

SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE

An Ordinance to provide for soil erosion and sedimentation control within the boundaries of Livingston County; definitions; application requirement; soil erosion and sedimentation control permits and soil erosion and sedimentation control plans; inspections; building and other permits; penalties; enforcement; construction; severability; repeal.

THE PEOPLE OF THE COUNTY OF LIVINGSTON, MICHIGAN, DO ORDAIN:

Article 1. Purpose and Authority. Deeming it advisable in the interest of preventing environmental harm caused by sedimentation and erosion; and to provide for, and as authorized by, the orderly and uniform administration of the soil erosion and sedimentation control provisions of the State of Michigan and in particular, part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994, as amended, being Sections 324.9101-324.9123a of the Compiled Laws of 1948 (MSA 13A.9101-13A.9123a), and the Administrative Rules promulgated by the Michigan Department of Environmental Quality (“MDEQ”) and in particular, Rule 323.1701 to Rule 323.1714; the County of Livingston, Michigan, does hereby adopt the following Ordinance:

Article 2. Ordinance Title. The title of this Ordinance shall be the Soil Erosion and Sedimentation Control Ordinance.

Article 3. Definitions.

ACCELERATED SOIL EROSION: the increased loss of the land surface that occurs as a result of human activities.

ACCEPTABLE EROSION AND SEDIMENT CONTROL PROGRAM: the activities of a county or local enforcing agency or authorized public agency that are conducted in accordance with the Act and the Rules regarding staff training, developing and reviewing plans, issuing permits, conducting inspections, and initiating compliance and enforcement actions to effectively minimize erosion and off-site sedimentation.

ACT: Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended.

ADMINISTRATIVE POLICY: administrative guidelines to the Ordinance.

AUTHORIZED LOCAL OFFICIAL: the Chief Deputy Drain Commissioner or other personnel of Livingston County legally authorized to issue municipal civil infraction citations.

CHIEF DEPUTY DRAIN COMMISSIONER: the person designated by the Livingston County Board of Commissioners as one of the persons responsible for enforcing the Act, Rules and this Ordinance in the County.

CITATION: a written complaint or notice to appear in District Court upon which an authorized local official records the occurrence of existence of one (1) or more violations of the Act, the Rules and/or this Ordinance by the party cited.

COUNTY: the County of Livingston, Michigan.

COUNTY AGENCY: an officer, board, commission, department, or other entity of county government.

COUNTY DRAIN: drains established and/or constructed pursuant to the Michigan Drain Code, Act 40 of the Public Acts of 1956, as amended.

COUNTY ENFORCING AGENCY: the Livingston County Drain Commissioner's Office, as designated by the Livingston County Board of Commissioners.

DEPUTY DRAIN COMMISSIONER: a person designated by the Livingston County Board of Commissioners as one of the persons responsible for enforcing the Act, Rules and this Ordinance in the county.

DESIGNATED AGENT: a person who has written authorization from the landowner to sign the application and secure a permit in the landowner's name.

DISTRICT COURT: 53rd Judicial District Court.

DRAIN: a drain that is a County Drain or a Storm Drain, as defined in this section.

DRAIN COMMISSIONER: a person designated by the Livingston County Board of Commissioners as one of the persons responsible for enforcing the Act, Rules and this Ordinance in the County.

DRAIN COMMISSIONER'S OFFICE: the Livingston County Drain Commissioner or his representative.

EARTH CHANGE: a human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.

LAKE: the Great Lakes and all natural and artificial inland lakes or impoundments that have definite banks, a bed, visible evidence of a continued occurrence of water, and a surface area of water that is equal to, or greater than, 1 acre. "Lake" does not include sediment basins and basins constructed for the sole purpose of storm water retention, cooling water, or treating polluted water.

LANDOWNER: the person who owns the property or who holds a recorded easement or who is engaged in construction in a public right-of-way in accordance with sections 13, 14, 15, and 16 of Act No. 368 of the Public Acts of 1925, as amended.

LOCAL AGENCY: a county, city, village, or charter township.

MAJOR PROJECTS: earth changes that meet or exceed one (1) acre for commercial, industrial and/or residential subdivision projects. For single family projects, improvements exceeding 600 square feet.

