

**PART 10**

[Amendments related to Sedimentation and Erosion Control regulations]

**Sec. 3.8 Sedimentation and Erosion Control**

[Paragraphs not listed remain unchanged]

**3.8.2 Application Requirements****B. Land-Disturbing Permit**

1. A land-disturbing permit may be obtained by submitting the following:
  - b. ~~Zoning compliance checkoff~~ Verification of an approved site plan or written approval issued by the Durham City-County Planning Department;

**3.8.7 Disapproval of Plan**

- A. 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~~
  2. ~~Has~~ Has received notice of violation of a plan previously approved by the North Carolina Sedimentation Control Commission or a local government pursuant to the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it (the Act) or local ordinance adopted pursuant to the Act, and has not or had not complied with the notice within the time specified in the notice;
  23. 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;
  34. Has been convicted of a misdemeanor pursuant to NCGS § 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
  45. Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.

**Sec. 12.10 Sedimentation and Erosion Control**

[Paragraphs not listed remain unchanged]

**12.10.2 Applicability****A. Exemptions**

The following activities do not require a permit under this section:

**3. Agricultural Exemption**

- a. As set forth in NCGS § 113A-52.01, land-disturbing activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to:
  - ~~a.~~(1) Forage and sod crops, grain and feed crops, tobacco, cotton and peanuts;
  - ~~b.~~(2) Dairy animals and dairy products;
  - ~~c.~~(3) Poultry and poultry products;
  - ~~d.~~(4) Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all such animals;
  - ~~e.~~(5) Bees and apiary products;

- ~~f.~~(6) Fur animals; and
- ~~g.~~(7) Mulch, ornamental plants, and other horticultural products. For purposes of this section, “mulch” means substances composed primarily of plant remains or mixtures of such substances;
- b.** In order for a land-disturbing activity to be eligible for an agricultural exemption (no exemption is to be assumed until approval of the request by the County), it must be reasonably demonstrated to the county that the land on which the disturbance is taking place is intended for continuous agricultural use. To qualify for exemption under this section, an application for exemption shall be submitted to the County Sedimentation and Erosion Control Office. The Erosion Control Officer or designee shall review the application and grant or deny the exemption within 15 working days of receipt. The land owner shall receive notification of this decision in writing and have ten working days to respond if the exemption is denied. The County Engineer or designee shall have five working days to review and decide on the appeal. Appeal of the County Engineer or designee’s decision may be made to the Board of Commissioners within 30 days of receipt.

The county may require preparation and approval of an erosion and sedimentation control plan for land-disturbing activities applying for an application for exemption where sediment control measures are needed to protect against off-site damages due to sediment from the land-disturbing activity as documented by the county staff.

#### **12.10.4 Mandatory Standards for Land-Disturbing Activity**

No land-disturbing activity shall occur except in accordance with the mandatory standards listed below. Except where more stringent standards are specified in this Ordinance, the technical standards and specifications contained in the North Carolina Erosion and Sediment Control Planning and Design Manual shall also apply. In addition, for land disturbing activities greater than or equal to one acre, requirements within the most recent version of the State of North Carolina General Permit No. NCG010000 shall apply.

#### **B. Stabilization of Disturbed Land**

The angle for disturbed land shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures.

##### **1. Ongoing Activity**

##### **a. Groundcover**

Land left exposed shall be planted or otherwise provided with temporary ground cover, devices, or structures sufficient to restrain erosion within the applicable time period after completion of any phase of grading or period of inactivity as follows: seven days for a steep slope; ten days for a moderate slope; 14 days for land with no slope or inclination. For purposes of this section, a moderate slope means an inclined area, the inclination of which is less than or equal to three units of horizontal distance to one unit of vertical distance; and a steep slope means an inclined area, the inclination of which is greater than three units of horizontal distance to one unit of vertical distance. No other criteria apply.

**Commentary:** The moderate and steep slope definitions in this section are mandated by state law (S.L. 2009-486) for sedimentation and erosion control

purposes. This steep slope definition differs from the steep slope definition under UDO Sec. 8.8, Steep Slope Protection Standards, which is otherwise applicable throughout the UDO.

**b. Soil Stockpiles**

Soil stockpiles shall be limited to the shorter of thirty (30) feet above existing grade or half the height of adjacent existing mature tree cover. Stockpiles shall be wrapped in two rows of silt fence and groundcover shall be planted in accordance with this section. Stockpile slopes shall be 2:1 or flatter.

