

Town of Cape Charles

APPENDIX D

Erosion and Sediment Control Ordinance

Section 22.1 Chapter Title

This ordinance shall be known as the "Erosion and Sediment Control Ordinance of the Town of Cape Charles, Virginia."

Section 22.2 Purpose of Chapter

The purpose of this ordinance is to prevent degradation of properties, stream channels, water, and other natural resources of the Town of Cape Charles and to promote the public health and welfare of the people in Cape Charles by establishing requirements for the control of erosion and sedimentation from non-agricultural land disturbance and by establishing procedures whereby these requirements shall be administered and enforced. (Ord. No. 17, 6-11-91)

This chapter is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4 (Sec. 10.1-560 et seq.) known as the "Erosion and Sediment Control Law." This law provides for a comprehensive statewide program with standards and guidelines to control soil erosion and sedimentation on the local level (Ord. No. 17, 3, 6-11-91).

Section 22.3 Definitions

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

"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.

"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.

"Board" means the Virginia Soil and Water Conservation Board.

"Certified inspector" means an employee or agent of the Town of Cape Charles 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" means an employee or agent of the Town of Cape Charles 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.

"Certified program administrator" means an employee or agent of the Town of Cape Charles 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" means any activity which removes the vegetation ground cover including, but not limited to, root mat removal and/or topsoil removal.

"Conservation Plan" (see **"Erosion and Sediment Control Plan"**)

"Council" means the Cape Charles Town Council

"Department", or **"DCR"** means the Department of Conservation and Recreation

"District" or **"Eastern Shore Soil and Water Conservation District"** means a political subdivision of this Commonwealth organized in accordance with the provisions of Article 3 of this Chapter, Section 10.1-560, Code of Virginia, as amended.

"Erosion and Sediment Control Plan", **"Conservation 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 assure that the entire unit or units of land will be so treated to achieve the conservation objective.

"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 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.

"Governing body" means the Cape Charles Town Council.

“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 the land-disturbing activity is confined to the area of the road, street, or sidewalk which is hard surfaced;
4. Septic tank 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 activities authorized under a permit issued by the Department of Mines, Minerals, and Energy;
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 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 this title or is converted to bona fide agricultural or improved pasture use as described in Subsection B of Sec. 10.1-1163;
8. Repair or rebuilding of the tracks, right 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; however, the governing body of the program authority may reduce this exception to a smaller area of disturbed land and/or qualify the conditions under which this exception shall apply;
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 all of the land disturbing activities are within 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 article and the regulations adopted pursuant thereto; and
12. 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 requirement of the plan-approving authority.

“Local erosion and sediment control program” or **“local control program”** means an outline of the various methods employed by a program authority 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.

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

“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.

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

“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.

“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 other legal entity.

“Plan-approving authority” means the program administrator of the Town, responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of land and for approving plans.

“Program authority” means the Town of Cape Charles, which has adopted a soil erosion and sediment control program approved by the Board.

“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.

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

“Significant weather event” means rainfall in excess of 1” within a 24 hr. period or winds in excess of 25 MPH for a period of more than 24 hrs.

“Single-family residence” means a noncommercial dwelling that is occupied exclusively by one family.

“State Erosion and Sediment Control Program” or **“State Program”** means the program administered by the Board pursuant to Section 10.1-560, et seq. of the Code of Virginia as amended, including the regulations designed to minimize erosion and sedimentation.

“State Waters” means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.

“Town” means the Municipal Corporation of Cape Charles.

“Water quality volume” means the volume equal to the first half inch of runoff multiplied by the impervious surface of the land development project.

Cross Reference - Definitions and rules of construction generally, 1-2.

State Law Reference - Similar definitions, Code of Virginia, 10.1-560.

Section 22.4 Severability

If any portion of this article is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remainder of the provision.

