



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
GAYLORD DISTRICT OFFICE



LIESL EICHLER CLARK
DIRECTOR

August 26, 2021

VN No. VN-012123

VIA EMAIL AND CERTIFIED MAIL

Mr. James Brewer
10150 Greenwood Road
Gladwin, Michigan 48624

Dear Mr. Brewer:

SUBJECT: Violation Notice
Site Name: Torch River RV Park

Department of Environment, Great Lakes, and Energy (EGLE), Water Resources Division (WRD), staff inspected the Torch River RV Park, located at 12918 Torch River Road, Rapid City, Michigan 49676 (Site), to determine compliance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.3101 *et seq.*, and the Administrative Rules promulgated thereunder (Part 31); Part 91, Soil Erosion and Sedimentation Control (SESC), of the NREPA, MCL 324.9101 *et seq.*, and the Administrative Rules promulgated thereunder (Part 91), Rule 323.2190, Permit-By-Rule of the 1979 Administrative Code (Permit-By-Rule); and Part 303, Wetlands Protection, of the NREPA, MCL 324.30319 *et seq.*, and the Administrative Rules promulgated thereunder (Part 303).

On August 11, 2021, EGLE staff conducted an inspection to determine if there were impacts related to the Site following the rain event the night of August 10, 2021. EGLE staff visited the Site again on August 12, 2021, to determine if further impacts resulting from the rain event that occurred the evening of August 11, 2021. During the inspection on August 11, 2021, EGLE staff confirmed unlawful discharges of sediment to the adjacent properties from both the east and west side of the Site, a violation of Part 91. In addition, EGLE staff confirmed a discharge of sediment from the site across Torch River Road to the wetlands (waters of the state) east of the site. The discharge of sediment to waters of the state is a violation of Part 31, Part 91, and Permit-By-Rule. The discharge of sediment to regulated wetlands east of the site is also a non-permittable violation of Part 303.

Currently the site is not covered by a Notice of Coverage (NOC) under Permit-By-Rule. Since on August 11, 2021, the site had a discharge of storm water to surface waters of the state, you need to immediately obtain a NOC and implement the Part 31 Permit-By-Rule requirements. Please see the enclosed Frequently Asked Questions regarding the Permit-By-Rule requirements.

You are expected to immediately take all necessary and otherwise lawful actions on the Site to achieve and maintain compliance with Part 91, Part 31, and Permit-By-Rule, and to prevent any future discharge of sediment from the site. Please note however, that you or any of your authorized agents are expected to obtain any state, local, or federal regulatory approvals and

permits applicable to any actions taken to bring the site into compliance, from the appropriate agencies. You are also reminded that you are required to comply with any and all Part 91 permits, requirements, and directives from the Antrim County Soil Erosion Agency.

In addition, you are required to submit a response to this Violation Notice, including a corrective action plan (CAP). The response, including a CAP, shall be submitted via MiWaters no later than **September 9, 2021**. At a minimum, the response shall include:

1. A detailed description and compilation of activities undertaken to date since the inspection on August 11, 2021, and those planned for future implementation to prevent another discharge of sediment to adjacent properties or to surface waters of the state. Please provide photos, if appropriate, to demonstrate the placement of or the effectiveness of SESC measures that have been implemented to date.
2. A CAP that includes, at a minimum, a detailed site plan showing the existing, new, and/or planned SESC measures that you have implemented or intend to implement to address all areas of earth disturbance to prevent any future off-site discharge of sediment. The CAP shall also include a detailed timing and sequencing plan for implementing the planned SESC measures with a detailed projected schedule for the remaining earth change activities taking place on-site through the anticipated final stabilization efforts.
3. A list of efforts you have taken or plan to take to remove sediment, including clay, that discharged off-site during the August 10, 2021, rain event. Include photographs of any sediment cleanup completed. For any sediment removal you are planning to do on adjacent properties, it is your responsibility to obtain (and properly document) authorizations/approval from the impacted property owners prior to conducting any work on their properties. For any work that you plan along or in the wetlands there shall be no equipment or machinery in the wetlands, therefore sediment may only be removed by scraping it out with a hand shovel, so organic soils and wetland vegetation are not disturbed.
4. The MiWaters submission number showing that an NOC has been applied for, the name of the Construction Storm Water Operator (CSWO) for the site (CSWO is required by Permit-By-Rule) and the receipt of payment for the NOC application fee.

