

S T A T E O F M I C H I G A N

BOARD OF COMMISSIONERS OF THE COUNTY OF ALLEGAN

BOARD OF COMMISSIONERS—AMEND SOIL EROSION & SEDIMENTATION CONTROL ORDINANCE #1013.3 & FEE SCHEDULE

WHEREAS, a public hearing, duly noticed, was held in the Board Room, County Services Building, on April 13, 2023, at 1:00 PM, to allow public comment.

THEREFORE BE IT RESOLVED that upon hearing public comment, the Board of Commissioners (Board) hereby adopts the amended Soil Erosion & Sedimentation Control Ordinance #1013.3 & Fee Schedule, as presented; and

BE IT FURTHER RESOLVED that the Soil Erosion & Sedimentation Control Ordinance and Fee Schedule #1013.3 shall take effect June 1, 2023; and

BE IT FURTHER RESOLVED that notice of said adopted ordinance shall be published in a newspaper of general circulation in Allegan County within ten (10) business days of adoption; and

BE IT FINALLY RESOLVED that the Clerk is authorized to publish and post notices of this ordinance to properly inform the general public of its adoption.

Moved by Commissioner Dugan, seconded by Commissioner Kapenga to approve the resolution as presented. Motion carried by roll call vote. Yeas: 5 votes. Nays: 0 votes.

(STATE OF MICHIGAN)

) ss

(COUNTY OF ALLEGAN)

I, Bob Genetski, Clerk of the Allegan County Board of Commissioners and Clerk of the County of Allegan, do hereby Certify that the above Resolution was duly adopted by said Board on April 27, 2023.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said County and Court in Allegan, Michigan, this 27th day of April, 2023.

Bob Genetski, Clerk-Register

ALLEGAN COUNTY

SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE

Ordinance No. 1013.3

The Allegan County Soil Erosion and Sedimentation Control Ordinance is intended to protect the health, safety and welfare of the County residents and the public health, safety and welfare of the community by regulating earth change activities, which can harm the environment through erosion and the unnatural accumulation of sediment.

ARTICLE I - Purpose and Authority

Section 101. Short Title. This Ordinance shall be known as, and shall be cited and referred to as, The Allegan County Soil Erosion and Sedimentation Control Ordinance.

Section 102. Jurisdiction. The Allegan County Health Department shall administer and enforce this Ordinance throughout the County except within the territorial boundaries of a governmental unit that has adopted an Ordinance and has been designated by the Department as a Municipal Enforcing Agency pursuant to Section 9106 of Part 91, or has been designated by the Department as an Authorized Public Agency pursuant to Section 9110 of Part 91.

Section 103. Authority. The authority for this Ordinance is found in Part 91 Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Part 91), being 324.9101 *et seq.* of the Michigan Compiled Laws and the Administrative Rules promulgated by the Department of Environment, Great Lakes and Energy.

Section 104. Severability (Section 324.9122). If any provision of Part 91, the Rules under Part 17, or this Ordinance is declared by a court of competent jurisdiction to be invalid, the invalid provision shall not affect the remaining provisions of Part 91, the Rules under Part 17, or this Ordinance that can be given effect without the invalid provision. The validity of Part 91, the Rules under Part 17, or this Ordinance as a whole or in part shall not be affected, other than the provision invalidated.

ARTICLE II - Definitions

Section 201. Definitions. The County of Allegan adopts by reference the definitions contained in Part 91 and the Rules under Part 17 unless expressly given a different meaning by this Ordinance. The following definitions shall apply in the interpretation and enforcement of this Ordinance:

- (a) **Accelerated Soil Erosion**, means the increased loss of the land surface that occurs as a result of human activities.
- (b) **Agricultural Practices**, means all land farming operations except plowing or tilling of land for the purpose of crop production or the harvesting of crops.
- (c) **Authorized Public Agency**, means a state agency or an agency of a local unit of government authorized by the Department under Section 9110 of Part 91 to implement soil erosion and sedimentation control procedures with regard to earth changes undertaken by it.
- (d) **Cease and Desist Order**, means an order that stops only that work relative to a project which is causing a violation of this ordinance or Part 91 until said violation is corrected.
- (e) **Certificate of Completion**, means a signed, written statement by the Soil Erosion Control Agent that the specific construction and inspections have been performed and that such work complies with the applicable requirements of Part 91, the Rules under Part 17, and this Ordinance.
- (f) **Conservation District**, means a conservation district authorized under Part 93, Soil Conservation Districts, of the Natural Resources and Environmental Protection Act, 1994 PA 451, being 324.9301 *et seq.* of the Michigan Compiled Laws.
- (g) **County**, means the County of Allegan, Michigan.

