

# DEPARTMENT OF ENVIRONMENTAL QUALITY EROSION AND SEDIMENT CONTROL MODEL ORDINANCE (Revised December 5, 2014)

## Section 10-1. TITLE, PURPOSE, AND AUTHORITY

This ordinance shall be known as the "Erosion and Sediment Control Ordinance of [program authority]." The purpose of this chapter is to prevent degradation of properties, stream channels, waters and other natural resources of the [program authority] by establishing requirements for the control of soil erosion, sediment deposition and non-agricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.

This Chapter is authorized by the Code of Virginia, Title 62.1, Chapter 3.1, Article 2.4, known as the Virginia Erosion and Sediment Control Law.

## Section 10-2. DEFINITIONS As used in the ordinance, unless the context requires a different meaning:

1. "**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.
2. "**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.
3. "**Board**" means the Virginia State Water Control Board.
4. "**Certified inspector**" means an employee or agent of a VESCP authority 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.
5. "**Certified plan reviewer**" means an employee or agent of a VESCP authority 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 or a professional soil scientist as defined in Sec. 54.1-2200 of the Code of Virginia.
6. "**Certified program administrator**" means an employee or agent of a VESCP authority 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.
7. "**City**" means the City of [program authority]. (If applicable.)
8. "**Clearing**" means any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal. (Optional or local definition may be used.)

9. **"County"** means the County of [program authority]. (If applicable.)
10. **"Department"** means the Department of Environmental Quality.
11. **"Development"** means a tract or parcel of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.
12. **"Director"** means the Director of the Department of Environmental Quality.
13. **"District"** or **"Soil and Water Conservation District"** refers to the [name of district] Soil and Water Conservation District. (If applicable.)
14. **"Erosion and Sediment Control Plan"** or **"Plan"** means a document containing material for the conservation of soil and water resources of a unit or 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 and all information deemed necessary by the VESCP plan approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.
15. **"Erosion Impact Area"** means an area of land not associated with a 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.] (Include shoreline reference, if applicable.)
16. **"Excavating"** means any digging, scooping or other methods of removing earth materials. (Optional or local definition.)
17. **"Filling"** means any depositing or stockpiling of earth materials. (Optional or local definition.)
18. **"Grading"** means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions. (Optional or local definition.)
19. **"Land-disturbing Activity"** means any man-made change to the land surface that 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:
  - a) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
  - b) Individual service connections;
  - c) 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 that is hard-surfaced;

- d) Septic tank lines 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;
- e) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1 of the Code of Virginia;
- f) 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, 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 Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of Sec. 10.1-1163;
- g) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
- h) Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Va. Code § 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;
- i) Disturbed land areas of less than 10,000 square feet in size, or less than 2,500 square feet in all areas of the jurisdiction designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations; **[However, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify conditions under which this exception applies.]**
- j) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- k) Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the 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 ordinance; and
- l) 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 requirements of this ordinance.

**20. "Land-disturbing Permit or approval"** means a permit or other form of approval issued by **[VESCP authority]** for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any other land disturbing activity. **(Optional or local definition.)**

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

22. **"Owner"** means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.
23. **"Peak flow rate"** means the maximum instantaneous flow from a given storm condition at a particular location.
24. **"Permittee"** means the person to whom the land-disturbing approval is issued or the person who certifies that the approved erosion and sediment control plan will be followed.
25. **"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, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.
26. **"State permit"** means an approval to conduct a land-disturbing activity issued by the Board in the form of a state stormwater individual permit or coverage issued under a state general permit.
27. **VESCP Plan-approving authority"** means the [department or position title] responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.
28. **"VESCP authority" or "program authority"** means the [locality] which has adopted a soil erosion and sediment control program that has been approved by the Board.
29. **Responsible Land Disturber"** or "RLD" means an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved ESC plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the ESC plan or permit as a prerequisite for engaging in land disturbance.
30. **"Runoff volume"** means the volume of water that runs off the land development project from a prescribed storm event.
31. **"Single-family residence"** means a noncommercial dwelling that is occupied exclusively by one family.
32. **"State waters"** means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.
33. **"Transporting"** means any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs. **(Optional or local definition.)**
34. **"Town"** means the incorporated town of [program authority]. **(If applicable.)**
35. **"Virginia Erosion and Sediment Control Program" or "VESCP"** means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and non-agricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and

guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations.

