

- (~~A~~) A signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained before the open burning begins from all residents or owners of dwellings, commercial or institutional establishments, or other occupied structures within 1,000 feet of the open burning site; or
- (~~B~~) An air curtain burner as described in Rule 113C-7 of this chapter, is utilized at the open burning site;
- (~~C~~) Heavy oils, asphaltic materials such as shingles and other roofing materials, items containing natural or synthetic rubber, or any materials other than plant growth are not burned. However, kerosene, distillate oil, or diesel fuel may be used to start the fire;
- (~~D~~) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day, except that, under favorable meteorological conditions, deviation from these hours of burning may be granted by the Department of Natural Resources Tribal Environmental Director. The owner or operator of the open burning operation shall be responsible for obtaining written approval for burning during periods other than those specified in this part; and
- (~~E~~) No fires are started or vegetation is added to existing fires when the Tribe's Division of Agriculture and Natural Resources Bureau of Indian Affairs Branch of Forestry has banned burning for that area.

Sec. 113C-7. - Air curtain burners.

- (~~a~~) Debris from land clearing or right-of-way maintenance may be carried off-site for open burning to facilities permitted in accordance with this rule for the operation of an air curtain burner. However, no material may be taken off-site for open burning in areas where a permitted air curtain burner is not available.
- (~~b~~) Air permits shall not be required for air curtain burners located at temporary land clearing or right-of-way maintenance sites for less than nine months. Operating air permits shall be required for air curtain burners located at permanent sites or where materials are transported in from another site.
- (~~c~~) Air curtain burners ~~described in paragraph (b) of this rule~~ shall comply with the following conditions and stipulations:
 - (~~1a~~) Prevailing winds at the time of burning shall be away from any area, including a public road within 250 feet of the burning, as measured from the edge of the pavement or other roadway surface, which may be significantly affected by smoke, ash, or other air pollutants from the burning;
 - (~~2b~~) Only collected land clearing and yard waste materials may be burned. Heavy oils, asphaltic materials, items containing natural or synthetic rubber, tires, grass clippings, collected leaves, paper products, plastics, general trash, garbage, or any materials containing painted or treated wood materials shall not be burned. Leaves still on trees or brush may be burned;

- (3e) No fires shall be started or material added to existing fires when the Bureau of Indian Affairs Branch of Forestry has banned burning for that area;
- (4d) Burning shall be conducted only between the hours of 8:00 a.m. and 6:00 p.m.;
- (5e) Operators of the air curtain burner shall be certified to read visible emissions and the facility shall be tested for visible emissions within 90 days after initial operation;
- (6f) Air curtain burners shall meet manufacturers specifications for operation and upkeep to ensure complete burning of material charged into the pit. Manufacturers specifications shall be kept on-site and be available for inspection by the Department of Natural Resources ~~Tribal Environmental staff~~;
- (7g) Except during startup, visible emissions shall not exceed five percent opacity when averaged over a six-minute period except that one six-minute period with an average opacity of more than five percent but no more than 35 percent shall be allowed for any one-hour period. During startup, the visible emissions shall not exceed 35 percent opacity when averaged over a six-minute period. Start-up shall not last for more than 30 minutes, and there shall be no more than one startup per day;
- (8h) The owner or operator of an air curtain burner shall not allow ash to build up in the pit to a depth higher than one-third of the depth of the pit or to the point where the ash begins to impede combustion, whichever occurs first. The owner or operator of an air curtain burner shall water the ash prior to its removal to prevent the ash from becoming airborne;
- (9i) The owner or operator of an air curtain burner shall not load material into the air curtain burner such that it will protrude above the air curtain;
- (10j) Only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used to start the fire; and
- (11k) The location of the burning at temporary sites shall be at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted.

(124) Compliance with this rule does not relieve any owner or operator of an air curtain burner from the necessity of complying with other public health laws, rules in this chapter or any other air quality rules.

