

VAN BUREN COUNTY DRAIN COMMISSIONER

SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE

Preamble

An Ordinance to provide for the administration of a soil erosion and sedimentation control

program for those areas within Van Buren County except for those of the county where a Part 91

Municipal Enforcement Agency program or Authorized Public Agency program is in effect, in order to encourage and regulate the proper use and protection of natural resources, to provide for administration and enforcement, to establish civil penalties for violations, and to provide for reimbursement of costs incurred by the County Enforcing Agency pursuant to this Ordinance and to Part 91, Act 451 of 1994, as amended.

Whereas, after careful study of the proposed Soil Erosion and Sedimentation Control (SESC) Ordinance, The Committee of the Whole has recommended adoption of the Ordinance to the Van Buren County Board of Commissioners.

Therefore, pursuant to the authority set forth in MCL 46.11(j) and MCL 324.9105(3), the Board of Commissioners of the County of Van Buren, Michigan, ordains:

Article 1. Short Title

This Ordinance shall be known, and may be cited, as the "Van Buren County Soil Erosion and Sedimentation Control Ordinance". All Articles, Sections, and other topical headings are for reference only and shall not be construed to be part of this Ordinance.

Article 2. Intent and Purpose

2.1. Intent

The Van Buren County SESC Ordinance is based upon and incorporates the provisions of Part 91 of the Natural Resources and Environmental Protection Act, being Public Act 451 of 1994, as amended (MCL 324.9101 through 324.9123a), and its attendant rules, hereinafter referred to as "Part 91". Van Buren County assumes responsibility for the administration and enforcement of Part 91 within its political boundaries, except for those areas of the county where a Part 91 Municipal Enforcement Agency program or Authorized Public Agency program is in effect.

2.2. Purpose

The purpose of this Ordinance is to protect the surface water resources within Van Buren

County by providing for the administration and enforcement of the Van Buren County SESC Ordinance. All earth change activity described or defined in Part 91 shall be regulated under this Ordinance. No person shall maintain or undertake an earth change governed by this Ordinance, except in compliance with this Ordinance, and pursuant to a SESC permit issued by the County Enforcing Agency if required.

2.3. Right to Farm

Plowing and tilling of land for the purpose of crop production or the harvesting of crops does not require a permit under Article 5. The Van Buren County Drain Commissioner may, on his own volition, pursue separate legal action against an agricultural operator for sediment discharges to a county or inter-county drain from the plowing and tilling of land under Public Act 40 of 1956, as amended, to protect a county or inter-county drain.

Article 3. Administration and Enforcement

3.1. County Enforcing Agency

The Van Buren County Drain Commissioner is the County Enforcing Agency responsible for administering and enforcing this ordinance.

3.2. Relief from Personal Responsibility

The County Enforcing Agency, or any other county employee or officer charged with duties and responsibilities pursuant to this Ordinance, while acting within the scope of their authority, are hereby relieved from all personal liability for damages to persons or property resulting from the exercise or discharge of their duties. Any civil or criminal action brought against an officer or employee of the county, while acting within the scope of authority granted under this Ordinance, may be defended by the legal representative of the County until final termination of proceedings. If a judgment for damages is awarded against the above mentioned officers or employees as a result of a civil action for personal injury or property damage caused while acting within the scope of the individual's employment or while acting within the scope of authority of this Ordinance, the County of Van Buren may pay, or compromise, the judgment.

3.3. Duties of the County Enforcing Agency

It shall be the responsibility of the County Enforcing Agency to enforce the provisions of this Ordinance, and in doing so, to perform the following duties:

3.3.1. Issue Permits and Certificates: Applications for permits required by this Ordinance shall be submitted to the County Enforcing Agency, which shall issue SESC Permits and Certificates of Completion when applicable provisions of this Ordinance have been fulfilled.

3.3.2. Maintain Records: Records for active SESC permits shall be available for public inspection during regular business hours. Upon written request, copies of documents may be furnished at cost to any person consistent with policy of the Board of Commissioners.

3.3.3. Mitigation: It shall be the responsibility of the County Enforcing Agency to conduct such activity as is deemed necessary to remove an immediate threat to environmental resources, property or public safety.

3.3.4. Prepare Invoices and Record Liens: Invoices for mitigation expense shall be mailed by certified mail to the owner(s) of the land on which the violation occurred. Property liens against the land in violation shall be recorded at the Van Buren County Register of Deeds for all invoices remaining unpaid thirty (30) days after mailing. The owner of the land shall be responsible for all costs associated with the recording and subsequent release of a lien.

