

CHAPTER 154: EROSION AND SEDIMENT CONTROL

Section

General Provisions

- 154.01 Definitions
- 154.02 Authority
- 154.03 Governing body
- 154.04 Purpose
- 154.05 Scope and exclusions

Requirements

- 154.20 General requirements
- 154.21 Storm water drainage protection
- 154.22 Basic control objectives
- 154.23 Design and performance standards

Plans

- 154.40 Erosion and sediment control plans
- 154.41 Plan revision after initiation
- 154.42 Responsibility for maintenance
- 154.43 Borrow and waste areas
- 154.44 Access and haul roads
- 154.45 Operations in lakes or natural watercourses

Permits

- 154.60 Permits to conduct land-disturbing activity

Administration and Enforcement

- 154.70 Inspections and investigations
- 154.71 Existing uncovered areas
- 154.72 Compliance
- 154.73 Surety
- 154.74 Appeals; Haywood County Sediment Control Board

- 154.99 Penalty
(Ord. passed –88; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

GENERAL PROVISIONS**§ 154.01 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCELERATED EROSION. Any increase over the rate of natural erosion as a result of land-disturbing activities.

ACCESS AND HAUL ROADS. All roadways either permanent or those to be obliterated after completion of land-disturbing activities; used for private travel, construction vehicles, earth moving or heavy equipment or other machinery, and constructed and used in conjunction with land-disturbing activities which require a permit under this chapter.

ACT. The State Sedimentation Pollution Control Act of 1973, being G.S. §§ 113A-50 through 113A-66 and all rules and orders adopted pursuant to it.

ADEQUATE SEDIMENTATION AND EROSION CONTROL MEASURES, STRUCTURES, OR DEVICES. A device, structure, or measure which controls the soil material within the land area under control of the person conducting the land-disturbing activity.

AFFILIATE. A person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control of another person (reference 17 Code of Federal Regulations §240.12(b)-2 (1 June 1993 Edition)).

APPROVED SEDIMENT CONTROL PLAN. A written course of action including maps, drawings, calculations, or assumptions, found by the Inspector or other duly appointed agent to satisfy all requirements of this chapter which details the timing and proper installation of erosion control measures or devices which have a reasonable probability, if implemented, of restraining accelerated erosion and off-site sediment damage associated with a land-disturbing activity.

APPLICANT. Any person, whether the person financially responsible for the land-disturbing activity or his/her duly appointed agent, who submits a formal application, to the Inspector or duly appointed agent, for a permit to conduct land-disturbing activities controlled by this chapter, or who files with the Sediment Board, a motion to appeal a decision by the Inspector or his or her agent as contained in this chapter.

BEING CONDUCTED. A land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

BORROW. Fill material required for on-site construction obtained from other locations.

BUFFER ZONE. The strip of land adjacent to a lake or natural watercourse.

CHAPTER. The County Erosion and Sediment Control ordinance as approved by the governing board of the county and included townships.

COMPLETION OF CONSTRUCTION OR DEVELOPMENT. No further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

CONTINUING VIOLATION. Those violations of this chapter or an approved sediment control plan which are occurring after the date for compliance as set forth in a notice of violation served upon the person responsible for a land-disturbing activity covered under this chapter.

DEPARTMENT. The North Carolina State Department of Environment and Natural Resources.

DETENTION STORAGE. Any structure or device which acts to retard the volume of storm water runoff and prevent increased storm flow as a result of a land-disturbing activity.

DEVELOPMENT. Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

DIRECTOR. The Director of the Division of Land Resources of the Department of Environment and Natural Resources.

DISCHARGE POINT. That point at which runoff leaves a tract of land.

DISTRICT. The Haywood County Soil and Water Conservation District created pursuant to G.S. Chapter 139.

DISTURBED AREAS. Any area of land or water that is subject to a land-disturbing activity as defined in this chapter.

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

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

FINAL OBJECTIVE. The type of structure or use resulting from the land-disturbing activity.

FOREST LANDS. All land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

FOREST PRACTICES. Any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber.

GROUND COVER. Any natural vegetative growth or other materials which render the soil surface stable against accelerated erosion.

HIGH-QUALITY WATERS. Those classified as such in 15A NCAC 2B .0101(e)(5) - General Procedures, which is incorporated herein by reference to include further amendments incorporated herein by reference.

HIGH-QUALITY WATER (HQW) ZONES. Areas in the Coastal Counties that are within 575 feet of High Quality Waters and for the remainder of the state areas that are within one mile and drain to HQW's.

INSPECTOR. An individual or group of individuals designated by the Haywood County Commissioners and charged with upholding the provisions of this chapter, and having the power to enter all lands at reasonable times to insure that these provisions are being carried out.

LAKE OR NATURAL WATERCOURSE. Any stream, river, brook, swamp, branch, creek, run, waterway, and any reservoir, lake, or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulations of sediment.

LAND-DISTURBING ACTIVITY. Any use of the land by any person for residential, industrial, educational, institutional, or commercial development, and 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.

LAND-DISTURBING PERMIT (hereafter "PERMIT"). The document issued by the county which allows grading or other land-disturbing activity or operations to commence and proceed in accordance with the requirements of this chapter of the Haywood County Code of Ordinances.

LOCAL GOVERNMENT. Any county, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and/or cities, acting through a joint program pursuant to the provisions of the North Carolina Sedimentation and Erosion Control Act, being G.S. §§ 113A-50 through 113A-66.

NATURAL EROSION. The wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

OFF-SITE SEDIMENT DAMAGE. The removal or transport of sediment across the boundaries of a land-disturbing activity, resulting in deposition of such materials in any lake or natural watercourse or any lands public or private not owned by the person responsible for the land-disturbing activity.

PARENT. An affiliate that directly, or indirectly through one or more intermediaries, controls another person (see 17 Code of Federal Regulations §240.12(b)-2 (1 June 1993 Edition))

PERSON. 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.

PERSON RESPONSIBLE FOR THE VIOLATION.