- (d5) Recordkeeping requirements. The owner or operator of an air curtain burner at a permanent site shall keep a daily log of specific materials burned and amounts of material burned in pounds per hour and tons per year. The owner or operator of an air curtain burner at a temporary site shall keep a log of total number of tons burned per temporary site.

Sec. 113C-8. - Penalties.

- (a4) Individuals or corporations violating the provisions of the above sections of this chapter shall be guilty of a misdemeanor. All such persons who are subject to the criminal jurisdiction of the Cherokee Indian Court shall be subject to imprisonment for 60 days or a fine of \$500.00, or both for each violation. Persons who are not subject to the criminal jurisdiction of the Cherokee ~~Indian~~ Court shall be subject to punishment in the North Carolina or United States courts, as appropriate.

- (b2) Any person over whom the Tribal Court can exercise criminal jurisdiction, and who violates any of the provisions shall, upon conviction in Tribal Court, be guilty of a criminal offense, and shall be subject to a fine of not less than \$100.00, nor more than \$5,000.00, for each day each violation occurs, and in the discretion of the Tribal Court, may also be subject to imprisonment of not less than one day, nor more than 90 days, for each day each violation occurs. As an alternative sentence, any person found guilty of violating any of the provisions may be placed on probation, and required by the Tribal Court to provide not less than 40 hours, but not more than 200 hours, of community service assisting the solid waste agency, or performing other kinds of community service.
- (c3) Any person who violates any of the provisions is subject to the imposition of civil penalties for such unlawful activities. ~~The Director of the Solid Waste Agency, through the~~ Tribe's Attorney General, is authorized to file a civil action against such person on behalf of the Tribe in Tribal Court for injunctive relief or for damages caused by such violation. ~~for civil penalties, including reasonable attorney's fees and costs. Any civil action concerning such violations shall be heard in Tribal Court, and the alleged violator shall be served and have the opportunity to be heard.~~ Any person who is found by the Tribal Court to have committed the alleged violations shall be subject to a civil penalty of not less than \$100.00, but not more than \$1,500.00, for each day each violation occurs, including reasonable attorney's fees and costs.
- (d4) ~~The Director of the Solid Waste Agency, through the Tribe's Attorney General, is authorized to bring a civil action on behalf of the Tribe or its members, in Tribal Court, or any other court of law, against any person who has committed any violation under the provisions, for all civil damages caused, including damages to the land or natural resources of the Tribe or its members, and for the reasonable costs actually incurred, or to be incurred, by the Tribe for cleaning up any solid or hazardous waste, or abating the effects thereof, together with the costs of the suit, including reasonable attorney's fees. The Tribal Council must approve the filing of any civil action for damages before such action is filed.~~
- (e5) ~~Any Tribal law enforcement officer is authorized to seize the property of any person who commits and is charged with the criminal violation of any of the provisions, if such property, while used in the commission of such offenses, is located on the Reservation. If such person is convicted of any offense under the provisions, such seized property shall be forfeited to the Tribe. Such property shall be seized as security for the payment of any civil penalties or damages which may be assessed or imposed, and such property is subject to forfeiture to the Tribe for payment of any civil penalties or damages actually assessed or imposed.~~
- (f6) ~~All civil penalties assessed by the Tribal Court shall be paid to the Environmental Protection Board, and shall be retained in a trust fund designated for paying costs of remedial responses to environmental emergencies occurring on the Reservation, and shall only be expended on such purposes. This includes any property which is forfeited to the Tribe for payment of civil penalties.~~
- (7) ~~All civil damages shall be paid to the Tribe. This includes any property which is forfeited to the Tribe for payment of civil damages.~~
- (8) ~~Reasonable attorney's fees awarded in any civil action shall be paid to the Tribe if the attorney is an employee of the Tribe, or shall otherwise be paid according the provisions of~~

~~any retainer agreement. All costs of suit awarded in any civil action shall be paid to the Tribe.~~

(g9) Any person who is not a member of the Tribe who is found by the Tribal Court to have committed any violations may be excluded from the Reservation, and may have his or her rights to engage in commercial dealings, or consensual activities, on the Reservation suspended or terminated.

