

# CHAPTER 17: EARTH CHANGES

## ARTICLE I. SOIL EROSION AND SEDIMENTATION CONTROL

### 17-1. PURPOSE; DESIGNATION OF MUNICIPAL ENFORCING AGENT.

(A) The purpose of this chapter is to control soil erosion and the resulting sedimentation of the waters of the state by ensuring compliance with Part 91, Soil Erosion and Sedimentation Control (SESC), of Public Act 451 of 1994, the Natural Resources and Environmental Protection Act (NREPA), as amended, and the Administrative Rules adopted thereunder. This chapter has been adopted under the authority granted by Part 91 of the Act, being MCL 324.9101 et seq.

(B) The requirements of this chapter, Part 91 of the Act, and related Administrative Rules shall be enforced by the Office of Engineering, which is hereby designated as the Municipal Enforcing Agency ("MEA") under Part 91 of the Act.

(Ord. No. 384 § 1, 8-15-06)

#### Statutory reference:

*Authority to adopt ordinance, see M.C.L. § 324.9106*

*Designation of enforcing agency, see M.C.L. § 324.9106(1)*

### 17-2. DEFINITIONS.

As used in this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

**ACCELERATED SOIL EROSION.** The increased loss of land surface that occurs as a result of human activities.

**ACT.** The Natural Resources and Environmental Protection Act (NREPA), Public Act 451 of 1994 as amended.

**ADJACENT PROPERTY.** Any property, public or private, not contained within the application, whether or not owned by the applicant.

**AGRICULTURAL PRACTICES.** All land farming operations except the plowing or tilling of land for the purpose of crop production or the harvesting of crops.

**CERTIFICATE OF COMPLETION.** A signed written statement by the City Engineer or his or her duly authorized representative that specific construction has been inspected and found to comply with all plans and specifications.

**CITY COUNCIL.** The Sterling Heights City Council.

**CITY ENGINEER.** The City Engineer or his or her duly authorized representative.

**EARTH CHANGE.** A human made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. EARTH CHANGE does not include the practice of plowing and tilling soil for the purpose of crop production.

**EARTH MATERIALS.** Any materials which are normally part of the natural earth, including topsoil, sand, gravel and clay but not including valuable minerals, oil and gases.

**EXCAVATION or CUT.** Any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated and shall include the conditions resulting therefrom.

**FLOODPLAIN.** That area which would be inundated by storm runoff or floodwater equivalent to that which would occur with a rainfall or flood of 100 year recurrence frequency.

**GARDENING.** Activities necessary to the growing of plants for personal use, consumption, or enjoyment.

**GRADING.** Any stripping, excavating, filling, balancing, stockpiling, or any combination thereof, and shall include the land in its excavated or filled condition.

**LAKE.** The Great Lakes and all natural and artificial inland lakes or impoundments that have definite banks, a bed, visible evidence of a continued occurrence of water, and a surface area of water that is equal to, or greater than, 1 acre. LAKE does not include sediment basins and basins constructed for the sole purpose of storm water retention, cooling water, or treating polluted water.

**LANDFILL.** Any disposal area or tract of land, building, unit or appurtenance or combination thereof that is used to collect, store, handle, dispose of, bury, cover over or otherwise accept or retain refuse as herein defined.

**NONEROSIVE VELOCITY.** A speed of water movement that is not conducive to the development of accelerated soil erosion.

**PERMANENT SOIL EROSION AND SEDIMENTATION CONTROL MEASURES.** Those control measures which are installed or constructed to control soil erosion and sedimentation and which are maintained after project completion.

**PERSON.** A natural person, firm, corporation, partnership or association.

**SEAWALL MAINTENANCE.** An earth change activity landward of the seawall.

**SEDIMENT.** Solid particulate matter, including both mineral and organic matter, that is in suspension in water, is being transported, or has been removed from its site of origin by the actions of wind, water, or gravity and has been deposited elsewhere.

**SEDIMENT BASIN.** A naturally occurring or constructed depression used for the sole purpose of capturing sediment during or after an earth change activity.

**SOIL EROSION** or **EROSION.** The wearing away of land by the action of wind, water, gravity, or a combination of wind, water, or gravity.

**SOIL EROSION AND SEDIMENTATION CONTROL PERMIT.** A permit issued to authorize work to be performed under this chapter.

**SOIL EXCAVATION.** The removal or earth change of any kind or nature from a site of gravel, clay, sand, soil or other earthen materials.

**STREAM.** A river, creek, or other surface watercourse which may or may not be serving as a drain as defined in Act No. 40 of the Public Acts of 1956, as amended, being MCL 280.1 et seq., and which has definite banks, a bed, and visible evidence of the continued flow or continued occurrence of water, including the connecting waters of the Great Lakes.

**STRIPPING.** Any activity which removes or significantly disturbs the vegetative surface cover, including clearing and grubbing operations.

