

## CHAPTER 15

# PERMITS

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## 15.1 INTRODUCTION

### 15:1.1 Definitions

**Permit:** an agreement that binds the owners to design requirements and the operators to performance procedures and standards which may include: construction, alterations, and occupancy of right-of-ways such as underground utilities.

**Agency:** an administrative government division empowered to regulate related statutes under their jurisdiction which may include: Michigan Department of Environmental Quality (MDEQ), Michigan Department of Transportation (MDOT), United States Army Corp of Engineers (USACE), Environmental Protection Agency, and local jurisdictions.

**Permit Consolidation Unit-PCU:** primary contact unit to obtain information regarding proposed commercial and industrial projects that require multiple permits. The emphasis is to facilitate contact with the Department early in the planning phase to insure that all environmental permits are identified and pursued.

**Joint Permit Application:** A permit application to facilitate the state and federal permit application process administered by the MDEQ and the USACE, respectively, for regulated activities where the land meets the water, including wetlands, often referred to as the land/water interface.

### 15:1.2 Purpose

Permits are an essential procedural step before activities begin. The following information will assist permit applicants in communicating with the Michigan Department of Environment Quality to obtain information regarding regulatory permits or license requirements and the permitting/licensing process.

#### (1) **Responsibility**

The MDEQ has been assigned certain powers and duties under Public Act 451 of 1994 to protect the public health and environment through resource management and environmental protection.

#### (2) **Permit Coordinator**

The MDEQ has a full-time permit coordinator. The coordinator is the primary contact point to obtain information regarding proposed commercial and industrial projects that require multiple permits. The emphasis is to facilitate contact with the MDEQ early in the planning phase to ensure that all environmental permits are identified and pursued.

### 15:1.3 How the Process Works

The permit coordinator is committed to facilitate communication between applicants and MDEQ staff to obtain permits and provide liaison with the Michigan Jobs Commission and other

departments of state and local government agencies that have a vested interest in specific permit requirements. This commitment is carried out through the following information, communication and coordination activities:

**(1) Pre-Application Information**

- Telephone call(s) or scheduled face to face discussion of proposed project.
- Referral to other divisions and departments of state government.
- Mail out project related information packet.
- Follow-up call(s) to the project representative to answer questions.

**(2) Pre-Application Services**

- Schedule and chair pre-application meeting with potential applicant and appropriate staff from divisions and other state departments.
- Distribute permit applications and instructions and establish preliminary permit requirements.
- Schedule follow-up conferences.
- Distribute meeting summary.
- Make follow-up calls to applicants for questions.

**(3) Post Application Services**

- Permit tracking.
- Conflict resolution.
- Serve as a communication focal point.
- Referral and follow-up.
- Coordination with other departments.
- Internal coordination

**(4) Review Community Development Block Grants and Environmental Impact Statements**

- Send one copy of the grant request to the Permit Coordinator for assessment of permit requirements.

**(5) General Literature and Information**

- Acts and rules
- Guidebooks

- Permit applications
- Studies and reports
- Permit Coordination Form
- *Michigan Permit Requirements for Natural Resources Development* manual

#### **15:1.4 General Advice on Obtaining Permits and Information:**

- Start planning process as early as possible.
- Determine if project requires multiple and/or complex permits.
- Contact the permit coordinator as early as possible.
- Obtain site approval early in the planning process.
- Have site evaluated for endangered and threatened species and wetlands.
- Determine required site isolation distance.
- Request copy of Permit Coordination Information Form EQP-3580 (11/95)

#### **15:2 PERMIT APPLICATION - PERMIT CONSOLIDATION UNIT (PCU)**

In recognition of the duplication of state and federal regulations, this “Joint Permit Application” package was developed to enhance the understanding of the permit requirements of the state and federal laws for construction activities where the land meets the water, including wetlands, often referred to as the land/water interface. The status of your application being processed by the state can be viewed through [CIWPIS](#), Land and Water Management Division’s (LWMD) permit tracking system.

