

Guide to permits for construction and installation of surface water irrigation practices

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The following is a summary of selected parts of Michigan Public Act 451 rules applicable to construction/installation practices for the purpose of surface water irrigation. Public Act 451 of 1994 as amended, is known as NREPA or the *Natural Resources and Environmental Protection Act*.

Installing irrigation equipment and constructing irrigation ponds may require permits under more than one part of NREPA. This guide deals with the parts of NREPA most applicable to surface water irrigation practices but may not be exhaustive in all cases:

- ◆ Part 31 Water Resources Protection (Floodplains Regulatory Authority found in Part 31)
- ◆ Part 91 Soil Erosion and Sedimentation Control
- ◆ Part 301 Inland Lakes and Streams
- ◆ Part 303 Wetland Protection

It should be noted that Parts 31, 301, and 303 are administered through your district MDEQ office and the joint permit application is available at www.michigan.gov/jointpermit. Part 91 Soil Erosion and Sedimentation Control permits are administered through your county or municipal soil erosion-permitting agency -- contact information by county available at www.deq.state.mi.us/sesca. Another option for agricultural producers may be to enter into an Agricultural Agreement with the local Conservation District. Check with your local Conservation District to determine if this service is offered. In addition, you may need permission from your county drain commissioner for irrigation activities within the drain right-of-way.

MSU Extension and the Michigan Department of Environmental Quality are aware that irrigation practices and situations vary greatly. The development of this summary has been a cooperative effort and is provided to increase understanding of the scope and type of permits that may be required. To avoid violation of NREPA, irrigators are strongly advised to check with the appropriate agency when planning irrigation construction.



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Placement of irrigation equipment



Do I need a Part 301 Inland Lakes and Streams permit?

Answer: Maybe. A permit is required for the following activities in a lake or stream; dredging, filling, or placement of a structure on bottomland or placement of a structure, which may interfere with the natural flow of an inland lake or stream. Also, the construction of a waterway or the construction of a water body (pond) within a 500 feet of a lake or stream, or the connection of any natural or artificially constructed waterway or water body with an existing lake or stream.

Definition from Part 301: "Inland lake or stream" means a natural or artificial lake, or pond, or impoundment; a river, stream, or creek which may or may not be serving as a drain as defined by the drain code of 1956 ... or any other body of water that has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water.... Inland lake or stream does not include the Great Lakes, Lake St. Clair, or a lake or pond that has a surface area of less than 5 acres.

Do I need a Part 91 Soil Erosion and Sedimentation Control (SESC) permit?

Answer: Maybe. A SESC permit is not required for the actual placement of irrigation equipment. However, if the placement involves an earth change (grading, balancing, shaping of the land) within 500 feet of a lake or stream, a SESC permit is required unless waived by the county or municipal enforcing agency. Pursuant to Rule 323.1705(2) promulgated under Part 91, "a county or municipal 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 and streams.

Part 91 defines lake as "the Great Lakes and all natural or artificial inland lakes or impoundments that have definite banks, a bed, visible evidence of continued occurrence of water, and a surface area of water that is equal to or greater than one acre. Lake does not include sediment basins and basins constructed for the sole purpose of storm water retention, cooling water, or treating polluted water." The Part 91 definition for stream is the same as found in Part 301 (see above).

Do I need a permit under the Floodplain Regulatory Authority found in Part 31?

Answer: Maybe. A permit is required for any encroachment on the 100 year floodplain of a stream or river. "Encroachment" means any structure, filling, grading, or deposition of materials in, upon, across, or projecting into, a floodplain, channel, or floodway. There are some exceptions, please contact your local MDEQ field office.

Construction of an irrigation pond



Do I need a Part 91 Soil Erosion and Sedimentation Control permit?

Answer: Maybe. A SESC permit is required if the pond will be located within 500 feet of a lake or stream OR if the earth change associated with the pond construction (i.e. the pond and the spoil area) disturbs one or more acres.

Note: Counties and municipalities can adopt SESC ordinances that are more restrictive than Part 91 or the rules promulgated under Part 91. Therefore, check with the appropriate county or municipal enforcing agency before constructing any pond regardless of size or location.

Do I need a Part 303 Wetlands Protection permit?

Answer: No. Construction or maintenance of a farm or stock pond is exempt from Part 303. However, excavated soil is considered “fill” and must be placed on upland and out of the floodplain and stabilized to prevent erosion.

Do I need a Part 301 Inland Lakes and Streams permit?

Answer: Maybe. A permit is required if the pond is located within 500 feet of an inland lake or stream, or has a surface water connection with an inland lake or stream.

Do I need a permit under the Floodplain Regulatory Authority found in Part 31?

Answer: Maybe, if the pond is located in a floodplain. A permit is required for any encroachment on the 100 year floodplain of a stream or river. “Encroachment” means any structure, filling, grading, or deposition of materials (including excavated soils) in, upon, across, or projecting into, a floodplain, channel, or floodway. There are some exceptions, please contact your local MDEQ field office.