~~(10) Any civil penalties or damages imposed under this section are in addition to, and do not supercede or limit, any other remedies which may be available to the Tribe, including the filing of an action for injunctive relief in Tribal Court, or the filing of a civil action for civil damages, or any other relief in any court of competent jurisdiction.~~

~~Sec. 113C-9. Rules and regulations.~~

~~The Lands Committee shall promulgate rules and regulations for the enforcement of this chapter.~~

~~Sec. 113C-10. Prior inconsistent laws repealed.~~

~~Any existing laws which are inconsistent with this chapter are specifically repealed.~~

~~Sec. 113C-11. Severability.~~

~~If any section of this chapter is deemed unconstitutional, the remaining provisions shall have full force and effect.~~

~~Sec. 113C-12. Effective date.~~

~~This chapter shall be effective 30 days after execution by the Principal Chief.~~

Chapter 113D - SOIL EROSION AND SEDIMENTATION CONTROL

ARTICLE I. - GENERAL PROVISIONS

Sec. 113D-1. - Title.

This chapter may be cited as the Eastern Band of Cherokee Soil Erosion and Sedimentation Control Law.

Sec. 113D-2. - Severability.

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

Sec. 113D-3. ~~Effective date.~~ (Rescinded and Reserved).

~~This chapter shall take effect and be enforced on June 1, 2001.~~

Sec. 113D-4. - Purposes.

(a) This chapter is adopted for the purposes of:

- (1) Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and
- (2) Establishing procedures through which these purposes can be fulfilled.

Sec. 113D-5. - Definitions.

(a) As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) *Accelerated erosion*: Any increase over the rate of natural erosion as a result of land-disturbing activity.

(2) *Access and haul roads*: All roads either permanent or those to be obliterated after completion of land-disturbing activities, used for private travel, construction vehicles, earth-moving or heavy equipment or other machinery and constructed and used in conjunction with land-disturbing activities which require a permit under this chapter.

(3) *Adequate erosion control measure, structure, or device*: One which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

(4) *Affiliate*: A person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

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

(6) *Applicant*: Any person, whether the person is financially responsible for the land-disturbing activity or his/her duly appointed agent, who submits a formal application, to the environmental planning office or duly appointed agent, for a permit to conduct land-disturbing activities controlled by this chapter, or who files with the environmental review board a motion to appeal a decision by the environmental planning office or his agent as contained in this chapter.

(7) *Being conducted*: A land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

(8) *Borrow*: Fill material which is required for on-site construction and is obtained from other locations.

(9) *Buffer zone*: The strip of land adjacent to a lake or natural watercourse.

(10) *Completion of construction or development*: No further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

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

(12) *Director*: The director of environmental planning for the Eastern Band of Cherokee Indians.

(13) *Discharge point*: The point at which runoff leaves a tract of land.

(14) *District*: The county soil and water conservation district, created pursuant to Chapter 139, North Carolina General Statutes, which encompasses the Tribal land in question.

(15) *Disturbed areas*: Those areas where the ground cover on or above the soil surface is removed, including trees, grasses or pavements or other surfaces either natural or manmade.

(16) *Energy dissipater*: A structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

(17) *Erosion*: The wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

(18) *Final objective*: The type of structure or use resulting from the land-disturbing activity.

(19) *Ground cover*: Any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

(20) *Lake or natural watercourse*: Any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

(21) *Land-disturbing activity*: Any use of the land by any person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

(22) *Local government*: The Eastern Band of Cherokee Indians.

(23) *Natural erosion*: The wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

(23) *Off-site sediment damage*: The removal or transport of sediment across the boundaries of a land-disturbing activity, resulting in deposition of such materials in any lake or natural watercourse or any land, public or private not owned by the person responsible for the land-disturbing activity.

~~*Parent*: An affiliate that directly, or indirectly through one or more intermediaries, controls another person.~~

(24) *Person*: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

(25) Person conducting land-disturbing activity: Any person who may be held responsible for a violation unless expressly provided otherwise by this chapter, the Act, or any order adopted pursuant to this chapter or the Act.