If you have any factual information you would like us to consider regarding the violations identified in this Violation Notice, please provide them with your written response.

Please be advised that failure to respond to this notice by the above deadline may subject you to escalated enforcement action and penalties, as provided by Part 31.

Please be advised that compliance with the terms and conditions of this Violation Notice does not constitute a release or waiver of liability for past, present or continuing violations of Part 31, Part 91, Part 303, or Permit-By-Rule, or other statutes, if applicable. Please be further advised that EGLE reserves the right to require future activities, potentially including wetland restoration and/or other possible corrective actions as may be identified by the WRD. EGLE also reserves the right to take additional and/or escalated enforcement actions including, but not limited to, civil actions seeking fines with regards to past, continuing, or future violations.

We anticipate your cooperation in resolving this matter. Should you require further information, or if you would like to arrange a meeting to discuss these matters, contact me directly at 989-370-5819; BraggJ@Michigan.gov; or EGLE, WRD, Gaylord District Office, 2100 West M-32, Gaylord, Michigan 49735-9282.

Sincerely,

Justin Bragg
Gaylord District Office
Water Resources Division

Enclosure

cc: Ms. Carrie May, Boyne Engineering and Design
Ms. Heidi Shaffer, Antrim CEA
Mr. Brian Jankowski, EGLE
Mr. Joseph Haas, EGLE
Ms. Keri Kent, EGLE

PERMIT-BY-RULE FOR STORM WATER FROM CONSTRUCTION ACTIVITIES

QUESTIONS AND ANSWERS

1. **Q. How do I know if my construction activities require a permit according to the federal Phase II Storm Water Regulations (Phase II)?**
 - A. All construction activities that meet the following criteria are subject to Permit-by-Rule requirements.
 1. There will be a total earth disturbance of one or more acres.
 2. The site will have a point source discharge of storm water to waters of the state, either directly or through a separate storm sewer.

Note: Only construction activities that have land disturbances of five acres or more will need to apply for coverage under Permit-by-Rule from the State of Michigan.
One-to five-acre sites are covered automatically.
2. **Q. What is considered to be an earth disturbance?**
 - A. An earth disturbance means a man-made change in the natural cover or topography of the land. This may include such activities as road widening, complete road surfacing that disturbs the soil, new construction, cut and fill activities, construction on lands previously used for agriculture, and drain construction activities.

3. Q. **What is Permit-by-Rule?**

A. Permit-by-Rule is a state rule that allows Michigan land owners involved in construction activities to easily obtain the permit coverage required under the National Pollutant Discharge Elimination System (NPDES) Storm Water Regulations. Coverage under Permit-by-Rule requires that land owners first have coverage under Part 91 Soil Erosion and Sedimentation Control (SESC) Program, Part 615 Supervision of Wells, or Part 631 Reclamation of Mining Lands. Permit-by-Rule requires the permittee to have regular inspections of the soil erosion controls by a certified storm water operator.

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

A. No. The exemption expired on March 10, 2003, with the implementation of Phase II of the Federal Storm Water Regulations. All construction projects owned or operated by public entities (municipalities, school districts, etc), with earth disturbances of one acre or more, with a discharge to waters of the state are subject to the same regulations as privately-owned developments.