The LWMD, MDEQ regulates activities under the following Parts of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended:

- Part 301, Inland Lakes and Streams
- Part 303, Wetlands Protection
- Part 325, Great Lakes Submerged Lands
- Floodplain Regulatory Authority found in Part 31, Water Resources Protection
- Part 353, Sand Dunes Protection and Management
- Part 323, Shorelands Protection and Management
- Part 315, Dam Safety
- Part 91, Soil Erosion and Sedimentation Control

The US Army Corps of Engineers (USACE) has the authority to regulate activities within the waters of the United States under the following statutes:

- Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)
- Section 404 of the Clean Water Act (33 U.S.C. 1344)

In planning and scheduling your project, be aware that it will generally take from 45 to 180 days from the time you apply until your permit is issued or denied. The processing time is dependent on:

- The size and complexity of your project
- The number of corrections that are required for your original application
- If the project requires a Public Notice or a Public Hearing
- The season of the year, with spring and summer being the busiest

Permit applications should be sent to the Permit Consolidation Unit (PCU) in Lansing as:

MDEQ  
LWMD PCU  
P.O. Box 30204  
Lansing, MI 48909-7704

1. You can expect the PCU to enter your project into CIWPIS, the LWMD permit tracking system, within 7 days of receipt
2. Once the PCU has received the information necessary for review of your project, including the full application fee and drawings that have adequate detail for review, the file will be sent to the appropriate MDEQ District Office for site inspection and final processing.
3. The PCU review time for complete applications ranges from 15 to 45 days.
4. Applications are processed in the date order in which they are received.
5. Once an application is determined to be complete, you will receive a card or a public notice that will tell you the file number and the telephone number of the office where your application is being processed.
6. If your application is incomplete for some reason, or if you have not included a check for the correct fee, you will be contacted by the PCU staff by phone or letter.
7. District Office processing times for technical review usually range from 60 to 90 days, processing time will be longer if a public notice is required or if a public hearing is held. A

LWMD

staff

person from your local District Office may visit your project site and may contact you for additional information prior to issuance of a permit, if approved.

8. If a federal permit will also be required, a copy of the permit application will be sent to the Detroit District Office, USACE for processing at the federal level.
9. If you have any questions about the permitting process or if you need to modify your application, you can contact the PCU at 517-373-9244, send an email to [DEQ-LWM-PCU@state.mi.us](mailto:DEQ-LWM-PCU@state.mi.us) or mail the PCU at the address above.

### **15:3 MDEQ - LWMD AND DRAINAGE DISTRICTS**

Permits are commonly issued in a variety of activities. The following are some examples of construction activities impacting a county drain that would require the submission of a permit application to the MDEQ - Land and Water Management Division:

- Construction work related to any drain established after January 1, 1973.
- The relocation of a county drain or any other construction work, outside of the drain right-of-way established prior to January 1, 1973.
- The upstream or downstream extension of a county drain.
- The construction or excavation of a new branch to an existing drain.
- The placement of spoils or other fill material into a regulated wetland.
- A new or replacement bridge or culvert that is not installed as part of a drain project conducted pursuant to the Drain Code of 1956, Act No. 40 of the Public Acts of 1956, being Sections 280.1 to 280.63 of the Michigan Compiled laws.
- Any construction work on an established county drain done by an individual or developer that is not part of a drain project conducted pursuant to the drain code of 1956, Act No. 40 of the Public Acts of 1956, being Sections 280.1 to 280.63 of the Michigan Compiled laws.

#### **15:3.1 Permit Exemptions**

The following are the only four statutes administered by the Land and Water Management Division that provide exemptions for some construction activities in designated county drains. There are no exemptions found in the other land and Water Management Division statutes.

1. Part 301, Inland Lakes and Streams, of the Natural Resources Protection Act, 1994 PA 451, as amended (NREPA), provides exemptions for the maintenance and improvement of all drains

legally established or constructed prior to January 1, 1973 pursuant to the drain code of 1956, Act 40 of the Public Acts of 1956 being Sections 280.1 to 280.630 of the Michigan Compiled Laws, **except** those legally established drains constituting mainstream portions of certain natural watercourses identified in rules promulgated by the department under Section 30110.

2. Part 303, Wetlands Protection of the NREPA allows for exemptions for maintenance, operation or improvement which includes straightening, widening or deepening of the following which is necessary for the production or harvesting of agricultural project.
  - a. An existing private agricultural drain.
  - b. That portion of a drain legally established pursuant to the drain code of 1956, Act No. 40 of the Public Acts of 1956, being Sections 280.1 to 280.630 of the Michigan Compiled Laws, which has been constructed or improved for drainage purposes.
3. A drain constructed pursuant to other provisions of Part 303 or former Act 203 or the Public Acts of 1979.
4. The Floodplain Regulatory Authority found in Part 31, Water Resources Protection, of NREPA allows for exemptions for an improvement proposed under Act No. 40 of the Public Acts of 1956, as amended, being Sections 280.1 et seq. of the Michigan Compiled Laws.