- (h) **County Enforcing Agency**, means the Environmental Health Division of the Allegan County Health Department, as designated by the Allegan County Board of Commissioners under Section 9105 of Part 91.
- (i) **Department**, means the Department of Environment, Great lakes and Energy (EGLE).
- (j) **Designated Agent**, means a person who has written authorization from the landowner to sign the application and secure an earth change permit in the landowner's name.
- (k) **Earth Change**, means 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.
- (l) **Earth Change Permit** or **Permit**, means a permit issued by the Soil Erosion Control Agent to authorize work to be performed under the provisions of Part 91, the Rules under Part 17, and this Ordinance.
- (m) **Grading**, means any leveling, stripping, excavating, filling, stockpiling or any combination thereof and shall include the land in its excavated or filled condition.
- (n) **Lake**, means the Great Lakes and all natural and artificial inland lakes or impounds that have definite banks, a bed, visible evidence of 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.
- (o) **Landowner**, means the person who owns or holds a recorded easement on the property or who is engaged in construction in a public right-of-way in accordance with sections 13, 14, 15, and 16 of Highway Obstructions and Encroachments; use of Highway by Public Utilities, 1925 PA 368, as amended, being 247.183, 247.184, 247.185, and 247.186 of the Michigan Compiled Laws.
- (p) **Municipal Enforcing Agency**, means an agency designated by a municipality under Section 9106 of Part 91 to enforce a Local Ordinance that has been approved by the Department.
- (q) **Municipality**, means any of the following:
 1. A city.
 2. A village.
 3. A charter township.
 4. A general law township that is located in a county with a population of 200,000 or more.
- (r) **Non-Erosive Velocity**, means a speed of water movement that is not conducive to the development of accelerated soil erosion.
- (s) **On-Site Authorized Agent**, means the person identified on the permit application by the landowner or the designated agent to be authorized and responsible for making decisions on behalf of the landowner.
- (t) **Part 91**, means Part 91, Soil Erosion and Sedimentation Control, of the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, being 324.9101 *et seq.* of the Michigan Compiled Laws.
- (u) **Permanent Soil Erosion and Sedimentation Control Measures**, means those control measures, which are installed or constructed to control soil erosion and sedimentation and which are maintained after project completion.
- (v) **Rules**, means the Rules under Part 17 promulgated pursuant to the Administrative Procedures Act of 1969, 1969 PA 306, being 24.201 to 24.328 of the Michigan Compiled Laws for the administration of Part 91.
- (w) **Sediment**, means solid particulate matter, including both mineral and organic matter that 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.
- (x) **Sediment Basin**, means a naturally occurring or constructed depression used for the sole purpose of capturing sediment during and after an earth change activity.
- (y) **Soil Erosion**, means the wearing away of land by the action of wind, water, or gravity; or a combination of wind, water, or gravity.
- (z) **Soil Erosion Control Agent**, means a person who has a certificate of training in soil erosion and sedimentation control from the Department and that is appointed by the Allegan County Health Department to perform the responsibilities for administering and enforcing Part 91, the Rules, and this Ordinance.
- (aa) **Stabilization**, means 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.

- (bb) **State Agency**, means a principal state department or a state public university.
- (cc) **Stop Work Order**, means an order that stops all work on a project until any and all violations of Part 91, the Rules under Part 17, and this Ordinance are corrected, except for remedial measures to correct the violation.
- (dd) **Storm Water Retention Basin**, means 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.
- (ee) **Stream**, means a river, creek, or other surface watercourse which may or may not be serving as a drain as defined in The Drain Code of 1956, 1956 PA 40, as amended, being 280.1 et seq. of the Michigan Compiled Laws, 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.
- (ff) **Temporary Soil Erosion and Sedimentation Control Measures**, means interim control measures which are installed or constructed to control soil erosion and sedimentation and which are not maintained after project completion.
- (gg) **Violation of Part 91 or Violates Part 91**, means a violation of Part 91, the Rules under Part 17, or this Ordinance, or a permit issued under Part 91 or this Ordinance.
- (hh) **Waters of the State**, means the Great Lakes and their connecting waters, inland lakes and streams, as defined in the Rules under Part 17, and wetlands regulated under Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, being 324.30301 *et seq.* of the Michigan Compiled Laws.
- (ii) **Hearing Officer**, under Sections 1001, 1002 or 1003 means a designated employee of the Allegan County Health Department or the Allegan County Drain Commissioners Office who is a Soil Erosion Control Agent, with Plan Review and Design Certification from the Department and who does not have direct responsibility for the permit in question.
- (jj) **Storm Drain Inlet**, means a location where surface water can enter a storm water collection system which discharges either directly or through a series of storm drain inlets connected by conduit to a lake, river, stream, regulated wetland, storm water retention or detention pond.

ARTICLE III – General Provisions

Section 301. County Enforcing Agency. The Environmental Health Division of the Allegan County Health Department is hereby designated as the County Enforcing Agency responsible for administering and enforcing Part 91, the Rules under Part 17, and this Ordinance.

Section 302. Rules Adopted. The County hereby adopts by reference and incorporates into this Ordinance as if fully set forth herein the Rules adopted by the Department pursuant to Part 91 and duly filed with the Secretary of State. Said rules shall be available for public distribution at a reasonable charge and will be available for public inspection at the Allegan County Health Department.

Section 303. Fee Schedule. All fees for administering and enforcing this Ordinance shall be paid to the County in accordance with a Fee Schedule determined by resolution of the County Board of Commissioners. The County Board of Commissioners may revise the Fee Schedule by adopting a written amendment to the Fee Schedule from time to time. All fees shall be doubled if work starts without a permit.

Section 304. Other Regulations Repealed. All other County Codes, Ordinances, and Regulations and parts of Codes, Ordinances, and Regulations, which are inconsistent or conflict with the provisions of this Ordinance, are hereby repealed. This includes the Allegan County Enforcing Agency Soil Erosion and Sedimentation Control Resolution dated July 5, 1978 and the Allegan County Soil Erosion and Sedimentation Control Ordinance dated August 26, 2004.

