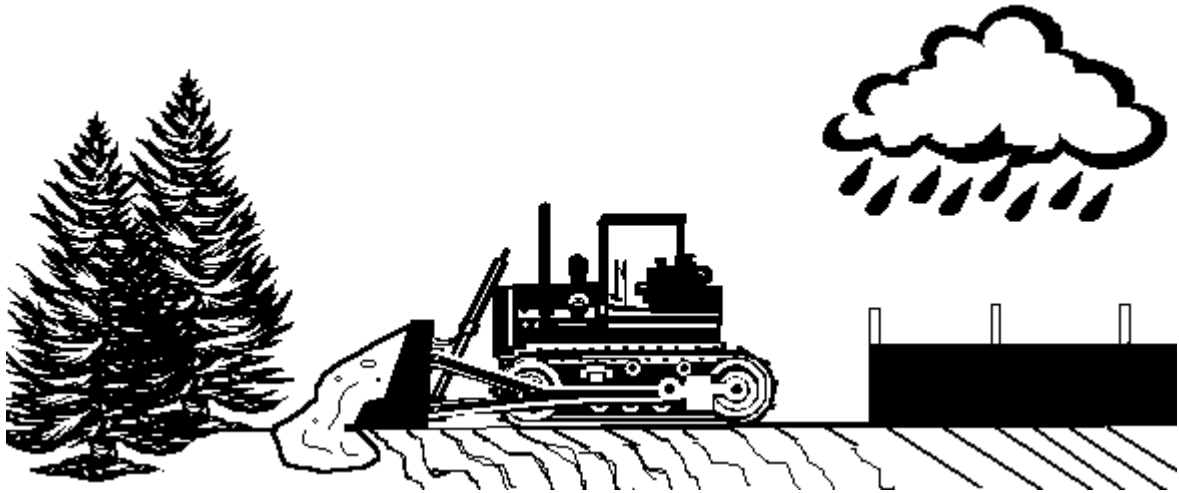


# Erosion & Sediment Control Planner Packet



**Land Quality Section**

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**Simplified Overview of the Sedimentation Pollution Control Act  
of 1973**

**The Sediment Pollution Control Act of 1973: Myths and  
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# WHAT IS EROSION AND SEDIMENTATION?

**Erosion** is the detachment and movement of soil particles by wind, water, and gravity. Natural erosion (geologic erosion) is a process that occurs slowly over millions of years. Geologic erosion has shaped the landscape around us.

Accelerated erosion is NOT a natural process. Accelerated erosion occurs when more soil than usual is detached and moved by water or some other force and is caused by land disturbing activities such as the construction of roads and buildings, commercial forestry, agriculture, and surface mining. These activities leave the land free of vegetation. Accelerated erosion strips the land of its topsoil, decreasing soil productivity and causing sedimentation in our lakes and rivers.

**Sedimentation** is the process by which eroded soil is deposited into our lakes and streams. Sediment can accumulate in the bottom of lakes, streams, estuaries, and nursery areas. It can smother fish habitats vital to reproduction and destroy aquatic insects that fish feed upon.

Sediment fills our rivers, lakes, and streams, decreasing their storage volume and increasing the frequency of floods and the damage caused by flooding. Sediment in our waters increases the costs of power production; this cost is passed on to you and me.

Sediment suspended in the water also increases the cost of treating municipal drinking water supplies. Sediment restricts the amount of sunlight reaching aquatic plants, reducing the amount of dissolved oxygen in our waters. Sediment degrades the beauty of our waters by increasing the cloudiness of the water.



# What Can We Do About it?

Accelerated **erosion and sedimentation** primarily result from agriculture, forestry, and construction practices. These activities clear the land of vegetation and expose the soil surface so that it is more easily eroded. However, we all benefit from these three activities. How can we protect our land, rivers, lakes, and streams from the damage caused by erosion and sedimentation?

We can control erosion and sedimentation from construction, forestry, and agriculture by using Best Management Practices (BMPs). BMPs are practices that either prevent erosion from happening or keep eroded sediment from entering rivers, lakes, and streams. By using best management practices, we can greatly reduce the amount of sediment entering our rivers, lakes, and streams. BMPs allow us to continue activities such as farming, forestry, and construction while protecting the quality of the water around us.

## What Are Some Examples of Best Management Practices?

- Agriculture:
- No till or conservation tillage practices.
  - Leaving crop residue on fallow fields.
  - Strip cropping, contour farming, and use of terraces.
  - Taking land on steep topography out of production.
  - Use of natural buffer zones around rivers, lakes, and streams.
- Forestry:
- Natural buffer areas around rivers, lakes and streams
  - Replant vegetation on disturbed areas
  - Mulching
  - Control runoff on forestry roads and other affected areas
- Construction:
- Use of temporary ground cover
  - Leave natural buffer zones
  - Limit time of exposure
  - Use of phased grading plans
  - Control rates of runoff
  - Use devices such as sediment basins, rock dams, and sediment traps

# What Does the Law Say?

**Sediment Control** in North Carolina is governed by the Sedimentation Pollution Control Act of 1973. The Act requires anyone involved in a land disturbing activity of one acre or more to submit an erosion and sediment control plan to the Land Quality Section of the North Carolina Department of Environmental Quality or the appropriate delegated local program.

The erosion and sediment control plan must be submitted to the Land Quality Section at least 30 days before the land disturbing activity begins and must be approved before beginning the activity. The Act exempts land disturbing activities for forestry if the logging activity follows forestry BMPs adopted by the Department of Environmental Quality. Mine sites permitted under the Mining Act of 1971 are exempt since an erosion and sediment control plan is required by Mining permits. Agriculture also is exempt under the Act.

The Sedimentation Pollution Control Act has few limitations as to what goes into a plan. The approved plan must control sediment and keep it from leaving the site. This allows for effective technical innovations in erosion and sediment control and may also help lower the cost of erosion and sediment control.

The Act has 5 mandatory standards.

1. Buffer zones along streams or rivers must be sufficient to control visible siltation within the first 25% of the buffer zone closest to the land disturbing activity. There must also be a 25-foot minimum width buffer along trout waters.
2. Groundcover must be established on exposed slopes within 21 calendar days after completion of any phase of grading.
3. Permanent groundcover must be established within 15 working days or 90 calendar days of completion of the project, whichever is shorter, and measures must be provided to keep sediment on site.
4. Any land disturbing activity of one acre or more must have an approved erosion and sediment control plan.
5. Any land disturbing activity must be done in accordance with the approved erosion and sediment control plan.

# The Full Rules and Regulations

[Sedimentation Pollution Control Act of 1973](#)  
[North Carolina General Statutes Chapter 113A Article 4](#)

The Sedimentation Pollution Control Act (SPCA) is the enabling legislation that gives authority to the Sedimentation Control Commission (SCC) and the Land Quality Section. It 'sets the stage'.

[Sedimentation Control](#)  
[Chapter 4 of Title 15A of the North Carolina Administrative Code \(T15A.04\)](#)

The NC Administrative Code (Code) provides the administrative overview of how the SCC and Land Quality Section enforce the Act. It provides the 'how to'.

## Glossary of Terms

- Accelerated Erosion:** Erosion that occurs more rapidly than natural geological erosion: the result of farming, forestry, and land grading for construction.
- BMPs:** Best Management Practices: practices or measures that allow us to protect water quality from pollutants such as sediment while still continuing activities such as construction, forestry, and agriculture.
- Buffer Zone:** Strips of natural areas such as forest or grasses between a body of water and a land disturbing activity such as agriculture, construction, or forestry.
- Dissolved Oxygen:** The amount of oxygen dissolved in a specific volume of water. Sufficient amounts of dissolved oxygen are important to the survival of fish and other aquatic organisms. The turbidity caused by sediment suspended in the water restrict sunlight to aquatic plants thereby reducing the dissolved oxygen in the water.

<b>Erosion:</b>	Detachment and movement of soil or rock by water, wind, ice, or gravity.
<b>Estuary:</b>	A body of water where a freshwater river or stream empties into the sea. Estuaries are important breeding grounds for many types of fish but are damaged by the accumulation of sediments due to accelerated erosion.
<b>Geological Erosion:</b>	Wearing away of the earth's surface by water, ice, or other natural agents under environmental conditions of climate, vegetation, and topography undisturbed by man.
<b>Non-Point Source Pollution:</b>	Pollution that is washed into rivers, lakes, and streams from runoff during rainfall events. Sediment is the largest non-point source pollutant.
<b>Point Source Pollution:</b>	Water pollution that is introduced into rivers, lakes, or streams directly from a single source, such as a pipe.
<b>Pollutant:</b>	Any substance that reduces the quality of biological habitats. Sediment is a pollutant of water.
<b>Pollution:</b>	Any physical, chemical, or biological change that adversely affects the health, survival, or activities of living organisms or alters the environment in undesirable ways.
<b>Sediment:</b>	Solid particulate matter, mineral or organic, that has been or is being moved by water, air, gravity, or ice from its origin. Sediment typically consists of clay, silt or sand-sized particles.
<b>Sedimentation:</b>	The process by which soils that have been washed into rivers, lakes, and streams, or onto the land surface are deposited.
<b>Topsoil:</b>	The upper layer of soil. This layer holds most of a soil's nutrients and is the most productive layer of soil. Topsoil is the layer of soil that is usually lost due to accelerated erosion.
<b>Turbidity:</b>	The "cloudiness" or discoloration of a body of water. Turbidity is caused by the suspension of solid particles such as clays in rivers, lakes, and streams.

- Vegetation:** The plants that cover the land surface. Vegetation helps protect soil from erosion by preventing the direct effect of rainfall on soil and holding onto soil with its roots.
- Watershed:** The land area that drains into a stream, river, or lake. A large river may have a watershed that encompasses many smaller watersheds.





# Simplified Overview of the Sedimentation Pollution Control Act of 1973

## PURPOSE

The objective of the Sedimentation Pollution Control Act of 1973 is to protect North Carolina land and natural watercourses from erosion and sedimentation impacts. The primary purposes are to: (1) keep sediment from entering our natural watercourses e.g. streams, rivers, lakes, swamps, and marshes; and (2) keep sediment from washing onto adjacent property.

## MANDATORY STANDARDS

### Buffer Zone Requirements

If you are conducting a land-disturbing activity, such as construction, near a lake or natural watercourse, visible siltation should be kept in the 25% of the buffer zone nearest the land-disturbing activity. For example, land disturbance taking place 20 feet from a stream would be in compliance if the sediment from the construction site travels less than 5 feet into the buffer. If the stream is classified as a Trout Stream, the same requirement applies, but the undisturbed buffer must be at least 25 feet wide.

### Slope Stabilization Requirements

Any slope generated or disturbed during a land-disturbing activity may not be so steep that it is impossible to prevent erosion from them by providing a natural groundcover (such as grass) or other adequate erosion-control devices. Groundcover or other erosion-control devices on slopes must be in place within 21 calendar days of completion of any phase of grading. Example: A slope generated during highway construction is not in compliance if it has deep, eroded gullies in it.

### Groundcover Requirements

Groundcover may be plants, mulches, rocks, etc. that hold the soil in place. Grass is a common groundcover. Whenever land is disturbed, permanent groundcover must be in place within 15 working days or 90 calendar days, whichever is shorter.

