

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**WATER BUREAU**

**WATER RESOURCES PROTECTION**

(By authority conferred on the department of environmental quality by sections 3103 and 3106 of 1994 PA 451, MCL 324.3103 and 324.3106)

**PART 21. WASTEWATER DISCHARGE PERMITS**

**R 323.2101 Purpose.**

Rule 2101. (1) These rules are being processed to implement the 1972 amendments to part 31 of the act which authorized the initiation of a waste or waste effluent discharge permit system compatible with the national pollutant discharge elimination system (NPDES). The NPDES has been initiated by the federal Congress through the enactment of the federal water pollution control act amendments of 1972, (33 U.S.C. §1251 et seq.). In general, the rules outline all of the following:

(a) The procedures by which all persons discharging wastes into the waters of the state shall apply for waste or waste effluent discharge permits as required by part 31 of the act.

(b) Exceptions to procedural requirements.

(c) Public participation procedures and hearings on permit applications.

(d) Procedures by which permits are issued or denied by the department.

(e) Appeals procedures.

(f) Permit conditions and monitoring of waste or wastewater discharges.

(2) The promulgation of these rules, in association with part 31 of the act, provides sufficient authority to the state, upon approval by the United States environmental protection agency, to issue permits for waste or wastewater discharges under the NPDES pursuant to section 402(b) of the United States Public Law 92-500 (33 U.S.C. §1251 et seq.). The department is the state agency designated by state law to administer this program.

History: 1979 AC; 2003 AACCS.

**R 323.2102 Definitions; A to F.**

Rule 2102. As used in this part:

(a) "Act" means 1994 PA 451, MCL 324.3101 et seq., and the rules promulgated under the act.

(b) "Animal feeding operation (AFO)" means a lot or facility, other than an aquatic animal production facility, where the animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(c) "Applicant" means a person who applies to the department for a state or national permit to discharge waste or wastewaters into the waters of the state by an NPDES application form or a state permit application form.

(d) "Application" means either the uniform national NPDES application form, including subsequent additions, revisions, or modifications thereof, promulgated by the administrator of EPA and adopted for use by the department or a state permit application form for applying for a permit.

(e) "Approved control plan" means the plan which is prepared by an authorized public agency, which is approved by the department pursuant to the provisions of section 9110 of part 91 of the act, and which contains the soil erosion and sedimentation control procedures that govern all construction activities normally undertaken by the authorized public agency.

(f) "Authorized public agency" means a state, local, or county agency that is designated pursuant to the provisions of section 9110 of part 91 of the act to implement soil erosion and sedimentation control requirements with regard to construction activities undertaken by the agency.

(g) "Authorized representative" means a person who has written authorization from the construction permittee to sign the notice of coverage in the name of the construction permittee.

(h) "Certified storm water operator" means an individual who has been certified by the department pursuant to the provisions of section 3110 of part 31 of the act as properly qualified to operate treatment or control facilities for storm water discharges.

(i) "Concentrated animal feeding operation (CAFO)" means an AFO that is defined as a large CAFO or a medium CAFO, or that is designated by the department under R 323.2196(3) as a medium CAFO or a small CAFO. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

(j) "CAFO process wastewater" means water directly or indirectly used in the operation of a CAFO for any of the following:

- (i) Spillage or overflow from animal or poultry watering systems.
- (ii) Washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities.
- (iii) Direct contact swimming, washing, or spray cooling of animals.
- (iv) Dust control.

(v) Any water which comes into contact with, or is a constituent of, any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

(k) "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 40 C.F.R. §122.26(a) (2000) and which is any of the following:

(i) Five acres or more in size and defined as a construction activity pursuant to the provisions of 40 C.F.R. §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 C.F.R. §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.

(l) "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 1925 PA 368, 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.

(m) "Department" means the director of the department of environmental quality or his or her designee to whom the director delegates a power or duty by written instrument.

(n) "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.

(o) "Discharger" means any person who discharges, directly or indirectly, any substance defined by section 3109 of part 31 of the act, any treated or untreated waste, waste effluent, wastewater, or pollutant; or cooling waters into any of the waters of the state or upon the ground.

(p) "Draft permit" means a draft of a permit which is proposed to be issued by the department, which is prepared by staff of the department before public notice of an application for a permit by a discharger, and which contains proposed effluent standards and limitations, proposed compliance schedules, and other proposed conditions or restrictions deemed necessary by the department for a discharge.

(q) "Effluent standards and limitations" means all state or federal effluent standards and limitations on quantities, rates, and concentrations of chemical, physical, biological, and other constituents to which a waste or wastewater discharge may be subject under the federal act or part 31 of the act, including all of the following:

- (i) Effluent limitations.
- (ii) Standards of performance.
- (iii) Toxic effluent standards and prohibitions.
- (iv) Pretreatment standards.
- (v) Schedules of compliance.

(r) "EPA" means the United States environmental protection agency.

(s) "Fact sheet" means a description of a discharge which is available to the public, which is prepared by the department pursuant to the guidelines, and which includes all of the following information:

- (i) Information on the location of the discharge.
- (ii) Rate or frequency of the discharge.
- (iii) Components of the discharge.
- (iv) Proposed determinations of the department regarding the discharge.
- (v) The location and identification of uses of the receiving waters.
- (vi) Water quality standards and procedures for formulation of final determinations on the discharge by the department.

(t) "Federal act" means the federal water pollution control act, commonly referred to as the clean water act, Public Law 92-500, as amended by Public Law 95-217, Public

Law 95-576, Public Law 96-483, Public Law 97-1171, and Public Law 100-4, 33 U.S.C. §1251 et seq., and the rules and regulations promulgated thereunder.

History: 1979 AC; 1985 AACS; 1992 AACS; 2003 AACS; 2005 AACS.

**R 323.2103 Definitions; G to O.**

Rule 2103. As used in this part:

(a) "General permit" means a national permit issued authorizing a category of similar discharges.

(b) "Guidelines," unless otherwise noted, means the federal guidelines promulgated by the USEPA entitled "Part 124 - Procedures for Decision making," 40 C.F.R. §124 (2004).

(c) "Illicit connection" means a physical connection to a separate storm sewer that primarily conveys non-storm water discharges other than uncontaminated groundwater into the storm sewer; or a physical connection not authorized or permitted by the local authority, where a local authority requires authorization or a permit for physical connections.

(d) "Illicit discharge" means any discharge to, or seepage into, a separate storm sewer that is not composed entirely of storm water or uncontaminated groundwater. Illicit discharges include non-storm water discharges through pipes or other physical connections; dumping of motor vehicle fluids, household hazardous wastes, domestic animal wastes, or litter; collection and intentional dumping of grass clippings or leaf litter; or unauthorized discharges of sewage, industrial waste, restaurant wastes, or any other non-storm water waste directly into a separate storm sewer.

(e) "Industry" means a private person, corporation, firm, plant, or establishment that directly or indirectly discharges waste or wastewater into the waters of the state.

(f) "Land application area" specifically for CAFOs means land under the control of an AFO owner or operator, whether it is owned, rented, leased, or subject to an access agreement to which production area waste or CAFO process wastewater is or may be applied. Land application area includes land not owned by the AFO owner or operator but the AFO owner or operator has control of the land application of production area waste or CAFO process wastewater.

(g) "Large CAFO" is an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories:

(i) 700 mature dairy cows, whether milked or dry.

(ii) 1,000 veal calves.

(iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, and cow/calf pairs.

(iv) 2,500 swine each weighing 55 pounds or more.

(v) 10,000 swine each weighing less than 55 pounds.

(vi) 500 horses.

(vii) 10,000 sheep or lambs.

(viii) 55,000 turkeys.

(ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system.

(x) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system.

(xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system.

(xii) 30,000 ducks, if the AFO uses other than a liquid manure handling system.

(xiii) 5,000 ducks, if the AFO uses a liquid manure handling system.

(h) "Local limit" means a specific prohibition or limit on discharges of pollutants or pollutant parameters by a nondomestic source to a POTW that are set by a POTW in accordance with an approved pretreatment program.

(i) "Mailing list" means a permanent list of persons who request notification and information on public hearings, permits, and other NPDES forms that is prepared and maintained by the department pursuant to the guidelines, these rules, and 1969 PA 306, MCL 24.201 et seq.

(j) "Management agency" means an area-wide waste treatment management agency that is designated by the governor pursuant to the provisions of section 208(a) of the federal act.

(k) "Manure" includes manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.

(l) "Maximum extent practicable" or "MEP" means implementation of best management practices by a public body to comply with an approved storm water management program as required in a national permit for a municipal separate storm sewer system, in a manner that is environmentally beneficial, technically feasible, and within the public body's legal authority.

(m) "Medium CAFO" is defined as the following:

(i) Is an AFO that stables or confines the numbers of animals specified in any of the categories listed in subdivision (ii) of this subrule, and any of the following are met:

(A) Has been designated by the department as a CAFO under R 323.2196(3).

(B) Pollutants are discharged from the production area into waters of the state through a manmade ditch, pipe, tile, swale, flushing system, or other similar manmade conveyance.

(C) Pollutants are discharged directly into waters of the state from the production area which originate outside of and pass over, across, or through the facility or that otherwise come into direct contact with the animals confined in the operation.

(ii) Includes the following number and type of animals:

(A) 200 to 699 mature dairy cows, whether milked or dry.

(B) 300 to 999 veal calves.

(C) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, and cow/calf pairs.

(D) 750 to 2,499 swine each weighing 55 pounds or more.

(E) 3,000 to 9,999 swine each weighing less than 55 pounds.

(F) 150 to 499 horses.

(G) 3,000 to 9,999 sheep or lambs.

(H) 16,500 to 54,999 turkeys.

(I) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system.

(J) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system.

(K) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system.

(L) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system.

(M) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system.

(n) "Minor discharge" means a discharge of wastewater which has a total volume of less than 50,000 gallons on every day of the year, which does not affect the waters of another state, and which is not identified by the department, the regional administrator, or by the administrator of the USEPA, in regulations issued by him or her pursuant to the provisions of section 307(a) of the federal act, as a discharge which is not a minor discharge, except that a discharge is not a minor discharge if there is a discharge of less than 50,000 gallons on any day of the year which represents 1 of 2 or more discharges from a single person, municipality, or industry that, in total, is more than 50,000 gallons on any day of the year.

(o) "Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are owned or operated by the United States, a state, city, village, township, county, district, association, or other public body created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law, such as a sewer district, flood control district, or drainage district, or similar entity, or a designated or approved management agency under section 208 of the federal act that discharges to waters of the state. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(p) "National permit" means an NPDES permit, or equivalent document or requirements, issued by the department to a discharger pursuant to sections 3106 and 3112 of part 31 of the act for discharges into surface waters.

(q) "New source" means a building, structure, facility, or installation from which waste, pollutants, or wastewater is or may be discharged into the surface or groundwaters of the state or on the ground and for which construction was commenced after publication of proposed regulations by the USEPA prescribing a standard of performance pursuant to the provisions of section 306(a) of the federal act that will be applicable to the source if the standard is thereafter promulgated in accordance with the provisions of section 306 of the federal act.

(r) "Noncompliance list" means a list of dischargers, which is prepared by the department pursuant to these rules and the guidelines for transmittal to the regional administrator, who fail or refuse to comply with a compliance schedule in a permit issued pursuant to part 31 of the act.

(s) "Nondomestic source" or "source of nondomestic wastewater" means an industry, commercial establishment, or other entity that discharges wastewater to a publicly owned treatment works other than, or in addition to, water-carried wastes from toilet, kitchen, laundry, bathing, or other facilities that are used for household purposes.

(t) "NPDES" means the national pollutant discharge elimination system established by the federal act.

(u) "NPDES form" means any issued permit and any uniform national form which is used by the department, which is developed for use in the NPDES, and which is prescribed in regulations promulgated by the administrator of the USEPA, including an NPDES application and a reporting form.

(v) "On-site disposal system" means a natural system or mechanical device used to collect, treat and discharge, or reclaim wastewater from 1 or more dwelling units without the use of community-wide sewers or a centralized treatment facility.

History: 1979 AC; 1985 AACS; 1992 AACS; 2003 AACS; 2005 AACS; 2006 AACS.

### **R 323.2104 Definitions; P to W.**

Rule 2104. As used in this part:

(a) "Part 91 permitting entity" means an agency that is designated by a county board of commissioners pursuant to the provisions of section 9105 of part 91 of the act; an agency that is designated by a city, village, or township in accordance with the provisions of section 9106 of part 91 of the act; or the department if the construction activity is under the jurisdiction of 2 or more municipal or county enforcing agencies; or the department for soil erosion and sedimentation activities under part 615 or part 631 pursuant to the provisions of section 9115 of part 91 of the act.

(b) "Person" means an individual, partnership, association, corporation, industry, or public body.

(c) "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 POTW designated as part of the drain or a discharge otherwise required to be authorized by a national permit.

(d) "Production area" means that part of an AFO that includes animal confinement area, manure storage area, raw materials storage area, and waste containment areas. The animal confinement area includes open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milk

rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes lagoons, runoff ponds,

storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes feed silos, silage bunkers, and bedding materials. The waste containment area includes settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

(e) "Production area waste" means manure and any waste from the production area and any precipitation, for example, rain or snow, which comes into contact with, or is contaminated by, manure or any of the components listed in the definition for "production area." Production area waste does not include water from land application areas.

(f) "Public body" means the United States, the state of Michigan, city, village, township, county, school district, public college or university, single purpose governmental agency; or any other body which is created by federal or state statute or law.