**TEMPORARY SOIL EROSION AND SEDIMENTATION CONTROL MEASURES.** Interim control measures which are installed or constructed to control soil erosion and sedimentation until permanent soil erosion and sedimentation control is effected, and which are not maintained after project completion.

**WATERS OF THE STATE.** The Great Lakes and their connecting waters, inland lakes and streams as defined in the rules promulgated under Part 91 and wetlands regulated under Part 303, Wetland Protection, of the Act.

(Ord. No. 384 § 1, 8-15-06)

### **17-3. COMPLIANCE WITH CHAPTER PREREQUISITE TO APPROVAL OF SITE PLAN OR PLAT.**

(A) No site plan, plot plan or plat shall be approved under this chapter unless said site plan, plot plan, or plat shall include soil erosion and sediment control measures consistent with the requirements of this chapter and related land development regulations. The soil erosion and sedimentation control measures shall be set forth in a soil erosion and sedimentation control (SESC) plan designed to effectively reduce accelerated soil erosion and sedimentation. The SESC plan must identify factors that may contribute to soil erosion or sedimentation, or both. The SESC plan shall be made available for inspection at all times at the site of the earth change.

(B) The SESC plan shall include, but not be limited to, all of the following:

(1) A map or maps at a scale of not more than 200 feet to the inch or as otherwise determined by the City Engineer. A map shall include a legal description and site location sketch that includes the proximity of any proposed earth change to lakes or streams, or both; predominant land features; and contour intervals or slope description.

(2) A soils survey or a written description of the soil types of the exposed land area contemplated for the earth change.

(3) Details for proposed earth changes, including all of the following:

(a) A description and the location of the physical limits of each proposed earth change.

(b) A description and the location of all existing and proposed on-site drainage and dewatering facilities.

(c) The timing and sequence of each proposed earth change.

(d) The location and description for installing and removing all proposed temporary soil erosion and sedimentation control measures.

(e) A description and the location of all proposed permanent soil erosion and sedimentation control measures.

(f) A program proposal for the continued maintenance of all permanent soil erosion and sedimentation control measures that remain after project completion, including the designation of the person responsible for the maintenance. Maintenance responsibilities shall become a part of any sales or exchange agreement for the land on which the permanent soil erosion and sedimentation control measures are located.

(C) The City Engineer, or a designee who is trained in soil erosion and sedimentation control methods and techniques, shall review and approve a soil erosion and sedimentation control plan. The Office of Engineering shall respond within 30 calendar days following receipt of a properly submitted application for a soil erosion and sedimentation control permit by approving or disapproving the application, or requiring modification of the application. The applicant shall be notified by first-class mail. If an application is disapproved, the Office of Engineering shall advise the applicant by certified mail of the reasons for disapproval and conditions required for approval. The Office of Engineering need not notify an applicant of

approval or disapproval by mail if the applicant is given written approval or disapproval of the application in person. A permit given to the applicant either in person or by first-class mail constitutes approval. The permit shall be kept readily available at the site of the earth change for inspection upon request.

(Ord. No. 384 § 1, 8-15-06)

**Administrative rules:**

*Plan requirements, see R 323.1703*

*Application review, see R 323.1707*

**17-4. COMPLIANCE WITH CHAPTER REQUIRED FOR OCCUPANCY.**

No final certificate of occupancy for any building will be issued unless the applicant for said certificate shall have obtained a certificate of completion indicating compliance with grading requirements, the soil erosion and sedimentation control plan, and completion of all permanent soil erosion and sedimentation control measures.

(Ord. No. 384 § 1, 8-15-06)

**17-5. SESC PERMITS, SESC APPLICATION/PLANS, AND FEES.**

(A) Permit requirement. Except as exempted by sections 17-15 of this chapter, no person shall remove any earth materials, perform or undertake any grading, operate a soil excavation site or landfill, deposit land within the City, nor undertake any earth change unless a valid soil erosion and sedimentation control permit has been issued by the Office of Engineering. A landowner or designated agent shall submit an application for a permit to the Office of Engineering.

(B) Permit application. A separate application shall be required for each soil erosion and sedimentation control permit. Plans, specifications, and timing schedules shall be submitted with each application for a permit. The plans shall be prepared or approved and signed by a registered professional engineer or by an architect. The Office of Engineering may waive the preparation or approval and signature by the registered professional engineer or architect when the work entails little hazard to the adjacent property and does not include the construction of a fill upon which a structure may be erected.

(C) Application procedure. The written application for a permit required by this chapter shall be made on forms provided by the Office of Engineering. Each application shall contain:

- (1) Full names and address of all parties with an interest in the premises, setting forth their legal interest;
- (2) A full, complete legal description of the premises where the proposed earth change is to take place.

(3) The application shall contain or be accompanied by a written statement of the extent, development, improvement, and general purpose of the proposed operations and the program therefor. This statement shall list all types of materials to be removed and/or filled and the specific area of the site where each of the materials or fill is to be removed or placed, a detailed statement as to the method of operation, the type of machinery or equipment to be used, and the estimated period of time that such operation shall cover. Any details of similar operations carried on by the applicant shall also be provided.

