

Chapter 57 EROSION AND SEDIMENT CONTROL \*

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Cross References: Building code, Ch. 3; subdivisions, Ch. 23; flood plain management, Ch. 48; stormwater detention, Ch. 60.

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**§ 57-1. Title.**

This chapter shall be known as the "Erosion and Sediment Control Ordinance of Arlington County, Virginia." (6-27-76)

**§ 57-2. Purpose.**

The purpose of this chapter is to conserve the land, water, air and other natural resources of Arlington County and promote the public health and welfare of the people in Arlington County by establishing requirements for the control of erosion and sedimentation, and by establishing procedures whereby these requirements shall be administered and enforced. (6-27-76)

**§ 57-3. Authorization.**

This chapter is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4, known as the "Erosion and Sediment Control Law." This article provides for a comprehensive statewide program with standards and guidelines to control soil erosion and sedimentation which is implemented on the local level.

(6-27-76; Ord. No. 92-16, 5-1-92)

**§ 57-4. Definitions.**

As used in this chapter, unless the context clearly indicates otherwise:

1. *Administrator* means the County Manager or his designated representative.
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. *Governing body* means the County Board of Arlington County.
4. *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 state, including, but

not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include: (i) individual service connections; (ii) installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street, or sidewalk provided such land disturbing activity is confined to the area of the road, street, or sidewalk which is hard-surfaced; (iii) 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; (iv) surface or deep mining; (v) exploration or drilling for oil and gas including well-site, roads, feeder lines and off-site disposal areas; (vi) installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles; (vii) 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 article and the regulations adopted pursuant thereto; (viii) such minor land-disturbing activities as home gardens and individual landscaping, repairs, and maintenance work of areas which are less than two thousand five hundred (2,500) square feet and for which no building permit is required; (ix) emergency work to protect life, limb, or property, and emergency repairs; provided that 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 local plan approving authority or the commission when applicable; (x) livestock feed lot operations, tilling, planting, or harvesting of agricultural, horticultural, forestry, or forest crops, 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, to reforest or convert to bona fide agriculture or improved pasture use, land drainage and land irrigation; (xi) repair or rebuilding of tracks, right-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company; (xii) preparation for single-family residences separately built where the disturbed site area is less than two thousand five hundred (2,500) square feet in size, unless in conjunction with multiple construction in subdivision development; (xiii) disturbed land areas for commercial or noncommercial uses of less than two thousand five hundred (2,500) square feet in size; (xiv) 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, Article 2 (§ 10.1-604 et seq.) of Chapter 6 of the Code of Virginia, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation.

5. *Local erosion and sediment control program or local control program* means an outline of the various methods employed by a locality to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and including, without limitation, such items as local ordinances, policies, and guidelines, technical materials, inspection, enforcement, and evaluation.
6. *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.
7. *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.
8. *Peak flow rate* means the maximum instantaneous flow from a given storm condition at a particular location.

9. *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 this state, any interstate body, or any other legal entity.
  10. *Conservation standards or standards* means the criteria, guidelines, techniques, and methods for the control of erosion and sedimentation.
  11. *Conservation plan, 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 and 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 entire unit or units of land will be treated so as to achieve the conservation objectives.
  12. *Runoff volume* means the volume of water that runs off the land development project from a prescribed storm event.
  13. *State erosion and sediment control program or state program* means the program adopted by the commission consisting of conservation standards, guidelines, and criteria to minimize erosion and sedimentation.
  14. *State waters* means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth of Virginia or within its jurisdiction.
  15. *Subdivision* shall have the meaning in the definition provided in Chapter 23, Subdivisions, of the Code of Arlington County, Virginia.
  16. *Plan approving authority* means the Arlington County Department of Environmental Services which is responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of land and which shall approve such plan if the plan is determined to be adequate and which is responsible for inspecting land-disturbing activity to ensure compliance with the approved plan.
  17. *Land-disturbing permit* means a permit issued by Arlington County for any land-disturbing activity that requires the submission and review of an approved conservation plan by the plan approving authority under the provisions of this chapter.
  18. *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.
- (6-27-76; 7-30-77; Ord. No. 82-11, 4-25-82; Ord. No. 92-16, 5-1-92; Ord. No. 94-17, 6-4-94; Ord. No. 98-25, 10-17-99; Ord. No. 04-25, 10-2-04)