### **Erosion and Sediment Control Plan Requirements**

If more than one acre of land on a tract is to be disturbed, an erosion and sediment control plan is required. Erosion and sedimentation control plan application approvals are issued by Land Quality Section Regional Offices or local government erosion and sedimentation control programs.

### **Adherence to Erosion and Sediment Control Plan**

The land disturbing activity must be done in accordance with the approved erosion and sediment control plan.

## **EXEMPTIONS**

In general, agricultural lands used for the production of plants and animals useful to man are exempt from the Act. As long as best management practices in the Forest Practice Guidelines Related to Water Quality are followed, activities undertaken on forestland for the production and harvesting of timber are exempt. Lands used for mining are also exempt as they are subject to the Mining Act regulations. In emergency situations that threaten human lives, land may be disturbed without an immediate erosion and sedimentation control plan approval.

## **ENFORCEMENT**

Failure to have an approved plan before the land disturbing activity can result in a fine of up to \$5000 per day per violation. Failure to comply with the Sedimentation Pollution Control Act can result in fines up to \$5000 per day per violation for each day of the violation, the issuance of a stop-work order, injunctive relief, a restoration order, or possible criminal prosecutions.

### **For additional information reference the following:**

- The Sedimentation Pollution Control Act of 1973 ([GS113A Article 4](#))
- The NC Department of Environmental Quality Division of Energy, Mineral and Land Resources website: [NC DEQ DEMLR](#)
- Contact the appropriate NCDEQ/DEMLR/Land Quality Section office: [Regional Offices](#)

*This summary was created for educational purposes only, and does not preempt the law.*

Written by Mary Russell Robertson & Janet Paith

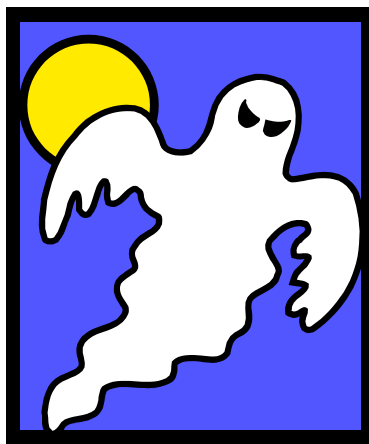
Revised: September 2018

# The Sedimentation Pollution Control Act of 1973 Myths And Misconceptions



- ☠ Land Quality is EPA
- ☠ The Sediment Pollution Control Act (SPCA) Regulates Runoff to Prevent Flooding, etc Downstream.
- ☠ To comply with the SPCA all Runoff must meet Water Quality Requirements of 50 NTU
- ☠ The SPCA does not apply to sites < 1 acre
- ☠ If over an acre is to be disturbed, I can go ahead and disturb up to an acre while the plan is being approved
- ☠ If the project area is wooded, I can timber it before development without a plan, as long as I do not grub the site.
- ☠ Single family home lots are exempt from the SPCA
- ☠ A notice of violation must require a time period to comply before I can be assessed civil penalty
- ☠ If I do not have offsite damage, then I will not be fined
- ☠ If I am in compliance on the compliance date of a Notice of Violation, then there is no civil penalty
- ☠ If I give my contractor the approved plan, he is responsible for any fines for failing to implement the plan
- ☠ It's easier to get forgiveness for violations than permission
- ☠ If I do everything on the approved plan I will not have problems and will not be fined
- ☠ Sediment control measures "Filter" sediment

- ☠ If the site is open less than 1 year, then I can proportion the storage requirements
- ☠ If I can clean a sediment basin more frequently, then I can reduce the size of the basin
- ☠ I can improve the effectiveness of a measure by making it deeper
- ☠ Use of rock check dams in ditch lines is a good sediment control measure
- ☠ I can use temporary slope drains for permanent runoff control
- ☠ It is okay to substitute prefab silt fence for the fence with the metal stakes
- ☠ If I seed the ground then I have met the ground cover requirements of the SPCA
- ☠ A thick layer of wood mulch can be adequate
- ☠ Land Quality (or their employees) keep the penalties that are assessed
- ☠ We are building a cemetery, so we don't need a permit
- ☠ If I sell dirt from my borrow site, they say I need a mining permit
- ☠ It's a farming operation, so it's exempt from the SPCA
- ☠ It's a logging job, so it's exempt from the SPCA



Revised 9/5/12



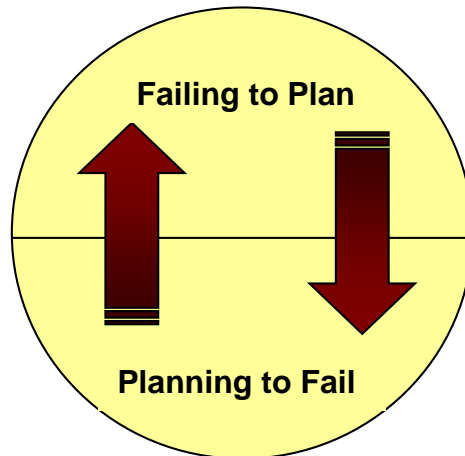
North Carolina Department of Environmental Quality | Division of Energy, Mineral and Land Resources  
512 North Salisbury Street | 1612 Mail Service Center | Raleigh, North Carolina 27699-1612  
919.707.9200

# Plan Requirements For Erosion and Sedimentation Control Plans

## Purpose of a Plan

- Serves as a guide
- Establishes a “blueprint”
- Allows for flexibility
- Creates a basis for communication
- Forces thought

## Planning Considerations



- Design phased plans
  - Clearing and grubbing stage
  - Final grading
- Integrate E&SC installation with construction schedule
- Minimize duration of exposure
- Limit the disturbed area
- Allow for the maintenance of measures
- Capture sediment near the source

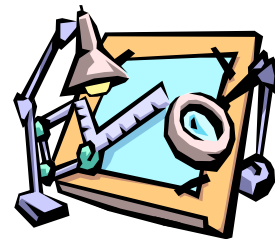
- Divert surface water runoff from undisturbed areas
- Keep runoff velocities low
  - Less than 10% increase at property lines
- Install permanent water conveyance measures early in the project

## Elements of a Plan

- Brief narrative describing:
  - The purpose of the proposed development
  - The conditions of the site and adjacent areas
  - The proposed erosion and sediment control measures
- Site location or vicinity map
- Site development drawing
- Site sediment and erosion control drawing
  - Appropriate scale with topographic information to assess drainage patterns
- Specifications and drawings of practices with supporting design calculations and assumptions
- Temporary and permanent seeding specifications with soil amendments
- Construction and maintenance schedule
- Financial/ ownership form

## Site Drawing

- Legend
- Topographic information
  - Coastal plain versus mountains
  - Existing and proposed contours
- Borrow and waste areas
- Topsoil stockpiles
- Construction routes within the project



- Watershed area
- Drainage ways
  - Creeks, ditches, channels
- Property lines
- Construction entrances
- Critical areas
- Easements
  - Utility easements
  - Greenways
- Erosion and sedimentation control measures



### Design Criteria

- 10-year storm design
- High Quality Water (HWQ) zones
  - 25-year storm design
  - Settling efficiency of 70% of the 40-micron particle
  - Maximum disturbed area = 20 acres
- Trout water buffer zones
  - Minimum buffer = 25 feet
  - Special permit for encroachment

### Types of Measures

- |                           |                         |
|---------------------------|-------------------------|
| • Temporary sediment trap | • Outlet protection     |
| • Sediment basin          | • Silt fence            |
| • Skimmer sediment basin  | • Diversions and berms  |
| • Rock Dam                | • Slope drains          |
| • Grass lined channels    | • Temporary check dam   |
| • Riprap lined channels   | • Gravel entrance/ exit |
| • Inlet protection        |                         |

## Temporary Sediment Trap

### **Design Criteria**

- Store 3600 cf of storage per acre of disturbed area
- Safely pass the 10-year design storm through the outlet structure for the total drainage area
- Drainage area = 5 acres or less
- Surface area of trap = 435 sf per cfs of  $Q_{10}$  peak inflow
- Do not locate in live stream

### **Common Problems:**

- Inadequate spillway size
- Inadequate storage size
- No plan for maintenance
- No access for maintenance
- Low point in embankment

## Skimmer Sediment Basin

### **Design Criteria**

- Store 1800 cf of storage per acre of disturbed area
- Safely pass the 10-year design storm through the outlet structure for the total drainage area
- Drainage area = 10 acres or less
- Surface area of trap = 325 sf per cfs of  $Q_{10}$  peak inflow
- Do not locate in live stream

### **Common Problems:**

- Inadequate spillway size
- Inadequate storage size
- No plan for maintenance
- No access for maintenance
- Low point in embankment



## Temporary Sediment Basin

### **Design Criteria**

- Trash guard
- Outlet protection
- Embankment
  - Minimum freeboard = 1 foot
  - 2.5:1 or flatter side slopes
  - Non-jurisdictional under Dam Safety Law
- HQW's – design basin for 70% settling efficiency of 40-micron particle
- Dewater in 1-3 days from the surface
- Spillway system: combined spillways must pass the 10-year design storm, 25-year storm event in HQW's
  - Principal spillway – minimum capacity = 2-year design storm
  - Emergency spillway – construct in natural ground; carry the 10/25 yr. storm minus the capacity of the principal spillway
- Must provide additional erosion and sediment control measures during the installation of the facility
- Do not install in live stream

### **Common Problems**

- Piping failure along conduit
- Erosion of spillway or embankment
- Slumping or settling of embankment from poor compaction
- Slumping failure from steep side slopes
- Erosion at pipe outlet
- No plan for maintenance
- No access for maintenance
- Sediment not properly removed
- Does not dewater from surface
- Lack of trash rack
- Spillway too high relative to top of dam

## Rock Dam

### **Design Criteria**

- Drainage area no larger than 10 acres
- Dam height less than 8 feet
- Spillway section
  - Maximum of 6 inches' flow depth with additional 1 foot for freeboard
  - Carry the 10-year design storm
- Do not install in a live stream
- Carry embankment up to a point at least 2 feet higher than the spillway
- Sediment storage area
  - Store 3600 ft<sup>3</sup> of storage per acre of disturbed area
  - Surface area = 435 sf per cfs of Q<sub>10</sub> peak inflow
- Minimum stone size for fill:
  - Minimum d<sub>50</sub> = 12 inches
  - Provide liner under stone
- Outlet protection

### **Common Problems**

- Failure from piping along abutments
- Erosion below dam

## Grass-lined channels

### **Design Criteria**

- Carry the peak runoff from the 10-year design storm without eroding the channel
- If the velocity exceeds 2 ft/s (for bare soil condition – not established grass) a temporary liner must be specified
  - Liner designed for the peak flow from the 2-year storm
- Side slopes generally 3 horizontal to 1 vertical or flatter

## **Common Problems**

- Gullying or head cutting in the channel
- Erosion occurs before vegetation is established
- Ponding along channel
- Side slope caving

## Riprap lined channel

### **Design Criteria**

- Design velocity exceeds allowable velocity for grass-lined channels
- Lining thickness = 1.5 x max. stone diameter
- Install filter blanket of sand/gravel or filter fabric under riprap
- Undercut channel the depth of the riprap lining plus the filter

### **Common Problems**

- Riprap restricts flow in channel
- Foundation not properly excavated
- Side slopes too steep
- Riprap poorly graded or placed