(g) "Publicly owned treatment works" or "POTW" means either of the following:

(i) A facility or facilities which are owned by a governmental entity and which are used or intended to be used for the collection and treatment of municipal wastewater, including sewage, liquid industrial waste, and storm water.

(ii) The owner or owners of a facility or facilities specified in paragraph (i) of this subdivision.

(h) "Regional administrator" means the USEPA region V administrator.

(i) "Regulated MS4" means an MS4 that is required to have a national permit to discharge storm water into surface waters of the state pursuant to R 323.2161(c), (d), (e), or (f).

(j) "Regulated pollutants" means all of the following:

(i) Pollutants that are limited by categorical pretreatment standards as defined in R 323.2302(q).

(ii) Pollutants for which control measures on nondomestic sources are necessary to avoid noncompliance with effluent limitations established in the POTW's discharge permit.

(iii) Pollutants for which control measures on nondomestic sources are necessary to avoid restricting the POTW's approved residuals management program.

(iv) Pollutants for which control measures on nondomestic sources are necessary to avoid operational problems at the treatment facility or collection system.

(k) "Reporting form" means the uniform NPDES reporting form, including subsequent additions, revisions, or modifications thereof, which is promulgated by the administrator of the USEPA and which is adopted by the department for use in administering these rules, or a state form that is

prescribed by the department for use in administering these rules, for reporting data and information to the department by a discharger on monitoring and other conditions of permits.

(l) "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

(m) "Separate storm sewer system" means a system of drainage, including, but not limited to, roads, catch basins, curbs, gutters, parking lots, ditches, conduits, pumping devices, or man-made channels, which has the following characteristics:

(i) The system is not a combined sewer where storm water mixes with sanitary wastes.

(ii) The system is not part of a publicly owned treatment works (POTW).

(n) "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.

(o) "Small CAFO" means an AFO that is designated a CAFO by the department under R 323.2196(3) and is not a medium CAFO.

(p) "Soil erosion and sedimentation control permit" means a permit that is issued pursuant to the provisions of part 91 of the act by a part 91 permitting entity.

(q) "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.

(r) "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.

(s) "State permit" means a permit or equivalent document or requirements that are issued by the department to a discharger who discharges wastewater on the ground or into groundwaters.

(t) "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

(u) "Storm water discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the national permits program under 40 C.F.R. §122.3 and §122.27 (2000). For the categories of industries identified in this subdivision, the term includes, but is not limited to, storm water discharges from all of the following:

(i) Industrial plant yards.

(ii) Immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility.

(iii) Material handling sites. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product, or waste product.

(iv) Refuse sites.

(v) Sites used for the application or disposal of process waste waters, as defined at 40 C.F.R. §401.11 (2000).

(vi) Sites used for the storage and maintenance of material handling equipment.

(vii) Sites used for residual treatment, storage, or disposal.

(viii) Shipping and receiving areas.

(ix) Manufacturing buildings.

(x) Storage areas, including tank farms, for raw materials and intermediate and final products.

(xi) Areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

(xii) The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the areas described in this paragraph.

(xiii) Industrial facilities include facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in the following paragraphs and those facilities designated by the department under the provisions of R 323.2161(1)(f). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subdivision:

(A) Facilities subject to EPA promulgated storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards, except facilities that have toxic pollutant effluent standards which are exempted under paragraph (J) of this subdivision.

(B) Facilities classified as standard industrial classifications 24, except 2434; 26, except 265 and 267; 28, except 283; 29; 311; 32, except 323; 33; 3441; and 373.

(C) Facilities classified as standard industrial classifications 10 through 14, mineral industry, including active or inactive mining operations, except for areas of non-coal mining operations which were released from applicable state or federal reclamation requirements after December 17, 1990, and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with, or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts, or waste products located on the site of operations. Inactive mining operations are mining sites which are not being actively mined, but which have an identifiable owner/operator. Inactive mining sites do not include sites where mining claims are being maintained before disturbances associated with the extraction, beneficiation, or processing of mined materials and do not include sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.

(D) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle c of the federal resource conservation and recovery act.

(E) Landfills, land application sites, and open dumps that receive or have received any industrial wastes, waste that is received from any of the facilities described under this subdivision, including those that are subject to regulation under subtitle D of the federal resource conservation and recovery act.

(F) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, which are classified as standard industrial classification 5015 and 5093.

(G) Steam electric power generating facilities, including coal handling sites.

(H) Transportation facilities classified as standard industrial classifications 40; 41; 42, except 4221 to 25; 43; 44; 45; and 5171 which have vehicle maintenance

shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance, including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication; equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i) to (vii), (ix), or (x) of this subdivision are associated with industrial activity.

(I) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that is located within the confines of the facility, provided the system has a design flow of 1.0 million gallons per day or more, or is required to have an approved federal pretreatment program under 40 C.F.R., part 403 (2000). Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the federal act.

(J) Facilities under standard industrial classifications 20; 21; 22; 23; 2434; 25; 265; 267; 27; 283; 285; 30; 31, except 311; 323; 34, except 3441; 35; 36; 37, except 373; 38; 39; and 4221 to 25.

(v) "Total maximum daily load" or "TMDL" means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

(w) "Trade secret" means the whole or any portion or phase of any manufacturing proprietary process or method which is not patented, which is secret, which is useful in compounding an article of trade that has a commercial value, and the secrecy of which the owner has taken reasonable measures to prevent from becoming available to persons other than those selected by the owner to have access thereto for limited purposes. "Trade secret" shall not be construed, for purposes of these rules, to include any information relative to the quantum and character of waste products or their constituents discharged or sought to be discharged into waters of this state.

(x) "Urbanized area" means a place and the adjacent densely populated territory that together have a minimum population of 50,000 people, as defined by the United States bureau of the census and as determined by the latest available decennial census.

(y) "Urbanizing area" means an area of contiguous census blocks with population densities of 1,000 persons or more per square mile that together have a population of 10,000 people or more, as determined by the latest available decennial census.

(z) "Vessel" means any contrivance that is used or capable of being used for navigation upon water, whether or not the contrivance is capable of self-propulsion, including any of the following:

- (i) Foreign and domestic vessels that are engaged in commerce upon the waters of the state.
- (ii) Passenger or other cargo-carrying vessels.
- (iii) Privately owned recreational watercraft.
- (iv) Any other floating craft.

(aa) "Waste" means any waste, wastewater, waste effluent, or pollutant that is discharged into water, including any of the following:

- (i) Dredged spoil.
- (ii) Solid waste.
- (iii) Incinerator residue.
- (iv) Sewage.
- (v) Garbage.
- (vi) Sewage sludge.
- (vii) Munitions.
- (viii) Chemical wastes.
- (ix) Biological materials.
- (x) Radioactive materials.
- (xi) Heat.
- (xii) Wrecked or discarded equipment.
- (xiii) Rock.
- (xiv) Sand.
- (xv) Cellar dirt.
- (xvi) Industrial, municipal, and agricultural waste.

(bb) "Wastewater" means liquid waste discharges directly or indirectly into the waters of the state that result from industrial and commercial processes and municipal operations, including liquid or water-carried process waste, cooling and condensing waters, and sanitary sewage.

(cc) "Water quality standards" means the part 4 water quality standards promulgated pursuant to part 31 of 1994 PA 451, as amended, being R 323.1041 to 323.1117 of the Michigan administrative code.

History: 1979 AC; 1985 AACS; 1992 AACS; 2003 AACS; 2005 AACS; 2006 AACS.

### **R 323.2106 Permit requirements of dischargers.**

Rule 2106. (1) A person discharging wastes into the surface or groundwaters of the state or on the ground as a point source discharge, whether or not in compliance with an outstanding order of determination, final order of determination, or stipulation with the department, shall promptly make application for and obtain from the department a valid national or state permit pursuant to section 3112 or 3113 of part 31 of the act and according to procedures and deadlines set forth in these rules.

(2) A person proposing a waste or wastewater discharge to the surface or groundwaters of the state shall apply not less than 180 days before commencement of the discharge or any other time period before commencement of the discharge as determined and required by the department, for a national or state permit on an appropriate application form supplied by or approved by the department.

(3) A person discharging wastes into surface waters of the state shall apply to the department for a national permit. A person discharging wastes on the ground or into groundwaters shall apply to the department for a state permit. The procedures, forms, and deadlines required by these rules shall apply to applications for either national or state permits.

History: 1979 AC; 2003 AACS.

**R 323.2108 Permits; application and filing procedures.**

Rule 2108. (1) An application for a permit shall be completed in accordance with and subject to guidelines in 40 C.F.R. §122.21 (2005).

(2) A person discharging waste or wastewater from more than 1 location shall file a separate application for each discharge location. A single application may be filed for multiple outfalls discharging from a single location, except that the discharge from each outfall shall be described separately in the application.

History: 1979 AC; 2003 AACS; 2005 AACS; 2006 AACS.

**R 323.2109 Permits; application exemptions.**

Rule 2109. A person who discharges or proposes to discharge the following types of waste or wastewater shall not be required to apply for a permit from the department pursuant to part 31 of the act or these rules:

(a) Human sewage that is discharged from vessels.

(b) Water, gas, and other materials that are injected into a well to facilitate the production of oil or gas, or water that is derived in association with oil or gas production and disposed of in a well if authorized by the state supervisor of wells.

(c) A discharge that is directed solely to a publicly owned treatment works, but not from a publicly owned treatment works.

(d) Point source discharges of storm water, unless a person is required to apply for a national permit pursuant to R 323.2161 or R 323.2196.

History: 1979 AC; 1992 AACS; 2003 AACS; 2005 AACS.

**R 323.2111 Rescinded.**

History: 1979 AC; 2003 AACS.

**R 323.2112 Permit applications; deficiencies; additional data requirements.**

Rule 2112. (1) The department, at its discretion or upon request of the regional administrator, may request of an applicant any additional information deemed necessary to complete or correct deficiencies in the application before processing the application or issuing or denying the issuance of a permit. A national permit or state permit shall not be issued by the department until an application is complete or any further information requested by the department is supplied.

(2) The department shall take proper enforcement action as prescribed by part 31 of the act against any person who fails to file a complete application, if deficiencies are not corrected or incomplete information is not supplied within 60 days to the department following its request by the applicant.

History: 1979 AC; 2003 AACCS.

**R 323.2114 Permit applications and other NPDES forms; valid signatories.**

Rule 2114. A state or national permit application form or any other NPDES form submitted to the department pursuant to these rules shall be signed as follows:

(a) For a corporation, by a principal executive officer of at least the level of vice president, or his or her designated representative, if the representative is responsible for the overall operation of the facility from which the discharge described in the permit application or other NPDES form originates.

(b) For a partnership, by a general partner.

(c) For a sole proprietorship, by the proprietor.

(d) For a municipal, state, or other public facility, by either a principal executive officer, the mayor, village president, city, or village manager, or other duly authorized employee.

History: 1979 AC; 2003 AACCS.

**R 323.2115 Permits; tentative determinations and draft permits.**

Rule 2115. (1) Before public notice pursuant to R 323.2117 of a national or state permit application and when the department is satisfied that the application is complete, the staff of the department shall make preliminary determinations on the application, including a proposed determination to issue or deny a state or national permit for the discharge described in the application.

(2) If the proposed determination is to issue a state or national permit, then all of the following additional tentative determinations shall be made:

(a) Proposed effluent limitations shall be identified for the constituents proposed to be limited.

(b) A proposed schedule of compliance for meeting the proposed effluent limitations, including interim dates and requirements, if applicable.

(c) A description of any other proposed restrictions or other conditions determined necessary by the department which will significantly affect the discharge described in the application, including pretreatment standards for discharges into publicly owned treatment works.

(3) The department shall prepare a draft permit based upon the tentative determinations made pursuant to subrules (1) and (2) of this rule for the national or state permit application. The draft permit shall be mailed to the applicant and, in the case of a national permit, to the regional administrator before public notice of the application.

History: 1979 AC; 2003 AACCS.

**R 323.2117 Public notice of permit application and preliminary determinations.**

Rule 2117. (1) The department shall prepare and sign a public notice of an application for a national permit, or a state permit as deemed appropriate by the department, and of the proposed determination to issue or deny a permit for the proposed or existing discharge identified in the application. The notice shall be circulated within the geographical area of the proposed or existing discharge in 1 or more of the following ways:

(a) Posting of the notice in the post office or other public buildings of the municipality nearest the premises of the applicant in which the discharge is or will be located.

(b) Posting of the notice at the entrance to the applicant's premises or nearby.

(c) Publishing the notice in 1 or more newspapers of general circulation in the area of the applicant, or if appropriate, in an applicable periodical.

(2) A copy of the notice shall be transmitted to the permit applicant and shall be available at the department office in Lansing and at the department district office nearest to the geographical location of the applicant. Any person may make a written request for a copy of the notice which will be mailed to him or her.

History: 1979 AC; 2003 AACCS.

### **R 323.2118 Public notice; contents and information.**

Rule 2118. A public notice of a state or national permit application shall contain all of the following information:

(a) The date of posting or publication of the public notice.

(b) The address and telephone number of the department office in Lansing and the department district office nearest to the geographical location of the applicant.

(c) The name and address of the applicant.

(d) A concise description of the applicant's activities and operations which result in the discharge identified in the permit application.

(e) The name of the waterway to which the discharge is made or is proposed to be made, including the location of the proposed or existing discharge identified in the application.

(f) A statement of the department's tentative determination to issue or deny the permit for the discharge identified in the application.

(g) A concise description of the procedures for the formulation of final determinations including information on the comment period prescribed in R 323.2119 or other means by which interested persons may comment on the tentative determinations.

