

## Chapter 8

### EROSION AND SEDIMENT CONTROL\*

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#### **Sec. 8-1. Title, purpose, and authority.**

This chapter shall be known as the "Erosion and Sediment Control Ordinance of James City County." The purpose of this chapter is to conserve the land, water, air, and other natural resources of the county by establishing requirements for the control of erosion and sedimentation, and by establishing procedures whereby these requirements shall be administered and enforced.

(Ord. No. 85A-13, 10-26-99)

**State law reference**-Code of Va., § 10.1- 560 et seq.

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

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

*Agreement in lieu of a plan.* A contract between the plan-approving authority and the owner which specifies conservation measures which must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

*Applicant.* Any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

*Board.* The Virginia Soil and Water Conservation Board.

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\***Editor's note**-Ord. No. 85A-13, adopted October 26, 1999, repealed and replaced Ch. 8, Erosion and Sedimentation Control. Prior to this repeal and replacement, Ch. 8, derived from Ord. of March 10, 1975, and from the following:

<b>Ord. No.</b>	<b>Date</b>	<b>Ord. No.</b>	<b>Date</b>
85A-1	6-16-77	85A-7	8-1-88
85A-2	3-9-81	85A-8	5-1-89
85A-3	5-11-81	85A-9	3-4-91
85A-4	12-2-85	85A-10	10-12-92
85A-5	7-7-86	85A-11	2-16-93
85A-6	1-4-88	85A-12	6-11-96

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*Certified inspector.* An employee or agent of a program authority who (i) holds a certificate of competence from the board in the area of project inspection or (ii) is enrolled in the board's training program for project inspection and successfully completes such program within one year after enrollment.

*Certified plan reviewer.* An employee or agent of a program authority who (i) holds a certificate of competence from the board in the area of plan review, (ii) is enrolled in the board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to article 1 (Sec. 54.1-400 et seq.) of chapter 4 of title 54.1 of the Code of Virginia (1950).

*Certified program administrator.* The director of the environmental 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.

*Clearing.* Any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.

*Conservation plan, erosion and sediment control plan, or plan.* A document containing material for the conservation of soil and water resources of a unit or 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 or units of land will be so treated to achieve the conservation objectives.

*County.* James City County.

*Department.* The Department of Conservation and Recreation.

*Development.* A tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

*Director.* The director of the department.

*District or soil and water conservation district.* Refers to the Colonial Soil and Water Conservation District.

*Erosion impact area.* An area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

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

*Filling.* Any depositing or stockpiling of earth materials.

*Grading.* Any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

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*Land-disturbing activity.* Any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

- (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
- (2) Individual service connections;
- (3) 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;
- (4) 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;
- (5) Surface or deep mining;
- (6) Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas;
- (7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Code of Virginia sections 10.1-604 et seq., ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Code of Virginia sections 10.1-1100 et seq. of this title or is converted to bona fide agricultural or improved pasture use as described in subsection B of Code of Virginia section 10.1-1163;
- (8) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- (9) Disturbed land areas of less than 2,500 square feet in size; provided, that the environmental division 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 sedimentation;
- (10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- (11) Shore erosion control projects on tidal waters when the projects are approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; and
- (12) 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.

*Land-disturbing permit.* A permit issued by county for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein.

*Local erosion and sediment control program or local control program.* An outline of the various methods employed by the county to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

*Owner.* The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

*Permittee.* The person to whom the permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

*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 the commonwealth, any interstate body, or any other legal entity.

*Plan-approving authority.* The environmental 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.

*Program authority.* The county which has adopted a soil erosion and sediment control program approved by the board.

*Single-family residence.* A noncommercial dwelling that is occupied exclusively by one family.

*State erosion and sediment control program or state program.* The program administered by the Virginia Soil and Water Conservation Board pursuant to the State Code including regulations designed to minimize erosion and sedimentation.

*State waters.* All waters on the surface and under the ground wholly or partially within or bordering the commonwealth or within its jurisdictions.

*Transporting.* Any moving of earth materials from one place to another place 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.

(Ord. No. 85A-13, 10-26-99)

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

(a) The county adopts the regulations, references, guidelines, standards and specifications promulgated by the Virginia Soil and Water Conservation Board and the *James City County Guidelines for Design and Construction of Stormwater Management BMPs* for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural

resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the *Virginia Erosion and Sediment Control Regulations* and the *Virginia Erosion and Sediment Control Handbook*, Third Edition, dated 1992.

(b) An erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The erosion control program of the county shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.

(c) The county hereby designates the environmental division as the plan-approving authority.  
(Ord. No. 85A-13, 10-26-99)

#### **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 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.

Where the land-disturbing activity results from the construction of a single-family residence, an "agreement in lieu of a plan" may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

(b) The standards contained within the *Virginia Erosion and Sediment Control Regulations*, including the Minimum Standards, the *Virginia Erosion and Sediment Control Handbook* and the *James City County Guidelines for Design and Construction of Stormwater Management BMPs (Guidelines)* are to be used by the applicant when making a submittal under the provisions of this chapter and in the preparation of an erosion and sediment control plan. The plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by these same standards, regulations and guidelines. When the standards vary between the publications, the state regulations shall take precedence except for the MS-19 two-year storm criteria, whereas James City County has adopted a one-year storm criteria as specified in the *Guidelines*.

