

CHAPTER 3: ADMINISTRATION & REGULATIONS

The Wayne County Storm Water Management Standards are administered jointly by the Wayne County Department of Public Services (WCDPS) and the Wayne County Department of Environment (WCDOE). In addition to Wayne County, other agencies are involved with storm water management and may have jurisdiction over the design, construction and maintenance of storm water management systems. The storm water management authority of various agencies, including Wayne County, is summarized in this Chapter. Chapter 12 of this manual provides contact information for relevant state and county agencies.

3.1 Wayne County

Drain Code, Act 40 of 1956, as amended

This state law governs the construction and maintenance of established County Drains and drainage districts. The Drain Code specifies requirements for sewers, pumping equipment, and other structures and mechanical devices that are required to purify the flow of water in County Drains. The Drain Code provides for flood control projects, water management districts and sub-districts, and for flood control and drainage projects within such districts. The Code authorizes the assessment and collection of taxes in certain circumstances, and prescribes penalties for violations of the Code.

In Wayne County, for purposes of implementing and administering the Drain Code, the Director of WCDOE serves as the County Drain Commissioner.

Subdivision Control Act, Act 288 of 1967, as amended

This state law requires county drain commissioners to ensure that the drainage within platted subdivisions is adequate to address storm water management needs within the proposed subdivision and protects downstream land owners from flooding. Through the subdivision review process, drain commissioners are authorized to impose obligations upon developers to ensure that drains and natural watercourses, both inside and outside the plat,

are improved to the Drain Commissioners' standards when necessary for the proper drainage of a proposed subdivision.

The subdivision control act also requires county drain commissioners to ensure that storm water management systems necessary for proposed subdivisions are maintained in perpetuity by an appropriate governmental unit. Alternatively, drain commissioners must ensure that a governmental unit will oversee the performance of maintenance by a private entity, such as a property owner's association. Drain commissioners may acquire jurisdiction over the drainage systems within subdivisions as deemed necessary for adequate operation and maintenance.

In Wayne County, the functions of the Drain Commissioner under the subdivision control act have been assigned to the Director of WCDOE.

Mobile Home Commission Act, Act 96 of 1987

This state law requires county drain commissioners to review and approve outlet drainage for proposed manufactured or mobile home parks. Proprietors are required to submit preliminary site plans for purposes of this review.

In Wayne County, the functions of the County Drain Commissioner under the mobile home commission act have been assigned to the Permit Office of the Engineering Division, WCDPS.

Parks and Airports, Act 90 of 1913, as amended

This state law authorizes the County to purchase and own real estate to use as public parks and airports. Under Act 90, Wayne County is responsible for the care and control of park and airport property. As a corollary to this responsibility, the County may make reasonable rules and regulations respecting the use of the park and airport property by the public. These regulations include requirements and standards pertaining to the use of park

or airport property for the control of storm water drainage from neighboring properties.

County Road Law, Act 283 of 1909, as amended

The County Road Law authorizes county road commissioners to grade, drain, construct, surface, and otherwise maintain roads under their control. In addition, the law requires persons who desire to construct or perform any work within county road rights-of-way to obtain a permit from the county.

In Wayne County, the executive powers and duties of the County Road Commission are vested in the Roads Division of WCDPS.

Riparian Rights

Owners of land that are adjacent to natural watercourses have “riparian rights” associated with the ownership of water frontage. These rights include the right to hold the land up to the water’s edge secure against the unauthorized use of the property or riparian waters by non-riparian landowners. Wayne County is a riparian landowner by virtue of owning park lands and other property adjacent to natural watercourses within county watersheds. As such, the County may reasonably restrict the use of these County lands for storm water drainage from neighboring properties.

Wayne County Certificate of Coverage, MDEQ Storm Water General Permit

As discussed in Chapter 2, the County’s certificate of coverage and the Michigan General Permit obligated the County to develop and implement the Storm Water Management Standards. The County’s compliance with the General Permit is coordinated by the Watershed Management Division of WCDOE.

