

**DEPARTMENT OF ENVIRONMENTAL  
QUALITY**

**DIVISION OF ENERGY, MINERAL,  
AND LAND RESOURCES**

**SEDIMENTATION  
CONTROL COMMISSION  
MEETING**

**10:00 A.M.  
Tuesday  
November 5, 2020**

**ONLINE MEETING via WEBEX**

**If you have any questions concerning this meeting, please contact  
Julie Coco at (919) 707- 9215**

I. **Preliminary Matters**

A. Call to Order

B. Recognition of Those Attending

C. Swearing in of New Members, if Present

D. Approval of Meeting Minutes from August 11, 2020

## AGENDA

North Carolina Sedimentation Control Commission  
Business Meeting

Ground Floor Hearing Room  
Archdale Building  
512 North Salisbury Street  
Raleigh North Carolina

*Though normally held at the above location, this meeting will be held via webinar.*

November 5, 2020, 10:00 AM

***The Elections and Ethics Enforcement Act mandates that the Chair inquire as to whether any member knows of any known conflict of interest or appearance of conflict with respect to matters before the Commission. Executive Order 34 requires any member to recuse herself or himself from voting on any matter before this Commission which would confer a financial benefit on the member. If any member knows of a conflict of interest, appearance of a conflict, or possible financial benefit please so state at this time.***

Dr. Susan White, Chair, Presiding

### I. Preliminary Matters

- A. Call to Order
- B. Recognition of Those Attending
- C. Swearing in of New Members, if Present
- D. Approval of Meeting Minutes from August 11, 2020

### II. Action Items

- A. Election of a Vice-Chair – Dr. Susan White  
*The Chair will ask the members for a nomination and vote to elect a vice-chair for the October 2020 – October 2022 term. Responsibilities can be found in the Commission's Operating Procedures on the SCC website.*
- B. Guilford County Local Program Review – Ms. Julie Coco  
*Staff are presenting the findings and recommendations of their review for this program.*
- C. Town of Wake Forest Local Program Review – Ms. Julie Coco  
*Staff are presenting the findings and recommendations of their review for this program.*

- D. Formal Review of Local Government Ordinance  
*Officials from the Town of Clayton are requesting approval of their erosion and sedimentation control ordinance.*
- E. Model Ordinance Update – Ms. Julie Coco  
*Staff are requesting approval for changes to the model ordinance used by Local Programs.*

### III. **Information Items**

- A. Risk-based Approach to Construction Projects in Mountainous Areas of North Carolina – Mr. Toby Vinson and Mr. Brian Wrenn  
*Staff will introduce an enhanced risk-based approach specific to the challenges faced in the mountains with our increasing storm events.*
- B. Commission Technical Committee – Dr. Susan White  
*The Chair will provide an update on the progress in obtaining members.*
- C. Land Quality Section Active Sediment Cases and Enforcement — Ms. Julie Coco  
*Staff will report on the status of Civil Penalty Assessments, action on Civil Penalty Assessments, and Judicial Actions.*
- D. Education Program Status Report — Ms. Rebecca Coppa  
*Staff will report on Sediment Education Program activities.*
- E. Sediment Program Status Report — Ms. Julie Coco  
*Staff will report on LQS's current statewide plan approval, inspection, and enforcement activities.*
- F. NCDOT Report – Ms. Julie Coco  
*Staff will report on the Immediate Corrective Action Reports issued by the Department.*
- G. Land Quality Section Report — Mr. Toby Vinson  
*Staff will provide a report on the current number of vacancies in the Section and other LQS activities and issues.*
- H. Coronavirus Disease of 2019 (COVID-19) Status – Mr. Toby Vinson  
*Staff will provide an update on the division's current mode of operation during the pandemic.*
- I. Reminder of Next Commission Meeting on Tuesday, February 23, 2021 –  
Mr. Toby Vinson

**IV. Conclusion**

- A. Remarks by DEMLR Director
- B. Remarks by Commission Members
- C. Remarks by Chairman
- D. Adjournment

MINUTES  
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION  
AUGUST 11, 2020  
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING  
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on August 11, 2020 at 10:00 a.m. via an online webinar. The following persons were in attendance via webinar for all or part of the meeting, with Commission members being present for the entire meeting:

**COMMISSION MEMBERS**

Dr. Susan White (Chair)  
Mr. Jonathan Bivens  
Ms. Natalie Berry  
Ms. Heather Deck  
Mr. Mark Taylor  
Ms. Susan Foster  
Ms. LaToya Ogallo  
Dr. Richard McLaughlin  
Ms. Marion Deerhake

**OTHERS**

Mr. Matt Gantt, Regional Operations Chief, DEMLR  
Mr. Toby Vinson, Program Operations Chief, DEMLR  
Mr. Grant Parrish, State Assistant Sedimentation Specialist, DEMLR  
Ms. Julie Coco, State Sedimentation Specialist, DEMLR  
Ms. Rebecca Coppa, State Sedimentation Education Specialist, DEMLR  
Mr. Zac Lentz, DEMLR-Winston Salem Regional Office  
Ms. Sarah Zambon, Attorney General's Office  
Mr. Shelton Sullivan, DWR  
Ms. Susan Locklear, Stormwater Engineer, Town of Clayton  
Mr. Joshua Baird, Town Engineer, Town of Clayton  
Mr. Rich Cappola, Town of Clayton  
Ms. Karyn Pageau, Wake County

**PRELIMINARY MATTERS**

Dr. White called the meeting to order at 10:06 am.

Dr. White read Executive Order No. 1 regarding avoidance of conflict of interest.

Those in attendance introduced themselves. Dr. White announced any potential conflicts with the Commission members and reminded them to recuse themselves from any discussions related to those conflicts. Dr. White read the guidelines for participating in the webinar.

Dr. White asked for a motion to approve the minutes from the May 12, 2020 meeting. Ms. Deck moved to approve the minutes. Dr. McLaughlin made a second; the motion passed, and the minutes were approved unanimously.

## **ACTION ITEMS**

### **Model Ordinance Changes**

Ms. Coco summarized proposed changes to the model ordinance used by Local Programs. She also posed questions as to other text within the ordinance.

The motion was as follows:

Ms. Foster moved to defer a vote to re-adopt the model ordinance until the November meeting to allow staff time to make changes requested by the Commission. Mr. Bivens seconded the motion. The Commission voted to defer re-adoption of the model ordinance to the Commission's November meeting. In a second draft, DEMLR staff will differentiate between the changes proposed upon entering this meeting, and the modifications of those changes proposed during this meeting.

## **INFORMATION ITEMS**

### **Informal Review of Local Government Ordinance**

*(This was removed from Action Items as listed on the agenda.)*

Ms. Coco introduced an ordinance drafted by the Town of Clayton and requested comments from the commission members. Staff addressed questions from the members and provided comments to Town staff.

### **Committee Nominations & Topics**

The Chair opened the discussion with a list of nominees for the Commission's Technical Committee (CTC). The question was asked as to whether we had adequate representation across the state of North Carolina on the CTC. A concern arose as to adequate homebuilder representation. Ms. Foster offered to seek statewide representation for homebuilders.

Nominations continue to be solicited for both the CTC and the Education Advisory Committee.

The Chair presented a list of technical topics solicited from the members and compiled by staff for discussion. Solicitations continue for this list in anticipation of discussion topics for committee meetings.

### **Land Quality Section Active Sediment Cases and Enforcement**

Ms. Coco reported on the status of civil penalty assessments and judicial actions. Numbers were available through the end of the 2019-2020 fiscal year.

### **Education Program Status Report**

Ms. Rebecca Coppa reported on Sediment Education Program activities. Concessions and improvisations have been made where in-person events were prohibited due to the Coronavirus pandemic and the State executive orders that ensued.

### **Sediment Program Status Report**

Ms. Coco reported on the Land Quality Section's statewide plan approvals, inspections, and enforcement activities. The number of inspections conducted was reduced while staff were directed to limit visits to high-priority sites during the pandemic. This correlated with fewer notices for violations but did not significantly impact the total count of inspections for the fiscal year. Plan applications and reviews were down slightly from the previous fiscal year but appear to have had little impact on program operations.

### **NCDOT Report**

Ms. Coco reported on the two Immediate Corrective Action Reports issued by the Department.

### **Land Quality Section Report**

Mr. Vinson provided a report on the current number of vacancies in the Section.

### **COVID-19 Status**

Mr. Vinson discussed how the pandemic and ensuing State executive orders have impacted program operations. The Department instituted a teleworking policy for employees.

## **CONCLUSION**

**Remarks by the DEMLR Chief of Program Operations** – Mr. Vinson introduced Mr. Graham Parrish as the new State Assistant Sedimentation Specialist, Graham Parrish. Mr. Vinson thanked staff for their hard work during this time. He also thanked the members for their guidance on program initiatives.

**Remarks by Commission Members** – None

**Remarks by Chairman** – The Chair expressed her appreciation to the members for their attendance and to the DEMLR staff for their work effort.

**Adjournment** – Dr. White adjourned the meeting at approximately 1:23 pm.

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Julie Coco, State Sediment Engineer  
Division of Energy, Mineral, and Land  
Resources

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William Vinson, Jr.  
Chief of Program Operations  
Division of Energy, Mineral, and  
Land Resources

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Dr. Susan White, Chair  
Sedimentation Control Commission

**II. Action Items**

- A. Election of a Vice-Chair – Dr. Susan White
- B. Guilford County Local Program Review – Ms. Julie Coco
- C. Town of Wake Forest Local Program Review – Ms. Julie Coco
- D. Formal Review of Local Government Ordinance
- E. Model Ordinance Update – Ms. Julie Coco

## **Local Program Report to the SCC Guilford County, September 24, 2020**

On September 24, 2020, personnel from the NCDEQ, Land Quality Section, conducted a review of Guilford County's Erosion and Sedimentation Control Program. Guilford County was last reviewed on 1/30/2020. The Sediment Control Commission placed Guilford County on a 9-month probation at the February 5, 2020 Commission meeting. The County has since hired a second inspector, bringing their staff total to 3 members that contribute 3 full time equivalents to the erosion control program. The County requires a sediment and erosion control plan for sites that have a total land disturbance of one acre or more and any disturbance within Tier 1 or Tier 2 of critical watershed areas. From August 2019 to August 2020, the County reviewed or re-reviewed 45 erosion and sedimentation control plans and approved 34. During the same time frame the County stated that they had conducted 1067 inspections and issued 4 NOVs. All NOVs were issued during the probationary period. The County states that they hold building and other permits as a tool to achieve compliance. Preconstruction meetings are required for all approved projects before a grading permit is issued. Guilford County currently has 131 active projects. During the previous review DEMLR staff noted a few issues including; infrequent site inspections, sites not following approved plans, a plan review being conducted outside of the 30-day time frame requirement, sites not providing adequate groundcover within timetables, and sites with steep and unprotected slopes. The County states that they perform weekly site inspections on large sites, bi-weekly inspections on average sites and monthly inspections on smaller sites. The county explained that the reported number of inspections only accounted for inspections that were solely erosion and sediment control. When inspectors conducted inspections for other things, such as building, landscape, plumbing, etc., in conjunction with the erosion and sediment control inspection, due to the way they code each inspection within their system they are not counted as ESC inspections. The County and DEMLR regional staff conducted joint inspections throughout the probationary period on the 4 sites from the 1/30/2020 review and 5 additional sites. DEMLR regional staff reported that the local program appears to be performing at least monthly inspections on all sites, filing detailed inspection reports and communicating with project engineers, contractors and developers about issues noted during inspections and ways that they can prevent situations leading to noncompliance.

The following is a summary of the projects that were reviewed:

### **1. Aydogdu**

This project was one of the original 4 reviewed during the 1/30/2020 review and consists of 3.8 disturbed acres for residential development. The file for this project contained the plan, approval letter, calculations, inspection reports, deed, and the FRO form. The plan was received on 5/7/2019 and was approved on 6/6/2019. The approved plan was adequate. The site has been inspected 23 times. The site was last inspected on 9/9/2020 and was found to be in compliance at the time. No NOVs or CPAs have been issued to this site at the time of our review. During our inspection, the site was out of compliance for failure to document self-inspections. The site needed general maintenance and cleaning. A few areas of concrete slurry washouts were noted and pointed out to County staff as things to look for and refer to the Winston-Salem Regional office as NPDES violations. The site had good ground cover, stockpiles were stabilized and protected, and the entrance was well maintained. The skimmer basins were well maintained and

functioning properly. This site will soon be moving into a second phase and County staff has requested a revised plan before the builder can move into the next phase.

## **2. The Summit Church**

This project was one of the original 4 reviewed during the 1/30/2020 review and consists of 8.13 acres for the construction of a church. The file for this project contained the plan, approval letter, calculations, inspection reports, deed, and the FRO form. The plan was received on 3/27/2019 and was approved on 4/26/2019. The approved plan was adequate. The site has been inspected 22 times. The site was last inspected on 9/16/20 and was found to be in compliance at the time. No NOV's or CPAs have been issued to this site at the time of our review. During our inspection, the site was in compliance. Seeding/landscape crews were on-site, and it appeared they had recently mulched. Seed was germinating well. A small amount of sediment outside the LOD behind the steep slopes of the SE corner needed to be removed and slopes needed to be stabilized with seed and/or mulch. A channel that had formed and was undercutting an outlet needed to be repaired and the dissipation pad stabilized. County staff noted the need for overseeding with permanent vegetation and final stabilization of the sloped areas.

## **3. Summerfield Ridge**

This project was one of the original 4 reviewed during the 1/30/2020 review and consists of 11.3 acres disturbed acres for residential development. The file for this project contained the plan, approval letter, inspection reports, calculations, deed, and the FRO form. The plan was received on 5/31/2019 and approved on 7/5/2019. The approved plans were adequate. This site has received 41 inspections. The site was last inspected prior to our review on 9/16/2020. Prior to the 1/30/2020 review, DEMLR staff had received multiple complaints from the public. DEMLR staff has not received any additional complaints during the probationary period. No NOV's or CPAs have been issued to this site at the time of our review. During joint inspections between DEMLR Regional and County staff over the probationary period, DEMLR staff reported that all deficiencies were noted and observed by County Inspectors, and that County staff consistently worked with project engineers, contractors, builders and landscape crews to bring the site into compliance. Many additional measures have been required by the County to ensure proper handling of erosion and sedimentation. Due to time constraints, a site inspection during our review was not completed. County staff conducted an inspection on 10/7/2020 and found that the site was out of compliance for failure to provide adequate groundcover, Unprotected exposed slopes and failure to maintain erosion control measures. The County set a 9-day deadline to complete corrective actions which were included on the inspection report.

## **4. Angels Landing**

This project was one of the original 4 reviewed during the 1/30/2020 review and consists of 5.7 disturbed acres for residential development. The file for this project contained the plan, approval letter, calculations, inspection reports, FRO form, and the deed. The plan was received on 7/17/2019 and approved on 7/27/2019. The approved plan was adequate. The site has had 17 inspections. The site was last inspected prior to our review on 9/11/2020. Prior to the 1/30/2020 review, DEMLR staff had received multiple complaints from the public. DEMLR staff has not

received any additional complaints during the probationary period. The site has not received any NOVs or CPAs from the local program at this time. During joint inspections DEMLR Regional staff reported that the County was working with the grading contractor to bring the site into compliance, all sediment and erosion control measures had been installed per the approved plan and were functioning properly, and that temporary vegetative stabilization had been well established. Due to time constraints, a site inspection during our review was not conducted. County staff conducted an inspection on 10/7/2020 at which time the site was found to be out of compliance for failure to provide adequate groundcover, unprotected exposed slopes and failure to maintain erosion control measures. The County set a 12-day deadline to complete corrective actions which were included on the inspection report.

## **5. Brick Reform Church**

This project is one that DEMLR-Regional staff conducted inspections in conjunction with County staff over the probationary period. This project consists of 2.6 disturbed acres for commercial development. The file for this project contained the plan, approval letter, calculations, inspection reports, deed and the FRO form. The plan went through 2 review cycles, with the final revised plan being received on 3/27/2020 and approved the same day. This site has received 3 inspections. The last inspection was conducted on 9/21/2020 where the site was found to be in compliance. The approved plans were missing the site soil information. During joint inspections in August the site had been well seeded and maintained. Due to time constraints, a site inspection was not conducted during our review. DEMLR Regional staff and County Inspectors conducted an inspection on 9/28/2020. During this inspection the site was in compliance. The site was well stabilized with temporary vegetation, the construction entrance was well maintained and clean and the two skimmer basins were functioning properly and well maintained.

## **6. RCC 260K (Inspections Only)**

This project is one that DEMLR-Regional staff conducted inspections in conjunction with County staff over the probationary period. This site is a large industrial property. During the 8/25/2020 joint inspection, the site was in compliance. DEMLR-Regional Staff conducted an inspection on 9/28/2020, at which time the site continued to be in compliance. Inspectors noted that a skimmer basin was in need of baffle maintenance, sediment clean-out and new riprap on the outlet dissipater pad to prevent further undercutting. The site overall was well stabilized with temporary vegetation and inspectors noted that permanent vegetation could be seeded during the fall growing season. The same deficiencies were noted by both County and DEMLR staff.

### **Positive findings:**

During our review we found several positive aspects about Guilford County's local erosion control program including:

- Requires all disturbances within Tier1 and Tier 2 critical watershed area to receive a permit.
- The County requires applicants to include the DEMLR NPDES plan sheets in their plan submittals in order to receive an approval.
- Preconstruction meetings are required by the County for all projects.

- Conducting regular monthly site inspections and more frequent inspections on larger sites and when violations are noted.

### **Issues Noted and Required Action:**

During our review we found that Guilford County's local erosion control program had a few deficiencies including:

- Plans should include all information necessary to ensure that they can be approved in accordance with 15A NCAC 04B .0107(a) & (c) and 15A NCAC 04B .0118(d)(1) pursuant to the basic plan objectives under 15A NCAC 04B .0106. A plan was approved which was missing soils information.
- The requirement for adequately documented self-inspections. G.S. 113A-54.1(e) and 15A NCAC 4B .0131.

The County shall implement the following changes to correct the deficiencies noted above:

- Make sure that all applicable items on the Plan Review Checklist, including but not exclusively soils information, stream delineations and stockpile locations, are included on the plans before approval.
- Check that self-inspection reports are kept on site for all projects not just ones out of compliance or bad actors.

### **Additional Recommendations for Improvement (Optional changes):**

DEMLR staff has also put together a list of recommendations, or option items, to improve the program:

- Update all template letters to reflect latest language and references to North Carolina Administrative Code as the NCAC rules have recently been updated.
- Monitor and provide guidance for NPDES violations including improper concrete washout and fuel containment on site during inspections. Note possible violations and refer to the Winston-Salem Regional Office.