Section 22.5 Local Erosion and Sediment Control Program

- A. The minimum standards of local program effectiveness established by the Board pursuant to Subsection D of Title 10.1-561 shall be maintained by the Town program and who hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the 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. A local program shall contain a certified program administrator, a certified plan reviewer, and a certified project inspector, who may be the same person. Any person who holds a certificate of competence from the Board in the areas of plan review, project inspection, or program administration which was attained prior to the adoption of the mandatory certification of Subsection A of this section shall be deemed to satisfy the requirements of that area certification.
- C. The Town of Cape Charles hereby appoints the E&S Administrator and Plan Reviewer as the plan approving authority.
- D. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the program administrator. The regulations may be revised from time to time as necessary. Before adopting or revising regulations, the Town shall give due notice and shall conduct a public hearing on the proposed or revised regulations except that a public hearing shall not be required when the district is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the Town is proposing regulations that are more stringent than the state program.

(Ord. No. 9372, I, 7-14-93)

Cross Reference - Similar provisions, Code of Virginia 10.1-561-1.
State Law Reference - See Editor's note to 22-4.

Section 22.6 Regulated Land-Disturbing Activities; Submission and Approval of Control Plan

- A. The owner or lessee of the land being developed has the responsibility for plan preparation and submission. The owner or lessee may designate someone (e.g. an engineer, architect, contractor, etc.) to prepare the plan, but the owner or lessee retains the ultimate responsibility.
- B. Except as provided in Code of Virginia § 10.1-564, no person may engage in any land-disturbing activity until he has submitted to the Town Program Administrator an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved by said Administrator. 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 Soil and Water Conservation Board for review and approval rather than to each jurisdiction concerned.
- C. 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 approved by the program administrator. The Program Administrator may waive the certificate of competence requirement in (D) below 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 may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be in violation of this ordinance.

- D. The Certified Plan Reviewer shall review E&S plans submitted to it and grant written approval within 45 days of the receipt if it is determined 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 ordinance.
- E. The standards contained within the "Virginia Erosion and Sediment Control Regulations", the Virginia Erosion and Sediment Control Handbook and Chapters 22 & 74 of "The Cape Charles Town Code" are to be used by the applicant when making a submittal under the provisions of this ordinance 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.
- F. When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that will permit approval of the plan. If no action is taken by the plan approving authority within 45 days, the plan will be deemed approved and the person authorized to proceed with the proposed activity.
- G. An approved plan may be changed by the Town in the following cases:
 - 1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
 - 2. Where the person responsible for carrying out the approved 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 article, are agreed to by the Program Administrator and the person responsible for carrying out the plan.

- H. In order to prevent further erosion, the Program Administrator may require approval of a plan for any land identified in the local program as an erosion impact area.
- I. 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.
- J. The Department of Conservation and Recreation will be responsible for plan approval of state agencies and these agencies are exempt from this ordinance except as provided for in the Code of Virginia Sec.10.1-564.
- K. 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 and telephone utility lines; and
 - 2. Construction of the tracks, rights of way, bridges, communication facilities and other related structures and facilities of the railroad company.
- L. The Program Administrator may waive or modify any of the regulations that are deemed inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:
 - 1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the plan-approving authority shall be documented in the plan.
 - 2. During construction, the person responsible for implementing the approved plan may request a variance in writing from the plan-approving authority. The plan-approving authority shall respond in writing either approving or disapproving such a request. If the plan-approving authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

(Ord. No. 9372, I, 7-14-93)

State Law Reference - Similar provisions, Code of Virginia 10.1-563.

Note - See the Editor's note to 22-4.

Section 22.7 Permit Required for Land-Disturbing Activities

- 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 ordinance, and has paid the fees and posted the required bond.
- B. No land-disturbing permit shall be issued by the Program Administrator or any employee of the Town until the applicant submits an approved Erosion and Sediment Control Plan (unless exempted by the provisions of this ordinance) and certification that the plan will be followed.
- C. No land-disturbing permit shall be issued for a portion of a site for which a wetlands permit is required until evidence of necessary permits from the local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers, as applicable, is submitted to the program administrator.