Wayne County Soil Erosion and Sedimentation Control Ordinance

Wayne County adopted the Soil Erosion and Sedimentation Control Ordinance, Chapter 94 of the Code of Ordinances of Wayne County (1998) (the “SESC Ordinance”), in October 2001. The SESC Ordinance designates WCDOE as the County Enforcing Agency responsible for administration and enforcement of Part 91 (Soil Erosion and Sedimentation Control) of the Natural Resources and Environmental Protection Act, 1994 P.A. 451, as amended. Pursuant to the SESC Ordinance, Wayne County reviews

soil erosion and sedimentation control plans and issues permits for earth changes subject to the Ordinance. The SESC Ordinance incorporates the administrative rules promulgated by the State of Michigan under Part 91, and provides for:

- penalties and civil fines as provided under Part 91;
- consent agreements;
- municipal civil infraction citations and notices; and
- a schedule of civil fines authorized under the Wayne County Municipal Civil Infractions Ordinance, Chapter 2 of the Code of Ordinances of Wayne County (2000).

In numerous communities within Wayne County, LRMD administers the Michigan Soil Erosion and Sedimentation Control Act pursuant to the SESC Ordinance.

Wayne County Solid Waste Ordinance

Wayne County adopted amendments to the Solid Waste Ordinance, chapter 104 of the Wayne County Code of Ordinances (1998) (the “SW Ordinance”), in September 2004. Under the SW Ordinance, all new solid waste disposal areas that require a construction permit under state law must apply to Wayne County for storm water construction approval. Existing sanitary landfills must use a combination of retention basins, swales, and/or ditches to manage runoff from landfill areas. The SW Ordinance is administered and implemented by the Land Resource Management Division (LRMD) of WCDOE.

Wayne County Sewer Use Ordinance

The County adopted the Sewer Use Ordinance, chapter 101 of the Wayne County Code of Ordinances (1998), in 1995 and amended the ordinance in 1998. The sewer use ordinance requires permits for connections or alterations to county-owned storm water facilities or public storm water facilities connected directly or indirectly to County facilities. The ordinance governs design, construction, alteration and use of County sewer facilities, imposing discharge rate limitations, right-of way requirements for County Drains and natural watercourses, design flow calculation methodology, sewer pipe specifications and construction requirements.

Wayne County Storm Water Management Ordinance and Administrative Rules

Wayne County enacted the Wayne County Storm Water Management Ordinance and Administrative Rules in 2000

and amended the Ordinance and rules on August 7, 2003 and December 19, 2006. This manual was revised in August 2003 and January 2007 to conform to the amendments. The ordinance and rules, along with this manual, are collectively referred to as the “Storm Water Management Standards.”

Wayne County applies the Storm Water Management Standards to the design, construction and maintenance of projects within County jurisdiction that impact storm water runoff. Detailed information about the County’s Storm Water Management Standards is provided in Chapter 5 of this manual.

3.2 Local Municipalities

The municipality or municipalities in which a proposed project is located may have local storm water management standards for design, construction and maintenance. Construction activities within the municipality may be subject to these local standards. The Wayne County Storm Water Management Standards do not limit the authority of municipalities within the County to develop and implement their own storm water management standards that are equal to or more stringent than the County Standards.

3.3 State of Michigan

3.3.1 Michigan Department of Transportation (MDOT)

MDOT is involved with all drainage facilities associated with any MDOT road right-of-way. A permit is required for any work within the right-of-way of any MDOT route. Contact MDOT or see the MDOT website (<http://www.michigan.gov/mdot>) for information about MDOT routes in Wayne County.

3.3.2 Michigan Department of Environmental Quality (MDEQ)

Subdivision Control Act, Act 288 of 1967, as amended

Under this Act, subdivisions that include a watercourse that drains an area of two square miles must meet prescribed standards for residential purposes and occupancy within a flood plain. These standards refer to such items as minimum lot area, street access, lowest finish floor elevation, and basement openings above the flood plain.