Section 305. More Restrictive Provisions. To the extent that any provisions or requirements of this Ordinance are more restrictive than, or are in addition to, the provisions or requirements of Part 91 or the Rules under Part 17, this Ordinance shall control.

ARTICLE IV – Building Permits (see R 323.1711)

Section 401. Notification. A local agency or general law township that issues building permits shall notify the Allegan County Health Department immediately upon receipt of a building permit application that includes activities requiring an earth change permit identified in Section 501 of this Ordinance.

Section 402. Withhold Building Permit. A local agency or general law township shall not issue a building permit to a person engaged in an earth change if the change requires a permit under Part 91, the Rules under Part 17, or this Ordinance until the Allegan County Health Department has issued the Earth Change Permit.

ARTICLE V - Earth Change Permit Requirements

Section 501. Activities Requiring an Earth Change Permit (see Section 324.9116 and R 323.1704)

- (a) A landowner or Designated Agent who contracts for, allows, or engages in an earth change in this County shall obtain an Earth Change Permit in the landowner's name from the Allegan County Health Department, unless exempted in Section 502 of this Ordinance, before commencing an earth change which:
 - 1. Disturbs one or more acres of land; or
 - 2. Is located within 500 feet of the Waters of the State regardless of the amount of land disturbed; or
 - 3. Is located within 100 feet of a storm drain inlet regardless of the amount of land disturbed.
- (b) If an earth change is under the jurisdiction of two or more municipal or county enforcing agencies, an earth change permit from the Allegan County Health Department is required for the activities under the jurisdiction of this Ordinance if not under the jurisdiction of a Municipal Enforcing Agency (MEA).
- (c) If a Soil Erosion Control Agent serves a notice of determination in person or by certified mail, with return receipt requested, to a person who owns land on which an earth change has been made that may result in or contribute to soil erosion or sedimentation of adjacent properties or Waters of the State, the landowner shall obtain an earth change permit and implement and maintain soil erosion and sedimentation control measures that will effectively reduce soil erosion or sedimentation from the land on which the earth change has been made (see Section 324.9116).
- (d) An earth change activity that does not require an Earth Change Permit under Part 91, the Rules under Part 17, or this ordinance is not exempt from enforcement procedures under Part 91, the Rules under Part 17, or this Ordinance, if the activity exempted results in soil erosion and off-site sedimentation of adjacent properties or the waters of the state (see R 323.1704 (2)).

Section 502. Permit Exemptions and Waivers. (see R 323.1705, Section 324.9115 and Section 324.9115a for additional exemptions)

- (a) An Earth Change Permit is not required for the following:
 - 1. A beach nourishment project permitted under Part 325, Great Lakes Submerged Lands, of the Natural Resources and Environmental Protection Act, 1994 PA 451, being MCL 324.32501 *et seq.* of the Michigan Compiled Laws.
 - 2. 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, streams, drains or regulated wetlands.
 - 3. An earth change of a minor nature that is stabilized within twenty-four (24) hours of the initial disturbance and that will not contribute sediment to lakes, streams, drains or regulated wetlands.
 - 4. Plowing or tilling of land for the purpose of crop production or the harvesting of crops.
 - 5. Earth changes associated with the logging or mining industry. However, all earth changes associated with these activities shall conform to the same standards as if they required an Earth Change Permit under Part 91, the Rules under Part 17, or this Ordinance. The exemption from obtaining a permit under this subsection does not apply to the following:
 - a. Access roads to and from the site where active logging or mining is taking place.
 - b. Ancillary activities associated with logging or mining.
 - c. The removal of clay, gravel, sand, peat or topsoil.

6. Earth changes associated with well locations, surface facilities, flowlines, or access roads relating to oil or gas exploration and development activities regulated under Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451 being MCL 324.61501 *et seq.*, provided the permit application to drill and operate contains a Soil Erosion and Sedimentation Control Plan that is approved by the Department under Part 615. However, those earth changes shall conform to the same standards as required for an Earth Change Permit under Part 91, the Rules under Part 17, and this Ordinance.
 7. Earth changes associated with a metallic mineral mining activity regulated under a mining and reclamation plan that contains soil erosion and sedimentation control provisions approved by the Department under Part 631, Reclamation of Mining Lands, of the Natural Resources and Environmental Protection Act, 1994 PA 451, being MCL 324.63101 *et seq.*
 8. Projects undertaken by Authorized Public Agencies; however, the Authorized Public Agency must notify the Allegan County Health Department of each proposed earth change.
 9. Gardening on residential property where the natural elevation is not raised.
 10. Removal of tree stumps, shrub stumps or roots on residential property where the earth change does not exceed 100 square feet.
 11. Any current or future exemptions that may be authorized under part 91 or Rules not in this ordinance.
- (b) The Allegan County Health Department may grant a permit waiver for an earth change located within 500 feet of the Waters of the State or within 500 feet of a storm drain inlet after receiving a signed affidavit from the landowner stating that the earth change will disturb less than 225 square feet and the earth change will not contribute sediment to the Waters of the State.
 - (c) The landowner, where such exempt or waived earth change activities occur, shall plan, implement and maintain acceptable soil erosion and sedimentation control measures that meet the same standards as if they required a permit under Part 91, the Rules under Part 17, and this Ordinance. Furthermore, the exemptions or waivers provided in this Section or Section 511 shall not be construed as an exemption from enforcement proceeding under Part 91, the Rules under Part 17, or this Ordinance if the activities so exempt or waived cause or result in soil erosion or off-site sedimentation. Once those proceedings commence, a permit shall be required before work may resume.