(h) The address and telephone number of the department office where more information on the application may be obtained or where copies of the draft permit prepared pursuant to R 323.2115 and fact sheets may be obtained and any other applicable NPDES forms and related documents may be inspected or copied.

History: 1979 AC; 2003 AACCS.

### **R 323.2119 Public notice; comment period for interested persons.**

Rule 2119. (1) Up to 30 days following the date of posting or publication of the public notice pursuant to R 323.2117, an interested person may submit his or her views in writing on the application or department tentative determinations, or both, to the department. The time for public comment may be extended by the department if it determines that an extension of time is necessary to facilitate additional public comment.

(2) All views submitted to the department in writing by interested persons during the comment period shall be retained and considered in the formulation of final determinations by the department on the permit application.

History: 1979 AC; 2003 AACS.

### **R 323.2121 Fact sheets on permit applications.**

Rule 2121. (1) For each state or national permit application which identifies an existing or proposed discharge of 500,000 gallons or more for any day of the year, the department shall prepare and make available a fact sheet with respect to the application described in the public notice, which shall contain information prescribed by R 323.2122.

(2) The department may prepare a fact sheet for any existing or proposed discharge identified in an application of less than 500,000 gallons for any day of the year, if it deems the discharge is of significant importance to warrant additional information for public comment.

(3) A copy of the fact sheet shall be available at the department office in Lansing and at the department district office nearest to the geographical location of the applicant. Any person may request in writing a copy of the fact sheet which will be mailed to him or her.

History: 1979 AC; 2003 AACS.

### **R 323.2122 Fact sheets on permit applications; contents and information.**

Rule 2122. The fact sheet prepared pursuant to R 323.2121 shall contain, but is not limited to, all of the following information:

(a) A sketch or detailed description of the location of the existing or proposed discharge described in the permit application.

(b) A quantitative description of the existing or proposed discharge including, but not limited to, all of the following information:

(i) Its rate or frequency or average daily flow.

(ii) Its summer and winter temperatures in degrees Fahrenheit and mixing zone information.

(iii) If the discharge is a thermal discharge subject to limitation under the federal act.

(iv) Its average daily discharge in pounds per day of any pollutants or other constituents subject to limitation under part 31 of the act or the federal act or rules or regulations promulgated thereunder.

(c) The preliminary determinations made by the department on the permit application pursuant to R 323.2115.

(d) A concise citation of water quality standards, effluent limitations and standards, and mixing zones, if applicable, to be applied to the discharge, and the uses for which the receiving waters have been classified.

(e) A complete description of the procedures used by the department to formulate final determinations on the application and existing or proposed discharges, including the 30-day comment period on the public notice, procedures for requesting a public hearing on the application pursuant to R 323.2130 and other procedures to facilitate public comment and participation in the formulation of final determinations by the department.

History: 1979 AC; 2003 AACCS.

### **R 323.2124 Public notices and fact sheets; mailing lists.**

Rule 2124. (1) An interested person who desires to receive copies of all public notices or fact sheets, or both, on state or national permit applications for discharges in a geographical drainage area of the state as identified in subrule (2) of this rule, may request that his or her name be placed on a permanent mailing list of the department for the information. The request shall be made in writing to the department office in Lansing and shall be renewed in December of each year. Failure to renew the request is just cause for the department to remove a name from the mailing list.

(2) The written request of an interested person to the department shall clearly identify the name of the person, the person's address, the documents desired, and the geographical drainage area of the state for which information is requested. A separate request shall be made for each of the following geographical drainage areas of the state:

- (a) Lake Michigan and tributaries thereto, entire.
- (b) Lake Michigan and tributaries thereto, Upper Peninsula.
- (c) Lake Michigan and tributaries thereto, Lower Peninsula.
- (d) Lake Superior and tributaries thereto.
- (e) Lake Huron and tributaries thereto.
- (f) Lake Erie and tributaries thereto.
- (g) St. Mary's river.
- (h) Detroit river, Lake St. Clair, and St. Clair river and tributaries thereto.

History: 1979 AC; 2003 AACCS.

### **R 323.2125 Public notices and fact sheets; notice to other governmental agencies.**

Rule 2125. (1) Upon receipt of an application for a national permit which identifies an existing or proposed discharge into interstate waters, and when the department determines that the discharge may affect the quality of the waters of any other state, it shall notify the appropriate state or interstate agency of the discharge and shall transmit a copy of the public notice and fact sheet on the application thereto. Upon

request of the state or interstate agency, the department shall also transmit a copy of the application and the draft permit prepared pursuant to R 323.2115.

(2) A state or interstate agency notified by the department pursuant to subrule (1) of this rule shall have 45 days in which to comment on the existing or proposed discharge and may submit in writing to the department and the regional administrator its views and recommendations. The views and recommendations submitted to the department by another state or interstate agency may be incorporated into the national permit if determined necessary and desirable by the department. If not incorporated into the national permit, the department shall notify the state or interstate agency in writing and provide an opportunity for hearing, if requested by the state or interstate agency.

(3) When a public notice on a national permit application for discharges into navigable waters is posted or published, the department shall transmit a copy of the notice and fact sheet thereon to the appropriate district engineer of the United States army corps of engineers for existing or proposed discharges identified therein, if such discharges are not minor discharges.

(4) If requested in writing thereby, the department shall mail a copy of a public notice or fact sheet, or both, for an application for a national or state permit, to any other federal, state, or local agency or affected Canadian provincial or federal agencies. The provisions of subrule (2) of this rule with regard to opportunity for comment and hearings apply to the federal, state, or local agencies, or Canadian provincial or federal agencies.

History: 1979 AC; 2003 AACS.

### **R 323.2126 Rescinded.**

History: 1979 AC; 2003 AACS.

### **R 323.2127 Public access to NPDES forms and department files and records.**

Rule 2127. A copy of a state or national permit application, public notice, fact sheet, draft permit, and other NPDES forms relating thereto, including written public comment thereon, and other reports, files, and information relating to the application not classified as confidential information by the department pursuant to R 323.2128 shall be available for public inspection and copying during normal business hours at the department office in Lansing and an appropriate district office of the department in the geographical area of the applicant. Document inspection and copying procedures shall be according to R 323.1015.

History: 1979 AC; 2003 AACS.

### **R 323.2128 Confidential information.**

Rule 2128. Upon determination by the department that public disclosure of information contained on any NPDES form, except information concerning effluent

data or information from the files and records of the department not otherwise entitled to protection against disclosure by previous action of the department or of EPA, would divulge information entitled to protection as trade secrets of the applicant, the department shall label and otherwise handle the information as confidential, and shall notify and forward the information to the regional administrator. In making its determination of entitlement to protection as a trade secret, the department shall consider evidence submitted by the applicant. If the department denies entitlement to protection as a trade secret, the applicant, upon notification thereof, shall have 30 days in which to appeal the decision to the department. If the

department determines, following appeal, that the information is not entitled to trade secret status, then the department, not less than 30 days after the applicant is notified of the decision, shall release the information for inspection or copying pursuant to R 323.2127. Where EPA has previously accorded trade secret status to information of an applicant, the department shall accept that finding as entitlement to trade secret status for the purpose of this rule. Unless otherwise determined by the regional administrator or the department, all information labeled by the department as confidential shall not be available to the public for inspection or copying pursuant to R 323.2127, except that the information shall be made available at any time to the regional administrator or other authorized representative of the United States concerned with carrying out part 31 of the act or the federal act, upon written request therefore.

History: 1979 AC; 2003 AACS.

**R 323.2130 Permit applications; public hearings, determinations, and scheduling.**

Rule 2130. (1) Within the 30-day comment period or other applicable comment period provided after posting or publishing of a public notice pursuant to R 323.2119, an applicant, any affected state or state or interstate agency or country, the regional administrator, or any other interested person or agency may file a petition with the department for a public hearing on an application for a state or national permit. A petition for a public hearing shall indicate the reasons why a hearing is requested, the interest in or relationship of the petitioner to the application or existing or proposed discharge identified therein, and specifically indicate which portions of the application or other NPDES form or information constitutes necessity for a public hearing. If the department determines that a petition constitutes sufficient cause or that there is sufficient public interest in an application for a public hearing, it may direct the scheduling of a hearing thereon.

(2) A hearing shall be scheduled not less than 4 weeks nor more than 8 weeks after the department determines the necessity of the hearing in the geographical location of the applicant or, at the discretion of the department, at another appropriate location, and shall be noticed not less than 30 days before the hearing in the same manner as the public notice on an application pursuant to R 323.2117 and R 323.2118. The notice of public hearing shall be transmitted to the applicant and shall be published in at least 1 newspaper of general circulation in the geographical area of the existing or proposed discharge identified on the permit application and shall be mailed to any person or group upon request therefore. Notice shall be mailed to all

persons and governmental agencies which received a copy of the notice or the fact sheet for the permit application.

(3) The department may hold a single public hearing on related groups of permit applications.

History: 1979 AC; 2003 AACCS.

**R 323.2131 Permit applications; public hearing notice; contents.**

Rule 2131. A notice by the department of a public hearing on an application shall contain, in addition to the time and place of the hearing, all of the following information:

(a) The address and telephone number of the department office in Lansing, and the appropriate district office of the department.

(b) The name and address of the applicant whose application will be considered at the public hearing.

(c) The name of the waterway to which a discharge, as identified on the application, is or will be made, and a concise description of the location on the waterway of the discharge.

(d) Reference to the public notice posted and published for the application, including the identification numbers and dates of issuance thereof.

(e) A brief statement of the purpose of the public hearing.

(f) A concise description of the issues which have been identified by the petitioners requesting the public hearing.

(g) The address or addresses of department offices where interested persons may inspect or obtain copies of a draft permit, fact sheet, or other applicable NPDES forms or other reports, files, or information relating to an application subject to public hearing, if the documents have not been labeled confidential by the department pursuant to R 323.2128.

(h) A concise description of the nature of the public hearing and the issues to be heard, with reference to department rules and procedures to be followed.

History: 1979 AC; 2003 AACCS.

**R 323.2133 Permit applications; determinations; issuance; denial.**

Rule 2133. (1) After review of tentative determinations or modifications thereof made by the staff of the department pursuant to R 323.2115, any comments on the permit application received by the department from the regional administrator pursuant to R 323.2112, comments received from the public during the 30-day comment period following public notice of the permit application as provided by R 323.2117, or other applicable recommendations or determinations, and review of the public hearing record after a hearing on an application pursuant to R 323.2130, the department shall make a final determination on the permit application and may issue or deny a state or national permit pursuant to section 3106 of part 31 of the act.

(2) An appeal to a final determination of the department made pursuant to subrule (1) of this rule, or to a condition of a permit issued, or the denial of a permit pursuant to

part 31 of the act and the rules shall be in accordance with and subject to section 3113 of part 31 of the act.

(3) When the department issues a state or national permit to a discharger in possession of an order of determination or stipulation of the department issued or entered into before April 15, 1973, the state or national permit conditions shall take precedence over all conditions of the order of determination or stipulation. If the department denies the issuance of a state or national permit to a discharger in possession of an order of determination or stipulation of the department, compliance with the conditions of the order of determination or stipulation is not a defense of the discharger's obligation as prescribed by part 31 of the act.

(4) A national permit issued by the department pursuant to part 31 of the act and these rules is a state permit where the permit is issued for waste or wastewater discharges into the surface waters of the state. A state permit issued for a waste or wastewater discharge into groundwaters or on the ground is not a national permit required pursuant to the federal act.

History: 1979 AC; 2003 AACCS.

#### **R 323.2134 Permits; transmittal to EPA.**

Rule 2134. The department shall transmit all copies of national permits issued by the department pursuant to part 31 of the act and these rules to the regional administrator immediately following issuance. If a permit is denied, written notice thereof and the reasons therefore shall be transmitted to the regional administrator.

History: 1979 AC; 2003 AACCS.

#### **R 323.2136 Terms and conditions of permits; prohibited discharges.**

Rule 2136. (1) A permit shall not be issued to a person proposing any of the following discharges:

(a) A discharge containing a radiological, chemical, or biological warfare agent, or a high-level radioactive waste.

(b) A discharge containing a substance which the department determines would substantially impair anchorage, or navigation, or both.

(c) A point source discharge in conflict with an areawide waste treatment management plan or amendments thereto, prepared by a management agency pursuant to section 208(b) of the federal act, unless the department finds the variance necessary to protect the public health, safety, and welfare.

(2) An NPDES permit will not be issued to a person proposing any of the following discharges into waters subject to regulation under the federal act:

(a) A discharge containing a radiological, chemical, or biological warfare agent, or a high-level radioactive waste.

(b) A discharge containing a substance which, as determined by the secretary of the army acting through the chief of engineers of the United States army corps of engineers, would substantially impair anchorage, or navigation, or both.

(c) A discharge to which the regional administrator objects in writing to the department pursuant to R 323.2112, pursuant to any right to object provided the administrator of EPA in section 402(d) of the federal act.

(d) A point source discharge in conflict with an areawide waste treatment management plan, or amendments thereto, prepared by a management agency pursuant to section 208(b) of the federal act unless otherwise approved by EPA.

History: 1979 AC; 2003 AACS.

**R 323.2137 Terms and conditions of permits; effluent standards and limitations.**

Rule 2137. When applicable, a permit issued by the department shall contain terms and conditions deemed necessary by the department to ensure compliance with at least the following effluent standards and limitations:

(a) Effluent limitations for publicly owned treatment works and other point source discharges when promulgated by the administrator of EPA pursuant to sections 301, 302, 307, and 308 of the federal act, in accordance with and subject to the date of compliance prescribed therein, if the limitations are not in conflict with part 31 of the act or the federal act.

