

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**WATER RESOURCE DIVISION**

**PART 17. SOIL EROSION AND SEDIMENTATION CONTROL**

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

**PART 17. 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 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, 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 a person who fulfills 1 or more of the following requirements:

(i) The person owns or holds a recorded easement on the property.

(ii) The person is engaged in construction in a public right-of-way in accordance with sections 13, 14, 15, and 16 of 1925 PA 368, MCL 247.183, 247.184, 247.185, and 247.186.

(iii) The person is engaged in a project that meets all of the following conditions:

(A) The project is related to 1 or more roads, highways, sidewalks, trails, driveways, parking areas, forms of public transit, forms of nonmotorized transportation, or boating, including all structures, improvements, features, and lands related to the project.

(B) One or more state agency or local unit of government owns, exercises jurisdiction over, or holds a recorded easement on the property in the area where the earth change will occur.

(C) All state agencies or local units of government that own, exercises jurisdiction over, or have a recorded easement on the property in the area where the earth change will

occur grant a permit or written authorization to the person that specifies where the earth change is allowed to occur.

(D) No state agency or local unit of government that owns, exercises jurisdiction over, or holds a recorded easement in the area where the earth change will occur has control over the project during construction. The control prohibited by this subparagraph includes, but is not limited to, paying for or having a financial interest in the project during construction or directing contractors and other individuals engaged in construction work. The control prohibited by this subparagraph does not consist solely of establishing construction requirements or conducting inspections.

(f) "Nonerosive 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 1994 PA 451, MCL 324.9101 to 324.9123.

(h) "Sediment basin" means a naturally occurring or constructed depression used for the sole purpose of capturing sediment during or 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 that is constructed to capture surface water runoff and that 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 that may or may not be serving as a drain as defined in 1956 PA 40, MCLs 280.1 to 280.630, 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 that are installed or constructed to control soil erosion and sedimentation and that are not maintained after project completion.

(m) "Permanent soil erosion and sedimentation control measures" means control measures that are installed or constructed to control soil erosion and sedimentation and that are maintained after project completion.

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

History: 1979 AC; 1998 AACCS; 2017 MR 12, Eff. June 20, 2017.

### **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: 1979 AC; 1998 AACs.

**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 sediment control measures.

(v) A description and the 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: 1979 AC; 1998 AACs.

**R 323.1704 Permit requirements.**

Rule 1704. (1) A landowner 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: 1979 AC; 1998 AACCS.

**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 § 324.32501 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) cause or result in a violation of part 91 or these rules.

History: 1979 AC; 1998 AACCS.

**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 an 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: 1979 AC; 1998 AACCS.

**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.

History: 1979 AC; 1998 AAC; 2007 AAC.

**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 the control procedures or measures or including other control procedures or measures will prevent accelerated soil erosion and sedimentation during the earth change.

History: 1979 AC; 1998 AAC.

**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 sediment 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 nonerosive 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: 1979 AC; 1998 AACCS.

#### **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, then the enforcing agency or authorized public agency shall determine which specifications are appropriate for the project.

History: 1979 AC; 1998 AACCS.

#### **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 is 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: 1979 AC; 1998 AACCS.

**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: 1979 AC; 1998 AACS.

**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: 1979 AC; 1998 AACS.

**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 water resources 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: 1979 AC; 1998 AACS; 2017 MR 12, Eff. June 20, 2017.