(4) Each application shall be accompanied by a statement by a registered civil engineer or land surveyor as to the cubic yards of the material to be removed and/or fillers and a detailed statement as to the total volume and extent of the earth change.

(D) Application data required. A soil erosion and sedimentation control plan which meets the requirements of Rule 1703 and Section 17-3(B) of this chapter must accompany a soil erosion and sedimentation control permit application. The plans and specifications accompanying the permit application shall also contain the following data:

- (1) A location map at a scale of not less than one inch to 200 feet, indicating the site location as well as the adjacent properties within 500 feet of the site boundaries;
- (2) A boundary line survey of the site on which the work is to be performed;
- (3) A plan of the site at a scale of one inch to 100 feet, showing:
  - (a) Name, address and telephone number of the owners, developer, and petitioner;
  - (b) A timing schedule indicating the anticipated starting and completion dates of the development sequence and the time of exposure of each area prior to the completion of effective erosion and sediment control measures;
  - (c) A certified statement of the quantity of excavation and fill involved;
  - (d) Existing topography at a maximum of two foot contour intervals;
  - (e) Proposed topography at a maximum of two foot contour intervals;
  - (f) Location of any structure or natural feature on the site;
  - (g) Location of any structure or natural feature on the land adjacent to the site and within 50 feet of the site boundary lines;
  - (h) Adjoining land uses;

- (i) Location of existing and proposed utilities;
- (j) Location of borrow and soil storage areas;
- (k) Location of all public facilities and services;
- (l) Location of existing and proposed streets, roadways, parking areas, entrances, and exits;
- (m) Location of public and private water supplies, wells, springs, streams, swamps, or other bodies of water within one-quarter of a mile of the site of the proposed earth change;
- (n) Location of any proposed additional structures or development on the site;
- (o) Elevations, dimensions, location, extent, and the slope of all proposed grading (including building and driveway grades);
- (p) The estimated total cost of the required temporary and permanent soil erosion and sedimentation control measures;
- (q) Plans of all drainage provisions, retaining walls, cribbing, planting, anti-erosion devices or other temporary or permanent soil erosion and sedimentation control measures to be constructed in connection with, or as a part of, the proposed work, together with a map showing the drainage area of land tributary to the site and estimated runoff of the area served by any drains;
- (r) Other information or data as may be required by the Office of Engineering such as a soil investigation report which shall include but not be limited to: data regarding the nature, distribution, and supporting ability of existing soils and rock on the site.

(E) Fees. When an application is made for a permit as required under the terms of this chapter, a fee shall be paid by the applicant in an amount as established by City Council. The City Council may establish fees for plan review and/or for inspections made to determine compliance with this chapter, which fees shall be paid prior to commencement of any work regulated by this chapter.

(F) Issuance. Upon a determination that a permit applicant has met all of the requirements of Part 91 of the Act, the Administrative Rules, and this chapter, the Office of Engineering shall issue a permit for the proposed earth change. The issuance of the permit shall not constitute an exemption from any other permits that may be required by federal or state law, local ordinance, or regulation or rule, relating to the underlying project for which the earth change will be undertaken.

(Ord. No. 384 § 1, 8-15-06)

**Statutory reference:**

*Permit required for earth change, see M.C.L. § 324.9112(1)*

**Administrative rules:**

*SESC plan requirements, see R 323.1703*

*Application for permit, see R 323.1706*

*Issuance, see R 323.1707*

**17-6. BOND REQUIREMENT.**

A soil erosion and sedimentation control permit shall not be issued unless the permittee shall first deposit with the city, in the form of cash, a cashier's check or irrevocable bank letter of credit acceptable to the city, whichever the applicant selects, in an amount sufficient to assure the installation and completion of such protective or corrective measures required by the Office of Engineering. The total cost shall be estimated by a registered professional engineer or architect and shall be subject to review by the Office of Engineering, except that the Office of Engineering shall have discretion on a project-by-project basis to offer applicants for permits involving small-scale projects the option of accepting the Office of Engineering's own cost estimate. The deposit shall be made upon the conditions that the permittee shall comply with all of the provisions of this chapter and all of the terms and conditions of the permit and shall complete all of the work contemplated under the permit within the time limit specified in the permit or, if no time limit is specified, within one year after the date of the issuance of the permit. For purposes of this section, the term "small-scale projects" shall mean projects involving earth changes for which a soil erosion and sedimentation control permit is required, but for which the cost of retaining a professional engineer or architect to obtain a cost estimate would be, in the discretion of the Office of Engineering, cost prohibitive, impractical, or unduly burdensome due to the nature and scale of the project.