(26) Person responsible for the violation: As used in this chapter:

(A4) The developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity; or

(B2) The landowner or person in possession or control of the land when he has directly or indirectly allowed the land-disturbing activity or has benefitted from it or he has failed to comply with any provision of this chapter, the Act, or any order adopted pursuant to this chapter or the Act as imposes a duty upon him.

(27) Phase of grading: One of two types of grading, rough or fine.

(28) Plan: An erosion and sedimentation control plan.

(29) Sediment: Solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

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

(31) Siltation: Sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.

(32) Stabilize: To establish groundcover sufficient and adequate to prevent erosion. Temporary stabilization measures are those that are sufficient to prevent erosion until the appropriate time for establishing permanent groundcover.

(33) Storm drainage facilities: The system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

(34) Stormwater runoff: The direct runoff of water resulting from precipitation in any form.

(35) Subsidiary: An affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

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

(37) Tract: All contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

(38) Twenty five (25)-year storm: The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

(39) *Uncovered*: The removal of ground cover from, on, or above the soil surface.

(40) *Undertaken*: The initiation of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

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

(42) *Waste*: Surplus materials resulting from on-site construction and disposed of at other locations.

(43) *Waste areas*: Areas used for the stockpiling or burial of surplus materials resulting from on-site construction and disposed of at other locations.

(44) *Working days*: Days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

Sec. 113D-6. - Exclusions.

(a) This chapter shall not apply to the following land-disturbing activities:

(1) Activities, including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals, including, but not limited to:

(A)a. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts;

(B)b. Dairy animals and dairy products;

(C)e. Poultry and poultry products;

(D)d. Livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats;

(E)e. Bees and apiary products;

(F)f. Fur-producing animals;

(G)g. Ornamental horticulture, including the raising of shrubs, Christmas trees, and other nursery operations; and

(H)h. Trout production and other aquaculture activities;

(2) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with best management practices the provisions of this chapter shall apply to such activity and any related land-disturbing activity on the tract;

(3) Activities for which a permit is required under federal mining laws; or

(4) For the duration of an emergency, activities essential to protect human life.

Secs. 113D-7—113D-19. - Reserved.

ARTICLE II. - EROSION AND SEDIMENTATION CONTROL PLANS AND NOTIFICATION PROCEDURES

Sec. 113D-20. - Plan required.

- (a) No person shall initiate any land-disturbing activity uncovering one acre or more (43,560 square feet) without having an erosion and sedimentation control plan approved by the Tribe.
- (b) An erosion and sedimentation control plan shall be prepared for all land-disturbing activities subject to this chapter whenever the proposed activity is to be undertaken on a tract comprising of one acre or more, if one acre or more is to be uncovered. The plan shall be filed with the environmental planning office at least 30 calendar days prior to the commencement of the proposed activity.
- (c) Persons conducting land-disturbing activity on a tract which covers one acre or more shall file three copies of the erosion control plan with the environmental planning office at least 30 calendar days prior to beginning such activity and shall keep another copy of the plan on file at the job site. After approving the plan, if the environmental planning office, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the environmental planning office will require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the environmental planning office.
- (d) The environmental planning office will review each complete plan submitted to them and within 30 calendar days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Incomplete plans shall be returned for completion. The 30-day review period will not begin until all required items are submitted. The environmental planning office shall have five business days to check the plans for completeness. Failure to approve, approve with modifications, or disapprove a complete erosion and sedimentation control plan within 30 calendar days of receipt shall be deemed approved. Disapproval of a plan must specifically state in writing the reasons for disapproval. The environmental planning office must approve, approve with modifications, or disapprove a revised plan within 15 calendar days of receipt, or it is deemed to be approved. If, following commencement of a land-disturbing activity pursuant to an approved plan, the environmental planning office determines that the plan is inadequate to meet the requirements of this chapter, the county may require any revision of the plan that is necessary to comply with this chapter. Failure to approve, approve with modifications, or disapprove a revised erosion control plan within 15 calendar days of receipt shall be deemed approval of the plan. The environmental planning office shall establish an expiration date of three years for erosion control plans approved under this chapter.
- (e) The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this chapter. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the environmental planning office. A professional is not required to design plans.