### **Conclusion:**

During our review and correspondence throughout the probationary period we found that Guilford County's Locally Delegated Erosion and Sediment Control Program has addressed all the issues found during the 1/30/2020 review. The addition of a second full time inspector has increased the ability to conduct frequent and detailed inspections. The program has many tools outside of issuing NOV's to push sites toward compliance but will issue NOV's if necessary. DEMLR staff has not received any citizen complaints regarding Guilford County projects in the past few months. It appears that the County has addressed the issues previously noted during the 1/30/2020 review and continue to learn and input the work and effort to effectively implement their Local Erosion and Sediment Control Program.

Based on the review, staff will recommend that Guilford County's Erosion and Sedimentation Control Program be removed from probation and continue its delegation.

This report has been prepared based on the review of Guilford County's Local Program conducted on 9/24/2020. This report will be presented to the Sedimentation Control Commission (SCC) on November 5, 2020.

## **Local Program Report to the SCC Town of Wake Forest, September 18, 2020**

On September 18, 2020, personnel from the NCDEQ, Land Quality Section, conducted a review of the Town of Wake Forest's Erosion and Sedimentation Control Program. Wake Forest was last reviewed on September 30, 2015. The Town has 6 staff members that currently contribute 3 full time equivalents to the erosion control program. The Town requires a sediment and erosion control plan for sites with a total land disturbance of 0.5 acres or more as well as individual lots that are a part of a common plan of development. In the 2019-2020 fiscal year, the Town of Wake Forest reviewed or re-reviewed 161 erosion and sedimentation control plans, approved 53, and disapproved 108. The most common reasons for disapproval of a plan were incomplete applications, calculations missing or inadequate construction sequencing and phasing. In the same time frame the Town performed 1,527 inspections, issued 40 NOVs, and 4 stop work orders. The Town states that each site has a monthly inspection and the inspectors perform periodic site drive-throughs between inspections. The Town has started working with the building permits department to hold COs and TCOs as another means of achieving compliance. Preconstruction meetings are required for all approved projects before land disturbance can commence. The Town currently has a total of 98 active projects. During our review of the program, we reviewed four sets of plans, however due to time, we inspected two of the four job sites.

The following is a summary of the projects that were reviewed:

### **1. Wake Forest Goldston**

This project consists of 23.89 acres disturbed for residential development. The file for this project contained the plan, approval letter, calculations, inspection reports and the FRO form. The FRO form included a statement requesting a deed, but the Town indicated that the planning department retained a copy of the deed. This plan went through 3 review cycles with the final revised plan received on 11/7/2018 and approved on 11/16/2018. The approved plan was adequate. The site has received 12 inspections, the last being performed on 8/12/2020 and was given a "conditional pass" noting: silt fence and outlets needing repair, needing stabilization of graded lots, rills around basin inlets needing repair and stabilization, fallen trees needing to be removed and sediment on the road at stream crossings needing to be cleaned and surrounding area stabilized with ground cover. No NOVs or CPAs have been issued to this site. During our inspection, the site was in compliance but still required some actions to prevent further issues. The contractor had established good temporary ground cover and the area above the culvert at the first stream crossing had been sodded. Areas of silt fence had been repaired. The transitions into basins were stabilized well. Internal silt fence needed to be repaired where undercutting had occurred and where sediment had accumulated. Silt fence outlets needed to be cleaned out and fresh stone needed to be added. The baffles in the skimmer basins needed to be reinstalled. A large gully had formed above the buffer where a permanent SCM was to be installed and needed to be immediately repaired and stabilized to prevent any sediment leaving the site.

## **2. Wegmans**

This project consists of 34.0 disturbed acres for commercial development. The file for this project contained the plan, approval letter, calculations, inspection reports and FRO form. The deed was indicated to be held in the planning department. The plan went through 6 review cycles with the final revised plan received on 3/18/2019 and approved on 3/31/2019. This site has received 10 inspections after disturbance began in November of 2019. The last inspection was conducted on 9/14/2020 and the site was found to be in compliance. No NOV's or CPAs have been issued to this site. During our inspection, the site was out of compliance for failure to follow approved plan, failure to take measures to protect property and failure to install and maintain measures. Inlet protections needed maintenance and fresh stone, and one needed inundated sediment to be cleaned out. A sediment basin needed re-installation after being removed prior to the up-gradient area being stabilized. The skimmer in the southeast permanent stormwater pond needed to be reattached. Slopes throughout the site had recently been tracked.

## **3. Wheatfield Shopping Center**

This project consists of 4.94 disturbed acres for commercial development. The file for this project contained the plan, approval letter, calculations, inspection reports and FRO. The deed was indicated to be held in the planning department. This plan went through 3 review cycles with the last revised plan being received on 3/17/2020 and was approved on 3/30/2020. The approved plans were adequate. The site had received 5 previous inspections with the most recent being 8/27/2020 with the site being in compliance. No NOV's or CPAs have been issued to this site. Due to time constraints, a site inspection was not completed.

## **4. Holding Village Phase 4**

This project consists of 12.85 disturbed acres for residential development. The file for this project contained the plan, approval letter, calculations and FRO. The deed was indicated to be held in the planning department. The site has had their pre-construction meeting and is in the process of installing their initial ESC measures so no inspections have been conducted yet. The plans have gone through 2 review cycles with the final revised plan being received on 2/3/20 and were approved on 2/13/2020. The approved plans showed impacts into a buffer and neither a 404 nor 401 permit was included. Due to time constraints, a site inspection was not completed.

### **Positive findings:**

During our review we found a number of positive aspects about Wake Forest's local erosion control program including:

- Lower disturbed area threshold compared to the state.
- All approved plans are required to include site specific construction phasing/sequencing to receive approval.

- Preconstruction meetings are required for all projects prior to the start of land disturbance and NPDES plan sheets are required to be obtained by contractors at or before the meeting.
- Regular monthly inspections with unofficial weekly drive through site visits.

### **Issues Noted and Required Actions:**

During our review we found that the Town of Wake Forest's local erosion control program had a few deficiencies including:

- A plan approved was missing a 404/401 permit for impacts into a buffer.
- Land Owner information is not required on the FRO form.

The County shall implement the following changes to correct the deficiencies noted above:

- Update FRO form to include Land Owner information and update FRO form Part B, item 1 to reflect the following language; "Company(ies) or firm(s) who are financially responsible for the land-disturbing activity (Provide a comprehensive list of all responsible parties on an attached sheet.) If the company or firm is a sole proprietorship the name of the owner or manager may be listed as the financially responsible party."
- Require a signed agreement when the landowner and FRP are different entities.
- Make sure if a FRP or Owner changes on a project, that the updated FRO form has been re-notarized. Ensure appropriate 404/401 permits have been obtained prior to plan approval when impacts to a buffer or stream are possible. Under General Statute 113A-54.1(c), you shall disapprove an erosion control plan if it would result in a violation of NCAC rules adopted to protect riparian buffers along surface waters.

### **Additional Recommendations for Improvement (Optional changes):**

DEMLR staff has also put together a list of recommendations, or option items, to improve the program:

- Retain a copy of the deed in the project file
- Monitor and provide guidance for NPDES violations including improper concrete washout and fuel containment on site during inspections. Note possible violations and refer to the Raleigh Regional Office.
- Increase details and notes added to inspection reports to better describe what was observed during inspections.

### **Conclusion:**

During our review we found that the Town of Wake Forest was effectively implementing their Locally Delegated Erosion and Sediment Control Program. Based on the review, staff will recommend to "Continue Delegation" for the Town of Wake Forest's Erosion and Sedimentation Control Program.

This report has been prepared based on the review of the Town of Wake Forest's Local Program conducted on 9/18/2020. This report will be presented to the Sedimentation Control Commission (SCC) on November 5, 2020.

TOWN OF CLAYTON  
Amendment to the Code of Ordinances: Addition of Chapter 156

**BEING HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA, to add Chapter 156 as follows:**

**156.100 – TITLE.**

This chapter shall be known and may be cited as the Town of Clayton Soil Erosion and Sedimentation Control Ordinance.

**156.101 – PURPOSE.**

This ordinance is adopted for the purposes of:

1. 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
2. establishing procedures through which these purposes can be fulfilled.

**156.102 –DEFINITIONS.**

As used in this ordinance, unless the context clearly indicates otherwise, the following definitions apply:

1. *Accelerated Erosion* - means any increase over the rate of natural erosion as a result of land-disturbing activity.
2. *Act* - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
3. *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.
4. *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.
5. *Approving Authority* – means the Division or other State or local government agency

that has been delegated erosion and sedimentation plan review responsibilities in accordance with the provision of the Act.

6. *Being Conducted* - means a land-disturbing activity has been initiated and not deemed complete by the approving authority.
7. *Borrow* - means fill material that is required for on-site construction that is obtained from other locations.
8. *Buffer Zone* - means the strip of land adjacent to a lake or natural watercourse.
9. *Commission* - means the North Carolina Sedimentation Control Commission.
10. *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.
11. *Department* - means the North Carolina Department of Environmental Quality (DEQ).
12. *Director* - means the Director of the Division of Energy Mineral and Land Resources of the Department of Environmental Quality.
13. *Discharge Point or Point of Discharge* - means that point where runoff leaves a tract of land where a land disturbing activity has occurred or enters a lake or natural watercourse.
14. *Energy Dissipator* - 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.
15. *Erosion* - means the wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.
16. *Ground Cover* - means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.
17. *Lake or Natural Watercourse* – means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond.
18. *Land-disturbing Activity* - means any use of the land by any person in residential, industrial, education, 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.
19. *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.

20. *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.
21. *Parent* – means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
22. *Person* - means any 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.
23. *Person Conducting the Land-Disturbing Activity* - means any person who may be held responsible for violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
24. *Person Who Violates or Violator* – as used in G.S. 113A-64, means:
  - A. any landowner or other person who has financial or operational control over the land-disturbing activity; or
  - B. who has directly or indirectly allowed the activity, and who has failed to comply with the provisions of the Act, the rules of this Chapter, or any order or local ordinance adopted pursuant the Act, as it imposes a duty upon that person.
25. *Plan* - means an erosion and sedimentation control plan
26. *Program Administrator* – means Town Engineer or Town Engineer's designee
27. *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.
28. *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.
29. *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.
30. *Storm Drainage Facilities* - means the system of inlets, conduits, channels, ditches

and appurtenances which serve to collect and convey storm water through and from a given drainage area.

31. *Stormwater Runoff* - means the runoff of water resulting from precipitation in any form.
32. *Subsidiary* – means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.
33. *Ten-Year Storm* or Q10- means a rainfall of an intensity that, based on historical data, is predicted, by a method acceptable to the approving authority, to be equaled or exceeded, on the average, once in ten years, or the probability (10%) of a storm of this magnitude occurring in any given year and of a duration which will produce the maximum peak rate of runoff from the watershed of interest under average antecedent wetness conditions.
34. *Town* – means the Town of Clayton, NC; both town limits and extra territorial jurisdiction (ETJ)
35. *Tract* - means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.
36. *Twenty-five Year Storm* or Q25- means a rainfall of an intensity that, based on historical data, is predicted, by a method acceptable to the approving authority, to be equaled or exceeded on the average, once in 25 years, or the probability (4%) of a storm of this magnitude occurring in any given year and of a duration which will produce the maximum peak rate of runoff from the watershed of interest under average antecedent wetness conditions.
37. *Uncovered* - means the removal of ground cover from, on, or above the soil surface.
38. *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.
39. *Velocity* - means the speed of flow through a cross section perpendicular to the direction of the main channel at the peak flow of the storm of interest but not exceeding bank full flows
40. *Waste* - means surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.

#### **156.103 – SCOPE AND EXCLUSIONS.**

1. *Geographical Scope of Regulated Land-Disturbing Activity.* This ordinance

shall apply to land-disturbing activity within the territorial jurisdiction of the Town and to the extraterritorial jurisdiction of the Town as allowed by agreement between local governments, the extent of annexation or other appropriate legal instrument or law.

2. *Exclusions from Regulated Land-Disturbing Activity.* Notwithstanding the general applicability of this ordinance to all land-disturbing activity, this ordinance shall not apply to the following types of land-disturbing activity:
  - A. Activities, including the production and 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:
    - (i) forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts.
    - (ii) dairy animals and dairy products.
    - (iii) poultry and poultry products.
    - (iv) livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
    - (v) bees and apiary products.
    - (vi) fur producing animals.
    - (vii) 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. An activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality (Best Management Practices), as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality, the provisions of this ordinance shall apply to such activity and any related land-disturbing activity on the tract.
  - C. An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
  - D. A land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).
  - E. An activity which is essential to protect human life during an emergency.

- F. Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
  - G. Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2
3. *Plan Approval Requirement for Land-Disturbing Activity.* No person shall undertake any land-disturbing activity subject to this ordinance without first obtaining a Plan approval from the Town.
  4. *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.
  5. *More Restrictive Rules Shall Apply.* Whenever conflicts exists between federal, state, or local laws, ordinance, or rules, the more restrictive provision shall apply.
  6. *Plan Approval Exceptions.* Notwithstanding the general requirement to obtain a Plan approval prior to undertaking land-disturbing activity, a Plan approval shall not be required for land-disturbing activity that does not exceed 1 acre (43,560 square feet) in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

#### **156.104 – MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY.**

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

##### *1. Buffer zone*

- A. *Standard Buffer.* 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 twenty- five percent (25%) of the buffer zone nearest the land-disturbing activity.
  - (i) *Projects On, Over or Under Water.* This standard 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.

- (ii) *Buffer Measurement.* Unless otherwise provided, the width of a buffer zone is measured horizontally from the top of bank 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.
- 2. *Graded Slopes and Fills.* The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 14 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.
- 3. *Fill Material.* Unless a permit from the Department's Division of 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 twelve (12) inches, and any materials which would cause the site to be regulated as a  
    landfill by the State of North  
    Carolina.
- 4. *Ground Cover.* Whenever land-disturbing activity is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Provisions for a ground cover sufficient to restrain erosion must be accomplished within 14 calendar days following completion of construction or development if an NCG01 permit is required. Unless where otherwise specified in the Act or the rules of this Chapter, provisions for permanent ground cover sufficient to restrain erosion shall be accomplished within 90 calendar days following completion of construction or development.
- 5. *Prior Plan Approval.* No person shall initiate any land-disturbing activity that will disturb more than one acre on a tract unless, thirty (30) or more days prior to initiating the activity, a Plan for the activity is filed with and approved by the Town. The land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved.
- 6. *De-watering.* The Town shall forward to the Director of the Division of Water

Resources a copy of each Plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract.

7. The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.
8. All individuals that obtain a State or locally-approved erosion and sedimentation control plan that disturb one acre or more of land are required by the U.S. Environmental Protection Agency to obtain coverage under the N.C. Department of Environmental Quality Construction General Permit No. NCG010000 (NCG01). The requirements in NCG01 for temporary or permanent ground cover may differ from the ground cover, or stabilization, requirements in this Chapter. It is the responsibility of the person conducting the land-disturbing activity to ensure compliance with the NCG01.

#### **156.105 – EFFECTIVE DATE.**

This ordinance becomes effective on January 1, 2021.

#### **156.106 – SEVERABILITY.**

If any section or section or sections of this ordinance is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

### **ARTICLE 2 - EROSION AND SEDIMENTATION CONTROL PLANS**

#### **156.200 - PLAN SUBMISSIONS.**

A Plan shall be prepared for all land-disturbing activities subject to this ordinance whenever the proposed activity will disturb more than one acre on a tract. Plans should be submitted per current Town standard procedures and policies.

#### **156.201 - FINANCIAL RESPONSIBILITY and OWNERSHIP.**

1. Plans shall 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 principal place of business of (1) the person financially responsible, (2) the owner of the land, and (3) any registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the Plan, the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance. Except as provided in subsections 156.202 *Utilities* and

156.210 *Transfers* of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.

2. Plans shall be disapproved unless accompanied by documentation of property ownership.

#### **156.202 - UTILITIES.**

If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.

#### **156.203 - SURETY.**

A surety will be required in the form of a performance bond or a letter of credit. The surety will ensure that stabilization of the site is achieved throughout the disturbed area in the event the contractor is unable to complete the project and shall be paid to the Town prior to the issuance of the land disturbance (grading) permit. The surety shall be equal to \$1500/acre of land disturbance rounded to the nearest ½ acre. This surety will be released once a certificate of completion is issued by the Town. A certificate of completion will be provided when the site is stabilized with a sufficient amount of ground cover to prevent erosion, or permanent mow-able planting with 100 coverage and 80 percent growth with no large bare patches. The Town may cash the surety if the site is issued a continuing violation notice for ground stabilization.

#### **156.204 - ENVIRONMENTAL POLICY ACT DOCUMENT.**

Any Plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environment Policy Act (G.S. 113A-1, et seq.) shall be deemed incomplete until a complete environmental document is available for review. The Town shall promptly notify the person submitting the Plan that the 30-day time limit for review of the Plan pursuant to this ordinance shall not begin until a complete environmental document is available for review.

#### **156.205 - CONTENT.**

The Plan required by this section shall contain architectural or 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 ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the Town on request.

**156.206 - TIMELINE for DECISIONS on PLANS.**

The Town will review each complete Plan submitted to them and within 30 days of receipt thereof will notify the person submitting the Plan that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a complete Plan within 30 days of receipt shall be deemed approval. The Town of Clayton will review each revised Plan submitted to them and within 15 days of receipt thereof will notify the person submitting the Plan that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a revised Plan within 15 days of receipt shall be deemed approval.

**156.207 – APPROVAL.**

The Town shall only approve a Plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control. Approval assumes the applicant's compliance with the federal and state water quality laws, regulations and rules. The Town shall condition approval of Plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. Plan approval is contingent on land-disturbing activity commencing within a year of permit issuance. If after a year no land disturbing activity has occurred, permit and plan approval shall be void. Once the land disturbance (grading) activity has commenced, the permit is valid for 2 years from the date of commencement. Permit renewal is required if the project has not been completed by the 2 year expiration date and is valid for an additional year from original expiration date previously established with the commencement of the land disturbance. The permit renewal application must be submitted prior to expiration of the original permit, otherwise, a new plan submittal and permit shall be required. The permit renewal fee is listed in the Town's Fee Schedule.

**156.208 - DISAPPROVAL for CONTENT.**

The Town may disapprove a Plan or draft Plan based on its content. A disapproval based upon a Plan's content must specifically state in writing the reasons for disapproval.

