

Sec. 15.5

Sedimentation and Erosion Control Enforcement and Penalties

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15.5.1 Inspections and Investigations

A. Inspection

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

B. Willful Resistance, Delay or Obstruction

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

C. Notice of Violation

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

D. Stop Work Order

The County may issue a stop work order for the site on which the violation has occurred.

a. Upon issuance of such an order and the posting of same on the site of the violation, all work on the site of the violation shall cease, except those activities necessary to bring the site into compliance with this article.

b. Notice of the stop work order may be served by any means authorized under NCGS § 1A-1, Rule 4.

DE. Investigation

The Sedimentation and Erosion Control Officer or designee shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any

property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

EE. Statements and Reports

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

15.5.2 Revocation of Permits

A. The County Engineer or designee shall have the power to revoke land-disturbing permits issued pursuant to Sec. [3.8](#), Sedimentation and Erosion Control, and Sec. [12.10](#), Sedimentation and Erosion Control. When the Sedimentation and Erosion Control Officer or designee proposes to the County Engineer or designee that a land-disturbing permit be revoked, the Officer or designee shall serve the permittee or other responsible person with a notice of intent to revoke specifying the time and date of a pre-termination hearing to be held before the County Engineer or designee. The notice shall be delivered at least three working days, Monday through Friday, before the date specified for the pre-termination hearing.

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

B. Should the County Engineer or designee determine that the land-disturbing permit should be revoked, he/she shall serve the permittee or other responsible person with a notice of revocation. Upon receipt of the notice of revocation, the responsible person shall immediately cause or order the cessation of all land-disturbing activities except those activities which are specifically directed towards bringing the site into a state of compliance.

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

D. No person shall resume or continue any land-disturbing activity other than those necessary to bring the site into a state of compliance after receipt of a revocation notice and before reissuance of a land-disturbing permit or decision of the Board of Commissioners reinstating a land-disturbing permit. After the Sedimentation and Erosion Control Officer or designee has inspected the site and approved the remedial work, the responsible party may reapply for a land-disturbing permit. The fee for reapplication shall be 100% of the current application fee.

15.5.3 Civil Penalties

A. Civil Penalty for a Violation

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

B. Civil Penalty Assessment Factors

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

1. The degree and extent of harm caused by the violation;
2. The cost of rectifying the damage;

3. The amount of money the violator saved by noncompliance;
4. Whether the violation was committed willfully; and
5. The prior record of the violator in complying or failing to comply with this Ordinance.

C. Notice of Civil Penalty Assessment

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

1. Pay the assessment;
2. File a request for remission of the assessment;
 - a. A request for remission of a civil penalty imposed under this section must be filed with the Sedimentation Control Commission within 30 days of receipt of the notice of assessment,
 - b. Notification of a request for remission must also be filed with the County Engineer,
 - c. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to NCGS § [150B](#), Art. 3, and a stipulation of the facts on which the assessment was based; or
3. Contest the assessment within 30 days by filing a petition for a contested case under NCGS § [150B](#), Art. 3.
 - a. The administrative law judge hearing the matter shall make a recommended decision to the Board of Commissioners. If either party wishes to challenge the recommended decision, they must file with the Clerk to the Board of Commissioners, and serve on the other parties, and the Office of Administrative Hearings, specific exceptions and objections, detailing the errors of fact or law they contend exist within the recommended decision, and other written argument they

wish to submit, within 30 days after the issuance of same. Other parties shall file any response they wish to make to a submission of exceptions and objections within 30 days of service of same but may not use this subsequent filing to submit new, or additional, exceptions and objections of their own.

b. The recommended decision and any written submissions of the parties will be reviewed by the Board of Commissioners within 90 days after the official record in this matter is served upon the Clerk to the Board of Commissioners by the Office of Administrative Hearings. The Board of Commissioners shall adopt or modify the recommended decision consistent with the provisions of NCGS § [150B-36](#).

c. Appeal of the decision of the Board of Commissioners shall be in accordance with NCGS § [150B](#), Art. 4.

D. Collection

If payment is not received within 60 days after it is due, Durham County may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation occurred, or where the violator's residence or principal place of business is located. Such civil actions 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.

E. Credit of Civil Penalties

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

15.5.4 Reserved

15.5.5 Enforcement Alternatives

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

- A.** Whenever there is reasonable cause to believe that any person is violating or threatening to violate the Act, this section, Sec. [3.8](#), Sedimentation and Erosion Control, Sec. [12.10](#), Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan, the County Attorney may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action as provided in paragraph [15.3.3](#), Injunctive Relief in Superior Court, for injunctive relief to restrain the violation or threatened violation in superior court.
- B.** The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil penalties assessed under this section.
- C.** Land-disturbing activities undertaken without first obtaining a land-disturbing permit, but which are required by Sec. [3.8](#), Sedimentation and Erosion Control, to obtain a land-disturbing permit, shall be subject to a permit fee of 200% of the current applicable fee, in addition to any civil penalties assigned per paragraph [15.5.3](#), Civil Penalties.
- D.** Conveyance of the property subject to the permit, in whole or in part, shall not terminate the permit holder's obligations under the Act, this section, Sec. [3.8](#), Sedimentation and Erosion Control, Sec. [12.10](#), Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan until such time as a substitute, or succeeding, permit is approved by the Sedimentation and Erosion Control Officer or designee.

15.5.6 Restoration of Areas Affected by Failure to Comply

The Sedimentation and Erosion Control Officer or designee may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by NCGS § [113A-57\(3\)](#) and Sec. [12.10](#), Sedimentation and Erosion Control, to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this section or the Act.

The Durham Unified Development Ordinance is current through legislation effective:

Durham County: July 1, 2022

City of Durham: July 1, 2022

Disclaimer: The [Durham City-County Planning Department](#) office has the official version of the Durham Unified Development Ordinance. Users should contact the Planning Department for amendments subsequent to the amendment cited here.

[City Website: durhamnc.gov](#)

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