#### **§ 57-5. Local erosion and sediment control program.**

- (1) This chapter and the current edition of the "Virginia Erosion and Sediment Control Handbook" shall be an integral part of the Arlington County erosion and sediment control program and shall comprise the Arlington County Erosion and Sediment Control Handbook.
- (2) The Arlington County Board hereby adopts the Virginia Erosion and Sediment Control Regulations (Section 4VAC50-30, as amended) for Controlling Erosion and Sediment from Land-Disturbing Activities as setting the minimum requirements for controlling erosion and sedimentation from land-disturbing activities. In addition to these minimum requirements, the relevant requirements of the Storm Water Detention Ordinance, Chapter 60 of the Code of Arlington County, Virginia, also apply.
- (3) In accordance with §10.1-561 of the Code of Virginia, and as an alternative to the requirements of the most recent version of Minimum Standard 19 contained in the Virginia Erosion and Sediment Control Regulations, any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for

natural or manmade 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 manmade channels as defined herein or other county regulation.

(4) The "Virginia Erosion and Sediment Control Handbook," current edition, shall be used by an applicant making a submittal under the provisions of this chapter in preparing the erosion and sediment control plan. The plan approving authority, in considering the adequacy of such submitted plan, shall be guided by the same guidelines and standards.

(5) In accordance with , §10.1-561 of the Code of Virginia, stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as set forth herein or applicable state law.

(6-27-76; Ord. No. 82-11, 4-25-82; Ord. No. 92-16, 5-1-92; Ord. No. 94-17, 6-4-94)

#### **§ 57-6. Regulated land-disturbing activities.**

(1) Except as provided in subsections (2) and (3), no person shall engage in any land-disturbing activity until he has submitted to the plan approving authority an erosion and sediment control plan for such land-disturbing activity and until that plan has been reviewed and approved by the plan approving authority. 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.

(2) Projects undertaken by state agencies in accordance with Section 10.1-564 of the Code of Virginia shall be deemed not to be in violation of this chapter for land-disturbing activities.

(3) Any person whose land-disturbing activities involve lands which extend into the jurisdiction of another local erosion and sediment control program may submit a conservation plan to the Virginia Soil and Water Conservation Board for review and approval, rather than submission to each jurisdiction concerned.

(4) Whenever a land-disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of the required erosion and sediment control plan shall be the responsibility of the owner of the land.

(5) State Water Control Board approval of linear utility and railroad project specifications.

(6) In accordance with the procedure set forth by §10.1-563 (E) of the Code of Virginia, any person engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions, 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 mitigation banks, pursuant to a permit issued 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 banks annually with the Board for review and approval consistent with guidelines established by the Board.

(6-27-76; Ord. No. 82-11, 4-25-82; Ord. No. 94-17, 6-4-94)

**§ 57-7. Action on erosion and sediment control plans prior to land disturbing activity.**

(1) The plan approving authority shall approve any erosion and sediment control plan submitted to it if it determines that the plan meets the conservation standards of the local control program and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and will comply with the provisions of this chapter.

(2) The plan approving authority shall act on all plans submitted to it and for which a fee is paid within forty-five (45) days after receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving the specific reasons for its disapproval. When a plan submitted for approval pursuant to this chapter is found upon review to be inadequate, the plan approving authority shall review or specify such modifications, terms, and conditions as will permit approval of the plan and shall communicate these requirements to the applicant. If no action is taken by the plan approving authority within the time specified above, the plan shall be deemed approved and the applicant shall be authorized to proceed with the proposed activity. 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 Code of Virginia, who will be in charge of and responsible for carrying out the land-disturbing activity. 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. 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 Code of Virginia. 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 herein.

(3) An approved plan may be changed by the plan approving authority in the following cases:

(a) Where, upon inspection of the site, the plan approving authority has found the implementation of the plan to be inadequate to accomplish the erosion and sediment control objectives of the plan; or

(b) 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, the proposed amendments to the plan, consistent with the requirements of this chapter, are agreed to by the plan approving authority and the person responsible for carrying out the plan.

(6-27-76; Ord. No. 92-16, 5-1-92; Ord. No. 94-17, 6-4-94)

**§ 57-8. Issuance of land-disturbing permit and fees.**

(1) No person shall engage in any regulated land-disturbing activity, as defined in section 58-6 of this chapter, until he has acquired a land-disturbing permit from the plan approving authority.

(2) No grading, building, or other permits for land-disturbing activities may be issued unless the applicant submits with his application an approved erosion and sediment control plan as required by this chapter.

(3) An erosion and sediment control fee for reviewing plans and performing field inspections shall be collected at the time of building permit application as follows:

All exterior alteration, plumbing, electrical, or mechanical building permits where more than one hundred (100) square feet and less than two thousand five hundred (2,500) square feet are estimated to be disturbed.

