

Appendix 2-D

State Statutes and Regulations

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If you require assistance accessing this information or require it in an alternative format, contact the Michigan Department of Transportation's (MDOT) Americans with disabilities Act (ADA) coordinator at [Michigan.gov/MDOT-ADA](https://www.michigan.gov/MDOT-ADA).

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2.D.1 Introduction

This appendix provides a general overview of State statutes and regulations applicable to highway drainage. These are intended for reference only. Prior to relying upon this information, confirm the information is current and has not been rescinded or superseded by subsequent statutes or regulations. In some instances, consultation with an attorney may be necessary to ensure compliance with applicable statutes and regulations.

2.D.2 State Statutes and Regulations

- [Natural Resources and Environmental Protection Act](#) (PA 451 of 1994)
 - [Water Resources Protection \(Part 31\)](#)
 - <https://www.michigan.gov/egle/about/organization/water-resources/floodplain-management/floodplains>
 - [Administrative Rules R 323.1311 - R 323.1329](#)
 - Part 31 Floodplain and Floodways (Water Resources Protection) of the NREPA, Public Act 451 of 1994, as amended, requires a permit from EGLE for construction in a floodplain of any river or stream having a contributing drainage area greater than 2 square miles upstream of the crossing.
 - Specific exemptions to Part 31 are listed in Rule 323.1312.
 - At the time of this writing, under Rule 323.1312(i), a wearing course is generally accepted by EGLE to be 4 inches deep.
 - The Municipal Separated Storm Sewer System (MS4) program for reducing/eliminating pollution from point source discharges to waters of the state requires the elimination of illicit discharges.
 - [Soil Erosion and Sedimentation Control \(Part 91\)](#)
 - [Administrative Rules R 323.1701 – R323.1714](#)
 - Part 91 (Soil Erosion and Sedimentation Control) of the NREPA, Public Act 451 of 1994, requires control measures be installed to prevent discharge of sediment to inland lakes or streams.
 - Earth changes greater than 1 acre in size or within 500 feet of an inland lake or stream generally require a permit unless the work is being done under the purview of an Authorized Public Agency (APA).
 - Part 91 requires a Soil Erosion and Sedimentation Control (SESC) Plan prepared by a person certified for SESC Plan Review and Design by EGLE. For sites disturbing more than 5 acres, a Notice of Coverage (NOC) is also required.
 - [Inland Lakes and Streams \(Part 301\)](#)
 - Projects meeting designated criteria may qualify for a [General Permit \(GP\)](#) or [Minor Permit \(MP\)](#) under Part 301.
 - [Administrative Rules R 281.811 - R 281.846](#)
 - Part 301 (Inland Lakes and Streams) of the NREPA, Public Act 451 of 1994, requires an Inland Lakes and Streams Permit from EGLE for construction in, over, or adjacent to inland lakes or streams.

- Part 301 protects Michigan's inland lakes and streams from construction activities. Specific requirements address activities occurring below the ordinary high-water mark of a lake or stream.
- [Wetland Protection \(Part 303\)](#)
 - [Administrative Rules R 281.921 - R 281.925](#)
 - Part 303 (Wetland Protection) of the NREPA, Public Act 451 of 1994, requires a State Wetland Permit from EGLE for regulated activities in wetland areas. Any unavoidable wetland impacts resulting from regulated activities in a regulated wetland must be properly mitigated on a no net loss basis. Wetland mitigation plans should be developed and coordinated with EGLE during the project development stage.
- [Natural Rivers \(Part 305\)](#)
 - Refer to the MDNR website for project requirements regarding natural rivers.
 - <https://www.michigan.gov/dnr/managing-resources/fisheries/natural-rivers>
- [Inland Lake Levels \(Part 307\)](#)
 - Part 307 (Inland Lake Levels) of NREPA, Public Act 451 of 1994, requires a permit from EGLE for construction, enlargement, repair, reconstruction, alteration, removal, or abandonment of any lake level control structure in the State of Michigan with a court-ordered legal lake level.
 - Legal lake level and control structure hydraulics must be accounted for in any hydrologic and hydraulic model prepared in which the lake level could impact the design of the highway drainage system. Examples of such impacts include effects on design flow rates and impacts on tailwater conditions.
- [Dam Safety \(Part 315\)](#)
 - [Administrative Rules R 281.1301 – R 281.1313](#)
 - Part 315 (Dam Safety) of the NREPA, Public Act 451 of 1994, requires a Dam Safety permit from EGLE for construction, enlargement, repair, reconstruction, alteration, removal, or abandonment of any dam in the State of Michigan.
- [Shorelands Protection and Management \(Part 323\)](#)
 - [Administrative Rules R 281.21 – R 281.26](#)
 - Part 323 (Shorelands Protection and Management) of the NREPA, Public Act 451 of 1994, requires a permit from EGLE for projects impacting high-risk areas, flood risk areas, and environmental areas.
- [Great Lakes Submerged Lands \(Part 325\)](#)
 - [Administrative Rules R 322.1001 – R 322.1018](#)
 - Part 325 (Great Lakes Submerged Land) of the NREPA, Public Act 451 of 1994, requires a permit from EGLE for any dredging, filling, or related construction activities in, over, or adjacent to any Great Lake.
 - When working on a project located near a Great Lake, permits from EGLE and USACE will may be required. The jurisdictional boundaries of each agency are defined by the established Ordinary High Water Mark (OHWM) of the lakes. Note that the OHWM elevations that are