Michigan Natural Resource & Environmental Protection Act (NREPA), Act 451 of 1994, as amended

Part 31 - Water Resources Protection

Storm Water Management

MDEQ regulates storm water discharges pursuant to Part 31 of NREPA, which generally prohibits pollution of the State’s waters, obstruction and occupation of floodways, and any activity that would harmfully interfere with river and stream discharge characteristics. Through Part 31 and other state laws, MDEQ implements and administers Phases I and II of the federal storm water management regulations, which were established by the United States Environmental Protection Agency pursuant to the federal Clean Water Act. As noted previously, Phase I and II of the federal storm water management regulations authorize MDEQ to require permits for discharge of storm water from municipal separate storm sewer systems, certain categories of industry, and construction activity in which one or more acres of land are disturbed. These permits are part of the National Pollutant Discharge Elimination System (NPDES) permit program authorized by the federal Clean Water Act.

Phase I of the federal storm water regulations, promulgated by EPA in 1990, requires the implementation of storm water controls (1) at certain types of industrial facilities, (2) during “construction activity” that disturbs five or more acres of land and involves a point source discharge of storm water from the site during construction, and (3) operators of municipal separate storm sewer systems (“MS4s”) serving populations greater than 100,000.

Phase II of the federal storm water program, promulgated by EPA in 1999, expanded the Phase I program by imposing storm water controls on (1) additional categories of industrial discharges, (2) smaller construction sites (sites that disturb between one and five acres of land), and (3) operators of municipal separate storm sewer systems (“MS4s”) in urbanized areas with populations under 100,000. In Michigan, Phase II of the storm water program became effective March 10, 2003.

A summary of the Michigan's requirements for discharges from construction sites, industrial sites, and municipal separate storm sewer systems is presented below.

Construction Sites. Michigan landowners responsible for construction activities disturbing 5 acres or more with a point source discharge to waters of the state may obtain permit coverage for their storm water discharges under the "Permit-by-Rule" developed by MDEQ. To obtain coverage under the Permit-by-Rule, an applicant first must obtain a Soil Erosion and Sedimentation Control (SESC) permit. An SESC permit may be obtained from WCDOE or from a local community that is a "Local Enforcing Agency" under Part 91 of NREPA.

After obtaining a SESC permit, the applicant submits a completed Notice of Coverage (NOC) form, with an application fee, to the MDEQ. After MDEQ receives the NOC and application fee, the permittee is deemed to be covered under the NPDES program. The permit requires, among other things, that the permittee appoint a storm water operator responsible for the supervision and inspection of the soil erosion control measures. The storm water operator must be certified by the MDEQ.

For construction activities disturbing between 1 and 5 acres, the landowner is required to obtaining a SESC permit from a local agency and comply with the provisions of the MDEQ Permit-by-Rule. Developers of such smaller sites need not submit a Notice of Coverage application to MDEQ.

Industrial Sites. Industrial facilities in Michigan that are subject to the NPDES program may obtain storm water discharge authorization by obtaining one of three types of permits: a generic baseline general permit, a generic general permit with monitoring requirements, or a site-specific individual permit. Approximately 4,000 industrial facilities in Michigan have obtained storm water discharge authorization under one of these permit programs.

Permitted industrial facilities must designate an individual at the facility who is responsible for exercising supervision and control over the control structures at the facility, eliminating any unauthorized non-storm water discharges, and developing and implementing a storm water pollution prevention plan for the facility, including structural and

nonstructural control measures. The individual must be certified by MDEQ as a storm water operator.

Municipal Separate Storm Sewer Systems. Phase I of the federal storm water regulations applied to municipal separate storm sewer systems (MS4s) serving a population of 100,000 or more. The Phase I program initially required these larger MS4s to obtain a jurisdictional permit from MDEQ. Jurisdictional permits mandated implementation of prescriptive storm water control measures within the jurisdiction of the permittee, such as requirements for public education and public involvement, illicit discharge elimination, construction and post construction storm water controls, and good housekeeping and pollution prevention practices for municipal operations.

