

Chapter 42

ENVIRONMENT*

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***Cross references**—Animals, ch. 14; buildings and building regulations, ch. 18; businesses, ch. 22; community development, ch. 30; fire prevention and protection, ch. 46; planning, ch. 54; solid waste, ch. 62; utilities, ch. 74.

State law references—Erosion and sediment control, Code of Virginia, § Tit. 62.1, Art. 2.4.; action to remove public nuisance, Code of Virginia, § 15.2-900.

ARTICLE I. IN GENERAL

Secs. 42-1—42-30. Reserved.

ARTICLE II. EROSION AND SEDIMENT CONTROL

Sec. 42-31. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrator or *program administrator* means an employee or agent of a program authority who (i) holds a certificate of competence from the Virginia Soil and Water Conservation Board in the area of plan review, (ii) is enrolled in the Virginia Soil and Water Conservation 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.

Agreement in lieu of a plan means a contract between the program authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the program authority in lieu of an erosion and sediment control plan

Clearing means any activity which removes the vegetative ground cover including, but not limited to, root mat removal and/or topsoil removal.

District or *Southside Soil and Water Conservation District* means a governmental subdivision of the state organized in accordance with the provisions of the soil and water conservation districts law (Code of Virginia, § 10.1-506 et seq.).

Erosion and sedimentation control plan or *plan* means 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 ensure that the entire unit of land will be so treated to achieve the conservation objectives.

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

Filling means any depositing or stockpiling of earth materials.

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

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

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

Natural channel design concepts means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain

Peak flow rate means the maximum instantaneous flow from a given storm condition at a particular location

Person means 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 means the Southside Soil and Water Conservation District.

Responsible land disturber (RLD) means an individual from the project or development team that will be in charge of and responsible for carrying out land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who (i) holds a Responsible Land Disturber certificate of competence, (ii) holds a current certificate of competence from the Virginia Soil and Water Conservation Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review, (iii) holds a current Contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect, or land surveyor pursuant to Article I (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia

Runoff volume means the volume of water that runs off the land development project from a prescribed storm event

Single-family residence means a non-commercial dwelling that is occupied exclusively by one family

Transporting means 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.

Water quality volume means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project
(Ord. Of 5-12-75, § 3(2) - (13))

Cross reference—Definitions generally, § 1-2.

State law reference—Definitions, Code of Virginia, § 10.1-500.

Sec. 42-32. Local erosion and sediment control program.

(a) Pursuant to § Title 62.1, Article 2.4 of the Code of Virginia, the County of Charlotte hereby adopts, as an integral part of this article, the regulations, references, guidelines, standards, and specifications established by the Virginia Soil and Water Conservation Board 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, as amended.

(b) Before adopting or revising regulations, the County of Charlotte shall give due notice and conduct a public hearing on the proposed or revised regulations, except that a public hearing shall not be required when the County of Charlotte is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the County of Charlotte proposes or revises regulations that are more stringent than the State program.

(c) The jurisdiction of this article shall include the unincorporated areas of the county and the four incorporated towns (Keysville, Drakes Branch, Charlotte Court House, and Phenix), pursuant to recorded resolutions from each town's governing body to the effect that it was the expressed intention that all land disturbing activities within the boundaries are to be covered by the terms and provisions of this article.

(Ord. of 5-12-75)

(d) The County of Charlotte hereby designates the Charlotte County Administrator as the Erosion and Sediment Control Program Administrator.

(e) In accordance with § 62.1-44.15:55 of the Code of Virginia, stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels.

(f) In accordance with § 62.1-44.15:55 of the Code of Virginia, any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels.

Sec. 42-33. Purpose of article.

This article shall provide for, both during and following development, the control of erosion and sedimentation and establish procedures for the administration and enforcement of such controls.

(Ord. Of 5-12-75, § 1)

Sec. 42-34. Application of article.

