

§153.01 Title.

This chapter may be cited as the *Macon County Soil Erosion and Sedimentation Control Ordinance*.

§153.02 Purposes.

This chapter is adopted for the purposes of:

(A) Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses and other public and private property by sedimentation; and

(B) Establishing procedures through which these purposes can be fulfilled.

§153.03 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accelerated erosion means any increase over the rate of natural erosion as a result of land-disturbing activity.

Act means the North Carolina Sedimentation Pollution Control Act of 1973, as amended (G.S. §§113A-50 *et seq.*), and all rules and orders adopted pursuant to it.

Adequate erosion control measure, structure or device means one which controls the soil material within the land area under responsible control of the person conducting the land disturbing activity.

Affiliate means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

Administration means the person appointed by the Macon County Board of Commissioners to assure compliance with the provisions of this Chapter and associated administration processes.

Applicant means any person, whether the person is financially responsible for the land-disturbing activity or his/her dually appointed agent, who submits a formal application to the administrator, or his designee, for a permit to conduct land-disturbing activities controlled by this chapter.

Approved Erosion and Sediment Control Plan means written course of action including maps, construction schedules, drawings, calculation or assumptions, found by the Administrator or other duly appointed agent to satisfy all requirements of this chapter which details the timing and proper installation of erosion control measures or devices which have a reasonable probability, if implemented, of restraining accelerated erosion and off site sediment damage associated with a land-disturbing activity.

Being conducted means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

Borrow means fill material which is required for on-site construction and is obtained from other locations.

Buffer zone means the strip of land adjacent to a lake or natural watercourse.

Coastal counties means the following counties: Beaufort, Bertie, Brunswick, Camden, Cantered, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington.

Commission means the state sedimentation control commission.

Completion of construction or development means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

Department means the state department of environment and natural resources.

Director means the director of the division of land resources of the state department of environment and natural resources.

Discharge point means that point at which runoff leaves a tract of land.

District means the Macon Soil and Water Conservation District created pursuant to G.S. ch. 139, and as amended.

Energy dissipater means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

Erosion means the wearing away of land surface by the action of wind, water, gravity or any combination thereof.

Final Objective means the type of structure or use resulting from the land disturbing activity.

Ground cover means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

Hazardous Materials Those chemicals or substances which are physical hazards or health hazards, whether the materials are in usable or waste conditions.

High quality water (HQW) zones means areas in the coastal counties that are within 575 feet of high quality waters and, for the remainder of the state, areas that are within one mile and drain to HQWs.

High quality waters means those classified as such in 15A NCAC 2B.0101(e)(5) General Procedures, which is incorporated herein by reference to include further amendments pursuant to N.C.G.S. § 150B-18, *et seq.*

Lake or natural watercourse means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

Land-disturbing activity means any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

Local government means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns and cities, acting through a joint program pursuant to the provisions of the Act. The Administrator is the action agent for purposes of taking action under this chapter. Wherein this chapter specifies action will be taken by the local government, the Administrator is the intended office, except where the context clearly indicates otherwise.

Natural erosion means the wearing away of the earth's surface by water, wind or other natural agents under natural environmental conditions undisturbed by man.

Off Site Sediment Damage means the transport of sediment across boundaries of a land disturbing activity, resulting in deposition of such materials in any lake or natural watercourse or on any land, public or private, not owned by the person responsible for the land-disturbing activity.

Parent means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

Permit means a land-disturbing authorization issued by the Administrator in accordance with this chapter.

Person means an individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

Person conducting land-disturbing activity means any person who may be held responsible for a violation of the Act or this chapter unless expressly provided otherwise by this chapter, the Act, or any order adopted pursuant to this chapter or the Act.

Person responsible for the violation, as used in this chapter and G.S. § 113A-64, means:

- (1) The developer or other person who has, or holds himself or herself out as having, financial or operational control over the land-disturbing activity; or
- (2) The landowner or person in possession or control of the land when he or she has directly or indirectly allowed the land-disturbing activity or has benefitted from it or he or she has failed to comply with any provision of this chapter, the Act, or any order adopted pursuant to this chapter or the Act which imposes a duty upon him or her.