Phase I MS4 permittees are now eligible to coverage under a general MS4 storm water permits developed for the Phase II storm water program. MDEQ's general permits identify the requirements that must be met by all public agencies applying for coverage. To obtain coverage, the public agency must prepare an application that sets forth its proposal for compliance with the requirements. MDEQ reviews the application, and, if it is satisfactory, issues a certificate of coverage to the applicant. The certificate of coverage constitutes a valid authorization to discharge storm water under the general permit.

As noted previously, Phase II of the federal storm water program expanded the Phase I program to apply to municipal separate storm sewer systems in urbanized areas with populations *under* 100,000. Two general permits are available to smaller MS4s: a traditional general (jurisdictional) permit, and a watershed-based general permit. The traditional general permit (Permit No. MIS040000) was promulgated in March 2003 and became effective April 1, 2003. Like the jurisdictional permit that was available to larger MS4s under Phase I, the traditional general permit contains prescriptive storm water control measures that must be implemented within the jurisdictional boundaries of the permittee. These include requirements for public education and public involvement, illicit discharge elimination, construction and post construction storm water controls, and good housekeeping and pollution prevention practices for municipal operations.

The watershed-based general permit was originally issued in 1998 (Michigan Storm Water General Permit (“General Permit” No. MIG610000) and was reissued in December 2002 as a mandatory permit, to be effective April 1, 2003 (Permit No. MIG619000). The watershed-based general permit addresses the same basic requirements as the traditional general permit but provides greater flexibility to MS4s in selecting and implementing storm water controls. The watershed-based general permit requires cooperative interaction with other public bodies outside of the permittee’s jurisdiction. This cooperative approach is designed to accomplish storm water quality improvements watershed-wide, and provides an added benefit of cost-sharing for some storm water controls. Watershed-wide controls means that many public bodies that discharge storm water to the same river or lake develop controls together, and implement them as part of a coordinated strategy.

Only operators of MS4s in “urbanized areas” are required to obtain a storm water permit pursuant to the federal Phase II regulations. “Urbanized areas” are delineated and defined by the federal Bureau of the Census. Virtually all of Wayne County is considered an urbanized area under the federal Phase II regulations. At the time of publication of this manual, Wayne County and most communities within Wayne County have coverage or have applied for coverage under the watershed-based general permit option. Two communities within Wayne County have applied for coverage under the traditional (jurisdictional) general permit option.

Flood Plains

Part 31 also controls flood plain occupancy. Under Part 31, a permit must be obtained from the MDEQ to fill or otherwise occupy a flood plain. The purpose of this control is to assure that watercourses, and the portion of the flood plains that are floodways, are not inhabited and are kept free and clear of interference or obstruction which would cause any undue restriction of floodway capacity. Part 31 also ensures that adequate provisions are proposed so that no flood damage will occur from proposed alterations.

Part 91 - Soil Erosion and Sedimentation Control

Part 91 of NREPA is designed to protect the waters of the State from sedimentation caused by soil erosion. Part 91 requires persons intending to cause earth changes to prepare soil erosion and sedimentation control plans. In addition, permits are required for earth changes that disturb one or more acres of land or that are within 500 feet of a lake or stream. Permits are issued by counties or local governments with programs approved by the MDEQ. In Wayne County, these permits are issued by LRMD unless the project is located in a community that is a Municipal Enforcing Agency. For a listing of the communities in which SESC permits are issued by Wayne County, please see the Wayne County website (www.waynecounty.com/doe/land).

Part 301 - Inland Lakes and Streams

Part 301 of NREPA controls the construction of channel modifications and utilities crossing streams, rivers, creeks and other watercourses in the State. Under Part 301, a permit must be obtained from the MDEQ to alter or modify any watercourse. This program regulates unlawful encroachment of these watercourses and specifies construction techniques for alterations and modifications.

