

ROCKBRIDGE COUNTY CODE

Chapter 12

EROSION AND SEDIMENT CONTROL

Section 12-1. Title, Purpose, and Authority.

This chapter shall be known as the "Erosion and Sediment Control Ordinance of Rockbridge County." The purpose of this ordinance is to prevent degradation of properties, stream channels, waters and other natural resources of the County by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced. This ordinance is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4 (Sec. 10.1-560, *et seq.*), known as the Virginia Erosion and Sediment Control Law.

Section 12-2. Applicability of Chapter in Towns.

The provisions of this chapter shall be applicable within the corporate limits of the Town of Glasgow and the Town of Goshen. Administrative procedures may be established to accommodate the review of plans for development located within the towns.

Section 12-3. Administration in Conjunction with Land Development Regulations.

This chapter shall be administered in conjunction with the County's Land Development Regulations, also referred to as the County's subdivision and zoning ordinances, as applicable to the development and subdivision of land within the County, the Town of Glasgow and the Town of Goshen, or to the development of previously subdivided land within the County or incorporated towns within the County.

Section 12-4. Definitions.

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

- A. "Agreement in lieu of a plan" means a contract between the plan-approving 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 plan-approving authority in lieu of a formal site plan.
- B. "Applicant" means 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.

- C. "As-built plans" means a final set of drawings and specifications illustrating exactly what has been constructed in the field to be produced upon completion by a licensed 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.
- D. "Board" means the Virginia Soil and Water Conservation Board.
- E. "Certified inspector" means 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.
- F. "Certified plan reviewer" means 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.
- G. "Certified program administrator" means an employee or agent of a program authority 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.
- H. "Clearing" means any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.
- I. "County" means the County of Rockbridge, Virginia.
- J. "Department" means the Department of Conservation and Recreation.
- K. "Development" means 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.
- L. "Director" means the director of the Department.
- M. "District" or "Soil and Water Conservation District" refers to the Natural Bridge Soil and Water Conservation District.
- N. "Erosion and Sediment Control Plan" or "Plan" means 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.

- O. "Erosion Impact Area" means 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 shorelines where the erosion results from wave action or other coastal processes.
- P. "Excavating" means any digging, scooping or other methods of removing earth materials.
- Q. "Filling" means any depositing or stockpiling of earth materials.
- R. "Grading" means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.
- S. "Land-disturbing Activity" means 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, Article 2, (Sec. 10.1-604 et seq.) of Chapter 6, 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 Chapter 11 (Sec. 10.1-1100 et seq.) of the Code of Virginia (1950, as amended) or is converted to bona fide agricultural or improved pasture use as described in Subsection B of Sec. 10.1-1163 of the Code of Virginia (1950, as amended);

- (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 10,000 square feet in size; however, this exception shall not apply to disturbed areas directly related to the construction of, or to providing access to, a new or existing structure (including a residence), in which event a land disturbing permit shall be required.
 - (10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
 - (11) Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this chapter; 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.
- T. "Land-disturbing Permit" means a permit issued by the County for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein.
- U. "Local erosion and sediment control program", "local control program", or "County erosion and sediment control program" means 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.

- V. "Owner" means 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.
- W. "Permittee" means 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.
- X. "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.
- Y. "Plan-approving authority" means the County Program Administrator, or designees, responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.
- Z. "Program Administrator" means the certified program administrator designated and authorized by the Board of Supervisors of Rockbridge County as director of the County Erosion and Sediment Control Department to administer the local control program.
- AA. "Program authority" means the County of Rockbridge, which has adopted a soil erosion and sediment control program approved by the Board.
- BB. "Responsible Land Disturber" means an individual from the project or development team, who will be in charge of and responsible for carrying out a 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 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 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1.
- CC. "Single-family residence" means a noncommercial dwelling that is occupied exclusively by one family.
- DD. "State Erosion and Sediment Control Program" or "State Program" means the program administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia, including regulations designed to minimize erosion and sedimentation.

- EE. "State Waters" means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdictions.
- FF. "Stormwater Maintenance Agreement" means a signed and notarized agreement between the owner and the county naming a responsible party for the long-term maintenance of all man made stormwater structures associated with a particular site development.
- GG. "Town" means the incorporated Town of Glasgow and Town of Goshen.
- HH. "Transporting" means 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.

Section 12-5. Local Erosion and Sediment Control Program.

