

JUL 26 2011

ORDINANCE NO. 85A-19BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 8, EROSION AND SEDIMENT CONTROL, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 8-2, DEFINITIONS; SECTION 8-3, EROSION AND SEDIMENT CONTROL PROGRAM; SECTION 8-4, REGULATED LAND-DISTURBING ACTIVITIES; SUBMISSION AND APPROVAL OF PLANS, CONTENTS OF PLANS; SECTION 8-5, PERMITS, FEES, BONDING, ETC.; SECTION 8-6, MONITORING, REPORTS, AND INSPECTIONS; AND SECTION 8-7, PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 8, Erosion and Sediment Control, is hereby amended and reordained by amending Section 8-2, Definitions; Section 8-3, Erosion and sediment control program; Section 8-4, Regulated land-disturbing activities; Submission and approval of plans, content of plans; Section 8-5, Permits, fees, bonding, etc.; Section 8-6, Monitoring, reports, and inspections; and Section 8-7, Penalties, injunctions, and other legal actions.

Chapter 8. Erosion and Sediment Control

**Sec. 8-2. Definitions.**

As used in the chapter, unless the context requires a different meaning:

*Certified program administrator.* The director of the ~~environmental division~~ *engineering and resource protection division* who (i) holds a certificate of competence from the board in the area of program administration or (ii) is enrolled in the board's training program for program administration and successfully completes such program within one year after enrollment.

*Plan-approving authority.* The ~~environmental~~ *engineering and resource protection* division responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.

**Sec. 8-3. Erosion and sediment control program.**

(c) The county hereby designates the *environmental engineering and resource protection* division as the plan-approving authority.

**Sec. 8-4. Regulated land-disturbing activities; Submission and approval of plans, contents of plans.**

(a) Except as provided herein, no person may engage in any land-disturbing activity until he has submitted to the *environmental engineering and resource protection* division for the county an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the plan-approving authority. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the board for review and approval rather than to each jurisdiction concerned.

**Sec. 8-5. Permits, fees, bonding, etc.**

(e) Performance surety. All applicants for permits shall provide to the county a performance bond, cash escrow, or an irrevocable letter of credit, any combination thereof, or other legal arrangements as is acceptable to the county attorney, to ensure that measures could be taken by the county at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him as a result of his land-disturbing activity.

The amount of the performance surety shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the county to take such conservation action, the county may collect from the applicant any costs in excess of the amount of the surety held.

Within 60 days of adequate stabilization, as determined by the ~~environmental~~ *engineering and resource protection* division, in any project or section of a project, such performance surety, or the unexpended or unobligated portion thereof shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section.

**Sec. 8-6. Monitoring, reports, and inspections.**

(b) The ~~environmental~~ *engineering and resource protection* division shall periodically inspect the land-disturbing activity as prescribed in the *Virginia Erosion and Sediment Control Regulations* and require that an individual holding a certificate of competence, as provided by the state Department of Conservation and Recreation, who will be in charge of and responsible for carrying out the land-disturbing activity, be identified 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, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.

If the ~~environmental~~ *engineering and resource protection* division 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.

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 specified time, 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 shall be subject to the penalties provided by this chapter.

(c) Upon determination of a violation of this chapter, the ~~environmental~~ *engineering and resource protection* division may, in conjunction with or subsequent to a notice to comply as specified in this chapter, 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.

If land-disturbing activities have commenced without an approved plan, the ~~environmental~~ *engineering and resource protection* division may, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

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, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this chapter. 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 days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the circuit court of James City County.

If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the ~~environmental~~ *engineering and resource protection* division may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the county.

The owner may appeal the issuance of an order to the circuit court of James City County.

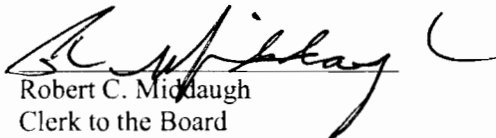
Any person violating or failing, neglecting or refusing to obey an order issued by the ~~environmental~~ *engineering and resource protection* division may be compelled in a proceeding instituted in the circuit court of James City County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.

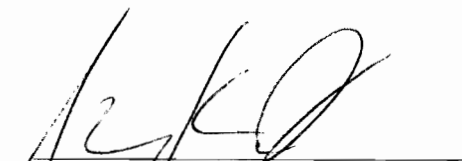
Nothing in this section shall prevent the ~~environmental~~ *engineering and resource protection* division from taking any other action authorized by this chapter.

**Sec. 8-7. Penalties, injunctions, and other legal actions.**

(c) The ~~environmental~~ *engineering and resource protection* division, or the owner or property which has sustained damage or which is in imminent danger of being damaged, may apply to the circuit court of James City County to enjoin a violation or a threatened violation of this chapter, without the necessity of showing that an adequate remedy at law does not exist.

ATTEST:

  
Robert C. McLaugh  
Clerk to the Board

  
Mary K. Jones  
Chairman, Board of Supervisors

SUPERVISORS	VOTE
KENNEDY	AYE
GOODSON	AYE
MCGLENNON	AYE
ICENHOUR	AYE
JONES	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 26th day of July, 2011.