Phase of grading means one of two types of grading, rough or fine.

Plan means an erosion and sedimentation control plan.

Protective cover See "ground cover."

Receiving watercourse means a lake, natural watercourse or other natural or manmade area into which stormwater runoff flows from a land-disturbing activity.

Road means all roads, either permanent or those to be obliterated after completion of land-disturbing activities, used for private travel, construction vehicles, earth-moving or heavy equipment or other machinery and constructed and used in conjunction with land-disturbing activities under this chapter.

Sediment means solid particulate matter, both mineral and organic, that has been, or is being, transported by water, air, gravity or ice from its site of origin.

Sedimentation means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

Siltation means sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.

Slope means the description of the angle of the land being disturbed with respect to horizontal. For example, a 2-1 slope would have a vertical rise or fall of 1-foot for each 2-feet of horizontal distance.

Stabilize means to establish groundcover sufficient and adequate to prevent erosion. Temporary stabilization measures are those that are sufficient to prevent erosion until the appropriate time for establishing permanent control measures.

Storm drainage facilities means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

Stormwater runoff means the direct runoff of water resulting from precipitation in any form.

Subsidiary means an affiliate that is directly or indirectly through one or more intermediaries, controlled by another person.

Ten-year storm means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest, under average antecedent wetness conditions.

Tract or site means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

Twenty-five year storm means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

Uncovered means the removal of ground cover from, on, or above the soil surface.

Undertaken means the initiating of any activity, or phase of activity, which results, or will result, in a change in the ground cover or topography of a tract of land.

Velocity means the average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

Waste means surplus materials resulting from on-site construction and disposed of at other locations.

Working days means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken, as determined by the Administrator, or their designee, except where the context clearly indicates otherwise.

§153.04 Scope and exclusions.

This chapter shall apply to all land-disturbing activities undertaken by any person within the jurisdiction of the County of Macon, with the following exclusions:

- (A) Those undertaken on agricultural land for the production of plants and animals useful to man, as set forth in G.S. § 113A-52.01, including but not limited to:
 - (1) Forage and sod crops, grain and feed crops, tobacco, cotton and peanuts;
 - (2) Dairy animals and dairy products;
 - (3) Poultry and poultry products;
 - (4) Livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all such animals;
 - (5) Bees and apiary products;
 - (6) Fur producing animals;
 - (7) Ornamental horticulture, including the raising of shrubs, Christmas trees, and other nursery operations;
 - (8) Trout production and other aquaculture activities;
 - (9) Fruit and vegetable crops;

- (B) Those undertaken on forest land for the production and harvesting of timber and timber products and which are conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the Department. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this chapter shall apply to such activity and any related land-disturbing activity on the tract;

- (C) Activity undertaken by persons as defined in G.S. § 113A-52(8) who are otherwise regulated by the provisions of the Mining Act of 1971, G.S. §§ 74-46--74-68;

- (D) Land-disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. § 113A-56(a); and

- (E) For the duration of an emergency, activities essential to protect human life.

§153.05. General requirements

- (A) *Plan required.* No person shall initiate any land-disturbing activity which uncovers more than one-half acre without having an erosion control plan approved by the Administrator, except those land-disturbing activities specifically excluded by this chapter. It is the responsibility of the person conducting such activities to submit to the Administrator any plan of form required and/or to apply to the Administrator for any permit required.

(B) *Protection of property.* Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity. In addition, they will be held responsible for knowing and following the requirements of this chapter.

(C) Neither the approval of an erosion control plan, nor the absence of a requirement to submit a plan shall relieve the property owner or the operator of the requirement stated in subsection (B) of §153.05.

(D) *More restrictive rules shall apply.* Whenever conflicts exist between federal, state or local laws, ordinances or rules, the more restrictive provision shall apply.