- A. Pursuant to section 10.1-562 of the Code of Virginia, the County of Rockbridge hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Board and any local handbook or publication 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 Rockbridge 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 Rockbridge is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the County proposes or revises regulations that are more stringent than the state program.
- C. Pursuant to Sec. 10.1-561.1 of the Code of Virginia, 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 Rockbridge County shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.
- D. The County hereby designates the County Program Administrator as the plan-approving authority. The Program Administrator or the County may consult or contract with any other approved person or agency for additional assistance with administration of the local control program, including plan reviews and approvals.

- E. The program and regulations provided for in this chapter shall be made available for public inspection at the office of the County Erosion and Sediment Control Department.

Section 12-6. Submission and Approval of Plans; Contents of Plans.

- A. Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the Erosion and Sediment Control Department an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the plan-approving authority. The County Erosion and Sediment Control Department will provide all applicants with a submittal package to be completed before any submission can be made. 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.

Where the land-disturbing activity results from the construction of, or to provide access to, a new or existing structure (including a residence), and the disturbed area is less than 10,000 square feet, the permit will be issued without the requirement of official plans and reviews unless the project is determined to constitute a major threat to, or likely to have a major impact on, off-site areas. The required permit must be obtained prior to commencement of any land-disturbing activity.

- B. The standards contained within the "Virginia Erosion and Sediment Control Regulations", the Virginia Erosion and Sediment Control Handbook and any local handbook or publication 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 the same standards, regulations and guidelines. When the standards vary between the publications, the State regulations shall take precedence.
- C. The plan-approving authority shall review conservation plans submitted to it and grant written approval within 45 days of the receipt of the plan if it determines that the plan meets the requirements of the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the

plan shall provide the name of an individual holding a certificate of competence, to the program authority, as provided by § 10.1-561, of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this chapter.

However, the plan-approving authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single-family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § 10.1-561 of the Virginia Erosion and Sediment Control Law. Failure to provide the name of an individual holding a certificate of competence shall be a violation of this chapter.

- D. The plan shall be acted upon within 45 days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its 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.

- E. 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; or
 - (3) The original design professional finds it necessary to request a formal variance. All variances must be requested in writing and are to include all pertinent information (i.e. drawings, calculations, justification). Variances regarding any of the minimum standards as listed in the Virginia Erosion and Sediment Control Handbook will not be issued without consultation with the Department of Conservation and Recreation.
- F. In order to prevent further erosion, the County may require approval of a plan for any land identified in the local program as an erosion impact area.

- G. 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.
- H. Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:
 - (1) Construction, installation or 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.

Individual approval of separate projects within subdivisions 1 and 2 of this subsection is not necessary when Board approved specifications are followed, however, projects included in subdivisions 1 and 2 must comply with Board approved specifications. Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the County of Rockbridge erosion and sediment control program and this chapter.

- I. State agency projects are exempt from the provisions of this chapter except as provided for in the Code of Virginia, Sec. 10.1-564.

Section 12-7. Permits; Fees; Security for Performance.

- A. 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.
- B. Any land-disturbing activity, regardless of use or exemption from this chapter, deemed an erosion impact area shall require immediate application for a permit and shall be subject to the provisions of this chapter.
- C. Any applicant for a permit under this chapter shall pay the required fees to the County, in accordance with the following schedule, at the time of submission of the erosion and sediment control plan or agreement in lieu of plan, to cover the administrative expense of review, permitting, and inspection.

DEVELOPMENT TYPE		BASE FEE	ADDITIONAL FEE PER DISTURBED ACRE (or any portion thereof)	RESUBMITTAL FEE***	INSPECTION FREQUENCY
Commercial/Industrial		\$1,065	\$175	\$80/hour for review	Once per 2 weeks
Residential (3 or more lots)		\$1,100	\$175	\$80/hour for review	Once per 2 weeks
Single Family Home/Addition and/or Access to Structure – Under 10,000 square feet disturbed		\$50		-0-	None
Single Family Home/Addition – Over 10,000 square feet disturbed					
Score	1-12	\$100		-0-	Each scheduled building inspection
Score	13-19	\$150		-0-	Once per 8 weeks
Score	20-26	\$200		-0-	Once per 4 weeks
Score	27-33	\$250		-0-	Once per 2 weeks

*** The Resubmittal Fee will only apply after the second submittal. Resubmittal of plans that have significant changes are not subject to the Resubmittal Fee and will be charged the initial fee again.

