

# VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

## CHAPTER 249

*An Act to amend and reenact § 10.1-566 of the Code of Virginia, relating to notice of violation by land-disturbing activities.*

[H 1009]

Approved March 13, 2012

**Be it enacted by the General Assembly of Virginia:**

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

§ 10.1-566. Monitoring, reports, and inspections.

A. The plan-approving authority or, if a permit is issued in connection with land-disturbing activities that 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. However, any 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. 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 *for noncompliance with a plan* 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. *The order for disturbance without an approved plan or permits shall be served upon the owner by registered or certified mail to the address specified in the land records of the locality, shall be posted on the site where the disturbance is occurring, and shall remain in effect until such time as permits and plan approvals are secured, except in such situations where an agricultural exemption applies.* If the alleged violator has not ~~obtained an approved plan or any required permits~~ *implemented the specified corrective measures* within seven days from the date of service of the order, the chief administrative officer or his designee may issue ~~an~~ *a subsequent* 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 such corrective measures are implemented.* *The subsequent* 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~~ *any* 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.