§153.06. Basic control objectives

An erosion and sedimentation control plan may be disapproved pursuant to §153-17 if the plan fails to address the following control objectives:

(A) *Identify critical areas.* On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.

(B) *Limit time of exposure.* All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.

(C) *Limit exposed areas.* All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.

(D) *Control surface water.* Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

(E) *Control sedimentation.* All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.

(F) *Manage stormwater runoff.* When the increase in the velocity of stormwater runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity at the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

§153.07 Mandatory standards for land-disturbing activity.

No land-disturbing activity subject to the control of this chapter shall be undertaken except in accordance with the following mandatory standards:

(A) *Buffer zone.* Except where more stringent buffer requirements are specified in the Macon County Code of Ordinances, the following requirements shall apply:

(1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the environmental management commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Administrator may approve plans which include land disturbing activity along trout waters when the duration of such disturbance would be temporary and the extent of such disturbance would be minimal. This subsection shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over or under a lake or natural watercourse.

(2) Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

(3) The 25 foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.

(4) Where a temporary and minimal disturbance is permitted as an exception by subsection (A)(1) of this section, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1,000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Administrator.

(5) No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15 NCAC 2B.0211, "Fresh Surface Water Classification and Standards," in these waters.

(B) *Graded slopes and fills; roads.*

(1) The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 30 working days or 45 calendar days, whichever period is shorter, of completion of any phase of grading, be planted or otherwise provided with ground cover, devices or structures sufficient to restrain erosion.

(2) Generally, unless the following conditions can be met, an approved plan for erosion control and stabilization of the soil is required.

(a) All cut slopes will have a minimum finished grade of 1.5:1.

(b) All fill slopes will have a minimum finished grade of 2:1.

(3) (a) Maximum sustained grades for roads should not exceed:

(i) Six percent for natural soil and grass;

(ii) Ten percent for gravel or crushed stone;

(iii) Sixteen percent for paving (asphalt or concrete);

(b) Notwithstanding the provisions of subsections (B)(3)(a) (ii) and (iii) above, these grades may be increased up to 15% for gravel or crushed stone and 20% for pavement for reaches of 200 feet or less where no alternative exists.

(c) Culverts are required in natural drains on all roads. Culverts should be placed every 130 to 200 feet on all in-sloped roads.

(C) *Ground cover.* Whenever land-disturbing activity regulated by this chapter is undertaken on a tract, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of such tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in section 153.17 of this chapter, provisions for a ground cover sufficient to restrain erosion must be accomplished within 30 working days or 120 calendar days following completion of construction or development, whichever is shorter.

(D) *Prior plan approval.* No person shall initiate any land-disturbing activity on a tract for which an erosion and sedimentation control plan is required by §153.17 of this chapter unless at least 30 or more calendar days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with and approved by the county Administrator, and the required permit is obtained.

(E) *Fill material.* Unless a permit from the N.C. Department of Environment and Natural Resources Division of Solid Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding 12 inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina. Fill materials must be free of any toxic or hazardous material.

(F) *Prevention of material deposited on public roadways.* Soil material shall be prevented from being deposited on public roadways by the use of mud mats, gravel taps, washing methods, and the like.

(G) *Commencement of activity.* Prior to initiating land-disturbing activity, the person conducting such activity must notify the Administrator of the date that such activity will begin.

§153.08 Design and performance standards.

(A) Except as provided in subsection (B)(2) of this section, erosion and sedimentation control measures, structures and devices shall be so planned, designed and constructed as to provide protection from the calculated maximum peak of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices," or other calculation procedures acceptable to the Administrator, or their designee.

(B) In high quality water (HQW) zones, the following design standards shall apply:

(1) Uncovered areas in HQW zones shall be limited at any time to a maximum total area, within the boundaries of the tract, to 20 acres. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director.