Sec. 113D-21. - Financial responsibility statement.

Erosion control plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the plan, the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter.

Sec. 133D-22. - Coordination with the National Environmental Policy Act (NEPA).

Any plan submitted for a land-disturbing activity for which an environmental document is required by the National Environmental Policy Act shall be deemed incomplete until a complete environmental document is available for review. The Tribe shall promptly notify the person submitting the plan that the 30-calendar-day time limit for review of the plan pursuant to subsection 113D-20(d) of this chapter shall not begin until a complete environmental document is available for review.

Sec. 113D-23. - Plan disapproval.

- (a) The environmental planning office may disapprove an erosion control plan upon a finding that an applicant, or a parent company, subsidiary, or other affiliate of the applicant:
- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the environmental planning office pursuant to the Act and has not complied with the notice within the time specified in the notice;
 - (2) Has failed to pay a civil penalty assessed pursuant to the Act or a local chapter adopted pursuant to the Act by the time the payment is due.
 - (3) Has been convicted of a misdemeanor pursuant any criminal provision of a local chapter adopted pursuant to the Act or;
 - (4) Has failed to substantially comply with the provisions of this chapter, or rules or regulations adopted pursuant to this chapter. For purposes of this section an applicant's record may be considered for only the two years prior to the application date.

Sec. 113D-24. - Plan amendment.

Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the environmental planning office, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

Sec. 113D-25. - Failure to file a plan.

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

Sec. 113D-26. - Compliance with water quality laws.

The approval of an erosion control plan is conditioned on the applicant's compliance with federal and Tribal water quality laws, regulations, and rules.

Sec. 113D-27. - Plans involving ditches to lower the water table.

A copy of the erosion control plan for any land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table must be forwarded to the environmental planning office and the United States Army Corps of Engineers.

Sec. 113D-28. - Plan approval or disapproval.

- (a) If the submitted plan is approved by the environmental planning office, a permit to conduct land-disturbing activities shall be issued in the name of the applicant.
- (b) An erosion and sedimentation control plan may be disapproved if the plan fails to address the following control objectives, or other requirements of this chapter:
 - (1) *Identify critical areas.* On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.
 - (2) *Limit time of exposure.* All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
 - (3) *Limit exposed areas.* All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
 - (4) *Control surface water.* Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
 - (5) *Control sedimentation.* All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
 - (6) *Manage storm water runoff.* When the increase in the velocity of stormwater runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

Sec. 113D-29. - Notification procedures for land disturbing activity not meeting the erosion control plan requirements.

- (a) In cases where less than one acre will be disturbed, applicants for building permits on any construction will be asked to complete a form that explains how erosion control will be managed during construction. The form will provide an opportunity to choose among simple approaches to keep mud and sediment from leaving the property. The information provided on the form will serve as an erosion control plan for the new construction. Applicants will need to know the downhill slope of the lot to complete the form. No fee is required for completing the form.

- (b) Should the applicant fail to fill out the notification form in advance of clearing land, give false or misleading information on the form or fail to install the procedures as called for on the form, a penalty will be assessed as outlined in section 113D-73.

ARTICLE III. - PERMITS

Sec. 113D-30. - Permit required.

- (a) No person shall undertake any land-disturbing activity subject to this chapter without first obtaining a permit therefore from the environmental planning office, except that no permit shall be required for any land-disturbing activity:
 - (1) For the purpose of fighting fires;
 - (2) For the stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage; or
 - (3) That does not exceed 43,560 square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.
- (b) Tribal council hereby establishes a \$50.00 per acre fee for sediment and erosion control permits for commercial sites. If a person initiates land-disturbing activity for which a permit is required without obtaining such a permit, the environmental planning office is authorized to double the regular permit fee.
- (c) Requests for a permit to conduct land-disturbing activities shall contain a sediment control plan.