Section 503. Permit Application; Designated Agent; Meeting with Soil Erosion Control Agent. (see R 323.1706)

- (a) A landowner or Designated Agent shall submit an Earth Change Permit Application to the Allegan County Health Department. Copies of the Permit Application containing state prescribed information are available from the Allegan County Health Department.
- (b) The permit application shall be signed and dated by the landowner or Designated Agent. If the landowner is a corporation, include the name and title of the authorized corporate representative.
- (c) If a Designated Agent is signing the application for the landowner, the landowner shall either also sign the application or provide a letter authorizing the Designated Agent to act on his/her behalf including authority for the Designated Agent to designate an On-Site Authorized Agent.
- (d) The Earth Change Permit Application shall be accompanied by a Soil Erosion and Sedimentation Control Plan, the required fees and any other documents that the Soil Erosion Control Agent may require.
- (e) The landowner or Designated Agent shall meet with the Soil Erosion Control Agent, if requested, to ensure that the Soil Erosion and Sedimentation Control Plan meet the provisions of this Ordinance.

Section 504. Soil Erosion and Sedimentation Control Plan; Contents. (See R 323.1703) A Soil Erosion and Sedimentation Control Plan shall be designed to effectively reduce accelerated soil erosion and sedimentation, and shall identify factors that may contribute to soil erosion or sedimentation or both. The plan shall be drawn to a standard engineering scale on sheets not exceeding 24 inches by 36 inches in size and include, but is not limited to, all of the following:

- (a) A site location sketch showing the project location within the city, village, or township.
- (b) A boundary survey, including a legal description by a professional surveyor, or legal description of the site.
- (c) Name, address, and telephone number of the landowner and also the Designated Agent if the landowner is not completing the application.
- (d) A map or maps at a scale of not more than 200 feet to the inch or as otherwise determined by the Allegan County Health Department. The maps shall include: property boundaries; proximity of proposed earth change activities to Waters of the State; predominate land features including structures and vegetation

- on-site and extending 50 feet beyond property boundaries; and existing and proposed topographical contour intervals or slope descriptions. The Allegan County Health Department shall determine the required contour information necessary to effectuate the provision of this ordinance. Single family home construction projects, or similar projects in size, may submit written information concerning the slope of the project area instead of a topographical sketch unless the Allegan County Health Department determines, in writing, that a topographical sketch is needed.
- (e) A soils survey or a detailed written description of the soil types of the exposed land area contemplated for the earth change.
 - (f) Details for the proposed earth changes including all of the following:
 - 1. A description and the location of the physical limits of each proposed earth change.
 - 2. A description and the location of all existing and proposed on-site drainage and dewatering facilities including downspouts from eaves troughs and storm and sump leads or discharge points for single family residential sites, if applicable.
 - 3. The timing and sequence of each proposed earth change on a form approved by the Allegan County Health Department.
 - 4. A description, the location, and estimated costs of all proposed temporary soil erosion and sedimentation control measures along with a schedule for installing and removing each temporary control measure.
 - 5. The location, a description, and the estimated costs of all proposed permanent soil erosion and sedimentation control measures and facilities along with the schedule for the installation and maintenance of all control measures and facilities.
 - 6. A program proposal for the continued maintenance of all permanent soil erosion and sedimentation control measures and facilities that remain after project completion, including the designation of the landowner, person, or designated company, or entity responsible for their maintenance. Maintenance responsibilities shall become a part of any sales or exchange agreement on which the permanent soil erosion control measures and facilities are located.
 - (g) Any other information required by the Soil Erosion Control Agent.

Section 505. Earth change requirements: time; sediment removal; design installation, and removal of temporary or permanent control measures; Standards and Specifications. (see R 323.1708, 1709 and 1710)

- (a) A person shall design, construct, and complete an earth change in a manner that limits the exposed area of any disturbed land for the shortest possible period of time as determined by the Soil Erosion Control Agent.
- (b) A person shall remove sediments caused by accelerated soil erosion from runoff waters before it leaves the site of the earth change.
- (c) A person shall design a temporary or permanent control measure that is designed and constructed for the conveyance of water around, through or from, the earth change area to limit the water flow to a non-erosive velocity.
- (d) A person shall install temporary soil erosion and sedimentation control measures before or upon commencement of the earth change activity and shall maintain the measures on a daily basis. Temporary soil erosion and sedimentation control measures shall be removed after permanent soil erosion measures are in place and the area is stabilized. A person shall stabilize the area with permanent soil erosion control measures pursuant to approved plans and under approved standards and specifications as prescribed by Section 505(f) below.
- (e) A person shall complete permanent soil erosion control measures for all slopes, channels, ditches or any disturbed land area as approved in the timing sequence schedule but no later than 5 calendar days after final grading or the final earth change has been completed. If it is not possible to permanently stabilize a disturbed area after an earth change has been completed or if significant earth change activity ceases, then a person shall maintain temporary soil erosion and sedimentation control measures until permanent soil erosion control measures are in place and the area is stabilized.
- (f) A person shall install and maintain temporary and permanent control measures in accordance with the standards and specifications of the following, as applicable:
 - 1. The product manufacturer,
 - 2. The Department,
 - 3. The Michigan Association of Conservation Districts (MACD) SESC Manual,
 - 4. The Michigan Department of Technology, Management and Budget (DTMB) SESC Manual,