(2) Erosion and sedimentation control measures, structures and devices within HQW zones shall be so planned, designed and constructed to provide protection from the runoff of the 25-year storm which produces the maximum peak rate of runoff as calculated according to the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

(3) Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70 percent for the 40-micron (0.04mm) size soil chapter transported into the basin by the runoff of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

(4) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization, unless soil conditions permit a steeper

slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

(5) Ground cover sufficient to restrain erosion must be provided for any portion of land-disturbing activity in a HQW zone within 15 working days or 30 calendar days following completion of construction or development, whichever period is shorter.

§153.09 Permanent downstream protection of stream banks channels and slopes

(A) Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:

(1) The velocity established by the table in subsection 153.09 (D) of this section;
or

(2) The velocity of the 10-year storm runoff in the receiving watercourse prior to development.

(3) If subsections 153.09(A)(1) or (2) of this section cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the prior to development velocity by 10%.

(B) Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The Commission recognizes that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives are to:

(1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;

(2) Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections;

(3) Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped sections to complex structures;

(4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.

(C) This rule shall not apply where it can be demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.

(D) The following is a table for maximum permissible velocity for stormwater discharges:

<i>Maximum permissible velocities</i>		
<i>Materials</i>	<i>F.P.S.</i>	<i>M.P.S.</i>
Alluvial silts (colloidal)	5.0	1.5
Alluvial silts (noncolloidal)	3.5	1.1
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Fine Gravel	5.0	1.5
Fine Sand (noncolloidal)	2.5	.8
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (Colloidal)	5.5	1.7
Ordinary firm loam	3.5	1.1
Sandy Loam (noncolloidal)	2.5	.8
Shales and hard pans	6.0	1.8
Silt loam (noncolloidal)	3.0	.9
Stiff Clay (very colloidal)	5.0	1.5
Source – Adapted from recommendations by Special Committee on Irrigation research, American Society of Civil Engineers, 1926, for channels with straight alignment. For Sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderate sinuous channels, and by 0.8 for highly sinuous channels.		

§153.10 Borrow and waste areas.

When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the Department's division of solid waste management, shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

§153.11 Access and haul roads.

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

§153.12 Operations in lakes or natural watercourses.

Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alternation to flow characteristic is provided. Persons undertaking such land-disturbing activity shall consult with the Army Corp of Engineers and the Department to determine if a permit is required before undertaking any such land-disturbing activity.

§153.13 Responsibility for maintenance.

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this chapter, the Act or any order adopted pursuant to this chapter or the Act. After site development, the land owner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency, as necessary to cure the problem.

§153.14 Additional measures.

Whenever the Administrator, or their designee, determines that significant sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take the additional protective action directed.

§153.15 Existing uncovered areas.

(A) *Uncovered areas.* All uncovered areas existing on the effective date of this chapter which resulted from land-disturbing activity that are subject to continued accelerated erosion and are causing off-site damage from sedimentation shall be provided with a ground cover or other protective measures, structures or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

(B) *Notice.* The Administrator, or their designee, will serve upon the landowner or other person in possession or control of the land a written notice of violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology and quantity of work required and shall set reasonable and attainable time limits of compliance.

(C) *Required plan.* The Administrator, or their designee, reserves the right to require preparation and approval of an erosion control plan in any instance where extensive control measures are required.

(D) *Reservoirs.* This section shall not require ground cover on cleared land forming the future basin of a planned reservoir.

§153.16 Permits.

(A) No person shall undertake any land-disturbing activity subject to this chapter without first obtaining a permit therefore from the Administrator, or their designee, except that no permit shall be required for any land-disturbing activity:

(1) For the purpose of fighting fires; or

(2) For the stockpiling of raw or processed sand, stone or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage.

(B) In cases where less than one-half acre will be disturbed, applicants for building permits for any construction will be required to complete a form that explains how erosion control will be managed during construction and to obtain a land disturbing permit, except that no permit is required for any addition or alteration to a single family residence when the only land disturbance activity is for pier or foundation wall footings. The form will provide an opportunity to choose among simple approaches to keep mud and sediment from leaving the property. The information provided on the form will serve as an erosion control plan for the new construction. Applicants will need to know the downhill slope of the lot to complete the form. In determining the area, lands under one

or diverse ownership being developed as a unit will be aggregated. Should the applicant fail to fill out the notification form and obtain a land-disturbing permit in advance of clearing land or fail to install the procedures as called for on the form, a penalty will be assessed as outlined in §153.20(B); Should the applicant give false information on the form, the permit may be revoked as outlined in §153.20(A).