3.3.5. Legal Remedy: The County Enforcing Agency may issue a Notice of Violation and/or a municipal civil infraction citation to the property owner, contractor, or individual who is not the property owner and who violates this ordinance. The County Enforcing Agency may also take other legal action deemed appropriate against an individual or the owner of a property in violation.

3.3.6. Official Copies: The County Enforcing Agency shall maintain one official copy of this Ordinance, which shall be available for public inspection during regular office hours.

3.3.7. Inspections: The County Enforcing Agency is empowered to conduct inspections of property undergoing earth change in order to properly carry out the enforcement of this Ordinance.

3.3.8 Document Retention: Permits, plans and associated documents for all projects, permitted under this ordinance, may be disposed of three years after the project is completed.

3.4. Interpretation. The County Enforcing Agency shall have full authority to make interpretations as to the scope and applicability of this Ordinance, including but not limited to determinations of violations, acceptability of plans and sureties, necessity for mitigation, and substantial completion. All such determinations by the County Enforcing Agency are considered final.

3.5. Fees, Fines and Sureties

3.5.1. Fees and Fines. The County Board of Commissioners shall periodically adopt a schedule of fees and fines to cover the cost of administration and enforcement of this Ordinance. Adjustment of the schedule of fees and fines will not invalidate other provisions of this Ordinance.

3.5.2. Sureties. Financial surety in form acceptable to the County Enforcing Agency may be required as a condition of a SESC Permit. The amount required may be periodically adjusted by the Board of Commissioners in conjunction with scheduled review of other administrative fees.

Surety is required for all of the following:

3.5.2.1. The area impacted by any earth change exceeding three (3) acres.

3.5.2.2. Mass clearing or land balancing greater than one (1) acre of disturbance.

3.5.2.3. A single or multiple family detached dwelling if final grading and seeding is not part of the builders contract.

3.5.2.4. The property owner, contractor or individual who failed to immediately correct an earlier violation issued pursuant to this Ordinance.

3.5.3. Return of Surety Unused portion of sureties shall be returned upon successful completion of a permitted activity.

Article 4. Rules and Definitions

4.1. Rules Adopted. The County of Van Buren adopts by reference the rules promulgated by the Department of Environmental Quality pursuant to Part 91, as they currently exist and as they may be amended. Said rules shall be available for public distribution at a reasonable charge and will be available for public inspection at the Office of the County Clerk and the County Enforcing Agency.

4.2. Definitions. The County hereby adopts by reference the definitions contained in Part 91. In addition, the following definitions shall apply in the interpretation and enforcement of this ordinance:

- 3.1. **Cease and Desist Order.** An order that stops that portion of the work relative to a project that is causing a violation of this Ordinance or Part 91 until said violation is corrected.
- 3.2. **Certification of Completion.** A signed written statement by the County Enforcing Agency, indicating that specific construction has been completed, inspected and found to be in compliance with all aspects of this Ordinance and Part 91.
- 3.3. **Van Buren County Drain Commissioner.** The County Agency responsible for administration and enforcement of this ordinance in the name of the County of Van Buren, and including agents acting on behalf of or appointed by the Drain Commissioner for administration and enforcement of this Ordinance.
- 3.4. **Mitigation.** Actions taken by the County Enforcing Agency to temporarily or permanently bring a parcel of land into compliance with this ordinance.
- 3.5. **Notice of Intent to File Lien.** Written notice to the owner of a property of intent to file a property lien to secure repayment of mitigation expense, including legal expense associated with a particular mitigation effort. Outstanding liens on property will be collected according to Article 7.
- 3.6. **Notice of Intent to Mitigate.** Legal notice to the owner of a property in violation of this Ordinance of intent to conduct mitigation to remove an immediate threat to natural resources, property or public safety.
- 3.7. **Notice of Taking Action.** Legal notice to the owner of a property in violation of this Ordinance of action already taken to remove an immediate threat to natural resources, property or public safety.

- 3.8. **Notice of Violation.** Written notice to the owner of a property that activity at that site is in violation of the Soil Erosion and Sedimentation Control Act and this Ordinance. Corrective action is required within 5 calendar days.

- 3.9. **SESC.** Abbreviation for "Soil Erosion and Sedimentation Control".