5. The Michigan Department of Transportation (MDOT) SESC Manual,
 6. Those formally adopted by the County Drain Commissioner's Office and
 7. Those formally adopted by the Allegan County Health Department (ACHD) or
 8. The plan may include specifications as an attachment.
- (g) If a conflict exists between standards and specifications referenced in this section, then the Soil Erosion Control Agent shall determine which specifications are appropriate for the project.

Section 506. Application Review and Permit Procedures. (see Section 324.9112 and R 323.1707)

- (a) The Soil Erosion Control Agent shall approve, disapprove, or require modification to an application for a permit within 30 calendar days after the filing of a complete application for permit. A complete application includes the completed application, plans, and required fees. The Soil Erosion Control Agent shall notify an applicant of approval by first-class mail. If an application is disapproved, then the Soil Erosion Control Agent shall advise the applicant by certified mail of its reasons for disapproval and conditions required for approval. The Soil Erosion Control Agent need 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.
- (b) Upon determination that a permit applicant has met all the requirements of Part 91, the Rules under Part 17, and this Ordinance, the Soil Erosion Control Agent shall issue a permit for the proposed earth change on a form that contains State prescribed information as well as that prescribed by the Allegan County Health Department.

Section 507. Permit Application Disapproval. The Soil Erosion Control Agent shall disapprove an Earth Change Permit application where:

- (a) The proposed work would cause uncontrolled soil erosion and/or off-site sedimentation; or
- (b) The work proposed by the applicant will interfere with an existing drainage course in such a manner as to cause damage to any adjacent property; or
- (c) The land area for which the work is proposed is subject to geological hazard to the extent that no reasonable amount of corrective work can eliminate or sufficiently reduce settlement, slope instability or any other such hazard to persons or property; or
- (d) The Earth Change Permit application is incomplete or does not comply with the provisions of Part 91, the Rules under Part 17, or this Ordinance.

Section 508. Permit Modification; Permit Revocation or Suspension.

- (a) The Soil Erosion Control Agent may provide written authorization for modifications to an Earth Change Permit or the approved Soil Erosion and Sedimentation Control Plan upon receiving a request from the landowner or On-Site Authorized Agent. No work in connection with any proposed modification shall take place without the written approval of the Soil Erosion Control Agent. The Soil Erosion Control Agent may require a new fee if the scope of the earth change activity has changed.
- (b) Any permit issued under this Ordinance may be revoked or suspended for any of the following reasons:
1. A violation of the condition of the permit.
 2. Misrepresentation or failure to fully disclose relevant facts in the application or in the Soil Erosion and Sedimentation Control Plan.
 3. A change in a condition that requires a temporary or permanent change in the activity.
 4. Authorized work is abandoned or suspended for a period of six (6) months.
 5. Notice will be given to the permit holder of revocation or suspension of the permit in person or by certified mail. If the permit has been revoked for any reason, a new earth change permit application accompanied by new plans and fees would be required for any earth change activities.

Section 509. Permit Expiration; Extension of Time.

- (a) Earth Change Permits shall expire automatically upon the project completion date specified in the permit. If a project completion date is not specified then the permit shall expire one year from the permit issuance date. The duration of an Earth Change Permit shall not exceed a period of three (3) years. Permits shall automatically expire if construction has not commenced within one year of the date of issuance.
- (b) If the landowner is unable to complete the earth change activities prior to the permit expiration date, the landowner or Designated Agent may request an extension of time provided the request is made in writing

at least 10 days prior to the permit expiration date. The request shall include all relevant necessary sustaining reports, supporting documentation, and fees.

- (c) If an extension of time is granted, the Soil Erosion Control Agent shall issue a written extension, which specifies a revised permit expiration date, not to exceed six (6) months.
- (d) An extension does not release the owner or the surety on a bond, or the person furnishing an irrevocable letter credit, or a person furnishing a cash bond, or a person furnishing a certificate of self-insurance from their responsibilities and/or liabilities thereunder.

Section 510. Earth Change Requirements Generally. (see R 323.1702 and R 323.1707 (4)). A person, the landowner, and the On-Site Authorized Agent engaged in an earth change shall:

- (a) Conduct the earth change in a manner that will effectively reduce accelerated soil erosion and resulting sedimentation.
- (b) Plan, implement, and maintain acceptable soil erosion and sedimentation control measures in conformance with Part 91, the Rules under Part 17, and this Ordinance, which effectively reduce accelerated soil erosion and off-site sedimentation.
- (c) Carry out the earth change activities in accordance with an approved Soil Erosion and Sedimentation Control Plan and in compliance with all the requirements of the Earth Change Permit, Part 91, the Rules under Part 17, and this Ordinance.
- (d) The Earth Change Permit must be posted on-site and clearly visible from the road. The Soil Erosion and Sedimentation Control Plan must be available for inspection at the site of the earth change at all times.