5. Q. **Is a county drain or roadside ditch cleanout a regulated earth disturbance?**

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

6. **Q. What is the application procedure for obtaining coverage under Permit-by-Rule for sites over five acres?**
- A. The applicant must first obtain the appropriate SESC Permit or be a Part 91 designated Authorized Public Agency (APA). The completed Notice of Coverage (NOC) form, site map, a copy of the SESC Permit, and permit fee must be received by the Michigan Department of Environmental Quality (MDEQ) before any construction begins at the site. The permittee is deemed to have the required coverage if the NOC is administratively complete.
7. **Q. What activities require a SESC Permit?**
- A. A permit is required for any earth change that disturbs one or more acres, or is within 500 feet of a lake or stream. Exempted activities include plowing and tilling for crop production and some logging and mining activities. Access roads to the logging and mining sites and ancillary activities associated with logging and mining operations are not exempt. The removal of clay, gravel, sand, peat, or topsoil is not considered metallic mineral mining and therefore requires a permit.
8. **Q. Who do I contact to get a SESC Permit for my construction activities?**
- A. The responsibility for enforcing the SESC Program has been delegated to the County Enforcement Agency (CEA). In some cases, this responsibility has been taken over locally by cities or townships, which are known as Municipal Enforcement Agencies (MEA). If you do not know who to contact, it is best to contact your county drain commissioner or road commission and they will tell you who will issue the necessary permit.

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

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

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

A. YES, there is a one-time fee of \$400.00 for each NOC request submitted to the MDEQ. This fee must be submitted with the NOC form. Authorization to discharge storm water does not begin until the administratively-complete NOC, one-time fee, copy of the appropriate SESC coverage and site map is received by the MDEQ.

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

11. Q. Is there a fee for storm water coverage for sites which are less than five acres in size?

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

12. Q. Will I have to submit any forms to the MDEQ for sites which are less than five acres in size?

A. It is not necessary to submit a NOC to the MDEQ for sites that are less than five acres in size, but the permittee will be required to submit inspection logs if the MDEQ specifically requests them.

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

A. The construction permittee must be the land owner or the recorded easement holder of the property or the Authorized Public Agency (APA) if the construction activity is under the control of an APA.

14. Q. When should I obtain Permit-by-Rule coverage?

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

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

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

Water that is pumped from mining operations (mine dewatering) is subject to federal effluent limitations guidelines and must apply for another type of NPDES permit. The application for mine dewatering discharges is available from the MDEQ, Water Division Web page at www.michigan.gov/deq. Click on WATER, then SURFACE WATER, then NPDES PERMITS, and then How to Apply for an NPDES permit. Contact your district MDEQ office for assistance in determining the permit needed for the mining operation.

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

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

17. **Q. Can I apply for the U.S. EPA General Permit for construction activities?**
- A. The MDEQ is the NPDES storm water permitting authority in Michigan. The EPA does not issue permits for construction activities in Michigan.
18. **Q. If someone other than the land owner or recorded easement holder currently holds the SESC Permit for a construction site, can the site obtain coverage under Permit-by-Rule?**
- A. No. The SESC Permit must be transferred into the land owner's name, and an NOC must be submitted to the MDEQ for coverage under the Permit-by-Rule as soon as possible. The SESC Permit requires the permit to be issued to the land owner or easement holder.
19. **Q. What is a Certified Storm Water Operator?**
- A. A Certified Storm Water Operator is an individual who has been certified by the MDEQ as having a minimum level of knowledge concerning the inspection and utilization of soil erosion and sedimentation control measures at construction sites.
20. **Q. How can I become a Certified Storm Water Operator?**
- A. The training materials and written examinations for certification are available through the eight (8) MDEQ Water Division District Offices. Attached is a list of the District Office locations and telephone numbers, and the name of the contact person in each of these offices. Training materials can also be obtained from the MDEQ, Water Division Web page at www.michigan.gov/deq. Click on WATER, then SURFACE WATER, then Storm Water, then Contact an MDEQ District Office for assistance.

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

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

22. Q. Who can become a Certified Storm Water Operator?

A. Anyone who studies the material and passes the examination may become a Certified Storm Water Operator for construction activities.

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

A. The permittee must comply with all of Michigan's Permit-by-Rule requirements. Two core requirements are that the permittee must be in compliance with the requirements of their SESC Permit, and they must inspect the soil erosion control measures at the site to insure that they are working correctly. The inspections of the soil erosion control measures must be done once per week and within 24 hours of a precipitation event that results in a storm water discharge from the site. If there is a rain-event inspection conducted during the week, this can substitute for the regular weekly inspection. Logs or records of the inspection must be kept, indicating the condition of the controls and any corrective actions taken.