(1) The developer or other person who has or holds himself or herself out as having financial or operational control over the land-disturbing activity; and/or

(2) The landowner or person in possession or control of the land when he/she has directly or indirectly allowed the land-disturbing activity or has benefited from it or he/she has failed to comply with any provision of this chapter, the Act, or any order adopted pursuant to this chapter or the Act as imposes a duty upon them.

PERSON CONDUCTING LAND-DISTURBING ACTIVITIES. Any person who may be held responsible for a violation of this chapter unless expressly provided otherwise in this chapter or the Sedimentation Pollution Control Act of 1973, being G.S. §§ 113A-50 through 113A 66, as amended, or any order adopted pursuant to this chapter or the Act.

PHASE OF GRADING. One of two types of grading, rough or fine.

PLAN. Erosion and Sediment control plan.

PUBLIC ROAD. A road or street which is maintained by the North Carolina Department of Transportation for use by the public and/or roads that are in actual open use as public vehicular areas, or dedicated or offered for dedication to the public use as a road, highway, street, or avenue, by a deed, grant, map, or plat, and that has been constructed and is in use by the public.

SEDIMENT. 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.

SEDIMENT BOARD. The Haywood County Sediment Control Board as organized by this chapter..

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

SILTATION. Sediment resulting from accelerated erosion which is settleable or removable by properly designed, installed, and maintained erosion and sedimentation control measures and devices, and which has been transported from its point of origin within the site of a land-disturbing activity, and which has been deposited, or is in suspension in water.

STORM DRAINAGE FACILITY. The system of inlets, conduits, channels, ditches, and appurtenances which serve to collect and convey storm water through and from a given drainage area.

STORM WATER RUNOFF. The direct runoff of water resulting from precipitation in any form.

SUBSIDIARY. An affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

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

TRACT. All contiguous land and/or bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

TWENTY-FIVE YEAR STORM. The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff from the watershed of interest under average antecedent wetness conditions.

UNCOVERED. The removal of ground cover from, on, or above the soil surface.

UNDERTAKEN. The initiation of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

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

VIOLATION. Any land-disturbing activity covered under the provisions of this chapter which is planned or carried out without regard to all the contents and responsibilities thereof or an approved erosion and sediment control plan.

WASTE. Surplus materials resulting from on-site construction and disposed of at other locations.

WASTE AREAS. Areas used for the stockpiling or burial of surplus materials resulting from on-site construction and disposed of at other locations.

WORKING DAYS. Days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activities to be undertaken.
(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

§ 154.02 AUTHORITY.

(A) Soil erosion and sedimentation are considered major public problems; therefore the Commissioners of the county enact the following chapter under the authority of the appropriate State Law, being G.S. Chapter 113A, Article 4, as amended.

(B) This chapter shall be cited as the Haywood County Erosion and Sediment Control ordinance.

(C) This chapter shall be effective on August 1, 1988.
(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

§ 154.03 GOVERNING BODY.

The governing body of this chapter is the Haywood County Sediment Control Board, as created in § 154.74, hereafter referred to as the Sediment Board.
(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

§ 154.04 PURPOSE.

This chapter is adopted for the purposes of:

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

(B) Protecting public and private lands from accelerated erosion due to increases in storm water runoff.

(C) Preventing continued accelerated erosion of existing areas which are unprotected and not in compliance with this chapter at the time of its adoption.

(D) Establishing procedures through which these purposes can be fulfilled.
Ord. passed --88; Am. Res. passed 1-7-93; Ord. passed 7-23-07)

§ 154.05 SCOPE AND EXCLUSIONS.*(A) Scope.*

(1) This chapter shall apply to all land-disturbing activities as defined in G.S. § 113A-52(6) undertaken by any person, with the exclusion of those defined in divisions (B)(1) through (3) of this section.

(2) In addition, a permit, contingent upon an approved plan, shall be required for all land-disturbing activities comprising one-half (21,780 square feet) or greater acres, including both temporary or permanent access and haul roads, borrow pits, waste areas, or other associated activities, undertaken by any person within the limits of the county. Also, a permit contingent upon an approved plan shall be required for all land-disturbing activities comprising less than one-half acres (<21,780 square feet) including both temporary and permanent access and haul roads, borrow pits, waste areas, or other associated activities, undertaken by any person within the limits of the county for any house site subject to a permit from the Haywood County Buildings Inspections Office (construction or placement) which are less than one-half acre in disturbed area; and commercial sites subject to a permit from the Haywood County Building Inspections Office which are less than one-half acre in disturbed area.

(B) Excluded 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) Land disturbing 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, but not including development activities such as clearing land or cutting timber.

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

(4) Land-disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. § 113A-56(a), as amended from time to time.

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

(C) *Jurisdiction.* This chapter may apply within the incorporated areas of municipalities upon proper resolution by the governing bodies of the respective municipalities and agreement by the Haywood County Board of Commissioners.

(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

REQUIREMENTS

§ 154.20 GENERAL REQUIREMENTS.

(A) *Persons conducting land-disturbing activities.*

(1) Persons conducting land-disturbing activities shall take all reasonable measures to prevent damage to public and private property resulting from those activities. In addition, they will be held responsible for knowing and following the requirements of this chapter.

(2) It is the responsibility of the person conducting the land-disturbing activity to apply to the Inspector or his or her agent for any permit required and receive the permit contingent upon an approved sediment control plan, before beginning any land-disturbing activity which uncovers one-half or greater acres; and any house site subject to a permit from the Haywood County Building Inspections Office (construction or placement) which is less than one-half acre in disturbed area; or commercial sites subject to a permit from the Haywood County Building Inspections Office which are less than one-half acre in disturbed area.

(3) Permit.

(a) If any land-disturbing activity requires a permit as defined in this chapter, none of the following documents or permits, where applicable, shall be issued until an erosion control plan has been approved by the Inspector:

1. A septic tank permit.
2. A building permit.

(b) Any of the above permits may be applied for at the same time as the permit required by this chapter.

(4) Requests for a permit to conduct land-disturbing activities shall contain an erosion and sediment control plan.