(a) Except as provided for in subsections (b) and (e) of this section, or in Code of Virginia § 62.1-44.15:55, no person may engage in any land disturbing activity, until such person has submitted to the county, has had reviewed by, and has had approved by the Southside Soil and Water Conservation District, an erosion and sediment control plan for such land disturbing activity.

(b) 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.

(c) Prior to engaging in any land-disturbing activities, the person responsible for carrying out the plan shall provide the program authority the name of a designated Responsible Land Disturber, an individual holding a certificate of competence who will be in charge of and responsible for carrying out the land-disturbing activity in accordance with the approved plan. However, the Responsible Land Disturber requirement shall be waived for an agreement in lieu of a plan for construction of a single-family residence.

(d) It is the intent of this article to be an adjunct to both the county's subdivision and zoning ordinances wherein such apply to the development and subdivision of land within the county or such apply to development on previously subdivided land within the county.

(e) In no instance shall the provisions of this article be construed to apply to the following:

- (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 the 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 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. 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, § 10.1-1100 et seq., or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, §10.1-1163(B).
- (8) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company
- (9) Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Code of Virginia § 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;
- (10) Disturbed land areas of less than 10,000 square feet in size; however, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;
- (11) Installation of fence and signposts or telephone and electric poles and other kinds of posts or poles;
- (12) 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
- (13) Emergency work to protect life, limb, or property, and emergency repairs; however, 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.

(Ord. of 5-12-75, §§ 2, 4; Ord of 2-8-82)

State law reference—Similar provisions, Code of Virginia, § 62.1-44.15:55.

Sec. 42-35. Monitoring and inspections.

(a) The Building Inspection Department shall inspect the land-disturbing activity immediately following the initial installation of erosion and sediment controls, at least once in every' two-week period, within 48 hours following any runoff producing storm event, and at the completion of the

project prior to the release of the performance bond. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.

(b) If the plan-approving authority determines that there is a failure to comply with the plan, a notice to comply 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 provide a time frame for completion of such measures. 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 article and shall be subject to the penalties provided by this article.

(c) Upon determination of a violation of this ordinance, the Program Administrator or his designee, may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, 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.

(d) 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 whether or not the alleged violator has been issued a notice to comply. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order shall be served in the same manner as a notice to comply and shall remain in effect for seven days from the date of service pending application by the enforcing authority or alleged violator for appropriate relief to the Circuit Court of Charlotte County.

(e) 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 Program Administrator or his designee 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 Charlotte County.

(f) The owner may appeal the issuance of an order to the Circuit Court of Charlotte County.

(g) Any person violating or failing, neglecting or refusing to obey an order issued by the Program Administrator or his designee may be compelled in a proceeding instituted in the Circuit Court of Charlotte County, Virginia to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon completion and approval of corrective action, satisfying any penalties imposed, and obtaining any required permits, the order shall be lifted immediately.

(h) Nothing in this section shall prevent the Program Administrator from taking any other action authorized by this article.

State law reference—Similar provisions, Code of Virginia, § 62.1-44.15:58.

Sec. 42-36. Plan – Submission.

Four copies of the erosion and sediment control plan shall be submitted to the administrator.

(Ord. of 5-12-75, § 5)

Sec. 42-37. Same – Specifications.

(a) An erosion and sedimentation control plan drawn to scale is required under this article and shall detail those methods and techniques to be utilized in the control of erosion and sedimentation. As a minimum, this plan shall follow the format detailed in chapter 6 of the current edition of the Virginia Erosion and Sediment Control Handbook and as may be amended from time to time, which by reference is adopted as a portion of this article and is included in the Charlotte County Erosion and Sediment Control Handbook.

(b) Approved standards and specifications for control techniques to be utilized in preparing this plan are to be set forth in chapter 3 of the current edition of the Virginia Erosion and Sediment Control Handbook, as may be amended from time to time, which by reference is hereby adopted, as a portion of this article.

(Ord. of 5-12-75, § 7; Ord. of 2-8-82)

Sec. 42-38. Same – Approval.