- 3.10. **Stop Work Order.** An order that stops all work on a project until any and all violations of this Ordinance or Part 91 are corrected, except for remedial measures to correct the violation.
- 3.11. **Waters of the state.** The Great Lakes and their connecting waters, inland lakes, streams and wetlands as defined in this ordinance.

- 9.1 **"Lake"** means 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.
- 9.2 **"Stream"** means 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, 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.
- 9.3. **"Wetland"** means 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 and which is any of the following:
- a. Contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.
 - b. Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and more than 5 acres in size.
 - c. Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and 5 acres or less in size if the Michigan Department of Environmental Quality determines that protection of the area is essential to the preservation of the natural resources of the state from pollution, impairment, or destruction and the State has so notified the owner.

Article 5. Application and Permit

5.1. Application and Permit

A person shall not maintain or undertake an earth change governed by this Ordinance, except in compliance with Part 91 and this Ordinance. The SESC Permit Application form and SESC Permit form shall contain all information required by Part 91 and this Ordinance. An Application, together with instructive information as deemed appropriate, shall be provided at no cost to each applicant by the County Enforcing Agency. The County Enforcing Agency shall approve or deny an application for a SESC permit within 30 days after the filing of a complete application for a SESC permit and the payment of the appropriate fees and sureties.

5.1.1 Permits Required:

A landowner or designated agent who contracts for, allows, or engages in, an earth change within the jurisdiction of the Van Buren County Enforcing Agency shall obtain a SESC Permit from the County Enforcing Agency before

commencing an earth change which disturbs 1 or more acres of land or which is within 500 feet of the water's edge of a lake, stream, or other waters of the state unless exempted in 5.1.2.

An earth change activity that does not require a permit under 5.1.2 of this ordinance is not exempt from enforcement procedures under part 91 or this ordinance, if the activity exempted by 5.1.2 of this ordinance causes or results in a violation of part 91 or this ordinance.

5.1.2 Permit Exemptions:

5.1.2.1 A SESC Permit is not required for any of the following:

- a. A beach nourishment project permitted under part 325 of Act No. 451 of the Public Acts of 1994, as amended, being § 324.32501 et seq. of the Michigan Compiled Laws.
- b. 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.
- c. 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.
- d. Installation of oil, gas, and mineral wells under permit from the state if the owner-operator is found by the state to be in compliance with the conditions of part 91.

5.1.2.2 The County Enforcing Agency may grant a SESC Permit waiver for an earth change after receiving a signed affidavit from the landowner stating that the earth change will disturb less than 225 square feet and that the earth change will not contribute sediment to lakes or streams.

5.1.2.3 An exemption provided for in 5.1.2.1 and 5.1.2.2 may be subject to enforcement procedures under this ordinance, if the activity causes or results in a violation of part 91 or this ordinance.

5.1.2.4 Logging, mining, or land plowing or tilling; permit exemptions.

5.1.2.4.1 Subject to 5.1.2.4.2, a person engaged in the logging industry, the mining industry, or the plowing or tilling of land for the purpose of crop production or the harvesting of crops is not required to obtain a permit under this part. However, all earth changes associated with the activities listed in this section shall conform to the same standards as if they required a permit under this part. The exemption from obtaining a permit under this subsection does not include either of the following:

- (a) Access roads to and from the site where active mining or logging is taking place.
- (b) Ancillary activities associated with logging and mining.

5.1.2.4.2 This part does not apply to a metallic mineral mining activity that is regulated under a mining and reclamation plan that contains soil erosion and sedimentation control provisions and that are approved by the State.

5.1.2.4.3 A person is not required to obtain a permit from a county enforcing agency or a municipal enforcing agency for earth changes associated with well locations, surface facilities, flow lines, or access roads relating to oil or gas exploration and development activities regulated under part 615, if the application for a permit to drill and operate under part 615 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 a permit under this part. This subsection does not apply to a multisource commercial hazardous waste disposal well as defined in section 62506a.

5.1.2.4.4 As used in this section, "mining" does not include the removal of clay, gravel, sand, peat, or topsoil.

5.2. Permit Termination

5.2.1. Expiration: SESC Permits shall expire on the date indicated on the permit. The holder of a valid permit may request an extension of coverage.

5.2.2. Construction Not Begun: SESC Permit coverage will automatically terminate if construction has not commenced within four (4) months of the date of issuance. A new plan and application, with fees, are required to obtain a SESC Permit for any site where a permit has been terminated for any reason.