(5) Applications shall be submitted at least 30 calendar days prior to the planned initiation of the land-disturbing activity.

(6) No person shall initiate any land-disturbing activity which uncovers one-half or greater acres without having an erosion and sediment control plan approved by the Inspector.

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

(B) **MANDATORY STANDARDS.** No land-disturbing activity subject to this chapter shall be undertaken except in accordance with the following mandatory requirements:

(1) *Buffer zone.*

(a) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Director may approve plans which include land-disturbing activity along trout waters when the duration of the disturbance would be temporary and the extent of the 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.

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

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

(d) Where a temporary and minimal disturbance is permitted as an exception by G.S. §113A-57(1) land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of 10% of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.

(e) No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15A Adm. Code 2B.011 "Fresh Surface Water Classification and Standards", as amended.

(2) *Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with a ground cover, device, or structure sufficient to restrain erosion.

(3) *Ground cover.* Whenever land-disturbing activity is undertaken on a tract subject to permitting requirements of this chapter, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain 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. Except as provided in § 154.23(B)(5) of this chapter, provision for a ground cover sufficient to restrain erosion must be accomplished within 15 working days or 90 calendar days following completion of construction or development, whichever is shorter.

(4) *Prior plan approval.* No person shall initiate any land-disturbing activity if one-half (1/2) acre or more is uncovered unless a sediment control plan is filed 30 or more days prior to initiation of the activity and the plan is approved by the Inspector. (Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-7-00; Am. Ord. passed 2-19-01; Ord. passed 7-23-07) Penalty, see § 154.99

(5) Any land-disturbing activity for which a plan is required by this chapter shall be conducted in accordance with the approved erosion and sedimentation control plan.

§ 154.21 STORM WATER DRAINAGE PROTECTION.

(A) *Statement of purpose.* The purpose of this section is to protect the public health, safety, and welfare from property damage caused by storm water runoff. To accomplish this, projects that fall under the provisions of this chapter shall take into consideration the following two basic objectives:

(1) Protect the absorptive, purifying, and retentive functions of natural systems that exist on the site of a proposed development; and

(2) Provide for post development storm water runoff characteristics that resemble the conditions that existed before the site's alteration.

(B) *Regulations.*

(1) *Post-construction velocity.*

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

1. The velocity established by the table in division (B)(5) below; or
2. The velocity of the 10-year storm runoff in the receiving watercourse prior to development.

(b) If conditions (B)(1)(a) 1. or 2. cannot be met, then the receiving watercourse to, and including, the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by 10%. (2)

Performance standard.

(a) The disturbing activity shall be planned and conditions such that the velocity of storm water runoff in the receiving watercourse at the point of discharge resulting from 10-year storm after development shall not exceed the greater of:

1. The critical velocity acceptable in the receiving watercourses as determined from division (B)(5) of this rule; or
2. The velocity in the receiving watercourse determined for the 10-year storm prior to development.

(b) If conditions (B)(2)(a) 1. or 2. of this section cannot be met, the channel below the discharge point shall be designed and constructed to withstand the expected velocity.

(3) *Acceptable management measures.* Measures applied alone, or in combination, to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. Innovative techniques and ideas will be considered and may be used when shown to have the potential for successful results. Some alternatives are to:

(a) Avoid increases in surface water runoff volume and velocity by including measures which promote filtration or detention and to compensate for increased runoff from areas rendered impervious.

(b) Avoid increases in storm water discharge velocities by using vegetated or roughened swales or waterways or detention storage in lieu of closed drains and high-velocity paved sections.

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

(d) Protect watercourses subject to accelerated erosion by providing improved cross-sections or linings resistant to erosion such as rip-rap or gabions.

(4) *Exception.* This rule shall not apply where it can be shown that storm water discharge velocities will not create an accelerated erosion problem in the receiving watercourse.

(5) *Maximum permissible velocity.* The following is a table for maximum permissible velocities for storm water discharges:

<i>Material</i>	<i>Maximum Permissible</i>	
	<i>F.P.S.</i>	<i>M.P.S.</i>
Fine sand	2.5	.8
Sandy loam	2.5	.8
Silt loam	3	.8
Firm loam	3.5	.9
Fine gravel	5	1.1
Still clay	5	1.5
Graded loam to cobble	5	1.5
Graded silt to cobble	5.5	1.5
Alluvial silts (non-colloidal)	3.5	1.1
Alluvial silts (colloidal)	5	1.5
Coarse gravel	6	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6	1.8
Source – adapted from recommendations by Special Committee on Irrigation Research, ASCE, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by .95 for slightly sinuous, by .9 for moderately sinuous channels, and by .8 for highly sinuous channels.		

(6) *Storm water runoff permit.* A storm water runoff permit is required where:

- (a) A sediment control plan is required, and;
- (b) The parcel is over two acres in area, and;

(c) The impervious surface of the new construction, including buildings, roads, sidewalks, recreational facilities, and the like, is over 50% of the acreage. For the purposes of this section, impervious surfaces include gravel, asphalt, concrete, tennis courts, and the like. (Note: Wooden slated decks and the water area of a swimming pool are considered pervious.)

(7) *Design standards.* The first one inch of rainfall shall be required to percolate on the site. This shall be accomplished through best management practices such as buffer areas, grassed swales, filter strips, porous pavement, infiltration basins and trenches, water quality inlets, retention ponds, extended detention ponds and other measures.

(8) *Storm water drainage plan.* A storm water drainage plan is required for all developments meeting the requirements of division (B)(6) above. It shall be prepared by a registered engineer, landscape architect or, to the extent permitted by law, a registered land surveyor and shall contain the following general elements:

- (a) A general site plan showing all impervious surfaces, the location and size of all storm water drainage structures (if any), best management practice measures, and infiltration areas;
- (b) Topographic features (finished grade);
- (c) General or typical cross sectional drawings of all storm water drainage structures, if any;
- (d) The total number of square feet of impervious surfaces and its relative percentage of the total lot;
- (e) Any other information deemed necessary by the Erosion Control Specialist.