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

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

A. The MDEQ recognizes that during inactive periods when the construction site has been stabilized for the winter and temperatures below freezing predominate, runoff and subsequent erosion will not occur. During these periods, the construction permittee

may certify in the construction log, without performing an on-site inspection, that weather and soil conditions are such that runoff from the site will not occur. Because of the stabilized nature of the site and the inactivity, the MDEQ will consider the requirement for inspection of the construction site to be met by this evaluation of weather and soil conditions at the site. On-site inspections shall resume as soon as there is any change in conditions that may allow runoff to occur.

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

A. Only one inspection is required following a precipitation event (within 24 hours of the occurrence), regardless of the length of time it takes for all of the runoff to leave the site. However, it may be in the permittee's best interest to continue checking the SESC measures in place to ensure proper performance.

26. Q. Will SESC agents have increased responsibilities under the Permit-by-Rule as a result of Phase II?

A. The responsibilities for County Enforcing Agency (CEAs) and Municipal Enforcing Agency (MEAs) will not increase as a result of Phase II.

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

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

28. Q. **If I violate the Soil Erosion Sedimentation Control (SESC) Permit, am I automatically violating the Permit-by-Rule?**
- A. Yes. Compliance with the Permit-by-Rule requires the permittee to be in compliance with their SESC permit or their Authorized Public Agency (APA) control plan for the site.
29. Q. **When is the construction site considered to be stabilized?**
- A. The site is considered to be stabilized when all permanent control structures have been installed, maintenance for the permanent controls has been arranged, vegetation is well established, and temporary controls have been removed.
30. Q. **Under Permit-by-Rule, what am I responsible for after the construction activity is completed?**
- A. Once the site has been stabilized and the SESC Permit has been terminated, the permittee must submit a Notice of Termination (NOT). This terminates coverage under Permit-by-Rule. The inspections can be discontinued at that time. Logbooks of the inspections must be kept on file and available for inspection for three years following termination.
31. Q. **What are the requirements under Permit-by-Rule if I do not submit a Notice of Termination (NOT)?**
- A. You will be in violation of the Permit-by-Rule and you must continue to utilize a Certified Storm Water Operator for weekly inspections until the NOT is submitted.

32. Q. **What if the SESC Permit expires or is terminated before the construction site is stabilized?**
- A. The NOC would also expire, and all discharges of storm water from the site to the waters of the state would be in violation of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451). A new SESC Permit, as well as an NOC, should be submitted to obtain the appropriate coverage.
33. Q. **How long is the Notice of Coverage effective?**
- A. Coverage under Permit-by-Rule expires after five years. However, most SESC Permits expire after one year. The SESC Permit will need to be renewed if the site has not been stabilized.
34. Q. **What is meant by a “larger common plan of development or sale?”**
- A. A “larger common plan of development or sale” is a contiguous area where multiple separate and distinct construction activities may be taking place at different schedules under one plan. For example, if a developer buys a 20-acre lot and builds roads, installs pipes, and runs electricity with the intention of constructing homes or other structures sometime in the future, this would be considered a common plan of development or sale. If the land is parceled off or sold, and construction occurs on plots that are less than five acres by separate, independent builders, this activity would still be subject to storm water permitting requirements if the **smaller plots were included on the original site plan.**
35. Q. **Does construction activity encompass repaving of roads?**
- A. Repaving or grinding of the road surface is not regulated under the storm water program unless one or more acres of underlying and/or surrounding soils are cleared, graded, or excavated as part of the operation.

36. Q. **Is clearing of lands specifically for agricultural or silvicultural purposes a regulated construction activity under 40 CFR 122.26 (b)(14)(x)?**
- A. No. Although the clearing of land may be greater than one acre, any amount of clearing for agricultural or silvicultural activities (orchards, cultivated crops, pastures, range lands, and forest lands) is not required to obtain coverage under Permit-by-Rule. This exemption only applies, however, if the clearing of land is solely for agricultural or silvicultural activities. This exclusion does not include earth disturbances from the construction of barns, buildings, or from Concentrated Animal Feeding Operations.
37. Q. **Is the installation of conservation practices to control non-point source pollution activities from agricultural or silvicultural activities a regulated construction activity under 40 CFR 122.26 (b)(14)(x)?**
- A. No. Earth disturbances associated with the installation of conservation practices associated with agricultural or silvicultural activities are not required to obtain coverage under Permit-by-Rule. Examples of these practices may include grassed waterways, diversions, water and sediment control basins, terraces, grade stabilization structures, lined waterways, and forest harvest trails and landings

MICHIGAN'S PERMIT-BY-RULE FOR CONSTRUCTION ACTIVITIES

R 323.2190 National permit for storm water discharge from construction activity.