documented as it relates to the jurisdictional boundary for each Great Lake are not consistent between EGLE and USACE, so impacts under each jurisdiction may be different.

- [EGLE OHWM for Great Lakes](#)
 - [USACE Detroit District Information](#)
 - [Sand Dunes \(Part 353\)](#)
 - Part 353 (Sand Dunes Protection and Management) of the NREPA, Public Act 451 of 1994, requires a permit from EGLE for any work in critical sand dune areas of the state.
- [Michigan Drain Code](#) (*PA 40 of 1956, MCL 280.1-630*) - This Act establishes the requirements for establishing, maintaining, assessing, and administering county drains in the State of Michigan. The following applicable chapters in the Michigan Drain Code may apply to MDOT drainage projects:
 - Chapter 3: Establishment of a drainage district
 - Chapter 4: Establishment of a county drain
 - Chapter 5: Establishment of an intercounty drainage district
 - Chapter 6: Establishment of an intercounty drain
 - Chapter 7: Apportionments and assessing of county drains
 - Chapter 8: Maintenance of county drains
 - Chapter 13: Drains in public highway rights-of-way
 - Chapter 14: Drains along railroads
 - Chapter 18: Obstruction removal in drains, extending of county drains by agreement, and enlarging of drainage districts by agreement
 - Chapter 20: Drains assessed to public corporations
 - Chapter 21: Intercounty drains assessed to public corporations
- [ACT 51](#), Public Acts of 1951 (MCL 247.651 – 247.675), state Trunk Line Highway System, provides for the classification of all public roads, streets, and highways. It defines the purpose for which Michigan Transportation funds may be allocated. Regarding drainage Section 10c (MCL247.660c states for both maintenance and preventive maintenance includes "...drainage...". [Section 14a](#) provides for the method of calculating drain special assessments pursuant to the Michigan Drain Code (MCL 280).
- [Public Act 170 of 1964](#) as amended by [Public Act 222 of 2001](#), Governmental Liability for Negligence, provides liability criteria for those engaged in the discharge of a government function. Sections 17 through 19 address how the department will proceed when notified by an affected property owner of a sewage disposal system event caused by a potential defect in the MDOT sewage disposal system. Note, the definition of sewage disposal system in this Act includes stormwater conveyance systems.
- [Public Act 200 of 1969](#) regulates driveways, banners, events, and parades upon and over highways; to provide for the promulgation of rules; to prescribe requirements for the issuance of permits; and to provide for the issuance of those permits. According to the Act and applicable administrative rules (247.244, Rule 24f), altered natural drainage shall not be permitted to flow on the highway right-of-way unless special provisions are approved by MDOT. Administrative Rules; 247.223 and 247.261 are also directly applicable.

- [ACT 283](#), Public Acts of 1909 (MCL 225.1) created a state highway department and commissioner whose responsibilities were transferred to the Michigan Department of Transportation (MDOT) by Act 286, Public Acts of 1964 (MCL 247.802). Specifically, Act 283 provided MDOT authority for the "...construction of drains..." (MCL 225.2b).

2.D.3 State Executive Orders

- MDOT must adhere to the conditions set forth in State of Michigan Executive Orders implemented by the Governor including:
 - Executive Order 1977-4, "State Flood Hazard Management Plan," which establishes flood standards. The Order requires MDOT watercourse crossings to pass the 1% chance (100-year) storm flow without causing a water surface increase.
 - Executive Order 1998-5 "Michigan Hazard Mitigation Coordinating Council (MHMCC)" requires MDOT to participate in the MHMCC. The MHMCC assists in implementing the Michigan Hazard Mitigation Plan and supports and promotes mitigation concepts, principles, strategies, and practices within governmental agencies and private sector organizations in Michigan. This council is a driving force for mitigation and promotes activities for creating disaster-resistant communities.

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