(9) *Operation and maintenance.* It shall be the responsibility of the property owner to insure that whatever storm water management devices or measures are installed are kept in good working order.

(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Ord. passed 7-23-07) Penalty, see § 154.99

§154.22 BASIC CONTROL OBJECTIVES.

An erosion and sediment control plan may be disapproved pursuant to § 154.40 of this chapter if the plan fails to address the following control objectives:

(A) *Control off-site sediment damage.* All land-disturbing activities are to be planned and conducted to confine sediment produced within the boundaries of the property upon which land-disturbing activities are being carried out.

(B) *Limit the time of exposure.* All land-disturbing activities are to be planned and conducted to limit exposure of disturbed areas to the shortest possible time. When discrete segments of the land-disturbing activity are completed, these should be stabilized quickly to avoid additional accelerated erosion hazards.

(C) *Limit the exposed areas.* All land-disturbing activities are to be planned and conducted to limit the size of the areas to be exposed at any one time.

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

(E) *Identify critical areas.* On-site areas subject to severe erosion and off-site areas subject to damage from accelerated erosion and/or sedimentation are to be identified and receive special attention.

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

(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07) Penalty, see § 154.99

§ 154.23 DESIGN AND PERFORMANCE STANDARDS.

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

(B) In High Quality Water (HQW) zones the following design standards shall apply:

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

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

(3) Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70% for the 40 micron (0.4 mm) size soil particle transported into the basin by the runoff of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the US Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the federal government or any generally recognized organization or association.

(4) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes not steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices, or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

(5) Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within 15 working days or 60 calendar days following completion of construction or development, whichever period is shorter.

(Ord. passed - -88; Am. Res. passed 1-7-93; Ord. passed 7-23-07) Penalty, see § 154.99

PLANS

§ 154.40 EROSION AND SEDIMENT CONTROL PLANS.

(A) A sediment control plan shall be prepared for all land-disturbing activities subject to this chapter whenever the proposed activity is to be undertaken on a tract comprising one-half or greater acres, if one-half or greater acres is to be uncovered. A sediment control plan shall be prepared for all land-disturbing activities for any house site subject to a permit from the Haywood County Building Inspections Office (construction or placement) which is less than one-half acre in disturbed area; and commercial sites subject to a permit from the Haywood County Building Inspections Office which are less than one-half acre in disturbed area.

(B) Persons conducting land-disturbing activities on a tract which cover one-half or greater acres, shall file two copies of the erosion and sediment control plan with the Inspector at least 30 days prior to beginning such activity and shall keep another copy of the plan on file at the job site. The Inspector will forward one copy of the plan to the District office upon receipt of a filed plan. If the Inspector, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the Inspector will require a revised plan. Pending the preparation of a revised plan, permits to conduct land-disturbing activities may be rescinded and work stopped or allowed to continue under conditions outlined by the Sediment Board.

(C) Erosion and sediment control plans shall be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his or her attorney in fact. The statement shall include the mailing and street address of the principal place of business of the person financially responsible and of the owner of the land or the owner's registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, this chapter or rules or orders adopted or issued pursuant to this chapter. If the applicant is not the owner of the land to be disturbed, the draft erosion and sediment control plan must include the owner's written consent for the applicant to submit a draft erosion and sediment control plan and to conduct the anticipated land-disturbing activity.

(D) Where prior approval of an erosion and sediment control plan is required, the applicant shall submit a copy to the Haywood County Soil and Water Conservation District. The District,

within 20 days of receipt of any plan, shall review the plan and submit its comments and recommendations to the Sediment Board or the Inspector. Failure of the District to submit its comments and recommendations within the 20 days will not delay final action on the plan. The parties may agree to a period of time less than 20 days.

(E) The Inspector will review each complete plan submitted and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve or disapprove a complete sediment control plan or a revised sediment control plan within 30 days of receipt shall be deemed approval. Denial of a plan must specifically state in writing the reasons for denial. The Inspector must approve, approve with modification, or deny a revised plan within 15 days of receipt, or it is deemed to be approved. If, following commencement of a land-disturbing activity pursuant to an approved plan, the Inspector determined that the plan is inadequate to meet the requirements of this chapter, the Inspector may require such revisions as are necessary to comply with this chapter. Failure to approve, approve with modification or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan.

(F) Any plan submitted for a land-disturbing activity for which an environmental document is required by the State Environmental Policy Act (G.S. § 113A-1 et seq.) shall be deemed incomplete until a complete environmental document is available for review. The Inspector shall promptly notify the person submitting the plan that the 30-day time limit for review for the plan pursuant to § 154.60(C)(5) of this chapter shall not begin until a complete environmental document is available for review.

(G) The sediment control plan required by this section shall contain such architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this chapter. Plans submitted to the Inspector shall contain such forms or worksheets as supplied and approved by the Inspector or at minimum:

- (1) A description of the final objective of the land-disturbing activity.
- (2) A specific time schedule for various stages of the land-disturbing activities.
- (3) Maps showing the following features should also be supplied:
 - (a) A true scale of not greater than one inch equals 200 feet and a contour interval of five feet or such interval sufficient to describe the topography. Not-to-scale sketches are not acceptable.
 - (b) Exact boundaries of the site including interior lines or easements, relations to nearest streets, roads, or highways, scale and north arrow, total acreage, and boundaries of the areas to be disturbed, as well as accurate estimates of their size, shall be shown.

(c) Existing conditions including buildings, creeks, or other bodies of water, culverts and bridges, road grades, areas of special environmental concern or those subject to severe erosion or flooding hazard, or other information which may be pertinent in evaluation of the plan.

(d) The location of access and haul roads, borrow pits, proposed structures, areas of cuts and fill, culverts, ditches, stream relocations, sediment basins, and other structural erosion control measures, and any non-vegetative ground covers such as paving, rip-rap, or other surfaces.

(4) Supporting documentation used for design of erosion control measures. including but not limited to:

(a) Runoff and drainage calculations, soil test results, velocity and discharge computations.