### **15:3.2 Aquatic Nuisance Control Program**

LWMD has the responsibility for issuing permits for the use of pesticides in waters of the State for controlling aquatic nuisances under Public Act 368 of 1978. The purpose of the permit is to regulate nuisance control projects so that such work will be conducted during certain times under certain conditions and with safeguards as are necessary to protect the public health, welfare and trust in the aquatic environment.

A permit will be required to chemically treat waters of the State to control aquatic nuisances, including aquatic plants. Treatment of vegetation along the banks of county drains or in county drains where no water is present does not require a permit from LWMD. This particular issue on permitting chemical treatment of county drains is being discussed by MACDC and MDEQ Staff. Applications for permits can be found on the MDEQ-LWMD web site.

### **15:3.3 Soil Erosion and Sedimentation**

Part 91, Soil Erosion and Sedimentation Control, of the NREPA (Part 91) provides for the control of soil erosion and protects the waters of the state from sedimentation. A permit is generally required for any earth change activity which disturbs one or more acres of land, or which is within 500 feet of a lake or stream.

Providing a county drain office is **not** a County Enforcing Agency (CEA) or an Authorized Public Agency (APA) those projects - petition or maintenance - contractor or drain maintenance personnel- the appropriate soil erosion and sedimentation permits must be obtained prior to activities.

### **15:3.4 Permit –by-Rule**

Construction activities which disturb five or more acres of land (if in a Phase II area one or more acres) and have a point source discharge of storm water to waters of the state are required to obtain a National Pollutant Discharge Elimination System (NPDES) permit from the MDEQ Surface Water Quality Division (SWQD).

Permit-by-Rule requires compliance with the soil erosion and sedimentation control permit issued under Part 91, and also requires soil erosion and sedimentation control measures to be inspected on a regular basis by a certified storm water operator.

### **15:3.5 Storm Water - Phase II Rules - Permits**

Regulated MS4's - Municipal Separate Storm Sewer System is a conveyance or system of conveyances owned or operated by a state, city, village, township or other public entity that discharges to waters of the state and is designated or used for collecting or conveying storm water - not a combined sewer. Urbanized areas - population of >50,000 and an overall population density of >1000 sq. mile. There are 252 automatic designees listed for Michigan - cities, towns, villages, townships, and counties. Unlisted but potential public entity designees include - drainage districts, road commissions, MDOT and possible others. Drain Commissioners may be able to cover multiple drainage districts under one (1) MS4 permit. The permitting at present time is voluntary. Final rules effective March 10, 2003.

## **15:4 OTHER STATE PERMITS**

State permits for various activities may include:

- Public Water Supply Construction Permit - P.A. Act 399 of 1976

- Sewer System Construction Permit - P.A. Act 451 Part 41

- NPDES - surface water permit - MDEQ - SWQD
- NPDES - groundwater discharge - MDEQ - WMD

### **15:5 LOCAL PERMITS**

Local Permits will be required primarily in utility management. Those permits may include but not limited to:

- Building permit (local & state)
- Electrical permit (local & state)
- Plumbing permit (local & state)
- Mechanical permit (local & state)
- Utility permits (gas & electric)
- Driveway culvert permit (local road authority)
- Well & Septic System (local health authority)

### **15:6 DRAIN OFFICE PERMITS**

Permits issued for various activities including utilities, local road, MDOT, to construct, alter, or encroach on right-of-way of drains.

### **15:7 MDOT AND DRAINAGE DISTRICTS**

A relationship that allows the Drain Commissioner to construct and maintain county drains which benefit the drainage of state trunk line system and enables MDOT to financially compensate the drainage district.

Sec. 321. Drains may be laid within or across the right-of-way of any highway, provided it shall be necessary for the County Drain Commissioner to obtain first a permit from the highway authority having jurisdiction. If title in fee simple be not in the highway authority, said commissioner shall also obtain a release of right-of-way for the purposes of such drain from the owner of the land, as provided in Sections 73, 74 and 75 of this Act.

#### **15:7.1 MDOT Construction Permits for Drain Projects**

Plans reviewed and issued from region or MDOT's Transportation Service Center

- Structural Adequacy/Impacts

- Traffic control
- Other state/federal permits part of condition

### 15:7.2 Common Issues

#### 1) Plan Reviews:

- Section 328 of Drain Code-MDOT provides plans, no requirement for approval
- Section 321 requires Drain Commissioner to “obtain a permit from the highway authority” and
- Section 321 requires “the highway authority shall be consulted and their consent shall be obtained in writing”.

