

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 490

An Act to amend and reenact §§ 10.1-563 and 10.1-566 of the Code of Virginia, relating to the regulation of land-disturbing activities; approval of control plan.

[S 1247]

Approved March 22, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-563 and 10.1-566 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-563. Regulated land-disturbing activities; submission and approval of control plan.

A. Except as provided in § 10.1-564, no person may engage in any land-disturbing activity until he has submitted to the district or locality an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved by the plan-approving authority. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program an erosion and sediment control plan may, at the option of the applicant, be submitted to the Board for review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

B. The plan-approving authority shall review conservation plans submitted to it and grant written approval within forty-five 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 approval of the plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, as provided by § 10.1-561, who will be in charge of and responsible for carrying out the land-disturbing activity.*

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 forty-five 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 the time specified above, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

C. An approved plan may be changed by the authority that approved the plan 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 plan-approving authority and the person responsible for carrying out the plan.

D. 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 approval. The specifications shall apply to:

1. Construction, installation or maintenance of electric transmission, 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.

The Board shall have sixty days in which to approve the specifications. If no action is taken by the Board within sixty days, the specifications shall be deemed approved. Individual approval of separate projects within subdivisions 1 and 2 of this subsection is not necessary when approved specifications are followed. Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the appropriate local erosion and sediment control program. The Board shall have the authority to enforce approved specifications.

E. In order to prevent further erosion a local program may require approval of a conservation plan for any land identified in the local program as an erosion impact area.

F. For the purposes of subsections A and B of this section, 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.

§ 10.1-566. Monitoring, reports and inspections.

A. The plan-approving authority or, if a permit is issued in connection with land-disturbing activities which involve the issuance of a grading, building, or other permit, the permit-issuing authority (i) shall provide for periodic inspections of the land-disturbing activity and *require that an individual holding a*

certificate of competence, as provided by § 10.1-561, who will be in charge of and responsible for carrying out the land-disturbing activity and (ii) 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 sediment. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. If the permit-issuing authority or plan-approving authority determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities. Where the plan-approving authority serves notice, a copy of the notice shall also be sent to the issuer of the permit. 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 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 § 10.1-569.

B. Notwithstanding the above provisions of this section the following may be applied:

1. Where a county, city, or town administers the local control program and the permit-issuing authority and the plan-approving authority are not within the same local government department, the locality may designate one department to inspect, monitor, report and ensure compliance. In the event a district has been designated as the plan-approving authority for all or some of the conservation plans, the enforcement of the program shall be with the local government department; however, the district may inspect, monitor and make reports for the local government department.

2. Where a district adopts the local control program and permit-issuing authorities have been established by a locality, the district by joint resolution with the appropriate locality may exercise the responsibilities of the permit-issuing authorities with respect to monitoring, reports, inspections and enforcement.

3. Where a permit-issuing authority has been established, and such authority is not vested in an employee or officer of local government but in the commissioner of revenue or some other person, the locality shall exercise the responsibilities of the permit-issuing authority with respect to monitoring, reports, inspections and enforcement unless such responsibilities are transferred as provided for in this section.

C. Upon receipt of a sworn complaint of a violation of this section, § 10.1-563 or § 10.1-564 from the representative of the program authority or the Board responsible for ensuring program compliance, the chief administrative officer, or his designee, of the program authority or the Board may, in conjunction with or subsequent to a notice to comply as specified in subsection A above, 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 or, if land-disturbing activities have commenced without an approved plan as provided in § 10.1-563, 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 whether or not the alleged violator has been issued a notice to comply as specified in subsection A above. 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 the jurisdiction wherein the violation was alleged to have occurred. 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 chief administrative officer 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 the locality in which the site is located. The owner may appeal the issuance of an order 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 the 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 § 10.1-569.