(b) Specifications for establishment and maintenance of vegetative ground covers including species to be used, lime and fertilizer application rates, time and method of planting, and type of mulch.

(H) A sediment control plan may be disapproved upon a finding that an applicant, or a parent, subsidiary or other affiliate of the applicant:

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

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

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

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

(5) For purposes of § 154.40(H), an applicant's record may be considered for only the two years prior to the application date.

(6) Has submitted an erosion control or sediment 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.

(I) The Inspector may require additional information from the applicant, at his or her discretion, to aid in determining the suitability of a submitted erosion and sediment control plan.

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

(K) Amendment to a plan.

(a) Application for an amendment to a plan may be made at any time in written or graphic form under the same conditions as the original application. Until the proposed amendment is approved by the Inspector, subject to all criteria set forth in this chapter, the permit holder may not proceed except in accordance with the original plan as approved.

(b) When an amendment is approved, the Inspector shall issue a new permit for the remaining time on the old permit plus the additional time as requested on the amendment.

(L) Reference to sediment control plan shall be deemed to be intended to be identical to and the same as references to erosion and sediment control plan, when appearing in this ordinance or in the General Statutes of North Carolina.

(M) Haywood County and/or the Commission shall condition approval of a draft erosion and sediment control plan upon the applicant's compliance with federal and state water quality laws, regulations and rules.

(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-7-00; Am. Ord. passed 2-19-01; Ord. passed 7-23-07) Penalty, see § 154.99

(N) 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. Any deviation from the approved erosion and sediment control plan that more than a minor field adjustment must be approved by the inspector prior to construction.

§ 154.41 PLAN REVISION AFTER INITIATION.

(A) Whenever the Inspector determines that significant sedimentation is occurring as a result of land-disturbing activities, despite application and maintenance of protective measures, the person conducting the land-disturbing activities will be required to and shall take additional protective action.

(B) If deemed appropriate by the Inspector the person conducting the land-disturbing activities shall submit an amendment or revision within the time specified by the Inspector. If an amendment or revised plan is neither approved or disapproved within 15 days after receipt by the Inspector, it is deemed approved.

(Ord. passed - -88; Am. Res. passed 1-7-93; Ord. passed 7-23-07) Penalty, see § 154.99

§ 154.42 RESPONSIBILITY FOR MAINTENANCE.

(A) *Maintenance during development.* The person conducting land-disturbing activities shall be responsible for maintaining and installing all temporary and permanent erosion control measures and vegetative covers as required by an approved sediment control plan or other provision of this chapter, the Act, or orders adopted pursuant to this chapter or the Act, during development of the site. After development is completed, the responsibility for installation and maintenance of all permanent erosion and sediment control measures, structures, or devices shall lie with the owner or person in possession or control of the property.

(B) *Maintenance after project completion.*

(1) Failure to properly maintain permanent erosion control measures after completion of the project constitutes a violation of this chapter unless located within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

(2) If maintenance of existing structures, measures, or devices are deemed inadequate by the Inspector, written notice of violation shall be served upon the landowner detailing the specific items of violation and setting a reasonable time frame for corrective action. Notices of violation shall be sent by registered or certified mail or other means. It shall further warn that failure to correct the violation in the time period specified will result in the assessment of a civil penalty or other enforcement action.

(Ord. passed - -88; Am. Res. passed 1-7-93; Ord. passed 7-23-07) Penalty, see § 154.99

§ 154.43 BORROW AND WASTE AREAS.

When the person conducting the land-disturbing activities is also the person conducting the borrow and waste disposal activities, areas from which borrow is obtained and which are not regulated by the Mining Act of 1971, being G.S. §§ 74-46 through 74-68, and waste areas for surplus materials other than landfills regulated by the Department's Division of Solid Waste Management, shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

(Ord. passed - -88; Am. Res. passed 1-7-93; Ord. passed 7-23-07)

§ 154.44 ACCESS AND HAUL ROADS.

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

(Ord. passed- -88; Am. Res. passed 1-7-93; Ord. passed 7-23-07)

§ 154.45 OPERATIONS IN LAKES OR NATURAL WATERCOURSES.

Land-disturbing activities in connection with construction on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in a streamflow's characteristics except when justification for a significant alteration to flow characteristic is provided.

(Ord. passed - -88; Am. Res. passed 1-7-93; Ord. passed 7-23-07) Penalty, see § 154.99

*PERMITS***§ 154.60 PERMITS TO CONDUCT LAND-DISTURBING ACTIVITY.**

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

- (1) For the purpose of fighting fires.
- (2) That does not exceed 21,780 square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.
- (3) For the stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage.

(B) The plan review fee charge is \$350 for each acre or parts of acres of land to be disturbed. An additional 10% of the total fee will be charged for any land-disturbing activity in areas of the county that may impact classified trout waters. Plan review fees shall be double the normal fee amount when land-disturbing activity begins before a Land-Disturbing Permit is obtained from the County. For a third or more plan review(s) as part of a submission, an additional fee of \$100 per acre or parts of an acre shall be charged. The plan review charge is \$50 per plan submission for any house site subject to a permit from the Haywood County Building Inspections Office (construction or placement) that is less than one-half acre in disturbed area. The plan review charge is \$50 per plan submission for commercial sites subject to a permit from the Haywood County Building Inspections Office which are less than one-half acre in disturbed area.

(1) To obtain a land-disturbing permit, the following is required for disturbed sites of one-half or more acres (21,780 square feet or more):

- (a) the completed form of financial responsibility and ownership,
 - (b) the completed and signed erosion and sediment control plan design checklist,
 - (c) the correct plan review fee,
 - (d) an approved erosion and sediment control plan (two copies),
 - (e) the completed affidavit for land-disturbing activities.
- (2) If the intent is to disturb one-half acre or more on a tract of land regardless of time frame, a land-disturbing permit must be obtained prior to beginning the land-disturbing activity.

