

ADOPTED

ORDINANCE NO. 85A-7

AUG 1 1988

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 5A, EROSION AND SEDIMENTATION CONTROL, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, SECTION 5A-3, DEFINITIONS, SECTION 5A-4, NONCONTROLLED ACTIVITIES, AND BY ADDING SECTION 5A-4.1, UTILITIES AND RAILROAD COMPANIES; AND BY AMENDING AND REORDAINING SECTION 5A-5, PROCEDURES FOR PLAN SUBMISSION AND REVIEW, INSPECTION AND ENFORCEMENT; SECTION 5A-6, PLANS GENERALLY; CERTAIN PROCEDURES ADOPTED BY REFERENCE; SECTION 5A-7, ACTION ON PLANS; SECTION 5A-8, RESPONSIBILITY OF OWNER FOR EXPENSE OF CONTROL MEASURES; PERFORMANCE BONDS; SECTION 5A-9, LAND-DISTURBING PERMIT GENERALLY; TERM OF PLAN; SECTION 5A-10, AMENDMENTS TO PLANS; AND SECTION 5A-11, PENALTY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 5A, Erosion and Sedimentation Control, is hereby amended and reordained by amending Section 5A-3, Definitions; Section 5A-4, Noncontrolled activities; Section 5A-4.1, Utilities and Railroad companies; Section 5A-5, Procedures for plan submission and review, inspection and enforcement; Section 5A-6 Plans generally; certain procedures adopted by reference; Section 5A-7, Action on plans; Section 5A-8, Responsibility of owner for expense of control measures; performance bonds; Section 5A-9 Land-disturbing permit generally; term of plan; Section 5A-10, Amendments to plans; and Section 5A-11, Penalty.

Chapter 5A. Erosion and Sedimentation Control

Section 5A-3. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Administrator. The official designated by the governing body to serve as its agent to administer this chapter.

Board. The Virginia Soil and Water Conservation Board.

Clearing. Any activity which removes the vegetative ground cover, including, but not limited to, the removal of root mat and-or topsoil.

District or soil and water conservation district. A governmental subdivision of the state organized in accordance with the provisions of the Soil Conservation Districts Law, Title 10.1, Chapter 5, Code of Virginia, 1950, as amended.

Erosion and sedimentation control plan or plan. A document containing material for the conservation of soil and water resources of a unit or a group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit of land will be so treated to achieve the conservation objectives.

Excavating. Any digging, scooping or other methods of removing earth materials.

Filling. Any depositing or stockpiling of earth materials.

Governing body. The board of supervisors of the county.

Grading. Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

Land-disturbing activity. Any land change which may result in soil erosion from water and-or wind and the movement of sediments into waters or into lands, including, but not limited to, clearing, grading, excavating, transporting and filling of land.

Land-disturbing permit. A permit issued by the county for clearing, filling, excavating, grading or transporting, or any combination thereof.

Person. Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of this state, any interstate body, or any other legal entity.

Plan approving authority or permit issuing authority. The division of code compliance.

Transporting. Any moving of earth materials from one place to another, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover, either by tracking or the buildup of earth materials, to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs. (3-10-75; Ord. No. 85A-4, 12-2-85; Ord. No. 85A-5, 7-7-86; Ord. No. 85A-6, 1-4-88)

Section 5A-4. Noncontrolled activities.

In no instance shall the provisions of this chapter be construed to apply to the following:

- (a) Such minor land disturbing activities as home gardens and individual home landscaping, repairs and maintenance work;
- (b) Individual service connections;
- (c) Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk provided such land disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;
- (d) Septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system;
- (e) Surface or deep mining; exploration or drilling for oil and gas including the well site, roads, feeder lines and off-site disposal areas;
- (f) Tilling, planting or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;
- (g) Agricultural engineering operations including but not limited to construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act, Chapter 8.1 (Section 62.1-115.1 et seq.) of the Code of Virginia, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;
- (h) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- (i) Preparation for single-family residences separately built, unless in conjunction with multiple construction in subdivision development;

- (j) Disturbed land areas of less than ten thousand (10,000) square feet in size; provided that the permit issuing authority can determine a Land Disturbing Permit shall be required if in its discretion it is deemed necessary to adequately safeguard the control of erosion and sediment.
- (k) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- (l) Shore erosion control projects on tidal waters when the projects are approved by the local wetlands board, the marine resources commission or the United States Army Corps of Engineers;
- (m) Emergency work to protect life, limb or property, and emergency repairs; provided that if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan approving authority. (3-10-75; Ord. No. 85A-1, 6-16-77; Ord. No. 85A-4, 12-2-85)

Section 5A-4.1 Utilities and railroad companies.