(Ord. No. 384 § 1, 8-15-06)

**Statutory reference:**

*Deposit as condition for issuance of permit, see M.C.L. § 324.9108*

**17-7. EXTENSION OF TIME.**

If the permittee is unable to complete the work within the specified time, he or she may, at least ten days prior to the

expiration of the permit, present in writing to the Office of Engineering a request for an extension of time setting forth the reasons for the requested extension. In the event such an extension is warranted, the Office of Engineering may grant additional time for the completion of the work, but no extension shall release the owner from the requirements under the preceding section of this chapter.

(Ord. No. 384 § 1, 8-15-06)

## **17-8. FAILURE TO COMPLETE WORK.**

In the event the permittee fails to complete the work or fails to comply with all of the requirements, conditions and terms of the permit, this chapter, Part 91 of the Act, and/or the Administrative Rules, the Office of Engineering may order such work as is necessary to eliminate any danger to persons or property or waters of the State and to leave the site in a safe condition and he or she may authorize completion of all necessary temporary or permanent soil erosion and sedimentation control measures. The permittee or the person issuing the letter of credit or making the cash deposit shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended by the city in causing any and all such work to be done. Any unused portion of the cash deposit, cashier's check, or amount collected under the irrevocable letter of credit shall be refunded to the permittee.

(Ord. No. 384 § 1, 8-15-06)

## **17-9. DENIAL OF PERMITS.**

Soil erosion and sedimentation control permits shall not be issued where:

- (1) The proposed work would cause hazards to the public safety and welfare;
- (2) The work as proposed by the applicant will damage any public or private property or utilities, or alter or interfere with any existing drainage in such a manner as to cause damage to any adjacent or off-site property, or result in the deposit or placement of debris or sediment off-site, or on any public way, waterway, wetland, waters of the State, or storm water management system, or create an unreasonable hazard to person or property;
- (3) The land area for which an earth change is proposed is subject to geological hazard to the extent that no reasonable amount of corrective work can eliminate or sufficiently reduce settlement, slope instability, or any other such hazard to persons or property; or
- (4) The land area for which the earth change is proposed may not lie within the floodplain of any stream or watercourse (not specifically designated and delineated by the city as an area subject to flood hazard), unless the application is approved by all appropriate federal, state, and county agencies, and the application complies with all applicable city ordinances.

(Ord. No. 384 § 1, 8-15-06)

## **17-10. MODIFICATION OF APPROVED PLANS.**

All modifications of the approved soil erosion and sedimentation control plans must be submitted and approved by the Office of Engineering. All necessary sustaining reports shall be submitted with any proposal to modify the approved plan. No earth change work in connection with any proposed modification shall be permitted without the approval of the Office of Engineering.

(Ord. No. 384 § 1, 8-15-06)

### ***Administrative rules:***

*Application review, see R 323.1707*

## **17-11. RESPONSIBILITY OF PERMITTEE.**

During earth change operations, the permittee shall be responsible for:

- (1) The prevention of damage to any public utilities or services within the limits of the earth change and along any routes of travel of the equipment;
- (2) The prevention of damage to adjacent property. No person shall conduct an earth change on land so close to the property line as to endanger any adjoining public street, sidewalk, alley, or any public or private property without supporting and protecting such property from settling, cracking, or other damage which might result;
- (3) Carrying out the proposed work in accordance with the approved plans and in compliance with all the requirements of the permit, this chapter, Part 91 of the Act, and the Administrative Rules;
- (4) The prompt removal of all soil, miscellaneous debris, or other materials applied, dumped, or otherwise deposited on public streets, highways, sidewalks, or other public thoroughfares during transit to and from the construction where such spillage constitutes a public nuisance or hazard.

(Ord. No. 384 § 1, 8-15-06)

## **17-12. GENERAL REQUIREMENTS.**

(A) All earth changes shall be conducted in a manner that will effectively reduce accelerated soil erosion and resulting sedimentation.

(B) All persons engaged in earth changes shall design, implement, and maintain acceptable soil erosion and sedimentation and control measures in conformance with Part 91 of the Act and the Administrative Rules, as well as in conformance with all of the provisions of this chapter.

(C) Unless the person preparing the soil erosion and sedimentation control plan shows, to the satisfaction of the Office of Engineering, that altering the control measures or including other control measures will prevent accelerated soil erosion and sedimentation during the earth change, the following soil erosion and sedimentation control measures shall be incorporated into the soil erosion and sedimentation control permit application;

(1) All earth changes shall be designed, constructed, and completed in such a manner as to limit the exposed area of any disturbed land for the shortest possible period of time as determined by the Office of Engineering.

(2) Sediment caused by accelerated soil erosion shall be removed from runoff water before it leaves the site of the earth change.

(3) Temporary or permanent measures shall be designed and constructed for the conveyance of water around, through, or from the earth change area to limit the water flow to a nonerosive velocity.

(4) Temporary soil erosion and sedimentation control measures shall be installed before or upon commencement of the earth change activity and shall be maintained on a daily basis. The temporary soil erosion and sedimentation control measures shall be removed after permanent soil erosion and sedimentation control measures are in place and the area is graded and stabilized with permanent soil erosion and sedimentation control measures pursuant to approved standards and specifications as prescribed by the Michigan Department of Environmental Quality Administrative Rules.