Section 511. Additional Permit Waivers.

- (a) A permit waiver may be granted to Section 501(a)3. A permit waiver may be granted in cases where topography or other physical attributes of the parcel would make it virtually impossible for sediment to enter a storm drain inlet during an earth change activity. Any earth change activity which receives a waiver under this section must be in compliance with the applicable portions of Section 502. (b)and(c).

ARTICLE VI - Earth Change Permit; Bond Requirements (see 324.9108)

Section 601. Surety Bond; Cash Bond; Irrevocable Letter of Credit.

- (a) The Soil Erosion Control Agent, may as a condition for the issuance of a permit, require the landowner to post a cash bond or an irrevocable letter of credit with the Allegan County Health Department in an amount sufficient to assure the installation and completion of such protective or corrective measures as may be required by the Health Department. In lieu of a cash bond or an irrevocable letter of credit, the landowner may file a surety bond in the amount of 125% of the amount sufficient to assure the installation and completion of such protective or corrective measures with the Allegan County Health Department. The surety bond shall be executed by the landowner and a corporate surety who has authority to do business in this state as a surety.
- (b) The surety bond shall be in a form approved by the County Corporate Counsel, or the Corporate Counsel's duly authorized agent, and shall be issued to the County Soil Erosion and Sedimentation Control Fund.
- (c) A surety bond, cash bond or irrevocable letter of credit, shall include and be made on the conditions that the landowner shall comply with all of the provisions of Part 91, the Rules under Part 17, and this Ordinance; all terms and conditions of the permit; and that the landowner shall complete all work contemplated under the permit within the time limit specified in the permit.
- (d) In the event that the landowner fails to comply with the terms and conditions of the Earth Change Permit; or fails to comply with the provisions of Part 91, the Rules under Part 17, or this Ordinance; or fails to comply with a notice of determination or other violation notices within the required time; or fails to implement the approved Soil Erosion and Sedimentation Control Plan, the Soil Erosion Control Agent may order such work as necessary to provide for effective soil erosion and sediment control. The landowner and the surety executing the bond or person issuing the irrevocable letter of credit or making the cash deposit shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses, including legal, that the Allegan County Health Department incurs in causing any and all work to be done to comply with the provisions of Part 91, the Rules under Part 17,

or this Ordinance. In the case of a cash bond, the Soil Erosion Control Agent shall authorize the Allegan County Health Department to refund any unused portion to the person who posted the bond.

- (e) The Allegan County Health Department may establish a list of pre-qualified contractors for use in ordering work required under Section 601(d).

ARTICLE VII - Notice of Completion; Certificate of Completion

Section 701. Notice and Certificate of Completion. Upon satisfactory execution of the approved plans and permit conditions and other requirements imposed under this Ordinance, the landowner shall file a written notice of completion with the Soil Erosion Control Agent. The Soil Erosion Control Agent shall make a final inspection within thirty (30) days of receiving the notice of completion and shall issue a certificate or letter of completion and release of bond if the landowner has satisfactorily complied with the plan, permit conditions and this ordinance. If the project is to be completed in different phases, the landowner may submit a written notice of completion for a project phase and the Soil Erosion Control Agent may issue separate certificates of completion and authorize a proportionate release of a cash bond for each completed project phase. Once a project phase has been completed and the Soil Erosion Control Agent has issued a certificate of completion for that phase, the SESC plan will need to be modified by the responsible party, and reapproved by the Soil Erosion Control Agent in order to remove the area that has been stabilized. The expiration date shall not exceed the original date from issuance of the initial or original permit.

ARTICLE VIII - Enforcement; Notice of Determination; Compliance Time; Violations and Penalties

Section 801. Enforcement. (see R 323.1712) A designated Soil Erosion Control Agent of the Allegan County Health Department may issue a uniform municipal civil infraction citation, Stop Work Order, Cease and Desist Order, or revoke a permit upon its findings that there is a violation of Part 91, the Rules under Part 17, or this Ordinance, or a finding that there is a violation of a permit or an approved Soil Erosion and Sedimentation Control Plan.

Section 802. Notice of Determination: (see 324.9117). If a Soil Erosion Control Agent determines that soil erosion or sedimentation of adjacent properties or the Waters of the State has or will reasonably occur from land in violation of Part 91, the Rules under Part 17, or this Ordinance, the Allegan County Health Department may seek to enforce a violation by notifying the landowner through a notice of determination served in person or by certified mail, with return receipt requested, of its determination. The notice shall contain a description of the violation and what must be done to remedy the violation and shall specify a time to comply with Part 91, the Rules under Part 17, and this Ordinance.

Section 803. Compliance; Time (see 324.9118). Within 5 days after a notice of violation has been issued under Section 802 of this Ordinance, a person who owns land subject to Part 91, the Rules under Part 17, or this Ordinance shall implement and maintain soil erosion and sedimentation control measures in conformance with Part 91, the Rules under Part 17, or this Ordinance.