**156.209 - OTHER DISAPPROVALS.**

The Town shall disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The Town may disapprove an erosion and sedimentation control plan or disapprove a transfer of a plan under subsection

*156.210 Transfers* of this section upon finding that an applicant or a parent,

subsidiary, or other affiliate of the applicant:

- (A) 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 the Town pursuant to this Article and has not complied with the notice within the time specified in the notice.
- (B) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due.
- (C) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article.
- (D) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved by the Town pursuant to subsection *156.209 Other Disapprovals* of this section, the local government shall so notify the Director of the Division of Energy, Mineral, and Land Resources within 10 days of the disapproval. The Town shall advise the applicant or the proposed transferee and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of Section 156.210(1), the applicant may appeal the local government's disapproval of the plan directly to the Commission.

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

#### **156.210 – PLAN APPEALS.**

1. The appeal of a disapproval or approval with modifications of a Plan shall be governed by the following provisions:
  - A. The disapproval or modification of any proposed Plan by the Town, shall entitle the person submitting the Plan to a public hearing if such person submits written demand for a hearing to the Town Clerk within 15 days after receipt of written notice of disapproval or modifications.
  - B. A hearing held pursuant to this section shall be conducted by the Town Council, within 30 days after the date of the request for a hearing.
  - C. The Town Council shall make recommendations to the Program Administrator, within 30 days after the date of the hearing on any Plan.

- D. The Program Administrator, will render its final decision on any Plan within 15 days of receipt of the recommendations from the Town Council.
  - E. If the Town upholds the disapproval or modification of a proposed Plan following the hearing, the person submitting the Plan shall then be entitled to appeal the Town's decision to the Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B .0118(d)
2. In the event that a Plan is disapproved pursuant to 156.209 *Other Disapprovals* of this ordinance, the applicant may appeal the Town's disapproval of the Plan directly to the Commission.

### **156.211 - TRANSFERS.**

The Town administering an erosion and sedimentation control program may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.

1. The Town may transfer a plan if all of the following conditions are met:
  - A. The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.
  - B. The Town finds all of the following:
    - i. The plan holder is one of the following:
      - a. A natural person who is deceased.
      - b. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
      - c. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
      - d. A person who has sold the property on which the permitted activity is occurring or will occur.
    - ii. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.

- iii. The successor-owner is the sole claimant of the right to engage in the permitted activity.
    - iv. There will be no substantial change in the permitted activity.
  2. The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
  3. The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
  4. Notwithstanding changes to law made after the original issuance of the plan, the Town may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the Town from requiring a revised plan pursuant to G.S. 113A-54.1(b).

#### **156.212 - NOTICE of ACTIVITY INITIATION.**

No person may initiate a land-disturbing activity before notifying the agency that issued the Plan approval of the date that land-disturbing activity will begin.

#### **156.213 - PRECONSTRUCTION CONFERENCE.**

When deemed necessary by the Town a preconstruction conference may be required and shall be noted on the approved plan.

#### **156.214 - DISPLAY of PLAN APPROVAL.**

A Plan approval issued under this article shall be prominently displayed at either the primary entrance of the job site or at another location that is observable to the public and inspectors until all construction is complete, all permanent sedimentation and erosion control measures are installed, and the site has been stabilized. A paper copy of the approved plan shall be kept on file at the job site.

#### **156.215 - REQUIRED REVISIONS.**

After approving a Plan, if the Town, either upon review of such Plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the Town shall require a revised Plan. Pending the preparation of the revised Plan, work shall cease or shall continue under conditions outlined by the appropriate authority. If following commencement of a land-disturbing activity pursuant to an approved Plan, the Town determines that the Plan is inadequate to meet the requirements of

this ordinance, the Town may require any revision of the Plan that is necessary to comply with this ordinance.

**156.216 – AMENDMENT to a PLAN.**

Applications for amendment of a Plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the Town, the land-disturbing activity shall not proceed except in accordance with the Plan as originally approved.

**156.217 – FAILURE to FILE a PLAN.**

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

**156.218 – FEES.**

Fees for review and approval of plans and permits are determined by the Town's current fee schedule.

ARTICLE 3 – INSPECTIONS

**156.300 - SELF INSPECTIONS.**

1. The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). In addition, weekly and rain-event self-inspections are required by federal regulations that are implemented through the NPDES Construction General Permit No. NCG 010000. The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1.
2. Where inspections are required by 156.300(1) of this Chapter or G.S. 113A-54.1(e), the following apply:
  - A. The inspection shall be performed during or after each of the following phases of a

plan:

- i. installation of all erosion and sediment control measures;
- ii. clearing and grubbing of existing ground cover;
- iii. completion of any grading that requires ground cover;
- iv. completion of storm drainage facilities;
- v. completion of all land-disturbing activities, construction, or development, including permanent ground cover establishment and removal of all temporary measures;
- vi. quarterly until the establishment of permanent ground cover sufficient to restrain erosion
- vii. transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new owner or person in control shall conduct and document inspections until the project is permanently stabilized as set forth in sub-item iii above.

B. Documentation of self-inspections shall include:

- i. Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;
- ii. Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
- iii. The name, address, organization affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. A template for an example of an inspection and monitoring report is provided on the DEMLR website at: <https://deq.nc.gov/about/divisions/energy-mineralland-resources/erosion-sediment-control/forms>. Any relevant licenses

and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site.

- iv. A record of any significant deviation from any erosion or sedimentation control measure from that on the approved plan. For the purpose of this Rule, a "significant deviation" means an omission, alternation, or relocation of an erosion or sedimentation control measure that prevents it from performing as intended. The record shall include measures required to correct the significant deviation, along with documentation of when those measures were taken. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

#### **156.301 – OTHER INSPECTIONS AND INVESTIGATIONS.**

1. *Inspection.* Agents, officials, or other qualified persons authorized by the Town, will periodically inspect land-disturbing activities to ensure compliance with the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance, 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.
2. *Willful Resistance, Delay or Obstruction.* No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the Town, while that person is inspecting or attempting to inspect a land-disturbing activity under this section.
3. *Notice of Violation.* If the Town determines that a person engaged in land-disturbing activity has failed to comply with the Act, this ordinance, or rules, or orders adopted or issued pursuant to this ordinance, a notice of violation shall be served upon that person. The notice may be served by any means authorized under GS 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, or this ordinance, or rules, or orders adopted pursuant to this ordinance, and inform the person of the actions that need to be taken to comply with the Act, this ordinance, or rules or orders adopted pursuant to this ordinance. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this ordinance. If the person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the Town shall deliver the notice of violation in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the Department, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. If the Town 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 G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

4. *Investigation.* The Town, 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 who presents appropriate credentials 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.
5. *Statements and Reports.* The Town 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.

#### ARTICLE 4 – BASIC CONTROL OBJECTIVES

##### **156.400 – OBJECTIVES.**

An erosion and sedimentation control Plan may be disapproved if the Plan fails to address the following control objectives:

1. *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.
2. *Limit Time of Exposure* - Limit exposure to the shortest time specified in G.S. 113A-57, the rules of this Chapter, or as directed by the approving authority
3. *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.
4. *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.
5. *Control Sedimentation* - All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
6. *Manage Storm Water Runoff* - Plans shall be designed so that any increase in velocity of stormwater runoff resulting from a land-disturbing activity will not result in accelerated erosion of the receiving stormwater conveyance or at the point of discharge. Plans shall include measures to prevent accelerated erosion within the project boundary and at the point of discharge.

## ARTICLE 5 – DESIGN AND PERFORMANCE STANDARDS

### 156.500 – DESIGN and PERFORMANCE STANDARDS.

1. Erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the runoff of a 10-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture, Natural Resources Conservation Service's "National Engineering Field Handbook 630 (Handbook 630)." This document is herein incorporated by reference including subsequent amendments and editions, and may be accessed at no cost at <https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/water/manage/hydrology/?cid=stelprdb1043063>. Other methodologies may be used if based on generally accepted engineering standards that are shown to be equivalent to or improved over the procedures in Handbook 630. The approving authority shall determine acceptability of an alternative methodology based upon a showing that the runoff model used was based on observed data in agreement with the predictive model.
2. The Sedimentation Control Commission and DEQ have created and adopted a *North Carolina Erosion and Sedimentation Control Planning and Design Manual* describing recommended sedimentation control techniques for construction activities. This is an acceptable resource for design of the erosion control plan.

## ARTICLE 6 – STORMWATER OUTLET PROTECTION

### 156.600 - INTENT.

Stream banks and channels downstream from any land disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land disturbing activity.

### 156.601 - PERFORMANCE STANDARD.

1. 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:
  - A. the velocity established by the Maximum Permissible Velocities Table set out within this subsection; or
  - B. the velocity of the ten-year storm runoff in the receiving watercourse prior to development.
2. If condition (A) or (B) of this Paragraph 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%.

3. TABLE 1 - Maximum Permissible Velocities\*\*:

<u>Material</u>	F.P.S. (feet per second)	M.P.S. (meters per second)
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (Colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

\*\* 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 moderately sinuous channels, and by 0.8 for highly sinuous channels.

**156.602 - ACCEPTABLE MANAGEMENT MEASURES.**

Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The Town recognizes that the management of storm water 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, while not exhaustive, 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 storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections:

3. Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
4. Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
5. Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.

#### **156.603 - EXCEPTIONS.**

This rule shall not apply where it can be demonstrated to the Town that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

### ARTICLE 7 – OTHER DISTURBED AREAS

#### **156.700 – BORROW AND WASTE AREAS.**

If the same person conducts the land-disturbing activity and any related borrow or waste activity, the related borrow or waste activity shall constitute part of the land-disturbing activity, unless the borrow or waste activity is regulated under the Mining Act of 1971, G.S. 74, Article 7, or is a landfill regulated by the Division of Waste Management. If the land-disturbing activity and any related borrow or waste activity are not conducted by the same person, they shall be considered by the approving authority as separate land-disturbing activities.

#### **156.701 – 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.

### ARTICLE 8 – NATURAL FEATURES

#### **156.800 – OPERATIONS IN LAKES AND NATURAL WATERCOURSES.**

Land disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize changes in the stream flow characteristics. Permits shall be obtained by other regulatory authorities, such as DEQ and USACE, when applicable and prior to issuance of grading permit from the Town.

## ARTICLE 9 – MAINTENANCE

### **156.900 – 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 Ordinance, the Act, or any order adopted pursuant to this ordinance or the Act. After site development, the landowner or person in possession or control of the land shall maintain all necessary permanent stormwater post-construction measures per the Town's NPDES Phase 2 permit, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

### **156.901 – ADDITIONAL MEASURES.**

Whenever the Town, determines that accelerated erosion and sedimentation continues despite the installation of protective practices, they shall direct the person conducting the land-disturbing activity to take additional protective action necessary to achieve compliance with the conditions specified in the Act or its rules.

## ARTICLE 10 – PENALTIES AND INJUCTIVE RELIEF

### **156.1000 – CIVIL PENALTIES.**

1. *Civil Penalty for a Violation.* Any person who violates any of the provisions of this ordinance, 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 Town 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).
2. *Environmental Impacts.* In addition to the civil penalties provided with the Town's Fee Schedule, the Plan Administrator may assess a one-time civil penalty of \$5,000.00 on the day of the violation for off-site sedimentation damage especially in the case of damage to a body of water, wetlands or buffer. Moreover, any malicious or intentional destruction of silt fencing or other sedimentation and erosion control device will result in a one-time fine of up to \$1,000.00.

3. *Repeat Offender.* An additional civil penalty of \$1,000.00 per day shall be charged to any person assessed a civil penalty for any violation of this chapter within the prior two years. A person may be assessed a civil penalty from the date the violation is detected if the deadline stated is not met. Each day of a continuing violation shall constitute a separate violation.
4. *Civil Penalty Assessment Factors.* The Program Administrator shall determine the amount of the civil penalty based upon the following factors:
  - A. the degree and extent of harm caused by the violation,
  - B. the cost of rectifying the damage,
  - C. the amount of money the violator saved by noncompliance,
  - D. whether the violation was committed willfully, and
  - E. the prior record of the violator in complying or failing to comply with this ordinance.
5. *Notice of Civil Penalty Assessment.* The Program Administrator 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 Town shall direct the violator to either pay the assessment, contest the assessment within 30 days by filing a petition for hearing with the Town or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the North Carolina General Statutes and a stipulation of the facts on which the assessment was based.
6. *Final Decision.* The final decision on contested assessments shall be made by the Town Council in accordance with this ordinance
7. *Appeal of Final Decision.* Appeal of the final decision by Town Council shall be to the Superior Court of Johnston County. Such appeals must be made within 30 days of the final decision of the Town Council.
8. *Remission of Civil Penalties.* A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the Town Council within 60 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes 31 and a stipulation of the facts on which the assessment was based. The following factors shall be considered in determining whether a civil penalty remission request will be approved:
  - A. Whether one or more of the civil penalty assessment factors in G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner.

- B. Whether the petitioner promptly abated continuing environmental damage resulting from the violation.
  - C. Whether the violation was inadvertent or a result of an accident.
  - D. Whether the petitioner had been assessed civil penalties for any previous violations.
  - E. Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.
  - F. 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.
9. *Collection.* If payment is not received within 60 days after it is due, the Town may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Johnston County Superior Court, or the County Superior Court of the violator's residence or principal place of business. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested and a remission that is not requested is due when the violator is served with a notice of assessment. An assessment that is contested or a remission that is requested is due at the conclusion of the administrative and judicial review of the assessment.
10. *Credit of Civil Penalties.* The clear proceeds of civil penalties collected by the Town under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by the Town 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 the Town for the prior fiscal year.

**156.1001 – CRIMINAL PENALTIES.**

Any person who knowingly or willfully violates any provision of this ordinance, or rule or order adopted or issued by the Commission or the Town or who knowingly or willfully 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, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000 as provided in G.S. § 113A-64.

**156.1002 – INJUNCTIVE RELIEF.**

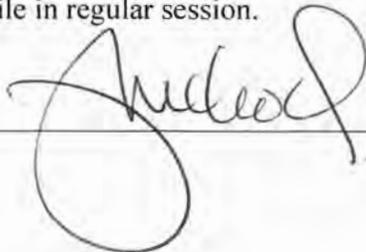
1. *Violation of Local Program.* Whenever the Program Administrator has reasonable cause to believe that any person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by the Town, or any term, condition, or provision of an approved Plan, it may, either before or after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the Town, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Johnston County Superior Court.
2. *Abatement of Violation.* 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 that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this ordinance.

**156.1003 – RESTORATION AFTER NON-COMPLIANCE.**

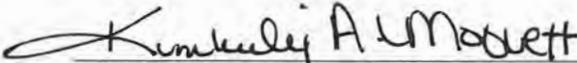
The Town, may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57 (3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation.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

**This Ordinance will become effective January 1, 2021.**

Duly adopted this the 21<sup>st</sup> day of September, 2020 while in regular session.

  
\_\_\_\_\_  
Jody McLeod  
Mayor

ATTEST:

  
\_\_\_\_\_  
Kimberly A. Moffett, CMC, NCCMC  
Town Clerk



MODEL LOCAL ORDINANCE

SOIL EROSION and SEDIMENTATION CONTROL

Purple text refers to changes tentatively approved by the Commission.

Red tracked changes refer to those made during or subsequent to the August meeting and pending approval.

Revised November 2020

SEDIMENTATION CONTROL COMMISSION

RALEIGH, NORTH CAROLINA

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO PROVIDE FOR THE CONTROL OF SOIL EROSION AND SEDIMENTATION.

NOW, THEREFORE, BE IT ORDAINED by the (Governing Body) of the (City), (Town), (County) hereby adopts the following ordinance.

SECTION 1            Title

This ordinance may be cited as the (city), (town), (county) Soil Erosion and Sedimentation Control Ordinance.

SECTION 2            Purpose

This ordinance 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.

SECTION 3            Definitions

As used in this ordinance, unless the context clearly indicates otherwise, the following definitions apply:

- (a) Accelerated Erosion - means any increase over the rate of natural erosion as a result of land-disturbing activity.
- (b) Act - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
- (c) 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.
- (d) 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.

- (e) Approving Authority – means the Division or other State or a local government agency that has been delegated erosion and sedimentation plan review responsibilities in accordance with the provisions of the Act.
- (f) Being Conducted - means a land-disturbing activity has been initiated and **not deemed complete by the Approving Authority**.
- (g) Borrow - means fill material **that** is required for on-site construction **that** is obtained from other locations.
- (h) Buffer Zone - means the strip of land adjacent to a lake or natural watercourse.
- (i) Coastal Counties - means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington.
- (j) Commission - means the North Carolina Sedimentation Control Commission.
- (k) 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.
- (l) Department - means the North Carolina Department of **Environmental Quality**.
- (m) Director - means the Director of the Division of Energy Mineral and Land Resources of the Department of **Environmental Quality**.
- (n) Discharge Point or Point of Discharge - means that point where runoff leaves a tract of land where a land-disturbing activity has occurred or enters a lake or natural watercourse.
- (o) District - means the \_\_\_\_\_ Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.
- (p) Energy Dissipator - 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.
- (q) Erosion - means the wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.
- (r) Ground Cover - means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.
- (s) High Quality Waters - means those classified as such in 15A NCAC **02B .0224**,

which is herein incorporated by reference including subsequent amendments and additions.

- (t) High Quality Water (HQW) Zones –means, for the Coastal Counties, areas within 575 feet of High Quality Waters; and for the remainder of the state, areas within one mile and draining to HQW’s.
- (u) Lake or Natural Watercourse – means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond.
- (v) 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.
- (w) 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.
- (x) 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.
- (y) Parent – means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
- (z) Person - means any 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.
- (aa) Person Conducting the Land-Disturbing Activity - means any person who may be held responsible for violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- (bb) Person Who Violates or Violator, as used in G.S. 113A-64, means: any landowner or other person who has financial or operational control over the land-disturbing activity; or who has directly or indirectly allowed the activity, and who has failed to comply with any provision of the Act, the rules of this Chapter or any order or local ordinance adopted pursuant to the Act as it imposes a duty upon that person.
- (cc) Plan - means an erosion and sedimentation control plan.
- (dd) 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.
- (ee) 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.

- (ff) 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.
- (gg) Storm Drainage Facilities - means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey storm water through and from a given drainage area.
- (hh) Stormwater Runoff - means the runoff of water resulting from precipitation in any form.
- (ii) Subsidiary – means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.
- (jj) Ten-Year Storm - means a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Approving Authority to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.
- (kk) Tract - means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.
- (ll) Twenty-five Year Storm - means a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Approving Authority to be equaled or exceeded, on the average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.
- (mm) Uncovered - means the removal of ground cover from, on, or above the soil surface.
- (nn) 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.
- (oo) Velocity - means the speed of flow through a cross section perpendicular to the direction of the main channel at the peak flow of the storm of interest but not exceeding bank full flows.
- (pp) Waste - means surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.
- ~~(qq) Working Days - means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be~~

~~undertaken.~~

~~[NOTE: It is suggested for local programs to also exclude Federal and State holidays, unless work is being conducted on these holidays.]~~

#### SECTION 4                    Scope and Exclusions

- (a) Geographical Scope of Regulated Land-Disturbing Activity. This ordinance shall apply to land-disturbing activity within the territorial jurisdiction of the (city), (town), (county) and to the extraterritorial jurisdiction of the (city), (town), (county) as allowed by agreement between local governments, the extent of annexation or other appropriate legal instrument or law.
  
