

MEMORANDUM

DATE: September 24, 2002

TO: The Board of Supervisors

FROM: Darryl E. Cook, Environmental Director

SUBJECT: Erosion and Sediment Control - Civil Penalties

On September 10, 2002, the Board considered an amendment to the Erosion and Sediment Control Ordinance that would allow the Environmental Division to serve a summons for civil penalties directly to an individual rather than have to go through the Clerk and Sheriff's Offices. The Board deferred action on the amendment to allow for additional consideration of the matter at a work session. To assist the Board in its determination, the following information presents the current enforcement process utilized by the Environmental Division.

When a violation is identified in the field, the responsible person is given notice of the violation with a list of corrective actions necessary to remedy the violation and a deadline for completion. The notice is in written form and is either an inspection report or a notice to comply. An inspection report is usually issued unless the violation is considered serious or it is for a single-family project. A notice to comply is a legal document that must be issued before further enforcement action can occur. The period of compliance with either document is generally set at three days. The project is then reinspected after three days and if the problem is corrected, no further action is taken. If the violation is not remedied, then further enforcement action is required.

The enforcement options are fairly limited under the Ordinance. Essentially, there are only civil penalties, stop work orders, and revocation of the land disturbing permit. The stop work order stops all land disturbing activities for seven days. If at the end of that time, the violation has not been corrected, then the stop work order can be extended to stop all work on-site except that necessary to correct the violation. This is in the form of an injunction issued by the Circuit Court. Revocation of the Land Disturbing permit puts the permittee or the person responsible for carrying out the plan in violation of the Ordinance and subject to the penalties provided in the Ordinance. These two enforcement techniques are not always effective as often violations occur when no active land disturbing activities are occurring on a site and a stop work order or revocation of the permit would have no immediate effect. However, in these cases, the use of civil penalties could be an effective tool to gain compliance.

The civil penalty provisions are enforced by the Circuit Court with fees assessed in accordance with the fee schedule already contained in the Ordinance in Section 8-7. To start the process, a summons must be issued to the violator. Currently, a summons can only be issued by the Sheriff's Office after coordination through the Clerk's Office. The steps and time frame involved with this process are as follows: First, the Environmental Division will prepare the necessary paperwork; this will occur usually at the end of a workday when the inspector returns to the office. The paperwork is then delivered to the Clerk's Office where it generally would be processed the next day. Finally, the summons is forwarded to the Sheriff's Office where it can take three to seven days to serve the summons depending on the Sheriff's workload and how long it takes to locate the individual to be served. Therefore, a week or more can be lost in the enforcement process when the need for correction is often immediate. Neither the Clerk nor the Sheriff reviews the merits of the summons in this process.

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The proposed change in method of service of the summons is sought to eliminate this week's delay in enforcement and provide for a quicker resolution of violations providing greater protection of the environment. In order to provide more accountability and an internal review process, only supervisors in the Environmental Division would be authorized to issue the summons. The more effective use of the civil penalty provisions would be another tool available to the Environmental Division in its enforcement of the Erosion Control Ordinance after the standard notice of compliance process has been utilized.

Staff recommends adoption of the attached Ordinance.

Darryl E. Cook

CONCUR:

John T. P Horne

DEC/gb
penalties.mem

Attachment