Electric and telephone utility companies and railroad companies shall file general erosion and sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:

- (1) Construction, installation or maintenance of electric and telephone utility lines; and
- (2) Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

The Board shall have sixty days in which to comment. Individual approval of separate projects within subdivisions (1) and (2) of this section is not necessary when approved specifications are followed. Projects not included in subdivisions (1) and (2) of this section shall comply with the requirements of the appropriate local erosion and sediment control program. The Board shall have the authority to enforce approved specifications.

Section 5A-5. Procedures for plan submission and review, inspection and enforcement.

Those procedures for plan submission and review, inspection and enforcement are set forth in a separate document which is made a part hereof entitled, "Administrative Guidelines," Chapter 7, adopted from the Virginia Erosion and Sedimentation Control Handbook, Second Edition, 1980. These procedures are controlling unless they are in conflict with a local ordinance or state law.

The plan approving authority or, if a permit is issued in connection with land-disturbing activities which involve the issuance of a grading, building, or other permit, the permit issuing authority

- (1) shall provide for periodic inspections of the land-disturbing activity and
- (2) may require monitoring and reports from the person responsible for carrying out the plan,

to ensure compliance with the approved plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment. The owner, occupier or operator shall be given notice of the inspection and an opportunity to accompany the inspectors. If the permit-issuing authority or plan-approving authority determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land disturbing activities to the agent or employee supervising such activities. Where the plan-approving authority serves notice, a copy of the notice shall also be sent to the issuer of the permit. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this chapter and upon conviction shall be subject to the penalties provided by this chapter. (3-10-75; Ord. No. 85A-3, 5-11-81; Ord. No. 85A-4, 12-2-85; Ord. No. 85A-5, 7-7-86)

Section 5A-6. Plans generally; certain procedures adopted by reference.

An erosion and sedimentation control plan is required under this chapter. The erosion and sedimentation control plan shall detail those methods and techniques to be utilized in the control of erosion and sedimentation.

At a minimum, the erosion and sedimentation control plan shall follow the format detailed in Chapter 2, Chapter 4, Chapter 5, and Chapter 6 of the Virginia Erosion and Sediment Control Handbook, Second Edition 1980, and as may be amended from time to time, which is adopted by reference as fully as if set forth herein in its entirety, as part of this chapter.

Approved standards and specifications for control techniques to be utilized in preparing this plan are set forth in Chapter 3 of the Virginia Erosion and Sediment Control Handbook, Second Edition 1980, and as may be amended from time to time, which is adopted by reference, as fully as if set forth herein in its entirety as part of this chapter. (3-10-75; Ord. No. 85A-6, 1-4-88)

Editor's note--Such procedures may be found on file in the office of the administrator.

Section 5A-7. Action on plans.

The plan-approving authority shall review conservation plans submitted to it and grant written approval within forty-five days of the receipt of the plan if it determines that the plan meets the requirements of the Board's regulations and if the person responsible for carrying out the plan certifies that he will conform to the provisions of this chapter.

When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within forty-five days. The notice shall specify the modifications, terms and conditions that will permit approval of the plan. If no action is taken by the plan-approving authority within the time specified above, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. (3-10-75; Ord. No. 85A-4, 12-2-85)

State Law Reference - Code of Virginia, Section 10.1-563.

Section 5A-8. Responsibility of owner for expense of control measures; performance bonds.