- (b) Exclusions from Regulated Land-Disturbing Activity. Notwithstanding the general applicability of this ordinance to all land-disturbing activity, this ordinance shall not apply to the following types of land-disturbing activity:
  - (1) Activities, including the production and 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:
    - (i) forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts.
    - (ii) dairy animals and dairy products.
    - (iii) poultry and poultry products.
    - (iv) livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
    - (v) bees and apiary products.
    - (vi) fur producing animals.
    - (vii) 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.
  
  - (2) An Activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality (Best Management Practices), as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality, the provisions of this ordinance shall apply to such activity and any related land-disturbing activity on the tract.

- (3) An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
  - (4) A land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).
  - (5) An activity which is essential to protect human life during an emergency.
  - (6) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
  - (7) Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2
- (c) Plan Approval Requirement for Land-Disturbing Activity. No person shall undertake any land-disturbing activity subject to this ordinance without first obtaining a Plan approval therefor from the (city)(town)(county).
  - (d) 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.
  - (e) More Restrictive Rules Shall Apply - Whenever conflicts exist between federal, state, or local laws, ordinance, or rules, the more restrictive provision shall apply.
  - (f) Plan Approval Exceptions. Notwithstanding the general requirement to obtain a Plan approval prior to undertaking land-disturbing activity, a Plan approval shall not be required for land-disturbing activity that does not exceed \_\_\_\_\_ acre in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

SECTION 5                    Mandatory Standards for Land-Disturbing Activity

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

- (a) Buffer zone
  - (1) Standard Buffer. 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 twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity.

(i) Projects On, Over or Under Water. This subdivision 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.

(ii) Buffer Measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally 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.

(2) Trout Buffer. 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 twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal.

(i) Projects On, Over or Under Water. This subdivision 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.

(ii) Trout Buffer Measurement. 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 to the nearest edge of the disturbed area.

(iii) Limit on Land Disturbance. Where a temporary and minimal disturbance has been permitted as an exception to the trout buffer, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent (10%) of the total length of the buffer zone within the tract to be disturbed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.

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

(b) Graded Slopes and Fills. The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion

control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.

- (c) Fill Material. ~~Unless a permit from the Department's Division of 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 twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina. Materials being used as fill shall be consistent with those described in 15A NCAC 13B .0562 unless the site is permitted by the Department's Division of Waste Management to operate as a landfill. Not all materials described in Section .0562 may be suitable to meet geotechnical considerations of the fill activity and should be evaluated accordingly.~~
- (d) Ground Cover. Whenever land-disturbing activity that will disturb more than \_\_\_\_\_ acre is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction upon and development of said 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 5(g)(4), provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within 90 calendar days following completion of construction or development, whichever period is shorter.

[NOTE: ONE ACRE OR LESS SHALL BE SPECIFIED IN THE ABOVE PARAGRAPH.]

- (e) Prior Plan Approval. No person shall initiate any land-disturbing activity that will disturb more than \_\_\_\_\_ acre on a tract unless, thirty (30) or more days prior to initiating the activity, a Plan for the activity is filed with and approved by the (city)(town)(county). An erosion and sedimentation control plan may be filed less than 30 days prior to initiation of a land-disturbing activity if the plan is submitted under an approved express permit program. The land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved.

[NOTE: ONE ACRE OR LESS SHALL BE SPECIFIED IN THE ABOVE PARAGRAPH. LOCAL PROGRAMS MAY HAVE PERMITS WHICH ALLOW FOR LAND DISTURBING ACTIVITIES TO BE INITIATED SUBSEQUENT TO BOTH A PLAN APPROVAL AND THE LOCAL PERMIT BEING ISSUED. IN THIS CASE, THE ABOVE SENTENCE WILL NEED TO BE REVISED OR

EXPANDED.]

The (city)(town)(county) shall forward to the Director of the Division of Water Resources a copy of each Plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract.

- (f) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

(g) Design Standards for The Upper Neuse River Basin (Falls Lake Watershed)

In addition to any other requirements of State, federal, and local law, land-disturbing activity in the watershed of the drinking water supply reservoir that meets the applicability requirements of Session Law 2009-486, Section 3. (a), shall meet all of the following design standards for sedimentation and erosion control:

- (1) Erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the runoff of the 25-year storm that produces the maximum peak rate of runoff as calculated according to procedures set out in the latest edition of the United States Department of Agriculture Soil Conservation Service's "Engineering Field ~~Manual for Conservation Practices Handbook~~" found through [nrcs.usda.gov](http://nrcs.usda.gov) or according to procedures adopted by any other agency of the State or the United States.
- (2) Sediment basins shall be planned, designed, and constructed so that the basin will have a settling efficiency of at least 70 percent for the 40-micron size soil particle transported into the basin by the runoff of the two-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the latest edition of the United States Department of Agriculture Soil Conservation Service's "National Engineering Field ~~Manual for Conservation Practices Handbook~~" or according to procedures adopted by any other agency of the State or the United States.
- (3) Newly constructed open channels shall be planned, 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 steeper side slopes or where the side slopes are stabilized by using mechanical devices, structural devices, or other ditch liners sufficient to restrain accelerated erosion. The angle for side slopes shall be sufficient to restrain accelerated erosion, as determined by the Approving Authority, based on soil conditions.
- (4) For an area of land-disturbing activity where grading activities have been completed, temporary or permanent ground cover sufficient to restrain erosion shall be provided as soon as practicable, but in no case later than seven calendar days after completion of grading. For an area of land-disturbing activity where grading activities have not been completed, temporary ground cover shall be provided as follows:
  - (i) For an area with no slope, temporary ground cover shall be provided

for the area if it has not been disturbed for a period of 14 calendar days.

- (ii) For an area of moderate slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of 10 calendar days. For purposes of this Item, "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.
- (iii) For an area of steep slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of seven calendar days. For purposes of this Item, "steep slope" means an inclined area, the inclination of which is greater than three units of horizontal distance to one unit of vertical distance.

SECTION 6                      Erosion and Sedimentation Control Plans

- (a) Plan Submission. A Plan shall be prepared for all land-disturbing activities subject to this ordinance whenever the proposed activity will disturb more than \_\_\_\_\_ ~~square-foot-acre~~ on a tract. The Plan shall be filed with the (city)(town)(county); a copy shall be simultaneously submitted to the \_\_\_\_\_ Soil and Water Conservation District at least 30 days prior to the commencement of the proposed activity.

[NOTE: ONE ACRE OR LESS SHALL BE SPECIFIED IN THE ABOVE PARAGRAPH. THE LAST SENTENCE IN PARAGRAPH (a) DEALING WITH PLAN SUBMISSIONS MAY BE DELETED IF SUBMISSIONS TO THE SOIL AND WATER CONSERVATION DISTRICTS ARE NOT REQUIRED UNDER PARAGRAPH (f) BELOW.]

- (b) Financial Responsibility and Ownership. 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 principal place of business of (1) the person financially responsible, (2) the owner of the land, and (3) any registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the Plan, the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance. Except as provided in subsections (c) or (k) of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.
- (c) If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and

sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.

- (d) Environmental Policy Act Document. Any Plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environment Policy Act (G.S. 113A-1, et seq.) shall be deemed incomplete until a complete environmental document is available for review. The (city)(town)(county) shall promptly notify the person submitting the Plan that the 30-day time limit for review of the Plan pursuant to this ordinance shall not begin until a complete environmental document is available for review.
- (e) Content. The Plan required by this section shall contain architectural or 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 ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the (city)(town)(county) on request.
- (f) Soil and Water Conservation District Comments. The District shall review the Plan and submit any comments and recommendations to the (city)(town)(county) within 20 days after the District received the Plan, or within any shorter period of time as may be agreed upon by the District and the (city)(town)(county). Failure of the District to submit its comments and recommendations within 20 days or within any agreed-upon shorter period of time shall not delay final action on the Plan.

[NOTE: PARAGRAPH (f) MAY BE DELETED WITH CONSENT FROM THE SEDIMENTATION CONTROL COMMISSION.]

- (g) Timeline for Decisions on Plans. The (city)(town)(county) will review each complete Plan submitted to them and within 30 days of receipt thereof will notify the person submitting the Plan that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a complete Plan within 30 days of receipt shall be deemed approval. The (city)(town)(county) will review each revised Plan submitted to them and within 15 days of receipt thereof will notify the person submitting the Plan that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a revised Plan within 15 days of receipt shall be deemed approval.
- (h) Approval. The (city)(town)(county) shall only approve a Plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control. Approval assumes the applicant's compliance with the federal and state water quality laws, regulations and rules. The (city)(town)(county) shall condition approval of Plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. The (city), (town), (county) may establish an expiration date, not to exceed three (3)

years, for Plans approved under this ordinance **whereby no land-disturbing activity has been undertaken.**

- (i) **Disapproval for Content.** The (city)(town)(county) may disapprove a Plan or draft Plan based on its content. A disapproval based upon a Plan's content must specifically state in writing the reasons for disapproval.
- (j) **Other Disapprovals.** The (city)(town)(county) shall disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The (city)(town)(county) may disapprove an erosion and sedimentation control plan or disapprove a transfer of a plan under subsection (k) of this section upon 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 this Article 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 this Article or a local ordinance adopted pursuant to this Article 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 this Article.
  - (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved by the (city)(town)(county) pursuant to subsection (j) of this section, the local government shall so notify the Director of the Division of Energy, Mineral, and Land Resources within 10 days of the disapproval. The (city)(town)(county) shall advise the applicant or the proposed transferee and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of Section 16(a), the applicant may appeal the local government's disapproval of the plan directly to the Commission.

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

- (k) **Transfer of Plans.** The (city)(town)(county) administering an erosion and sedimentation control program may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.

- (1) The (city)(town)(county) may transfer a plan if all of the following conditions are met:
  - (i) The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.
  - (ii) The (city)(town)(county) finds all of the following:
    - a. The plan holder is one of the following:
      1. A natural person who is deceased.
      2. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
      3. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
      4. A person who has sold the property on which the permitted activity is occurring or will occur.
    - b. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
    - c. The successor-owner is the sole claimant of the right to engage in the permitted activity.
    - d. There will be no substantial change in the permitted activity.
- (2) The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
- (3) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
- (4) Notwithstanding changes to law made after the original issuance of the plan, the (city)(town)(county) may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the (city)(town)(county) from requiring a revised plan pursuant to G.S. 113A-54.1(b).

- (l) Notice of Activity Initiation. No person may initiate a land-disturbing activity before notifying the agency that issued the Plan approval of the date that land-disturbing activity will begin.
- (m) Preconstruction Conference. When deemed necessary by the Approving Authority, a preconstruction conference may be required and noted on the approved plan.
- (n) Display of Plan Approval. A Plan approval issued under this Article shall be prominently displayed until all construction is complete, all temporary measures have been removed, all permanent sedimentation and erosion control measures are installed, and the site has been stabilized. A copy of the approved plan shall be kept on file at the job site.
- (o) Required Revisions. After approving a Plan, if the (city)(town)(county), either upon review of such Plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the (city),

(town), (county) shall require a revised Plan. Pending the preparation of the revised Plan, work shall cease or shall continue under conditions outlined by the appropriate authority. If following commencement of a land-disturbing activity pursuant to an approved Plan, the (city)(town)(county) determines that the Plan is inadequate to meet the requirements of this ordinance, the (city, (town), (county) may require any revision of the Plan that is necessary to comply with this ordinance.

- (p) Amendment to a Plan. Applications for amendment of a Plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the (city)(town)(county), the land-disturbing activity shall not proceed except in accordance with the Plan as originally approved.
- (q) Failure to File a Plan. Any person engaged in land-disturbing activity who fails to file a Plan in accordance with this ordinance, or who conducts a land-disturbing activity except in accordance with provisions of an approved Plan shall be deemed in violation of this ordinance.
- (r) Self-Inspections. The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). In addition, weekly and rain-event self-inspections are required by federal regulations, that are implemented through the NPDES Construction General Permit No. NCG 010000. The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1.

Where inspections are required by Section 6(r) of this Ordinance or G.S. 113A-54.1(e), the following apply:

- (1) The inspection shall be performed during or after each of the following phases of the plan;
  - (i) initial installation of erosion and sediment control measures;
  - (ii) clearing and grubbing of existing ground cover;
  - (iii) completion of any grading that requires ground cover;
  - (iv) completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
  - (v) transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new owner or person in control shall conduct and

document inspections until the project is permanently stabilized as set forth in Sub-Item (iii) of this Item.

- (2) Documentation of self-inspections performed under Item (1) of this Rule shall include:
- (i) Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;
  - (ii) Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
  - (iii) The name, address, organization affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. A template for an example of an inspection and monitoring report is provided on the DEMLR website at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site.
  - (iv) A record of any significant deviation from any erosion or sedimentation control measure from that on the approved plan. For the purpose of this Rule, a "significant deviation" means an omission, alternation, or relocation of an erosion or sedimentation control measure that prevents it from performing as intended. The record shall include measures required to correct the significant deviation, along with documentation of when those measures were taken. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

## SECTION 7 Basic Control Objectives

An erosion and sedimentation control Plan may be disapproved 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 activities are to be planned and conducted to limit exposure to the shortest time specified in G.S. 113A-57, the rules of this Chapter, or as directed by the Approving Authority.

- (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 to prevent off-site sedimentation damage.
- (f) Manage Stormwater Runoff - Plans shall be designed so that any increase in velocity of stormwater runoff resulting from a land-disturbing activity will not result in accelerated erosion of the receiving stormwater conveyance or at the point of discharge. Plans shall include measures to prevent accelerated erosion within the project boundary and at the point of discharge.

SECTION 8                      Design and Performance Standards

- (a) Except as provided in Section 8(b)(2) and Section 5(g)(1) of this ordinance, erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate 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 acceptable calculation procedures.
- (b) HQW Zones. In High Quality Water (HQW) zones the following design standards shall apply:
  - (1) Limit on Uncovered Area. Uncovered areas in HQW zones shall be limited at any time to a maximum total area of twenty acres within the boundaries of the tract. 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 upon providing engineering justification with a construction sequence that considers phasing, limiting exposure, weekly submitted self-inspection reports, and a more conservative design than the 25-year storm.
  - (2) Maximum Peak Rate of Runoff Protection. Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned, designed and constructed to provide protection from the runoff of the twenty-five year storm which produces the maximum peak rate of runoff as calculated according to procedures in the latest edition of the United States Department of Agriculture Soil Conservation Service’s “National Engineering Field ~~Manual for Conservation Practices~~ Handbook” or according to procedures adopted by any other agency of this state or the

United States or any generally recognized organization or association.

- (3) Settling Efficiency Sediment Basin Design. Sediment basins within HQW zones shall be designed and constructed according to the following criteria:
- (i) use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0 acre;
  - (ii) have a minimum of 1800 cubic feet of storage area per acre of disturbed area;
  - (iii) have a minimum surface area of 325 square feet per cfs of Q25 peak flow;
  - (iv) have a minimum dewatering time of 48 hours;
  - (v) incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles shall be sufficient.

Upon a written request of the applicant, the Director may allow alternative design and control measures in lieu of meeting the conditions required in subparagraphs (3)(ii) through (3)(v) of this sub-section if the applicant demonstrates that meeting all of those conditions will result in design or operational hardships and that the alternative measures will provide an equal or more effective level of erosion and sediment control on the site. Alternative measures may include quicker application of ground cover, use of sediment flocculants, and use of enhanced ground cover practices.

- (4) Grade. 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 forms of ditch liners proven as being effective in restraining accelerated erosion. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

## SECTION 9 Storm Water Outlet Protection

- (a) Intent. Stream banks and channels downstream from any land disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land disturbing activity.
- (b) Performance standard. 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 Maximum Permissible Velocities Table set out within this subsection; or

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

If condition (1) or (2) of this Paragraph 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%.

#### Maximum Permissible Velocities Table

The following is a table for maximum permissible velocity for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

<u>Material</u>	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (Colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

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 moderately sinuous channels, and by 0.8 for highly sinuous channels.

- (c) Acceptable Management Measures - Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The (city)(town)(county) recognizes that the management of storm water 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, while not exhaustive, 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 storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
  - (3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
  - (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
  - (5) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.
- (d) Exceptions - This rule shall not apply where it can be demonstrated to the (city), (town), (county) that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

#### SECTION 10            Borrow and Waste Areas

If the same person conducts the land-disturbing activity and any related borrow or waste activity, the related borrow or waste activity shall constitute part of the land-disturbing activity, unless the borrow or waste activity is regulated under the Mining Act of 1971, G.S. 74, Article 7, or is a landfill regulated by the Division of Waste Management. If the land-disturbing activity and any related borrow or waste activity are not conducted by the same person, they shall be considered by the Approving Authority as separate land-disturbing activities.

#### SECTION 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.

#### SECTION 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 minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall

minimize changes in the stream flow characteristics.

SECTION 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 Ordinance, the Act, or any order adopted pursuant to this ordinance or the Act. After site development, the landowner 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.

SECTION 14            Additional Measures

Whenever the (city)(town)(county), determines that accelerated erosion and sedimentation continues despite the installation of protective practices, they shall direct the person conducting the land-disturbing activity to take additional protective action necessary to achieve compliance with the conditions specified in the Act or its rules.

SECTION 15            Fees

- (a) The (city)(town)(county), may establish a fee schedule for the review and approval of Plans.

[NOTE: THE LOCAL PROGRAM SHALL CONSIDER THE ADMINISTRATIVE AND PERSONNEL COSTS INCURRED FOR REVIEWING THE PLANS AND FOR COMPLIANCE RELATED ACTIVITIES.]

SECTION 16            Plan Appeals

- (a) Except as provided in Section 16(b) of this ordinance, 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 Plan by the (city)(town)(county), shall entitle the person submitting the Plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of disapproval or modifications.
  - (2) A hearing held pursuant to this section shall be conducted by the (city)(town)(county), (appropriate local agency), within \_\_\_\_\_ days after

the date of the appeal or request for a hearing.

