\_\_\_)\_\_\_\_\_

**Permitted Activity:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project Location: Town \_\_\_\_\_; Range \_\_\_\_\_; Section \_\_\_\_\_

City or Township: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**Permit Conditions:**

1. The permitted activity shall be completed in accordance with the approved plans and specifications, and the **attached** general and specific conditions.
2. This permit does not waive the necessity for obtaining all other required federal, state, or local permits.
3. Permittee shall notify the permitting agency within one week after completing the permitted activity or one week prior to the permit expiration date, whichever comes first.

\_\_\_\_\_  
Permitting Agent

(\_\_\_\_)\_\_\_\_\_  
Telephone Number

**THIS PERMIT MUST BE POSTED AT THE PROJECT SITE.**

## GENERAL CONDITIONS

In accordance with Rule 1709 promulgated under the authority of Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and in addition to the information on the attached plan(s) and special conditions, the following general conditions apply to the earth change authorized by this permit:

- Design, construct, and complete the earth change in a manner that limits the exposed area of disturbed land for the shortest period of time.
- Remove sediment caused by accelerated soil erosion from runoff water before it leaves the site of the earth change.
- Temporary or permanent control measures shall be designed and installed to convey water around, through, or from the earth change at a non-erosive velocity.
- Install temporary soil erosion and sedimentation control measures before or upon commencement of the earth change activity and maintain the measures on a daily basis. Remove temporary soil erosion and sedimentation control measures after permanent soil erosion measures are in place and the area is stabilized. ("Stabilized" means the establishment of vegetation or the proper placement, grading, or covering of soil to ensure its resistance to soil erosion, sliding, or other earth movement.)
- Complete permanent soil erosion control measures for the earth change within five calendar days after final grading or upon completion of the final earth change. If it is not possible to permanently stabilize the earth change, then maintain temporary soil erosion and sedimentation control measures until permanent soil erosion control measures are in place and the area is stabilized.

## SPECIFIC CONDITIONS

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# PART 91 SITE INSPECTION REPORT

Project Name		
Address	City	Township
Permit No.	Inspections No.	Date of Inspection

## A. GENERAL

Is permit posted at site?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are approved plans available?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is sediment properly contained on project site?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is earth change confined to areas specified on plans?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is there a potential for sediment to leave property/site?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is there a potential for sediment to discharge to surface waters?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

## B. CONTROL MEASURES

Are controls installed per plans?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Are controls adequate for this site?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are controls properly maintained?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Are storm sewers being protected?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

## C. INSPECTOR'S COMMENTS

Specific on site conditions:

  
  

Weather conditions:

  
  

Photos Taken?  Yes  No:                      Samples Taken?  Yes  No:

  

Recommendations:

  
  
  
  

Corrections (if any) must be made by \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ (date)

  

Persons attending inspection:

## D ACTION TAKEN

<input type="checkbox"/> Report left on-site with _____	<input type="checkbox"/> Report mailed to _____
<input type="checkbox"/> Violation notice recommended _____	<input type="checkbox"/> Copies sent to _____

\_\_\_\_\_ Inspector's Signature                      \_\_\_\_\_ Date



**SOIL EROSION & SEDIMENTATION CONTROL/CONSTRUCTION STORM WATER INSPECTION LOG**

Project Name or Description: \_\_\_\_\_ NPDES Number (if applicable): \_\_\_\_\_ Page \_\_\_\_ of \_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Reason for Inspection:  Weekly Inspection  Inspection **within 24 hrs. of Storm Water Runoff**

Current extent of the project work: \_\_\_\_\_

SESC measures installed since the last inspection and their location: \_\_\_\_\_

Are SESC measures installed according to the SESC Plan?  **Y**  **N** Are there other potential areas of concern?  **Y**  **N**  
If **NO**, identify measures, locations, and actions needed below.

Are the SESC measures: Properly installed?  **Y**  **N** Maintained?  **Y**  **N** Appropriate for site conditions?  **Y**  **N**  
Failed?  **Y**  **N**  
If **NO**, identify measure locations and actions needed below.

Are additional SESC measures recommended?  **Y**  **N** Are there other concerns or improvements noted for the site?  **Y**  **N**  
If **YES**, identify locations and recommendations below.

Corrective Actions Taken/Needed **to repair or improve the prescribed control measures:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Certified Operator Signature:** \_\_\_\_\_ **Operator Number:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

The details included in this report were provided to: \_\_\_\_\_ Date: \_\_\_\_\_ By method of delivery: \_\_\_\_\_