5.3. Permit Suspended/Revoked

A SESC permit issued under this Ordinance may be revoked or suspended at the discretion of the County Enforcing Agency for any of the following reasons:

- 5.3.1. A violation of a condition of the SESC Permit.
- 5.3.2. Misrepresentation or failure to fully disclose relevant facts in the application or plan.
- 5.3.3. A change in land ownership.
- 5.3.4. Work already in progress is abandoned or suspended for a period of four months.

Article 6. Enforcement

6.1. Enforcement

This Ordinance shall be enforced by the County Enforcing Agency. The County Enforcing Agency may issue Notices of Violation, citations, stop work orders, cease and desist orders, or may revoke a SESC Permit upon finding that there is a violation of Part 91 or this Ordinance, and may pursue such legal action as may be necessary to correct a violation.

6.2. Municipal Civil Infractions; Authorized Enforcement Officials; Violation Bureau.

6.2.1. Municipal Civil Infractions. Violation of this Ordinance shall be a municipal civil infraction, as authorized under Chapter 87 of 1961 PA 23 6, as amended, and other applicable laws. A violation includes any act that is prohibited or made or declared to be unlawful, and any omission or failure to act where the act is required by this Ordinance. Each day that a violation exists constitutes a separate infraction. .

6.2.2. Authorized Enforcement Officials. The Van Buren County Drain Commissioner, the County Enforcing Agent (CEA), agents appointed by or acting on behalf of the CEA or Drain Commissioner, deputies of the Van Buren County Sheriffs Office, and other persons specifically designated by this Ordinance are the County officials authorized to issue municipal civil infraction citations and municipal civil infraction violation notices for violations of this Ordinance.

6.2.3. Municipal Civil Infractions Violations Bureau. The Municipal Civil infractions Violations Bureau, for disposition of violation notices issued under this Ordinance, shall be located at the Van Buren County Drain Commissioners Office, 219 E. Paw Paw Street, Suite 301, Paw Paw, MI 49079. .

6.3. Violations and Penalties; Injunction

6.3.1. A person who violates this Ordinance is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not less than \$250.00, and not more than \$2,500.00, plus costs of enforcement.

6.3.2. A person who knowingly makes a false statement in an Application or in a SESC plan is responsible for a civil fine of up to \$10,000.00 for each day of violation, plus costs of enforcement.

6.3.3. A person who knowingly continues to violate this Ordinance after receiving a Notice of Violation is responsible for payment of a civil fine of not less than \$2,500.00 nor more than \$25,000.00 for each day the violation continues to exist, plus costs of enforcement.

6.3.4. A default in payment of a civil fine or costs ordered under this section may be remedied by any means authorized under the Revised Judicature Act of 1961, as amended, being sections 600.101 to 600.9948 of the Michigan Compiled Laws as amended.

6.3.5. In addition to any fines and costs assessed under this section, a person who violates this Ordinance is liable to the State of Michigan for any damages for injury to, destruction of or loss of natural resources resulting from the violation.

6.3.6. Notwithstanding the existence or pursuit of any other remedy, the County may maintain an action in a court of competent jurisdiction for money damages and may request an injunction or other process against a person to restrain or prevent violations of this Ordinance.

6.4. Enforcement and Fines

6.4.1. Costs of Enforcement. The County Enforcing Agency shall maintain a record of all expenses relative to the enforcement of this Ordinance.

6.4.2. Fines. Fines levied and paid pursuant to legal action undertaken by the County Enforcing Agency shall be deposited with the county, and shall be used for enforcement of this Ordinance. Landowners, individuals and contractors undertaking an earth change in violation of this Ordinance or Part 91 are subject to the penalties prescribed herein.

Article 7. Reimbursement for Expense

7.1. Reports. It shall be the duty of the County Enforcing Agency to report to the Board of Commissioners, no later than the last Wednesday in September of each year, all unpaid property liens filed in conjunction with this Ordinance.

7.2. Assessment. It shall be the duty of the County Treasurer to place on the winter tax statement of each property for which there is an amount outstanding the full amount of the outstanding lien.

Article 8. Severability.

If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Article 9. Repeal

All ordinances in conflict are repealed only to the extent necessary to give this Ordinance full force and effect.

Article 10. Savings Clause.

This Ordinance shall not impair or affect any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this Ordinance takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent if this Ordinance had not been adopted.

Article 11. Effective Date 1-9-07