- E. Each sediment basin or trap in the Suburban or Rural Tier shall have a minimum volume of 3,600 cubic feet per acre of disturbed area and a minimum surface area of 435 square feet per cfs of Q25 (25-year storm) peak inflow. Each sediment basin or trap in the Downtown, Compact Neighborhood, or Urban Tier shall have a minimum volume of 1,800 cubic feet per acre of disturbed area and a minimum surface area of 325 square feet per cfs of Q25 peak inflow. A skimmer shall be used in each sediment basin or trap. If the temporary sediment basin or trap is to be converted to a permanent stormwater control measure and the volume is greater than that of the temporary basin, the larger of the two shall be used, unless approved in writing by the Durham County Erosion Control Office.
- I. ~~One party shall retain operational control of any basin or trap. Sold outparcels shall be permitted separately.~~ Developer shall retain control of permitted area, including sediment basins or traps, until permit has been closed. For commercial sites, sold outparcels shall be permitted separately.
- L. In high quality water (HQW) zones, Lake Michie/Little River Critical Area (M/LR-A), Lake Michie/Little River Protected Area (M/LR-B), Falls/Jordan Critical Area (F/J-A), Eno River Critical Area (E-A), and Third Fork Creek Watershed, uncovered areas shall be limited at any time to a maximum total area of 20 acres. In high quality water (HQW) zones, Only only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas within HQW- may be uncovered with the written approval of the Director of DEQ, Division of Energy, Mineral and Land Resources. Larger areas within all other zones may be uncovered with the written approval of the Durham County Erosion Control Office.

**12.10.6 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 State Department of ~~Environmental and Natural Resources~~ Environmental Quality'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. The name and location of any borrow and/or waste areas shall be provided to the Durham County Erosion Control Office upon request.

## Sec. 15.5 Sedimentation and Erosion Control Enforcement and Penalties

[Technical revisions and reorganization of the section consistent with the State's November 2018 Model Ordinance]

### 15.5.1

~~Agents, officials or other qualified persons authorized by the Sedimentation and Erosion Control Officer or designee may periodically inspect land disturbing activities to ensure compliance with the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or (the Act,) or an approved sedimentation and erosion control plan and to determine whether the measures utilized or required in the plan are effective in restraining erosion and retaining sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of plan approval of each sedimentation and erosion control plan.~~

### 15.5.2

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

### 15.5.3

~~If it is determined that a person engaged in land disturbing activity has failed to comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan, a notice of violation shall be served upon that person. The notice may be served by any means authorized under NCGS § 1A-1, rule 4. The notice shall specify a date by which the person must comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted pursuant to those sections or the Act, or an approved sedimentation and erosion control plan and inform the person of the actions that need to be taken to comply. If the person engaged in land disturbing activity fails to comply within the time specified, enforcement action shall be initiated. If the person engaged in the land disturbing activity has not received a previous notice of violation as specified in this section, the Erosion Control Officer or designee shall deliver the notice in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program or cooperative extension program, or by the provision of written documents such as Department of Environmental Quality or County Sedimentation and Erosion Control Office documents. If the Erosion Control Officer or designee is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by NCGS § 1A-1, rule 4, and shall include information on how to obtain assistance in developing corrective measures.~~

### 15.5.4

~~The Sedimentation and Erosion Control Officer, or designee shall have the power to conduct such investigations as he/she may reasonably deem necessary to carry out their duties as~~

prescribed in this section, 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.

#### **15.5.5**

The Sedimentation and Erosion Control Officer, or designee shall also have the power to require written statements, or the filing of reports under oath, with respect to land disturbing activity.