(b) Standards of performance, when promulgated by the administrator of EPA, for new sources within the categories defined in section 306 of the federal act.

(c) If the permit is for a discharge from a publicly owned treatment works, standards of performance, pretreatment standards or effluent limitations or prohibitions when promulgated by the administrator of EPA for toxic substances, monitoring, and charges pursuant to sections 204(b), 307, and 308 of the federal act, if the standards, limitations, or prohibitions are not in conflict with part 31 of the act or the federal act.

(d) Any other more stringent limitation deemed necessary by the department to meet applicable water quality standards, treatment standards, or schedules of compliance established pursuant to part 31 of the act or rules promulgated pursuant thereto, or necessary to meet other federal law or regulation enacted or promulgated subsequent to these rules, or required to meet any applicable water quality standards, including applicable requirements necessary to meet maximum daily loads established by and incorporated into the state's continuing planning process required pursuant to section 303 of the federal act.

History: 1979 AC; 2003 AACS.

**R 323.2138 Terms and conditions of permits; consistency with water quality standards.**

Rule 2138. When a state or national permit is issued by the department which contains any effluent standards or limitations set forth in R 323.2137, the department shall verify that the discharge authorized by the issued permit will not violate applicable water quality standards. When a permit contains additional effluent limitations based upon applicable water quality standards, the department shall

prepare a wasteload allocation ensuring that the discharge authorized by the issued permit is consistent with applicable water quality standards.

History: 1979 AC; 2003 AACCS.

**R 323.2139 Terms and conditions of permits; requirements to comply with plans.**

Rule 2139. The department, if it deems necessary, may impose any further requirements under the terms and conditions of a state or national permit to comply with an areawide waste treatment management plan, or amendments thereto, prepared by a management agency pursuant to section 208(b) of the federal act.

History: 1979 AC; 2003 AACCS.

**R 323.2140 Terms and conditions of permits; interim requirements.**

Rule 2140. Before promulgation of regulations by the administrator of EPA relating to applicable effluent standards or limitations, or standards of performance set forth in R 323.2137, the department may impose any standard, limitation, or condition within a state or federal permit to ensure compliance with part 31 of the act and the federal act.

History: 1979 AC; 2003 AACCS.

**R 323.2141 Terms and conditions of permits; discharges from vessels.**

Rule 2141. (1) If a national permit is issued pursuant to part 31 of the act and these rules for the discharge of wastes from a vessel other than human sewage exempted by R 323.2109, the permit shall contain requirements in accordance with and subject to the applicable regulations promulgated by the secretary of the federal department in which the United States coast guard is operating, which establish specifications for transportation, handling, carriage, storage, and stowage of such wastes.

(2) The department shall issue a national permit for the discharge of wastes from a vessel only when the permit is in conformance with part 95 of the act.

History: 1979 AC; 2003 AACCS.

**R 323.2142 Terms and conditions of permits; other limitations and requirements.**

Rule 2142. When issuing a state or national permit pursuant to part 31 of the act and these rules, the department shall specify therein, where applicable, average and maximum daily quantitative limitations for the level of wastewater constituents in terms of weight and, if appropriate, average or maximum concentration limits for the wastes in the discharge authorized by the issued permit.

History: 1979 AC; 2003 AACCS.

**R 323.2145 Terms and conditions of permits; schedules of compliance.**

Rule 2145. (1) A person issued a state or national permit by the department pursuant to R 323.2133 who is not in compliance with applicable effluent standards and limitations or other requirements conditioned therein at the time the permit is issued shall achieve compliance within a period of time as set forth by the department, with effluent standards and limitations, with water quality standards, or with specific requirements or conditions set by the department. The department shall require compliance with terms and conditions of the permit in the shortest reasonable period of time as determined thereby, or within a time schedule for compliance which shall be specified in the issued permit.

(2) If a time schedule for compliance specified in a state or national permit which is established by the department pursuant to subrule (1) of this rule is more than 9 months, then the time schedule shall provide for interim dates of achievement for compliance with certain applicable terms and conditions of the permit. Each interim date specified in the permit shall not be more than 9 months and, to the extent practicable, shall fall on March 31, June 30, September 30, or December 31.

History: 1979 AC; 2003 AACCS.

**R 323.2146 Terms and conditions of permits; compliance reports by dischargers.**

Rule 2146. Within 14 days after an interim date of compliance or the final date of compliance specified in a state or national permit, a permittee shall provide the department with written notice of his or her compliance or noncompliance with the requirements or conditions specified to be completed by that date. Failure to submit the written notice to the department is just cause for the department to pursue enforcement action against the discharger pursuant to part 31 of the act or these rules.

History: 1979 AC; 2003 AACCS.

**R 323.2147 Noncompliance lists.**

Rule 2147. (1) The department shall prepare and submit to the regional administrator, on or before February 28, May 31, August 31, and November 30, a list of all dischargers holding national permits which, as of 30 days before the date of the report, have submitted a report to the department pursuant to R 323.2146 showing noncompliance with requirements set forth by the department to be met on interim dates or on the final date of compliance specified in the permit and those which have not filed a timely report. The noncompliance list shall be available to the public at appropriate department offices for inspection and copying, and shall contain all of the following information:

- (a) The name and address of each noncomplying permittee.
- (b) A concise description of the nature of noncompliance.

(c) A description of proposed actions to be taken by the department or the permittee to correct the noncompliance.

(d) Any other information deemed necessary by the department to explain or mitigate an instance of noncompliance.

(2) A discharger who fails or refuses to comply with an interim or final date of compliance specified in a state or national permit may be deemed by the department to be in violation of the permit and may be subject to enforcement action prescribed in part 31 of the act or these rules.

History: 1979 AC; 2003 AACCS.

### **R 323.2149 Other terms and conditions of state and national permits.**

Rule 2149. (1) As part of the condition for issuing a state or national permit by the department pursuant to these rules, a discharger shall assure the department of all of the following:

(a) All discharges authorized by the permit are consistent with the terms and conditions of the permit and that the permittee will make all reasonable effort to meet any interim or final dates of compliance specified in the permit.

(b) Any facility expansion, production increases, process modifications, changes in discharge volume, or other changes in operations or conditions of the permittee which may result in a new or increased discharge of waste or wastewater shall be reported to the department by submission of a new application for a state or national permit pursuant to R 323.2108, or if the discharge does not violate effluent limitations specified in the permit, by submission to the department of notice of a new or increased discharge.

(c) The permittee shall allow any authorized department representative to enter upon the permittee's premises at any reasonable time, upon presentation of credentials, to have access to and copy any applicable records, to inspect process facilities, treatment works, monitoring methods or equipment therefore, or to sample any effluent of a discharge authorized by a permit.

(d) At all times the permittee shall maintain in good working order and operate as efficiently as possible any facilities or systems of control installed to achieve compliance with the terms and conditions of a permit.

(2) Before the department issues a state or national permit for a discharge from the publicly owned treatment works, it shall secure assurance from the applicant that it will be notified of all of the following:

(a) Any new introduction of waste or wastewater constituents into the treatment works from a source which would be a new source as defined in section 306 of the federal act if the source were discharging wastewater constituents.

(b) Except as to categories and classes of point sources or discharges specified by the department, any new introduction of waste or wastewater constituents into the treatment works from a source which would be subject to section 301 of the federal act if the source were discharging waste or wastewater constituents.

(c) Any substantial change in volume or character of waste or wastewater constituents being introduced into such treatment works by a source discharging wastewater into the treatment works at the time of issuance of a permit.

(3) If a permit is issued by the department for a discharge from a publicly owned treatment works, the permittee shall require any industrial user of the treatment works to comply with the requirements of sections 204(b), 307, and 308 of the federal act. To ensure compliance, a permittee shall require of each industrial user subject to the requirements of section 307 of the federal act to submit periodic notice over intervals, of not more than 9 months, of progress toward full compliance with section 307 requirements. The permittee shall forward a copy of the periodic notice to the department.

History: 1979 AC; 2003 AACCS.

### **R 323.2150 Duration of permits.**

Rule 2150. A state or national permit issued pursuant to part 31 of the act and these rules shall have a fixed term which shall not be more than 5 years.

A person who wishes to continue to discharge waste or wastewater into the surface or groundwaters of the state or on the ground shall apply for reissuance of a permit pursuant to R 323.2151.

History: 1979 AC; 2003 AACCS.

### **R 323.2151 Review and reissuance of state and national permits.**

Rule 2151. (1) Not less than 180 days before the expiration date of a state or national permit issued by the department pursuant to part 31 of the act and these rules, a permittee who wishes to continue the discharge of waste or wastewaters into the surface or groundwaters of the state or on the ground shall submit a written request to the department for reissuance.

(2) After receipt of written request for reissuance of a state or national permit by a permittee, the department shall review the request, and before reissuing a permit shall be assured by the permittee of all of the following:

(a) The permittee is in compliance with or has substantially complied with the terms, conditions, requirements, and schedules of compliance of the existing state or national permit.

(b) The department has up-to-date information on the permittee's production levels, waste treatment practices, and the nature, contents, and frequency of the permittee's discharge. The information shall be available to the department either through the submission of new NPDES forms by the permittee or by means of monitoring records or reports submitted thereto pursuant to R 323.2155.

(c) The discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements, including any additions to, or revisions or modifications of, the effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(3) The department shall follow the public notice and public participation procedures specified in R 323.2117 to R 323.2119 and R 323.2124 to R 323.2127 before any state or national permit is reissued pursuant to this rule.

(4) A copy of a national permit reissued by the department shall be transmitted to the regional administrator with any other appropriate NPDES forms or other applicable information relating thereto.

History: 1979 AC; 2003 AACS.

**R 323.2153 Point source discharges; standards of performance.**

Rule 2153. A facility, building, installation, or industry which discharges a point source discharge subject to a national permit and which is so constructed after October 18, 1972, to meet all applicable effluent standards of performance as required by the federal act, part 31 of the act, or these rules, shall not be subject to any more stringent standard of performance for any wastewater constituent during a 10-year period beginning on the date of completion of construction, or during the period of depreciation or

amortization of the facility for the purposes of section 167, or 169, or both, of the internal revenue code of 1954, 26 U.S.C. §167 or 169, whichever period ends first, unless reallocation of effluent loads are necessitated in a discharge complex to meet water quality standards.

History: 1979 AC; 2003 AACS.

**R 323.2154 Monitoring of discharges authorized by permits; requirements.**

Rule 2154. (1) The department may set forth monitoring requirements of any discharge authorized by a state or national permit issued by it pursuant to these rules. In requiring any discharge monitoring, the department shall specify the type of monitoring required, and the discharger shall obtain approval of the installation, use, and maintenance of monitoring equipment or methods to be employed therefore from the department.

(2) A discharge authorized by a national permit which the regional administrator, by written request to the department, requires to be monitored or which contains toxic waste or wastewater constituents for which an effluent standard or limitation has been established by the administrator of EPA pursuant to section 307(a) of the federal act, shall be monitored by the permittee for any or all of the following:

(a) The flow of the discharge in gallons per day or other volumes required by the department.

(b) Waste or wastewater constituents subject to reduction or elimination under the terms and conditions of the permit.

(c) Specific waste or wastewater constituents which are determined by the department to have a significant effect on the quality of the waters of the state.

(d) Waste or wastewater constituents specified as subject to monitoring by the administrator of EPA in regulations promulgated pursuant to the federal act.

(e) Any other specific waste or wastewater constituents which the regional administrator may request in writing to be monitored.

(3) The frequency of monitoring of a waste or wastewater discharge required to be monitored pursuant to this rule shall be specified in a state or national permit when issued, except that the department at any time may require additional monitoring by notification of the permittee in writing.

History: 1979 AC; 2003 AACCS.

**R 323.2155 Monitoring of discharges authorized by permits; recording and reporting.**

Rule 2155. (1) A permittee required to monitor a waste or wastewater discharge pursuant to R 323.2154, shall maintain records of all information resulting from such monitoring, including the date, place, and time of sampling; dates analyses were performed; the person performing the analyses; the analytical techniques, procedures, or methods used; and the results of the analyses. All records and results of monitoring activities, and calibration and maintenance records shall be retained by the permittee a minimum of 3 years unless otherwise required or extended by the department or the regional administrator.

(2) The department may require a permittee to report periodically the results of all monitoring activities undertaken on an appropriate reporting form supplied by the department. The department shall notify the permittee of the frequency of reporting, but the reporting frequency shall not be less than at least once in a period of 1 year.

(3) Upon written request of the regional administrator, the department shall transmit thereto any reporting form or other monitoring information required by this rule.

History: 1979 AC; 2003 AACCS.

**R 323.2159 State and national permits; modification or revocation by the department.**

Rule 2159. (1) The department may modify any term or condition, including a schedule of compliance, of a permit, or may revoke a permit upon its finding of any of the following:

(a) There is a change in any condition that requires a temporary or permanent reduction or elimination of a permitted discharge or constituent thereof.

(b) The administrator of EPA issues a regulation prescribing a restriction or prohibition of a waste or wastewater constituent which is not covered by the terms and conditions of a permit, or the regulation is more stringent than any limitation imposed on a wastewater constituent in a permit.

(c) A modification of the terms and conditions of a permit or a time schedule thereon is necessary because of an act of God or other conditions beyond the control of the permittee.

(d) In the case of discharges from publicly owned treatment works, federal treatment works grant funds are not available or are not sufficient to allow construction of the treatment works in a time schedule set forth in the permit.

(e) There is a violation of any term or condition of the permit.

(f) The permittee has obtained a permit by misrepresentation or has failed to disclose all relevant facts to the commission.