(5) Permanent soil erosion and sedimentation control measures for all slopes, channels, ditches, or any disturbed land area shall be completed within five calendar days after final grading or the final earth change has been completed. If it is not possible to permanently stabilize a disturbed area after an earth change has been completed or where significant earth change activity ceases, temporary soil erosion and sedimentation control measures shall be maintained until permanent soil erosion and sedimentation control measures are in place and the area is stabilized.

(6) All temporary and permanent erosion and sedimentation control measures shall be installed and maintained according to the approved plan.

(7) Control measures shall be installed and maintained in accordance with the standards and specifications of all of the following:

- (a) The product manufacturer.
- (b) The Macomb County conservation district.
- (c) The Department of Environmental Quality.
- (d) The Michigan Department of Transportation.
- (e) This chapter.

(8) If a conflict exists between the standards and specifications, then the City Engineer shall determine which specifications are appropriate for the project.

(9) Compliance with all of the provisions of this chapter shall not relieve the applicant or permittee from complying with all other applicable ordinances of the city.

(Ord. No. 384 § 1, 8-15-06)

**Administrative rules:**

*Earth change requirements generally, see R 323.1702*

*Earth change requirements, see R 323.1709*

*Standards and specifications, see R 323.1710*

**17-13. MAINTENANCE REQUIREMENTS.**

A person who owns land on which an earth change has been made that may result in or contribute to soil erosion or sedimentation of the waters of the state shall implement and maintain soil erosion and sedimentation control measures that will effectively reduce soil erosion or sedimentation from the land on which the earth change has been made. Persons carrying out soil erosion and sediment control measures under this chapter, and all subsequent owners of property concerning which such measures have been taken, shall maintain all permanent anti-erosion devices, retaining walls, structures, plantings and other protective devices.

(Ord. No. 384 § 1, 8-15-06)

**Statutory reference:**

Owner's duties, see M.C.L. § 324.9116

#### **17-14. MINIMUM DESIGN STANDARDS FOR EROSION AND SEDIMENT.**

All SESC plans and all grading plans and specifications, including extensions of previously approved plans, shall include provisions for erosion and sediment control in accordance with but not limited to the standards contained in the "Standards and Specifications for Soil Erosion and Sediment Control" published by the Macomb County Soil Conservation District. Copies of the standards shall be available for inspection in the office of the City Clerk and the City Engineer.

#### **17-15. EXEMPTIONS FROM PERMIT REQUIREMENTS.**

(A) A permit under the terms of this chapter shall not be required in the following instances:

(1) Earth changes that disturb less than one acre of land or which are more than 500 feet from the water's edge of a lake, stream, or river;

(2) Normal road and driveway maintenance, such as grading or leveling, that does not increase the width or length of the road or driveway and that will not contribute sediment to lakes or streams;

(3) An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance and that will not contribute sediment to lakes or streams;

(4) All other activities exempted from the permit requirements by Section 9115 of Part 91 of the Act and the Administrative Rules adopted thereunder, including the logging industry, the mining industry, or the plowing or tilling of land for the purpose of crop production or the harvesting of crops. As used in this subsection, the term "mining" does not include the removal of clay, gravel, sand, peat, or topsoil.

(B) The Office of Engineering may grant a permit waiver for an earth change after receiving a signed affidavit from the landowner stating that the earth change will disturb less than 225 square feet and that the earth change will not contribute sediment to lakes or streams.

(C) Although operations under this section are exempt from permit requirements, the operations are not exempt from compliance with, and enforcement of, Part 91 of the Act and the Administrative Rules, or the construction and other permit regulations specified in this chapter and elsewhere in this code of ordinances.

(D) A state agency or an agency of a local unit of government authorized under Section 9110 of Part 91 of the Act to implement soil erosion and sedimentation control procedures with regard to earth changes undertaken by it is exempt from obtaining a permit, but shall notify the Office of Engineering of each proposed earth change.

(Ord. No. 384 § 1, 8-15-06)

#### **Statutory reference:**

*Exemptions*, see M.C.L. § 324.9115

#### **Administrative rules:**

*Permit requirements*, see R 323.1704

*Permit exemptions and waivers*, see R 323.1705, 323.1706

#### **17-16. SOIL EROSION PERMITS.**

**SOIL EROSION.** If a soil erosion permit is required by the Act, no operation shall take place until a permit has been obtained. There shall be compliance at all times with the requirements of the soil erosion permit and this chapter.

(Ord. No. 384 § 1, 8-15-06)

#### **17-17. DRIFTING OR BLOWN MATERIAL UNLAWFUL.**

**DRIFTED OR BLOWN MATERIAL.** The drifting or airborne transmission beyond the property line of dust, particles, or debris from any open stockpile, working areas, or unplanted areas shall be unlawful and may be summarily caused to be abated.