Rule 2190. (1) Unless the Department has required an individual national permit pursuant to the provisions of subrule (3) or (4) of this rule, a point source discharge of storm water from a construction activity will be deemed to have a national permit authorizing the discharge if the criteria of subdivisions (A) and (B) of this subrule is met. Exception: after March 10, 2003, small construction activities, meaning 1 to 5 acres of disturbed soil as defined in R 323.2102(h)(ii) or (iii), are automatically deemed to have a national permit authorizing discharge of storm water in accordance with this rule and are not required to meet the filing requirements of subdivision(a) or (b) of this subrule, subrule (2)(j) of this rule, and subrule(5)(b) of this rule. The construction permittee shall do both of the following:

(a) File with the Department, on a form approved by the Department, notice of coverage pursuant to the provisions of this rule before the initiation of construction activity. The notice of coverage shall include all of the following:

(i) A copy of the individual soil erosion and sedimentation control permit for the site as issued to the construction permittee; or if the construction activity is to be carried out by an authorized public agency, certification by the authorized public agency that an approved control plan exists; or, for Part 615 or Part 631 permits, a copy of the permit, along with any forms or diagrams pertaining to soil erosion and sedimentation control that were part of the permit application.

(ii) Acknowledgement by the construction permittee that any discharge that is made pursuant to the provisions of this rule shall be in compliance with Part 31 of the Act and the rules promulgated thereunder.

(iii) A location map and a description of the nature of the construction activity.

(iv) The location of the proposed discharge and identification of the receiving water.

(v) The total area of the site and the area of the site that is expected to undergo construction activity during the life of the project.

(vi) Name and certification number of a certified storm water operator responsible for inspection of the construction activity in accordance with subrule (2)(e) of this rule.

(b) Provide a valid signature of the construction permittee or authorized representative on the notice of coverage. If the construction permittee is a partnership, association, corporation, industry, municipality, state agency, or interstate body, the valid signatory for the notice of coverage shall be determined in accordance with R 323.2114.

(2) A construction permittee that has authorization to discharge under a national permit pursuant to subrule (1) of this rule shall comply with all of the following provisions:

(a) Not directly or indirectly discharge wastes such as discarded building materials, concrete truck washout, chemicals, lubricants, fuels, litter, sanitary waste, or any other substance at the construction site into the waters of the state in violation of Part 31 of the Act or rules promulgated thereunder.

(b) Be in compliance with a soil erosion and sedimentation control permit for the site or, if the construction activity is carried out by an authorized public agency, the approved control plan, including the selected control measures that are applicable to the site.

(c) Properly maintain and operate the soil erosion control measures.

(d) Have the soil erosion control measures under the specific supervision and control of a storm water operator who has been certified by the Department as properly qualified to operate the soil erosion control measures. The certification shall be done in accordance with the requirements of R 323.1251 et seq.

(e) Cause the construction activity to be inspected by a certified storm water operator once per week, and within 24 hours after every precipitation event that results in a discharge from the site, and

ensure that any needed corrective actions are carried out. A log of the inspections and corrective actions shall be maintained on file by the construction permittee for review and shall be retained by the construction permittee for a period of 3 years from the date of the inspection or corrective action.

(f) In accordance with the requirements for on-land facilities as set forth in spillage of oil and polluting materials, being Part 5 of these rules, provide facilities and comply with reporting procedures for containment of any accidental losses of oil or other polluting materials.

(g) Dispose of solids, sediment, filter backwash, or other waste that is removed from or results from the treatment or control of storm water in compliance with applicable state laws and regulations and in a manner that prevents any waste from entering waters of the state.