## Inlet Protection

### **Design Criteria**

- Limit drainage area to 1 acre
- Types:
  - Excavated
  - Hardware Cloth and Gravel
  - Block and Gravel
  - Sod
  - Rock Doughnut
  - Rock Pipe

### **Common Problems**

- Excessive ponding
- Sediment pool area overwhelmed and enters storm drain
- Steel posts not used (Hardware cloth and gravel)
- Land slope at storm drain too steep

### **Outlet Protection**

#### **Design Criteria**

- Designed for the 10-year design storm or the design discharge of the water conveyance structure, whichever is greater
- 0% grade
- Minimum thickness = 1.5 x max. stone diameter
- Install filter underlining of graded gravel or synthetic filter
- Construct flush with the receiving channel

### **Common Problems**

- Riprap not extended far enough
- Foundation improperly excavated
- Appropriate filter not installed

### **Silt Fence**

- Install in areas receiving sheet runoff, not concentrated flow
- Steel posts must be used
- Follow NC Design Manual's specifications for installation

### **Common Problems**

- Overtopping at corners and at low points with no outlet
- Too much sediment accumulation
- Approach too steep
- Fence not adequately supported

### **Diversions and Berms**

- Uses:
  - Prevent undisturbed drainage from entering site
  - Redirect sediment laden runoff into a basin
  - Carry runoff away from an exposed slope
  - Reduce slope length as slope breaks

### **Common Problems**

- Steep slopes
- Berm not compacted
- Vehicles crossing
- Not constructed according to design specifications

### **Slope Drains**

- Uses:
  - Carries stormwater over cut and fill slopes in a non-erosive manner until permanent stormwater disposal measure can be installed

### **Common Problems**

- Failure from overtopping from inadequate pipe inlet capacity, causing erosion of slope
- Improper entrenching of the entrance
- Pipe outlet not extended beyond the toe of the slope, causing erosion of slope
- Improper compaction at the entrance of the pipe, causing the erosion

### Gravel Construction Entrance/Exit

- Install at points where construction traffic enters and leaves site

#### **Common Problems**

- Pad too thin
- Pad too short
- Pad not flare

### Temporary Check Dam

- Reduces erosion in a channel
- Max. drainage to dam = 0.5 acre
- Max. height of 2 feet at dam center
- Extend stone at least 1.5 feet beyond ditch banks to avoid washing

#### **Common Problems:**

- Check dams not removed
- Ponding water kills vegetation
- Erosion along abutments (end-cutting)
- Used as a sediment control



### 10 Things to Avoid in Plan Preparation

1. Do not use hay bales as sediment control
2. Do not specify silt fence in areas of concentrated flow
3. Do not specify rye grass in seeding mixtures
4. Do not specify riprap ditches or stream bank protection without filter fabric or stone under-layment
5. Do not specify in-stream measures as primary sediment control devices  
Control sediment before entering the stream
6. Do not design storm water outlets to discharge on fill slopes
7. Do not use terms such as “as directed by the Land Quality Section” or “as conditions warrant,” etc. Specify actions to be taken on the plan
8. Do not specify cut or fill slopes steeper than 2:1 without some engineering justification concerning stability
9. Do not show sediment control measures off the property in question unless easements, contracts, etc. are submitted with the plan to show that the measures will be allowed in those locations
10. Do not rely on standardized drawings, details, and specifications. The plan must be appropriate for the unique characteristics of the site in question

## Most Commonly Omitted Items in Plan Submittals

- Complete, notarized financial responsibility/ownership form
- Seeding and soil amendment rates
- Complete calculations package
- Construction schedule
- Actual locations of measures on the plan
- Location map detailed enough to locate the site
- Maintenance schedule
- Maintenance access
- Accurate scale
- Measures shown on site plan to scale



## Procedure Review

- Land Quality Section's review time for new plans = **30 days** from the receipt of the plan, including the correct fee
- Land Quality Section's review time for revised plans = 15 days from the date of receipt
- Initial review for completeness (fee, FRO form, location map, design calculations)
  - Designer/developer may be called or written to request more information
- Detailed review
  - Design calculations
  - Seeding specifications
  - Feasibility of plan



## Review Fee

- 1 acre = \$65.00 (rounded up to the nearest acre)
- Example:
  - Project site equals 4.34 acres
  - Rounds Up to 5-acre project
  - Fee = \$325.00 (5 acres), NOT \$260.00 (4 acres)
- Additional fees required for revised plans adding acreage (\$65/acre)

## Actions Taken on Plans

- Approval
  - As is
  - With performance reservations
  - With modifications
- Disapproval
  - Land Quality Section will identify why the plan was disapproved
  - Land Quality Section will not design a plan
- Plan may be disapproved if they fail to address:
  - Critical areas
  - Limiting the time of exposure
  - Limiting the area of exposure
  - Surface water control
  - Erosion and sediment control

## Major Items Considered for Plan Disapproval

1. Culverts
  - Size inappropriate
  - Inappropriate supporting calculations
  - No dissipators or dissipator design
  - Headwall - tailwall transition
2. Sediment basins
  - Needed and not shown
  - Inappropriate type basin
  - Inadequate or no supporting calculations
  - Transition to natural watercourse

### 3. Channels

- Velocity problems with no liner proposed or no supporting calculations
- Inadequate temporary or permanent liner classification
- No calculations verifying the following:
  - 10-year design storm
  - flow quantity
  - cross-section
  - slope
  - hydraulic radius
- Inadequate cross-drains or turn-outs into steep terrain

### 4. Cut and fill slopes

- Runoff control over fill slopes inadequate or inappropriate
- Inappropriate slope drain materials (Asphalt and/or plastic sheets)
- Fill or cut slopes steeper than 2:1 without justification or geotechnical report

### 5. Vegetation

- No specifications
- Inappropriate specifications

### 6. Inappropriate design in High Quality Water zones or trout waters

### 7. The director can disapprove a plan if the applicant or a parent, subsidiary or other affiliate of the applicant:

- Is under enforcement action such as an NOV
- Has failed to pay a civil penalty
- Has been convicted of criminal penalties under the SPCA
- Has failed to comply with State rules or local ordinances related to erosion and sedimentation control

## The Approved Plan

- A copy of the approved plan, including seeding spec's, calculations, etc., must be on-site at all times
- Letter of approval from the Land Quality Section is required to get building permits
- The plan must be modified if major changes are needed

Revised 10/5/18





# Erosion Control Plan Review Process

**North Carolina Department of  
Environmental Quality**

Division of Energy, Mineral and Land Resources  
The Land Quality Section

***Does anyone know where my plan went?***



**The submittal is received by the Regional Office or Local Program and the plan and fee processed.**

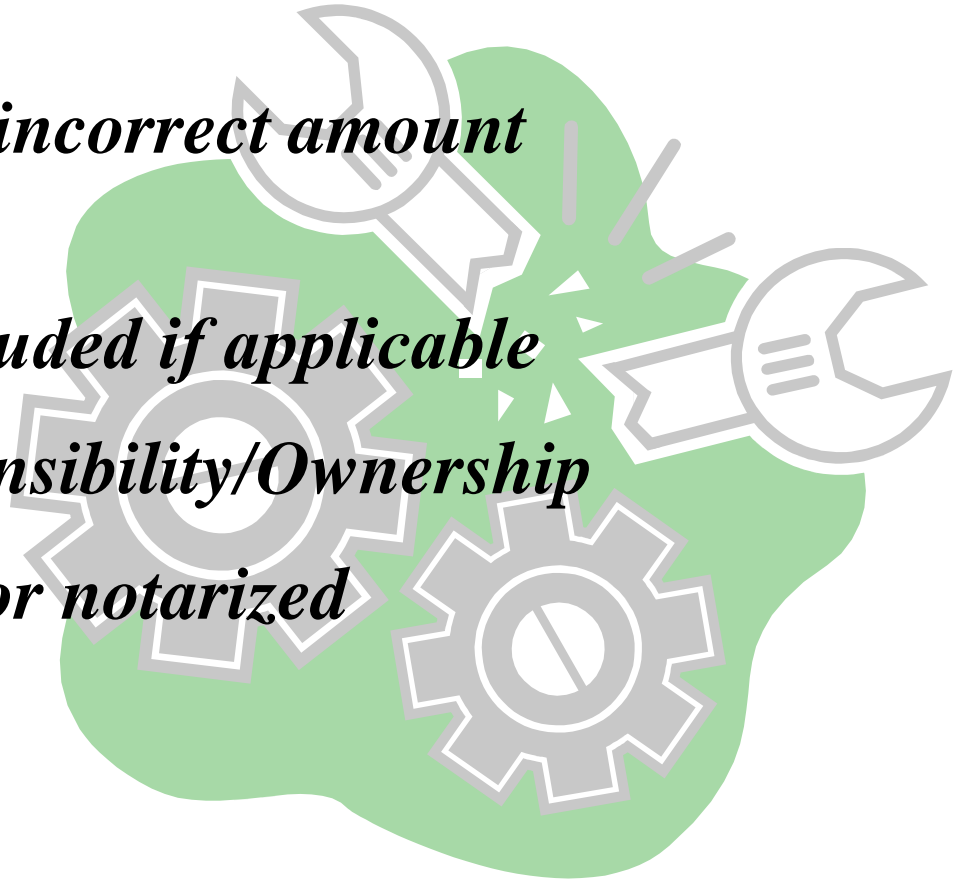


**The submittal is checked for a complete package, if complete it is logged in and assigned to the appropriate reviewer.**



# Things that throw a wrench into the works at the beginning

- *Fee not enclosed or incorrect amount*
- *No Plan enclosed*
- *No calculations included if applicable*
- *No Financial Responsibility/Ownership Form enclosed and/or notarized*



**Preliminary Review: a cursory review usually done by an inspector/technician.**

**A checklist is prepared listing any additional information and revisions that are required and is sent back to the submitter with a Letter of Receipt.**





**Final Plan Review: a technical review conducted by the Regional Engineer, Assistant Regional Engineer, or Local Program Engineer after all requested revision are received.**



# What actions can the Reviewer take?

- Approve the plan
- Approve the plan with modifications
- Approve the plan with performance reservations
- Disapprove the plan

# Modifications

Modifications are usually small details which were omitted or overlooked by the designer. Amendments to construction sequences can also be listed here.

# Performance Reservations

This means staff has reservations about proposed measures or techniques. If they don't work revised measures will be required.

# What if I get a Letter of Disapproval

The letter will tell you why the plan was deficient.

Make the corrections and resubmit as soon as possible.



# What happens if I get a Letter of Approval?



Don't forget to notify your Regional Office or Local Program when you begin construction.

# Trout Buffer Encroachments Review Sequence

- The Regional Office or Local Program:
  - Approves overall erosion and sediment control plan.
  - Reviews the trout buffer variance request and takes action.
- Two (2) copies of submittal are needed.