Section 22.8 Erosion and Sediment Control Program Fees

All fees for erosion and sediment control activities, including but not limited to permit applications, inspections, certificates, reviews, variances, and appeals, shall be established from time to time by the Cape Charles Town Council in its sole discretion.

Section 22.9 Application for Approval

Application for approval of an Erosion and Sediment Control Plan submitted to the Program Administrator shall include the following items:

- 1. Standard Town of Cape Charles application form;
- 2. The Erosion and Sediment Control Plan including:
 - a) A contoured site plan showing elevations and all E&S measures to be installed,
 - b) A detailed narrative to support the site plan describing all E&S measures to be installed, and
 - c) Any calculations needed to support the narrative.
- 3. A certification by the person responsible for carrying out the plan that he will properly perform the control measures included in the plan, and proof of the responsible person's certification by DCR.
- 4. Payment of the plan review and inspection fees listed in Section 22.8.
- 5. Documents under Subsections 1, 2, and 3 above shall be submitted in triplicate.

Reference: Code of Virginia E&S Law & Regs. 10.1- 562.I, 563.A, B.

Section 22.10 Bond or Other Security for Land-Disturbing Activities

- A. Prior to the issuance of any permit for grading, land disturbing, building, or other activity involving land-disturbing activities, the applicant shall provide a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement as is acceptable to the

Town to ensure that emergency measures could be taken by the Town at the applicant's expense should he fail, within the time specified, to initiate appropriate conservation action which may be required of him as a result of his land-disturbing activity. If the Town takes such conservation action upon such failure by the permittee, the Town may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the achievement of adequate stabilization of the land-disturbing activity, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated, as the case may be.

- B. The requirements of this section are in addition to all other provisions of law which relate to the issuance of such permits and shall not be construed to otherwise affect the requirements for such permits.

Reference: Code of Virginia, E&S Law & Regs. 10.1-565.

Section 22.11 Monitoring, Reports, and Inspections

- A. The Program Administrator of the Town shall provide for inspections of the land disturbing activity based on a two week regular inspection schedule for each site and may require monitoring and reports from the person responsible for carrying out the plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. Inspections shall also be performed within 48 hours of a significant weather event, immediately following initial installation of erosion and sediment controls, and at the completion of a project prior to the release of any performance bonds. A certified inspector of the Town shall be responsible for performing inspections on all land disturbing activity and shall report findings to the program administrator. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspections. Subsequent to inspections a list of items to be corrected, installed or repaired will be hand delivered or mailed first class to the permittee or the person responsible for carrying out the plan. An alternative inspection program which ensures compliance with the approved erosion and sediment control plan may be established by the Program Administrator. Any alternative inspection program shall be:
 - 1. Approved by the Board prior to implementation.
 - 2. Established in writing.
 - 3. Based upon a system of priorities that at a minimum, address the amount of disturbed project area, site conditions and stage of construction; and
 - 4. Documented by inspection records.
- B. If the program administrator determines that there is a failure to comply with the inspections list by the time specified on the inspections report, a "notice to comply" shall be served upon the permittee or person responsible for carrying out the plan. The notice to comply shall be delivered 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 to comply 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 shall be deemed revoked and the owner, permittee or person responsible for carrying out the plan shall be deemed in violation of this article and shall be subject to the penalties provided by Code of Virginia §10.1-569, as amended.

- C. Upon determination of a violation of this ordinance, the Program Administrator may in conjunction with, or subsequent to, a notice to comply as specified in subsection "B" above, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until specified corrective measures have been taken. 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 the appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Any person violating or failing, neglecting or refusing to obey an order issued by the chief administrative officer or his designee may be compelled in a proceeding instituted in the circuit court of jurisdiction wherein the violation was alleged to have occurred 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 chief administrative officer or his designee from taking any other action specified in Code of Virginia, E&S Law & Regs. 10.1-569.
- D. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within 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 as specified in subsection "B" above.