(c) The plan-approving authority shall, within 45 days from receipt thereof, approve any such plan, if it is determined that the plan meets the requirements of the local control program, and if the person responsible for carrying out the plan certifies that he or she will properly perform the erosion and sediment control measures included in the plan and will conform to the provisions of this chapter. In addition, as a prerequisite to approval of the plan, the person responsible for carrying out the plan shall provide the name of 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. Any disapproval of a plan shall be in writing and any disapproval shall specify the reasons for such disapproval.

When the plan is determined to be inadequate, the plan-approving authority shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

(d) An approved plan may be changed by the plan-approving authority when:

(1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or

- (2) The person responsible for carrying out the 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 plans.
  
- (e) In order to prevent further erosion, the county may require approval of a conservation plan for any land identified in the local program as an erosion impact area.
  
- (f) When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.
  
- (g) Whenever electric and telephone utility companies, interstate and intrastate natural gas pipeline companies or railroad companies undertake any of the activities included in subparagraphs (1) and (2) of this subsection, they shall be considered exempt from the provisions of this chapter.
  - (1) Construction, installation and maintenance of electric, natural gas and telephone utility lines and pipelines; and
  - (2) Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.
  - (3) Projects not included in subparagraphs (1) and (2) of this subsection shall comply with the requirements of the county erosion and sediment control program.
  
- (h) State agency projects are exempt from the provisions of this chapter except as provided for in the Code of Virginia, section 10.1-564.  
(Ord. No. 85A-13, 10-26-99; Ord. No. 85A-14, 7-24-01)

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

- (a) Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.
  
- (b) No person may engage in any land-disturbing activity until he has acquired a land-disturbing permit, unless the proposed land-disturbing activity is specifically exempt from the provisions of this chapter, and has paid the fees and posted the required bond.
  
- (c) Fees. The following administrative fee shall be paid to the county.
  - (1) Residential subdivisions shall pay \$70.00 per lot at the time of submission of the erosion and sediment control plan;
  - (2) Nonresidential site plans and other land-disturbing activities shall pay \$600.00 per acre of disturbance for the first 15 acres plus \$400.00 per acre for each additional acre over 15 at the time of submission of the erosion and sediment control plan; and
  - (3) Residential site plans shall pay \$840.00 per acre of disturbance for the first 15 acres plus \$560.00 per acre for each additional acre over 15 at the time of submission of the erosion and sediment control plan;

(4) A \$100.00 fee shall be required for each single-family residential structure at the time of submission of the building permit application.

(d) No land-disturbing permit shall be issued until the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.

(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 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.

(f) Any land-disturbing permit shall contain a right of entry to allow the manager or his designees access to the property until a final inspection determines that the land is adequately stabilized.

(g) These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

(h) Any approved erosion and sediment control plan shall become null and void one year after the date of issuance of the land-disturbing permit, and no further work subject to this chapter shall be allowed unless and until an additional or updated erosion and sediment 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 year in accord with such plan and verified by the on-site inspection by the manager.

(Ord. No. 85A-13, 10-26-99; Ord. No. 85A-14, 7-24-01; Ord. No. 85A-15, 4-22-03; Ord. No. 85A-16, 5-11-04; Ord. No. 85A-17, 6-28-05)

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

(a) The certified program administrator may require the person responsible for carrying out the plan to monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.

(b) The environmental 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 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 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 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 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 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 division from taking any other action authorized by this chapter.

(Ord. No. 85A-13, 10-26-99; Ord. No. 85A-14, 7-24-01)

Supp. No. 17, 6-05

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

(a) Schedule of civil penalties

(1) Any person who violates any provision of this chapter shall, upon a finding of the district court of James City County, 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 not less than \$100.00 nor more than \$1,000.00 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 not less than \$100.00 nor more than \$1,000.00 per violation per day.
- d. Watercourse measures - failure to comply with items 12, 13, 14, and 15 of the Minimum Standards shall be not less than \$100.00 nor more than \$1,000.00 per violation per day.
- e. Underground utility measures - failure to comply with item 16(a), and/or (c) of the Minimum Standards shall be not less than \$100.00 nor more than \$1,000.00 per violation per day.
- f. Failure to obey a stop work order shall be not less than \$100.00 nor more than \$1,000.00 per day.
- g. Failure to stop work when permit is revoked shall be not less than \$100.00 nor more than \$1,000.00 per day
- h. All other violations of this chapter not specifically enumerated in items (a) through (g) of this section shall be not less than \$100.00 nor more than \$1,000.00 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 \$10,000, including a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site.

(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.  
(Ord. No. 85A-13, 10-26-99; Ord. No. 85A-18, 11-25-08)

#### **Sec. 8-8. Appeals and judicial review.**

(a) Any applicant under the provision of this chapter who is aggrieved by any action of the county or its agent in disapproving plans submitted pursuant to this chapter shall have the right to apply for and receive a review of such action by the board of supervisors provided an appeal is filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before the board of supervisors shall be heard at the next regularly scheduled board of supervisors' public hearing provided that the board of supervisors and other involved parties have at least 30 days prior notice. In reviewing the agent's actions, the board of supervisors shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the board of supervisors may affirm, reverse or modify the action. The board of supervisors' decision shall be final, subject only to review by the circuit court of James City County.

(b) Final decisions of the county under this chapter shall be subject to review by the James City County circuit court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.  
(Ord. No. 85A-13, 10-26-99)