# How long will it take for the review?



- *30 days maximum on an initial submittal*
- *15 days maximum on a revision*

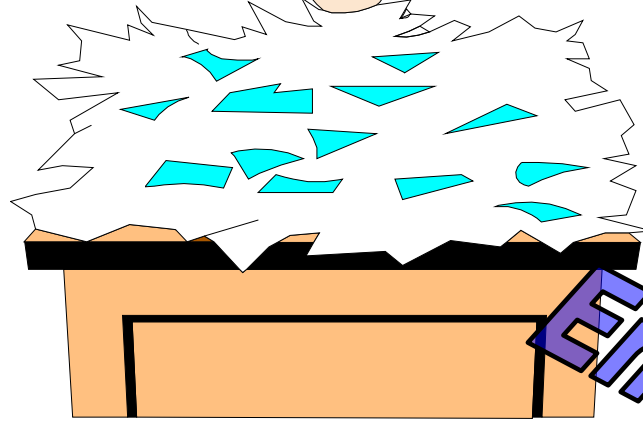
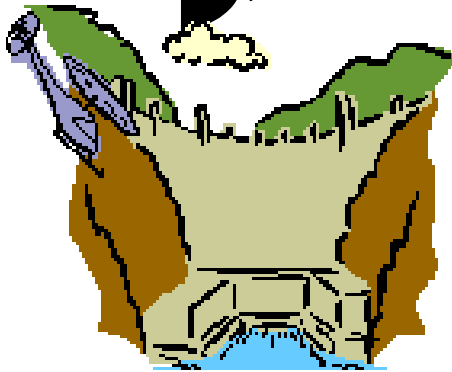


# Why Does it Take So Long?



**Enforcement**

**DAMS**



**Complaints**

**Mining**

**Emergencies**

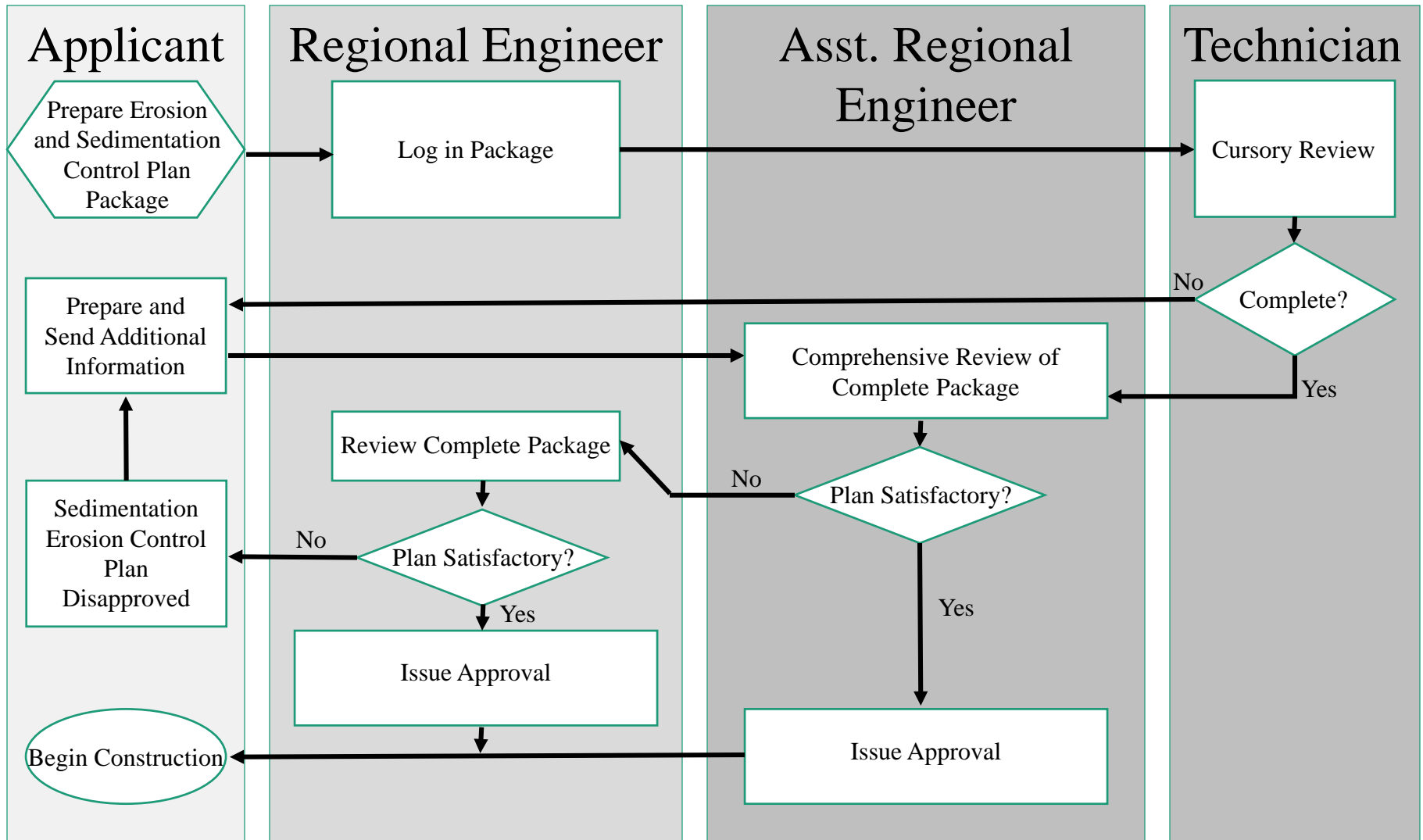
**Sediment**



# Hints to get prompt reviews

- Ensure the plan is accurate and detailed
- Cover all items on checklist
- Ensure the Financial Responsibility/Ownership Form is properly filled out
- Submit the correct fee

# Erosion and Sedimentation Control Plan Review Process



# Where to Get More Information

- Land Quality Section Website  
<https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>
- Land Quality Publications
- Or Contact Your:
  - Local Program,
  - Land Quality Section Regional Office or,
  - Land Quality Section Headquarters.

## EROSION and SEDIMENTATION CONTROL PLAN PRELIMINARY REVIEW CHECKLIST

The following items shall be incorporated with respect to specific site conditions, in an erosion & sedimentation control plan:

### NPDES Construction Stormwater General Permit NCG010000

- \_\_\_\_\_ Designation on the plans where the 7 or 14 day ground stabilization requirements apply per Section II.B.2 of the permit.
- \_\_\_\_\_ Design of basins with one acre or more of drainage area for surface withdrawal as per Section II.B.4 of the permit.

### LOCATION INFORMATION

- \_\_\_\_\_ Project location & labeled vicinity map (roads, streets, landmarks)
- \_\_\_\_\_ North arrow and scale
- \_\_\_\_\_ Identify River Basin.
- \_\_\_\_\_ Provide a copy of site located on applicable USGS quadrangle and NRCS Soils maps if it is in a River Basin with Riparian Buffer requirements.

### GENERAL SITE FEATURES (Plan elements)

- \_\_\_\_\_ Property lines & ownership ID for adjoining properties
- \_\_\_\_\_ Existing contours (topographic lines)
- \_\_\_\_\_ Proposed contours
- \_\_\_\_\_ Limits of disturbed area (provide acreage total, delineate limits, and label). Be sure to include all access to measures, lots that will be disturbed, and utilities that may extend offsite.
- \_\_\_\_\_ Planned and existing building locations and elevations
- \_\_\_\_\_ Planned & existing road locations & elevations, including temporary access roads
- \_\_\_\_\_ Lot and/or building numbers
- \_\_\_\_\_ Hydrogeologic features: rock outcrops, seeps, springs, wetland and their limits, streams, lakes, ponds, dams, etc. (include all required local or state buffer zones and any DWQ Riparian Buffer determinations)
- \_\_\_\_\_ Easements and drainageways, particularly required for offsite affected areas. Include copies of any recorded easements and/or agreements with adjoining property owners.
- \_\_\_\_\_ Profiles of streets, utilities, ditch lines, etc.
- \_\_\_\_\_ Stockpiled topsoil or subsoil locations
- \_\_\_\_\_ If the same person conducts the land-disturbing activity & 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, 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 separate land-disturbing activities and must be permitted either through the Sedimentation Pollution Control Act as a one-use borrow site or through the Mining Act.
- \_\_\_\_\_ Location and details associated with any onsite stone crushing or other processing of material excavated. If the affected area associated with excavation, processing, stockpiles and transport of such materials will comprise 1 or more acres, and materials will be leaving the development tract, a mining permit will be required.
- \_\_\_\_\_ Required Army Corps 404 permit and Water Quality 401 certification (e.g. stream disturbances over 150 linear feet)

### EROSION & SEDIMENT CONTROL MEASURES (on plan)

- \_\_\_\_\_ Legend (provide appropriate symbols for all measures and reference them to the construction details)
- \_\_\_\_\_ Location of temporary measures
- \_\_\_\_\_ Location of permanent measures
- \_\_\_\_\_ Construction drawings and details for temporary and permanent measures. Show measures to scale on plan and include proposed contours where necessary. Ensure design storage requirements are maintained through all phases of construction.
- \_\_\_\_\_ Maintenance requirements for measures
- \_\_\_\_\_ Contact person responsible for maintenance

### SITE DRAINAGE FEATURES

- \_\_\_\_\_ Existing and planned drainage patterns (include off-site areas that drain through project and address temporary and permanent conveyance of stormwater over graded slopes)
- \_\_\_\_\_ Method used to determine acreage of land being disturbed and drainage areas to all proposed measures (e.g. delineation map)
- \_\_\_\_\_ Size, pipe material and location of culverts and sewers
- \_\_\_\_\_ Soil information: type, special characteristics
- \_\_\_\_\_ Soil information below culvert storm outlets

- \_\_\_\_\_ Name and classification of receiving water course or name of municipal operator (only where stormwater discharges are to occur)

### STORMWATER CALCULATIONS

- \_\_\_\_\_ Pre-construction runoff calculations for each outlet from the site (at peak discharge points). Be sure to provide all supporting data for the computation methods used (rainfall data for required storm events, time of concentration/storm duration, and runoff coefficients).
- \_\_\_\_\_ Design calculations for peak discharges of runoff (including the construction phase & the final runoff coefficients for the site)
- \_\_\_\_\_ Design calcs for culverts and storm sewers (include HW, TW and outlet velocities)
- \_\_\_\_\_ Discharge and velocity calculations for open channel and ditch flows (easement & rights-of-way)
- \_\_\_\_\_ Design calcs for cross sections and method of stabilization for existing and planned channels (include temporary linings). Include appropriate permissible velocity and/or shear stress data.
- \_\_\_\_\_ Design calcs and construction details for energy dissipaters below culvert and storm sewer outlets (include stone/material specs & apron dimensions). Avoid discharges on fill slopes.
- \_\_\_\_\_ Design calcs and dimension of sediment basins (note current surface area and dewatering standards as well as diversion of runoff to the basins). Be sure that all surface drains, including ditches and berms, will have positive drainage to the basins.

### VEGETATIVE STABILIZATION

- \_\_\_\_\_ Area & acreage to be stabilized with vegetation
- \_\_\_\_\_ Method of soil preparation
- \_\_\_\_\_ Seed type & rates (temporary & permanent)
- \_\_\_\_\_ Fertilizer type and rates
- \_\_\_\_\_ Mulch type and rates (include mulch anchoring methods)

NOTE: Plan should include provisions for groundcover in accordance with NPDES Construction Stormwater General Permit NCG010000.