MINOR PROJECTS: earth changes that are less than one (1) acre for commercial, industrial and/or residential subdivision projects. For single family projects, improvements that are less than 600 square feet.

MUNICIPAL CIVIL INFRACTION: an act or omission that is prohibited by the Act, the Rules and/or this Ordinance, and for which civil sanctions including without limitation, fines, damages, expenses and costs may be ordered as authorized by Chapter 87 of Act No. 236 of the Public Acts of 1961, as amended.

MUNICIPAL CIVIL INFRACTION ACTION: a civil action in which the defendant is alleged to be responsible for a municipal civil infraction.

NON-EROSIVE VELOCITY: a speed of water movement that is not conducive to the development of accelerated soil erosion.

PERMANENT SOIL EROSION AND SEDIMENTATION CONTROL MEASURES: control measures which are installed or constructed to control soil erosion and sedimentation and which are maintained after project completion.

POND: an artificially enclosed body of water or body of standing water smaller than a lake.

RULES: the administrative rules promulgated by the Michigan Department of Environmental Quality (MDEQ), pursuant to the Act, being Rules 323.1701 to 323.1714.

SEDIMENT: solid particulate matter, including both mineral and organic matter, that has been deposited in water, is in suspension in water, is being transported, or has been removed from its site of origin by the actions of wind, water, or gravity and has been deposited elsewhere.

SEDIMENT BASIN: a naturally occurring or constructed depression used for the sole purpose of capturing sediment during or after an earth change activity.

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

STABILIZATION: the establishment of vegetation or the proper placement, grading, or covering of soil to ensure its resistance to soil erosion, sliding, or other earth movement.

STATE: State of Michigan.

STORM DRAIN: a conduit, pipe, natural channel, or human-made structure which serves to transport storm water runoff.

STORM WATER RETENTION BASIN: an area which is constructed to capture surface water runoff and which does not discharge directly to a lake or stream through an outlet. Water leaves the basin by infiltration and evaporation.

STREAM: a river, creek, or other surface watercourse which may or may not be serving as a drain as defined in Act No. 40 of the Public Acts of 1956, as amended, and which has definite banks, a bed, and visible evidence of the continued flow or continued occurrence of water, including the connecting waters of the Great Lakes.

SURFACE WATER: any water including ponds, lakes, streams, drains, and wetlands.

TEMPORARY SOIL EROSION AND SEDIMENTATION CONTROL MEASURES: interim control measures which are installed or constructed to control soil erosion and sedimentation and which are not maintained after project completion.

VIOLATION: an action which is prohibited by the Act, the Rules and/or this Ordinance. A violation shall include any omission or failure to act where the action is required by the Act, the Rules, and/or this Ordinance.

WETLAND: land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh as defined in Part 303 of Act No. 451 of the Public Acts of 1994, as amended.

Article 4. Assumption and Enforcement of the Act. The County hereby assumes responsibility for the administration and enforcement of the Act and the Rules within its political boundaries.

Article 5. Enforcing Agency. In accordance with the Act, the Drain Commissioner's Office of the County is hereby designated as the County Enforcing Agency to discharge the responsibilities of the County under the Act and the Rules.

Article 6. Grading/Soil Erosion and Sedimentation Control Application For Permit, Waivers, and Soil Erosion and Sedimentation Control Plan Requirements.

A. Application Required: An application must be submitted if a grading/soil erosion and sedimentation permit is required, as set forth in Article 6.C.

Soil erosion and sedimentation control plans as set forth in Article 6.E. shall be included with the applications.

Applications are made through:

Livingston County Drain Commissioner's Office
Soil Erosion and Sedimentation Control Program
2300 E. Grand River, Suite 105
Howell, Michigan 48843-7581

B. Waivers: Individuals seeking a waiver will be required to submit an affidavit attesting to the extent of the earth change. A waiver will be issued for the following earth changes, although an application and a grading/soil erosion and sedimentation control permit are not required:

- (1) Earth changes over 500 feet from surface water and that measure under one (1) acre;
- (2) Earth changes for clean up of emergency environmental incidents as defined by Michigan Department of Environmental Quality (MDEQ).
- (3) Earth disturbance less than 225 square feet that will not contribute sediment to surface waters; and

Waivers issued in accordance with this Ordinance do not relieve the landowner, designated agent, or developer of responsibility for controlling erosion and sedimentation. Waivers shall not be construed as exemptions from enforcement procedures pursuant to the Act, the Rules or this Ordinance, if the activity caused or resulted in a violation of the Act, the Rules or this Ordinance. Waivers shall be available for inspection at the site of the earth change and must be required to be posted on-site and clearly visible from the road.

