

***ADOPTION OF AN AMENDMENT TO
CHAPTER 104 (EROSION AND SEDIMENTATION CONTROL)
OF THE 1976 CODE OF THE COUNTY OF FAIRFAX, VIRGINIA***

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held electronically (due to the State of Emergency caused by the COVID-19 pandemic), on Tuesday, November 17, 2020, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment to Chapter 104 (Erosion and Sedimentation Control) of the 1976 Code of the County of Fairfax, Virginia, said amendment so adopted being in the words and figures following, to-wit:

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA:

That the Code of the County of Fairfax, Virginia, Chapter 104 (Erosion and Sedimentation Control), is amended, as follows:

Amend Article 1 Purpose and Administration, Section 104-1-5 Monitoring and Inspections, by revising it to read as follows:

(a) The Director ~~shall~~ must provide for periodic inspections of ~~any~~ the land-disturbing activity in accordance with Section 9 VAC 25-840-60.B of the Virginia Erosion and Sediment Control Regulations and ~~require that an individual holding a certificate of competence, as provided by Virginia Code, § 62.1-44.15:52, 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.~~ The Director may require monitoring and reports from the person responsible for carrying out the plan to ensure compliance with (1) the approved plan; and (2) ~~the field practices specified in the standards defined herein,~~ to determine whether the measures required in the plan ~~and standards~~ are effective in preserving and protecting trees and other vegetation, and controlling erosion and sediment resulting from the land-disturbing activities. Notice of ~~such~~ the right of inspection ~~shall~~ must be included in the permit. The owner, permittee, or person responsible for carrying out the plan ~~shall~~ must be given notice of the inspection.

(b) Failure to comply with an approved plan, including any plan alterations under Subsection 104-1-3(c), is a violation of this Article, and the permittee or the person responsible for carrying out the plan is deemed to be in violation thereof and is subject to the penalties provided by this Article. If the Director determines that the permittee has failed to comply with the plan, the standards defined herein, or this Section, the Director shall immediately serve upon the permittee, his agent, or the person responsible for carrying out the plan either in person or by registered or certified mail to the address specified by the permittee in his permit application, or by delivery at the site of the permitted activities to the agent or employee of the permittee supervising such activities a notice to comply.

~~Such notice shall specifically set forth the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. If the permittee fails to comply within the time specified, he may be subject to revocation of the permit; furthermore, the permittee or the 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.~~

Amend Article 1 Purpose and Administration, Section 104-1-12 Penalties, injunctions and other legal actions, by revising it to read as follows:

Section 104-1-12. – Enforcement, ~~P~~penalties, injunctions, and other legal actions.

(a) Violations: Violators of this Chapter ~~shall be~~ are guilty of a Class 1 misdemeanor.

(b) Civil Action for Damages: In addition to any criminal penalties or civil penalties provided under this Article, any person who violates any provision of this Article may be liable to the County in a civil action for damages.

(c) Inspection Report and Notice of Violation:

(1) If the Director determines that a permittee has failed to comply with an approved plan, the Director must serve an Inspection Report upon the permittee, the permittee's agent, or the person responsible for carrying out the plan either in person or by registered or certified mail to the address specified in the permit application, or by delivery at the site of the

permitted activities to the agent or employee of the permittee supervising the land-disturbing activities. The Inspection Report must set forth the reasons for noncompliance, measures needed to comply with the plan, and the time within which those measures must be completed.

(2) If the permittee fails to comply with the Inspection Report within the time specified in the report, the Director must issue a Notice of Violation that sets forth the reasons for noncompliance with the plan, corrective measures, and the time within which those measures must be completed. The Notice of Violation must be issued in the same manner as the Inspection Report in (c)(1) above. The Director may revoke the permit for the land-disturbing activity if the permittee or responsible person fails to comply with the Notice of Violation.

(ed) Stop Work Order:

(1) Stop Work Orders for Permitted Land Disturbances. ~~Upon receipt of a sworn complaint of a violation under this Chapter, the Director may, in conjunction with or subsequent to a notice to comply as specified above, issue an order~~ If the permittee or responsible person fails to comply with the Notice of Violation, the Director may issue a Stop Work Order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures specified in the Notice of Violation have been ~~taken~~ satisfied. The Stop Work Order for noncompliance with a plan and the Notice of Violation must be served in the same manner as the Inspection Report, and will remain in effect for seven days from the date of service pending application by the Director or alleged violator for appropriate relief in the Fairfax County Circuit Court or other appropriate court.

