

## 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.