- (3) The agency conducting the hearings shall make recommendations to the governing body of the (city)(town)(county), within \_\_\_\_ days after the date of the hearing on any Plan.
- (4) The Governing Body of the (city)(town)(county), will render its final decision on any Plan within \_\_\_\_ days of receipt of the recommendations from the agency conducting the hearing.
- (5) If the (city)(town)(county) upholds the disapproval or modification of a proposed Plan following the hearing, the person submitting the Plan shall then be entitled to appeal the (city)(town)(county)'s decision to the Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B .0118(d)

[NOTE: THE APPEALS PROCEDURES ABOVE ARE INCLUDED ONLY TO ENSURE THAT EACH LOCAL ORDINANCE CONTAINS PROCEDURES FOR APPEALS. THE PROCEDURE SHOULD BE WRITTEN TO CONFORM TO APPLICABLE EXISTING PROCEDURES, OR AS CREATED FOR THE ADMINISTRATION OF THE ORDINANCE.]

- (b) In the event that a Plan is disapproved pursuant to Section 6(j) of this ordinance, the applicant may appeal the (city)(town)(county)'s disapproval of the Plan directly to the Commission.

## SECTION 17            Inspections and Investigations

- (a) Inspection. Agents, officials, or other qualified persons authorized by the (city), (town), (county), will periodically inspect land-disturbing activities to ensure compliance with the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance, 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 the (city), (town), (county), while that person is inspecting or attempting to inspect a land-disturbing activity under this section.
- (c) Notice of Violation. If the (city)(town)(county) determines that a person engaged in land-disturbing activity has failed to comply with the Act, this ordinance, or rules, or orders adopted or issued pursuant to this ordinance, a notice of violation shall be served upon that person. The notice may be served by any means

authorized under GS 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, or this ordinance, or rules, or orders adopted pursuant to this ordinance, and inform the person of the actions that need to be taken to comply with the Act, this ordinance, or rules or orders adopted pursuant to this ordinance. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this ordinance. If the person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the (city)(town)(county) shall deliver the notice of violation in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program ~~in~~ on behalf of the Approving Authority Department, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. If the (city)(town)(county) 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 G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

- (d) Investigation. The (city)(town)(county), 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 who presents appropriate credentials for this purpose to enter at reasonable times, any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.
- (e) Statements and Reports. The (city)(town)(county), 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.

## SECTION 18            Penalties

### (a)    Civil Penalties

- (1) Civil Penalty for a Violation. Any person who violates any of the provisions of this ordinance, 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).

- (2) Civil Penalty Assessment Factors. The governing body of the (city)(town)(county) shall determine the amount of the civil penalty based upon the following factors:
  - (i) the degree and extent of harm caused by the violation,
  - (ii) the cost of rectifying the damage,
  - (iii) the amount of money the violator saved by noncompliance,
  - (iv) whether the violation was committed willfully, and
  - (v) the prior record of the violator in complying of failing to comply with this ordinance.
  
- (3) Notice of Civil Penalty Assessment. The governing body of the (city)(town)(county) 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 (city)(town)(county) shall direct the violator to either pay the assessment, contest the assessment within 30 days by filing a petition for hearing with the (city)(town)(county) (as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program), or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the North Carolina General Statutes and a stipulation of the facts on which the assessment was based.
  
- (4) Final Decision: The final decision on contested assessments shall be made by the governing body of the (city)(town)(county) in accordance with (the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program.)
  
- (5) Appeal of Final Decision. Appeal of the final decision of the governing body of the (city)(town)(county) shall be to the Superior Court of the county where the violation occurred. Such appeals must be made within 30 days of the final decision of the governing body of the (city)(town)(county).
  
- (6) Remission of Civil Penalties. A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the (city, town, county commission/board) within 60 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. The

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

- (i) Whether one or more of the civil penalty assessment factors in G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner.
- (ii) Whether the petitioner promptly abated continuing environmental damage resulting from the violation.
- (iii) Whether the violation was inadvertent or a result of an accident.
- (iv) Whether the petitioner had been assessed civil penalties for any previous violations.
- (v) Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.
- (vi) 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.

[NOTE: 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. The city/town/county commission or board 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. The city/town/county commission or board may not impose a penalty under this section that is in excess of the civil penalty imposed by the LOCAL PROGRAM.]

[NOTE: THE FOREGOING PROCEDURES ARE OFFERED AS GUIDANCE TO LOCAL GOVERNMENTS TO ENSURE THAT CIVIL PENALTIES ARE ACCOMPANIED BY REMISSION REQUESTS AND APPEAL PROCEDURES, INCLUDING HEARING OPPORTUNITIES.]

- (7) Collection. If payment is not received within 60 days after it is due, the (city)(town)(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 and a remission that is not requested is due when the violator is served with a notice of assessment. An assessment that is contested or a remission that is requested is due at the conclusion of the administrative and judicial review of the assessment.
- (8) Credit of Civil Penalties. The clear proceeds of civil penalties collected by

the (city)(town)(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 the (city)(town)(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 the (city)(town)(county) for the prior fiscal year.

[IN ANY EVENT, THE COST PERCENTAGE SHALL NOT EXCEED TWENTY PERCENT (20%) OF PENALTIES COLLECTED.]

- (b) Criminal Penalties. Any person who knowingly or willfully violates any provision of this ordinance, or rule or order adopted or issued by the Commission or a local government, or who knowingly or willfully 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, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000 as provided in G.S. § 113A-64.

#### SECTION 19 Injunctive Relief

- (a) Violation of Local Program. Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by the (city)(town)(county), or any term, condition, or provision of an approved Plan, it may, either before or after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the (city)(town)(county), for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.
- (b) Abatement of Violation. 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 that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this ordinance.

#### SECTION 20 Restoration After Non-Compliance

The (city)(town)(county), 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), 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 ordinance.

#### SECTION 21 Severability

If any section or section or sections of this ordinance is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

SECTION 22            Effective Date

This ordinance becomes effective on \_\_\_\_\_.

[IN ESTABLISHING AN EFFECTIVE DATE, THE LOCAL GOVERNMENT SHOULD CONSIDER THE NEED FOR LEAD-TIME TO ORIENT AND EDUCATE THOSE AFFECTED BY FULL IMPLEMENTATION OF THE ORDINANCE.]

## CHAPTER 04 - SEDIMENTATION CONTROL

### SUBCHAPTER 04A - SEDIMENTATION CONTROL COMMISSION ORGANIZATION

#### 15A NCAC 04A .0101 OFFICES OF THE SEDIMENTATION CONTROL COMMISSION

Persons may contact the North Carolina Sedimentation Control Commission offices at the Archdale Building, 512 N. Salisbury Street, P.O. Box 27687, Raleigh, North Carolina 27611. Persons may contact regional offices of the Commission's staff in the Division of Energy, Mineral, and Land Resources at the following locations:

- (1) Asheville Regional Office  
2090 U.S. 70 Hwy.  
Swannanoa, NC 28778-8211
- (2) Winston-Salem Regional Office  
450 W. Hanes Mill Rd., Suite 300  
Winston-Salem, N.C. 27105
- (3) Mooresville Regional Office  
610 E. Center Avenue, Suite 301  
Mooresville, N.C. 28115-2578
- (4) Raleigh Regional Office  
3800 Barrett Drive  
Raleigh, N.C. 27609-7222
- (5) Fayetteville Regional Office  
225 Green Street, Suite 714  
Fayetteville, N.C. 28301-5095
- (6) Washington Regional Office  
1424 Carolina Ave.  
Washington, N.C. 27889-3314
- (7) Wilmington Regional Office  
127 Cardinal Dr., Ext.  
Wilmington, N.C. 28405-3845

*History Note:* Authority G.S. 113A-54; 143B-298;  
Eff. February 1, 1976;  
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); October 1, 1995; February 1, 1992;  
May 1, 1990; December 1, 1988;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February  
2, 2016;  
Amended Eff. April 1, 2020.

#### 15A NCAC 04A .0102 PURPOSES

#### 15A NCAC 04A .0103 STRUCTURE

#### 15A NCAC 04A .0104 DELEGATION

*History Note:* Authority G.S. 113A-54(b)(d)(3); 113A-56(a)(b); 113A-58(1); 113A-61(d); 143B-298;  
Eff. February 1, 1976;  
Amended Eff. August 1, 1985; November 1, 1984; June 5, 1981; January 31, 1979;  
Repealed Eff. August 1, 1988.

#### 15A NCAC 04A .0105 DEFINITIONS

In addition to the terms defined in G.S. 113A-52, the following definitions shall apply in this Chapter and have these meanings:

- (1) "Accelerated Erosion" means any increase over the rate of natural erosion, as a result of land-disturbing activities.
- (2) "Act" means the Sedimentation Pollution Control Act of 1973 in G.S. 113A-50, et seq.
- (3) "Adequate Erosion Control Devices or Structures" means one that controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

- (4) "Approving Authority" means the Division or other State or a local government agency that has been delegated erosion and sedimentation plan review responsibilities in accordance with the provisions of the Act.
- (5) "Being Conducted" means a land-disturbing activity has been initiated and not deemed complete by the approving authority.
- (6) "Borrow" means fill material that is required for on-site construction that is obtained from other locations.
- (7) "Buffer Zone" means the strip of land adjacent to a lake or natural watercourse.
- (8) "Coastal Counties" means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.
- (9) "Completion of Construction or Development" means that no further land-disturbing activity is required on a phase of a project except that which, as determined by the approving authority, is necessary for establishing a permanent ground cover.
- (10) "Director" means the Director of the Division of Energy, Mineral, and Land Resources of the Department of Environmental Quality.
- (11) "Discharge Point" or "Point of Discharge" means that point where runoff leaves a tract of land where a land-disturbing activity has occurred or enters a lake or natural watercourse.
- (12) "Division" or "DEMLR" means the Division of Energy, Mineral, and Land Resources of the Department of Environmental Quality.
- (13) "Energy Dissipator" 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.
- (14) "Ground Cover" means any natural vegetative growth or other material that renders the soil surface stable against accelerated erosion.
- (15) "High Quality Waters" means those described in 15A NCAC 02B .0224, which is herein incorporated by reference including subsequent amendments and editions.
- (16) "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 of and drain to HQW's.
- (17) "Lake or Natural Watercourse" means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake, or pond.
- (18) "Natural Erosion" means "erosion" as defined in G.S. 113A-52(5) under natural environmental conditions undisturbed by man.
- (19) "Person Conducting the Land-disturbing Activity" means any person who may be held responsible for a violation unless provided otherwise by the Act, the rules of this Chapter, or any order or local ordinance adopted pursuant to these Rules or the Act.
- (20) "Person Who Violates," or "Violator," as used in G.S. 113A-64, means: any landowner or other person who has financial or operational control over the land-disturbing activity; or who has directly or indirectly allowed the activity, and who has failed to comply with any provision of the Act, the rules of this Chapter, or any order or local ordinance adopted pursuant to the Act, as it imposes a duty upon that person.
- (21) "Plan" means an erosion and sedimentation control plan.
- (22) "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.
- (23) "Storm Drainage Facilities" means the system of inlets, conduits, channels, ditches, and appurtenances that serve to collect and convey stormwater through and from a given drainage area.
- (24) "Stormwater Runoff" means the runoff of water resulting from precipitation in any form.
- (25) "Ten-Year Storm" means a rainfall of an intensity that, based on historical data, is predicted, by a method acceptable to the approving authority, to be equaled or exceeded, on the average, once in 10 years, and of a duration that will produce the maximum peak rate of runoff from the watershed of interest under average antecedent wetness conditions.
- (26) "Twenty-five Year Storm" or "Q25" means a rainfall of an intensity that, based on historical data, is predicted, by a method acceptable to the approving authority, to be equaled or exceeded, on the

- average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff from the watershed of interest under average antecedent wetness conditions.
- (27) "Uncovered" means having had ground cover removed from, on, or above the soil surface.
  - (28) "Undertaken" means the initiating of any activity or phase of activity that results or will result in a change in the ground cover or topography of a tract of land.
  - (29) "Velocity" means the speed of flow through a cross-section perpendicular to the direction of the main channel at the peak flow of the storm of interest but not exceeding bank full flows.
  - (30) "Waste" means surplus materials resulting from on-site construction and to be disposed offsite.

*History Note:* Authority G.S. 113A-52; 113A-54;  
Eff. November 1, 1984;  
Amended Eff. May 1, 1990;  
Temporary Amendment Eff. November 1, 1990 for a period of 180 days to expire on April 29, 1991;  
ARRC Objection Lodged November 14, 1990;  
ARRC Objection Removed December 20, 1990;  
Amended Eff. January 1, 1991;  
Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;  
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); October 1, 1995; April 1, 1992;  
Readopted Eff. April 1, 2020.

## SUBCHAPTER 4B - EROSION AND SEDIMENT CONTROL

### 15A NCAC 04B .0101 AUTHORITY

*History Note:* Authority G.S. 113A-54; 113A-64;  
Eff. February 1, 1976;  
Repealed Eff. November 1, 1984.

### 15A NCAC 04B .0102 PURPOSE

### 15A NCAC 04B .0103 SCOPE

*History Note:* Authority G.S. 113A-54(a)(b);  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984;  
Repealed Eff. August 1, 1988.

### 15A NCAC 04B .0104 DEFINITIONS

*History Note:* Authority G.S. 113A-52; 113A-54;  
Eff. February 1, 1976;  
Amended Eff. March 14, 1980; January 31, 1979; July 1, 1978;  
Repealed Eff. November 1, 1984.

### 15A NCAC 04B .0105 PROTECTION OF PROPERTY

Persons conducting land-disturbing activity shall follow the measures specified in this Chapter and the Act to protect all public and private property from sedimentation and erosion damage caused by the land-disturbing activities.

*History Note:* Authority G.S. 113A-54(d)(2);  
Eff. February 1, 1976;  
Amended Eff. August 1, 1988; November 1, 1984;  
Readopted Eff. April 1, 2020.

#### **15A NCAC 04B .0106 BASIC EROSION AND SEDIMENTATION CONTROL PLAN OBJECTIVES**

An erosion and sedimentation control plan developed pursuant to this Chapter shall be designed to address the following:

- (1) Identify Critical Areas. Identify site areas subject to accelerated erosion, and off-site areas vulnerable to damage from erosion and sedimentation.
- (2) Limit Exposed Areas. Limit the size of the area exposed at any one time.
- (3) Limit Time of Exposure. Limit exposure to the shortest time specified in G.S. 113A-57, the rules of this Chapter, or as directed by the approving authority.
- (4) Control Surface Water. Control surface water originating upgrade of exposed areas in order to reduce erosion and sediment loss during exposure.
- (5) Control Sedimentation. All land-disturbing activity shall be planned to prevent off-site sedimentation damage.
- (6) Manage Stormwater Runoff. Plans shall be designed so that any increase in velocity of stormwater runoff resulting from a land-disturbing activity will not result in accelerated erosion of the receiving stormwater conveyance or at the point of discharge. Plans shall include measures to prevent accelerated erosion within the project boundary and at the point of discharge.

*History Note:* Authority G.S. 113A-54(d)(4); 113A-54.1;  
Eff. February 1, 1976;  
Amended Eff. July 1, 2000; February 1, 1992; May 1, 1990; November 1, 1984; March 14, 1980;  
Readopted Eff. April 1, 2020.

#### **15A NCAC 04B .0107 MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY**

- (a) No land-disturbing activity subject to these Rules shall be undertaken except in accordance with G.S. 113A-57 and the standards established in these Rules.
- (b) Unless where otherwise specified in the Act or the rules of this Chapter, provisions for permanent ground cover sufficient to restrain erosion shall be accomplished within 90 calendar days following completion of construction or development.
- (c) Pursuant to G.S. 113A-57(4) and 113A-54(d)(4), an erosion and sedimentation control plan shall be filed and approved by the approving authority.
- (d) All individuals that obtain a State or locally-approved erosion and sedimentation control plan that disturb one acre or more of land are required by the U.S. Environmental Protection Agency to obtain coverage under the N.C. Department of Environmental Quality Construction General Permit No. NCG010000 (NCG01). The requirements in NCG01 for temporary or permanent ground cover may differ from the ground cover, or stabilization, requirements in this Chapter. It is the responsibility of the person conducting the land-disturbing activity to ensure compliance with the NCG01.

*History Note:* Authority G.S. 113A-54(d)(4); 113A-57;  
Eff. February 1, 1976;  
Amended Eff. July 1, 2000; May 1, 1990; August 1, 1988; November 1, 1984; March 14, 1980;  
Readopted Eff. April 1, 2020.

#### **15A NCAC 04B .0108 DESIGN AND PERFORMANCE STANDARD**

Except where otherwise specified in this Chapter, erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the runoff of a 10-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture, Natural Resources Conservation Service's "National Engineering Field Handbook 630 (Handbook 630)." This document is herein incorporated by reference including subsequent amendments and editions, and may be accessed at no cost at

<https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/water/manage/hydrology/?cid=stelprdb1043063>.

Other methodologies may be used if based on generally accepted engineering standards that are shown to be equivalent to or improved over the procedures in Handbook 630. The approving authority shall determine acceptability of an alternative methodology based upon a showing that the runoff model used was based on observed data in agreement with the predictive model.

*History Note: Authority G.S. 113A-54;  
 Eff. February 1, 1976;  
 Amended Eff. November 1, 1984; July 1, 1978;  
 Readopted Eff. April 1, 2020.*

**15A NCAC 04B .0109 STORMWATER OUTLET PROTECTION**

(a) Persons shall provide a design for the land-disturbing activity so that the post-construction velocity of the ten-year storm runoff in the receiving stormwater conveyance to, and including, the discharge point, does not exceed the greater of:

- (1) the velocity established by the table in Paragraph (d) of this Rule; or
- (2) the projected velocity of the ten-year storm runoff in the receiving stormwater conveyance prior to development.

If the projected conditions in Subparagraphs (1) or (2) of this Paragraph cannot be met, then the receiving stormwater conveyance to, and including, the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the velocity prior to development by ten percent.

(b) When conditions of this Rule can be met, the Commission shall allow alternative measures to control downstream erosion, including:

- (1) compensation for increased runoff from areas rendered impervious by designing measures to promote infiltration;
- (2) avoiding increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and paved sections;
- (3) providing energy dissipators at storm drainage outlets to reduce flow velocities to the discharge points; or
- (4) protecting stormwater conveyances subject to accelerated erosion by improving cross sections or providing erosion-resistant lining.

(c) This Rule shall not apply when stormwater discharge velocities will not result in accelerated erosion in the receiving stormwater conveyance or discharge point.