Section 804. Entry upon Land; Construction; Implementation, and Maintenance of Soil Erosion and Sedimentation Control Measures; Cost (see 324.9119). Not sooner than 5 days after notice of violation has been served in person or mailed under Section 802 of this Ordinance, if the condition of the land, in the opinion of the Allegan County Health Department, may result in or contribute to soil erosion or sedimentation of adjacent properties or to the Waters of the State, and if soil erosion and sedimentation control measures in conformance with Part 91, the Rules under Part 17, and this Ordinance are not in place, the Allegan County Health Department, or its designee, may enter upon the land and construct, implement, and maintain soil erosion and sedimentation control measures in conformance with Part 91, the Rules under Part 17, and this Ordinance. However, the Allegan County Health Department shall not expend more than \$10,000 for the cost of the work, materials, labor, and administration without prior written notice in the Notice of Determination provided in Section 802 of this Ordinance to the landowner that the expenditure of more than \$10,000 may be made. If more than \$10,000 is to be expended under this section, then the work shall not begin until at least 10 days after the notice of violation has been mailed by certified mail with return receipt requested.

Section 805. Reimbursement of the Allegan County Health Department Expenses; Lien for Expenses. (see 324.9120)

- (a) All expenses incurred by the Allegan County Health Department under Section 804 of this ordinance to construct, implement, and maintain soil erosion and sedimentation control measures to bring land into compliance with Part 91, the Rules under Part 17, and this Ordinance shall be reimbursed to the Allegan County Health Department by the landowner.
- (b) The Allegan County Health Department shall have a lien on the property for the expenses incurred under Section 804 of this Ordinance of bringing the land into conformance with Part 91, the Rules under Part 17, or this Ordinance. However, 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. 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, 1893 PA 206, being 211.1 to 211.157 of the Michigan Compiled Laws.

Section 806. Violations; Penalties (Section 324.9121)

- (a) A person who violates Part 91, the Rules under Part 17, or this Ordinance, is responsible for a uniform municipal civil infraction and may be ordered to pay a civil fine of not more than \$2,500.00 plus all court costs and attorney fees.
- (b) A person who knowingly violates Part 91, the Rules under Part 17, or this Ordinance or 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 plus all court costs and attorney fees.
- (c) A person who knowingly violates Part 91, the Rules under Part 17, or this Ordinance after receiving a notice of determination under Sections 801 or 802 is responsible for payment of a civil fine of not less than \$2,500.00 or more than \$25,000.00 for each day of the violation plus all court costs and attorney fees.
- (d) Civil fines collected under Section 806(a) shall be deposited into the Soil Erosion and Sedimentation Control Fund. Civil fines collected under Sections 806(b) or 806(c) that are payable to the Allegan County shall be deposited into the County General Fund.
- (e) A default in payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the Revised Judicature Act of 1961, 1961 PA 236, as amended, being section 600.101 *et seq.* of the Michigan Compiled Laws.
- (f) In addition to a fine assessed under this section, a person who violates Part 91, the Rules under Part 17, or this Ordinance is liable to the State of Michigan for damages for injury to, destruction of, or loss of natural resources resulting from the violation. The court may order a person who violates this part to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.
- (g) Lessees, contractors, or other individuals undertaking an earth change, as well as the landowner and On-Site Authorized Agent, are liable for civil penalties prescribed in Section 806.

Section 807. Violations Bureau; Payments.

- (a) The Allegan County District Court with jurisdiction has been established as the Violations Bureau for the uniform municipal civil infraction citations.
- (b) All persons that receive uniform municipal civil infraction citation shall have twenty-one (21) days to pay the fine to the District Court Office. If responsibility is denied or the fine is unpaid after twenty-one (21) days, the uniform municipal civil infraction citation shall be processed by the District Court for resolution pursuant to Chapter 87 of the Revised Judicature Act, MCL 600.8701 *et seq.* Either party may request a formal hearing before a judge.

ARTICLE IX - Injunction; Inspection and Investigation; Interference with Administration and Enforcement

Section 901. Injunction. Notwithstanding the existence or pursuit of any other remedy, the Department or the County may maintain an action in its own name in a court of competent jurisdiction for an injunction or other process against a person to restrain or prevent violations of Part 91, the Rules under Part 17, or this Ordinance.

Section 902. Right of Entry and Inspection. An agent appointed by the Department or the Allegan County Health Department may enter at all reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions or practices that may be in violation of Part 91, the Rules under Part 17, or this Ordinance.

Section 903. Interference with Administration and Enforcement. No person shall unlawfully hinder, oppose or resist the Soil Erosion Control Agent in the discharge of the administration and enforcement of Part 91, the Rules under Part 17, or this Ordinance. No person shall remove, mutilate or conceal any notice or placard posted by the Soil Erosion Control Agent except by written permission of the Soil Erosion Control Agent.

ARTICLE X - Appeal Procedures

Section 1001. Appeal of Permit Decision; Administrative Hearing.

- (a) If the landowner or Designated Agent is aggrieved by a permit decision made by the Soil Erosion Control Agent, a written appeal including the reason for the appeal referencing applicable sections of the Ordinance; a photocopy of any written action; and the required fees may be filed with the Allegan County Health Department within 14 calendar days of that decision. If an appeal is filed, an administrative hearing will be scheduled within 14 calendar days from the date of the filing.
- (b) The administrative hearing will allow the landowner or Designated Agent opportunity to submit additional information or re-emphasize previously submitted data. The Hearing Officer will then review the information and take under advisement any other comments received before making a final decision within twenty-one (21) days of the administrative hearing, and forward this final decision to the landowner or designated agent in person or by first class mail.