(C) A land-disturbing permit may be obtained upon submitting the fee, statement of financial responsibility and ownership, approved sedimentation and erosion control plan, if required, security deposit, if required, certification that tree protection fencing has been installed, if required, by obtaining approval of the proposed project by the county as necessary. The applicant shall submit three copies of the plan, if required, to the Administrator, or their designee, at least 30 days prior to commencement of the proposed activity. The Administrator, or their designee, shall review permit applications for land disturbing activities of one acre or less and, within 14 calendar days of receipt thereof, shall notify the person submitting the application that it has been approved, approved with modifications, or disapproved. No permit shall be issued until such time as the local government is assured that the proposed land-disturbing activity will be carried out in accordance with this chapter and the approved sedimentation and erosion control plan, if required. A land-disturbing permit application may be disapproved for the same reasons that an erosion control plan may be disapproved, as set forth in section 153.17(J) of this chapter.

(D) The fees charged for the administration and enforcement of this chapter shall be as prescribed by the county board of commissioners.

(E) This section shall not require ground cover on cleared land forming the future basin of a planned reservoir.

(F) When deemed necessary by the Administrator, or his designee, an application conference may be required.

(G) Display of permit. A land-disturbing permit issued under this chapter shall be prominently displayed until all construction is completed and all permanent sedimentation and erosion control measures are installed and the site has been substantially stabilized, as required.

(H) Surety. The Administrator, or their designee, shall require security to assure performance of the conditions of the permit whenever a land-disturbing activity is in excess of five acres or whenever the Administrator determines the activity may result in significant off-site damage. The applicant shall be required to file with the local government an improvement security in the form of a performance bond in an amount not less than \$500 or more than \$5,000 per acre of disturbed area as set forth in the approved erosion and sedimentation control plan. The amount shall be deemed sufficient by the Administrator, or their designee, to cover all costs of protection or other improvements required for conformity with standards specified in this chapter. The security shall be released when the Administrator, or their designee, has certified that all of the

requirements of this chapter have been met. Forfeiture of the improvement security shall not release the person conducting the land disturbing activity of their obligation to install and maintain necessary erosion control measures, to stabilize the site, or any other obligation of this chapter, the Act, or any rule or order promulgated in furtherance thereof.

(I) Conveyance of the property subject to the permit, in whole or in part, shall not terminate the permit holder's obligations under this chapter until such time as a substitute, or succeeding, permit is approved by the Administrator, or their designee.

(J) A land-disturbing permit shall lapse at the end of:

(1) One year from the date of issuance if no land-disturbing activity has been undertaken in that period. No land-disturbing activity may take place until the person responsible has applied for, and received, a new land-disturbing permit. The fee for the new permit shall be 100 percent of the current applicable fee.

(2) A two-year period, unless it is extended by the Administrator upon written request of the permit holder. The request for extension shall include reasons for incompleteness of the work. After review of the original plan and an on-site inspection of the completed work, the permit may be extended effective for a period not to exceed six months from the date of expiration of the original permit. The fee for the extended permit shall be 25 percent of the current applicable fee. If work cannot be completed and the site permanently stabilized prior to expiration of the permit or permit extension, then a new land-disturbing permit must be applied for and obtained as described in this section.

§153.17 Erosion and sedimentation control plans.

(A) An erosion control plan shall be prepared for all land-disturbing activities subject to this chapter whenever the proposed activity uncovers more than one-half acre. Provided, however, for those cases where a land disturbance permit is required and where the area has a slope of greater than 1 to 1, a plan shall be required for land disturbance associated with any project, regardless of the size of the project or the area being disturbed.