#### 2) Drain Clean Out:

- Impact on Slab (3 sided) and Box Culverts
- May expose footings
- Perched culvert

#### 3) County Drain Permits:

- MDOT’s Contractor obtains local permits (Section 107.2 of 1996 Standard Specification for Construction)

#### 4) Design Standards:

- 10,25,50 & 100 year flood frequency (Design Storm)
- MDOT looks at H/H Design calculations for impacts to roadway and adjoining properties.

#### 5) Consultants Qualifications:

- MDOT pre-qualifies consultants for design services in Hydraulics/Hydrology and structural design.
- MDOT will provide comments on plans

#### 6) Public Right-of-way:

- MDOT does not transfer title or easement for its road right-of-way (may need to obtain license agreement)
- Will transfer title to excess right-of-way or property

**15:8 RAILROADS AND DRAINAGE DISTRICTS**

Sec. 341. Drains may be laid along the line of any railroad within its right-of-way: Provided, that such drain shall not be to the injury of the roadbed. Whenever it is proposed to construct a drain along the line, and within the right-of-way of any railroad, and the company owning or operating such roads shall refuse or neglect to permit such drain to be constructed, or release the right-of-way therefore within the time prescribed in Section 75 of this Act, such release shall be obtained in the same manner as is provided in this Act for obtaining private lands: Provided, that no drain shall be constructed along the line of any railroad without the consent of the company owning or operating such road, if it shall appear to the special commissioners that such drain can equally well be laid on private lands.

**15:9 WEB SITES AVAILABLE**

1. [deq.state.mi.us](http://deq.state.mi.us) (MDEQ)
2. [deq.state.mi.us/lwm](http://deq.state.mi.us/lwm) (LWMD).
3. [deq.state.mi.us/lwm/grt\\_lakes/pcu/application.html](http://deq.state.mi.us/lwm/grt_lakes/pcu/application.html) (Permit applications)
4. [deq.state.mi.us/lwm/lwmacts.htm](http://deq.state.mi.us/lwm/lwmacts.htm) (LWM Statues Administered)
5. [deq.state.mi.us/lwm/water\\_mgmt/soils/soils.html](http://deq.state.mi.us/lwm/water_mgmt/soils/soils.html) (Soil Eroion & Sedimentation)
6. [mdot.state.mi.us](http://mdot.state.mi.us) (Michigan Department of Transportation)
7. [mda.state.mi.us](http://mda.state.mi.us) (Department of Agriculture)
8. [usace.army.mil/](http://usace.army.mil/) (Army Corp of Engineers)
9. [epa.gov/region5/](http://epa.gov/region5/) (EPA-Region 5)
10. [michiganlegislature.org/law/](http://michiganlegislature.org/law/) (Michigan Compiled Laws)
11. [macdc.net](http://macdc.net) (Michigan Association of County Drain Commissioners)

## QUESTIONS & ANSWERS

- 1. How can I find the regulations administered by the Department of Environmental Quality?**
  - A. Environmental requirements are included in both state and federal statutes, also called acts, and administrative rules. Most of Michigan's Environmental Acts were consolidated into the Natural Resources and Environmental Protection Act, 1994, PA451, as amended (Act 451). Act 451 is organized into sections called "Parts." Be aware that some administrative rules still refer to original environmental act numbers prior to their being included as Parts of Act 451 and that there are other state environmentally-related acts that are not incorporated into Act 451 at this time.
  
- 2. What should I do if there are wetlands in my project area?**
  - A. Considering wetlands in the very early stages of planning your project will help you avoid unnecessary delays and frustration in the regulatory process. The easiest and most preferred way to deal with wetlands on your project is to avoid disturbing the wetland to any extent. If this is not feasible minimizing impacts to the wetland will help maintain its functions in the landscape and ease the process of acquiring a permit. To protect the diverse wetlands in Michigan, certain activities are subject to regulation. A sampling of regulated activities is provided below. Filling or placing material in a wetland such as in bulldozing, grading, or dumping; dredging or removing soil from a wetland as in removing tree stumps, bulldozing, or digging a pond; draining water from a wetland by diverting to another area through a drain, ditch or pump mechanism. You will need to fill out a permit application and provide a diagram and other information describing your location and project. Contact the Land and Water Management Division, Permit Consolidation Unit.
  
- 3. What design storm does MDOT design its culverts for?**
  - A. The 2% chance (or 50-year) storm. We check the 1% chance storm for harmful interference. Circular culverts are generally designed to flow 90% full.
  