#### **15.5.6 Revocation of Permits**

~~A. The County Engineer shall have the power to revoke land disturbing permits issued pursuant to Sec. 3.8, Sedimentation and Erosion Control, and Sec. 12.10, Sedimentation and Erosion Control. When the Sedimentation and Erosion Control Officer or designee proposes to the County Engineer that a land disturbing permit be revoked, the Officer or 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 County Engineer. The notice shall be delivered at least three working days, Monday through Friday, before the date specified for the pre-termination hearing.~~

~~B. Should the County Engineer determine that the land disturbing permit should be revoked, he/she 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.~~

~~C. The person responsible for the land disturbing activity may appeal the revocation of a land disturbing permit to the Board of Commissioners by submitting a written demand to the Clerk to the Board of Commissioners for a hearing within 15 days after receipt of the written notice of revocation. The written demand must specify, in detail, the factual and/or legal basis for the appeal. No grounds other than those so specified may be argued.~~

~~D. 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 Commissioners reinstating a land disturbing permit. After the Sedimentation and Erosion Control Officer or 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% of the current application fee.~~

#### **15.5.7 Civil Penalties**

~~A. Any person who violates any of the provisions of the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, or rules or orders adopted or issued pursuant to those sections or the Act, or who initiates or continues a land disturbing activity for which sedimentation and erosion control plan and/or land disturbing permit is required except in accordance with such plan or permit shall be subject to civil penalties. The maximum civil penalty for a violation shall be \$5,000, or \$5,000 per day for a continuing violation. Civil penalties may be imposed from the date a violation was commenced. Each day of continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this section for~~

~~any previous violation and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land disturbing activity for which the erosion and sedimentation control plan is required is \$25,000.~~

- ~~B. The Sedimentation and Erosion Control Officer or designee shall impose the civil penalties authorized by this section. The Sedimentation and Erosion Control Officer or designee shall notify the person upon whom the civil penalties are imposed of the amount of the penalty, the reason for assessing the penalty, the option available to that person to request remission of the civil penalty under paragraph 15.5.8, the date of the deadline for that person to make the remission request regarding this particular penalty, and when that person has not been assessed any civil penalty under this section for any previous violation, the date of the deadline for that person to abate continuing environmental damage resulting from the violation in order to be subject to the maximum cumulative total civil penalty under this section. In determining the amount of the penalties the Sedimentation and Erosion Control Officer or designee 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 the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan. The notice of civil penalties shall be served by any means authorized under NCGS § 1A-1, rule 4, and shall direct the violator to either pay or contest the civil penalties, within 30 days after receipt of the notice, by filing a petition for a contested case under NCGS § 150B, art. 3. The administrative law judge hearing the matter shall make a recommended decision to the Board of Commissioners. If either party wishes to challenge the recommended decision, they must file with the Clerk to the Board of Commissioners, 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 and any written submissions of the parties will be reviewed by the Board of Commissioners within 90 days after the official record in this matter is served upon the Clerk to the Board of Commissioners by the Office of Administrative Hearings. The Board of Commissioners shall adopt or modify the recommended decision consistent with the provisions of NCGS § 150B-36. Appeal of the decision of the Board of Commissioners shall be in accordance with NCGS § 150B, art. 4.~~
- ~~C. 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 penalties. Civil penalties that are not contested are due when the~~

violator is served with a notice of civil penalties. Civil penalties that are contested are due at the conclusion of administrative and judicial review.

~~D. The clear proceeds of civil penalties collected pursuant to this section shall be credited to the Durham Public Schools in accordance with the provisions of NCGS § 115C 437.~~

#### **15.5.8 Remission of Civil Penalties**

~~A. A request for remission of a civil penalty imposed under this section may be filed with the Sedimentation Control Commission within 60 days of receipt of the notice of assessment. Notification of a request for remission must also be filed with the County Engineer. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to NCGS § 150B, art. 3, and a stipulation of the facts on which the assessment was based.~~

~~B. The following factors shall be considered in determining whether a civil penalty remission request will be approved:~~

- ~~1. Whether one or more of the civil penalty assessment factors in NCGS § 113A 64(a)(3) were wrongly applied to the detriment of the petitioner.~~
- ~~2. Whether the petitioner promptly abated continuing environmental damage resulting from the violation.~~
- ~~3. Whether the violation was inadvertent or a result of an accident.~~
- ~~4. Whether the petitioner had been assessed civil penalties for any previous violations.~~
- ~~5. Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.~~
- ~~6. The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.~~

~~C. The petitioner has the burden of providing information concerning the financial impact of a civil penalty on the petitioner and the burden of showing the petitioner's financial hardship.~~

~~D. The Commission may remit the entire amount of the penalty only when the petitioner has not been assessed civil penalties for previous violations and payment of the civil penalty will prevent payment for necessary remedial actions.~~

~~E. The Commission may not impose a penalty under this section that is in excess of the civil penalty imposed by the County.~~