### FINANCIAL RESPONSIBILITY/OWNERSHIP FORM

- \_\_\_\_\_ Completed, signed & notarized FR/O Form
- \_\_\_\_\_ Accurate application fee payable to NCDEQ (\$65.00 per acre rounded up the next acre with no ceiling amount)
- \_\_\_\_\_ Certificate of assumed name, if the owner is a partnership
- \_\_\_\_\_ Name of Registered Agent (if applicable)
- \_\_\_\_\_ Copy of the most current Deed for the site. Please make sure the deed(s) and ownership information are consistent between the plan sheets, local records and this form.
- \_\_\_\_\_ Provide latitude & longitude (in decimal degrees) at the project entrance.
- \_\_\_\_\_ Two hard-copies of the plans (some regional offices require additional plans or multiple sizes; please contact the regional coordinator prior to such submittal.)

NOTE: For the Express Permitting Option, inquire at the local Regional Office for availability. Express Reviews are performed by appointment only.

### NARRATIVE AND CONSTRUCTION SEQUENCE

- \_\_\_\_\_ Narrative describing the nature & purpose of the construction activity.
- \_\_\_\_\_ Construction sequence related to erosion and sediment control (including installation of critical measures prior to the initiation of the land-disturbing activity & removal of measures after areas they serve are permanently stabilized). Address all phases of construction and necessary practices associated with temporary stream bypasses and/or crossings.
- \_\_\_\_\_ Bid specifications related only to erosion control

**FINANCIAL RESPONSIBILITY/OWNERSHIP FORM  
SEDIMENTATION POLLUTION CONTROL ACT**

No person may initiate any land-disturbing activity on one or more acres as covered by the Act before this form and an acceptable erosion and sedimentation control plan have been completed and approved by the Land Quality Section, N.C. Department of Environmental Quality. (Please type or print and, if the question is not applicable or the e-mail and/or fax information unavailable, place N/A in the blank.)

**Part A.**

1. Project Name \_\_\_\_\_
2. Location of land-disturbing activity: County \_\_\_\_\_ City or Township \_\_\_\_\_  
Highway/Street \_\_\_\_\_ Latitude \_\_\_\_\_ Longitude \_\_\_\_\_
3. Approximate date land-disturbing activity will commence: \_\_\_\_\_
4. Purpose of development (residential, commercial, industrial, institutional, etc.): \_\_\_\_\_
5. Total acreage disturbed or uncovered (including off-site borrow and waste areas): \_\_\_\_\_
6. Amount of fee enclosed: \$ \_\_\_\_\_. The application fee of \$65.00 per acre (rounded up to the next acre) is assessed without a ceiling amount (Example: a 9-acre application fee is \$585).
7. Has an erosion and sediment control plan been filed? Yes \_\_\_\_\_ No \_\_\_\_\_ Enclosed \_\_\_\_\_
8. Person to contact should erosion and sediment control issues arise during land-disturbing activity:  
Name \_\_\_\_\_ E-mail Address \_\_\_\_\_  
Telephone \_\_\_\_\_ Cell # \_\_\_\_\_ Fax # \_\_\_\_\_
9. Landowner(s) of Record (attach accompanied page to list additional owners):  

Name	Telephone	Fax Number
Current Mailing Address	Current Street Address	
City	State	Zip
City	State	Zip
10. Deed Book No. \_\_\_\_\_ Page No. \_\_\_\_\_ Provide a copy of the most current deed.

**Part B.**

1. 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.*  

Name	E-mail Address
Current Mailing Address	Current Street Address
City	State
Zip	Zip
Telephone	Fax Number

2. (a) If the Financially Responsible Party is not a resident of North Carolina, give name and street address of the designated North Carolina Agent:

_____			_____		
Name			E-mail Address		
_____			_____		
Current Mailing Address			Current Street Address		
_____			_____		
City	State	Zip	City	State	Zip
_____	_____	_____	_____	_____	_____
Telephone _____			Fax Number _____		

(b) If the Financially Responsible Party is a Partnership or other person engaging in business under an assumed name, **attach a copy of the Certificate of Assumed Name**. If the Financially Responsible Party is a Corporation, give name and street address of the Registered Agent:

_____			_____		
Name of Registered Agent			E-mail Address		
_____			_____		
Current Mailing Address			Current Street Address		
_____			_____		
City	State	Zip	City	State	Zip
_____	_____	_____	_____	_____	_____
Telephone _____			Fax Number _____		

The above information is true and correct to the best of my knowledge and belief and was provided by me under oath (This form must be signed by the Financially Responsible Person if an individual or his attorney-in-fact, or if not an individual, by an officer, director, partner, or registered agent with the authority to execute instruments for the Financially Responsible Person). I agree to provide corrected information should there be any change in the information provided herein.

\_\_\_\_\_  
Type or print name

\_\_\_\_\_  
Title or Authority

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

-----  
-----  
I, \_\_\_\_\_, a Notary Public of the County of \_\_\_\_\_

State of North Carolina, hereby certify that \_\_\_\_\_ appeared personally before me this day and being duly sworn acknowledged that the above form was executed by him.

Witness my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Seal

\_\_\_\_\_  
Notary

My commission expires \_\_\_\_\_

# Fee Schedule

North Carolina Department of Environmental Quality,  
Division of Energy, Mineral and Land Resources, Land Quality Section

Note: Payments may be made by check or money order to the N.C. Department of Environmental Quality. Processing will not begin before payment is received.

## Dams

There are two fees for processing applications for approval concerning dams: (1) the minimum application processing fee and (2) the additional application processing fee.

These fees are described below.

- \$200 non-refundable minimum application processing fee with filing of application for construction, modification, or removal of a dam.

The following additional application processing fees are due with the submittal of an Owner's Cost Certification. It is based upon the following percentages of the actual cost of construction, enlargement, or removal of a dam.

- 2% of the actual cost between \$10,001 and \$100,000;
- 1.5% of the actual cost between \$100,001 and \$500,000;
- 1.0% of the actual cost between \$500,001 and \$1,000,000;
- 0.5% of the actual cost over \$1,000,001

The additional application fee amount cannot exceed \$50,000.

Actual costs shall include labor and materials associated with the construction, enlargement, or removal of a dam and appurtenances, but shall not include the costs associated with acquisition of land or right of way, design, quality control, electrical generating machinery, or constructing a road across the dam. The additional application fee must be submitted with an owner's certification form and accompanying documentation along with the as-built plans and the engineer's certification before final approval to impound or an approval of the breach will be granted.

## Erosion & Sedimentation Control

- \$65 non-refundable review processing fee for each acre of disturbed land or any part of an acre of disturbed land (including off-site borrow and waste areas). No processing fee will be charged for a revised plan unless the revised plan contains an increase in the number of acres to be disturbed.

**MINING FEES ON REVERSE SIDE**



# MINING

- A non-refundable permit application fee when filing for a new mining permit, a major permit modification or a renewal permit is required as follows:

TYPE	ACRES*	NEW PERMIT	MAJOR MODIFICATION	RENEWAL
Clay	1 but less than 25	\$500	\$250	\$250
	25 but less than 50	\$1,000	\$500	\$500
	50 or more	\$1,500	\$500	\$500
Sand & Gravel, Gemstone, and Borrow Pits	1 but less than 5	\$150	\$100	\$100
	5 but less than 25	\$250	\$100	\$100
	25 but less than 50	\$500	\$250	\$500
	50 or more	\$1,000	\$500	\$500
Quarry, Industrial Minerals, Dimension Stone	1 but less than 10	\$250	\$100	\$100
	10 but less than 25	\$1,000	\$250	\$500
	25 but less than 50	\$1,500	\$500	\$500
	50 or more	\$2,500	\$500	\$500
Peat & Phosphate	1 or more	\$2,500	\$500	\$500
Gold (Heap Leach), Titanium & Others	1 or more	\$2,500	\$500	\$500

- A non-refundable \$50 permit application processing fee is required for minor modifications. Minor permit modifications include administrative changes such as ownership transfers, name changes and bond substitutions. A minor permit modification also includes lands added to a permitted area, outside of the minimum permit buffer zone requirements, where no plans for mining related disturbance of the added lands have been approved. All other changes are considered major modifications.

- A non-refundable \$50 permit application processing fee is required for permit renewal of an inactive site, provided that any previously disturbed areas have been reclaimed in a manner acceptable to the Department.

\* Acres for new permits and renewal permits mean the total acreage at the site. Acres for major modification of permits means that area of land affected by the modification within the permitted mine area, or any additional land that is to be disturbed and added to an existing permitted area, or both.

# Local Erosion and Sediment Control Ordinances

## Contact Information

### Town of Apex

Stan Fortier, PE, CPESC  
Senior Engineer  
P.O. Box 250  
Apex, NC 27502  
\*Phone: (919) 249-1166  
Phone: (919) 249-3413  
Fax: (919) 367-7280  
[stan.fortier@apexnc.org](mailto:stan.fortier@apexnc.org)

### City of Archdale

David Señeres, PE  
Stormwater Program Manager  
307 Balfour Drive  
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Archdale, NC 27263  
Phone: (336) 439-7344  
Fax: (336) 431- 2130  
[dseneres@archdale-nc.gov](mailto:dseneres@archdale-nc.gov)

### City of Asheville

Monte Clampett  
Construction Coordinator  
P.O. Box 7148  
Asheville, NC 28802  
Phone: (828) 259-5434  
Fax: (828) 232- 4517  
[mclampett@ashevillenc.gov](mailto:mclampett@ashevillenc.gov)

### Avery County

Tommy Burleson, Director  
200 Montezuma Street  
P.O. Box 596  
Newland, NC 28657  
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Fax: (828) 733-7003  
[avery\\_planning@averycountync.gov](mailto:avery_planning@averycountync.gov)

### Town of Beech Mountain

Preston Yates  
Town Planner  
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Beech Mountain, NC 28604  
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### Town of Boone

Brian Johnson  
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680 West King Street, Suite C  
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### Buncombe County

Doug Sharp  
Erosion Control Officer  
46 Valley Street  
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Fax: (828) 250-6086  
[doug.sharp@buncombecounty.org](mailto:doug.sharp@buncombecounty.org)

### City of Burlington

Brandon Holt, PE  
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### Town of Cary

Kirk Stafford, CESSWI  
Stormwater Engineering Tech  
Water Resources Department  
Town of Cary  
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### Catawba County

Toni Norton, PE  
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### Town of Chapel Hill

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Howard W. Fleming  
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### City of Charlotte

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**Chatham County**

Rachael Thorn  
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**Town of Fuquay-Varina**

Jennifer Mitchell  
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[stormwater@fuquay-varina.org](mailto:stormwater@fuquay-varina.org)

**City of Greensboro**

Cass Heaton, Section Chief Sediment  
and Erosion Control  
Water Resources  
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**Haywood County**

\*Tim V. Surret  
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Erosion Control Director  
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Marc Pruett, CPESC  
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[mpruett@haywoodnc.net](mailto:mpruett@haywoodnc.net)

**Town of Highlands**

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**Town of Columbus**

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**Gaston County**

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**City of Greenville**

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**City of Henderson**

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**City of High Point**

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**Durham City/County**

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Stormwater and Erosion Control Division  
Manager  
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Durham, NC 27701  
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**Grandfather Village**

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**Guilford County**

Earl Davis  
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**Henderson County**

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**Town of Holly Springs**

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**Iredell County**

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**Johnston County**

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Johnston County Public Utilities  
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**Town of Lake Lure**

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**City of Monroe**

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**City of Newton**

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# Sedimentation Pollution Control Act of 1973

(As Amended through 2006)

## North Carolina General Statutes Chapter 113A Article 4

### **§ 113A-50. Short title.**

This Article shall be known as and may be cited as the "Sedimentation Pollution Control Act of 1973." (1973, c. 392, s. 1.)