- 4. Do we need a MDEQ permit to do work in a County Drain?**
  - A. It depends on the situation. If in doubt, you should contact legal counsel or the MDEQ.
  
- 5. When do I need a MDEQ permit?**
  - A. Work in and around a stream, lake or wetland will require a MDEQ permit unless exempt. Please be aware that this takes time. If you have specific permit questions on MDOT projects, please contact the Environmental Section in Planning Division.

**6. Why do I need a permit to work in the state trunk line right-of-way?**

- A. Michigan State laws require permission from the governmental unit having jurisdiction of the street or highway to construct inside the right-of-way line.

**7. When do I need a right-of-way occupancy agreement?**

- A. Right-of-way occupancy agreements are required when you are constructing something other than a driveway, such as a public sanitary sewer or water line crossing within the right-of-way. Contact the appropriate district office before starting plans for any work within the trunk line right-of-way.

**8. A property owner has asked me about constructing a pond on their property. Are there any MDEQ permits they need to obtain before proceeding?**

- A. A permit may be required from the MDEQ under Part 301, Inland Lakes and Streams; Part 303, Wetlands Protections; or Part 315, Dam Safety; of the Natural Resources and Environmental Protection Act, 1994 PA 45, as amended, if the pond will be:
- Within 500 feet of a lake stream or connected to a lake or stream
  - Within a regulated wetland
  - Within the 100 year floodplain of a river or stream;
  - Five acres or more in size; or one acre in Phase II areas or
  - Created by construction of a dam six feet or more in height that also impounds five acres or more at the design flood elevation.
  - When in doubt it is recommended you contact the MDEQ

**9. What permits do I need for earth changing construction activities related to water discharges?**

- A. Two types of permits for water discharges associated with construction or "earth change" activity are issues pursuant to the Natural Resources Environmental Protection Act, 1994 PA 451, as amended (NREPA).

Part 91, Soil Erosion and Sedimentation Control, of the NREPA (Part 91) provides for the control of soil erosion and protects the waters of the state from sedimentation. A permit is generally required for any earth change activity which disturbs one or more acres of land, or which is within 500 feet of a lake or stream.

Construction activities that disturb five or more acres of land (if in a Phase II area one or more acres) and have a point source discharge of storm water to waters of the state are required to obtain a National Pollutant

Discharge Elimination System (NPDES) permit from the MDEQ Surface Water Quality Division (SWQD).

Permit-by-Rule requires compliance with the soil erosion and sedimentation control permit issued under Part 91, and also requires soil erosion and sedimentation control measures to be inspected on a regular basis by a certified storm water operator. The certification materials and testing are available in each SWQD district office.

- 10. Do I need a permit to construct or maintain a drain within the railroad right-of-way?**
- A. Yes, Section 341 states that no drain shall be constructed along the line of any railroad without the consent of the company owning or operating such road. After said drain is established, an annual maintenance permit and notification of activities to the appropriate authority is recommended.
- 11. Is a permit required to spray brush and cattails along county drains?**
- A. Public Health Code 178, PA 368 as amended and Part 31, Water Resources Protection of the NREPA 1994 PA 451 as amended may require permits for chemical treatment of waters of the State to control aquatic nuisances, including aquatic plants. Treatment of vegetation along the banks of county drains or in county drains where no water is present does not require a permit from LWMD.
- 12. Is a permit required to lower a lake level, alter or construction on a spillway or dam structure?**
- A. Yes. A joint permit from MDEQ-LWMD and USACE is required unless a specific exemption applies.
- 13. Does MDNR have permitting authority that would be required for activities administered by the Drain Office?**
- A. No. MDNR has no permitting responsibility.
- 14. Will I need to obtain a permit from MDEQ to establish a new or extend an existing drain?**
- A. Yes. In both cases a permit will be required.
- 15. Who needs an NPDES permit?**
- A. Anyone discharging, or proposing to discharge, waste or wastewater into the surface waters of the State is required by law to obtain a National Pollutant Discharge Elimination System (NPDES) permit. The NPDES program is intended to control direct discharge into the surface waters of the State by imposing effluent limits and other conditions necessary to meet State and federal requirements.
- The NPDES program regulates pollutants discharged directly into waterways from wastewater sources. Indirect dischargers (those who discharge to a municipal treatment facility via a sanitary sewer) are not required to have an NPDES permit. Discharge to a storm sewer does not go to a municipal treatment facility, and is considered a direct discharge. Discharge to a municipal treatment facility may require a permit from the municipality under the Industrial Pretreatment Program.