(B) Three copies of the plan shall be filed at least 30 days prior to the commencement of the proposed activity with the Administrator, and a copy will be simultaneously submitted by the applicant to the Macon Soil and Water Conservation District office. A copy of the erosion control plan for any land-disturbing activity that involves the utilization of ditches for the purpose of dewatering or lowering the water table must be forwarded to the director of the state division of water quality. One copy of the approved plan shall be kept on file at the job site. After approving the plan, if the Administrator, or their designee, upon inspection of the job site, determines that a significant risk of off-site sedimentation exists, the Administrator, or their designee, will require a revised plan.

Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the Administrator, or their designee.

The approval of an erosion control plan is conditioned on the applicant's compliance with federal, state and local water quality laws, regulations, and rules.

(C) Erosion control plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principle place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of this state, a state agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter.

(D) The Macon Soil and Water Conservation District shall review the plan and submit any comments and recommendations to the Administrator within 20 calendar days after the soil and water conservation district received the erosion control plan, or within any shorter period of time as may be agreed upon by the soil and water conservation district and the Administrator. Failure of the soil and water conservation district to submit its comments and recommendations within 20 calendar days or within any agreed-upon shorter period of time shall not delay final action on the plan.

(E) The Administrator will review each complete plan submitted to it and within 30 calendar days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations or disapproved. The 30 day review period will not begin until all required items are submitted. The Administrator shall have five (5) business days to check the plan for completeness. Incomplete plans will be returned for completion. Failure to approve or disapprove a complete erosion and sedimentation control plan within 30 calendar days of receipt shall be deemed approval. Disapproval of a plan must specifically state in writing the reasons for disapproval. The Administrator, or their designee, must approve, approve with modifications, or disapprove a revised plan within 15 calendar days of receipt, or it is deemed to be approved. If, following commencement of a land-disturbing activity pursuant to an approved plan, the Administrator, or their designee, determines that the plan is inadequate to meet the requirements of this chapter, the Administrator or their designee, may require such revisions as are necessary to comply with this chapter. Failure to approve, approve with modifications, or disapprove a revised erosion control plan within 15 calendar days of receipt shall be deemed approval of the plan. Plans for which no permit has been issued shall expire one year from the approval date.

(F) Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. § 113A-1, et seq.) shall be deemed incomplete until a complete environmental document is available for review. The Administrator shall promptly notify the person submitting the plan that

the 30-day time limit for review of the plan pursuant to subsection (E) of this section shall not begin until a complete environmental document is available for review.

(G) The plan required by this chapter may contain architectural and engineering drawings, maps, assumptions, calculations and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this chapter. Plan content may vary to meet the needs of specific site requirements.

Detailed guidelines for plan preparation may be obtained from the Administrator, or their designee, on request.

(H) When deemed necessary by the Administrator, or their designee, a per-construction conference may be required.

(I) No person may initiate land disturbing activity before notifying the Administrator, or their designee, that the issued the plan approval of the date that the land-disturbing activity will begin.

(J) An erosion control plan may be disapproved upon a finding that an applicant, or a parent, subsidiary or other affiliate of the applicant:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the commission or a local government pursuant to the Act and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due;

(3) Has been convicted of a misdemeanor pursuant to G.S. § 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or

(4) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.

For purposes of this subsection (J), an applicant's record may be considered for only the two years prior to the application date.

(K) Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as described in this section. Until such time as such amendment is approved by the Administrator, or their designee, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

(L) Any person engaged in land-disturbing activity who fails to file a plan in accordance with this chapter, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan, shall be deemed in violation of this chapter.

§153.18 Appeals.

(A) Except as provided in subsection (B) of this section, the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:

(1) The disapproval or modification of any proposed erosion control plan or the refusal to issue a land-disturbing permit by the Administrator, or their designee, shall entitle the person submitting the plan, or applying for the permit, to a hearing if such person submits written demand to the clerk to the board for a hearing within 15 days after receipt of written notice of disapproval or modifications. The written demand must specify, with particularity, the factual and/or legal basis for the appeal. No grounds, other than those so specified, may be argued.