(d) The following table sets maximum permissible velocity for storm water discharges:

Material	Maximum Permissible Velocities in feet and Meters Per Second*	
	F.P.S.	M.P.S.
Fine Sand (noncolloidal)	2.5	.8
Sandy Loam (noncolloidal)	2.5	.8
Silt Loam (noncolloidal)	3.0	.9
Ordinary Firm Loam	3.5	1.1
Fine Gravel	5.0	1.5
Stiff Clay (very colloidal)	5.0	1.5
Graded, Loam to Cobbles (noncolloidal)	5.0	1.5
Graded, Silt to Cobbles (colloidal)	5.5	1.7
Alluvial Silts (noncolloidal)	3.5	1.1
Alluvial Silts (colloidal)	5.0	1.5
Coarse Gravel (noncolloidal)	6.0	1.8
Cobbles and Shingles	5.5	1.7
Shales and Hard Pans	6.0	1.8

\*For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels. Source: Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment.

*History Note: Authority G.S. 113A-54(b); 113A-54(c);  
 Eff. February 1, 1976;  
 Amended Eff. February 1, 1992; May 1, 1990; November 1, 1984; July 1, 1978;  
 Readopted Eff. April 1, 2020.*

#### **15A NCAC 04B .0110 BORROW AND WASTE AREAS**

If the same person conducts the land-disturbing activity and any related borrow or waste activity, the related borrow or waste activity shall constitute part of the land-disturbing activity, unless the borrow or waste activity is regulated under the Mining Act of 1971, G.S. 74, Article 7, or is a landfill regulated by the Division of Waste Management. If the land-disturbing activity and any related borrow or waste activity are not conducted by the same person, they shall be considered by the approving authority as separate land-disturbing activities.

*History Note:* Authority G.S. 113A-54(b);  
Eff. February 1, 1976;  
Amended Eff. May 1, 1990; November 1, 1984;  
Readopted Eff. April 1, 2020.

#### **15A NCAC 04B .0111 ACCESS AND HAUL ROADS**

Except for public roads, temporary access and haul roads constructed or used in connection with any land-disturbing activity shall be considered a part of the activity.

*History Note:* Authority G.S. 113A-54;  
Eff. February 1, 1976;  
Readopted Eff. April 1, 2020.

#### **15A NCAC 04B .0112 OPERATIONS IN LAKES OR NATURAL WATERCOURSES**

Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize changes in the stream flow characteristics.

*History Note:* Authority G.S. 113A-54;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984;  
Readopted Eff. April 1, 2020.

#### **15A NCAC 04B .0113 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 the Act, the rules of this Chapter, or any order or local ordinance adopted pursuant to the Act. After site development, the land owner or person in possession or control of the land shall install and maintain all 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.

*History Note:* Authority G.S. 113A-54;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984; July 1, 1978;  
Readopted Eff. April 1, 2020.

#### **15A NCAC 04B .0114 GUIDELINES FOR EROSION AND SEDIMENT CONTROL PRACTICES**

*History Note:* Authority G.S. 113A-54; 113A-64;  
Eff. February 1, 1976;  
Repealed Eff. November 1, 1984.

#### **15A NCAC 04B .0115 ADDITIONAL MEASURES**

Whenever the Commission or a local government determines that accelerated erosion and sedimentation continues despite the installation of protective practices, they shall direct the person conducting the land-disturbing activity to take additional protective action necessary to achieve compliance with the conditions specified in the Act or the rules of this Chapter.

*History Note:* Authority G.S. 113A-54(b); 113A-54.1(b);

*Eff. February 1, 1976;*  
*Amended Eff. November 1, 1984;*  
*Readopted Eff. April 1, 2020.*

#### **15A NCAC 04B .0116 EXISTING UNCOVERED AREAS**

*History Note: Authority G.S. 113A-54;*  
*Eff. February 1, 1976;*  
*Amended Eff. October 1, 1995; February 1, 1992; May 1, 1990; November 1, 1984;*  
*Expired Eff. March 1, 2016 pursuant to G.S. 150B-21.3A.*

#### **15A NCAC 04B .0117 STATEMENT OF FINANCIAL RESPONSIBILITY AND OWNERSHIP**

*History Note: Authority G.S. 113A-54(b);*  
*Eff. February 1, 1976;*  
*Amended Eff. November 1, 1984;*  
*Repealed Eff. May 1, 1990.*

#### **15A NCAC 04B .0118 APPROVAL OF PLANS**

(a) Persons conducting land-disturbing activity on a tract that covers one or more acres shall file the erosion and sedimentation control plan with the local government having jurisdiction or with the Commission if no local government has jurisdiction. The approving authority shall act on the plan within 30 days of receipt of the plan or the plan shall be deemed approved. A paper copy of the approved plan shall be kept on file at the job site. After approving a plan, if the Commission or local government determines, either upon review of such plan or upon inspection of the job site, that the plan is inadequate to meet the requirements of the Act and of this Chapter, the Commission or local government shall require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the approving authority.

(b) Commission Approval:

- (1) The Commission shall review plans for all land-disturbing activity over which the Commission has exclusive jurisdiction pursuant to G.S. 113A-56, and all other land-disturbing activity where no local government has jurisdiction.
- (2) The Commission shall complete its review of any completed plan within 30 days of receipt and shall notify the person submitting the plan in writing that it has been:
  - (A) approved;
  - (B) approved with modification; or
  - (C) disapproved.
- (3) The Commission's approval with modification or disapproval of any proposed plan shall entitle the person submitting the plan to an administrative hearing in accordance with the provisions of G.S. 150B-23.
- (4) Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act, G.S. 113, Article 1, and the Department rules set forth in 15A NCAC 01C shall be deemed incomplete until an environmental document is available for review. The Commission shall notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to Subparagraph (2) of this Paragraph shall not begin until the environmental document is available for review.

(c) An erosion and sedimentation control plan shall be disapproved unless the application includes an authorized statement of financial responsibility and documentation of property ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his or her attorney-in-fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents.

(d) Local Government Approval:

- (1) Local Governments administering erosion and sedimentation control programs shall develop and publish procedures for approval of plans. The procedures shall follow applicable laws, ordinances, and rules, and shall contain procedures for appeal consistent with the local government's organization and operations.
- (2) Appeals of local government decisions shall be conducted pursuant to G.S. 113A-61(c).

- (3) The Secretary shall appoint employees of the Department as he or she deems necessary to consider appeals from the local government's final disapproval or modification of a plan. Within 30 days following receipt of notification of the appeal, the departmental employee shall complete the review and shall notify the local government and the person appealing the local government's decision that the plan be approved, approved with modifications, or disapproved.
- (4) If the person submitting the plan disagrees with the decision reached by a Departmental employee, he or she may appeal the decision to the Commission by filing notice within 15 days with the Director of the Division of Energy, Mineral, and Land Resources. The Director shall make the proposed erosion control plan and the records relating to the local government's and Departmental employee's review, available to an erosion and sedimentation control plan review committee consisting of three members of the Commission appointed by the Chairman. Within 10 days following receipt of the notification of appeal, the erosion and sedimentation control plan review committee shall notify the local government and the person submitting the plan of a place and time for a hearing for consideration of the appeal. Both parties shall be given at least 15 days' notice of the hearing and an opportunity to present written or oral arguments. The erosion and sedimentation plan review committee shall notify both parties of its decision concerning the approval, disapproval, or modification of the proposed plan within 30 days following the hearing.
- (e) The applicant's right under G.S. 113A-54.1(d) to appeal the Director's disapproval of an erosion control plan under G.S. 113A-54.1(c) gives rise to a right to an appeal to the Commission. An applicant desiring to appeal the Commission's disapproval of an erosion control plan shall file with the Office of Administrative Hearings a contested case petition under G.S. 150B, Article 3.

*History Note:*

*Authority G.S. 113A-2; 113A-54; 113A-54.1; 113A-57; 113A-60(a); 113A-61(b); 113A-61(c); Eff. February 1, 1976;*  
*Amended Eff. May 1, 1990; August 1, 1988;*  
*Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;*  
*Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1(f)); June 1, 1995; February 1, 1992;*  
*Readopted Eff. April 1, 2020.*

**15A NCAC 04B .0119 COMPLIANCE WITH PLAN REQUIREMENT**

*History Note: Authority G.S. 113A-54(b); Eff. February 1, 1976;*  
*Amended Eff. November 1, 1984;*  
*Repealed Eff. August 1, 1988.*

**15A NCAC 04B .0120 INSPECTIONS AND INVESTIGATIONS**

- (a) The Commission, Department of Environmental Quality, or local government may require written statements related to items including Notices of Violation (NOVs) or Stop-Work orders, or the filing of reports under oath, such as self-inspection or engineering/design reports, concerning land-disturbing activity, as necessary to carry out duties specified in the Act.
- (b) Inspection of sites shall be carried out by the staff of Department of Environmental Quality, representatives of a delegated local government, or other qualified persons authorized by the Commission or Department of Environmental Quality as necessary to carry out duties specified in the Act.
- (c) No person shall refuse entry or access to any person authorized by the Commission or any representative of a delegated local government who requests entry for purposes of inspection.
- (d) When a preconstruction conference is proposed pursuant to G.S. 113A-51, the request shall be set forth in the plan.

*History Note: Authority G.S. 113A-51; 113A-54(b); 113A-58; 113A-61.1;*  
*Eff. February 1, 1976;*  
*Amended Eff. October 1, 1995; May 1, 1990; November 1, 1984;*  
*Readopted Eff. April 1, 2020.*

**15A NCAC 04B .0121 PENALTIES**

*History Note: Authority G.S. 113A-54; 113A-64;  
Eff. February 1, 1976;  
Repealed Eff. November 1, 1984.*

#### **15A NCAC 04B .0122 SEVERABILITY CLAUSE**

If any of these provisions are held invalid or unenforceable, all of the other provisions shall nevertheless continue in full force and effect.

*History Note: Authority G.S. 113A-54;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.*

#### **15A NCAC 04B .0123 EFFECTIVE DATE**

*History Note: Authority G.S. 113A-54(b);  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984; November 15, 1976;  
Repealed Eff. August 1, 1988.*

#### **15A NCAC 04B .0124 DESIGN STANDARDS IN SENSITIVE WATERSHEDS**

(a) Uncovered areas in HQW zones shall be limited to a maximum total area of 20 acres within the boundaries of the tract. Only the land-disturbing activity within a HQW zone shall be governed by this Rule. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director upon providing engineering justification with a construction sequence that considers phasing, limiting exposure, weekly submitted self-inspection reports, and more conservative design than the 25-year storm. The Director may also stipulate the inclusion of other conditions in the plan as necessary based on specific site conditions.

(b) Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned, designed, and constructed to provide protection from the runoff of the 25-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture, Natural Resources Conservation Service's "National Engineering Field Handbook 630 for Conservation Practices." Other methodologies may be used if based on generally accepted engineering standards that are shown to the Division to be equivalent to or improved over the procedures in Handbook 630. The Division shall determine acceptability of an alternative methodology based upon a showing that the runoff model used was based on observed data in agreement with the predictive model.

(c) In order to provide for water quality protection in HQW zones, sediment basins that discharge to those areas shall be designed and constructed to meet the following criteria:

- (1) use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0 acre;
- (2) have a minimum of 1800 cubic feet of storage area per acre of disturbed area;
- (3) have a minimum surface area of 325 square feet per cfs of Q25 peak inflow;
- (4) have a minimum dewatering time of 48 hours; and
- (5) incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles shall be sufficient.

(d) Upon a written request of the applicant, the Director may allow alternative design or control measures in lieu of meeting the conditions required in Subparagraphs (c)(2) through (c)(5) of this Rule if the applicant demonstrates that meeting all of those conditions will result in design or operational hardships and that the alternative measures will provide an equal or more effective level of erosion and sedimentation control on the site. Alternative measures may include quicker application of ground cover, use of sediment flocculants, and use of enhanced ground cover practices.

(e) 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 forms of ditch liners proven to the Division as being effective in restraining accelerated erosion. The angle for side slopes shall be sufficient to restrain accelerated erosion.

*History Note:* Authority G.S. 113A-54(b); 113A-54(c)(1);  
Eff. May 1, 1990;  
Readopted Eff. April 1, 2020.

#### **15A NCAC 04B .0125 BUFFER ZONE REQUIREMENTS**

- (a) The width of a buffer zone shall be 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.
- (b) A 25-foot minimum width undisturbed buffer zone shall be protected adjacent to trout waters designated by the Environmental Management Commission. The 25-foot width buffer zone shall be measured horizontally from the top of the bank to the nearest area of disturbance.
- (c) Where a temporary and minimal disturbance is permitted as an exception by G.S. 113A-57(1), land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of 10 percent of the total length of the buffer zone within the tract and distributed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone.
- (d) Upon a written request of the applicant, the Director may allow a larger area of disturbance than provided in Paragraph (c) of this Rule if the applicant demonstrates that additional measures will be utilized that will achieve an equal or more effective level of erosion and sedimentation control than would be achieved had the specifications prescribed in Paragraph (c) of this Rule been followed.
- (e) No land-disturbing activity shall be undertaken within a buffer zone adjacent to trout waters that is predicted by the approving authority to cause stream temperature violations in these waters as set forth in 15A NCAC 02B .0211 which is hereby incorporated by reference including subsequent amendments and editions.

*History Note:* Authority G.S. 113A-54(b); 113A-54(c)(1); 113A-57(1);  
Eff. May 1, 1990;  
Amended Eff. February 1, 1992;  
Readopted Eff. April 1, 2020.

#### **15A NCAC 04B .0126 APPLICATION FEE**

- (a) The nonrefundable application fee, in the amount provided in G.S. 113A-54.2, shall be paid when an erosion and sedimentation control plan is filed in accordance with Rule .0118 of this Section.
- (b) Each plan shall be deemed incomplete until the application fee is paid.
- (c) No application fee shall be charged for review of a revised plan unless the revised plan contains an increase in the number of acres to be disturbed. If the revised plan contains an increase in the number of acres to be disturbed, the plan review processing fee to be charged shall be the amount specified in G.S. 113A-54.2 for each additional acre (or any part thereof) disturbed.

*History Note:* Authority G.S. 113A-54; 113A-54.2;  
Temporary Rule Eff. November 1, 1990, for a period of 180 days to expire on April 29, 1991;  
AARC Objection Lodged November 14, 1990;  
AARC Objection Removed December 20, 1990;  
Eff. January 1, 1991;  
Amended Eff. August 1, 2002; July 1, 2000;  
Readopted Eff. April 1, 2020.

#### **15A NCAC 04B .0127 CERTIFICATE OF PLAN APPROVAL**

- (a) The Commission shall issue a certificate of plan approval to the applicant by hard copy or electronic submittal. Before construction begins, that documentation shall be posted at the primary entrance of the job site or other location that is observable to the public and inspectors.
- (b) No person may initiate a land-disturbing activity until notifying the approving authority of the date that the land-disturbing activity will begin.

*History Note:* Authority G.S. 113A-54(b);  
Temporary Rule Eff. November 1, 1990, for a period of 180 days to expire on April 29, 1991;  
ARRC Objection Lodged November 14, 1990;

*ARRC Objection Removed December 20, 1990;*  
*Eff. January 1, 1991;*  
*Amended Eff. July 1, 2000;*  
*Readopted Eff. April 1, 2020.*

#### **15A NCAC 04B .0128 RAILROAD COMPANIES**

*History Note: Authority G.S. 113A-52(6); 113A-54(b); 113A-54(c); 113A-54(d)(4); 113A-57(1);*  
*Eff. August 1, 1995;*  
*Expired Eff. March 1, 2016 pursuant to G.S. 150B-21.3A.*

#### **15A NCAC 04B .0129 EROSION CONTROL PLAN EXPIRATION DATE**

If no land-disturbing activity has been undertaken on a site, an erosion control plan shall expire three years following the date of approval.

*History Note: Authority G.S. 113A-54.1(a);*  
*Eff. October 1, 1995;*  
*Readopted Eff. April 1, 2020.*

#### **15A NCAC 04B .0130 EMERGENCIES**

Any person who conducts an emergency repair essential to protect human life that results in a land-disturbing activity within the meaning of G.S. 113A-52(6) and these Rules shall take the following actions:

- (1) notify the Director, or his or her designee, of the repair as soon as possible, but no later than five working days after the emergency ends; and
- (2) take all measures necessary to protect all public and private property from damage caused by the repair as soon as possible, but no later than 15 working days after the emergency ends.

*History Note: Authority G.S. 113A-52.01(4); 113A-54(b);*  
*Eff. October 1, 1995;*  
*Readopted Eff. April 1, 2020.*

#### **15A NCAC 04B .0131 SELF-INSPECTIONS**

All land-disturbing activities required to have an approved erosion and sedimentation control plan under G.S. 113A-54.1(e) shall conduct self-inspections for initial installation or modification of any erosion and sedimentation control devices and practices described in an approved plan. In addition, weekly and rain-event self-inspections are required by federal regulations, that are implemented through the NPDES Construction General Permit No. NCG 010000.

- (1) For self-inspections required pursuant to G.S. 113A-54.1(e), the inspection shall be performed during or after each of the following phases of the plan:
  - (a) initial installation of erosion and sediment control measures;
  - (b) clearing and grubbing of existing ground cover;
  - (c) completion of any grading that requires ground cover;
  - (d) completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
  - (e) transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new owner or person in control shall conduct and document inspections until the project is permanently stabilized as set forth in Sub-Item (c) of this Item.
- (2) Documentation of self-inspections performed under Item (1) of this Rule shall include:
  - (a) Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;
  - (b) Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
  - (c) The name, address, organization affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. A template for an example of an inspection and monitoring report is provided on the

DEMLR website at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site.

- (d) A record of any significant deviation from any erosion or sedimentation control measure from that on the approved plan. For the purpose of this Rule, a "significant deviation" means an omission, alternation, or relocation of an erosion or sedimentation control measure that prevents it from performing as intended. The record shall include measures required to correct the significant deviation, along with documentation of when those measures were taken. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

*History Note:* Authority G.S. 113A-54; 113A-54.1(e);  
Eff. October 1, 2010;  
Readopted Eff. April 1, 2020.