### **§ 113A-51. Preamble.**

The sedimentation of streams, lakes and other waters of this State constitutes a major pollution problem. Sedimentation occurs from the erosion or depositing of soil and other materials into the waters, principally from construction sites and road maintenance. The continued development of this State will result in an intensification of pollution through sedimentation unless timely and appropriate action is taken. Control of erosion and sedimentation is deemed vital to the public interest and necessary to the public health and welfare, and expenditures of funds for erosion and sedimentation control programs shall be deemed for a public purpose. It is the purpose of this Article to provide for the creation, administration, and enforcement of a program and for the adoption of minimal mandatory standards which will permit development of this State to continue with the least detrimental effects from pollution by sedimentation. In recognition of the desirability of early coordination of sedimentation control planning, it is the intention of the General Assembly that preconstruction conferences be held among the affected parties, subject to the availability of staff. (1973, c. 392, s. 2; 1975, c. 647, s. 3.)

### **§ 113A-52. Definitions.**

As used in this Article, unless the context otherwise requires:

- (1) Repealed by Session Laws 1973, c. 1417, s. 1.
- (1a) "Affiliate" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines "affiliate" as a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.
- (2) "Commission" means the North Carolina Sedimentation Control Commission.
- (3) "Department" means the North Carolina Department of Environment and Natural Resources.
- (4) "District" means any Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.
- (5) "Erosion" means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
- (6) "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.

(7) "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 this Article.

(7a) "Parent" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines "parent" as an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

(8) "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.

(9) "Secretary" means the Secretary of Environment and Natural Resources.

(10) "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.

(10a) "Subsidiary" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines "subsidiary" as an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

(10b) "Tract" means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

(11) "Working days" means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken. (1973, c. 392, s. 3; c. 1417, s. 1; 1975, c. 647, s. 1; 1977, c. 771, s. 4; 1989, c. 179, s. 1; c. 727, s. 218(60); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1991, c. 275, s. 1; 1993 (Reg. Sess., 1994), c. 776, s. 1; 1997-443, s. 11A.119(a).)

#### **§ 113A-52.01. Applicability of this Article.**

This Article shall not apply to the following land-disturbing activities:

(1) Activities, including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:

(a) Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.

(b) Dairy animals and dairy products.

(c) Poultry and poultry products.

(d) Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.

(e) Bees and apiary products.

(f) Fur producing animals.

(2) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the Department.

(3) Activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.

(4) For the duration of an emergency, activities essential to protect human life. (1993 (Reg. Sess., 1994), c. 776, s. 2; 1997-84, s. 1.)

#### **§ 113A-52.1. Forest Practice Guidelines.**



(a) The Department shall adopt Forest Practice Guidelines Related to Water Quality (best management practices). The adoption of Forest Practices Guidelines Related to Water Quality under this section is subject to the provisions of Chapter 150B of the General Statutes.

(b) If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this Article shall apply to such activity and any related land-disturbing activity on the tract.

(c) The Secretary shall establish a Technical Advisory Committee to assist in the development and periodic review of Forest Practice Guidelines Related to Water Quality. The Technical Advisory Committee shall consist of one member from the forest products industry, one member who is a consulting forester, one member who is a private landowner knowledgeable in forestry, one member from the United States Forest Service, one member from the academic community who is knowledgeable in forestry, one member who is knowledgeable in erosion and sedimentation control, one member who is knowledgeable in wildlife management, one member who is knowledgeable in marine fisheries management, one member who is knowledgeable in water quality, and one member from the conservation community.(1989, c. 179, s. 2.)

**§ 113A-53. Repealed by Session Laws 1973, c. 1262, s. 41.**

**§ 113A-54. Powers and duties of the Commission.**

(a) The Commission shall, in cooperation with the Secretary of Transportation and other appropriate State and federal agencies, develop, promulgate, publicize, and administer a comprehensive State erosion and sedimentation control program.

(b) The Commission shall develop and adopt and shall revise as necessary from time to time, rules and regulations for the control of erosion and sedimentation resulting from land-disturbing activities. The Commission shall adopt or revise its rules and regulations in accordance with Chapter 150B of the General Statutes.

(c) The rules and regulations adopted pursuant to G.S. 113A-54(b) for carrying out the erosion and sedimentation control program shall:

(1) Be based upon relevant physical and developmental information concerning the watershed and drainage basins of the State, including, but not limited to, data relating to land use, soils, hydrology, geology, grading, ground cover, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

(2) Include such survey of lands and waters as may be deemed appropriate by the Commission or required by any applicable laws to identify those areas, including multijurisdictional and watershed areas, with critical erosion and sedimentation problems; and

(3) Contain conservation standards for various types of soils and land uses, which standards shall include criteria and alternative techniques and methods for the control of erosion and sedimentation resulting from land-disturbing activities.

(d) In implementing the erosion and sedimentation control program, the Commission shall:

(1) Assist and encourage local governments in developing erosion and sedimentation control programs and, as a part of this assistance, the Commission shall develop a model local erosion and sedimentation control ordinance. The Commission shall approve, approve as modified, or disapprove local programs submitted to it pursuant to G.S. 113A-60.

(2) Assist and encourage other State agencies in developing erosion and sedimentation control

programs to be administered in their jurisdictions. The Commission shall approve, approve as modified, or disapprove programs submitted pursuant to G.S. 113A-56 and from time to time shall review these programs for compliance with rules adopted by the Commission and for adequate enforcement.

(3) Develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques appropriate for use by persons engaged in land-disturbing activities, general educational materials on erosion and sedimentation control, and instructional materials for persons involved in the enforcement of this Article and erosion and sedimentation control rules, ordinances, regulations, and plans.

(4) Require submission of erosion and sedimentation control plans by those responsible for initiating land-disturbing activities for approval prior to commencement of the activities.

(e) To assist it in developing the erosion and sedimentation control program required by this Article, the Commission is authorized to appoint an advisory committee consisting of technical experts in the fields of water resources, soil science, engineering, and landscape architecture.

(f) Repealed by Session Laws 1987, c. 827, s. 10, effective August 13, 1987. (1973, c. 392, s. 5; c. 1331, s. 3; c. 1417, s. 6; 1975, 2nd Sess., c. 983, s. 74; 1977, c. 464, s. 35; 1979, c. 922, s. 2; 1983 (Reg. Sess., 1984), c. 1014, ss. 1, 2; 1987, c. 827, s. 10; 1987 (Reg. Sess., 1988), c. 1000, s. 3; 1989, c. 676, s. 1; 1993 (Reg. Sess., 1994), c. 776, s. 3; 2002-165, ss. 2.2, 2.3.)

#### **§ 113A-54.1. Approval of erosion control plans.**

(a) A draft erosion and sedimentation control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. 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. The Commission shall approve, approve with modifications, or disapprove a draft erosion and sedimentation control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. The Commission shall condition approval of a draft erosion and sedimentation control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion and sedimentation control plan within 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves a draft erosion and sedimentation control plan or a revised erosion and sedimentation control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve, approve with modifications, or disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of the plan. The Commission may establish an expiration date for erosion and sedimentation control plans approved under this Article.

(b) If, following commencement of a land-disturbing activity pursuant to an approved erosion and sedimentation control plan, the Commission determines that the plan is inadequate to meet the requirements of this Article, the Commission may require any revision of the plan that is necessary to comply with this Article. Failure to approve, approve with modifications, or disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of the plan.

(c) The Commission 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 Director of the Division of Land Resources may disapprove an erosion and sedimentation control plan 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; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

(d) In the event that an erosion and sedimentation control plan is disapproved by the Director pursuant to subsection (c) of this section, the Director shall state in writing the specific reasons that the plan was disapproved. The applicant may appeal the Director's disapproval of the plan to the Commission. For purposes of this subsection and subsection (c) of this section, an applicant's record may be considered for only the two years prior to the application date.

(e) 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). 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. (1989, c. 676, s. 2; 1993 (Reg. Sess., 1994), c. 776, s. 4; 1998-221, s. 1.11(a); 1999-379, s. 1; 2005-386, s. 7.1; 2006-250, s. 1.)

#### **§ 113A-54.2. Approval Fees.**

(a) The Commission may establish a fee schedule for the review and approval of erosion and sedimentation control plans under this Article. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for reviewing the plans and for related compliance activities. An application fee may not exceed fifty dollars (\$50.00) per acre of disturbed land shown on an erosion and sedimentation control plan or of

land actually disturbed during the life of the project.

(b) The Sedimentation Account is established as a nonreverting account within the Department. Fees collected under this section shall be credited to the Account and shall be applied to the costs of administering this Article.

(c) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 1039, s. 3, effective July 24, 1992.

(d) This section may not limit the existing authority of local programs approved pursuant to this Article to assess fees for the approval of erosion and sedimentation control plans. (1989 (Reg. Sess., 1990), c. 906, s. 1; 1991 (Reg. Sess., 1992), c. 1039, s. 3; 1993 (Reg. Sess., 1994), c. 776, s. 5; 1999-379, s. 5; 2002-165, s. 2.4.)

#### **§ 113A-55. Authority of the Secretary.**

The sedimentation control program developed by the Commission shall be administered by the Secretary under the direction of the Commission. To this end the Secretary shall employ the necessary clerical, technical, and administrative personnel, and assign tasks to the various divisions of the Department for the purpose of implementing this Article. The Secretary may bring enforcement actions pursuant to G.S. 113A-64 and G.S. 113A-65. The Secretary shall make final agency decisions in contested cases that arise from civil penalty assessments pursuant to G.S. 113A-64. (1973, c. 392, s. 6; c. 1417, s. 3; 1993 (Reg. Sess., 1994), c. 776, s. 6.)

#### **§ 113A-56. Jurisdiction of the Commission.**

(a) The Commission shall have jurisdiction, to the exclusion of local governments, to adopt rules concerning land-disturbing activities that are:

- (1) Conducted by the State.
- (2) Conducted by the United States.
- (3) Conducted by persons having the power of eminent domain other than a local government.
- (4) Conducted by a local government.
- (5) Funded in whole or in part by the State or the United States.

(b) The Commission may delegate the jurisdiction conferred by G.S. 113A- 56(a), in whole or in part, to any other State agency that has submitted an erosion and sedimentation control program to be administered by it, if the program has been approved by the Commission as being in conformity with the general State program.

(c) The Commission shall have concurrent jurisdiction with local governments that administer a delegated erosion and sedimentation control program over all other land-disturbing activities. In addition to the authority granted to the Commission in G.S. 113A-60(c), the Commission has the following authority with respect to a delegated erosion and sedimentation control program:

- (1) To review erosion and sedimentation control plan approvals made by a delegated erosion and sedimentation control program and to require a revised plan if the Commission determines that a plan does not comply with the requirements of this Article or the rules adopted pursuant to this Article.
- (2) To review the compliance activities of a delegated erosion and sedimentation control program and to take appropriate compliance action if the Commission determines that the local government has failed to take appropriate compliance action. (1973, c. 392, s. 7; c. 1417, s. 4; 1987, c. 827, s. 130; 1987 (Reg. Sess., 1988), c. 1000, s. 4; 2002-165, s. 2.5.; 2006-250, s. 2.)