#### **15.5.9 Criminal Penalties**

~~Any person who knowingly or willfully violates any provision of the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, or rules or orders adopted or issued pursuant to those sections or the Act, or who knowingly or willfully initiates or continues a land-disturbing activity for which an approved sedimentation and erosion control plan and/or land-disturbing permit is required except in accordance with such plan or permit shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000.00, as provided in NCGS § 113A 64.~~

#### **15.5.10 Enforcement Alternatives**

~~Violation of any provision of this Article shall result in forfeiture of any applicable security or portion thereof required under paragraph 3.8.3.~~

~~A. Whenever there is reasonable cause to believe that any person is violating or threatening to violate the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10,~~

~~Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan, the County Attorney may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action as provided in paragraph 15.3.3, Injunctive Relief in Superior Court, for injunctive relief to restrain the violation or threatened violation in superior court.~~

- ~~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 penalties assessed under this section.~~
- ~~C. Land disturbing activities undertaken without first obtaining a land disturbing permit, but which are required by Sec. 3.8, Sedimentation and Erosion Control, to obtain a land disturbing permit, shall be subject to a permit fee of 200% of the current applicable fee, in addition to any civil penalties assigned per paragraph 15.5.7, Civil Penalties.~~
- ~~D. Conveyance of the property subject to the permit, in whole or in part, shall not terminate the permit holder's obligations under the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan until such time as a substitute, or succeeding, permit is approved by the Sedimentation and Erosion Control Officer or designee.~~

#### **~~15.5.11 Restoration of Areas Affected by Failure to Comply~~**

~~The Sedimentation and Erosion Control Officer or designee may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by NCGS § 113A 57(3) and Sec. 12.10, Sedimentation and Erosion Control, 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 section or the Act.~~

#### **15.5.1 Inspections and Investigations**

##### **A. Inspection**

Agents, officials, or other qualified persons authorized by the Sedimentation and Erosion Control Officer or designee will periodically inspect land-disturbing activities to ensure compliance with the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or (the Act,) or an approved sedimentation and erosion control plan, and to determine whether the measures required in the Plan are effective in controlling erosion and sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each Plan.

##### **B. Willful Resistance, Delay or Obstruction**

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

##### **C. Notice of Violation**

If it is determined that a person engaged in land-disturbing activity has failed to comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or the Act,

or an approved sedimentation and erosion control plan, a notice of violation shall be served upon that person. The notice may be served by any means authorized under NCGS § 1A-1, rule 4. The notice shall inform the person of the actions that need to be taken to comply and specify a date by which the person must comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted pursuant to those sections or the Act, or an approved sedimentation and erosion control plan and inform the person of the actions that need to be taken to comply. If the person engaged in land-disturbing activity fails to comply within the time specified, enforcement action shall be initiated. If the person engaged in the land-disturbing activity has not received a previous notice of violation as specified in this section, the Erosion Control Officer or designee shall deliver the notice in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program or cooperative extension program, or by the provision of written documents such as Department of Environmental Quality or County Sedimentation and Erosion Control Office documents. If the Erosion Control Officer or designee is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by NCGS § 1A-1, rule 4, and shall include information on how to obtain assistance in developing corrective measures.

**D. Investigation**

The Sedimentation and Erosion Control Officer or designee, shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this ordinance, 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. Statements and Reports**

The Sedimentation and Erosion Control Officer or designee, shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

**15.5.2 Revocation of Permits**

**A.** The County Engineer or designee shall have the power to revoke land-disturbing permits issued pursuant to Sec. 3.8, Sedimentation and Erosion Control, and Sec. 12.10, Sedimentation and Erosion Control. When the Sedimentation and Erosion Control Officer or designee proposes to the County Engineer or designee that a land-disturbing permit be revoked, the Officer or 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 County Engineer or designee. The notice shall be delivered at least three working days, Monday through Friday, before the date specified for the pre-termination hearing.

**Commentary:** County Engineer designee shall be a North Carolina Professional Engineer and employed outside the Durham County Stormwater and Erosion Control Division.

**B.** Should the County Engineer or designee determine that the land disturbing permit should be revoked, he/she 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.

- C. The person responsible for the land-disturbing activity may appeal the revocation of a land-disturbing permit to the Board of Commissioners by submitting a written demand to the Clerk to the Board of Commissioners for a hearing within 15 days after receipt of the written notice of revocation. The written demand must specify, in detail, the factual and/or legal basis for the appeal. No grounds other than those so specified may be argued.
- D. 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 Commissioners reinstating a land-disturbing permit. After the Sedimentation and Erosion Control Officer or 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% of the current application fee.

