

**MARYLAND DEPARTMENT OF THE ENVIRONMENT  
WATER AND SCIENCE ADMINISTRATION**

**EROSION AND SEDIMENT CONTROL ENFORCEMENT AUTHORITY  
DELEGATION CRITERIA**

The criteria below is taken directly from the Code of Maryland Regulations (COMAR) and represents the minimum standards that a local jurisdiction must meet prior to being granted delegation of erosion and sediment control enforcement authority. In addition to meeting these criteria, and addressing Water and Science Administration (Administration) recommendations if previously delegated, an assessment of the quality of approved sediment control plans will be made to improve enforceability of those plans and plan quality. The Soil Conservation District (SCD) will be contacted to participate in field inspections to assist with the plan quality evaluation for successful erosion and sediment control implementation.

The erosion and sediment control ordinance and procedures promulgated by any jurisdiction seeking delegation shall reflect the standards set forth in items I (Exemptions), III (Inspection), and IV (Enforcement) below. Field implementation of these standards as well as previously documented field performance shall be considered by the Maryland Department of the Environment prior to granting or denying delegation.

Items I (Exemptions), II (Permits), and V (Penalties) below reiterate existing requirements of the State Sediment Control Law. The local ordinance and procedures may be more restrictive if desired except in the area of penalties, which are limited to the maximum allowed by State law. Any county, municipality, or the Washington Sewer and Sanitary Commission (WSSC) may use this penalty section. However, local jurisdictions with express power to enact local ordinances that provide for criminal and civil penalties may enact similar penalty provisions in local erosion and sediment control ordinances.

I. Exemptions

The following exemptions are the only allowed exemptions:

- A. Agricultural land management practices and agricultural BMPs;
- B. Clearing or grading activities that disturb less than 5,000 square feet of land area or disturb less than 100 cubic yards of earth; and
- C. Clearing or grading activities that are subject exclusively to State approval and enforcement under State law and regulations.

II. Permits

A. Requirements

The local jurisdiction may not issue a grading or building permit unless an erosion and sediment control plan has been approved by the appropriate plan approval authority. The local jurisdiction may require the posting of a performance bond prior to issuance of a permit.

B. Permit Suspension or Revocation

The appropriate plan approval authority shall withhold approval when it determines that the provisions of any outstanding order affecting the developer have not been complied with or there is a violation of the terms of an existing:

1. Grading permit;
2. Building permit; or
3. Erosion and sediment control plan or related approval.

The appropriate plan approval authority may suspend approval of the erosion and sediment control plan. Whenever an approval authority suspends its approval of a plan the designated jurisdiction shall also suspend the grading or building permit related to it.

III. Inspection

A. Inspection Procedures - All delegated jurisdictions shall, for inspection purposes, do all of the following:

1. Ensure that approved erosion and sediment control plans and permits are at the construction site and are complied with.
2. Ensure that every active site having a designed erosion and sediment control plan is inspected for compliance with the approved plan.
3. Ensure that inspections are requested and performed at the following stages of construction:
  - a. Upon initial installation of perimeter erosion and sediment controls prior to any other grading or earth disturbing activities. Other building or grading inspection approvals may not be authorized until approval of the initial construction of erosion and sediment control measures by the inspection agency.
  - b. Periodic maintenance inspections throughout the time of site construction.
  - c. Upon final stabilization with established vegetative cover before removal of sediment controls.

B. Inspection Reports

1. Written reports will be prepared after every inspection that describe:
  - a. The date and location of the site inspection;

- b. Whether the approved plan has been properly implemented and maintained;
    - c. Any practice deficiencies or erosion and sediment control plan deficiencies (due to implementation, phasing, or other problems);
    - d. If a violation exists, the type of enforcement action taken; and
    - e. If applicable, a description of any modifications to the plan.
  - 2. The inspection agency shall notify the on-site responsible personnel or the owner/developer in writing when violations are observed, describing the:
    - a. Nature of the violation;
    - b. Required corrective action; and
    - c. Time period in which to have the violation corrected.
- C. Complaints - Delegated jurisdictions shall accept and investigate complaints from any interested party and apply enforcement procedures when violations are confirmed.
  - 1. Any erosion and sediment control complaint received shall be acted upon within 3 working days and the complainant shall be notified of any action taken within 7 working days after receipt of the complaint.
  - 2. A delegated jurisdiction may request enforcement assistance from the Administration, which shall take enforcement action when appropriate, and notify the local enforcement authority.
- D. Right of Entry - It shall be a condition of every grading or building permit that the inspection agency has the right to enter the permitted property periodically to inspect for compliance with the approved erosion and sediment control plan and the appropriate sediment control ordinance.
- E. Field Modification Policy - Minor modifications of erosion and sediment control plans may be made in the field if approved by the inspector and documented in a field inspection report. The appropriate plan approval authority shall, in conjunction with the enforcement authority, develop a list of allowable field modifications for use by the inspector. The list of allowable field modifications shall be reviewed and approved by the Administration before its use.

#### IV. Enforcement

- A. Enforcement Procedures - Written enforcement policies and procedures must be adopted and implemented that enables the inspection agency to require corrective actions and take administrative and/or judicial actions for erosion and sediment control plan and ordinance violations. The following procedures are outlined in COMAR 26.17.01.09:

1. When the inspection agency or an inspector determines that a violation of the approved erosion and sediment control plan has occurred, the inspector shall notify the on-site responsible personnel or the permittee in writing of the violation, describe the required corrective action, and the time period in which to have the violation corrected.
  2. If the violation persists after the date specified in the notice of violation, the enforcement agency shall stop work on the site. The enforcement agency shall determine the extent to which work is stopped, which may include all work on the site except that work necessary to correct the violation.
  3. If reasonable efforts to correct the violation are not undertaken, the case may be referred for legal action.
  4. Depending upon the severity of the violation, any step in the enforcement process may be taken at any time.
  5. If a person is working without a permit, the inspection agency shall stop work on the site except activities necessary to provide erosion and sediment control.
- B. The permit issuing agency may deny the issuance of any additional permits when it determines that the applicant is not in compliance with the provisions of an approved erosion and sediment control plan (see II.B).

V. Penalties

- A. Any person who violates any provision of COMAR 26.17.01.09 is guilty of a misdemeanor, and upon conviction in a court of competent jurisdiction is subject to a penalty or fine as allowed. Each day upon which the violation occurs constitutes a separate offense.
- B. Any agency whose approval is required under this subtitle or any interested person may seek an injunction against any person who violates or threatens to violate any provision of the subtitle.
- C. In addition to any other sanction under this subtitle, the appropriate State, county, or municipal agency may bring a civil action or criminal prosecution as deemed necessary against a person for violation of this subtitle.