### **15A NCAC 04B .0132 DESIGN STANDARDS FOR THE UPPER NEUSE RIVER BASIN (FALLS LAKE WATERSHED)**

In addition to any other requirements of State, federal, and local law, land-disturbing activity in the watershed of the drinking water supply reservoir that meets the applicability requirements of Session Law 2009-486, Section 3.(a), shall meet all of the following design standards for sedimentation and erosion control:

- (1) Erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the runoff of the 25-year storm that produces the maximum peak rate of runoff as calculated according to procedures set out in the United States Department of Agriculture, Natural Resources Soil Conservation Service's "National Engineering Field Handbook 630 for Conservation Practices" or according to procedures adopted by any other agency of the State or the United States.
- (2) Sediment basins shall be planned, designed, and constructed so that the basin will have a settling efficiency of at least 70 percent for the 40-micron size soil particle transported into the basin by the runoff of the two-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture, Natural Resources Soil Conservation Service's "National Engineering Field Handbook 630 for Conservation Practices" or according to procedures adopted by any other agency of the State or the United States.
- (3) Newly constructed open channels shall be planned, 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 steeper side slopes or where the side slopes are stabilized by using mechanical devices, structural devices, or other ditch liners sufficient to restrain accelerated erosion. The angle for side slopes shall be sufficient to restrain accelerated erosion, as determined by the Division, based on soil conditions.
- (4) For an area of land-disturbing activity where grading activities have been completed, temporary or permanent ground cover sufficient to restrain erosion shall be provided as soon as practicable, but not later than seven days after completion of grading. For an area of land-disturbing activity where grading activities have not been completed, temporary ground cover shall be provided as follows:
  - (a) For an area with no slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of 14 days.
  - (b) For an area of moderate slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of 10 days. For purposes of this Item, "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.
  - (c) For an area of steep slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of seven days. For purposes of this Item, "steep slope" means an inclined area, the inclination of which is greater than three units of horizontal distance to one unit of vertical distance.

*History Note:* Authority G.S. 113A-54(b); S.L. 2009-486;

*Eff. February 1, 2012;*  
*Readopted Eff. April 1, 2020.*

## **SUBCHAPTER 4C - SEDIMENTATION CONTROL CIVIL PENALTIES**

### **15A NCAC 04C .0101 PURPOSE AND SCOPE**

*History Note: Authority G.S. 113A-54(b); 113A-64(a);*  
*Eff. February 1, 1976;*  
*Amended Eff. November 1, 1984; October 5, 1980;*  
*Repealed Eff. August 1, 1988.*

### **15A NCAC 04C .0102 DEFINITIONS**

*History Note: Authority G.S. 143B-10;*  
*Eff. February 1, 1976;*  
*Amended Eff. January 31, 1979; September 3, 1976;*  
*Repealed Eff. November 1, 1984.*

### **15A NCAC 04C .0103 WHO MAY ASSESS**

*History Note: Authority G.S. 113A-55; 113A-64; 143B-10;*  
*Eff. February 1, 1976;*  
*Amended Eff. November 1, 1984;*  
*Repealed Eff. June 1, 2020.*

### **15A NCAC 04C .0104 WHEN ASSESSABLE**

*History Note: Authority G.S. 113A-64;*  
*Eff. February 1, 1976;*  
*Amended Eff. November 1, 1984;*  
*Repealed Eff. August 1, 1988.*

### **15A NCAC 04C .0105 AMOUNT OF ASSESSMENT**

*History Note: Authority G.S. 113A-64;*  
*Eff. February 1, 1976;*  
*Repealed Eff. November 1, 1984.*

### **15A NCAC 04C .0106 CRITERIA**

*History Note: Authority G.S. 113A-54(b); 113A-55; 113A-64(a);*  
*Eff. February 1, 1976;*  
*Amended Eff. November 1, 1984; April 1, 1978;*  
*Repealed Eff. June 1, 2020.*

### **15A NCAC 04C .0107 PROCEDURES: NOTICES**

(a) The notice of violation shall describe the violation, request that all illegal activity cease, and inform the violator that a civil penalty may be assessed pursuant to G.S. 113A-64. If particular actions need to be taken to comply with the Sedimentation Pollution Control Act, the notice shall specify the actions to be taken, specify a time period for

compliance, and state that upon failure to comply within the allotted time, the person shall become subject to the assessment of a civil penalty for each day of the continuing violation beginning with the date of the violation.

(b) The stop-work order provided in G.S. 113A-65.1 shall serve as the notice of violation for purposes of the assessment of a civil penalty pursuant to G.S. 113A-64(a)(1). Copies of the stop-work order shall be served upon persons the Department has reason to believe may be responsible for the violation pursuant to G.S. 1A-1, Rule 4.

*History Note:* Authority G.S. 113A-54; 113A-61.1; 113A-64; 113A-65.1;  
Eff. February 1, 1976;  
Amended Eff. May 1, 1990; November 1, 1984;  
Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;  
Amended Eff. August 1, 2000; October 1, 1995; April 1, 1992;  
Temporary Amendment Eff. August 1, 2000;  
Amended Eff. April 1, 2001;  
Readopted Eff. April 1, 2020.

#### **15A NCAC 04C .0108 REQUESTS FOR ADMINISTRATIVE HEARING**

*History Note:* Authority G.S. 113A-64; 143B-10; 150B-23;  
Eff. February 1, 1976;  
Amended Eff. October 1, 1995; October 1, 1988; October 5, 1980; April 1, 1978;  
Repealed Eff. April 1, 2020.

#### **15A NCAC 04C .0109 TENDER OF PAYMENT**

*History Note:* Authority G.S. 113A-55; 143B-10;  
Eff. February 1, 1976;  
Amended Eff. October 5, 1980; April 1, 1978;  
Expired Eff. March 1, 2016 pursuant to G.S. 150B-21.3A.

#### **15A NCAC 04C .0110 ADMINISTRATIVE HEARING**

#### **15A NCAC 04C .0111 FURTHER REMEDIES**

*History Note:* Authority G.S. 113A-54; 113A-55; 113A-60; 113A-64 through 113A-66; 150B-22 et seq.;  
Eff. February 1, 1976;  
Amended Eff. October 1, 1995; August 1, 1988; November 1, 1984; October 5, 1980;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;  
Repealed Eff. April 1, 2020.

### **SUBCHAPTER 4D - LOCAL ORDINANCES**

#### **15A NCAC 04D .0101 SUBMISSION AND APPROVAL OF PROPOSED LOCAL ORDINANCES**

*History Note:* Authority G.S. 113A-54; 113A-60;  
Eff. February 1, 1976;  
Repealed Eff. August 1, 1988.

#### **15A NCAC 04D .0102 MODEL ORDINANCE**

*History Note:* Authority G.S. 113A-54(d); 113A-60;  
Eff. February 1, 1976;  
Amended Eff. March 14, 1980; February 23, 1979;  
Summary Rule Filed January 26, 1982;

*Amended Eff. October 1, 1995; May 1, 1990; August 1, 1988; November 1, 1984;  
Repealed Eff. April 1, 2020.*

**15A NCAC 04D .0103 REVISIONS TO APPROVED LOCAL ORDINANCES**

*History Note: Authority G.S. 113A-54(d); 113A-60;  
Eff. May 1, 1990;  
Amended Eff. January 4, 1993;  
Repealed Eff. October 1, 1995.*

**SUBCHAPTER 04E - RULEMAKING PROCEDURES**

**SECTION .0100 - GENERAL PROVISIONS**

**15A NCAC 04E .0101 GENERAL PURPOSE**

**15A NCAC 04E .0102 DEFINITIONS**

*History Note: Authority G.S. 113A-54; 113A-55; 150B;  
Eff. March 14, 1980;  
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); May 1, 1990; November 1, 1984;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February  
2, 2016;  
Repealed Eff. April 1, 2020.*

**15A NCAC 04E .0103 ADDRESS**

*History Note: Authority G.S. 113A-54;  
Eff. March 14, 1980;  
Repealed Eff. November 1, 1984.*

**15A NCAC 04E .0104 COPIES OF RULES**

(a) Copies of Commission rules may be requested by contacting the Commission's staff at the Archdale building address set forth in 15A NCAC 04A .0101. The request shall specify the rules requested, for example, 15A NCAC 04, Sedimentation Control, or 15A NCAC 04B .0113, Responsibility for Maintenance. A fee may be charged to recover mailing and duplication costs for requests of more than one copy of the same rule(s).

(b) The rules of the Commission (15A NCAC 04) can also be found on the website of the NC Office of Administrative Hearings at: <https://www.oah.nc.gov>.

*History Note: Authority G.S. 113A-54; 113A-55;  
Eff. March 14, 1980;  
Amended Eff. August 1, 1988; November 1, 1984;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February  
2, 2016;  
Amended Eff. April 1, 2020.*

**15A NCAC 04E .0105 DELEGATIONS OF AUTHORITY TO THE DIRECTOR**

*History Note: Authority G.S. 113A-54; 113A-55; 150B;  
Eff. March 14, 1980;  
Amended Eff. November 1, 1984; June 5, 1981;  
Repealed Eff. August 1, 1988.*

**SECTION .0200 - PETITIONS FOR RULEMAKING**

**15A NCAC 04E .0201 FORM AND CONTENT OF PETITION**

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Commission shall make the request in a petition to the Commission addressed to the:

Director  
Division of Energy, Mineral, and Land Resources  
1612 Mail Service Center  
Raleigh, North Carolina 27699-1612

(b) The petition shall contain the following information:

- (1) the text of the proposed rule(s) for adoption or amendment;
- (2) a statement of the reasons for adoption or amendment of the proposed rule(s), or the repeal of an existing rule(s);
- (3) a statement of the effect on existing rules or orders; and
- (4) the name(s) and address(es) of the petitioner(s).

(c) The petitioner may include the following information within the request:

- (1) the statutory authority for the agency to promulgate the rules(s);
- (2) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
- (3) a statement explaining the computation of the cost factors;
- (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and
- (5) documents and data supporting the proposed rule(s).

(d) Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to the petitioner by the Director on behalf of the Commission.

(e) In its review of the proposed rule, the Commission shall consider whether it has authority to adopt the rule; the effect of the proposed rule on existing rules, programs, and practices; probable costs and cost factors of the proposed rule; and the impact of the rule on the public and regulated entities.

*History Note: Authority G.S. 113A-54; 150B-20;  
Eff. March 14, 1980;  
Amended Eff. November 1, 1984;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;  
Amended Eff. April 1, 2020.*

**15A NCAC 04E .0202 CONTENTS OF PETITION**

*History Note: Authority G.S. 113A-54; 150B-16;  
Eff. March 14, 1980;  
Repealed Eff. November 1, 1984.*

**15A NCAC 04E .0203 DISPOSITION OF PETITIONS**

*History Note: Authority G.S. 113A-54; 113A-55; 150B-16;  
Eff. March 14, 1980;  
Amended Eff. August 1, 1988; November 1, 1984; June 5, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;  
Repealed Eff. April 1, 2020.*

**SECTION .0300 - NOTICE OF RULEMAKING HEARINGS**

**15A NCAC 04E .0301 TIMING OF NOTICE**

*History Note: Authority G.S. 113A-54; 150B-12;  
Eff. March 14, 1980;  
Repealed Eff. November 1, 1984.*

**15A NCAC 04E .0302 NOTICE MAILING LIST**

*History Note:* Authority G.S. 113A-54; 150B-12(b);  
Eff. March 14, 1980;  
Amended Eff. November 1, 1984;  
Repealed Eff. August 1, 1988.

**15A NCAC 04E .0303 ADDITIONAL INFORMATION**

*History Note:* Authority G.S. 113A-54; 150B-12;  
Eff. March 14, 1980;  
Repealed Eff. November 1, 1984.

**SECTION .0400 - RULEMAKING HEARINGS**

**15A NCAC 04E .0401 REQUEST TO PARTICIPATE**

**15A NCAC 04E .0402 CONTENTS OF REQUEST: GENERAL TIME LIMITATIONS**

*History Note:* Authority G.S. 113A-54; 150B-12(d),(e);  
Eff. March 14, 1980;  
Repealed Eff. November 1, 1984.

**15A NCAC 04E .0403 WRITTEN SUBMISSIONS**

*History Note:* Authority G.S. 113A-54; 150B-12(e);  
Eff. March 14, 1980;  
Amended Eff. June 5, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;  
Repealed Eff. April 1, 2020.

**15A NCAC 04E .0404 PRESIDING OFFICER: POWERS AND DUTIES**

*History Note:* Authority G.S. 113A-54; 150B-12;  
Eff. March 14, 1980;  
Repealed Eff. November 1, 1984.

**15A NCAC 04E .0405 STATEMENT OF REASONS FOR DECISION**

**15A NCAC 04E .0406 RECORD OF PROCEEDINGS**

*History Note:* Authority G.S. 113A-54; 150B-11(2); 150B-12(e);  
Eff. March 14, 1980;  
Amended Eff. August 1, 1988; November 1, 1984;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;  
Repealed Eff. April 1, 2020.

**SECTION .0500 - DECLARATORY RULINGS**

**15A NCAC 04E .0501 DECLARATORY RULINGS: GENERALLY**

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Sedimentation Control Commission may issue a declaratory ruling as provided in G.S. 150B-4 and the rules of this Section.

*History Note:* Authority G.S. 113A-54; 150B-4;  
Eff. March 14, 1980;

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;*  
*Amended Eff. April 1, 2020.*

#### **15A NCAC 04E .0502 PROCEDURE FOR REQUESTING DECLARATORY RULINGS**

(a) All requests for a declaratory ruling shall be filed with the Director, Division of Energy, Mineral, and Land Resources, Department of Environmental Quality, 1612 Mail Service Center, Raleigh, NC 27699-1612.

(b) All requests shall include the following:

- (1) name and address of petitioner(s);
- (2) the rule, statute, or order upon which a ruling is desired;
- (3) a statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a rule, statute, or order to a given factual situation;
- (4) arguments or data that demonstrate that the petitioner is aggrieved by the rule, statute, or order, or its potential application to petitioner;
- (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner;
- (6) a statement of the facts proposed for adoption by the Commission;
- (7) a draft of the proposed ruling; and
- (8) a statement of whether an oral argument is desired, and, if so, the reason(s) for requesting such an oral argument.

(c) A request for a ruling on the applicability of a rule, order or statute shall include a description of the specific factual situation on which the ruling is to be based and documentation supporting those facts. A request for a ruling on the validity of a Commission rule shall state the aggrieved person's reason(s) for questioning the validity of the rule and a brief or legal memorandum supporting the aggrieved person's position. A person may ask for both types of declaratory rulings in a single request.

(d) In the manner provided in G.S. 150B-23(d), any other person may request to intervene in the request for declaratory ruling. The request to intervene shall be determined by the Chairman.

*History Note: Authority G.S. 113A-54; 150B-4;*  
*Eff. March 14, 1980;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;*  
*Amended Eff. April 1, 2020.*

#### **15A NCAC 04E .0503 DISPOSITION OF REQUEST**

(a) The Commission Chairman shall make a determination on the completeness of the request for declaratory ruling based on the requirements of Rule .0502 of this Section, and the Chairman shall make a recommendation to the Commission on whether to grant or deny a request for a declaratory ruling.

(b) Before deciding the merits of the request, the Commission may:

- (1) request additional written submissions from the petitioner(s);
- (2) request a written response from the Department, or any other person; and
- (3) hear oral arguments from the petitioner(s) and the Department or their legal counsel.

(c) Whenever the Commission believes for good cause that the issuance of a declaratory ruling is undesirable, the Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the ruling, stating the reason(s) for the refusal to issue a ruling on the request.

(d) "Good cause" as the term is used in Paragraph (c) of this Rule shall include:

- (1) finding that there has been a similar determination in a previous contested case or declaratory ruling;
- (2) finding that the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
- (3) finding that no genuine controversy exists as to the application of a rule, statute, or order to the specific factual situation presented; or
- (4) finding that the factual context put forward as the subject of the declaratory ruling was considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record.

(e) The Commission, through the Department, shall keep a record of each declaratory ruling, which shall include at a minimum the following items:

- (1) the request for a ruling;

- (2) any written submission by a party;
  - (3) the given state of facts on which the ruling was based;
  - (4) any transcripts or recordings of oral proceedings, or, in the absence of a transcript or recording, a summary of all arguments;
  - (5) any other matter considered by the Commission in making the decision; and
  - (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling.
- (f) For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:
- (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered;
  - (2) any court of the Appellate Division of the General Court of Justice shall construe the statute or rule that is the subject of the declaratory ruling in a manner irreconcilable with the declaratory ruling;
  - (3) the Commission changes the declaratory ruling prospectively; or
  - (4) any court sets aside the declaratory ruling in litigation between the Commission or Department of Environmental Quality and the party requesting the ruling.
- (g) The party requesting a declaratory ruling may agree to allow the Commission to extend any of the deadlines beyond the timeframes provided in G.S. 150B-4.
- (h) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a decision or a ruling on the merits within the time provided in G.S. 150B-4 shall constitute a denial of the request as well as a denial on the merits of the request and shall be subject to judicial review.

*History Note:* Authority G.S. 113A-54; 113A-55; 150B-4  
 Eff. March 14, 1980;  
 Amended Eff. August 1, 1988; June 5, 1981;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;  
 Amended Eff. April 1, 2020.

**15A NCAC 04E .0504 RECORD OF DECISION**

*History Note:* Authority G.S. 113A-54; 150B-11;  
 Eff. March 14, 1980;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;  
 Repealed Eff. April 1, 2020.