Part 303 - Wetland Protection

Part 303 of NREPA provides for the preservation, management, protection, and use of wetlands. A permit is required for construction through, or alteration or use of, a wetland. The Act applies to wetlands that have a ground or surface water connection to a lake, pond, river, or stream; to any isolated wetlands that are greater than five acres in size; and in counties having a population of 100,000 or more, to any wetland determined to be essential to the preservation of the natural resources of the State from pollution, impairment, or destruction.

3.4 Federal Agencies

3.4.1 Federal Emergency Management Agency (FEMA)

The National Flood Insurance Program (NFIP), which was created by an act of Congress in 1968, was designed to reduce flood losses through local flood plain management and to provide protection for property owners against

potential losses through flood insurance. Some years later, FEMA was created and NFIP became a part of FEMA. FEMA collects data concerning flood hazards and is responsible for revising NFIP maps to conform to the data. Flood insurance maps are available from the local community or MDEQ. An application must be submitted to FEMA if any work will alter the existing floodplain.

3.4.2 U.S. Army Corps of Engineers (USACE)

State and federal law requires a joint permit from MDEQ and the USACE for certain activities in navigable waters or the waters of the United States.

Rivers and Harbors Act of 1899, Section 10

This Act requires USACE approval before commencing any work in or over navigable waters of the United States or that affects the course, location, condition or capacity of such waters. Typical activities requiring Section 10 permits include:

- Construction of piers, wharves, bulkheads, dolphins, marinas, ramps, floats, intake structure, and cable or pipeline crossings
- Dredging and excavation

Navigable waters are defined as waters that have been used in the past, are now used, or are susceptible to use as a means to transport interstate or foreign commerce up to the head of navigation. Further information on navigable waters in Wayne County can be obtained from the USACE.

Federal Clean Water Act, Section 404

Section 404 of the Clean Water Act requires USACE approval before discharging dredged or fill material into the waters of the United States. Waters of the United States includes essentially all surface waters such as all navigable waters and their tributaries, all interstate waters and their tributaries, all wetlands adjacent to these waters, and all impoundments of these waters. Typical activities requiring Section 404 permits include:

- depositing of fill or dredged material in waters of the U.S. or adjacent wetlands;
- site development fill for residential, commercial, or recreational developments;
- construction of revetments, groins, breakwaters, levees, dams, dikes, and weirs; and
- placement of riprap and road fills.

Joint MDEQ/USACE Permit Application

MDEQ and the United States Army Corps of Engineers (USACE) have prepared a joint permit application to facilitate permit applications for projects under the jurisdiction of both of these agencies. The MDEQ/USACE “Joint Permit Application” package covers permit requirements pursuant to state and federal rules and regulations for construction activities where the land meets the water (including wetlands), often referred to as the land/water interface. It is intended to prevent duplication of state and federal requirements. The application covers activities on or for the following parts of the (NREPA):

- Part 301, Inland Lakes and Streams, of the NREPA;
- Part 303, Wetlands Protection, of the NREPA;
- Part 325, Great Lakes Submerged Lands, of the NREPA;
- Floodplain Regulatory Authority found in Part 31, Water Resources Protection, of the NREPA;
- Part 353, Sand Dune Protection and Management, of the NREPA;
- Part 323, Shorelands Protection and Management, of the NREPA; and
- Part 315, Dam Safety, of the NREPA.

Contact MDEQ or visit the MDEQ website (www.michigan.gov/deq) for more information on the joint permit.

3.5 Responsibilities

The Permit Office reviews the design of storm water management systems; the suitability of the materials proposed, work performed, and manner of performance; and the rate of work progress related to storm water management systems subject to the Ordinance, Rules and Standards. Storm water management systems that are part of a soil erosion and sedimentation control plan permitted by LRMD also are reviewed by LRMD.

Storm water management systems that are not within the jurisdiction of Wayne County's Storm Water Management Program are reviewed by the local community.

It is the responsibility of the property owner to pay all appropriate fees and obtain approval from the appropriate jurisdictions to construct a storm water management system.