Reference: Code of Virginia, E&S Law & Regs. 10.1-566.

Section 22.12 Penalties, Injunctions, and Other Legal Actions

- A. Violators of Code of Virginia 10.1-563, 10.1-564, or 10.1-566 shall be guilty of a Class I misdemeanor.
- B. In lieu of criminal sanctions, any person who violates any provision of this ordinance, and condition of a permit, and any provision of this program shall, upon a finding of the appropriate general district court, be assessed the following civil penalties:

1. With the exception of a violation arising from commencement of land disturbing activities without a Town-approved plan and land-disturbing permit, a civil penalty in the amount of \$100.00 per violation shall be assessed when any person violates any regulation or order of this ordinance, any condition of a permit, or any provision of this program, or for failure to provide, implement, maintain, or properly install any of the following erosion and sediment control measures required by an approved plan:
 - a. vegetative controls including, but not limited to, permanent or temporary ground cover,
 - b. structural controls including, but not limited to, construction entrances, storm drain and drop inlet protection, outlet protection, and sediment traps and basins,
 - c. transporting sediment or debris onto paved public roads by vehicular traffic runoff, and
 - d. perimeter controls including, but not limited to, straw bales or silt fences,
 2. A civil penalty in the amount of \$1,000.00 shall be assessed for commencement of land disturbing activities without a Town-approved plan and land-disturbing permit.
 3. 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 \$3,000.00 except that a series of violations arising from the commencement of land disturbing activities without a Town approved plan and land disturbing permit for any person shall not result in civil penalties which exceed a total of \$10,000.00.
 4. The Program Administrator for the Town may issue a summons for collection of the civil penalty and the action may be prosecuted by the Town's legal resources.
 5. In any trial for a scheduled violation, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid into the treasury of the Town, except that where the violator is the Town itself, or its agent, the court shall direct the penalty to be paid into the State treasury.
- C. The Program Administrator or the owner of property which has sustained damage may apply to the circuit court in Northampton County to enjoin a violation or a threatened violation of this ordinance without the necessity of showing that an adequate remedy at law does not exist. An aggrieved owner of

property sustaining pecuniary damages resulting from a violation of an approved plan or required permit or from the conduct of land-disturbing activities commenced without an approved plan or required permit may also give written notice of the alleged violation to the Director (Code of Virginia § 10.1-569.1).

However, an owner of property shall not apply for injunctive relief unless:

1. 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
 2. Neither the person who has violated the local program nor the program authority has taken corrective action within 15 days to eliminate the conditions which have cause, or create the probability of causing, damage to his property.
- D. In addition to any criminal or civil penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the Town 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 Town. Any civil penalties assessed by a court shall be paid into the treasury of the Town, except that where the violator is the Town 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 order of the Town or any condition of a permit or any provision of this article, the Program Administrator 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 B or E.
- G. The Commonwealth's Attorney shall, upon request of the Town, take legal action to enforce the provisions of this ordinance.
- H. 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 damages.
- I. Such civil penalties as are imposed pursuant to this chapter shall be deposited into the Town's treasury.

(Ord. No. 9372, I, 7-14-93)

State Law Reference - Similar provisions, Code of Virginia, 10.1-569.

Note: See the Editor's note to 22-4.

Section 22.13 Appeals and Judicial Review

- A. Any applicant under the provision of this ordinance who is aggrieved by any action of the Town or its agent in disapproving plans submitted or noncompliance issues cited in inspection reports pursuant to this ordinance shall have the right to apply for and receive a review of such action by the Town Manager provided an appeal is filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before the manager shall be heard provided that the manager and other involved parties have at least 30 days prior notice. In reviewing the agent's actions, the manager shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the manager may affirm, reverse or modify the action. The manager's decision shall be final, subject only to review by the Circuit Court of Northampton County.

- B. Final decisions of the Town under this ordinance shall be subject to review by the Northampton 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.

Reference: Code of Virginia, E&S Law & Regs. 10.1-568.