

OCT 21 1992

ORDINANCE NO. 85A-10

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, BY AMENDING SECTION 5A-5, PROCEDURES FOR PLAN SUBMISSION AND REVIEW, INSPECTION AND ENFORCEMENT, 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-5, Procedures for plan submission and review, inspection and enforcement, and Section 5A-11, Penalty.

Chapter 5A. Erosion and Sedimentation Control

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

(a) 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 Sediment Control Handbook, Second Edition, 1980. These procedures are controlling unless they are in conflict with a local ordinance or state law.

(b) 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 sedimentation. 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.

(c) In order to prevent further erosion, the administrator may require an approved erosion and sedimentation control plan for any land identified and designated as an erosion impact area. Any property owner whose land is designated as an erosion impact area, provided the erosion is not the result of activities specified in section 5A-4, shall:

- (1) Submit an erosion and sedimentation control plan for approval within thirty (30) days of receipt of the notice designating the property as an erosion impact area;
- (2) Obtain a land-disturbing permit with sufficient surety posted pursuant to section 5A-8;
- (3) Install all control measures as approved on the plan; and
- (4) Comply with all other provisions of this chapter.

(d) The county may charge applicants a reasonable fee to defray the cost of program administration, including costs associated with the issuance of grading or land-disturbing permits, plan review, and periodic inspection for compliance with erosion and sedimentation control plans if charges for such costs are not made under any other law, ordinance or program. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill and administrator's expense involved, or \$1,000.00, whichever is less.

Section 5A-11. Penalty: ; *civil or criminal.*

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

(b) *Civil penalties:*

(1) *A civil penalty in the amount listed on the schedule below shall be assessed for each violation of the respective offense:*

(a) *Land disturbing activity when no permit has been issued:*

(1) *Disturbing an area of less than one acre \$50.00*

(2) *Disturbing an area of more than one acre or more . . . \$100.00*

(3) *Failing to respond to a notice of violation \$100.00*

(b) *Land disturbing when a permit has been issued:*

(1) *Failing to fully satisfy to a Notice to Comply \$100.00*

(2) Failing to obey a stop work order \$100.00

(3) Failing to stop work when the permit has been revoked \$100.00

(2) Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall specified violations arising from the same operative set of facts be charged more frequently than once in any ten-day period, and in no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$3,000.00.

(3) A civil action for such violation may be brought by the locality wherein the land lies. In any trial for a scheduled violation, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality or its agent, the court shall direct the penalty to be paid into the state treasury.

(4) Designation of a particular violation for a civil penalty shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A.

~~(b)~~ (c) The administrator, the county or the board may apply to the circuit court in any jurisdiction wherein the land lies 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 an adequate remedy at law does not exist.

~~(e)~~ (d) In addition to any criminal *or civil* 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)~~ (e) 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 \$2,000.00 for each violation. *A civil action for such violation or failure may be brought by the locality wherein the land lies. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.*

~~(e)~~ (f) 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

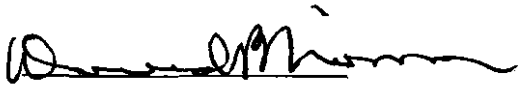
the limit specified in subsection ~~(d)~~ (e) of this section. Such civil charges shall be imposed instead of any appropriate civil penalty which could be imposed under subsection ~~(d)~~ (b) or (e).

~~(f)~~ (g) 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~~ *County Administrator or his designee* 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 *person or* permittee has been issued a notice to comply. Otherwise, such an order may be issued only after the *person or* 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~~ *county administrator* from taking any other action specified in this section.



Jack D. Edwards
Chairman, Board of Supervisors

ATTEST:



David B. Norman
Clerk to the Board

| <u>SUPERVISOR</u> | <u>VOTE</u> |
|-------------------|-------------|
| DEPUE | AYE |
| TAYLOR | NAY |
| SISK | AYE |
| KNUDSON | AYE |
| EDWARDS | AYE |

Adopted by the Board of Supervisors of James City County, Virginia, this 21st day of
October, 1992.

EroSed92.0-7