C. Grading/Soil Erosion and Sedimentation Control Permit Required

A grading/soil erosion and sedimentation control permit shall be required for a landowner, who contracts for, allows, or engages in an earth change in this County pursuant to the Act and the Rules. An application must be submitted and a grading/soil erosion and sedimentation control permit must be obtained from the Drain Commissioner's Office prior to engaging in the following:

- (1) Commencement of an earth change which disturbs one (1) or more acres of land;
- (2) Engaging an earth change within 500 feet of the water's edge of surface water, unless otherwise exempted in the Act, the Rules or this Ordinance;
- (3) Any other activity not specifically exempted under Article 6.D.

Permits shall be available for inspection at the site of the earth change and are required to be posted on-site and clearly visible from the road. Any unauthorized work shall be considered a violation of this Ordinance regardless of any later action taken toward compliance. Approved Plans must be available on-site for commercial, industrial, and residential subdivision projects.

A person who knowingly makes a false statement in an application for a permit or in a soil erosion and sedimentation control plan is responsible for the payment of a civil fine of not more than \$10,000.00 for each day of violation.

D. Grading/Soil Erosion and Sedimentation Control Application and Permit Not Required

Neither an application, a grading/soil erosion and sedimentation control permit, nor a waiver is required for any of the following:

- (1) Normal road and driveway maintenance, such as grading or leveling, that does not increase the width or length of the road or driveway and that will not contribute sediment to lakes or streams.
- (2) An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance and that will not contribute sediment to lakes or streams.
- (3) Installation of oil, gas, and mineral wells under permit from the supervisor of wells, if the owner-operator is found by the supervisor of wells to be in compliance with the conditions of the Act.
- (4) A person engaged in the logging industry, mining industry, or the plowing or tilling of land for the purpose of crop production or the harvesting of crops. This exemption from obtaining a permit does not include either a) access roads to and from the site where active mining or logging is taking place or b) ancillary activities associated with logging and mining. Mining does not include the removal of clay, gravel, sand, peat or topsoil.

The landowner, designated agent, or contractor shall remain responsible for controlling erosion and sedimentation. A permit exemption shall not be construed as an exemption from enforcement procedures pursuant to the Act, the Rules or this Ordinance, if the activity caused or resulted in a violation of the Act, the Rules or this Ordinance. The removal of clay, gravel, peat, sand, and topsoil does require a grading/soil erosion and sedimentation control permit, even if done for mining purposes.

E. Soil Erosion and Sedimentation Control Plan Requirements

A person who is required to obtain a grading/soil erosion and sedimentation control permit as set forth in Section C. above shall prepare or have prepared a soil erosion and sedimentation control plan for all major projects. Except for single family permits, the soil erosion and sedimentation control plan shall be prepared under the direction of a professional engineer, certified in Michigan, unless waived in writing by the Drain Commissioner's Office. The layout shall be drawn to a scale of not more than 1" = 100'. Only one set of plans needs to be submitted for single family permits. All other applications must contain two sets of plans.

The plan shall include, but not be limited to, the following:

- (a) Name, address, and telephone numbers of the landowner, developer, and petitioner, if different;
- (b) Legal description of the affected parcel of land;
- (c) A map or maps at a scale of not more than 100 feet to the inch or as otherwise determined by the Drain Commissioner's Office. A map shall include a legal description and site location sketch that includes the proximity of any proposed earth change to lakes, streams, or both; predominant land features; and contour intervals or slope description.