**III. Information Items**

- A. Risk-based Approach to Construction Projects in Mountainous Areas of North Carolina – Mr. Toby Vinson and Mr. Brian Wrenn
- B. Commission Technical Committee – Dr. Susan White
- C. Land Quality Section Active Sediment Cases and Enforcement— Ms. Julie Coco
- D. Education Program Status Report — Ms. Rebecca Coppa
- E. Sediment Program Status Report — Ms. Julie Coco
- F. NCDOT Report – Ms. Julie Coco
- G. Land Quality Section Report — Mr. Toby Vinson
- H. Coronavirus Disease of 2019 (COVID-19) Status – Mr. Toby Vinson
- I. Reminder of Next Commission Meeting on Tuesday, February 23, 2021 – Mr. Toby Vinson

Commission's Technical Committee Nominations

1. Greg Jennings, PhD, PE  
Jennings Environmental
2. Donald R. Pearson, Jr. EI, CPESC  
Roadside Environmental Field Operations Engineer  
North Carolina Department of Transportation
3. Daniel E. Line, PE, Extension Specialist, Bio and Ag Engineering  
NCSU Bio. & Ag. Engineering
4. Karyn Pageau, EI, CPESC  
Wake County Local Program
5. Jonathan Bivens, P.E.  
SCC Representative for Associated General Contractors
6. Mark Taylor, P.E.  
SCC Representative for Professional Engineers
7. Dr. Rich McLaughlin (if needed)  
SCC Representative for NCSU Soil Science
8. A.J. Lang, PhD  
N.C. Forest Service
9. Beth McLaughlin  
McLaughlin Consulting
10. Lauren Witherspoon  
City of Raleigh
11. Kevin Vogel  
Partner in LandDesign's Charlotte, NC office

Education Advisory Committee Nominations

1. Victor Barbour  
with Carolinas AGC
2. Dr. Rich McLaughlin  
SCC Representative for NCSU Soil Science
3. Tom Gerow, Jr.  
N.C. Forest Service
4. Eric Romaniszyn  
Haywood Waterways Association
5. Kristi Anspach  
Eco Turf, Inc Environmental Compliance Director

## **Updated - Summary of Suggested Topics for the Commission's Technical Committee**

### ***Topics suggested by SCC Members:***

- Topics related to rainfall/storm intensity/extreme weather events:
  - Are current sedimentation erosion control practices meeting state/local specific needs with increasing amounts and increased regularity of precipitation? For example, are the standards and BMPs for assessing 10 year return storm volumes, etc. and associated volumes appropriate now and/or into the future?
  - Are there correlations between BMP failures with increasing/repeated intensity events? Are there seasonality impacts?
  - How will projected increases in precipitation for NC/local areas across the state influence E&SC practices into the future?
- How are other south east states assessing and addressing legal requirements and changing needs in sedimentation and erosion control planning early in the design process?
- Potential applications of unmanned aerial vehicles (UAV) for monitoring and enforcement of SPCA.
- Looking at new products that may want to include in the Design Manual, example:
  - CRAFS – corrugated retention & filtration system
- Larger overarching discussion/brainstorming session of why there is still so much sediment pollution in our waterways. What the issues are, what tweaks can be made now to address the issues, and what the long range goals/plan should be.
- How effective requiring erosion control plans for sites under an acre would be, what local governments are doing and what's working for them.
- Are the current construction entrance requirements effective?
- Reducing plastics in erosion and sediment control products

### ***Topics suggested by LQS Staff***

- Design Manual Topics, example:
  - Seeding, and further incorporating native seeds
- Updating E&SC Field Manual (last updated in 2003/04)
- Updating E&SC Inspectors Guide (hasn't been updated since it was published in 1992)

## **Summary of Suggested Topics for the Education Advisory Committee**

### ***Topics suggested by LQS Staff***

- Create a high school curriculum (similar to or an accompaniment to NCDEQ-DWR's It's Our Water high school curriculum)
- Update & improve the Green Dozer Contractor modules in such a way that they can be put into an online learning management system so they can be offered as a self-paced course

November 5, 2020

- Create script for new E&SC Video Modules

## Active Sediment Case Report as of **October 16, 2020**

Atty	Case#	Violator (Name of Case)	County	Date of Assessment	Penalty Assessment Amt	Final Amt Paid	Comments	
	1920-001	David Drye Company, LLC	Mecklenburg	07-Aug-19	\$5,200.00		Penalty remission requested	Mecklenburg County LP
	S5180	Caruso Land, LLC	Wake	22-Jul-19	\$5,000.00		Penalty remission requested	Wake County LP
	TBD	Larry Ward	Wake	05-Nov-19	\$5,000.00		Penalty remission requested	Wake County LP
CM	20-003	ZP No. 335, LLC/Zimmer Development Co./WCU	Jackson	23-Apr-20	\$25,000.00		Settled. Awaiting payment.	
CM	20-009	Caviness & Cates Building and Development Co.	Franklin	15-Apr-20	\$3,200.00		Dismissal to be filed.	
CM	20-010	Clearly Development, Inc.	Onslow	25-Mar-20	\$5,000.00	\$4,500.00	Settled. Case closed.	
CM	20-011	Case Farms Processing, Inc.	Wayne	14-Aug-20	\$2,900.00	\$3,900.00	Settled. Awaiting payment.	
CM	20-012	Case Farms Processing, Inc.	Wayne	14-Aug-20	\$1,000.00	--	Both cases settled together.	
CM	20-013	ZP No. 335, LLC/Zimmer Development Co./WCU	Jackson	15-Jul-20	\$9,460.00		Settled. Awaiting payment.	
CM	20-015	ZP No. 335, LLC/Zimmer Development Co./WCU	Jackson	05-Oct-20	\$82,250.00		Pending settlement. Injunction requested.	
CM	20-017	Tardiff Property	McDowell	N/A	N/A		Injunction issued 10/2.	
CM	20-019	G&H Hauling, LLC	Brunswick				Being drafted.	
CM	20-022	Blue Ridge Mountain Sky, LLC	Polk				Being drafted.	
CM	20-023	Blue Ridge Mountain Sky, LLC	Polk	N/A	N/A		Injunction	

# **N.C. SEDIMENTATION CONTROL COMMISSION ENFORCEMENT REPORT**

by the OFFICE OF THE ATTORNEY GENERAL

10/16/2020

<b>Status of Cases</b>	<b>2/4/2020</b>	<b>4/30/2020</b>	<b>7/22/2020</b>	<b>10/16/2020</b>
1. LQS Drafting CPA	0	1	2	2
2. CPAs Out to Violator (30-day)	0	0	0	1
3. CPAs Out to Violator (60-day)	0	0	0	0
4. CPAs Prepared by LQS Under Review	0	2	0	2
5. CP Remission Requests Under Review	3	3	3	3
6. CP Remission Decisions	0	0	0	0
7. Cases Pending in OAH	0	1	4	4
8. Cases Awaiting Final Agency Decision	0	0	0	0
9. Cases Pending in General Courts of Justice				
a. Judicial Review	0	0	0	0
b. Injunctions	1	1	1	2
c. Pre-Judgement Collections	0	0	0	0
d. Post-Judgement Collections	0	0	0	0
e. Federal Cases	1	1	1	1
10. Cases in Bankruptcy Proceedings	0	0	0	0
11. *Cases where CPA Being Paid by Installment	0	0	0	0
12. Cases to be Closed	0	0	0	0
<b>TOTALS:</b>	5	9	11	13
<b>Action Since Prior Quarterly Report:</b>				
New Cases Received by AGO	0	1	3	4
Cases Closed by AGO	0	0	0	0

## **Education Program Status Report**

### ***Presentations/Exhibits***

Participated in the SciREN Triangle networking webinar for educators on September 24, 2020. Shared what resources DEMLR has available for teachers, as well as answering questions about DEMLR, erosion and water pollution.

### ***Workshops***

The in-person E&SC Design workshops originally scheduled for October 1 in Hickory and December 3 in Raleigh have been canceled. In its place, a series of free one hour weekly webinars is being run from the beginning of October through mid-December. These have been planned in coordination with SE-IECA and NCSU Department of Crop and Soil Sciences. We've been seeing attendance numbers between 300 and 350 at each of these webinars so far.

### ***Updates***

The E&SC website pages are continuously being updated as needed.

Have been focusing on professional development during this time, including taking a technical writing course and courses towards the NC Environmental Educators Certificate.

If you have any suggestions or would like to write an article for future issues of the biannual Sediments newsletter, email the education specialist. The next edition will be published at the end of December.



LAND QUALITY REGIONAL PROGRAM MONTHLY ACTIVITY REPORT

State Total FY 2020-2021 through:

September

Activity	WIRO	WIRO	ARO	ARO	WARO	WARO	WSRO	WSRO	RRO	RRO	FRO	FRO	MRO	MRO	TOTALS
	Month	YTD	Month	YTD	Month	YTD	Month	YTD	Month	YTD	Month	YTD	Month	YTD	
C. Letters of Deficiency	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
D. Cases Referred for Enforcement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3. Dam Safety	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
A. Letters of Deficiency	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
B. Enforcement Requests	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4. Stormwater	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
A. Notices of Violation (Total)	0	0	0	0	0	1	0	0	3	7	0	1	0	1	10
B. Notices of Deficiency (Total)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
C. NOVs to Repeat Violators	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D. Cases Referred for Enforcement	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
<b>*LOCAL PROGRAMS*</b>															
1. Local Ordinance Reviews	0	0	0	0	0	0	8	9	0	0	0	0	0	0	9
2. Local Programs Aided (hours)	4	4	8	21	0	0	26	89	0	0	0	0	10	28	142
<b>*DREDGE &amp; FILL APPLICATIONS*</b>	6	20	0	0	6	19	0	0	0	0	0	0	10	30	69
<b>*CUSTOMER SERVICE*</b>															
Technical Assistance (Aided Hours)	250	673	3	10	148	530	78	229	0	16	24	83	103	371	1911.88
Pre-Application Meetings	59	199	0	0	18	62	5	18	0	0	0	1	15	30	310

## Monthly Activity Report

### Activity Definitions

#### PLAN/APPLICATION REVIEW

1. **New Sedimentation Control Projects Rec'd** – The number of *complete* packages for a project that were received (FR/O form, plans, fee, landowner agreement and/or calculations, if either required). These are projects which have been assigned a new project identification number.
2. **New Sedimentation Plan Reviews** – The number of plan reviews that resulted in issuance of letters of approval and/or letters of disapproval (i.e., review > disapproval > resubmittal > approval = 2 reviews). It should not include preliminary or cursory reviews conducted by technicians that are followed by a detailed review by the ARE and/or RE. This number should be unique to the Project ID, and not to the reviewer.
3. **Sedimentation Plan EXPRESS Reviews** - Of the NEW plans that were reviewed, this item reflects the number of those that were express reviews. This number should always be equal to or less than the number reported under Item 2.
4. **New Sedimentation Plan Disapprovals** - Regular or express plans reviewed and disapproved for the first time. It should not include preliminary or cursory reviews conducted by technicians that are followed by a detailed review by the ARE and/or RE.
5. **Revised Sedimentation Plans Received** - Total number of previously reviewed regular and express plans received this month. It should not include preliminary or cursory reviews conducted by technicians. The same Project ID can be counted multiple times.
6. **Revised Sedimentation Plan Reviews** – Total number of regular and express plans revised and reviewed this month. It should not include preliminary or cursory reviews conducted by technicians. The same Project ID can be counted multiple times.
7. **Revised Sedimentation Plan Disapprovals** – Total number of **revised** regular or **revised** express plans reviewed that were disapproved. The same Project ID can be counted multiple times.
8. **Unreviewed E&SC Plans – End of Month** – The number of complete plans received for the month that have not yet been reviewed. This includes any plans received near the end of the month.

9. **E&SC Plan Reviews > 30 days** – The number of new projects that took more than 30 days from receipt to approve or disapprove. The goal is zero days.
  
10. **Revised Plan Reviews > 15 days** – Revisions to projects submitted that have not been reviewed within 15 days of receipt. The goal is zero days.

## MONITORING

1. **Sedimentation Inspections (Total)** – The total number of inspections conducted under the sedimentation program. This number should always be greater than the sum of A through D. Two inspectors together looking at one project equals one inspection.
  - A. **Landfills** – Inspections conducted at landfill sites
  - B. **DOT Contract** – Inspections conducted on NCDOT projects under a contract (TIP Projects) and any supplemental agreements.
  - C. **DOT Force Account** – Inspections conducted on NCDOT projects under force accounts. These types of arrangements involve notices to contractors to perform extra or altered work not covered by the original contract or by supplemental agreements.
  - D. **Complaints** – Inspections conducted on behalf of citizen complaints. The number of contacts that require field review to determine necessary actions or applicability. Those occurrences that only require office telephone interpretation of the law, rules, and/or procedures are not to be included.

## ENFORCEMENT

1. **Sedimentation**
  - A. **Notices of Violation (Total)** – The total number of notices issued under the sedimentation program. This includes first-time and repeat violators.
  - B. **NOVs to Repeat Violators** – Of the total above, this item represents the number of notices issued to repeat violators. This number should always be equal to or less than the number reported under Item A.
  - C. **Cases Referred for Enforcement** – The number of projects that have been issued case numbers (LQS-####-###).

## LOCAL PROGRAMS

1. **Local Ordinance Reviews** – The total number of formal reviews of local programs that are reported to the Sedimentation Control Commission through the Raleigh Central Office.
2. **Local Programs Aided (hours)** – The total number of hours spent by staff in informal review of local programs and the total number of hours spent working with local programs on specific projects and program administration (i.e., plan reviews, site inspections, enforcement assistance, presentations, training, etc.)

# North Carolina Department of Transportation Roadside Environmental Unit Erosion & Sedimentation / Stormwater Report

## ICA

### Immediate Corrective Action

*This project does not comply with the North Carolina Erosion and Sedimentation Control laws. Immediate Corrective Action is needed to resolve the situation to full compliance with the Law: (T15A: 04B.0000).*

#### Project Information

**Inspection Date:** 09/10/2020      **Evaluator:** Donald Pearson  
**Project #:** 34552.3.5      **TIP #:** R-3825B      **Contract #:**  
**Division #:** 4      **County:** Johnston  
**Project Type:** Contract      **Engineer:** Smithfield Resident  
**Project Length:** 4.60      **Disturbed Acres:** 0  
**River Basin:** Neuse      **HQW Zone:** NO      **Trout Zone:** NO  
**Location Description:** DP - NC 42 from East of Glen Laurel Road to Buffalo Road

#### Project Evaluation

**Report Type:**     Routine     ICA     ICA Ex 1st     ICA Ex 2nd     CICA - SWO  
                           PCN             ECPAR

Length	Section	Installation of BMPs	Maintenance of BMPs	Effectiveness of BMPs	Plan Implementation	Overall Project Evaluation
3.6	Sta:153+/- to End	7	6	6	7	6
1.0	remainder of Project	--	--	--	--	--

Grading Scale: 0 - 6 = Immediate Corrective Action Required, 7 = Fair, 8 = Good, 9 = Very Good, 10 = Excellent

#### **ICA Comments:**

Project is being issued an ICA for failure to adequately install and maintain EC measures throughout project limits. A follow up review will be conducted on September 16.

#### **Remarks and Recommendations:**

Met with Ryan, Alex, Dustin, Jeff, Chis, Wayne, Dock, and Donnie either yesterday or today to discuss project condition. Review of project began yesterday and continued today. I did not review entire project as items discovered warranted an ICA prior to finishing the review. Recommend items listed below as well as any outstanding items noted on NPDES inspection records or those identified by project inspectors be completed before September 16, 2020.

I did not review NPDES inspection documents but encourage Resident Engineer's office review with contractor to see if the SDO locations are being properly inspected and documented.

All items listed below should be considered URGENT or High priority.

L-line Sta:153+/- to End

Rt:153+/- to Driveway is eroding significantly - grade to manage runoff properly so intermediate EC measures can be installed.

Rt:154+/- has poorly installed Type A Rock Silt Check below driveway pipe - needs proper width and weir section.

Rt:154+/- Maintain rock checks below slope drain

Basin ID 15.1 is full of sediment and has been for a while considering the vegetation growing in the accumulated sediment. Skimmer head is almost completely buried in sediment. Rebuild this device as needed.

Special Sediment Control Fence outlet below this basin has failed releasing stone and sediment into permitted area. Repair and cleanup material.

Cleanout skimmer Basin sta:167+/-

Complete basin cleanout sta:168+/- and replace stone.

Significance silt loss has occurred Rt:168+/- adjacent to stream in buffer. Crews are actively cleaning it up.

Recommend talking to Chad Coggins about cleanup and whether additional material needs recovered.

Remove sandbags and geotextile lost into the stream at culvert outlet.

Remove contaminated rock in ditch Rt:168+/- and consider small basin as needed.

Clean out Basin ID 16.1

Basin ID 16.3 still has orifice plug still zip tied to the side of the skimmer head. Please install orifice and clean up accumulated silt near weir section of basin.

Repair and or reset geotextile lined ditch line about 174+/- to 180+/-

Need construction pad Rt:172+/- where vehicles are tracking dirt onto roadway.

Rt:173+/- has area between fill slope and berm for neighborhood funneling sediment from our project onto private property. Recover sediment as needed and install a Type A Rock Silt Check. Crews providing temporary groundcover today.

Lt:188+/- has sag in topo and significant sediment has built up on silt fence - maintain and install rock outlet as needed.

Groundcover needed on raw areas Lt: 190-195+/-

Maintain rock checks Rt:185-190+/- and grade roadbed to drain to these devices.

Rebuild tiered skimmer Basin ID 18.3.

Rebuild Type A Rock Inlet Protection on pipe Rt:201+50 and recover lost sediment at edge of pond on outlet end of pipe.

Reset turbidity curtain in pond Lt:202+/-

CWD Lt:223+/- to 229+/- is intended to keep clean off site water separate from runoff generated on project limits. Extend and stabilize area below CWD as needed.

Basin ID 21.2 was not built correctly. Orifice plug is still zip tied to the side of the skimmer head, the geotextile was not trenched in, there has not been sealant placed around barrel pipe through geotextile and berm, and no coir fiber matting has been placed at outlet.

Pursue groundcover on raw area Lt:230+/-

Basin ID 21.2 was not built correctly. Orifice plug is still zip tied to the side of the skimmer head, the geotextile was not trenched in, there are seams in layers of geotextile on front side of weir, and there isnt any sealant around barrel pipe through berm and weir.

Loose fill is being pushed into wetland area Rt:230+/- increasing risk as there is only a PIST A protecting existing 24-inch pipe which discharges into a pond off the ROW. Spoke to Dustin and Chis on site about options for containment and runoff management.

Scour is developing around Basin ID 21.5 and Basin ID 22.1.

Existing pipe outlet Rt:243+50- is causing erosion issues around Basin ID 22.1. Is this discharge from offsite? If so, can the water be routed through project via lined ditch?

#### Y11A

Need proper management of runoff from our project onto Y line and more specifically to drainage structures. Currently water is allowed to bypass the measures. Use sandbag berm, silt fence containment, etc... to capture and impound runoff. There is a fairly large section of ABC covered area available for some creative collection of runoff.

#### Borrow pit

Avoid vertical slopes. Groundcover required on unworked slopes steeper than 3:1 in 7 days. See EC plans sheet EC -03.

#### Waste pit

Waste material has been piled up within feet of overhead power lines. Safety issue? Approved reclamation plan indicated the height would be no more than 22 feet. Recommend checking that as the pit appears to be taller than that.

Replace rotten baffles in Basin. Expand use of PAM to help with turbidity in this basin. Also check the skimmer head to be sure it is not clogged. It should be actively draining today based on its elevation, but no water is

discharging.

Majority of this pit is raw and in need of completed slopes with permanent vegetation established. 7 Day time frame for raw unworked slopes steeper than 3:1 has likely been surpassed. Pursue proper stabilization.

Trucks are generating a lot of track out from this pit as well. Rebuild construction pad as needed and consider suspending hauling.

## Land Quality Section Report – November 5, 2020

<b>Org Unit Description</b>	<b>Position Location</b>	<b>Position</b>	<b>Position Description</b>
ENR SO ASEN EML Directors Office	Central Office, Raleigh	600032410	Administrative Associate II
ENR SO ASEN EML DO LQ CO Raleigh RO	Raleigh Regional Office	600032500	Engineer III
ENR SO ASEN EML DO LQ CO Winston Salem RO	Winston Salem Regional Office	600035458	Engineer I