(Ord. No. 384 § 1, 8-15-06)

#### **17-18. INSPECTION.**

(A) The Office of Engineering shall inspect all work relating to the requirements of this chapter. By accepting a permit issued under this article, the owner and/or operator of any operation shall be presumed to have consented to regular and routine inspections of the property for compliance with this chapter. The consent shall be authority to go on to any property under permit for purposes of any inspection.

(B) Upon satisfactory execution of all approved SESC plans and other requirements, the Office of Engineering shall issue a certificate of completion. If the Office of Engineering finds any existing conditions not as stated in any application, soil erosion and sedimentation control permit, or approved plan, it may refuse to approve further work until approval of a revised

SESC plan which will conform to the existing conditions.

(Ord. No. 384 § 1, 8-15-06)

## **17-19. ENFORCEMENT; PENALTIES.**

(A) The Office of Engineering may issue a cease and desist order or revoke a permit upon a finding by the Office of Engineering that there is a violation of Part 91 of the Act, or the Administrative Rules, or this chapter, or a finding that there is a violation of a permit or an approved soil erosion and sedimentation control plan.

(B) Notwithstanding the existence or pursuit of any other remedy, the city may maintain an action in its own name in any court of competent jurisdiction for an injunction or other relief against any person to restrain or prevent violations of this chapter, Part 91 of the Act, or the Administrative Rules.

(C) The City Engineer, or the duly authorized agents of the Office of Engineering, may enter at all reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions and practices which may be a violation of this chapter, Part 91 of the Act, or the Administrative Rules.

(D) If the Office of Engineering determines that soil erosion or sedimentation of adjacent properties or the waters of the state has or will reasonably occur from land in violation of Part 91 of the Act, or the Administrative Rules, or this chapter, the Office of Engineering may seek to enforce a violation by notifying the person who owns the land, by mail, with return receipt requested, of the determination. The notice shall contain a description of the violation and what must be done to remedy the violation and shall specify a time to comply. Within five days after the notice has been issued, the owner of the land shall implement and maintain soil erosion and sedimentation control measures that conform with the requirements of this chapter, Part 91 of the Act, and the Administrative Rules. After the five days, if the Office of Engineering determines that the condition of the land may contribute to soil erosion or sedimentation of adjacent properties or to the waters of the state, and if proper soil erosion and sedimentation control measures are not in place in conformance with this chapter, Part 91 of the Act, and the Administrative Rules, the City Engineer or a designee may enter upon the land and construct, implement, and maintain proper soil erosion and sedimentation control measures which are in conformance with this chapter, Part 91 of the Act, and the Administrative Rules. However, the cost of the work, materials, labor, and administration shall not exceed \$10,000.00 without prior written notice to the person who owns the land, in the original notice of violation mailed under this subsection, that the expenditure of more than \$10,000.00 may be made. If more than \$10,000.00 is to be expended under this subsection, then the work shall not begin until at least 10 days after the notice of violation has been mailed.

(E) All expenses incurred by the city under division (D) to construct, implement, and maintain soil erosion and sedimentation control measures shall be reimbursed to the city by the person who owns the land. The city shall have a lien for the expenses incurred. However, with respect to single-family or multifamily residential property, the lien for such expenses shall have priority over all liens and encumbrances filed or recorded after the date of such expenditure. With respect to all other property, the lien for such expenses shall be collected and treated in the same manner as provided for property tax liens under the general property tax act, also known as Public Act 206 of 1893, codified as MCL 211.1 to 211.157.

(F) The City Engineer and his or her designees are hereby authorized to issue a municipal civil infraction citation for a violation of this chapter, Part 91 of the Act, and the Administrative Rules. A person who violates this chapter is responsible for a municipal civil infraction, punishable by a fine in the amount established by Chapter 1 of the code of ordinances, except that:

(1) A person who knowingly violates this chapter or knowingly makes a false statement in an application for a permit or in a soil erosion and sedimentation control plan is responsible for the payment of a civil fine of up to \$10,000.00 for each day of violation, as established by Chapter 1 of the code of ordinances; and

(2) A person who knowingly violates this chapter after receiving a notice of determination under division (D) is responsible for the payment of a civil fine of not less than \$2,500.00 and not more than \$25,000.00 for each day of violation, as established by Chapter 1 of the code of ordinances.

(3) Civil fines collected under this subsection shall be deposited with the City Treasurer. A default in payment of a civil fine or costs ordered under this subsection may be remedied by any means authorized under the Revised Judicature Act of 1961, also known as Public Act 236 of 1961, codified as MCL 600.101 to 600.9948. In addition to a fine assessed under this section, a person who violates this chapter is liable to the state for damages for injury to, destruction of, or loss of natural resources resulting from the violation. The court may order a person who violates this chapter to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.