**§ 113A-57. Mandatory standards for land-disturbing activity.**

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

(1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Sedimentation Control 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. 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.

(2) 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.

(3) Whenever land-disturbing activity that will disturb more than one 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 the tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within a time period to be specified by rule of the Commission.

(4) No person shall initiate any land-disturbing activity that will disturb more than one acre on a tract unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for the activity is filed with the agency having jurisdiction and approved by the agency. 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, and the land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved. The agency having jurisdiction shall forward to the Director of the Division of Water Quality a copy of each erosion and sedimentation control 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.

(5) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan. (1973, c. 392, s. 8; c. 1417, s. 5; 1975, c. 647, s. 2; 1979, c. 564; 1983 (Reg. Sess., 1984), c. 1014, s. 3; 1987, c. 827, s. 131; 1989, c. 676, s. 3; 1991, c. 275, s. 2; 1998-99, s. 1; 1999-379, s. 2; 2002-165, s. 2.6; 2005-386, s. 7.2; 2005-443, s. 2; 2006-255, s. 2.)

**§ 113A-58. Enforcement authority of the Commission.**

In implementing the provisions of this Article the Commission is authorized and directed to:

- (1) Inspect or cause to be inspected the sites of land-disturbing activities to determine whether applicable laws, regulations or erosion and sedimentation control plans are being complied with;
- (2) Make requests, or delegate to the Secretary authority to make requests, of the Attorney General or solicitors for prosecutions of violations of this Article. (1973, c. 392, s. 9; 2002-165, s. 2.7.)

**§ 113A-59. Educational activities.**

The Commission in conjunction with the soil and water conservation districts, the North Carolina Agricultural Extension Service, and other appropriate State and federal agencies shall conduct educational programs in erosion and sedimentation control, such programs to be directed towards State and local governmental officials, persons engaged in land-disturbing activities, and interested citizen groups. (1973, c. 392, s.10.)

**§ 113A-60. Local erosion and sedimentation control programs.**

- (a) A local government may submit to the Commission for its approval an erosion and sedimentation control program for its jurisdiction, and to this end local governments are authorized to adopt ordinances and regulations necessary to establish and enforce erosion and sedimentation control programs. An ordinance adopted by a local government may establish a fee for the review of an erosion and sedimentation control plan and related activities. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. An ordinance adopted by a local government shall at least meet and may exceed the minimum requirements of this Article and the rules adopted pursuant to this Article. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.
- (b) The Commission shall review each program submitted and within 90 days of receipt thereof shall notify the local government submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of this Article and rules adopted pursuant to this Article.
- (c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and sedimentation control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.
- (d) A local government may submit to the Commission for its approval a limited erosion and sedimentation control program for its jurisdiction that grants the local government the

responsibility only for the assessment and collection of fees and for the inspection of land-disturbing activities within the jurisdiction of the local government. The Commission shall be responsible for the administration and enforcement of all other components of the erosion and sedimentation control program and the requirements of this Article. The local government may adopt ordinances and regulations necessary to establish a limited erosion and sedimentation control program. An ordinance adopted by a local government that establishes a limited program shall conform to the minimum requirements regarding the inspection of land-disturbing activities of this Article and the rules adopted pursuant to this Article regarding the inspection of land-disturbing activities. The local government shall establish and collect a fee to be paid by each person who submits an erosion and sedimentation control plan to the local government. The amount of the fee shall be an amount equal to eighty percent (80%) of the amount established by the Commission pursuant to G.S. 113A-54.2(a) plus any amount that the local government requires to cover the cost of inspection and program administration activities by the local government. The total fee shall not exceed one hundred dollars (\$100.00) per acre. A local government that administers a limited erosion and sedimentation control program shall pay to the Commission the portion of the fee that equals eighty percent (80%) of the fee established pursuant to G.S. 113A-54.2(a) to cover the cost to the Commission for the administration and enforcement of other components of the erosion and sedimentation control program. Fees paid to the Commission by a local government shall be deposited in the Sedimentation Account established by G.S. 113A-54.2(b). A local government that administers a limited erosion and sedimentation control program and that receives an erosion control plan and fee under this subsection shall immediately transmit the plan to the Commission for review. A local government may create or designate agencies or subdivisions of the local government to administer the limited program. Two or more units of local government may establish a joint limited program and enter into any agreements necessary for the proper administration of the limited program. The resolutions establishing any joint limited program must be duly recorded in the minutes of the governing body of each unit of local government participating in the limited program, and a certified copy of each resolution must be filed with the Commission. Subsections (b) and (c) of this section apply to the approval and oversight of limited programs. (e) Notwithstanding G.S. 113A-61.1, a local government with a limited erosion and sedimentation control program shall not issue a notice of violation if inspection indicates that the person engaged in land-disturbing activity has failed to comply with this Article, rules adopted pursuant to this Article, or an approved erosion and sedimentation control plan. The local government shall notify the Commission if any person has initiated land-disturbing activity for which an erosion and sedimentation control plan is required in the absence of an approved plan. If a local government with a limited program determines that a person engaged in a land-disturbing activity has failed to comply with an approved erosion and sedimentation control plan, the local government shall refer the matter to the Commission for inspection and enforcement pursuant to G.S. 113A-61.1. (1973, c. 392, s. 11; 1993 (Reg. Sess., 1994), c. 776, s. 7; 2002-165, s. 2.8.; 2006-250, s. 3.)

#### **§ 113A-61. Local approval of erosion and sedimentation control plans.**

(a) For those land-disturbing activities for which prior approval of an erosion and sedimentation control plan is required, the Commission may require that a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60 require the applicant

to submit a copy of the erosion and sedimentation control plan to the appropriate soil and water conservation district or districts at the same time the applicant submits the erosion and sedimentation control plan to the local government for approval. The soil and water conservation district or districts shall review the plan and submit any comments and recommendations to the local government within 20 days after the soil and water conservation district received the erosion and sedimentation control plan or within any shorter period of time as may be agreed upon by the soil and water conservation district and the local government. Failure of a soil and water conservation district to submit comments and recommendations within 20 days or within agreed upon shorter period of time shall not delay final action on the proposed plan by the local government.

(b) Local governments shall review each erosion and sedimentation control plan submitted to them and within 30 days of receipt thereof shall notify the person submitting the plan that it has been approved, approved with modifications, or disapproved. A local government shall only approve a plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control.

(b1) A local government shall condition approval of a draft erosion and sedimentation control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. A local government 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. A local government may disapprove an erosion and sedimentation control plan 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.

(b2) In the event that an erosion and sedimentation control plan is disapproved by a local government pursuant to subsection (b1) of this section, the local government shall so notify the Director of the Division of Land Resources within 10 days of such disapproval. The local government shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of subsection (c) of this section, the applicant may appeal the local government's disapproval of the plan directly to the Commission. For purposes of this subsection and subsection (b1) of this section, an applicant's record may be considered for only the two years prior to the application date.

(c) The disapproval or modification of any proposed erosion and sedimentation control plan by a local government 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 the disapproval or modification. The hearings shall be conducted pursuant to procedures adopted by the local government. If the local government upholds the disapproval or modification of a proposed erosion and sedimentation control plan following the public hearing, the person



submitting the erosion and sedimentation control plan shall be entitled to appeal the local government's action disapproving or modifying the plan to the Commission. The Commission, by regulation, shall direct the Secretary to appoint such employees of the Department as may be necessary to hear appeals from the disapproval or modification of erosion and sedimentation control plans by local governments. In addition to providing for the appeal of local government decisions disapproving or modifying erosion and sedimentation control plans to designated employees of the Department, the Commission shall designate an erosion and sedimentation control plan review committee consisting of three members of the Commission. The person submitting the erosion and sedimentation control plan may appeal the decision of an employee of the Department who has heard an appeal of a local government action disapproving or modifying an erosion and sedimentation control plan to the erosion and sedimentation control plan review committee of the Commission. Judicial review of the final action of the erosion and sedimentation control plan review committee of the Commission may be had in the superior court of the county in which the local government is situated.

(d) Repealed by Session Laws 1989, c. 676, s. 4, effective October 1, 1989. (1973, c. 392, s. 12; 1979, c. 922, s. 1; 1989, c. 676, s. 4; 1993 (Reg. Sess., 1994), c. 776, ss. 8, 9; 1998-221, s. 1.11(b); 1999-379, s. 3; 2002-165, s. 2.9.)

#### **§ 113A-61.1. Inspection of land-disturbing activity; notice of violation.**

(a) The Commission, a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60, or other approving authority shall provide for inspection of land-disturbing activities to ensure compliance with this Article and to determine whether the measures required in an erosion and sedimentation control plan are effective in controlling erosion and sedimentation resulting from the land-disturbing activity. Notice of this right of inspection shall be included in the certificate of approval of each erosion and sedimentation control plan.

(b) No person shall willfully resist, delay, or obstruct an authorized representative of the Commission, an authorized representative of a local government, or an employee or an agent of the Department while the representative, employee, or agent is inspecting or attempting to inspect a land-disturbing activity under this section.

(c) If the Secretary, a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60, or other approving authority determines that the person engaged in the land-disturbing activity has failed to comply with this Article, the Secretary, local government, or other approving authority shall immediately serve a notice of violation upon that person. The notice may be served by any means authorized under G.S. 1A- 1, Rule 4. A notice of violation shall specify a date by which the person must comply with this Article and inform the person of the actions that need to be taken to comply with this Article. 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. (1989, c. 676, s. 5; 1993 (Reg. Sess., 1994), c. 776, s. 10; 1999-379, s. 6; 2002-165, s. 2.10.)

#### **§ 113A-62. Cooperation with the United States.**

The Commission is authorized to cooperate and enter into agreements with any agency of the United States government in connection with plans for erosion and sedimentation control with

respect to land-disturbing activities on lands that are under the jurisdiction of such agency. (1973, c. 392, s. 13; 2002-165, s. 2.11.)

### **§ 113A-63. Financial and other assistance.**

The Commission and local governments are authorized to receive from federal, State, and other public and private sources financial, technical, and other assistance for use in accomplishing the purposes of this Article. (1973, c. 392, s. 14.)

### **§ 113A-64. Penalties.**

(a) Civil Penalties. --

(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control 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 for a violation is five thousand dollars (\$5,000). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

(2) The Secretary or a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60 shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Secretary within 30 days after it is due, the Department shall request the Attorney General to institute a civil action to recover the amount of the assessment. If a violator does not pay a civil penalty assessed by a local government within 30 days after it is due, the local government may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the violation occurred or the violator's residence or principal place of business is located. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(3) In determining the amount of the penalty, the Secretary shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this Article.

(4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11, effective October 1, 1994.

(5) The clear proceeds of civil penalties collected by the Department or other State agency under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Civil penalties collected by a local government under this subsection shall be credited to the general fund of the local government as nontax revenue.

(b) Criminal Penalties. -- Any person who knowingly or willfully violates any provision of this

Article or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars (\$5,000). (1973, c. 392, s. 15; 1977, c. 852; 1987, c. 246, s. 3; 1987 (Reg. Sess., 1988), c. 1000, s. 5; 1989, c. 676, s. 6; 1991, c. 412, s. 2; c. 725, s. 5; 1993, c. 539, s. 873; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 776, s. 11; 1998-215, s. 52; 1999-379, s. 4; 2002-165, s. 2.12.)