(h) Allow the Department to enter upon the site at any reasonable time before the expiration of the authorization to discharge as set forth in subrule (5) of this rule, upon presentation of credentials and other documents as may be required by law, for the purpose of inspecting conditions relating to the pollution of any waters or determining compliance with the provisions of this rule.

(i) Upon request, make available for public inspection or provide to the Department all reports or logs prepared pursuant to the provisions of this rule.

(j) File a revised notice of coverage in compliance with the provisions of subrule (1) of this rule before any expansion of the construction activity or change in the soil erosion control measures that requires a change in the soil erosion and sedimentation control permit.

(3) The Department may require that discharges from a construction activity be authorized by an individual national permit if it has been determined by the Department that unlawful pollution cannot be adequately guarded against, and there is or may be water quality degradation that will violate the commission act unless requirements in addition to those in the soil erosion and sedimentation control permit are imposed. A determination by the Department for an individual national permit or other additional control constitutes grounds for revocation of the authorization to discharge pursuant to the provisions of this rule.

(4) The Department may require that discharges from a construction activity be authorized by an individual national permit if it has been determined by the Department that the responsible Part 91 permitting entity or authorized public agency is not carrying out a program that is adequate to ensure that the requirements of Part 91 of the Act are complied with.

(5) The authorization to discharge pursuant to the provisions of this rule expires as follows:

(a) When the soil erosion and sedimentation control permit expires, or is revoked or terminated by the Part 91 permitting entity in accordance with the provisions of Part 91 of the Act and 1969 PA 306, MCL 24.201 et seq., or when the authorized public agency determines that the project has been completed by the stabilization of earth change activity.

(b) Five years from the date of the notice that is filed pursuant to the provisions of subrule (1)(a) of this rule, if the authorization to discharge has not previously expired pursuant to subdivision (a) of this subrule. This authorization may be extended by filing a new notice in compliance with the provisions of subrule (1)(a) of this rule. The construction permittee shall file a notice of termination with the Department, on a form approved by the Department, when authorization to discharge expires as set forth in accordance with subdivision (a) of this subrule. The notice of termination shall include the name and address of the construction permittee, the location of the construction site, and the mailing address, if available, and certification that stabilization of earth change activity has been completed or, if the certification cannot be made, the reason why the authorization to discharge has expired.

(6) The Department may revoke authorization to discharge pursuant to the provisions of this rule if an individual national permit is required pursuant to the provisions of subrule (3) of this rule or in compliance with R 323.2159.

(7) Nothing in this rule shall be construed to preclude the institution of any legal action or relieve the construction permittee from any responsibilities, liabilities, or penalties to which the construction permittee may be subject pursuant to Part 31 of the Act or rules promulgated thereunder.

(8) The provisions of this rule are severable, and if any provision of this rule or the application of any provisions of this rule to any circumstances is held invalid, the application of the provisions of this rule to other circumstances and the remainder of this rule shall not be affected by the invalidity.

(9) The construction permittee shall take all reasonable steps to minimize any adverse impact to the surface or groundwaters of the state that result from noncompliance with any of the conditions specified in this rule.

(10) If, for any reason, the construction permittee does not comply with, or will be unable to comply with, any of the conditions that are specified in this rule, the construction permittee shall provide the Department with the following information, in writing, within 5 days of becoming aware of the noncompliance or inability to comply:

(a) A description of the noncompliance and its cause.

(b) The period of noncompliance, including exact dates and times, or, if the noncompliance is not corrected, the anticipated time that the noncompliance is expected to continue and the steps taken to reduce, eliminate, and prevent recurrence of the noncompliance.

(11) The provisions of this rule do not convey any property rights in either real or personal property, or any exclusive privileges, authorize any pollution, impairment, or destruction of the natural resources of the state, or the violation of any federal, state, or local laws or regulations, or obviate the necessity of obtaining permits or approvals from other units of government as may be required by law.

(12) The provisions of this rule do not exempt the construction permittee from giving notice to public utilities and complying with each of the requirements of 1974 PA 53, MCL 460.701 et seq.

(13) This rule shall not provide authorization to discharge storm water from construction activity which is mixed with non-storm water, or which is subject to an existing national permit or general permit.

DEFINITIONS AS USED IN THE PERMIT-BY-RULE

“Act” means 1994 PA 451, MCL 324.3101 et seq., and the rules promulgated under the Act.

