

	WATER RESOURCES DIVISION POLICY AND PROCEDURE		DEPARTMENT OF ENVIRONMENTAL QUALITY
Original Effective Date: March 6, 2013 Revised Date: Reformatted Date:	Subject: Winter Construction Storm Water Inspection Policy Under Michigan's Permit-by-Rule		Category: <input type="checkbox"/> Internal/Administrative <input type="checkbox"/> External/Non-Interpretive <input checked="" type="checkbox"/> External/Interpretive
	Program Name: Surface Water Quality Program		
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A Department of Environmental Quality (DEQ) Policy and Procedure cannot establish regulatory requirements for parties outside of the DEQ. This document provides direction to DEQ staff regarding the implementation of rules and laws administered by the DEQ. It is merely explanatory; does not affect the rights of, or procedures and practices available to, the public; and does not have the force and effect of law.

INTRODUCTION, PURPOSE, OR ISSUE:

Michigan's Permit-by-Rule R 323.2190(2)(e) requires that construction activities on sites 1 acre, or greater, in size with a point source discharge to waters of the state be inspected once per week and within 24 hours after every precipitation even that results in a discharge from the site.

The DEQ, Water Resources Division (WRD), recognizes that during inactive periods when the construction site has been stabilized for the winter and below freezing temperatures predominate, runoff and subsequent erosion will not occur. Therefore, in such cases, on-site inspections may not be necessary to ensure adequate protection of the receiving waters.

AUTHORITY:

"Michigan's Permit-by-Rule" - R 323.2190 of the Part 21, Wastewater Discharge Permits Administrative Rules, promulgated under Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 *et seq.*

STAKEHOLDER INVOLVEMENT: [required for External/Interpretive]

Stakeholders:

- Michigan Association of Home Builders
- Michigan Department of Transportation (MDOT)
- County Road Association of Michigan (CRAM)
- Michigan Association of County Drain Commissioners (MACDC)
- Michigan Environmental Council
- Joint Agency Transportation Committee

The WRD e-mailed the draft procedure to the aforementioned stakeholder groups on November 8, 2012, and provided an opportunity for comment.

Stakeholder involvement took place in late November 2012 through early December 2012. Responses were due December 10, 2012.

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The Soil Erosion/Construction Storm Water Program Chair reviewed the comments and has incorporated the comments. This summary document and the final policy and procedure will be e-mailed to all stakeholders identified above.

DEFINITIONS:

As used in this document, the following definitions, consistent with those of Michigan's Permit-by-Rule shall apply:

- "Authorized public agency" means a state, local, or county agency that is designated pursuant to the provisions of Section 9110 of Part 91, Soil Erosion and Sedimentation Control, of the NREPA, to implement soil erosion and sedimentation control requirements with regard to construction activities undertaken by the agency.
- "Certified storm water operator" means an individual who has been certified by the DEQ pursuant to the provisions of Section 3110 of Part 31 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 Title 40 of the Code of Federal Regulations (CFR) §122.26(a) (2000) and which is any of the following:
 - I. Five acres or more in size and defined as a small construction activity pursuant to the provisions of 40 CFR §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 CFR §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 Highway Obstructions and Encroachments; Use of Highway by Public Utilities; 1925 PA 368, as amended; 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.

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- “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.
- “General permit” means a national permit issued authorizing a category of similar discharges.
- “Michigan’s Permit-by-Rule” means administrative rules (R 323.2190) promulgated under Part 31.
- “National permit” means a National Pollutant Discharge Elimination System (NPDES) permit, or equivalent document or requirements, issued by the DEQ to a discharger pursuant to Sections 3106 and 3112 of Part 31 for discharges into surface waters.
- “NPDES” means the national pollutant discharge elimination system established by the federal Clean Water Act.
- “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 Publicly Owned Treatment Works 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 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.

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- "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, snowmelt runoff, and surface runoff and drainage.

POLICY:

During inactive periods when a construction site has been temporarily stabilized and below freezing temperatures predominate; the Certified Storm Water Operator, without performing an on-site inspection, may certify in an inspection report as part of the construction log that weather and inactive conditions are such that runoff from the site will not occur. Because of the stabilized nature of the site and the inactivity, the WRD will consider the requirement for inspection of the construction met by this evaluation of weather conditions and statement in active status of the earth change activities at the site.

On-site inspections shall be resumed within 24 hours of any change in conditions that may allow runoff to occur such as earth change activity resuming, rainfall, or warming conditions that will cause snowmelt.

The requirements outlined in Michigan's Permit-by-Rule still exist whether the construction site earth change is active or not. Failure of soil erosion and sedimentation control measures on-site to protect water quality could lead to enforcement action against the permit holder.

PROCEDURES:

Who	Does What
Certified Storm Water Operator	<ol style="list-style-type: none">1) In order to cease on-site weekly inspections during periods of inactive earth change on-site during periods of time where discharges from the earth change activity are unlikely, each of the following must occur:<ol style="list-style-type: none">a) Ensure that earth change activity has ceased. Document this condition in the construction log.b) Confirm with an on-site inspection that the site has had temporary soil erosion and sedimentation control measures implemented to ensure that a discharge of sediment from the site shall not occur. Document this condition in the construction log.c) Document weather conditions. Weather conditions must be consistently below freezing and unlikely to result in runoff from the site. Document this condition in the construction log.2) Once conditions a, b, and c above are met, subsequent weekly inspection documentation may be completed without a site visit by

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Who	Does What
	<p><u>documenting weather conditions for the site location in the construction log</u> until any of the following occur:</p> <ul style="list-style-type: none">a) Weather conditions are no longer consistently below freezingb) Weather conditions are such that runoff from the site is likely to occurc) Earth change activity resumesd) The site becomes unstabilized <p>3) Once any of the conditions identified in 2a-2d occur, on-site inspections shall resume within 24 hours. On-site inspections shall be performed weekly and within 24 hours of precipitation events that result in a discharge to waters of the state.</p> <p>4) The Certified Operator may start the process over at step 1 at any time, if conditions warrant.</p>

DIVISION CHIEF APPROVAL:



William Creal, Chief
Water Resources Division

3/6/2013
Date

DEPUTY DIRECTOR APPROVAL:



Jim Sygo, Deputy Director

3/6/2013
Date