(Ord. No. 384 § 1, 8-15-06)

### **Statutory reference:**

*Injunction*, see M.C.L. § 324.9113(1)

*Entry for inspection*, see M.C.L. § 324.9113(2)

*Notice of violation*, see M.C.L. § 324.9117

*Time for compliance*, see M.C.L. § 324.9118

*Entry to obtain compliance*, see M.C.L. § 324.9119

*Reimbursement of expenses, see M.C.L. § 324.9120*

*Penalties, see M.C.L. § 324.9121*

**Administrative rules:**

*Cease and desist order, see R 323.1712*

**17-20. VARIANCE AND APPEALS.**

Where it is alleged that there is error or misinterpretation in any order, requirements, decisions, grant, or refusal made by the Office of Engineering, the Board of Ordinance Appeals established pursuant to Division 11 of Chapter 2 of the code of ordinances shall have the power to hear specific applications and may amend or change such order, requirements, decisions, grant, or refusal so that it is in harmony with the general purpose and intent of this chapter. However, no decision of the Board of Ordinance Appeals shall be contrary to the requirements of Part 91 of the Act and the Administrative Rules.

(Ord. No. 384 § 1, 8-15-06)

**17-21. ADOPTION BY REFERENCE.**

To the extent that they do not conflict with a more restrictive provision of this chapter, and to the extent that their requirements are not already set forth within the text of this chapter, the Administrative Rules promulgated by the Department of Environmental Quality pursuant to Part 91 of the Act, as amended and as may be amended from time to time and including all amendments through the effective date of this section, are hereby adopted and incorporated by reference as if fully set forth herein. A complete copy of the Administrative Rules is available to the public at the office of the city clerk for inspection.

(Ord. No. 384 § 1, 8-15-06)

**Statutory reference:**

*Adoption by reference, see M.C.L. § 324.9106(1)*

**Administrative rules:**

*Full text, see R 323.1701 et seq.*

**17-22 - 17-49. RESERVED.**

## **ARTICLE II. ADDITIONAL EARTH CHANGE REQUIREMENTS**

---

**17-50. PERFORMANCE STANDARDS - GENERAL REQUIREMENTS.**

With a permit or without a permit, if one is not required, undertaking any earth change or the carrying on of any alterations, modifications, or changes in geographical or geological structures which shall include all soil excavation and removal and filling of land or the creation or alteration of waterways, canals, and the like for either immediate use or for filling or removal at other places, shall comply with the following performance standards for sound, vibration, and the like.

(A) Sound. The pressure level of sounds shall not exceed the following decibel levels when adjacent to the following types of uses:

<b>Sound Level</b>	<b>Adjacent Use</b>	<b>Where Measured</b>
75 dBA	Residential	Common property line
85 dBA	Commercial	Common property line
90 dBA	Industrial and other	Common property line

The sound levels shall be measured using a weighted decibel measurement (referenced to 20 micropascals) and with a type of audio output meter approved by the U.S. Bureau of Standards. Objectionable noises due to intermittence, beat, frequency, or shrillness shall be muffled so as not to become a nuisance to adjacent uses.

(B) Vibrations. All machinery shall be so mounted and operated as to prevent transmission of ground vibration exceeding a displacement of three-thousandths of one inch (.003) measured at any property line of its source.

(C) Odors. The emission of noxious, odorous matter in such quantities as to be readily detectable at any point along lot lines, when diluted in the ratio of one volume of odorous air to four or more volumes of clean air, or as to produce a public nuisance or hazard beyond lot lines, is prohibited.

(D) Gases. The escape of or emission of any gas in concentrations so as to be injurious, destructive, or explosive shall be unlawful and may be summarily caused to be abated.

(E) Glare or heat. Any operation producing intense glare or heat shall be performed within an enclosure so as to completely obscure and shield such operation from direct view from any point along the lot line, except during the period of

construction of the facilities to be used and occupied.

(F) Light. Exterior lighting shall be so installed that the surface of the source of light shall not be visible from any bedroom window and shall be so arranged as far as practical to reflect light away from any residential use and in no case shall more than one footcandle power of light cross a lot line five feet above the ground in a residential district.

(G) Smoke, dust, dirt, and fly ash. It shall be unlawful to discharge into the atmosphere from any single source of emission whatsoever any air contaminates for a period or periods aggregating more than four minutes in any one-half hour which are:

(1) As dark or darker in shade as that designated as No. 2 on the Ringelmann Chart as published by the United States Bureau of Mines which is made a part of this article by reference. However, the umbrascopic readings of smoke densities may be used when correlated with the Ringelmann Chart.

A Ringelmann Chart shall be on file in the office of the City Engineer.

(2) Of such opacity as to obscure an observer's view to a degree equal to or greater than the smoke described in subsection (1) above, except when the emission consists only of water vapor. The quantity of gasborne or airborne solids shall not exceed 20 one-hundredths grains per cubic foot of the carrying medium at a temperature of 500°F.