(a) Any erosion and sedimentation plan submitted under the provisions of this article will be acted on in 45 days from receipt by either approving or disapproving in writing and giving specific reasons for disapproval. If no formal action has been taken by the plan approving authority in 45 days after receipt of the plan, the plan shall be deemed approved.

(Ord. of 5-12-75, § 8)

(b) Any person engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks, pursuant to a permit issued by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation banks annually with the Virginia Soil and Water Conservation Board for review and approval consistent with guidelines established by the Virginia Soil and Water Conservation Board.

State law reference—Similar provisions, Code of Virginia, § 62.1-44.15:55.

Sec. 42-39. Certification; bonding of performance.

(a) All control measures required by the provisions of this article shall be undertaken at the expense of the owner or his agent. Prior to issuance of the land disturbing permit in all cases where the cost of the erosion and sedimentation control improvements is estimated by the administrator to exceed \$300.00, the owner or his agent shall execute and file with the administrator an agreement and bond with surety approved by the legal counsel of the county, or agreement and cash escrow, or agreement and unconditional, irrevocable letter of credit issued to the clerk of the county circuit court by a commercial bank acceptable to the legal counsel for the county, in an amount determined by the administrator to be equal to the approximate cost of providing erosion and sedimentation control improvements, guaranteeing that the required measures will be properly and satisfactorily completed.

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

(Ord. of 5-12-75, § 9)

State law reference—Similar provisions, Code of Virginia, § 62.1-44.15:53.

Sec. 42-40. Issuance of land disturbing permit; fees.

(a) Except as provided for in Section 42-34(b) and (e), no person shall engage in any land disturbing activity within the county until he has acquired a land disturbing permit.

(b) Issuance of a land disturbing permit is conditioned on an approved erosion and sedimentation control plan, the certification of which shall be presented at the time of application for such a permit and, in addition, the requirements of Section 42-39 concerning a performance bond, cash escrow, letter of credit, any combination thereof, or such other legal arrangements as is acceptable under the provisions of Section 42-39, and to such fees levied in this article, if any, for land disturbing activities.

(c) ~~The fee for a land disturbing permit shall be \$150.00. The board of supervisors may, by ordinance or resolution, establish and from time to time amend a schedule of fees that will apply to all permits, reviews, and processing required by this ordinance.~~

(Ord. of 5-12-75, § 10; Mo. of 4-9-7; Ord. of 3-9-20, Sec 42-40c)

Sec. 42-41. Amendment of plan.

An approved erosion and sedimentation plan may be amended by the administrator if on-site inspection indicates that the approved control measures are not effective in controlling erosion and sedimentation or, because of changed circumstances, the approved plan cannot be carried out; provided, however, that such amendments are agreed to by persons responsible for carrying out the plan. Should the administrator and the person responsible for carrying out the plan fail to reach an agreement to an amendment, then the decision of the administrator shall be final.

(Ord. of 5-12-75, § 11)

Sec. 42-42. Administrative appeal; judicial review.

Final decisions of the administrator under this article shall be subject to appeal to the district, thence to county board of building code appeals, and thence to the county circuit court of record, 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. of 5-12-75, § 12)

State law reference—Judicial appeals, Code of Virginia, § 62.1-44.15:62.

Sec. 42-43. Liability.

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

(Ord. of 5-12-75, § 14)

State law reference — Similar provisions, Code of Virginia, § 62.1-44.15:63(B).

Sec. 42-44. Penalties, injunctions, and other legal actions.

(a) A violation of this article shall be deemed a Class I misdemeanor.

(b) Any person who violates any provision of this ordinance shall, upon a finding of the District or Charlotte County, be assessed a civil penalty. The civil penalty for any one violation shall be \$100, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. 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 \$10,000.

State law reference—Similar provisions, Code of Virginia, § 62.1-44.15:63.

Chapters 43—44

RESERVED