Sec. 113D-31. - Permit applications.

- (a) Clear lines of communication between the environmental planning office, the person financially responsible, and the person conducting the land-disturbing activities are essential not only for the success of the program outlined in this chapter, but to avoid costly delays and resubmittal of applications by the developer as well. It is recommended that prior to submitting a formal application for a permit, persons conducting land-disturbing activities notify the environmental planning office and briefly describe the planned activity, persons responsible for design of sediment control measures, a tentative schedule of activities and request application forms. A pre-application conference is strongly suggested to identify specific areas of concern to both the applicant and the environmental planning office. A permit will not be issued based upon a notification of intent.
- (b) Forms, application requirements, and plan assistance are available upon request from the environmental planning office. All requests for information, submission of plans and applications, and requests for assistance will be handled through the office of the environmental planning office.
- (c) The environmental planning office shall review the application and accompanying plan for completeness and compliance with this chapter. If the submitted plan is approved by the environmental planning office, a permit to conduct land-disturbing activities shall be issued in the name of the applicant. Permits are valid for three years after they are issued;

construction shall begin within the three-year time period or the permit shall expire and a new permit shall be required.

- (d) Permits shall be prominently displayed on the site until the project is certified complete by the environmental planning office. In addition, a copy of the approved sediment control plan shall be kept on hand at the job site at all times for inspection.

Sec. 113D-32. - Surety.

- (a) Application for a permit to disturb five or more acres shall require the posting of a security bond, with the environmental planning office, in the form of an escrow account, an account guaranteed by an established surety company or other instruments satisfactory to the Tribal attorney general, in an amount of not less than \$500.00 nor more than \$5,000.00 per acre of disturbed area as set forth in the approved sediment control plan to cover the costs of installation of sufficient erosion and sediment control measures and devices on the site in accordance with this chapter. Such surety shall be valid until the land-disturbing activity is completed in accordance with the approved sediment control plan and released by the environmental planning office as discussed in the following subsections.
 - (1) Land-disturbing activities not in compliance with this chapter or an approved sediment control plan for 90 working days after notice of violation is received through registered or certified mail or other means detailing specific items of violation, shall be subject to forfeiture of all applicable surety.
 - (2) Forfeiture of applicable surety shall in no way relieve responsible parties of penalties, fines or other requirements of this chapter.
 - (3) Forfeited surety shall be used to establish erosion control structures or ground cover in accordance with an approved sediment control plan. Any monies in excess of cost of establishing protective measures shall be refunded to the person responsible for the land-disturbing activity.
 - (4) Upon completion of improvements as required by this chapter, written notice shall be given by the applicant, through registered or certified mail, to the environmental planning office who shall perform an inspection of the improvements. If the conditions of this chapter are met, within 30 calendar days of the date of notification of completion the Tribe shall authorize in writing the release of applicable surety.

Secs. 113D-33—113D-39. - Reserved.

ARTICLE IV. - EROSION CONTROL REQUIREMENTS

Sec. 113D-40. - Responsibilities of persons conducting land-disturbing activities.

- (a) Persons conducting land-disturbing activities shall take all reasonable measures to prevent damage to public and private property resulting from those activities. In addition, they will be held responsible for knowing and following the requirements of this chapter.
- (b) It is the responsibility of the person conducting the land-disturbing activity to apply to the environmental planning office or his agent for any permit required and receive said permit

contingent upon an approved erosion and sediment control plan, before beginning any land-disturbing activity which uncovers one acre or more.

- (c) If any land-disturbing activity requires a permit as defined in this chapter, a building permit shall not be issued, until a plan has been approved by the environmental planning office or the proper notification form filled out. The building permit may be applied for at the same time as the permit or notification form required by this chapter.

Sec. 113D-41. - Protection of property.

Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.

Sec. 113D-42. - More restrictive rules shall apply.