(H) Roads. Roads on landfill and soil excavation sites shall be designed and constructed so that traffic will flow smoothly and will not be interrupted by inclement weather. Nonpaved roads between the site and the nearest paved roads and paved roads off-site within one-quarter mile of the site entrance which are used by vehicles and/or equipment traveling to or from the site and all roads on-site shall not be used unless they are treated by sufficient oil, water, and/or chemical substance, whichever would be appropriate for the surface and frequently enough so that they are dustfree whenever used by vehicles and/or equipment. Roads on-site shall mean roads designated on approved plans, and such other areas used by vehicles and/or equipment for travel on a regular basis, other than for travel on an infrequent basis necessitated by the operation of the landfill such as trucks and/or equipment going to and from a regular course of travel to the area which is currently being filled.

(I) Mud, dirt, clay, and the like on public roads. The owner and/or permit holder of any site where there is soil removal and/or any filling shall take whatever steps are necessary to avoid any motor vehicle carrying or tracking onto any public right-of-way from the site any sediment, mud, dirt, clay, refuse, and the like. If mud, dirt, clay, refuse, and the like is carried or tracked onto a public right-of-way and it does or might constitute a nuisance or hazard to public safety, the owner and/or permit holder shall clean the said right-of-way when and as often as is necessary, presuming weather conditions permit. In any case, an owner and/or permit holder shall not leave any such debris on a public right-of-way after the end of any working day. If notified during a working day by the city of a condition which requires cleaning, the matter shall be taken care of within one hour, weather permitting. If a nuisance or hazardous condition is left after a working day or not cleaned up within the one hour after receiving a request from the city and weather does not prevent the cleanup, the city may issue an ordinance complaint for the violation of this section due to the allowance of the condition to remain on the highway and/or clean the right-of-way and charge the owner and/or permit holder with the cost thereof, which may be collected in any court having general jurisdiction.

(J) Hours of operation. Hours of operation shall be 7:00 a.m. to 8:00 p.m. unless otherwise specified by the City Engineer. No operation shall be permitted on Sundays and legal holidays. In emergency situations this time period may be modified by the City Engineer, provided such emergency order shall not be effective for more than 72 hours.

(K) Drainage. Natural drainage shall not be blocked, diverted, or altered in such a manner as to cause the natural water flow to back up onto adjacent property or to flow in a different course or rate of flow upon leaving the property upon which the blocking, diversion, or alteration occurs, unless an application is made and a permit is issued by the City Engineer pursuant to plans which provide for a drainage flow which will not be detrimental to surrounding properties. No area designated for, and/or used as a drainage retention area, shall be altered, filled in, abandoned, or used for other purposes, unless it is done pursuant to a permit issued under this subparagraph. A permit shall be required under this subparagraph notwithstanding that a permit is not otherwise required by this article. Permit requirements and procedure shall be as adopted by the City Council, from time to time, by resolution.

(L) Floodplain, watercourse, and wetlands. There shall be no excavation, soil removal, filling, or depositing of materials in any floodplain, watercourse, and/or wetlands, said terms being defined by the city zoning ordinance, without a permit, if required.

(Ord. No. 384 § 1, 8-15-06)

## **17-51. EXCAVATIONS.**

(A) Setbacks. No cut or excavation shall be closer than 100 feet from the nearest street, highway or alley right-of-way line, nor from the nearest perimeter property line; provided, however, that the Office of Engineering may prescribe more strict requirements in order to give sublateral support to surrounding property where swell or geographic conditions warrant it.

(B) Standing water. No soil, sand, clay, gravel, or other similar material shall be removed in such a manner as to cause water to stand or accumulate or to result in a place of danger or menace to the public health or safety. The premises shall at all times be graded so that surface water drainage is not interfered with. Where removal or grading operations result in a body of water forming, the owner or operator of the quarry shall erect "Keep Out - Danger" signs on the required fence

around the excavation not more than 200 feet apart.

(C) Fencing. Where an excavation, subject to this article, is in excess of five feet in depth, the permit holder shall erect a fence around the perimeter of the site of at least six feet in height of wire to prevent unauthorized access to the site. Any gates required shall be kept locked when operations are not carried on.

(D) Topsoil replacement. Whenever topsoil exists suitable for growing vegetation at the time the operations begin, a sufficient quantity of the existing topsoil shall be stockpiled on said site so that the entire site, when excavation operations are completed, may be recovered with a minimum of four inches of topsoil. The replacement of such topsoil shall be made immediately following the termination of the excavation operation. In the event, however, that such operations continue over a period of time greater than 30 days, the operator shall replace the stored topsoil over the stripped area as he or she progresses. The replacement of the topsoil shall be in a manner suitable for growing vegetation.

(E) Slopes. The slopes of the banks of the excavation shall in no event exceed a minimum ratio of three feet horizontal to one foot vertical, and where ponded water results from the operation, the slope must be maintained and extended into the water to a depth of five feet. Suitable vegetation shall be planted on all finished slopes to deter erosion.

(Ord. No. 384 § 1, 8-15-06)