“Applicant” means a person who applies to the Department for a state or national permit to discharge waste or wastewaters into the waters of the state by an NPDES application form or a state permit application form.-

“Application” means either the uniform national NPDES application form, including subsequent additions, revisions, or modifications thereof, promulgated by the administrator of EPA and adopted for use by the Department or a state permit application form for applying for a permit.

“Approved control plan” means the plan which is prepared by an authorized public agency, which is approved by the Department pursuant to the provisions of section 9110 of Part 91 of the Act, and which contains the soil erosion and sedimentation control procedures that govern all construction activities normally undertaken by the authorized public agency.

“Authorized public agency” means a state, local, or county agency that is designated pursuant to the provisions of section 9110 of Part 91 of the Act to implement soil erosion and sedimentation control requirements with regard to construction activities undertaken by the agency.

“Authorized representative” means a person who has written authorization from the construction permittee to sign the notice of coverage in the name of the construction permittee.

“Certified storm water operator” means an individual who has been certified by the Department pursuant to the provisions of section 3110 of Part 31 of the Act as properly qualified to operate treatment or control facilities for storm water discharges.

“Construction activity” means a man-made earth change or disturbance in the existing cover or topography of land for which a national permit is required pursuant to the provisions of 40 C.F.R. §122.26(a) (2000) and which is any of the following:

- (i) Five acres or more in size and defined as a construction activity pursuant to the provisions of 40 C.F.R. §122.26(b)(14)(x) (2000).
- (ii) One acre or more in size and defined as a small construction activity pursuant to the provisions of 40 C.F.R. §122.26(b)(15) (2000).
- (iii) Less than 1 acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more.

The term includes clearing, grading, and excavating activities. The term does not include the practices of clearing, plowing, and tilling soil and harvesting for the purpose of crop production.

“Construction permittee” means a person who is deemed to have a national permit pursuant to the provisions of R 323.2190 and who owns or holds a recorded easement on the property where a construction activity is located, is constructing in a public right-of-way in accordance with the provisions of sections 13, 14, 15, and 16 of 1925 PA 368, MCL 247.183, 247.184, 247.185, and 247.186 , or is the authorized public agency if a construction activity is carried out by the authorized public agency.

“Department” means the director of the Department of Environmental Quality or his or her designee to whom the director delegates a power or duty by written instrument.

“Discharge” means any direct or indirect discharge of any waste, waste effluent, wastewater, pollutant, or any combination thereof into any of the waters of the state or upon the ground.

“Discharger” means any person who discharges, directly or indirectly, any substance defined by section 3109 of Part 31 of the Act, any treated or untreated waste, waste effluent, wastewater, or pollutant; or cooling waters into any of the waters of the state or upon the ground.

“EPA” means the United States Environmental Protection Agency.

“General permit” means a national permit issued authorizing a category of similar discharges.

“National permit” means an NPDES permit, or equivalent document or requirements, issued by the Department to a discharger pursuant to sections 3106 and 3112 of Part 31 of the Act for discharges into surface waters.

“NPDES” means the national pollutant discharge elimination system established by the Federal Act.

“NPDES form” means any issued permit and any uniform national form which is used by the Department, which is developed for use in the NPDES, and which is prescribed in regulations promulgated by the administrator of EPA, including an NPDES application and a reporting form.

“Part 91 permitting entity” means an agency that is designated by a county board of commissioners pursuant to the provisions of section 9105 of Part 91 of the Act; an agency that is designated by a city, village, or township in accordance with the provisions of section 9106 of Part 91 of the Act; or the Department if the construction activity is under the jurisdiction of 2 or more municipal or county enforcing agencies; or the Department for soil erosion and sedimentation activities under Part 615 or Part 631 pursuant to the provisions of section 9115 of Part 91 of the Act.

“Person” means an individual, partnership, association, corporation, industry, or public body.