(g) A toxic effluent standard or prohibition, including any schedule of compliance specified therein, is established pursuant to section 307(a) of in the permittee's discharge and the standard or prohibition is more stringent than any limitation upon the waste or wastewater constituent in the permit.

(h) The POTW receives wastewater from a nondomestic source and the development of a pretreatment program is necessary to control the introduction of regulated pollutants.

(i) When a request for removal credits is approved in accordance with R 323.2313(a).

(2) The department shall notify the regional administrator of any change in status or condition of a permit and he or she shall have an opportunity to object thereto, in writing, within 45 days before the effective date of the modification. If the regional administrator objects in writing, then the objection shall be resolved before the modification is approved by the department, unless the right to object is waived, in writing, by the regional administrator.

(3) A permittee who is affected by a modification of a permit by the department shall be notified not less than 90 days before the effective date of the modification and, upon petition therefore, shall have a hearing thereon pursuant to section 3112 of part 31 of the act.

(4) If the department modifies an effluent limitation or a schedule of compliance in a permit, notice of the modification shall be mailed to all persons on the department mailing list for public notices and fact sheets as prescribed by R 323.2124, and any interested person may comment thereon within 30 days following the date of notification.

History: 1979 AC; 1985 AACS; 2003 AACS.

### **R 323.2160 Enforcement.**

Rule 2160. (1) A person who submits false information to the department on an application, other NPDES form, or any other reporting form, or who violates any of these rules, a term, condition, or schedule of compliance contained within a valid state or national permit, or part 31 of the act is subject to the remedies or penalties prescribed by section 3115 of part 31 of the act.

(2) The department shall notify the regional administrator of all violations of these rules, a valid permit, or part 31 of the act, and of the means by which the department proposes to correct or require the correction of violations.

History: 1979 AC; 2003 AACS.

### **R 323.2161 Storm water discharge permits.**

Rule 2161. (1) A person who discharges storm water that is subject to regulation pursuant to the provisions of section 402(p) of the federal act and the corresponding regulations promulgated in 40 C.F.R. §122.26 (2000) shall apply for or obtain a national permit if the person has, will have, or operates any of the following:

(a) Storm water discharges associated with industrial activity. A national permit is not required if, in accordance with 40 C.F.R. §122.26(g) (2000), a discharge composed entirely of storm water is not a storm water discharge associated with industrial activity because there is no exposure of industrial materials and activities to rain, snow, snowmelt, or runoff, or any combination, and if the discharger has met the conditions of no exposure listed on a certification form provided by the department. The discharger shall complete, sign, and submit to the department the certification form provided by the department. A new certification form shall be submitted once every 5 years to qualify for continuation of the no exposure exclusion. This exclusion provision shall no longer apply and a national permit shall be required under either of the following conditions:

(i) If circumstances change and industrial materials or activities become exposed to rain, snow, snowmelt, or runoff, or any combination, then the conditions for this exclusion no longer apply. Any conditionally exempt discharger who anticipates changes in circumstances shall apply for and obtain national permit authorization before the change of circumstances. Failure to do so could result in penalties as provided under part 31 of the act for a discharge without a permit.

(ii) Notwithstanding the provisions of this subdivision, the department retains the authority to require national permit authorization, and deny this exclusion, upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to, a violation of an applicable water quality standard.

(b) Storm water discharges from a site of construction activity. The notice of coverage shall be received before the startup of construction for any storm water discharge from a site of construction activity disturbing 5 acres or more.

(c) An MS4 located in an urbanized area, except those exempted through cooperation with a permitted MS4 owner or operator under R 323.2161(2). Only storm water that flows from within the urbanized area is regulated.

(d) An MS4 located within an urbanizing area, which is designated by the department to need a national permit on the basis that it discharges storm water which results in a violation of water quality standards or which would imminently result in a violation of water quality standards in the absence of regulation.

(e) Designation from the department that storm water controls are needed for the discharge based on wasteload allocations that are part of total maximum daily loads (TMDLs) developed by the department that address the pollutants of concern.

(f) A discharge, or category of discharges within a geographic area, that is determined by the department to be a significant contributor of pollutants to waters of the state, or to contribute to a violation of water quality standards, or to contribute substantially to the pollutant loadings of a physically interconnected, regulated MS4.

(g) A storm water discharge that is the subject of a petition to the department to require a national permit, and the department determines that the discharger shall apply for a national permit in accordance with subdivision (f) of this subrule.

(2) If a national permit application is required for a municipal separate storm sewer system under subdivision (c), (d), (e), or (f) of this subrule, then each city, village, or township with the power or authority to control storm water discharges to the regulated MS4 shall apply for a national permit. An MS4 owner or operator other than a city, village, or township may cooperate with a permitted MS4 owner or operator so that the terms and conditions of the national permit may be met by the permitted MS4 owner or operator for the other owner or operator's municipal separate storm sewer system or systems in the regulated area. In this case, the MS4 owner or operator that is not a city, village, or township does not need to apply for a national permit. An MS4 owner or operator that is not a city, village, or township that cannot reach a cooperative agreement with the permitted MS4 owner or operator shall apply for a national permit for the MS4 it owns or operates.

(3) A person who is designated by the department to be regulated in accordance with subrule (1)(d), (e), or (f) of this rule shall apply to the department for a national permit within 180 days of receipt of notice from the department that a national permit is needed, unless permission for a later date is granted by the department. This subrule does not apply to storm water discharged from a site of construction activity.

History: 1992 AACCS; 2003 AACCS; 2006 AACCS.

**R 323.2161a Municipal storm water discharge; national permit minimum requirements.**

Rule 2161a. (1) The national permit for a regulated MS4 shall require, at a minimum, that the permittee develop, implement, and enforce a storm water management program designed to do both of the following:

(a) Reduce the discharge of storm water pollutants to the maximum extent practicable (MEP).

(b) Protect water quality and satisfy the appropriate water quality requirements of the federal act.

(2) Unless authorized to discharge under an individual national permit applied for under 40 C.F.R. §122.26(d) (2000) or authorized to discharge under another permit that the regional administrator has determined is adequate to meet the requirements of the federal act, a person with a national permit for a regulated MS4 shall comply with the requirements of 40 C.F.R. §122.34 (2000) as specified in R 323.2161a(3) to (12).

(3) A storm water management program for a regulated MS4 shall include a plan for implementing, at a minimum, the measures described as follows:

(a) A public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

(b) At a minimum, comply with state and local public notice requirements when implementing a public involvement/participation program.

(c) A program to detect and eliminate illicit connections and discharges. Under the illicit discharge elimination program, a permittee shall, at a minimum, perform all of the following:

(i) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls the permittee owns or operates, or points of discharge into an MS4 owned or operated by another public body, and the names and location of all waters of the state that receive discharges from the permittee's MS4.

(ii) Develop and implement a plan to detect and address non-storm water discharges to the municipal separate storm sewer system, including illegal dumping and failing on-site sewage disposal systems as appropriate.

(iii) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste into the municipal separate storm sewer system.

(iv) To the extent allowable under state or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into the municipal separate storm sewer system and implement appropriate enforcement procedures and actions. Discharges already authorized under an NPDES permit are excluded from this requirement. Discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the state. The following categories of non-storm water discharges or flows need to be prohibited only if identified as significant contributors to violations of state water quality standards:

(A) Water line flushing.

(B) Landscape irrigation.

(C) Diverted stream flows.

(D) Rising ground waters.

(E) Uncontaminated ground water seepage into storm sewers.

(F) Uncontaminated pumped ground water, except for groundwater cleanups.

(G) Discharges from potable water sources.

(H) Foundation drains.

(I) Air conditioning condensation.

(J) Irrigation water.

(K) Springs.

(L) Water from crawl space pumps.

(M) Footing drains.

(N) Lawn watering.

(O) Water from noncommercial car washing.

(P) Flows from riparian habitats and wetlands.

(Q) Residential swimming pool discharges and dechlorinated swimming pool discharges.

(R) Street wash water.

(d) A storm water management program for areas of construction activity, which shall include all of the following:

(i) A procedure to notify the part 91 permitting entity and the department when soil or sediment are deposited to the regulated MS4 from a construction activity in violation

of section 9116 of part 91 of the act or in violation of the effective prohibition on non-storm water discharges into the regulated

MS4 separate storm sewer system as required in subdivision (c)(iv) of this subrule.

(ii) A procedure to ensure adequate allowance for soil erosion and sedimentation controls on preliminary site plans, as applicable.

(iii) A procedure for receipt and consideration of complaints or other information submitted by the public.

(e) A program to address post-construction storm water runoff from new development and redevelopment projects that disturb 1 or more acres, including projects less than 1 acre that are part of a larger common plan of development or sale, that discharge into the regulated MS4. The program shall include an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state or local law. The ordinance or other regulatory mechanism shall be designed to prevent or minimize water quality

impacts, including resource impairment resulting from extreme flow volumes and flow conditions, and shall include all of the following:

(i) A requirement for review of post-construction storm water best management practices during initial site plan review, as applicable.

(ii) Strategies for implementation of structural or non-structural, or both, best management practices appropriate for the community.

(iii) Requirements for adequate long-term operation and maintenance of best management practices.

(f) An operation and storm water maintenance program that includes a staff training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations, using training materials that are available from EPA, the state, or other organizations. The storm water management program shall include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

(4) A city, village, or township shall comply with the terms and conditions of its national MS4 permit in all areas within its political or territorial boundaries for which a permit application is required under R 323.2161(1)(c), (d), (e), or (f).

(5) A public body, other than a city, village, or township, that holds a national permit for a municipal separate storm sewer system or systems it owns or operates, shall comply with the terms and conditions of the national permit for the municipal separate storm drain sewer system or systems it owns or operates and for which a national permit application was submitted in accordance with R 323.2161(1)(c), (d), (e), or (f).

(6) If an existing qualifying local program requires the permittee to implement 1 or more of the minimum control measures of subrule (3) of this rule, the department may include conditions in the national permit that direct the permittee to follow that qualifying program's requirements rather than the requirements of subrule (3) of this rule. A qualifying local program is a local or state municipal storm water management program that imposes, at a minimum, the relevant requirements of subrule (3) of this rule.

(7) To request authorization to discharge in accordance with a general permit for a municipal separate storm sewer system, a public body shall submit to the department, on a form provided by the department, a national permit application which shall include the name of a contact person responsible for implementing or coordinating the storm water management program.

(8) A permittee shall comply with any more stringent effluent limitations in the national permit, including permit requirements that modify, or are in addition to, the minimum measures based on a total maximum daily load (TMDL) or equivalent analysis. The department may include more stringent limitations based on a TMDL or equivalent analysis that determines that more stringent limitations are needed to protect water quality.

(9) A permittee shall comply with other applicable national permit requirements, standards, and conditions established in the individual or general permit, developed consistent with the provisions of 40 C.F.R. §§122.41 to 122.49 (2000), as appropriate.

(10) A permittee shall evaluate compliance with the minimum measures required under subrule (3) of this rule, the appropriateness of the best management practices implemented to comply with the minimum measures, and progress towards achieving the measurable goals reported pursuant to subrule

(12)(a)(ii) of this rule. The department may establish monitoring requirements in accordance with state or watershed specific monitoring plans or as needed for a permittee to demonstrate the pollution reduction achieved by implementing best management practices.

(11) A permittee shall keep records required by the national permit for not less than 3 years. A permittee shall submit the records to the NPDES authority if specifically asked to do so. The records, including a description of the storm water management program, shall be available to the public at reasonable times during regular business hours unless confidentiality is protected under 40 C.F.R. §122.7 (2000).

(12) A permittee shall submit annual reports to the department for the first permit term. For subsequent permit terms, the permittee shall submit reports in years 2 and 4 unless the department or national permit requires more frequent reports. The department may establish a reporting format that shall be followed by the permittee. Unless the department specifies otherwise, the annual reports shall include the following minimum information:

(a) The first annual report submitted by a permittee for approval by the department shall consist of a storm water management program plan which includes descriptions of all of the following:

(i) The best management practices that will be implemented for each of the storm water minimum measures specified in subrule (3)(a) to (f) of this rule.

(ii) Measurable goals for each of the best management practices, including, as appropriate, the years in which the required actions will be undertaken, interim milestones, the frequency of the action, anticipated water quality benefit, and a description of water quality monitoring, if any, during the reporting period. The permittee is not required to meet the measurable goals identified in the first annual report

in order to demonstrate compliance with any minimum measure in subrule (2)(c) to (f) of this rule for which the

department has not issued a menu of best management practices. If the department does not issue a menu of best management practices, the permittee still shall comply with other requirements of the national permit, including good faith implementation of best management practices designed to comply with the minimum measures.

(iii) A summary of the storm water control activities to be undertaken during the next reporting cycle pursuant to the storm water management program plan.

(iv) The status of the water quality in the waters of the state within the permittee's political, territorial, property, or right-of-way boundaries. Narrative descriptions and/or numeric descriptions may be submitted. Narrative descriptions may include, but are not limited to, reports of unnatural physical properties such as turbidity, color, oil film, floating solids, foams, settleable solids, suspended solids or deposits, presence or absence of indicator animals, algae or bacteria, presence of trash and

floatables, and streambank and streambed conditions. For numeric descriptions, permittees may seek alternatives to instream water chemistry monitoring or may limit chemical monitoring to a small number of parameters. Biological indexes are acceptable numeric descriptions. Permittees may

partner to gather information, or may report information collected by other entities including county, state, or federal governments.

(v) An identification and prioritization of the stresses on the receiving waters within the permittee's political, territorial, property, or right-of-way boundaries. Stresses are negative impacts on surface water quality, navigation, industrial water supply, public water supply at the point of water intake, fish and other indigenous aquatic life and wildlife, human body contact recreation, and agricultural uses. Stresses include known or suspected pollutant sources that result in water quality status concerns reported under paragraph (iv) of this subdivision.