Whenever conflicts exist between federal or Tribal laws, ordinance, or rules, the more restrictive provision shall apply.

Sec. 113D-43. - Access and haul roads.

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

Sec. 113D-44. - Operations in lakes or natural watercourses.

Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided. The applicant shall consult with the US Army Corps of Engineers and the Tribe to determine if a permit is required before undertaking any land-disturbing activity in or near a watercourse, wetlands or swamp.

Sec. 113D-45. - Borrow and fill areas.

When the person conducting the land-disturbing activity is also the person conducting the borrow fill activity, areas from which borrow is obtained or fill is deposited shall be considered as part of the land-disturbing activity. When the person conducting the land-disturbing activity is not the person obtaining the borrow or depositing the fill, these areas shall be considered a separate land-disturbing activity.

Sec. 113D-46. - Additional measures.

Whenever the Tribe determines that significant sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action.

Sec. 113D-47. - Restoration of areas affected by failure to comply.

The Tribe may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity as required to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This includes damage to properties adjacent to, nearby or downstream of the permitted property that are not owned by the person engaging in the land-disturbing activity. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this chapter.

Secs. 113D-48, 113D-49. - Reserved.

ARTICLE V. - STANDARDS FOR LAND-DISTURBING ACTIVITY

Sec. 113D-50. - Mandatory standards.

(a) No land-disturbing activity subject to the control of this chapter shall be undertaken except in accordance with the following mandatory standards:

(1) *Buffer zone.*

(A)a. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Tribe approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

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

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

(D)d. Where a temporary and minimal disturbance is permitted as an exception by (1)a. of this section, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1,000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the director of environmental planning.

(E)e. No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations.

- (2) *Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 30 working days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.
- (3) *Ground cover.* Whenever land-disturbing activity is undertaken on a tract comprising more than one acre, if more than one acre is uncovered, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Provisions for a ground cover sufficient to restrain erosion must be accomplished within 30 working days or 45 calendar days following completion of construction or development whichever period is shorter.
- (4) *Plan approval.* No person shall initiate any land-disturbing activity on a tract if more than one acre is to be uncovered unless an erosion and sedimentation control plan for such activity is filed 30 or more calendar days prior to initiating the activity and approved by the Tribe.

Sec. 113D-51. - Design and performance standards.

Erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of runoff from the 10-year storm. Runoff rates shall be calculated using the procedures in the USDA, Natural Resources Conservation Service's "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures.

Sec. 113D-52. - Storm water outlet protection.

- (a) Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse at the discharge point does not exceed the greater of:
 - (1) The velocity established by the table in subsection (d) of this section; or
 - (2) The velocity of the 10-year storm runoff in the receiving watercourse prior to development.

If the foregoing requirements cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the pre-development velocity by ten percent.

- (b) Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The environmental planning office recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will

be considered and may be used when shown to have the potential to produce successful results. Some alternatives are to:

- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
 - (2) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections;
 - (3) Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped sections to complex structures;
 - (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.
- (c) *Exceptions.* This rule shall not apply where it can be demonstrated that storm water discharge velocities will not create an erosion problem in the receiving watercourse.
- (d) The following is a table for maximum permissible velocity for storm water discharges:

Maximum Permissible
Velocities

Material	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5

Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source. Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

Sec. 113D-53. - Responsibility for maintenance.

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this chapter, the Act, or any order adopted pursuant to this chapter or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

Secs. 113D-54—113D-59. - Reserved.

ARTICLE VI. - APPEALS

Sec. 113D-60. - Environmental review board established.

- (a) The environmental review board is hereby established to hear these appeals pursuant to this chapter and other environmental laws of the Eastern Band of Cherokee Indians as designated by the Tribal council.
- (b) The environmental review board shall be composed of two Tribal council members appointed by Tribal council chairman and one local qualified person appointed by the Principal Chief.
- (c) The environmental review board is authorized and directed to establish procedures necessary for fair and careful review of appeals related to the Tribe's environmental laws.
- (d) The Tribe's legal division shall advise and assist the environmental review board in any matters that shall come before it.