36. “**Water Quality Volume**“ means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

### **Section 10-3. LOCAL EROSION AND SEDIMENT CONTROL PROGRAM**

Pursuant to section 62.1-44.15:54 of the Code of Virginia, the [VESCP authority] hereby establishes a VESCP program and adopts the regulations 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) [The following additional text is optional at the discretion of the VESCP authority: and the *Virginian Erosion & Sediment Control Handbook, third edition*]. In accordance with § 62.1-44.15:52 of the Code of Virginia, any plan approved prior to July 1, 2014 that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels

- A. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements for natural and man-made channels shall be satisfied by compliance with water quantity requirements specified in § [62.1-44.15:28](#) of the Stormwater Management Act and 9VAC25-870-66 of the Virginia Stormwater Management Program (VSMP) regulations, unless such land-disturbing activities are in accordance with the grandfathering provisions of the Virginia Stormwater Management Program (VSMP) Regulations.
- B. Pursuant to Sec. 62.1-44.15:53 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The Erosion Control Program of [locality] shall contain a certified program administrator, a certified plan reviewer, and a certified inspector (who may be the same person.)
- C. The [locality] hereby designates [department or position title] 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 [department or position title].

### **Section 10-4. SUBMISSION AND APPROVAL OF PLANS; CONTENTS OF PLANS**

- A. Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the [department or position title] an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the VESCP authority. No approval to begin a land disturbing activity will be issued unless evidence of state permit coverage is obtained where it is required. Where land-disturbing activities involve lands under the jurisdiction of more than one VESCP, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Department 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 standards contained within the "Virginia Erosion and Sediment Control Regulations" [optional to include:the Virginia Erosion and Sediment Control Handbook as amended] and **[any local handbook or publication]** 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.
- C. The VESCP plan-approving authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of the Erosion and Sediment Control Law and the Board's regulations, and if the person responsible for carrying out the plan certifies that he will properly perform the measures included in the plan and will conform to the provisions of this ordinance. 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 the responsible land disturber, to the program authority, as provided by § 62.1-44.15:52, 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 the responsible land disturber, 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.

**[The following additional text is optional at the discretion of the VESCP authority: *However, the VESCP 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. 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 the responsible land disturber,, as provided by § 62.1-44.15:52 of the Virginia Erosion and Sediment Control Law. Failure to provide the name of the responsible land disturber shall be a violation of this ordinance. End of optional text.***

- D. When the 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 such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.
- E. The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.
- F. The VESCP authority may require changes to an approved plan when:
  - (1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
  - (2) The person responsible for carrying out the 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 ordinance, are agreed to by the plan-approving authority and the person responsible for carrying out the plans.

- G. Variances: The VESCP plan-approving authority may waive or modify any of the standards that are deemed to be 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.
  - (3) The VESCP authority shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.
- H. In order to prevent further erosion, the **[locality]** may require approval of a plan for any land identified in the local program as an erosion impact area.
- I. When a 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. In accordance with the procedure set forth in §62.1-44.15:55 (E) of the Code of Virginia, any person engaging, in more than one jurisdiction, in the creation and operation of wetland mitigation or stream restoration banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetland mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation or stream restoration banks annually with the Board for review and approval consistent with guidelines established by the Board. Approval of general erosion and sediment control specifications does not relieve the owner or operator from compliance with any other local ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.
- K. State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia, Sec. 62.1-44.15:56.

#### **Section 10-5. PERMITS; FEES; SECURITY FOR PERFORMANCE**

- A. Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities shall not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan, certification that the plan will be followed and evidence of state permit coverage where it is required.