(vi) Notice that the permittee is relying on another owner or operator of a regulated MS4 to satisfy national permit obligations under 1 or both of the following conditions:

(A) The permittee lacks power or authority to comply with the national permit obligation.

(B) The other regulated MS4 owner or operator is already implementing a program that meets the national permit obligation for the permittee.

(vii) Notice provided under paragraph (vi) of this subrule is valid only if the other regulated MS4 owner or operator has national permit authorization to discharge and provides notice under paragraph (viii) of this subdivision for the applicable national permit obligations.

(viii) Notice that the permittee will satisfy some of the national permit obligations of another regulated MS4 owner or operator, if applicable.

(ix) A city, village, or township permittee shall submit to the department the identification of regulated MS4 owners and operators other than itself within its political or territorial boundaries that have applied for or will apply for national permits, and shall submit descriptions of either the MS4s or the areas within its boundaries for which the other regulated MS4 owners and operators claim authority.

(b) All annual reports subsequent to the first annual report shall include all of the following information:

(i) The status of compliance with the storm water management program plan and other national permit conditions for which the permittee is responsible, an assessment of the appropriateness of the best management practices identified in the storm water management program plan, and an assessment of progress towards achieving the identified measurable goals for each of the best management practices.

(ii) Results of information collected and analyzed, including monitoring data, if any, during the reporting period.

(iii) A summary of the storm water activities to be undertaken during the next reporting cycle pursuant to the storm water management program plan.

(iv) Notice of a change in any identified best management practices or measurable goals for any of the minimum measures.

(v) A description of change in status of any agreement or agreements used by the permittee to rely on another public body to satisfy some of the national permit obligations, if applicable.

History: 2003 AACCS.

**R 323.2189 Referenced federal regulations; definitions; adoption of standards by reference.**

Rule 2189. (1) As used in the federal regulations referenced in R 323.2161, the terms "NPDES state" and "NPDES authority" shall mean the department of environmental quality as specified in this rule.

(2) The following federal regulations are adopted by reference in these rules, are available for inspection at the Lansing office of the department of environmental quality, and may be obtained from the Department of Environmental Quality, Water Division, P.O. Box 30273, Lansing, MI 48909, at a cost as of the time of adoption of these rules of 5 cents per page and a labor rate of \$19.20 per hour, or from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost as of the time of the adoption of these rules of \$45.00 for 40 C.F.R. Parts 100-135, \$56.00 for 40 C.F.R. Parts 400-424, and \$61.00 for 40 C.F.R. Parts 425-699; or via the Internet at <http://bookstore.gpo.gov>:

(a) 40 C.F.R. §122.3(e) (2000).

(b) 40 C.F.R. §122.7. (2000).

(c) 40 C.F.R. §122.21 (2005).

(d) 40 C.F.R. §§122.26 to 27 (2000).

(e) 40 C.F.R. §122.28(b)(2)(v) (2000).

(f) 40 C.F.R. §§122.34 to 35 (2000).

(g) 40 C.F.R. §§122.41 to 122.43 (2000).

(h) 40 C.F.R. §122.44 (2005).

(i) 40 C.F.R. §§122.45 to 122.49 (2000).

(j) 40 C.F.R. §§125.80 to 125.99 (2005), except 40 C.F.R. §§125.89 and 125.98 (2005). "New source" as used in this subdivision is defined in 40 C.F.R. §122.2. "New source" as used elsewhere in these rules shall be as defined in R 323.2103.

(k) 40 C.F.R. §401.11 (2000).

(l) 40 C.F.R. §403 (2000).

(m) 40 C.F.R. §412 (2003) except that the definition for "land application area" shall be as defined in R 323.2103.

(n) 40 C.F.R. §451 (2005).

History: 1985 AACCS; 1990 AACCS; 1992 AACCS; 1995 AACCS; 2003 AACCS; 2005 AACCS; 2006 AACCS.

**R 323.2190 National permit for storm water discharge from construction activity.**

Rule 2190. (1) Unless the department has required an individual national permit pursuant to the provisions of subrule (3) or (4) of this rule, a point source discharge of storm water from a construction activity will be deemed to have a national permit authorizing the discharge if the criteria of subdivisions (a) and (b) of this subrule are met. Exception: small construction activities, meaning 1 to 5 acres of disturbed soil as defined in 40 C.F.R. §122.26(b)(15), are automatically deemed to have a national permit authorizing discharge of storm water in accordance with this rule and are not required to meet the filing requirements of subdivision(a) or (b) of this subrule, subrule (2)(j) of this rule, and subrule(5)(b) of this rule. The construction permittee shall do both of the following:

(a) File with the department, on a form approved by the department, notice of coverage pursuant to the provisions of this rule before the initiation of construction activity. The notice of coverage shall include all of the following:

(i) A copy of the individual soil erosion and sedimentation control permit for the site as issued to the construction permittee; or if the construction activity is to be carried out by an authorized public agency, certification by the authorized public agency that an approved control plan exists; or, for part 615 or part 631 permits, a copy of the permit, along with any forms or diagrams pertaining to soil erosion and sedimentation control that were part of the permit application.

(ii) Acknowledgement by the construction permittee that any discharge that is made pursuant to the provisions of this rule shall be in compliance with part 31 of the act and the rules promulgated thereunder.

(iii) A location map and a description of the nature of the construction activity.

(iv) The location of the proposed discharge and identification of the receiving water.

(v) The total area of the site and the area of the site that is expected to undergo construction activity during the life of the project.

(vi) Name and certification number of a certified storm water operator responsible for inspection of the construction activity in accordance with subrule (2)(e) of this rule.

(b) Provide a valid signature of the construction permittee or authorized representative on the notice of coverage. If the construction permittee is a partnership, association, corporation, industry, municipality, state agency, or interstate body, the valid signatory for the notice of coverage shall be determined in accordance with R 323.2114.

(2) A construction permittee that has authorization to discharge under a national permit pursuant to subrule (1) of this rule shall comply with all of the following provisions:

(a) Not directly or indirectly discharge wastes such as discarded building materials, concrete truck washout, chemicals, lubricants, fuels, litter, sanitary waste, or any other substance at the construction site into the waters of the state in violation of part 31 of the act or rules promulgated thereunder.

(b) Be in compliance with a soil erosion and sedimentation control permit for the site or, if the construction activity is carried out by an authorized public agency, the approved control plan, including the selected control measures that are applicable to the site.

(c) Properly maintain and operate the soil erosion control measures.

(d) Have the soil erosion control measures under the specific supervision and control of a storm water operator who has been certified by the department as properly qualified to operate the soil erosion control measures. The certification shall be done in accordance with the requirements of R 323.1251 et seq.

(e) Cause the construction activity to be inspected by a certified storm water operator once per week, and within 24 hours after every precipitation event that results in a discharge from the site, and ensure that any needed corrective actions are carried out. A log of the inspections and corrective actions shall be maintained on file by the construction permittee for review and shall be retained by the construction permittee for a period of 3 years from the date of the inspection or corrective action.

(f) In accordance with the requirements for on-land facilities as set forth in spillage of oil and polluting materials, being part 5 of these rules, provide facilities and comply with reporting procedures for containment of any accidental losses of oil or other polluting materials.

(g) Dispose of solids, sediment, filter backwash, or other waste that is removed from or results from the treatment or control of storm water in compliance with applicable state laws and regulations and in a manner that prevents any waste from entering waters of the state.

(h) Allow the department to enter upon the site at any reasonable time before the expiration of the authorization to discharge as set forth in subrule (5) of this rule, upon presentation of credentials and other documents as may be required by law, for the purpose of inspecting conditions relating to the pollution of any waters or determining compliance with the provisions of this rule.

(i) Upon request, make available for public inspection or provide to the department all reports or logs prepared pursuant to the provisions of this rule.

(j) File a revised notice of coverage in compliance with the provisions of subrule (1) of this rule before any expansion of the construction activity or change in the soil erosion control measures that requires a change in the soil erosion and sedimentation control permit.

(3) The department may require that discharges from a construction activity be authorized by an individual national permit if it has been determined by the department that unlawful pollution cannot be adequately guarded against, and there is or may be water quality degradation that will violate the commission act unless requirements in addition to those in the soil erosion and sedimentation control permit

are imposed. A determination by the department for an individual national permit or other additional control constitutes grounds for revocation of the authorization to discharge pursuant to the provisions of this rule.

(4) The department may require that discharges from a construction activity be authorized by an individual national permit if it has been determined by the department that the responsible part 91 permitting entity or authorized public agency is not carrying out a program that is adequate to ensure that the requirements of part 91 of the act are complied with.

(5) The authorization to discharge pursuant to the provisions of this rule expires as follows:

(a) When the soil erosion and sedimentation control permit expires, or is revoked or terminated by the part 91 permitting entity in accordance with the provisions of part 91 of the act and 1969 PA 306, MCL 24.201 et seq., or when the authorized public agency determines that the project has been completed by the stabilization of earth change activity.

(b) Five years from the date of the notice that is filed pursuant to the provisions of subrule (1)(a) of this rule, if the authorization to discharge has not previously expired pursuant to subdivision (a) of this subrule. This authorization may be extended by filing a new notice in compliance with the provisions of subrule (1)(a) of this rule. The construction permittee shall file a notice of termination with the department, on a form approved by the department, when authorization to discharge expires as set forth in accordance with subdivision (a) of this subrule. The notice of termination shall include the name and address of the construction permittee, the location of the construction site, and the mailing address, if available, and certification that stabilization of earth change activity has been completed or, if the certification cannot be made, the reason why the authorization to discharge has expired.

(6) The department may revoke authorization to discharge pursuant to the provisions of this rule if an individual national permit is required pursuant to the provisions of subrule (3) of this rule or in compliance with R 323.2159.

(7) Nothing in this rule shall be construed to preclude the institution of any legal action or relieve the construction permittee from any responsibilities, liabilities, or penalties to which the construction permittee may be subject pursuant to part 31 of the act or rules promulgated thereunder.

(8) The provisions of this rule are severable, and if any provision of this rule or the application of any provisions of this rule to any circumstances is held invalid, the application of the provisions of this rule to other circumstances and the remainder of this rule shall not be affected by the invalidity.

(9) The construction permittee shall take all reasonable steps to minimize any adverse impact to the surface or groundwaters of the state that result from noncompliance with any of the conditions specified in this rule.

(10) If, for any reason, the construction permittee does not comply with, or will be unable to comply with, any of the conditions that are specified in this rule, the construction permittee shall provide the department with the following information, in writing, within 5 days of becoming aware of the noncompliance or inability to comply:

(a) A description of the noncompliance and its cause.

(b) The period of noncompliance, including exact dates and times, or, if the noncompliance is not corrected, the anticipated time that the noncompliance is expected to continue and the steps taken to reduce, eliminate, and prevent recurrence of the noncompliance.

(11) The provisions of this rule do not convey any property rights in either real or personal property, or any exclusive privileges, authorize any pollution, impairment, or destruction of the natural resources of the state, or the violation of any federal, state, or local laws or regulations, or obviate the necessity of obtaining permits or approvals from other units of government as may be required by law.

(12) The provisions of this rule do not exempt the construction permittee from giving notice to public utilities and complying with each of the requirements of 1974 PA 53, MCL 460.701 et seq.

(13) This rule shall not provide authorization to discharge storm water from construction activity which is mixed with non-storm water, or which is subject to an existing national permit or general permit.

History: 1992 AACCS; 2003 AACCS; 2006 AACCS.

### **R 323.2191 General permits generally.**

Rule 2191. (1) Upon a determination by the department that certain discharges are appropriately and adequately controlled by a general permit, the department may issue a general permit to cover a category of discharge. The general permit may cover storm water point source discharges or a category of point source discharges other than storm water point source discharges if all of the following provisions apply:

- (a) The sources involve the same or substantially similar types of operations.
- (b) The sources discharge the same types of wastes.
- (c) The sources require the same effluent limitation or operating conditions.
- (d) The sources require the same or similar monitoring.

(2) General permits shall be issued, modified, revoked and reissued, or terminated in compliance with these rules.

(3) The department may require any person who is authorized to make a discharge, by a general permit, to apply for and obtain an individual national permit if any of the following circumstances apply:

(a) The discharge is a significant contributor to pollution as determined by the department on a case-by-case basis.

(b) The discharger is not complying, or has not complied, with the conditions of the general permit.

(c) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of waste applicable to the point source discharge.

(d) Effluent standards and limitations are promulgated for point source discharges subject to the general permit.

(e) The department determines that the criteria under which the general permit was issued no longer apply. Any person may request the department to take action pursuant to the provisions of this subrule.

(4) If the department requires a person who is authorized to make a discharge, by a general permit, to apply for an individual national permit as provided in subrule (3) of this rule, the department shall do so in writing. Written notice shall include all of the following:

(a) A statement of the reasons for the department's decision.

(b) An application form.

(c) A statement setting the date by which the owner or operator shall file the application.

(d) A statement that on the effective date of the individual national permit, the general permit, as it applies to the individual discharge, will be superseded.

(5) Any person having a discharge which is authorized, or proposing a discharge which may be authorized by a general permit, may request to be excluded from the coverage of the general permit and apply for an individual national permit. An application shall be submitted pursuant to these rules, with reasons supporting the request, to the department. The department may deny an application for an individual national permit if it determines that the general permit is more appropriate.

(6) The issuance of an individual national permit to a person will supersede the applicability of the general permit on the effective date of the individual national permit.