- (d) A soils survey or a written description of the soil types of the exposed land area contemplated for the earth change.
- (e) Details for proposed earth changes, including all of the following:
 - (i) A description and the location of the physical limits of each proposed earth change.
 - (ii) A description and the location of all existing and proposed on-site drainage and dewatering facilities.
 - (iii) The timing and sequence of each proposed earth change.
 - (iv) The location and description of installing and removing all proposed temporary soil erosion and sediment control measures.
 - (v) A description and the location of all proposed permanent soil erosion and sediment control measures.
 - (vi) A program proposal for the continued maintenance of all permanent soil erosion and sediment control measures that remain after project completion, including the designation of the person responsible for the maintenance. Maintenance responsibilities shall become a part of any sales or exchange agreement for the land on which the permanent soil erosion control measures are located.

Article 7. Grading/Soil Erosion and Sedimentation Control Permit Approvals and Performance Guarantees.

A. Requirements

Prior to commencing any earth change including construction of access roads, driveways, tree and shrub removal, or grading, an application for a grading/soil erosion and sedimentation control permit (“permit”), as set forth in Article 6, shall be submitted to the Drain Commissioner’s Office as required by the Act, the Rules and this Ordinance. The Drain Commissioner’s Office shall have thirty (30) calendar days to review the application and issue or deny a permit.

Livingston County Drain Commissioner
 Soil Erosion and Sedimentation Control Program
 2300 E. Grand River, Suite 105
 Howell, MI 48843-7581

Each permit application shall be accompanied by soil erosion and sedimentation control plans as follows: single family permits require submittal of one (1) copy of the proposed soil erosion and sedimentation control plan, all other permits require submittal of two (2) copies of the proposed soil erosion and sedimentation control plan prepared under the direction of a professional engineer, certified in Michigan, unless waived in writing by the Drain Commissioner’s Office. For single family permits, the Drain Commissioner’s

Office shall make a determination as to whether the project is a major project or minor project. In all cases, any other documentation the Drain Commissioner's Office may require to make its determination must be submitted. The permit application shall be signed by the landowner and his/her designated agent, if applicable. The cost of the permit shall be determined by resolution by the Livingston County Board of Commissioners, which shall be amended from time to time.

B. Denial of Permit

Grading/soil erosion and sedimentation control permit requests shall be denied where:

- (1) The proposed grading would cause hazards to the public safety and welfare; or
- (2) The application submitted is incomplete;
- (3) The soil erosion and sedimentation resulting from the work, as proposed by the applicant, will damage public or private property; or
- (4) The drainage design does not conform to Livingston County Drainage Standards.

C. Performance Guarantees

As a condition for the issuance of a permit for commercial, industrial, or residential subdivision projects, the County is authorized to require the applicant to deposit with the Clerk of the County a performance guarantee in the form of cash, a certified check, or an irrevocable bank letter of credit, as selected by the applicant, or a surety bond acceptable to the County Board of Commissioners, in an amount sufficient to assure the installation and completion of such protective or corrective measures as may be required by the County. The performance guarantee will be returned to the applicant when the site is permanently stabilized and has met all requirements set forth in the Act and this Ordinance. Performance guarantees may be required for single family residences.

D. Approval from Other Governmental Agencies

Grading/soil erosion and sedimentation control permits and waivers issued in accordance with this Ordinance do not relieve the owner of responsibility for obtaining all other necessary permits or approvals from federal, state, and/or county agencies. If requirements vary, the most stringent requirements shall be followed.

Article 8. Permit and Soil Erosion and Sedimentation Control Plan Approval Process.

The Drain Commissioner's Office shall approve, disapprove, or require modification of an application for an earth change permit within thirty (30) calendar days following receipt of the application. The review period begins upon the receipt of a completed application, soil erosion and sedimentation control plan, and payment of fees. The Drain Commissioner's Office shall notify an applicant of approval by first-class mail or in person. If an application is disapproved,

the Drain Commissioner's Office shall advise the applicant by first-class mail or in person of its reasons for disapproval and conditions required for approval. The Drain Commissioner's Office shall not notify an applicant of approval or disapproval by mail if the applicant is given written approval or disapproval of the application in person. A permit given to the applicant either in person or by first-class mail constitutes approval.

Upon a determination that a permit application has met all of the requirements of the Act, the Rules and this Ordinance, the Drain Commissioner's Office shall issue a permit for the proposed earth change.