(C) *Applications for permits.*

(1) Clear lines of communication between the Inspector and the person conducting the land-disturbing activities are essential not only for the success of the program outlined in this chapter, but to avoid costly delays and resubmittal of applications by the developer as well. This section outlines procedures which will insure speedy processing of applications for permits to conduct land-disturbing activities.

(2) The person conducting the land-disturbing activity shall submit the application to the Inspector for review and approval at least 30 days prior to initiating any land-disturbing activity covered by this chapter. Only applications received through registered or certified mail, or hand delivered, will be accepted. In addition, all applications must contain an erosion and sediment control plan which meets all requirements set forth in § 154.40 of this chapter.

(3) Prior to submitting a formal application for a permit, persons conducting land-disturbing activities may notify the Inspector, briefly describing the planned activity, persons responsible for design of sediment control measures, a tentative schedule of activities, and a request for application forms. A pre-application conference is strongly suggested to identify specific areas of concern to both the applicant and the Inspector. A permit will not be issued based upon a notification of intent.

(4) Forms, application requirements, and plan assistance are available upon request from the Inspector's office. All requests for pre-development planning, submission of plans and applications, and requests for assistance will be handled through the office of the Inspector.

(5) The Inspector shall review the application and accompanying plan for completeness and compliance with this chapter.

(a) Applications found to meet all requirements of this chapter shall be approved, and a permit to conduct land-disturbing activities will be issued by the Inspector within 30 days after receipt of the application.

(b) After review, applications which do not meet all requirements of this chapter shall be approved with modifications, approved with performance reservations, or disapproved. The application shall be returned to the applicant in writing detailing specific areas where the standards of this chapter have not been met. The applicant shall be notified within 30 days after receipt by the Inspector that the plan has been disapproved. If the application is disapproved, the applicant may resubmit the application after performing the necessary changes, for additional review. If the application is disapproved, no permit to conduct land-disturbing activities will be issued.

(c) For applications found to be partially complete, the Inspector shall request specific additional information by registered mail. If sufficient information is provided and the plan meets all requirements of this chapter, a permit to conduct land-disturbing activities shall be issued. When deemed necessary by the inspector, a permit may be issued with performance reservations or

approved contingent upon modifications to the plan. Under no circumstances shall the 30-day time period for approval or disapproval be extended by a request for additional information.

(d) Failure to approve or disapprove a properly submitted application for a permit to conduct land-disturbing activities within 30 days of receipt by the Inspector shall be deemed approval. A submitted revision to a previously disapproved application must be approved or disapproved within 15 days of receipt by the Inspector, or it is deemed approved.

(e) If, following commencement of a land-disturbing activity pursuant to an approved plan, the Inspector determines that the plan is inadequate to meet the requirements of this chapter, he or she may require such revisions as are necessary to comply with this chapter.

(6) If the submitted plan is approved by the Inspector, a permit to conduct land-disturbing activities shall be issued in the name of the applicant.

(a) Permits shall be issued for the specific time frame requested or for incremental time periods if requested on the application. The permit shall lapse at the end of the time frame specified. It may be reissued by the Inspector at the written request of the permit holder, when deemed necessary. Written request for an extension of a permit to conduct land-disturbing activities must be made in writing at least ten days prior to expiration of the existing permit.

(b) Permits shall be prominently displayed on the site until the project is certified complete by the Inspector or the release of all applicable surety. In addition, a copy of the approved sediment control plan shall be kept on hand at the job site at all times for inspection.

(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07) Penalty, see § 154.99

ADMINISTRATION AND ENFORCEMENT

§ 154.70 INSPECTIONS AND INVESTIGATIONS.

(A) The Inspector will periodically inspect the sites of land-disturbing activities to determine whether the activity is being conducted in accordance with the plan, the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter and to determine whether the measures required by the plan are effective in controlling erosion and sediment resulting from land-disturbing activities. For this purpose, he or she may enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each erosion and sediment control plan.

(B) The Inspector shall conduct on-site inspections of the work authorized by the permit to insure that the work is done in accordance with the approved erosion and sediment control plan and

meets all requirements of this chapter. If violation of the approved plan or other requirements of this chapter is found, the Inspector will serve upon the person responsible, by registered or certified mail or other means (including posting a notice on the site), reasonably calculated to give actual notice, a notice of violation of this chapter and shall revoke the issued permit to conduct land-disturbing activities. The notice may be served by any means authorized under G.S. § 1A-1, Rule 4. The specific violations, measures necessary to achieve compliance, and the time frame for correction of those items shall be set forth in the notice of violation. However, no time period for compliance need be given for obstructing, hampering, or interfering with an authorized representative while in the process of carrying out his or her official duties. If the items are not corrected in the specified time frame, enforcement action shall be initiated or a civil and criminal penalty imposed as provided in G.S. § 113A-64, effective from the date of receipt of the notice of violation.

(C) The Sediment Board shall have the power to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. No person shall refuse entry or access to any authorized representative or agent of the Inspector or the Sediment Board who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representatives while in the process of carrying out their official duties.

(D) The Inspector shall also have the power to require written statements or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activities.

(E) The Inspector, as employed and approved by the County Commissioners, shall be responsible to and act under the authority of the County Commissioners in consultation with the Sediment Board. The Inspector shall be responsible for all inspections, plan review and approval, initiation of penalties, and other responsibilities as outlined in this chapter.
(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

§ 154.71 EXISTING UNCOVERED AREAS.

(A) All uncovered areas existing on the effective date of this chapter resulting from land-disturbing activities covered under this chapter which contain one or greater acre in size, and are causing off-site sediment damage, and are subject to continued accelerated erosion shall be required to provide a ground cover or other adequate erosion control and sedimentation devices, measures, or structures sufficient to restrain accelerated erosion and control off-site sediment damage.

(B) If the person in possession or control of the property or the owner fails to comply with the provisions of this chapter:

(1) The Inspector will serve upon the landowner or other person in possession or control of the land written notice of violation by registered or certified mail return receipt requested, or other

means reasonably calculated to give actual notice which shall include the specific items of violation and set a reasonable time frame for compliance. In determining the measures required and the time allowed for compliance, the economic feasibility, technology, and quantity of work required shall be considered.