(2) Hearings held pursuant to this section shall be conducted by the board of county commissioners within 15 days after the date of the appeal or request for a hearing, or at the next regularly scheduled meeting, whichever is later.

(3) If the board of county commissioners upholds the disapproval or modification of a proposed erosion and sedimentation control plan or refusal to issue a permit following the public hearing, the person submitting the plan or permit application shall then be entitled to appeal the board of county commissioners' decision to the state sedimentation control commission as provided in G.S. § 113A-61(c) and Title 15 NCAC 4B.0018(d).

(B) In the event that an erosion control plan is disapproved pursuant to subsection 153.17(J), the Administrator shall notify the Director of the division of land resources of such disapproval within ten days. The Administrator shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the Administrator's disapproval of the plan pursuant to subsection 153.17(J) directly to the Commission.

§153.19 Inspections and investigations.

(A) Agents, officials or other qualified persons authorized by the Administrator may periodically inspect land-disturbing activities to ensure compliance with the Act, this chapter or rules or orders adopted or issued pursuant to this chapter, and to determine whether the measures required in the plan are effective in controlling erosion and

sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of plan approval of each erosion control plan.

(B) No person shall willfully resist, delay or obstruct an authorized representative, employee or agent of Macon County while that person is lawfully inspecting or attempting to inspect a land-disturbing activity under this section.

(C) If it is determined that a person engaged in land-disturbing activity has failed to comply with the Act, this chapter, or rules or orders adopted or issued pursuant to them, or has failed to obtain a land-disturbing permit or has failed to comply with an approved plan, a notice of violation shall be served upon that person. The notice may be served by any means authorized under G.S. § 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, this chapter, or rules, or orders adopted pursuant to this chapter and inform the person of the actions that need to be taken to comply with the Act, this chapter, or rules or orders adopted pursuant to this chapter. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. If the person engaged in land-disturbing activity fails to comply within the time specified, enforcement action shall be initiated.

(D) The Administrator, or their designee, shall have the power to conduct such investigations as it may reasonably deem necessary to carry out their duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

(E) The Administrator, or their designee, shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

§153.20 Penalties.

(A) *Revocation of permits.*

(1) The Administrator shall have the power to revoke land-disturbing permits issued pursuant to this chapter. When the Administrator, or their designee, proposes to revoke a land-disturbing permit, the Administrator, or their designee, shall serve the permittee or other responsible person with a notice of intent to revoke, specifying the time and date of a pre-termination hearing to be held before the Administrator. The notice may be served by any means authorized under G.S. § 1A-1, Rule 4. The notice shall be delivered at least three working days, Monday through Friday, before the date specified for the pre-termination hearing.

(2) Should the Administrator determine that the land disturbing permit should be revoked then they shall serve the permittee, or other responsible person, with a

notice of revocation. Upon receipt of the notice of revocation, the responsible person shall immediately cause or order the cessation of all land-disturbing activities except those activities which are specifically directed towards bringing the site into a state of compliance.

(3) The person responsible for the land-disturbing activity may appeal the revocation of a land-disturbing permit to the board of county commissioners by submitting a written demand to the clerk to the board for a hearing within 15 days after receipt of the written notice of revocation. The written demand must specify, with particularity, the factual and/or legal basis for the appeal. No grounds, other than those so specified, may be argued.

(4) No person shall resume or continue any land-disturbing activity other than those necessary to bring the site into a state of compliance after receipt of a revocation notice and before reissuance of a land-disturbing permit or decision of the board of county commissioners reinstating a land-disturbing permit. After the Administrator, or their designee, has inspected the site and approved the remedial work, the responsible party may reapply for a land-disturbing permit. The fee for reapplication shall be 100 percent of the current application fee.