Single family construction permits are valid for up to one (1) year from date of issuance as determined by the soil erosion and sedimentation control plan. Extensions may be permitted prior to expiration, up to one (1) additional year, upon written approval of the Drain Commissioner's Office. Extensions shall be granted if the site is in compliance with the Act, the Rules and this Ordinance, namely, the site must be in compliance with sedimentation control measures. An inspection shall be conducted prior to the granting of an extension as set forth in Article 10.B. Permit extensions will not be granted to sites that fail the inspection or to sites where the permit has expired.

Commercial/industrial/residential subdivision project permits are valid for two (2) years from date of issuance. Permit extensions may be granted from year to year thereafter, as necessary, upon written approval of the Drain Commissioner's Office. Extensions shall only be granted if the site is in compliance with the Act, the Rules and this Ordinance. An inspection shall be conducted prior to the granting of an extension as set forth in Article 10.B. Permit extensions will not be granted to sites that fail the inspection or to sites where the permit has expired.

In all instances, permit extensions shall not be granted until all applicable fees are paid.

Article 9. Permit Availability. Grading/soil erosion and sedimentation control permits issued by the Drain Commissioner's Office, pursuant to the Act and the Rules, shall be available for inspection at the site of the earth change and are required to be posted on-site and clearly visible from the road. The soil erosion and sedimentation control plans for commercial/industrial/residential sites shall be available at the site.

Article 10. Inspections and Reporting Requirements.

A. Inspections Prior to Commencement of Project

A preliminary review may be required by the Drain Commissioners Office between the applicant, contractor(s), and the Drain Commissioner's Office on-site to review the permit and/or plan responsibilities and requirements. Site-specific requirements for erosion and sedimentation control shall be determined and added to the permit. Temporary soil erosion and sedimentation controls shall be installed prior to, or upon commencement of, the earth changes. The applicant shall contact the Drain Commissioner's Office no later than two (2) business days prior to commencing work so that a site inspection may be performed. If the site passes the inspection, the Drain Commissioner's Office shall recommend that the County Building Department issue a Building Permit, if necessary. If a building permit is not required, the earth change activity may begin.

B. Inspections During and Upon Completion of Project and for Permit Extensions

The Drain Commissioner's Office may enter at all reasonable times upon any property to conduct an on-site inspection to ensure compliance with the Act, the Rules or this Ordinance. Such inspections may take place before, during, and after any earth change activity whether or not an application has been made or a permit has been issued. The cost of the inspections and re-inspections due to violations shall be paid to Livingston County in accordance with a fee schedule determined by resolution by the Livingston County Board of Commissioners, which shall be amended from time to time.

If, upon inspection, existing site conditions are found to be in conflict with an approved permit or plan, a cease and desist order may be issued, as set forth in Article 13, an injunction may be issued as set forth in Article 14, and/or the landowner and/or permittee cited for a municipal civil infraction violation as set forth in Article 16. No earth moving shall be done unless authorized for the purpose of protection until revised plans have been submitted, reviewed, approved, and the permit or plan has been modified.

When ready to close a commercial, industrial, or residential subdivision, or single family permit, the applicant shall request a final inspection for permit closure. Final inspections are performed only during the growing season, as defined in the Michigan Department of Transportation Seeding Standards, which is from April 15 to October 15. If the applicant does not request a final inspection, the Drain Commissioner's Office may conduct a final inspection within thirty (30) days before or after the expiration of the permit.

The following requirements must be met for closure of commercial, industrial, and residential subdivision permits, unless otherwise indicated:

- (1) All disturbed areas are permanently stabilized in a manner to prevent soil movement or loss from erosive forces such as rain, ice, gravity, wind, and human activities.
- 2) Any temporary controls have been removed.
- (3) The applicant's professional engineer has submitted a letter certifying the site is completed and stabilized per the approved soil erosion and sedimentation control plan. This requirement is not applicable for single family permits.
- 4) All permanent erosion control measures are in place and maintained.
- 5) The Drain Commissioner's Office has received an as-built plan at the same scale as the original plan which shows all improvements and final grades. The plan must be sealed by a registered professional engineer in the State of Michigan, and must contain as-built elevations of all surface and subsurface drainage structures. Sufficient as-built topography of detention or retention basins must be provided to demonstrate that the storm water management basins contain the volumes indicated in the approved plan. This requirement is not applicable for single family permits.