- 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. Officials, departments, agencies or authorities authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may not issue any such permit until the permit required by this section has been issued and the applicant certifies that the plan or agreement will be implemented. No building permits shall be issued in a single family subdivision, multi-family development, or for any commercial or industrial use property until the owner has received a written inspection report from the Program Administrator confirming that all controls shown on the approved plan (including required stormwater facilities) are properly installed and all denuded areas are properly stabilized. In addition, all new road construction is to be at final grade and covered with stone with proper ditch lining.

- F. All applicants for permits shall provide to the County a reasonable performance bond with surety, cash escrow, an irrevocable letter of credit, or any combination thereof, acceptable to the County Program Administrator, to ensure that measures could be taken by the County of Rockbridge 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 bond or other security for performance 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 sixty (60) days of adequate stabilization, as determined by the County Program Administrator in any project or section of a project, but not before receiving all documentation required under this chapter, such bond, cash escrow or letter of credit, 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.

- G. The record owner of the property at the time of permit issuance shall provide a signed and notarized Stormwater Maintenance Agreement with the County, together with a map or plat in recordable form showing the stormwater management facilities to be maintained, all of which shall be recorded in the Clerk's Office of the Circuit Court of Rockbridge County. The maintenance agreement may be transferred to another responsible person or entity, such as a property owners' association, provided that such association has been properly established and transfer of maintenance responsibility is completed prior to conveyance of any out-parcel in the project.

As-built plans showing the final stormwater management facilities, man-made ditches and channels, and storm sewer systems shall be provided to the Program Administrator upon completion of the project. No surety will be released until all items are provided to the County Erosion and Sediment Control Department. Failure to respond to an initial request for the required documentation will result in enforcement action in accordance with County Code Section 12-8 and Section 12-10.

- H. 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.

Section 12-8. Monitoring, Reports, and Inspections.

- A. The County 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 Certified Inspectors of the County Erosion and Sediment Control Department shall periodically inspect the land-disturbing activity in accordance with Sec 4VAC50-30-60 of the Virginia Erosion and Sediment Control Regulations 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 Certified Inspector 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 first-class mail and 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 Certified Inspector or the County Program Administrator 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 Certified Inspector or the Program Administrator 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 until all required corrections have been made and verified by Program Administrator, or until an approved plan and any required permits are obtained.

If the alleged violator has not obtained an approved plan or any required permits, or has not completed all specified corrective measures, within seven days from the date of service of the order, the Program Administrator may issue an order to the owner requiring that all construction and other work of any kind on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained, or until all specified corrective measures have been completed. Such an order shall be served upon the owner by first-class mail and by registered or certified mail to the address specified in the permit application or the land records of Rockbridge County.

The owner may appeal the issuance of an order to the Circuit Court of Rockbridge County within 30 days of the date thereof.

Any person violating or failing, neglecting or refusing to obey an order issued by the Program Administrator may be compelled in a proceeding instituted in the Circuit Court of Rockbridge 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 Program Administrator from taking any other action authorized by this chapter.

Section 12-9. The Natural Bridge Soil & Water Conservation District.

By joint resolution of the Board of Supervisors of Rockbridge County and The Natural Bridge Soil & Water Conservation District, the authority and responsibilities of the County Program Administrator as provided in this chapter may be delegated and assigned, in whole or in part, to the District for enforcement of the provisions of this chapter.

Section 12-10. Penalties, Injunctions, and Other Legal Actions.

- A. Any person issued a Notice to Comply will be assessed a \$50.00 re-inspection fee to be paid to the county treasurer on or before the specified compliance date in the notice.
- B. Any person who violates any provision of this chapter shall, upon a finding of the General District Court of Rockbridge 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 a total of \$10,000.

- C. The Program Administrator, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the Circuit Court of Rockbridge 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 civil 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 the limit specified in Subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection E.

- G. The Commonwealth's Attorney or the County Attorney shall be authorized, upon request of the County or the program administrator, to take legal action to enforce the provisions of this chapter.
- H. 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.

Section 12-11. 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 Rockbridge County 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 public hearing of the Board of Supervisors, 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 Supervisor's decision shall be final, subject only to review by the Circuit Court of Rockbridge County.
- B. Final decisions of the County under this chapter shall be subject to review by the Rockbridge 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. of 10-22-01; Ord. of 6-26-06; Ord. of 7-23-07)

State law reference(s) -- Code of Virginia, §10.1-560, et seq.