(B) *Civil penalties.*

(1) Any person who violates any of the provisions of this chapter, or rules or orders adopted or issued pursuant to this chapter or who initiates or continues a land-disturbing activity for which an erosion control plan and/or land-disturbing permit is required except in accordance with the terms, conditions and provisions of an approved plan and/or land-disturbing permit shall be subject to a civil penalty. The maximum civil penalty for a violation shall be \$5,000.00. A civil penalty may be imposed from the date the violation was detected. Each day of continuing violation shall constitute a separate violation.

(2) The Administrator shall impose the civil penalty authorized by this section. The Administrator shall notify the person upon whom the civil penalty is imposed, of the amount of the penalty and the reason for the penalty. In determining the amount of the penalty the Administrator shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this chapter, the Act, and rules promulgated in furtherance thereof. The notice of civil penalty shall be served by any means authorized under G.S. § 1A-1, Rule 4, and shall direct the violator to either pay the civil penalty or contest the civil penalty, within 30 days after receipt of the notice of civil penalty, by filing a petition for a contested case under G.S. Ch. 150B, Art. 3. The administrative law judge hearing the matter shall make a recommended decision to the board of county commissioners. If either party wishes to challenge the recommended decision they must file with the clerk to the board, and serve on the

other parties, and the office of administrative hearings, specific exceptions and objections, detailing the errors of fact or law they contend exist within the recommended decision, and other written argument they wish to submit, within 30 days after the issuance of same. Other parties shall file any response they wish to make to a submission of exceptions and objections within 30 days of service of same, but may not use this subsequent filing to submit new, or additional, exceptions and objections of their own. The recommended decision will be reviewed by the board of county commissioners within 90 days after the official record in this matter is served upon the clerk to the board by the office of administrative hearings. The board of county commissioners shall adopt or modify the recommended decision consistent with the provisions of G.S. § 150B-36. Appeal of the decision of the board of county commissioners shall be in accordance with G.S. Ch. 150B, Art. 4.

(3) If payment is not received within 30 days after demand for payment is made, the matter will be referred to the county attorney's office for initiation of a civil action to recover the amount of the civil penalty. The civil action may be brought in the superior court. A civil penalty that is not contested is due when the violator is served with a notice of civil penalty. A civil penalty that is contested is due at the conclusion of the administrative and judicial review of the civil penalty.

(4) The clear proceeds of civil penalties collected pursuant to this chapter shall be credited to the Macon Public Schools in accordance with the provisions of G.S. 115C-437.

(C) *Criminal penalties.* Any person who knowingly or willfully violates any provision of the Act, this chapter, or rule or order adopted or issued pursuant to the Act or this chapter, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion control plan and/or land-disturbing permit is required except in accordance with the terms, conditions and provisions of an approved plan and/or land-disturbing permit, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000.00, as provided in G.S. 113A-64.

§153.21 Enforcement alternatives.

Violation of any provision of this chapter shall result in forfeiture of any applicable security or portion thereof required under subsection 153.16(H).

(A) Whenever there is reasonable cause to believe that any person is violating or threatening to violate this chapter or any rule or order adopted or issued pursuant to the Act, this chapter, or any term, condition or provision of an approved erosion control plan, the county attorney may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action as provided in section §10.99 of the Macon County Code of Ordinances, for injunctive relief to restrain the violation or threatened violation in superior court. Upon determination by a court that an

alleged violation is occurring, or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure the restoration is performed, or to prevent the threatened violation.

(B) The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this chapter, or the Act.

§153.22 Restoration of areas affected by failure to comply.

The Administrator may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57(3) and section 153.07(C) of this chapter, to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this chapter, or the Act.

§153.22 Civil Relief

Any person injured by a violation of the Act, this chapter or any rule or order duly adopted by the Department or the county, or by the institution or continuation of a land-disturbing activity for which an erosion and sedimentation control plan is required other than in accordance with the terms, conditions and provisions of an approved plan may bring a civil action for relief in accordance with the provisions of G.S. §113A-66.

As amended by the Board of Commissioners November 10, 2008