All control measures required by the provision of this chapter shall be undertaken at the expense of the owner or his agent. Pending such actual provision thereof, the owner or his agent shall execute and file with the administrator, prior to issuance of the land-disturbing permit, a performance bond with surety, cash escrow, letter of credit, any combination thereof, or other legal arrangement as is acceptable to the county attorney. This shall be in an amount determined by the administrator, equal to the approximate total cost of providing erosion and sedimentation control improvements. These documents shall be approved by the county, and are to ensure that measures could be taken by the county, at the applicant's expense, should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of him by his approved plan as a result of his land-disturbing activity. If the agency takes such conservation action upon such failure by the permittee, the agency may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held.

Within sixty (60) days of the achievement of adequate stabilization and completion of the land-disturbing activity, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the owner or his agent, or terminated, as the case may be.

These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits. (3-10-75; Ord. No. 85A-2, 3-9-81)

Section 5A-9. Land-disturbing permit generally; term of plan.

Except as provided in Section 5A-4 of this chapter, no person shall engage in any land-disturbing activity as defined in Section 5A-3 of this chapter within the county until he has acquired a land-disturbing permit.

Issuance of a land-disturbing permit is conditioned on an approved erosion and sediment control plan or certification of such, which, shall be presented at the time of application for such a permit; and in addition, the requirements of Section 5A-8 of this chapter concerning a performance bond, cash escrow, or a letter of credit or such other legal arrangement as is acceptable under the provisions of Section 5A-8, must be complied with.

Any approved erosion and sedimentation control plan shall become null and void one hundred and eighty (180) days after the date of approval and no further work subject to this chapter shall be allowed unless and until an additional or updated erosion and sedimentation control plan has been submitted and approved in accordance with the provisions of this chapter or unless all requirements of the approved control plan have been completed in less than one hundred and eighty (180) days in accord with such plan and verified by the on-site inspection by the director of code compliance or his designee. (3-10-75).

Section 5A-10. Amendments to plans.

An approved erosion and sedimentation plan may be amended by the plan approving authority or by the Board when it has approved the plan if:

(a) inspection has revealed that the plan is inadequate to satisfy applicable regulations; or

(b) the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this chapter, are agreed to by the plan-approving authority and the person responsible for carrying out the plan. (3-10-75)

Section 5A-11. Penalty.

(a) A violation of this chapter shall be deemed a misdemeanor and upon conviction shall be subject to a fine not exceeding one thousand dollars (\$1,000.00) or thirty (30) days' imprisonment, or both, for each violation.

(b) The county or the Board may apply to the court of record in the jurisdiction wherein the land lies, or to the circuit court of the City of Richmond, should the land lie in more than one jurisdiction, for injunctive relief to enjoin a violation or a threatened violation under Section 5A-5 or Section 5A-9 of this chapter, without the necessity of showing that there does not exist an adequate remedy at law.

- (c) In addition to any criminal penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the County, or to the Board, as appropriate, in a civil action for damages.
- (d) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars (\$ 2,000.00) for each violation.
- (e) With the consent of any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board, the Director, or plan-approving or permit-issuing authority, any condition of a permit, or any provision of this chapter, the Board, or plan-approving or permit-issuing authority may provide, in an order issued by the Board or plan-approving or permit-issuing authority against such person for the payment of civil charges for past violations in specific sums, not to exceed the limit specified in subsection (d) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (d).
- (f) Upon receipt of a sworn complaint of a substantial violation of either Section 5A-5 or Section 5A-9 of this chapter from the division of code compliance, the chief administrative officer of the county or the Board may, in conjunction with or subsequent to a notice to comply, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, such an order may be issued without regard to whether the permittee has been issued a notice to comply. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven (7) days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Upon completion of corrective action, the order shall immediately be lifted. Nothing in this subsection shall prevent the chief administrative officer from taking any other action specified in this section. (3-10-75; Ord. No. 85A-4, 12-2-85; Ord. No. 85A-5, 7-7-86; Ord. No. 85A-6, 1-4-88)



Jack D. Edwards, Chairman
Board of Supervisors

ATTEST:



David B. Norman
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
NORMENT	AYE
TAYLOR	NAY
MAHONE	AYE
DEPUE	ABSENT
EDWARDS	AYE

Adopted by the Board of Supervisors of James City County, Virginia,
this 1st day of August, 1988.

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