(2) The Inspector reserves the right to require the preparation and approval of a sediment control plan in any instance where extensive control measures are required.
(Ord. passed - -88; Am. Res. passed 1-7-93; Ord. passed 7-23-07)

§ 154.72 COMPLIANCE.

(A) Injunctive relief.

(1) Whenever the Inspector has reasonable cause to believe that any person is violating or threatening to violate any provision of this chapter, or any term or condition of an approved sediment control plan, he or she may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the county for injunctive relief to restrain the violation or threatened violation. The action will be brought in the Superior Court of Haywood County by the County Attorney.

(2) Upon determination by the court that an alleged violation is occurring or is threatened, it will enter such orders or judgments as necessary to halt the violation or prevent the threatened violation. The institution of an action for injunctive relief will not relieve any party to such proceedings from any civil or criminal penalties prescribed for violations of this chapter.

(B) If after the time specified in the notice of violation the site is not in compliance with an approved erosion and sediment control plan or all requirements of this chapter, the Inspector shall present written demand for payment upon the person in violation. The demand for payment shall detail the specific areas where the responsible person is in violation of this chapter.

(C) Civil penalties collected pursuant to this chapter shall be used or disbursed as directed by G.S. § 113A-64(a), and if not otherwise provided, such penalties shall be used in the administration of this chapter by the county.

(D) The period of time set in the notice of violation, as issued by the Inspector, for the site to come into compliance with this chapter is not exempt from accrual of civil penalties toward the person responsible for the land-disturbing activity.

(Ord. passed - -88; Am. Ord. passed 6-1-90; Am. Res. passed 1-7-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-19-01; Ord. passed 7-23-07) Penalty, see § 154.99

§ 154.73 SURETY.

(A) Application for a permit to disturb five or more acres shall require the posting of a security bond, with the Inspector, in the form of an escrow account, an account guaranteed by an established surety company or other instruments satisfactory to the County Attorney, in an amount of \$2500 per acre or parts of acres of disturbed area as set forth in the approved erosion and sediment control plan, to cover the costs of installation of sufficient erosion and sediment control measures and devices on the site in accordance with this chapter. Such surety shall be valid until the land-disturbing activity is completed in accordance with the approved sediment control plan and released by the Inspector as discussed in the following subsections.

(B) Land-disturbing activities not in compliance with this chapter or an approved sediment control plan for 31 calendar days after notice of violation is received through registered mail or certified mail or other means detailing specific items of violation, shall be subject to forfeiture of all applicable surety.

(C) Forfeiture of applicable surety shall in no way relieve responsible parties of penalties, fines, or other requirements of this chapter.

(D) Forfeited surety shall be used to establish erosion control structures or ground covers in accordance with an approved sediment control plan. Any monies in excess of cost of establishing protective measures shall be refunded to the person responsible for the land-disturbing activity.

(E) Upon completion of improvements as required by this chapter, written notice shall be given by the applicant, through registered or certified mail, to the county which shall perform an inspection of the improvements. If the conditions of this chapter are met, the county shall, within 30 calendar days of the date of notification of completion, authorize in writing the release of applicable surety. (Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

§ 154.74 APPEALS; HAYWOOD COUNTY SEDIMENT CONTROL BOARD.

(A) *Creation.* In order to provide a procedure for appeals, as outlined in division (C) of this section, the Haywood County Sediment Control Board (hereafter “Sediment Board”) is created. The Sediment Board shall be a five-member board composed of the following appointees:

(1) Two supervisors from the District Board, nominated by that board. An additional District Supervisor shall serve as an alternate.

(2) The Chairman of the Board of County Commissioners or his or her appointee.

(3) One appointee of the County Commissioners from each of the following groups or organizations:

(a) Haywood County Home Builders Association, or a private organization with similar functions.

(b) A licensed general contractor.

(4) All members shall be appointed to staggered four-year terms with all elected officials serving only during the duration of their office.

(5) Individuals nominated for the Sediment Board shall be approved by the Haywood County Board of Commissioners, who shall make the final appointments.

(6) In the event that qualified individuals from the designated organizations or groups are unavailable, the County Commissioners shall appoint members at large.

(B) *Responsibilities.* In addition, consistent with this chapter, the Sediment Board shall be responsible for providing direction and policy for the sediment control program in general. In addition, the Sediment Board shall make decisions in matters concerning forfeiture of surety, civil and criminal penalties, or injunctions against individuals in violation of this chapter, after consultation with the County Attorney.

(C) *Opportunities for appeal.*

(1) Except as provided in division (C)(2) of this section, the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:

(a) The disapproval or modification of an application for a permit to conduct land-disturbing activities by the Inspector will entitle the applicant to appeal to the Sediment Board.

(b) The determination of forfeiture of applicable surety shall be subject to appeal to the Sediment Board.

(c) A notice of violation for failure to maintain existing sediment-control structures or ground covers after completion of the project or a notice of violation for existing uncovered areas subject to continued erosion at the time of passage of this chapter shall be subject to appeal before the Sediment Board.

(2) The Inspector shall advise the applicant and the Sediment Board in writing as to the specific reason(s) that the plan was disapproved. The applicant may appeal the Inspector's disapproval of the plan pursuant to § 154.40(H) directly to the Sediment Board.

(D) Appeal hearings will be conducted within 30 calendar days after written request for appeal is received by the Sediment Board. Only written requests for appeal received within 15 days of any action by the Inspector which qualify for appeal will be considered. If the appeals hearing is not conducted within the specified time frame, the appeal is deemed upheld.

(E) If the Sediment Board upholds the action by the Inspector in the case of disapproval or modification of a submitted sediment control plan, the person submitting the appeal shall then be entitled to appeal the Sediment Board's decision to the Haywood County Board of Commissioners as provided by G.S. § 113A-61 (C) and Title 15 Adm. Code 4 (B) .0018b. Judicial review of the final action of the Haywood County Board of Commissioners shall be to the Superior Court of Haywood County, upon appeal by an aggrieved party.