To obtain a commercial/industrial/residential subdivision project permit extension, the permit holder, or authorized representative, shall request the Drain Commissioner's Office to inspect the site. The inspection shall be conducted prior to the-second year anniversary of the

permit or prior to the close of the growing season preceding the expiration of the permit. No extensions will be granted if the site fails the inspection, i.e., if not in compliance with the soil erosion and sedimentation control plan, as set forth in Article 8. If the site is in violation of the Act, Rules or this Ordinance, enforcement proceedings will commence.

C. Reporting Requirements

A National Pollution Discharge Elimination System (“NPDES”) permit holder shall submit a copy of MDEQ-required storm water operational reports to the Drain Commissioner’s Office upon request.

Article 11. Building Permits. A township, city, village, or any county agency which issues building permits shall notify the Drain Commissioner’s Office upon receipt of an application for a building permit that requires an earth change which disturbs one (1) or more acres or which is located within 500 feet of surface water under the Act, the Rules and this Ordinance. A township, city, village, or any county agency shall not issue the building permits to a person engaged in an earth change if the change requires a permit under the Act, the Rules or this Ordinance until the Drain Commissioner’s Office has issued the required state-prescribed permit for the earth change. Revocation of soil erosion permit by the Drain Commissioner’s Office may result in revocation of a building permit.

Article 12. Permits Issued by County and State Agencies. Approvals under this Ordinance shall not relieve a property owner of the need to obtain other permits or approvals from federal, state, county, and local agencies. When requested by the Drain Commissioner’s Office, the recipient of a grading/soil erosion and sedimentation control permit shall provide the Drain Commissioner’s Office with copies of required permits from Livingston County Health Department, Livingston County Road Commission, Livingston County Building Department, and/or state agencies including but not limited to the Michigan Department of Environmental Quality (MDEQ).

Article 13. Notice of Erosion and Sedimentation. If the Drain Commissioner’s Office determines that soil erosion or sedimentation of adjacent properties or the water of the State has or will reasonably occur from land in violation of the Act, the Rules or this Ordinance, the Drain Commissioner’s Office may seek to enforce the violation by notifying the person who owns the land, by mail with return receipt requested, of its determination to cease and desist all activities. The notice shall contain a description of the violation and what must be done to remedy the violation. The landowner shall have five (5) calendar days from the mailing date in which to implement and maintain soil erosion and sedimentation control measures in conformance with the Act, the Rules and this Ordinance.

If the landowner has not corrected the condition on the land within five (5) calendar days, the Drain Commissioner’s Office may proceed accordingly. In its discretion, if no action has been taken within five (5) calendar days by the landowner, the Drain Commissioner’s Office may send notice to the landowner that the permit will be revoked in five (5) calendar days if the violation is not corrected. Revocation of the permit shall affect other contingent permits.

Concurrently or alternatively, the Drain Commissioner’s Office may enter upon the land to construct, implement, and maintain soil erosion and sedimentation control measures in conformance with the Act, the Rules and this Ordinance. The Drain Commissioner’s Office shall not expend more than \$10,000.00 for the cost of the work, materials, or labor without prior

written notice to the person who owns the land that the expenditure of more than \$10,000.00 may be made.

A person who fails to cease and desist the activities after receiving notice of the violation is responsible for the payment of a civil fine of \$2,500.00 the first day of violation, \$5,000.00 the second day of violation, \$10,000.00 the third day of violation, and \$25,000.00 thereafter for each subsequent day of violation.

The County shall have a lien for the expenses incurred to bring the land into conformance with the Act, the Rules and this Ordinance. With respect to single-family or multi-family residential property, the lien for such expenses shall have priority over all liens and encumbrances filed or recorded after the date of such expenditure, pursuant to the Act. With respect to all other property, the lien for such expenses shall be collected and treated in the same manner as provided for property tax liens under the general property tax act being Act 206 of the Public Act of 1893, as amended.

Article 14. Injunctions. Notwithstanding any remedy and penalty provided in Article 13, the County may maintain an action in its own name in a court of competent jurisdiction for an injunction or other process against any person to restrain or prevent violation of the Act, the Rules or this Ordinance.

Article 15. Municipal Civil Infraction Action; Commencement. A municipal civil infraction action may be commenced upon the issuance by an authorized local official of a municipal civil infraction citation directing the alleged violator to appear in District Court.