#### **§ 113A-64.1. Restoration of areas affected by failure to comply.**

The Secretary or a local government that administers a local erosion and sedimentation control program approved under G.S. 113A-60 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 Article. (1993 (Reg. Sess., 1994), c. 776, s. 12; 2002-165, s. 2.13.)

#### **§ 113A-65. Injunctive relief.**

(a) Violation of State Program. -- Whenever the Secretary has reasonable cause to believe that any person is violating or is threatening to violate the requirements of this Article he may, either before or after the institution of any other action or proceeding authorized by this Article, institute a civil action 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 or threatened violation is occurring or about to occur, and shall be in the name of the State upon the relation of the Secretary.

(b) Violation of Local Program. -- Whenever the governing body of a local government having jurisdiction has reasonable cause to believe that any person is violating or is threatening to violate any ordinance, rule, regulation, or order adopted or issued by the local government pursuant to this Article, or any term, condition or provision of an erosion and sedimentation control plan over which it has jurisdiction, may, either before or after the institution of any other action or proceeding authorized by this Article, institute a civil action in the name of the local government 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.

(c) Abatement, etc., 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 subsections (a) or (b) of this section shall not relieve any party to the proceeding from any civil or criminal penalty prescribed for violations of this Article. (1973, c. 392, s. 16; 1993 (Reg. Sess., 1994), c. 776, s. 13; 2002-165, s. 2.14.)

#### **§ 113A-65.1. Stop-work orders.**

(a) The Secretary may issue a stop-work order if he finds that a land-disturbing activity is being

conducted in violation of this Article or of any rule adopted or order issued pursuant to this Article, that the violation is knowing and willful, and that either:

(1) Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent.

(2) Off-site sedimentation has caused severe damage to adjacent land or that such damage is imminent.

(3) The land-disturbing activity is being conducted without an approved plan.

(b) The stop-work order shall be in writing and shall state what work is to be stopped and what measures are required to abate the violation. The order shall include a statement of the findings made by the Secretary pursuant to subsection (a) of this section, and shall list the conditions under which work that has been stopped by the order may be resumed. The delivery of equipment and materials which does not contribute to the violation may continue while the stop-work order is in effect. A copy of this section shall be attached to the order.

(c) The stop-work order shall be served by the sheriff of the county in which the land-disturbing activity is being conducted or by some other person duly authorized by law to serve process as provided by G.S. 1A-1, Rule 4, and shall be served on the person at the site of the land-disturbing activity who is in operational control of the land-disturbing activity. The sheriff or other person duly authorized by law to serve process shall post a copy of the stop-work order in a conspicuous place at the site of the land-disturbing activity. The Department shall also deliver a copy of the stop-work order to any person that the Department has reason to believe may be responsible for the violation.

(d) The directives of a stop-work order become effective upon service of the order. Thereafter, any person notified of the stop-work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in G.S. 113A-64(a). A stop-work order issued pursuant to this section may be issued for a period not to exceed five days.

(e) The Secretary shall designate an employee of the Department to monitor compliance with the stop-work order. The name of the employee so designated shall be included in the stop-work order. The employee so designated, or the Secretary, shall rescind the stop-work order if all the violations for which the stop-work order are issued are corrected, no other violations have occurred, and all measures necessary to abate the violations have been taken. The Secretary shall rescind a stop-work order that is issued in error.

(f) The issuance of a stop-work order shall be a final agency decision subject to judicial review in the same manner as an order in a contested case pursuant to Article 4 of Chapter 150B of the General Statutes. The petition for judicial review shall be filed in the superior court of the county in which the land-disturbing activity is being conducted.

(g) As used in this section, days are computed as provided in G.S. 1A-1, Rule 6. Except as otherwise provided, the Secretary may delegate any power or duty under this section to the Director of the Division of Land Resources of the Department or to any person who has supervisory authority over the Director. The Director may delegate any power or duty so delegated only to a person who is designated as acting Director.

(h) The Attorney General shall file a cause of action to abate the violations which resulted in the issuance of a stop-work order within two business days of the service of the stop-work order. The cause of action shall include a motion for an ex parte temporary restraining order to abate the violation and to effect necessary remedial measures. The resident superior court judge, or any judge assigned to hear the motion for the temporary restraining order, shall hear and determine the motion within two days of the filing of the complaint. The clerk of superior court shall accept

complaints filed pursuant to this section without the payment of filing fees. Filing fees shall be paid to the clerk of superior court within 30 days of the filing of the complaint. (1991, c. 412, s. 1; 1998-99, s. 2; 2005-386, s. 7.3.)

#### **§ 113A-66. Civil relief.**

(a) Any person injured by a violation of this Article or any ordinance, rule, or order duly adopted by the Secretary or a local government, or by the initiation or continuation of a land-disturbing activity for which an erosion and sedimentation control plan is required other than in accordance with the terms, conditions, and provisions of an approved plan, may bring a civil action against the person alleged to be in violation (including the State and any local government). The action may seek any of the following:

(1) Injunctive relief.

(2) An order enforcing the law, rule, ordinance, order, or erosion and sedimentation control plan violated.

(3) Damages caused by the violation.

(4) Repealed by Session Laws 2202-165, s. 2.15, effective October 23, 2002.

If the amount of actual damages as found by the court or jury in suits brought under this subsection is five thousand dollars (\$5,000) or less, the plaintiff shall be awarded costs of litigation including reasonable attorneys fees and expert witness fees.

(b) Civil actions under this section shall be brought in the superior court of the county in which the alleged violations occurred.

(c) The court, in issuing any final order in any action brought pursuant to this section may award costs of litigation (including reasonable attorney and expert-witness fees) to any party, whenever it determines that such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require, the filing of a bond or equivalent security, the amount of such bond or security to be determined by the court.

(d) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek injunctive or other relief. (1973, c. 392, s. 17; 1987 (Reg. Sess., 1988), c. 1000, s. 6; 2002-165, s. 2.15.)

#### **§ 113A-67. Annual Report.**

The Department shall report to the Environmental Review Commission on the implementation of this Article on or before 1 October of each year. The Department shall include in the report an analysis of how the implementation of the Sedimentation Pollution Control Act of 1973 is affecting activities that contribute to the sedimentation of streams, rivers, lakes, and other waters of the State. The report shall also include a review of the effectiveness of local erosion and sedimentation control programs. (2004-195, s. 2.1.)

### **SEDIMENTATION CONTROL COMMISSION**

#### **§ 143B-298. Sedimentation Control Commission - creation; powers and duties.**

There is hereby created the Sedimentation Control Commission of the Department of Environment, Health, and Natural Resources with the power and duty to develop and administer

a sedimentation control program as herein provided. The Sedimentation Control Commission has the following powers and duties:

- (1) In cooperation with the Secretary of the Department of Transportation and Highway Safety and other appropriate State and federal agencies, develop, promulgate, publicize, and administer a comprehensive State erosion and sedimentation control program.
- (2) Develop and adopt on or before July 1, 1974, rules and regulations for the control of erosion and sedimentation pursuant to G.S. 113A-54.
- (3) Conduct public hearings pursuant to G.S. 113A-54. (4) Assist local governments in developing erosion and sedimentation control programs pursuant to G.S. 113A-60.
- (5) Assist and encourage other State agencies in developing erosion and sedimentation control programs pursuant to G.S. 113A-56.
- (6) Develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques pursuant to G.S. 113A-54. (1973, c. 1262, s. 39; 1977, c. 771, s. 4; 1989, c. 727, s. 218(137).)

**§ 143B-299. Sedimentation Control Commission - members; selection; compensation; meetings.**

(a) Creation; Membership. -- There is hereby created in the Department of Environment, Health, and Natural Resources the North Carolina Sedimentation Control Commission, which is charged with the duty of developing and administering the sedimentation control program provided for in this Article. The Commission shall consist of the following members:

- (1) A person to be nominated jointly by the boards of the North Carolina League of Municipalities and the North Carolina Association of County Commissioners;
- (2) A person to be nominated by the Board of the North Carolina Home Builders Association;
- (3) A person to be nominated by the Carolinas Branch, Associated General Contractors of America;
- (4) The president, vice-president, or general counsel of a North Carolina public utility company;
- (5) The Director of the North Carolina Water Resources Research Institute;
- (6) A member of the State Mining Commission who shall be a representative of nongovernmental conservation interests, as required by G.S. 74-38(b);
- (7) A member of the State Soil and Water Conservation Commission;
- (8) A member of the Environmental Management Commission;
- (9) A soil scientist from the faculty of North Carolina State University;
- (10) Two persons who shall be representatives of nongovernmental conservation interests; and
- (11) A professional engineer registered under the provisions of Chapter 89C of the General Statutes nominated by the Professional Engineers of North Carolina, Inc.

(b) Appointment. -- The Commission members shall be appointed by the Governor. All Commission members, except the person appointed under subdivision (5) of subsection (a) of this section, shall serve staggered terms of three years and until their successors are appointed and duly qualified. The person appointed under subdivision (5) of subsection (a) of this section shall serve as a member of the Commission, subject to removal by the Governor as hereinafter

specified in this section, so long as the person continues as Director of the Water Resources Research Institute. The terms of members appointed under subdivision (2), (4), (7), and (8) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The terms of members appointed under subdivision (1), (3), and (10) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms of members appointed under subdivision (6), (9), and (11) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Except for the person appointed under subdivision (5) of subsection (a) of this section, no member of the Commission shall serve more than two complete consecutive three-year terms. Any member appointed by the Governor to fill a vacancy occurring in any of the appointments shall be appointed for the remainder of the term of the member causing the vacancy. The Governor may at any time remove any member of the Commission for inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance or because they no longer possess the required qualifications for membership. The office of the North Carolina Sedimentation Control Commission is declared to be an office that may be held concurrently with any other elective or appointive office, under the authority of Article VI, Sec. 9, of the North Carolina Constitution.

(b1) Chair. -- The Governor shall designate a member of the Commission to serve as chair.

(c) Compensation. -- The members of the Commission shall receive the usual and customary per diem allowed for the other members of boards and commissions of the State and as fixed in the Biennial Appropriation Act, and, in addition, the members of the Commission shall receive subsistence and travel expenses according to the prevailing State practice and as allowed and fixed by statute for such purposes, which said travel expenses shall also be allowed while going to or from any place of meeting or when on official business for the Commission. The per diem payments made to each member of the Commission shall include necessary time spent in traveling to and from their places of residence within the State to any place of meeting or while traveling on official business for the Commission.

(d) Meetings of Commission. -- The Commission shall meet at the call of the chair and shall hold special meetings at the call of a majority of the members. (1973, c. 1262, s. 40; 1977, c. 771, s. 4; 1981, c. 248, ss. 1, 2; 1989, c. 727, s. 218(138); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1991, c. 551, s. 1; 2006-79, s. 9.)

## **BUILDING PERMITS**

In 1988, the General Assembly amended G.S. 153A-357 and 160A-417 regarding building permits. The amendments were as follows:

**§ 153-357(b)** No permit shall be issued pursuant to subsection (a) for any land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S. 113A-57, unless an erosion control plan has been approved by the Sedimentation Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site of the activity.

**§ 160A-417(b)** No permit shall be issued pursuant to subsection (a) for any land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S. 113A-57, unless an erosion control plan has been approved by the Sedimentation Pollution Control Commission pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site of the activity.