Section 1002. Appeal of Notice of Violation; Administrative Hearing.

- (a) If the landowner or On-Site Authorized Agent is aggrieved by a compliance and enforcement action made by the Soil Erosion Control Agent pursuant to Section 802 of this Ordinance, a written appeal including the reason for the appeal referencing applicable sections of the Ordinance; a photocopy of any written action; and the required fees may be filed with the Allegan County Health Department within 24 hours of receiving a notice of violation. If an appeal is filed, an administrative hearing will be scheduled within three (3) calendar days of the date of the filing.
- (b) The administrative hearing will allow the landowner or On-Site Authorized Agent opportunity to submit additional information or re-emphasize previously submitted data. The Hearing Officer will then review the information and take under advisement any other information received before making a final decision within two (2) days of the administrative hearing, and forward this final decision to the landowner or On-Site Authorized Agent in person or by certified mail, return receipt requested.

Section 1003. Allegan County Health Department Decisions; Standard of Review.

- (a) The Hearing Officer shall sustain the decision of the Soil Erosion Control Agent unless the Hearing Officer finds, by clear and convincing evidence that the Soil Erosion Control Agent's decision:
 1. Was based upon a mistake(s) of fact and that the correction of that mistake(s) leads to a different result; or,
 2. Was based upon a mistake(s) of law and that the correction of that mistake(s) leads to a different result; or,
 3. Constitutes an abuse of discretion and no factual or legal argument provides any support for the Soil Erosion Control Agent's position.
- (b) All decisions, whether oral or written, must include a brief recap of testimony and evidence presented. The decision of the Hearing Officer shall be binding upon the Soil Erosion Control Agent and the Landowner, Designated Agent and/or On-Site Authorized Agent.

ARTICLE XI - Soil Erosion and Sedimentation Control Fund

Section 1101. Creation of Fund. The Soil Erosion and Sedimentation Control Fund is created within the county treasury.

Section 1102. County Treasurer. The county treasurer may receive money or other assets from any source for deposit into the Soil Erosion and Sedimentation Control Fund. The county treasurer shall direct the investment of the Soil Erosion and Sedimentation Control Fund. The county treasurer shall credit to the Soil Erosion and Sedimentation Control Fund interest and earnings from fund investments. The county treasury may transfer money from the Soil Erosion and Sedimentation Control Fund to the General Fund by resolution of the County Board of Commissioners.

Section 1103. Deposits to Fund. All fees, cash bonds, money received from an irrevocable letter of credit or a certificate of self-insurance, and reimbursements for expenses incurred by the Allegan County Health Department made payable to the Allegan County Health Department with regard to Part 91, the Rules under Part 17, or this Ordinance shall be deposited by the County Treasurer into the Soil Erosion and Sedimentation Control Fund.

Section 1104. Revolving Funds. Money in the Soil Erosion and Sedimentation Control Fund at the close of the fiscal year shall remain in the fund and shall not lapse to the county general fund.

Section 1105. Expending Funds. The Allegan County Health Department shall expend money from the fund only to administer and enforce Part 91, the Rules under Part 17, or this Ordinance.

ARTICLE XII - Effective Date

Section 1201. Effective Date. This Ordinance shall take effect June 1, 2023. All active permits issued prior to adoption of said Ordinance and bonds shall remain in effect and shall be subject to provisions of this Ordinance. The undersigned do hereby certify that the above and foregoing Ordinance, known as the Soil Erosion and Sedimentation Control Ordinance, Ordinance No. 1013.3 of the County of Allegan, Michigan, was introduced at a regular meeting of the County Board of Commissioners, and a public hearing was held on April 13, 2023, and was thereafter passed at a regular meeting on April 27, 2023.

Jim Storey, Chair, Allegan County Board of Commissioners

Date

Bob Genetski, County Clerk/Register

Date

ALLEGAN COUNTY

SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE

(Adopted under Section 303)

FEE SCHEDULE FOR MUNICIPAL CIVIL INFRACTION CITATIONS

Ordinance No. 1013.3

I. Residential:

<u>Infraction</u>	<u>Fine</u>
a. No permit.....	\$100.00*
Repeat Offense.....	\$250.00*
b. Other violations.....	\$250.00*
c. Violations leading to erosion.....	\$500.00*
d. Repeat Offense.....	\$750.00*

II. All other Commercial or Industrial Sites such as Site Development (Plats, Mobile Home Parks, Multiple Housing Units, Apartments, Commercial, Industrial, Cut and Fill Operations, Golf Courses, etc.), Utilities and Sand and Gravel Mining:

<u>Infraction</u>	<u>Fine</u>
a. No Permit.....	\$750.00*
b. Failure to Maintain Sedimentation and erosion controls....	\$750.00*
c. Tracking sediment onto roadway.....	\$750.00*
d. Failure to stabilize critical areas.....	\$750.00*
e. Failure to repair de-stabilized area.....	\$750.00*
f. Failure to comply with permit restrictions.....	\$750.00*
g. Other violations.....	\$750.00*
h. First repeat offense.....	\$1,500.00*
i. Second and subsequent repeat offenses.....	\$2,500.00*

*plus all court costs and attorney fees