

ORDINANCE NO.

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

Chapter 8. Erosion and Sediment Control

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

- (a) Schedule of civil penalties
- (1) *The erosion and sediment control administrator or his deputy may issue a summons for collection of the civil penalty to any person who violates a provision of this chapter.* ~~Any person who violates any provision of this chapter shall,~~ Upon a finding of the district court of James City County, *such person shall* be assessed a civil penalty. A civil penalty in the amount listed on the schedule below shall be assessed for each violation of the respective offenses:
 - a. Commencement of land disturbing activity without an approved erosion control plan as provided in section 8-4 shall be \$1,000.00 per day.
 - b. Vegetative measures - failure to comply with items 1, 2, 3, 5, and 7 of the Minimum Standards shall be \$100.00 per violation per day.
 - c. Structural measures - failure to comply with items 2, 4, 6, 8, 9, 10, 11, 15, and 17 of the Minimum Standards shall be \$100.00 per violation per day.
 - d. Watercourse measures - failure to comply with items 12, 13, 14, and 15 of the Minimum Standards shall be \$100.00 per violation per day.
 - e. Underground utility measures - failure to comply with item 16(a), and/or (c) of the Minimum Standards shall be \$100.00 per violation/per day.
 - f. Failure to obey a stop work order shall be \$100.00 per day.

- g. Failure to stop work when permit is revoked shall be \$100.00 per day
- h. All other violations of this chapter not specifically enumerated in items (a) through (g) of this section shall be \$100.00 per day.

(b) 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, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.

(c) The environmental 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.

However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

(d) In addition to any penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the county in a civil action for damages.

(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 for each violation. A civil action for such violation or failure may be brought by the county.

Any civil penalties assessed by a court shall be paid into the treasury of the county, 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.

(f) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this chapter, the county may provide for the payment of civil charges for violations in specific sums, not to exceed \$2,000. Such civil charges shall be instead of any appropriate civil penalty.

(g) Compliance with the provisions of this chapter shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

State law reference - Code of Va., §§ 10.1-562 and 10.1-569

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of September, 2002.