History: 1992 AACCS; 2003 AACCS.

### **R 323.2192 General permits; application and coverage.**

Rule 2192. All of the following provisions are application requirements for coverage under general permits and shall be complied with:

(a) A person who requests coverage under a general permit shall comply with all applicable requirements of this part, except where the department has approved an amended application form that is specific to a general permit.

(b) Upon the receipt of an application for coverage under an existing general permit, the department shall determine if the discharge meets the criteria for coverage under the general permit. The issuance of a notice of coverage by the department which states that the discharge meets the criteria initiates coverage by the general permit.

(c) The department shall promptly report to the department each person having a discharge for which coverage by general permit has been initiated pursuant to the provisions of subdivision (b) of this rule. A person who is aggrieved by the coverage may file a sworn petition for a contested case hearing on the matter with the department in accordance with the provisions of section 3113 of part 31 of the act. A petition that is filed more than 60 days after coverage by the general permit is reported to the department may be rejected by the department as being untimely.

(d) A person who holds an individual national permit for a point source discharge that is excluded from a general permit solely because the person already has an individual national permit may apply for coverage under the general permit. The department may terminate the individual national permit and include the discharge under the coverage of the general permit if the department determines that the general permit is more appropriate.

History: 1992 AACCS; 2003 AACCS.

**R 323.2193 National permit; clean corporate citizen benefits.**

Rule 2193. An establishment that has been designated as a clean corporate citizen by the department under R 324.1504 is eligible for the following benefits related to national permits:

(a) A clean corporate citizen applying for reissuance of a national permit may certify that the previous application information, or a portion of the application, is still representative of the discharge, and need not provide new discharge monitoring information, unless there have been changes in state or federal application requirements since the previous application was submitted. The department may request additional information as necessary to process the permit.

(b) When applying for a national permit for a new wastewater discharge that is not covered by a federal technology-based treatment standard, a clean corporate citizen may provide its determination of best professional judgment (BPJ) for technology-based effluent limitations for the case-by-case determinations required under section 402(a)(1) of the federal act. The department will review and use the clean corporate citizen's determination of BPJ for purposes of a draft permit, unless the determination is inconsistent with state or federal regulations, or is contrary to known technology previously used in setting BPJ permit limitations.

(c) A clean corporate citizen that qualifies for coverage under a general permit as provided in R 323.2191 is not required to obtain an individual national permit solely because it is designated as a major discharger by the United States environmental protection agency.

(d) A nonmunicipal clean corporate citizen may construct and utilize wastewater treatment processes to comply with effluent limitations of a national permit without department approval of the plans and specifications for the wastewater treatment processes.

(e) The department shall not conduct more than 1 comprehensive sampling inspection during the effective period of the national permit for a clean corporate citizen, unless the department has reason to believe that the permittee is not in compliance with any applicable statute, rule, national permit, or enforcement order.

(f) The national permit for a clean corporate citizen shall include a provision allowing the department to reduce, but not eliminate, the monitoring frequency of parameters specified in the permit. The department may reduce monitoring. Reduced monitoring shall be sufficient to determine compliance and will be conditioned on continued compliance with parameter limitations. If reduced monitoring identifies a violation of a parameter limitation, then the permit shall provide for an increase in monitoring until compliance is regained. A clean corporate citizen shall submit a request for reduced monitoring to the department in writing. Approval of reduced monitoring under this rule is not subject to the requirements in R 323.2159.

(g) Unless otherwise required by the department, or as necessary for a complete application for national permit reissuance, upon request, the department shall authorize a clean corporate citizen to submit discharge monitoring reports on an annual basis. This provision does not abrogate the

permittee's responsibility to report instances of noncompliance required to be reported by statute, rule, national permit, or enforcement order.

(h) The department shall expedite its response to a request from a clean corporate citizen to use a water treatment additive.

History: 2000 AACRS; 2003 AACRS.

### **R 323.2194 State Permit Clean Corporate Citizen Benefits**

Rule 2194. An establishment that has been designated as a clean corporate citizen by the department under R 324.1504 is eligible for the following benefits related to state permits:

(a) A clean corporate citizen applying for a new state permit, permit renewal, or permit modification may request the department to accelerate the application review. All of the following provisions apply to the request:

(i) A clean corporate citizen shall request an accelerated review in writing.

(ii) A clean corporate citizen shall submit an administratively complete application under R 323.2108 for the unit to be permitted.

(iii) A clean corporate citizen or its authorized agent shall sign the written request.

(iv) The department shall approve the request for an accelerated permit application review within 15 calendar days after receipt of the request and required information, unless, within the 15-calendar-day period, the request is either denied in writing for cause by the department or an extension of up to 15 additional calendar days is specified in writing by the department. If the department fails to make its decision within the extended time period, then the request for an accelerated permit application review is automatically approved at the end of the extended time period.

(v) If the accelerated permit application review is approved, then the department shall complete a review of the application within 30 calendar days and recommend either that the permit be issued with or without special conditions or that the permit be denied.

(vi) If the department recommends that the permit be issued, then the department shall provide a copy of the draft permit to the applicant and publish the public notice required under R 323.2117. The department shall issue or deny the permit within 15 calendar days after the conclusion of the public comment period, unless substantial new issues are raised during the comment period or hearing.

(vii) If the department recommends that the permit be denied, then the department shall notify the applicant, in writing, of the deficiencies that caused the application to be denied. The department may extend the 30 day accelerated review period if an extension is requested by the applicant within 10 calendar days to address those deficiencies.

(viii) If an extension is granted, an applicant will have 30 days to address the application deficiencies. If the applicant sufficiently addresses the deficiencies, then the department shall proceed with the issuance of the permit. If the applicant does not sufficiently address the

deficiencies, then the department may proceed with permit denial or may place the application in lower priority status to afford the clean corporate citizen additional time to address the deficiencies.

(b) The department may authorize a clean corporate citizen to reduce the required frequency of effluent and groundwater monitoring at an existing facility by up to 50%. All of the following provisions apply to reduced monitoring:

(i) The department may reduce the effluent and groundwater monitoring requirements as outlined in the permit if all of the following criteria are met:

(A) The effluent limits set forth in the permit have been consistently met over a period of 1 year or over 12 sampling events.

(B) The groundwater limits set forth in the permit have been consistently met for 4 consecutive sampling events.

(C) The point of compliance for measuring groundwater impact is not more than 150 feet from the discharge point.

(ii) Upon request by a clean corporate citizen, the department shall provide its decision to reduce effluent and groundwater monitoring within 30 days of receipt of documentation that the criteria specified in subparagraphs (A) to (C) of this paragraph have been met.

(iii) The reduced monitoring specified in writing by the department supersedes the monitoring frequency set forth in the permit. However, upon notice from the department that an effluent or groundwater permit limit has been or is being exceeded, the original sampling frequency as specified in the permit shall immediately resume.

(c) After notice to the department, unless disapproved by the department within 30 days, a clean corporate citizen may reduce the monitoring or reporting requirements, or both, for upgradient wells specified in a permit to a frequency of once per year unless or until either of the following occurs:

(i) An effluent or groundwater permit limit is exceeded. If an exceedance of a permit limit in the effluent or the groundwater as a result of monitoring downgradient wells is found, then a clean corporate citizen shall immediately sample and monitor the upgradient well or wells and analyze the sample in accordance with requirements for sampling and analysis set forth in the permit. A clean corporate citizen shall continue the frequency of monitoring and reporting for the upgradient well or wells in accordance with the permit until the clean corporate citizen can demonstrate to the department that the problem that caused the exceedance has been resolved. Once the clean corporate citizen has demonstrated that the problem that caused the exceedance has been resolved, the clean corporate citizen may request the department to authorize reduced monitoring as specified in this subdivision.

(ii) The permit expires.

(d) After notice to the department, unless disapproved by the department within 45 days, a clean corporate citizen may use a product that is not specified in the current permit if an approved toxicologist certifies that the discharge would not violate the discharge standards in R 323.2222 as a result of using the product. All of the following provisions apply to the use of a product that is not specified in the current permit:

(i) The department may approve a toxicologist for certifying a discharge if the toxicologist meets all of the following qualifications and if proof of the qualifications is provided to the department in writing:

(A) The toxicologist possesses, at a minimum, a Master of Science degree in toxicology.

(B) The toxicologist has at least 1 year of experience conducting toxicological reviews.

(C) The toxicologist has a minimum of 1 year of practical experience in evaluating biological and chemical data to determine the potential impact to humans and other living organisms.

(ii) Except for standards developed under R 323.2222(2)(c)(ii) soil treatment of the Part 22 rules, a toxicologist who meets all of the criteria in paragraph (i)(A), (B), and (C) of this subdivision may review and certify product changes for a clean corporate citizen if both of the following occur:

(A) The toxicologist follows the procedures in R 323.2220 for determining wastewater characteristics.

(B) The toxicologist certifies that the discharge standards for each chemical constituent determined to be in the discharge meet the limits in R 323.2222.

(iii) The notice in this subdivision shall include copies of all documentation and materials used by the toxicologist to certify the product change.

(iv) If, at anytime after the 45-day period specified in this subdivision, the department determines that the use of a product should be discontinued, then, upon written notification by the department, the clean corporate citizen shall either discontinue use of the product within 30 days or reduce the concentrations of the product to meet the applicable standards in R 323.2222. The clean corporate citizen shall notify the department by the end of the 30 day-period of its decision regarding the use of the product. If the concentration is reduced, the clean corporate citizen shall submit documentation to the department which demonstrates that the reduced concentrations are consistent with the discharge standards in R 323.2222.

(e) R 323.2150 notwithstanding, a clean corporate citizen may petition the department to extend the expiration date for an existing permit for a period of up to 5 years if the clean corporate citizen can demonstrate that its facility has consistently maintained compliance with its permit for the preceding 5 years. All of the following provisions apply to a permit extension:

(i) To receive a permit extension, the clean corporate citizen shall provide all of the following information to the department:

(A) A written request for the permit extension that specifies the duration of the extension. A clean corporate citizen shall submit the extension request to the department not less than 180 days before the expiration date of the current permit.

(B) A summary of reports on monitoring data and other required facility operations which demonstrates that the facility has consistently complied with its permit requirements for the preceding 5 years.

(C) A certification that the current discharges are fully and accurately represented in the most recent permit application.

(ii) The written request for an extension satisfies the requirements for timely application for permit renewal. If the department determines that the criteria in paragraph (i) of this subdivision has been met, then the department shall extend the expiration date for the permit for the period of time requested, but not for more than 5 years.

(iii) If the department determines that the clean corporate citizen meets the necessary criteria to qualify for a permit extension, then within 30 days of making the determination the department shall publish a public notice stating that the department proposes to extend the existing permit. The notice shall also include the proposed new expiration date.

(iv) The department shall extend the permit expiration date at the end of the public notice period unless either of the following occurs:

(A) The department determines that the clean corporate citizen does not meet the criteria in paragraph (i) of this subdivision.

(B) Based on comments received during the public comment period or other information, the department determines that further review of the permit is needed or that changes to the permit may be needed, or both, before extending the expiration date.

(v) The department shall not extend a permit more than 5 additional years.

(f) A nonmunicipal clean corporate citizen qualifies for a reduction in design reviews for industrial treatment processes by the department. This subdivision pertains to design reviews specified by rules or permit, including, but not limited to, the preliminary basis of designs, new technologies, and alternative treatment systems.

(g) A nonmunicipal clean corporate citizen may construct and utilize wastewater treatment processes to comply with permit requirements without department approval of the plans and specifications for the wastewater treatment process if all of the following provisions are satisfied:

(i) All process equipment is the proper size and type for the intended application.

(ii) Proper staffing, operation, and maintenance requirements have been specified for the facility.

(iii) The facility is designed to meet all permit limits when operated and maintained as specified.

History: 2000 AACS.

### **R 323.2195. Termination of benefits.**

Rule 2195. Upon termination of a clean corporate citizen designation, the department shall terminate or restrict all benefits provided to a former clean corporate citizen under R 323.2193 and R 323.2194 as provided in this part and as determined by the department.

History: 2000 AACS; 2003 AACS.

### **R 323.2196 CAFO permits.**

Rule 2196. (1) CAFOs are point sources that require NPDES permits for discharges or potential discharges and require all of the following:

(a) If an operation becomes a CAFO, then the NPDES requirements for CAFOs apply to all animals in confinement at the operation and all production area waste and CAFO process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

(b) All CAFO owners or operators shall apply either for an individual NPDES permit, or a certificate of coverage under an NPDES general permit, unless the owner or operator has received a determination from the department, made after providing notice and opportunity for public comment, that the CAFO has "no potential to discharge" pursuant to subrule (4) of this rule.

(c) The discharge to waters of the state from land application areas is a discharge from the CAFO subject to NPDES permit requirements.

(2) The schedule for permit application, coverage, and renewal shall include all of the following:

(a) A CAFO shall apply for an NPDES permit not later than the effective date of these rules, except as specified in subdivisions (b), (d), or (e) of this subrule.

(b) An existing CAFO, or an existing AFO that becomes a CAFO, that has not had a regulated discharge since January 14, 2000, shall apply for coverage under NPDES general permit no. MIG440000 (effective January 1, 2003), or equivalent document approved by the department, not later than 90 days after notification by the department or by September 1, 2005, whichever is sooner. Before July 1, 2007, all CAFOs that are operating under an equivalent document approved by the department shall apply for an NPDES permit. An existing CAFO or existing AFO is any CAFO or AFO that is constructed and populated before January 30, 2004.

(c) For the purposes of subdivision (b) of this subrule, a regulated discharge is any of the following:

(i) A discharge that causes or contributes to a violation of R 323.1041 to R 323.1117 of the water quality standards.