(2) Stop Work Orders for Unpermitted Land Disturbances. ~~or, if~~ land-disturbing activities have commenced without an approved plan and any required permits as provided in Section 104-1-2, the Director may issue an order a Stop Work Order requiring that all of the land-disturbing activities be stopped until an approved plan ~~or~~ and any required permits are obtained. The Stop Work Order for commencement of land-disturbing activities without an approved plan and permits must be served upon the property owner by mailing with confirmation of delivery to the last known address of the owner as shown in the current Fairfax County Real Estate Assessment files and posted on the site where the land disturbance is occurring. The Stop Work Order remains in effect until the permits and plan approvals are secured. If the owner fails to comply with the Stop Work Order for the unpermitted land-disturbing activity, the Director may request the Building Official to issue a Stop Work Order under the Building Code (Chapter 61 of the Fairfax County Code) requiring that all construction and other work on the site be stopped, other than corrective measures.

(3) The Director may issue a Stop Work Order ~~Where~~ without first issuing an Inspection Report or Notice of Violation if the alleged noncompliance with an approved plan 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 Sections 104-1-2 and 104-1-5. 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 (7) days from the date of service pending application by the Director or the permit holder for appropriate relief to the Circuit Court. If the alleged violator has not obtained an approved plan or any required permits within seven (7) days from the date of service of the order, the Director 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.

(4) The owner may appeal the issuance of ~~an order~~ a Stop Work Order to the Fairfax County Circuit Court.

(5) The Director may institute an action for injunction, mandamus, or other appropriate remedy against ~~a~~Any person violating or failing, neglecting, or refusing to obey an order issued by the Director ~~may be compelled in a proceeding instituted in the Circuit Court to obey same and comply therewith by injunction, mandamus or other appropriate remedy.~~

(6) A Stop Work Order is deemed null and void upon ~~The order shall be lifted immediately following~~ completion and approval of the corrective actions ~~or obtaining the~~ when an approved plan or ~~and~~ any required permits identified in the Stop Work Order are obtained.

(7) Nothing in this ~~s~~Section ~~shall~~ prevents the Director from taking any other action specified in this Chapter.

(de) Injunctive Relief: The County may apply to the Fairfax County Circuit Court for injunctive relief to enjoin a violation or a threatened violation under this Chapter, without the necessity of showing that there does not exist an adequate remedy at law.

(ef) Enforcement: The Commonwealth's Attorney must prosecute criminal penalties for violations of this Article shall, upon request of the County, ~~take legal action to enforce the provisions of this Article.~~

(fg) Compliance as Defense Against Damages: Compliance with the provisions of this Article ~~shall be~~ is *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.

(gh) Use of Escrow: As provided for in Section ~~104-1-4~~ 104-1-5 of this Article, the Director may authorize ~~the~~ County agents to use escrow funds posted by the applicant to ~~provide~~ implement conservation measures ~~as may be necessary due to correct the applicant's permittee's failure to initiate appropriate conservation action or maintain those conservation measures required by the approved plan as a result of his land disturbing activity. In the event that~~ If escrow funds are used by the County ~~pursuant to~~ under this Article, the applicant must shall deposit; an amount sufficient to restore the escrow to its original balance within ten (10) days ~~of such~~ after disbursement, ~~an amount sufficient to restore the amount to its original balance.~~

(hi) Civil Penalty Penalties:

(1) Violations of any regulation or order of the State Water Control Board, any provision of this Ordinance, any condition of a permit, or any provision of the Virginia Erosion and Sediment Control Law are subject to a civil penalty, upon the finding of an appropriate court. The civil penalty for any one violation will be not less than \$100 nor more than \$1,000. Each day during which the violation is found to have existed is a separate offense. A series of specified violations arising from the same operative set of facts may not result in civil penalties that exceed a total of \$10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site may not result in civil penalties that exceed a total of \$10,000. Civil penalties under this Subsection will be in lieu of criminal sanctions and preclude prosecution under Subsection 101-4-12(a).

(2) ~~Without limiting the remedies which may be obtained in this Section,~~ aAny person violating or failing, neglecting or refusing to obey any injunction, mandamus, or other remedy

obtained pursuant to this ~~s~~Section ~~is~~ shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the Director.

(i) Consent Orders: With the consent of any person who has violated or failed, neglected or refused to obey any regulation or any condition of a permit or any provision of this Article, the Director may provide, in an order issued by the Director against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection 104-1-12(i) (h) of this Section. The consent to sSuch civil charges by agreement to a consent order will shall be instead of any civil penalty which could be imposed under Subsection 104-1-12(i) (h).

(k) Any civil penalties assessed by a court will be paid into the treasury of Fairfax County. Civil penalties under this Subsection may be obtained in addition to any other remedy available under this Section with the exception of the criminal sanctions precluded by 104-1-12 (i)(1) above.

This amendment shall become effective on November 18, 2020, at 12:01 a.m.

GIVEN under my hand this 17th day of November, 2020.

JILL G. COOPER
Clerk for the Board of Supervisors