Article 16. Municipal Civil Infraction Citations; Issuance and Service. Municipal civil infraction citations shall be issued and served by an authorized local official as follows:

- A. The time for appearance specified in a citation shall be within ten (10) days after the citation is issued.
- B. The place for appearance specified in a citation shall be the 53rd Judicial District Court.
- C. Each citation shall be numbered consecutively and shall be in a form approved by the State Court Administrator. The original citation shall be filed with the District Court. Copies of the citation shall be retained by the County and issued to the alleged violator as provided by Section 8705 of Act No. 236 of Public Acts of 1961, as amended.
- D. A citation for a municipal civil infraction signed by an authorized local official shall be treated as made under oath if the violation alleged in the citation occurred in the presence of the official signing the complaint and if the citation contains the following statement immediately above the date and signature of the official: **I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge and belief.**
- E. An authorized local official who witnesses a person commit a municipal civil infraction shall prepare and subscribe, as soon as possible and as completely as possible, an original and required copies of a citation.
- F. An authorized local official may issue a citation to a person if:

- (1) Based upon investigation, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction; or
 - (2) Based upon investigation of a complaint by someone who allegedly witnessed the person commit a municipal civil infraction, the official has reasonable cause to believe that the person is responsible for an infraction and if the County attorney approves in writing the issuance of the citation.
- G. Municipal civil infraction citations shall be served by an authorized local official as follows:
- (1) Except as provided in Article 15G(2) below, an authorized local official shall personally serve a copy of the citation upon the alleged violator.
 - (2) If the municipal civil infraction action involves the use or occupancy of land, a building, or other structure, a copy of the citation does not need to be personally served upon alleged violation, but may be served on an owner or occupant of land, building, or structure by posting the copy on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by first-class mail to the owner of the land, building, or structure at the owner's last known address.

Article 17. Municipal Civil Infraction Citations; Contents.

- A. A municipal civil infraction shall name the County as Plaintiff and shall contain the name and address of the Defendant, the municipal civil infraction alleged, the place where the Defendant shall appear in court, the telephone number of the court, and the time at or by which the appearance shall be made.
- B. The citation shall inform the Defendant that he or she may do one of the following:
 - (1) Admit responsibility for the municipal civil infraction by mail, in person, or by representation, at or by the time specified for appearance.
 - (2) Admit responsibility for the municipal civil infraction "with explanation" by mail by the time specified for appearance, or in person, or by representation.
 - (3) Deny responsibility for the municipal civil infraction by doing either of the following:
 - (a) Appearing in person for an informal hearing before the Judge or Magistrate of the District Court without the opportunity of being represented by an attorney, unless a formal hearing before the District Court's Judge is requested by the County.
 - (b) Appearing in the District Court for a formal hearing before the District Court's Judge, with the opportunity of being represented by an attorney.
- (4) The citation shall also inform the Defendant of all of the following:

- (a) That if the Defendant desires to admit responsibility “with explanation” in person or by representation, the Defendant must apply to the District Court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time for an appearance.
- (b) That if the Defendant desires to deny responsibility, the Defendant must apply to the District Court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time to appear for a hearing, unless a hearing date is specified on the citation.
- (c) That a hearing shall be an informal hearing unless a formal hearing is requested by the Defendant or the County.
 - (d) That, at an informal hearing, the Defendant must appear in person before the District Court’s Judge or Magistrate, without the opportunity of being represented by an attorney.
 - (e) That, at a formal hearing, the Defendant must appear in person before the District Court’s Judge with the opportunity of being represented by an attorney.
- (5) The citation shall contain a notice in boldfaced type that the failure of the Defendant to appear within the time specified in the citation or at the time scheduled for a hearing or appearance is a misdemeanor and will result in the entry of a default judgment against the Defendant on the municipal civil infraction.

Article 18. Establishment of Schedule of Civil Fines.