(F) Any fines levied during the appeal period shall accrue and be payable by the responsible individuals so long as the violations remain. Upon conclusion of the appeals process, either the responsible party must pay all applicable fines or if the appeal is upheld, all applicable fines shall be forfeited by the county and returned to the successful appellant.

(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-7-00; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

§ 154.99 PENALTY.

Any person conducting land-disturbing activities who does not apply for a permit as specified in this chapter, or who conducts land-disturbing activities except in accordance with an approved erosion and sediment control plan shall be in violation of this chapter and subject to applicable penalties as follows:

(A) *Criminal penalties.* Any person who knowingly or willfully violates any provision of this chapter, or rule or order adopted or issued pursuant to this chapter, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion and sediment control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a misdemeanor punishable by imprisonment not to exceed 90 days, or a fine not to exceed \$5000, or both, in the discretion of the court.

(B) *Civil penalties.*

(1) Any person who initiates or continues a land-disturbing activity without an approved erosion and sediment control plan, or violates any of the provisions of this chapter, or orders or rules adopted pursuant to this chapter, or conducts land-disturbing activities except in accordance with an approved erosion and sediment control plan, shall be subject to a civil penalty other than a violation of a stop-work order issued under G.S. § 113A-65.1 of not more than \$5,000. The maximum civil penalty for a violation is \$5,000. A civil penalty may be assessed for the date of the initial violation. Each day of a continuing violation is a separate violation and subject to an additional \$5,000 fine. No additional civil penalty shall be assessed until the person alleged to be in violation has been notified as provided in G.S. § 113A-61.1(b). The notice shall describe the violation with reasonable time frames for corrective action specified, and warn that failure to correct the violations within the period specified will result in the assessment of a civil penalty or other enforcement action. If after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the date of the violation. However no time period for compliance need be

given for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties.

(2) *Civil penalty assessment for the date of the initial violation.*

For each acre of land disturbed on a tract which has no approved erosion and sediment control plan required by Chapter 154 of the Haywood County Code of Ordinances, the civil penalty assessment shall be \$500 per acre for the date of the initial violation. If an acceptable sediment and erosion control plan is submitted to the County within a reasonable time from the date of the initial violation (for this application and analysis, the date of the initial violation will be considered as “day one”), 45% of the civil penalty may be forgiven. If acceptable or reasonable measures are installed on the tract in violation before or by the end of the fifth day from the date of the initial violation (for this application and analysis, the date of the initial violation will be considered as “day one”), forty-five percent (45%) of the civil penalty may be forgiven. In any circumstance, if the violation for the “no approved plan” condition is committed knowingly and willfully, the civil penalty shall be no less than 100% of the total civil penalty for the date of the initial violation.

(3) The civil penalty may be \$100 plus \$1 for each linear foot of buffer zone violated for failure to retain along a lake or natural watercourse a buffer zone of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity.

(4) The civil penalty shall be \$100 and may include an additional \$5 for each linear foot of streamside buffer zone violated for failure to provide along trout waters an undisturbed buffer zone twenty-five feet wide or of sufficient width to confine visible siltation by natural or artificial means within 25% of that portion of the buffer zone nearest the land-disturbing activity, whichever is the greater width.

(5) A minimum civil penalty of \$50 per day may be assessed for each applicable violation listed below. The applicable daily civil penalties shall continue and accrue for each day the tract is in violation of the Chapter until the site is deemed by the County to be in compliance with this Chapter:

\$50 per day for no approved plan, § 154.20(A)(6) and § 154.20(B)(4) of this Chapter; G.S. 113A-54(d)(4), G.S. 113A-57(4) and 15 NCAC 04B.0107.

\$50 per day for failure to follow approved plan, § 154.70(A), (B) and § 154.42(a) of this Chapter; G.S. 113A-61.1(a) and 15A NCAC 04B.0113.

\$50 per day for “revised plan required”, § 154.41(A) and (B) of this Chapter; G.S. 113A-54.1(b) and 15A NCAC 04B.0118(a).

\$50 per day for failure to provide adequate ground cover, § 154.20(B)(2) and (3) or (if in HQW zone) § 154.23(B)(5) of this Chapter; G.S. 113A-57(3) and 15A NCAC 04B.0107(b) or (if in HQW zone) 15A NCAC 04B.0124(e).

\$50 per day for insufficient measures to retain sediment on site, § 154.20(B)(3) of this Chapter; G.S. 113A-57(3).

\$50 per day for “failure to take all reasonable measures,” § 154.20(A)(1) of this Chapter; 15A NCAC 04B.0105.

\$50 per day for “inadequate buffer zone,” § 154.20(B)(1) of this Chapter; G.S. 113A-57(1).

\$50 per day for “graded slopes and fills too steep,” § 154.20(B)(2) and (if in HQW zone) § 154.23(B) of this Chapter; G.S. 113A-57(2) and (if in HQW zone) 15A NCAC 04B.0124(d).

\$50 per day for “unprotected exposed slopes,” § 154.20(B)(2) of this Chapter; G.S. 113A-57(2).

\$50 per day for failure to maintain erosion control measures, § 154.42(A)(B) of this Chapter; 15A NCAC 04B.0113.

\$50 per day for failure to secure from the County a valid Land-Disturbing Permit prior to conducting a land-disturbing activity, § 154.60 of this Chapter.

\$50 per day for failure to comply with the design and performance standards for High Quality Water Zones (HQW’s), § 154.23 of this Chapter.

(6) *Restoration of areas affected by failure to comply.*

The County may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by § 154.20(B)(3) of this Chapter (and G.S. 113A-64.1), 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 penalty or injunctive relief authorized under this Chapter. ((1993 (Reg. Sess., 1994), c. 776, s.12.))

(7) Severability.

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

(Ord. passed - - 88; Am. Ord. passed 6-1-90; Am. Res. passed 1-7-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-7-00; Am. Ord. passed 2-19-01; Am. Ord. passed 7-23-07)