### **15.5.3 Civil Penalties**

#### **A. Civil Penalty for a Violation**

Any person who violates any of the provisions of the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, or rules or orders adopted or issued pursuant to those sections or the Act, or rule or order adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. The maximum civil penalty amount that the (city)(town)(county) may assess per violation is five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).

#### **B. Civil Penalty Assessment Factors**

The Sedimentation and Erosion Control Officer or designee shall determine the amount of the civil penalty based upon the following factors:

1. The degree and extent of harm caused by the violation;
2. The cost of rectifying the damage;
3. The amount of money the violator saved by noncompliance;
4. Whether the violation was committed willfully, and
5. The prior record of the violator in complying or failing to comply with this ordinance.

#### **C. Notice of Civil Penalty Assessment**

The Sedimentation and Erosion Control Officer or designee shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4. A notice of assessment by the Sedimentation and Erosion Control Officer or designee shall direct the violator to either:

1. Pay the assessment;
2. File a request for remission of the assessment;

- a. A request for remission of a civil penalty imposed under this section must be filed with the Sedimentation Control Commission within 60 days of receipt of the notice of assessment.
  - b. Notification of a request for remission must also be filed with the County Engineer.
  - c. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to NCGS § 150B, art. 3, and a stipulation of the facts on which the assessment was based.
- 3. Or, contest the assessment within 30 days by filing a petition for a contested case under NCGS § 150B, art. 3.
  - a. The administrative law judge hearing the matter shall make a recommended decision to the Board of Commissioners. If either party wishes to challenge the recommended decision, they must file with the Clerk to the Board of Commissioners, 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.
  - b. The recommended decision and any written submissions of the parties will be reviewed by the Board of Commissioners within 90 days after the official record in this matter is served upon the Clerk to the Board of Commissioners by the Office of Administrative Hearings. The Board of Commissioners shall adopt or modify the recommended decision consistent with the provisions of NCGS § 150B-36.
  - c. Appeal of the decision of the Board of Commissioners shall be in accordance with NCGS § 150B, art. 4.

**D. Collection**

If payment is not received within 60 days after it is due, Durham County may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

**E. Credit of Civil Penalties**

The clear proceeds of civil penalties collected by Durham County under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by Durham County may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by Durham County for the prior fiscal year.

**15.5.4 Criminal Penalties**

Any person who knowingly or willfully violates any provision of the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, or rules or

orders adopted or issued pursuant to those sections or the Act, or who knowingly or willfully initiates or continues a land-disturbing activity for which an approved sedimentation and erosion control plan and/or land-disturbing permit is required except in accordance with such plan or permit shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000.00, as provided in NCGS § 113A-64.

#### **15.5.5 Enforcement Alternatives**

Violation of any provision of this Article shall result in forfeiture of any applicable security or portion thereof required under paragraph 3.8.3.

- A. Whenever there is reasonable cause to believe that any person is violating or threatening to violate the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan, the County Attorney may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action as provided in paragraph 15.3.3, Injunctive Relief in Superior Court, for injunctive relief to restrain the violation or threatened violation in superior court.
- 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 penalties assessed under this section.
- C. Land-disturbing activities undertaken without first obtaining a land-disturbing permit, but which are required by Sec. 3.8, Sedimentation and Erosion Control, to obtain a land-disturbing permit, shall be subject to a permit fee of 200% of the current applicable fee, in addition to any civil penalties assigned per paragraph 15.5.7, Civil Penalties.
- D. Conveyance of the property subject to the permit, in whole or in part, shall not terminate the permit holder's obligations under the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan until such time as a substitute, or succeeding, permit is approved by the Sedimentation and Erosion Control Officer or designee.

#### **15.5.6 Restoration of Areas Affected by Failure to Comply**

The Sedimentation and Erosion Control Officer or designee may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by NCGS § 113A-57(3) and Sec. 12.10, Sedimentation and Erosion Control, 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 section or the Act.

### **PART 11**

That the Unified Development Ordinance shall be renumbered, including references, as necessary to accommodate these changes.

### **PART 12**

That this amendment of the Unified Development Ordinance shall become effective December 1, 2019