Sec. 113D-61. - Appeals.

(a) If an erosion control plan is disapproved or modified, the environmental planning office shall advise the applicant in writing as to the specific reasons that the plan was disapproved. The

applicant may appeal the environmental planning office disapproval of the plan to the environmental review board.

- (1) The appeal shall not be considered unless a written demand for a hearing is filed with the environmental planning office within 15 calendar days after receipt of written notice of disapproval or modifications.
- (2) Hearings held pursuant to this section shall be conducted by the environmental review board within 30 calendar days after the date of the appeal or request for a hearing. The environmental planning office shall participate in the hearing to explain the basis for its decision. The appealing party shall participate in the hearing to explain the basis for his or her appeal of that decision.
- (3) If the environmental review board upholds the disapproval or modification of a proposed soil erosion and sedimentation control plan following the hearing, that decision shall be final for the Eastern Band of Cherokee.

Secs. 113D-62—113D-69. - Reserved.

ARTICLE VII. - ENFORCEMENT

Sec. 113D-70. - Inspections and investigations.

- (a) The environmental planning office, agents, officials, or other qualified persons authorized by the environmental planning office will periodically inspect land-disturbing activities to ensure compliance with the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each erosion control plan.
- (b) No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the environmental planning office while that person is inspecting or attempting to inspect a land-disturbing activity under this section.
- (c) If it is determined that a person engaged in land-disturbing activity has failed to comply with this chapter, or rules, or orders adopted or issued pursuant to this chapter, a notice of violation shall be served upon that person. The notice shall specify a date by which the person must comply with the Act, or this chapter, or rules, or orders adopted pursuant to this chapter, and inform the person of the actions that need to be taken to comply with the Act, this chapter, or rules or orders adopted pursuant to this chapter. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Any person who fails to comply within the time specified is subject to the civil and criminal penalties provided in this chapter.
- (d) The environmental planning office shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

- (e) The environmental planning office shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

Sec. 113D-71. - Stop-work orders.

- (a) The environmental planning office may issue a stop-work order if he or she finds that a land-disturbing activity is being conducted in violation of this article or of any rule adopted or order issued pursuant to this article, that the violation is knowing and willful, and that either:
 - (1) Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent;
 - (2) Off-site sedimentation has caused severe damage to adjacent land or that such damage is imminent; or
 - (3) The land-disturbing activity is being conducted without an approved plan.
- (b) The stop-work order shall be in writing and shall state what work is to be stopped and what measures are required to abate the violation. The order shall include a statement of the findings made by the environmental planning office pursuant to subsection (a) of this section, and shall list the conditions under which work that has been stopped by the order may be resumed. The delivery of equipment and materials, which do not contribute to the violation, may continue while the stop-work order is in effect. A copy of this section shall be attached to the order.
- (c) The stop-work order shall be served by the Cherokee Police or by some other person duly authorized by law to serve process as provided by Tribal law, and shall be served on the person at the site of the land-disturbing activity who is in operational control of the land-disturbing activity; the environmental planning office shall forward a copy of the order to the person financially responsible. The Cherokee Police or other person duly authorized by law to serve process shall post a copy of the stop-work order in a conspicuous place at the site of the land-disturbing activity. The environmental planning office shall also deliver a copy of the stop-work order to any person that the environmental planning office has reason to believe may be responsible for the violation.
- (d) The directives of a stop-work order become effective upon service of the order. Thereafter, any person notified of the stop-work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in section 113D-73.
- (e) The environmental planning office shall designate an employee to monitor compliance with the stop-work order. The name of the employee so designated shall be included in the stop-work order. The employee so designated, or the environmental planning office, shall rescind the stop-work order if all the violations for which the stop-work order are issued are corrected, no other violations have occurred, and all measures necessary to abate the violations have been taken. The environmental planning office shall rescind a stop-work order that is issued in error.
- (f) The issuance of a stop-work order shall be subject to appeal to the environmental review board pursuant to article VI of this chapter.