- A. A schedule of civil fines for violations of the Act, the Rules and this Ordinance is hereby established. The fines for the violations shall be as follows:
 - (1) For the first citation issued to a Defendant who admits or is found by the District Court to have violated the Act, the Rules and this Ordinance, the civil infraction fine shall be \$1,000.00 for the first violation cited and an additional \$1,000.00 for each additional violation listed within the citation, up to but not to exceed \$2,500.00. In addition to such fines, the Defendant shall pay such costs and damages and expenses as may be set by the District Court, as authorized by Section 8727 of Act No. 236 of the Public Acts of 1961, as amended and shall be liable to the State for damages for injury to, destruction of, or loss of natural resources resulting from the violation. The District Court may order a person who violates the Act, the Rules and the Ordinance to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.
 - (2) For a second citation issued to a Defendant who admits or is found by the District Court to have committed repeated violations of the Act, the Rules and this Ordinance the civil infraction fine shall be \$1,750.00 for each repeat violation. As used in this section, “repeat violations” means a

second violation of the same requirement or provision (i) committed by the Defendant within any one (1) year period, and (ii) for which the Defendant admits responsibility or is determined to be responsible. In addition to such fines, the Defendant shall pay such costs and damages and expenses as may be set by the District Court, as authorized by Section 8727 of Act No. 236 of the Public Acts of 1961, as amended and shall be liable to the State for damages for injury to, destruction of, or loss of natural resources resulting from the violation. The District Court may order a person who violates the Act, the Rules and this Ordinance to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.

(3) For any subsequent citation issued to a Defendant who admits or is found by the District Court to have committed repeated violations of the Act, the Rules and this Ordinance the civil infraction fine shall be \$2,500.00 for each repeat violation. As used in this section, "repeat violations" means a third or more violation of the same requirement or provision (i) committed by the Defendant within any one (1) year period, and (ii) for which the Defendant admits responsibility or is determined to be responsible. In addition to such fines, the Defendant shall pay such costs and damages and expenses as may be set by the District Court, as authorized by Section 8727 of Act No. 236 of the Public Acts of 1961, as amended, and shall be liable to the State for damages for injury to, destruction of, or loss of natural resources resulting from the violation. The District Court may order a person who violates the Act, the Rules and this Ordinance to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.

- B. A person who knowingly violates the Act, the Rules, and this Ordinance is also responsible for the payment of a civil fine of not more than \$10,000.00 for each day of continuing violation.
- C. Failure to appear at the District Court within the time specified in a citation or at the time scheduled for a hearing or an appearance is a misdemeanor and will result in entry of a default judgment against the Defendant on the municipal civil infraction.
- D. Failure to comply with an order, judgment, or default in payment of a civil fine, costs, damages, or expenses, so ordered may result in enforcement actions, including but not limited to, imprisonment on civil contempt which shall not exceed one (1) day for each \$30.00 due, collections, placements of liens, or other remedies as permitted by Chapter 87 or Act 236 or Public Acts of 1961, as amended.

D. A municipal civil infraction is not a lesser included offense of a criminal offense or an ordinance violation that is not a civil infraction.

Article 19. Fees. All costs and fees shall be paid to Livingston County in accordance with a fee schedule determined by resolution by the Livingston County Board of Commissioners, copy attached, which shall be amended from time to time.

Article 20. Administrative Policies. Administrative polices are available to assist individuals in complying with soil erosion control measures in accordance with the Act, the Rules and this Ordinance.

Article 21. Construction. When not inconsistent with the context, words used in the present tense include the future. Words in the singular include the plural and words in the plural include the singular. Masculine shall include a feminine and neuter. The word "shall" is always mandatory and not merely directive. Words or terms not defined herein shall be interpreted as defined in statutes, regulations, or codes to which they apply or if not so defined shall be defined in the manner of their common meaning. Headings shall be deemed for convenience and shall not limit the scope of any section of this Ordinance.

Article 22. Severability. The various parts, sections, subsections, paragraphs, sentences, phrases, and clauses of this Ordinance are hereby declared to be severable. If any part, section, subsection, paragraph, sentence, phrase or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, it shall be considered severed from this Ordinance and shall not be construed as affecting the validity of the remaining portions of this Ordinance.

Article 23. Repeal. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Article 24. Savings Clause. This Ordinance does not affect rights and duties matured, penalties that were incurred, and proceedings that were begun, before its effective date.

Article 25. Effective Date of Ordinance. This Ordinance shall take effect when notice of its adoption is published in a newspaper of general circulation in the County.