“Point source discharge” means a discharge that is released to the waters of the state by a discernible, confined, and discrete conveyance, including any of the following from which wastewater is or may be discharged:

- (i) A pipe.
- (ii) A ditch.
- (iii) A channel.
- (iv) A tunnel.
- (v) A conduit.
- (vi) A well.
- (vii) A discrete fissure.
- (viii) A container.
- (ix) A concentrated animal feeding operation.
- (x) A vessel or other floating craft.

The term does not include a legally established county or intercounty drain, except for a county or intercounty drain that has a POTW designated as part of the drain or a discharge otherwise required to be authorized by a national permit.

“Site” means the area where a construction activity is physically located or conducted, including adjacent land that is used in connection with the construction activity.

“Soil erosion and sedimentation control permit” means a permit that is issued pursuant to the provisions of Part 91 of the Act by a part 91 permitting entity.

“Soil erosion control measures” means the measures or procedures to prevent or reduce the pollution of waters of the state that are required in the soil erosion and sedimentation control permit for the site or the selected control measures from the approved control plan that are applicable to the site.

“Stabilization of earth change activity” means the proper placement, grading, or covering of soil or rock at a construction activity to ensure subsequent resistance to soil erosion, sliding, or other earth movement.

“Storm water” means storm water runoff, snow melt runoff, and surface runoff and drainage.

OTHER RULES REFERENCED IN THE PERMIT-BY-RULE

R 323.2114 Permit applications and other NPDES forms; valid signatories.

Rule 2114. A state or national permit application form or any other NPDES form submitted to the Department pursuant to these rules shall be signed as follows:

- (a) For a corporation, by a principal executive officer of at least the level of vice president, or his or her designated representative, if the representative is responsible for the overall operation of the facility from which the discharge described in the permit application or other NPDES form originates.
- (b) For a partnership, by a general partner.
- (c) For a sole proprietorship, by the proprietor.
- (d) For a municipal, state, or other public facility, by either a principal executive officer, the mayor, village president, city, or village manager, or other duly authorized employee.

R 323.2159 State and national permits; modification or revocation by the Department.

Rule 2159. (1) The Department may modify any term or condition, including a schedule of compliance, of a permit, or may revoke a permit upon its finding of any of the following:

- (a) There is a change in any condition that requires a temporary or permanent reduction or elimination of a permitted discharge or constituent thereof.
 - (b) The administrator of EPA issues a regulation prescribing a restriction or prohibition of a waste or wastewater constituent which is not covered by the terms and conditions of a permit, or the regulation is more stringent than any limitation imposed on a wastewater constituent in a permit.
 - (c) A modification of the terms and conditions of a permit or a time schedule thereon is necessary because of an act of God or other conditions beyond the control of the permittee.
 - (d) In the case of discharges from publicly owned treatment works, federal treatment works grant funds are not available or are not sufficient to allow construction of the treatment works in a time schedule set forth in the permit.
 - (e) There is a violation of any term or condition of the permit.
 - (f) The permittee has obtained a permit by misrepresentation or has failed to disclose all relevant facts to the commission.
 - (g) A toxic effluent standard or prohibition, including any schedule of compliance specified therein, is established pursuant to section 307(a) of the Federal Act for a toxic waste or wastewater constituent which is present in the permittee's discharge and the standard or prohibition is more stringent than any limitation upon the waste or wastewater constituent in the permit.
 - (h) The POTW receives wastewater from a nondomestic source and the development of a pretreatment program is necessary to control the introduction of regulated pollutants.
 - (i) When a request for removal credits is approved in accordance with R 323.2313(a).-
- (2) The Department shall notify the regional administrator of any change in status or condition of a permit and he or she shall have an opportunity to object thereto, in writing, within 45 days before the effective date of the modification. If the regional administrator objects in writing, then the objection shall be resolved before the modification is approved by the Department, unless the right to object is waived, in writing, by the regional administrator.
- (3) A permittee who is affected by a modification of a permit by the Department shall be notified not less than 90 days before the effective date of the modification and, upon petition therefore, shall have a hearing thereon pursuant to section 3112 of Part 31 of the Act.

(4) If the Department modifies an effluent limitation or a schedule of compliance in a permit, notice of the modification shall be mailed to all persons on the Department mailing list for public notices and fact sheets as prescribed by R 323.2124, and any interested person may comment thereon within 30 days following the date of notification.