- B. 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.
- C. An administrative fee of **[amount, fee schedule, or reference to local ordinance]** shall be paid to **[locality]** at the time of submission of the erosion and sediment control plan.
- D. No land-disturbing permit shall be issued until the applicant submits with his application an approved erosion and sediment control plan or agreement in lieu of an approved erosion and sediment control plan and certification that the plan will be followed.
- E. **The following additional text is optional at the discretion of the VESCP authority:** *All applicants for permits shall provide to the [locality] a performance bond with surety, cash escrow, or an irrevocable letter of credit acceptable to the [position title], to ensure that measures could be taken by the [locality] at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him by the approved plan as a result of his land-disturbing activity.*

*The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the [locality] to take such conservation action, the [locality] may collect from the applicant any costs in excess of the amount of the surety held.*

*Within sixty (60) days of adequate stabilization, as determined by [department or position title] in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits. [End of optional language.]*

#### **Section 10-6. MONITORING, REPORTS, AND INSPECTIONS**

- A. The responsible land disturber,, as provided by § [62.1-44.15:52](#), shall be in charge of and responsible for carrying out the land-disturbing activity and provide for periodic inspections of the land-disturbing activity. The **[locality]** may require the person responsible for carrying out the plan to monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.
- B. The **[department or position title]** shall periodically inspect the land-disturbing activity in accordance with 9VAC25-840-60 of the Virginia Erosion and Sediment Control Regulations to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.

If the **[position title]** 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 mailing with confirmation of delivery 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 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 may be revoked and the permittee or person responsible for carrying out the plan shall be subject to the penalties provided by this ordinance.

- C. Upon issuance of an inspection report denoting a violation of Va. Code §§ 62.1-44.15:55, -44.15:56, the **[position title]** may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, 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.

If land-disturbing activities have commenced without an approved plan, the **[position title]** may issue an order 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 without regard to whether the alleged violator has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the alleged violator 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 days from the date of service pending application by the **[locality]** or permit holder for appropriate relief to the Circuit Court of **[locality] [or other appropriate court]**. The **[locality]** shall serve such order for disturbance without an approved plan or permits upon the owner by mailing with confirmation of delivery to the address specified in the land records. Said order shall be posted on the site where the disturbance is occurring, and shall remain in effect until 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 within seven days from the date of service of the order, the **[position title]** 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 mailing with confirmation of delivery to the address specified in the permit application or the land records of **[locality]**.

The owner may appeal the issuance of an order to the Circuit Court of **[locality] [or other appropriate court]**.

Any person violating or failing, neglecting or refusing to obey an order issued by **[position title]** may be compelled in a proceeding instituted in the Circuit Court of **[locality]** 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 **[position title]** from taking any other action authorized by this ordinance.

**Section 10-7. PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS**

- A. Violators of this ordinance shall be guilty of a Class I misdemeanor.
- B. Any person who violates any provision of Va. Code §§ 62.1-44.15:55, 62.1-44.15:56 shall, upon a finding of the District Court of **[locality]**, be assessed a civil penalty. The civil penalty for any one violation shall be not less than \$100 nor more than \$1,000, except that the civil penalty for commencement of land-disturbing activities without an approved plan 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 \$10,000, 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. Any such civil penalties shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A of § [62.1-44.15:63](#).

- C. The **[position title]**, or the owner or property which has sustained damage or which is in imminent danger of being damaged, may apply to the Circuit Court of **[name of locality]** to enjoin a violation or a threatened violation of Va. Code §§ 62.1-44.15:55, 62.1-44.15:56, without the necessity of showing that an adequate remedy at law does not exist.

However, an owner of property shall not apply for injunctive relief unless (i) 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 (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

- D. In addition to any criminal or civil penalties provided under this ordinance, any person who violates any provision of the Erosion and Sediment Control Law may be liable to **[name of locality]** 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 **[locality]**.

Any civil penalties assessed by a court shall be paid into the treasury of **[locality]**, except that where the violator is the locality 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 condition of a permit or any provision of this ordinance, or order of the VESCP authority the **[locality]** 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 **[locality]**, take legal action to enforce the provisions of this ordinance.
- H. Compliance with the provisions of this ordinance shall be 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.

**Section 10-8. APPEALS AND JUDICIAL REVIEW**

- A. Final decisions of the **[locality]** under this ordinance shall be subject to review by the **[authority]** 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.