

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 129

An Act to amend and reenact § 10.1-562 of the Code of Virginia, relating to issuing of special orders under the Erosion and Sediment Control Law; civil penalty.

[H 2937]

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-562 of the Code of Virginia is amended and reenacted as follows:

§ 10.1-562. Local erosion and sediment control programs.

A. Each district in the Commonwealth shall adopt and administer an erosion and sediment control program for any area within the district for which a county, city, or town does not have an approved erosion and sediment control program.

To carry out its program the district shall adopt regulations consistent with the state program. The regulations may be revised from time to time as necessary. Before adopting or revising regulations, the district 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 district is amending its program to conform to revisions in the state program. However, a public hearing shall be held if a district proposes or revises regulations that are more stringent than the state program. The program and regulations shall be available for public inspection at the principal office of the district.

B. In areas where there is no district, a county, city, or town shall adopt and administer an erosion and sediment control program.

C. Any county, city, or town within a district may adopt and administer an erosion and sediment control program.

Any town, lying within a county which has adopted its own erosion and sediment control program, may adopt its own program or become subject to the county program. If a town lies within the boundaries of more than one county, the town shall be considered for the purposes of this article to be wholly within the county in which the larger portion of the town lies. Any county, city, or town with an erosion and sediment control program may designate its department of public works or a similar local government department as the plan-approving authority or may designate the district as the plan-approving authority for all or some of the conservation plans.

D. Any erosion and sediment control program adopted by a district, county, city, or town shall be approved by the Board if it is consistent with the state program and regulations for erosion and sediment control.

E. If a *comprehensive* review conducted by the Board of a local control program indicates that the program authority has not administered, enforced or conducted its program in a manner that satisfies the minimum standards of effectiveness established pursuant to subsection D of § 10.1-561, the Board shall notify the program authority in writing, which notice shall identify corrective action required to attain the minimum standard of effectiveness and shall include an offer to provide technical assistance to implement the corrective action. If the program authority has not implemented the corrective action identified by the Board within ~~thirty~~ 30 days following receipt of the notice, or such additional period as is necessary to complete the implementation of the corrective action, then the Board shall *have the authority to (i) issue a special order to any locality that has failed to enter into a corrective action agreement or, where such corrective action agreement exists, has failed to initiate or has not made substantial and consistent progress towards implementing an approved corrective action agreement within the deadline established by the Board to pay a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed \$20,000 per violation for noncompliance with the state program, to be paid into the state treasury and deposited in the Virginia Stormwater Management Fund established by § 10.1-603.4:1 or (ii) revoke its approval of the program.* Prior to *issuing a special order or* revoking its approval of any local control program, the Board shall conduct a formal hearing pursuant to § 2.2-4020 of the Administrative Process Act. Judicial review of any order of the Board *issuing a civil penalty pursuant to this section or* revoking its approval of a local control program shall be made in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

F. If the Board revokes its approval of a local control program of a county, city, or town, and the locality is in a district, the district shall adopt and administer an erosion and sediment control program for the locality.

G. If the Board (i) revokes its approval of a local control program of a district, or of a county, city, or town not in a district, or (ii) finds that a local program consistent with the state program and regulations has not been adopted by a district or a county, city, or town which is required to adopt and administer a local program, the Board shall, after such hearings or consultations as it deems appropriate

with the various local interests involved, develop, adopt, and administer an appropriate program to be carried out within such district, county, city, or town, as applicable, by the Board.

H. If the Board has revoked its approval of any local control program, the program authority may request that the Board approve a replacement program, and the Board shall approve the replacement program if it finds that (i) the program authority is capable of administering the program in accordance with the minimum standards of effectiveness and (ii) the replacement program otherwise meets the requirements of the state program and regulations. The Board shall conduct a formal hearing pursuant to § 2.2-4020 of the Administrative Process Act on any request for approval of a replacement program.

I. Any program authority which administers an erosion and sediment control program may charge applicants a reasonable fee to defray the cost of program administration. A program authority shall hold a public hearing prior to enacting an ordinance establishing a schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill and administrators' expense involved.

J. The governing body of any county, city or town which (i) is in a district which has adopted a local control program, (ii) has adopted its own local control program, (iii) is subject to a local control program adopted by the Board, or (iv) administers a local control program, may adopt an ordinance providing that violations of any regulation or order of the Board, any provision of its program, any condition of a permit, or any provision of this article shall be subject to 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 as provided in § 10.1-563 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. Adoption of such an ordinance providing that violations are subject to a civil penalty shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A of § 10.1-569.