(ii) A discharge from the process or production area due to precipitation events, either by overland, drainage tiles, or other mechanisms, except the discharge of uncontaminated runoff that does not come into contact with any animals, animal waste, or production area waste.

(iii) A dry-weather discharge, including an accidental release.

(d) Newly constructed CAFOs shall apply for an NPDES permit at least 180 days before commencing operation.

(e) AFOs that become CAFOs after September 1, 2005, shall apply for an NPDES permit at least 180 days before becoming a CAFO.

(f) For AFOs that are designated as CAFOs per subrule (3), the CAFO shall apply for an NPDES permit no later than 90 days after receiving notification of the designation.

(g) Not later than 180 days before the expiration of the permit or equivalent document approved by the department, the permittee shall submit an application to renew its permit. However, the permittee need not continue to seek continued permit coverage or reapply for a permit if both of the following conditions are true:

(i) The facility has ceased operation or is no longer a CAFO.

(ii) The permittee has demonstrated to the satisfaction of the department that there is no remaining potential for a discharge.

(3) In designating an AFO as a CAFO, the following apply:

(a) The department may designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to waters of the state. In making this designation, the department shall consider all of the following factors:

(i) The size of the AFO and the amount of production area waste and CAFO process wastewater reaching waters of the state.

(ii) The location of the AFO relative to waters of the state.

(iii) The means of conveyance of production area waste and CAFO process wastewater into waters of the state.

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of production area waste and CAFO process wastewater into waters of the state.

(v) Other relevant factors.

(b) An AFO shall not be designated under this subrule unless the department has conducted an inspection of the operation.

(c) An AFO with numbers of animals below those established in R 323.2103(m) shall not be designated as a CAFO unless either of the following occurs:

(i) Pollutants are discharged from the production area into waters of the state through a manmade ditch, pipe, tile, swale, flushing system, or other similar manmade conveyance.

(ii) Pollutants are discharged from the production area directly into waters of the state which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(4) In making determinations for no potential to discharge for large CAFOs, all of the following apply:

(a) The department, upon request, may make a determination that a specific large CAFO has no potential to discharge pollutants to waters of the state. In making this determination, the department shall consider the potential for discharges from both the production area and any land application areas. The department shall also consider any record of prior discharges by the CAFO. In no case may the CAFO be determined to have no potential to discharge if it has had a discharge within 5 years before the date of the request submitted under subdivision (b) of this subrule. For purposes of this rule, the term 'no potential to discharge' means that there is no potential for any CAFO production area waste or CAFO process wastewater to be added to waters of the state under any circumstance or climatic condition. A determination that there is no potential to discharge only relates to discharges of production area waste and CAFO process wastewater covered by this rule.

(b) In requesting a determination of no potential to discharge, the CAFO owner or operator shall submit any information that will support such a determination. Such information shall include all of the information specified in 40 C.F.R. §§122.21(f) and (i)(1)(i) to (ix) (2003) and include documentation showing that the CAFO has been verified under the livestock system of the Michigan agriculture environmental assurance program (MAEAP), or successor program, if such a program is available. The department has discretion to require additional information to supplement the request, and may also gather additional information through physical inspection of the CAFO.

(c) Before making a final decision to grant a no potential to discharge determination, the department shall issue a notice to the public stating that a no potential to discharge request has been received. This notice shall be accompanied by a fact sheet which includes the following, if applicable:

(i) A brief description of the type of facility or activity which is the subject of the no potential to discharge determination.

(ii) A brief summary of the factual basis, upon which the request is based, for granting the no potential to discharge determination.

(iii) A description of the procedures for reaching a final decision on the no potential to discharge determination. The department shall base the decision to grant a no potential to discharge determination on the administrative record, which includes all information submitted in support of or against a no potential to discharge determination and any other data gathered by the department. The department shall notify any CAFO seeking a no potential to discharge determination of its final determination within 180 days of receiving the request.

(d) The owner or operator shall request a no potential to discharge determination by the applicable permit application dates. If the department's final decision is to deny the no potential to discharge determination, then the owner or operator shall seek coverage under a permit within 30 days after notice of the denial.

(e) The no potential to discharge determination does not relieve the CAFO from the consequences of an actual discharge. Any unpermitted CAFO that discharges pollutants into the waters of this state is in violation of the act even if it has received a no potential to discharge determination from the department. Any CAFO that has received a determination of no potential to discharge, but who anticipates changes in circumstances that could create the potential for a discharge, shall contact the department and apply for and obtain NPDES permit authorization prior to the change of circumstances. If any CAFO that has received a determination of no potential to discharge has unanticipated changes in circumstances that could create the potential for a discharge, then the CAFO shall immediately notify the department and submit a complete application for coverage under an NPDES permit within 30 days after the change in circumstances.

(f) Where the department has issued a determination of no potential to discharge, the department retains the authority to subsequently require NPDES permit coverage for any of the following:

(i) If circumstances at the facility change.

(ii) If new information becomes available.

(iii) If there is another reason for the department to determine that the CAFO has a potential to discharge.

(g) Notwithstanding any other provision of this section, a CAFO that has received a no potential to discharge determination from the department is not required to seek coverage under an NPDES permit that would otherwise be required.

(5) CAFO NPDES permits shall include all of the following:

(a) A requirement to develop and implement a comprehensive nutrient management plan (CNMP). The CNMP shall be approved by a certified CNMP provider. At a minimum, a CNMP shall include best management practices and procedures necessary to implement applicable effluent limitations and technical standards established by the department including all of the following:

(i) Ensure adequate storage of production area waste and CAFO process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities.

(ii) Ensure proper management of mortalities and ensure that they are not disposed of in a liquid manure, storm water, or CAFO process wastewater storage or treatment system.

(iii) Ensure clean water is diverted from the production area.

(iv) Prevent direct contact of confined animals with waters of the state.

(v) Ensure chemicals and other contaminants handled at the CAFO, that are not part of the normal agricultural practice at the production area, are not disposed of in any production area waste, CAFO process wastewater, or storm water storage or treatment system.

(vi) Identify specific conservation practices to control runoff of pollutants to waters of the state.

(vii) Identify protocols for testing of production area waste, CAFO process wastewater, and soil.

(viii) Conduct a field-by-field assessment of land application areas and address the form, source, amount, timing, rate, and method of application of nutrients to demonstrate that land application of production area waste or CAFO process wastewater is in accordance with field-specific nutrient management practices that ensures proper agricultural utilization of the nutrients in the production area waste or CAFO process wastewater. The assessment shall take into account field-specific conditions including locations of tile outlets, tile risers, and tile depth before land application to determine suitability of land application and to prevent discharge of any potential polluting material.

(ix) Ensure proper land application by complying with all of the following conditions:

(A) Production area waste and CAFO process wastewater shall not be land-applied on ground that is flooded, saturated with water, frozen, or snow-covered where the production area waste and CAFO process wastewater may enter waters of the state.

(B) Production area waste and CAFO process wastewater shall not be applied to frozen or snow-covered ground unless it is subsurface injected and there is substantial soil coverage of the applied production area waste and CAFO process wastewater, or it is surface-applied and incorporated within 24 hours.

(C) Production area waste and CAFO process wastewater may be surface-applied to frozen or snow-covered ground and not incorporated within 24 hours only if there is a field-by-field demonstration in the CNMP showing that such land application will not result in a situation where production area waste and CAFO process wastewater may enter waters of the state.

(D) Production area waste and CAFO process wastewater shall not be applied when precipitation exceeding ½ inch is forecast within 24 hours or if precipitation is forecast that may cause the production area waste and CAFO process wastewater to enter waters of the state.

(E) On ground that is not frozen or snow-covered, production area waste and CAFO process wastewater, if not subsurface-injected, shall be incorporated into the soil within 24 hours of application except on no-till fields.

(x) Identify specific records that will be maintained to document the implementation and management of the CNMP.

(b) A copy of the CAFO's CNMP shall be maintained at the CAFO and made available to the department on request. In addition, the executive summary shall be submitted to the department.

(c) A prohibition on dry weather discharges from the CAFO except in accordance with 40 C.F.R. §412.31(a)(2) (2003) or 40 C.F.R. §412.46(d) (2003).

(d) Storm water discharges from land areas under the control of a CAFO where production area waste or CAFO process wastewater has been applied in compliance with field-specific nutrient management practices developed in accordance with R 323.2196(5)(a), and such discharges do not cause or contribute to a violation of water quality standards, are in compliance with this rule, provided such discharges are authorized by an NPDES permit.

(e) Unless the department determines otherwise, in cases where production area waste or CAFO process wastewater is sold, given away, or otherwise transferred to other persons (recipient) and the land application of that production area waste or CAFO process wastewater is not under the operational control of the CAFO owner or operator that generates the production area waste or CAFO process wastewater (generator), a manifest shall be used to track the transfer and use of the production area waste or CAFO process wastewater.

(i) The CAFO owner or operator shall do all of the following:

(A) Prepare a manifest for tracking the production area waste or CAFO process wastewater before transferring the production area waste or CAFO process wastewater.

(B) Designate on the manifest the recipient of the production area waste or CAFO process wastewater.

(ii) The generator shall use a manifest form which is approved by the department and which has locations for recording all of the following information:

(A) A manifest document number.

(B) The generator's name, mailing address, and telephone number.

(C) The name and address of the recipient of the production area waste or CAFO process wastewater.

(D) The nutrient content of the production area waste or CAFO process wastewater to be used in determining the appropriate land application rates.

(E) The total quantity of production area waste or CAFO process wastewater by units of weight or volume and the number and size of the loads or containers used to transfer that quantity of production area waste or CAFO process wastewater.

(F) A statement that informs the recipient of his or her responsibility to properly manage the land application of the manure and/or wastewater to minimize the discharge of pollutants to waters of the state.

(G) The following certification: "I hereby declare that the production area waste or CAFO process wastewater is accurately described above and is suitable for land application."

(H) Other certification statements as may be required by the department.

(I) Address or other description for the final destination of the production area waste or CAFO process wastewater.

(J) Locations for dates and signatures.

(iii) The generator shall do all of the following with respect to the manifest:

- (A) Sign the manifest certification by hand.
- (B) Obtain the handwritten signature of the recipient and the date of acceptance on the manifest.
- (C) Retain 1 copy of the manifest.
- (D) Give the remaining copies to the recipient.
- (E) Advise the recipient of his or her responsibilities to complete the manifest and return a copy to the generator within 30 days after completion of the land application or other disposal or use of the production area waste or CAFO process wastewater.
  - (iv) One manifest may be used for multiple loads or containers of the same production area waste or CAFO process wastewater transferred to the same recipient.
  - (v) The generator shall not sell, give away, or otherwise transfer production area waste or CAFO process wastewater to a recipient if any of the following occurs:
    - (A) The recipient has previously not returned a copy of the completed manifest to the generator.
    - (B) The returned manifest indicates improper land application, use, or disposal.
    - (C) The generator has been advised by the department that the department or a court of appropriate jurisdiction has determined that the recipient has improperly land-applied, used, or disposed of a manifested production area waste or CAFO process wastewater.
    - (D) The recipient fails or refuses to provide accurate information on the manifest in a timely manner.
  - (vi) If the generator has been prohibited from selling, giving, or otherwise transferring large CAFO waste to a particular recipient under paragraph (v), above, and the generator wishes to resume selling, giving, or otherwise transferring large CAFO waste to that particular recipient, then the one of the following shall be accomplished:
    - (A) For improper paperwork only, such as incomplete or inaccurate information on the manifest, the recipient must provide the correct, complete information.
    - (B) For improper land application, use, or disposal of the large CAFO waste by the recipient, the generator must demonstrate, in writing, to the department that the improper land application, use, or disposal has been corrected, and the department has provided approval of the demonstration.
  - (vii) All copies of manifests shall be kept with the CAFO owner or operator's CNMP for a minimum of 5 years.
  - (viii) The requirements of this rule do not apply to quantities of production area waste or CAFO process wastewater less than 1 pick-up truck load, 1 cubic yard, or 1 ton per recipient per day.
- (f) A requirement that the CAFO owner or operator shall submit annual reports to the department. The annual report shall include, but is not limited to, all of the following:
  - (i) The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, and turkeys).
  - (ii) Estimated amount of total production area waste and CAFO process wastewater generated by the CAFO in the previous 12 months (tons/gallons).

(iii) Estimated amount of total production area waste and CAFO process wastewater transferred to another person by the CAFO in the previous 12 months (tons/gallons).

(iv) Total number of acres for land application covered by the CNMP developed in accordance with subdivision (a) of this subrule.

(v) Total number of acres under control of the CAFO that were used for land application of production area waste and CAFO process wastewater in the previous 12 months.

(vi) Summary of all production area waste and CAFO process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume.

(vii) A statement indicating whether the current version of the CAFO's CNMP was developed or approved by a certified CNMP provider.

History: 2005 AACS.

### **R 323.2197 Cooling water intake structures.**

Rule 2197. For a facility with cooling water intake systems regulated under 40 C.F.R. §125.91, the following controls apply:

(a) A facility that withdraws cooling water from a connecting water of the Great Lakes shall be subject to entrainment performance standards at §125.94(b)(2).

(b) A facility that withdraws cooling water from a waterway with open fish passage to 1 of the Great Lakes and is located within 30 miles of the lake, but does not withdraw cooling water from a Great Lake or a connecting water of the Great Lakes, shall be subject to entrainment performance standards at §125.94(b)(2) if the director determines that such regulation is appropriate to prevent significant impact to Great Lakes' fish or shellfish populations caused by entrainment.

History: 2006 AACS.