Fence permits are not included . . . . \$50.00

All exterior alteration, plumbing, electrical, or mechanical building permits where more than two thousand five hundred (2,500) square feet are disturbed . . . . 500.00

All demolition and new residential single-family structure building permits . . . . 200.00

New town house building permits (per structure of less than ten (10) units) . . . . 500.00

New town house building permits (per structure of ten (10) units or more) . . . . 500.00

Not to exceed . . . . 25,000.00

Each new commercial structure, each new apartment structure, and any other new structure requiring building permits where less than five thousand (5,000) square feet are estimated to be disturbed . . . . 1,000.00

Each new commercial structure, each new apartment structure, and any other new structure requiring building permits where more than five thousand (5,000) square feet are disturbed . . . . 1,000.00

Plus, for each square foot of disturbed area over the first five thousand (5,000) square feet . . . . 0.22

The maximum fee to be charged not to exceed forty thousand dollars (\$40,000.00).

(6-27-76; Ord. No. 82-11, 4-25-82; Ord. No. 90-5, 7-1-90; Ord. No. 92-16, 5-1-92; Ord. No. 94-17, 6-4-94; Ord. No. 01-9, 4-21-01)

**§ 57-9. Monitoring, reports and inspections.**

The plan approving authority (i) shall periodically inspect the land-disturbing activity and (ii) may require that the permit holder furnish periodic monitoring reports of the land-disturbing activity to ensure compliance with the approved plan and to determine whether the measures required in that plan are effective in controlling erosion and sediment resulting from the land-disturbing activity. The right-of-entry to conduct such inspections shall be expressly reserved in the permit. The permit holder, or his duly designated representative, shall be given notice of the inspection. If the plan approving authority determines that the permit holder has failed to comply with the plan, the plan approving authority shall immediately serve a notice to comply upon the permit holder by registered or certified mail to the address specified by the permit holder in his permit application, or by delivery at the site of the permitted activities to the agent or employee of the permit holder supervising such activities. Such notice shall set forth specifically the measures needed to come into compliance with such plan and shall specify the time within which such measures shall be completed. If the permit holder fails to comply within the time specified, his permit may be revoked; furthermore, he shall be deemed to be in violation of this chapter and upon conviction of such violation shall be subject to the penalties provided by this chapter. (6-27-76; Ord. No. 87-4, 1-24-87; Ord. No. 92-16, 5-1-92; Ord. No. 94-17, 6-4-94)

**§ 57-9.1. Adherence to approved plans and specifications.**

Upon receipt of a sworn complaint by the project inspector of a violation of the terms of the permit or any applicable law, the County Manager or his designee, in conjunction with or subsequent to a notice to comply, as specified in section 57-9 above, may 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 required by this ordinance, then all of the land-disturbing activities shall 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 deposits in waters within the watersheds, 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 permit holder has been issued a notice to comply, as specified in section 57-9 above. Otherwise, such an order may be issued only after the permit holder has failed to comply with such a notice to comply, as specified in section 57-9 above. The order shall be served in the same manner as a notice to comply, as specified in section 57-9 above, and shall remain in effect for a period of seven (7) days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the Circuit Court of Arlington County. 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 County Manager or his designee from taking any other permissible action.  
(Ord. No. 92-16, 5-1-92; Ord. No. 94-17, 6-4-94)

**§ 57-10. Administrative appeal; judicial review.**

(1) Final decisions of the plan approving authority under this chapter shall be subject to review by the County Manager provided written request for such review is filed within thirty (30) days from the date of any written decision by the plan approving authority which adversely affects the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

(2) Final decisions of the County Manager under this chapter shall be subject to review by the Circuit Court of Arlington County, provided an appeal is filed within thirty (30) days from the date of the final written decision which adversely affects the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.  
(6-27-76; 10-23-76; Ord. No. 92-16, 5-1-92)

**§ 57-11. Penalties, injunctions, and other legal actions.**

(1) A civil penalty of one hundred dollars (\$100.00) shall apply to any person who violates (i) any condition of a permit or (ii) any provisions of this chapter, except the civil penalty for commencement of land-disturbing activities without an approved plan shall be one thousand dollars (\$1,000.00). Each day any violation of the provisions of this chapter is found to have existed shall constitute a separate offense. In no event shall a series of violations result in civil penalties which exceed a total of three thousand dollars (\$3,000.00) arising from the same operative set of facts, 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 ten thousand dollars (\$10,000.00).

(a) Any person who violates (i) any condition of a permit or (ii) any provisions of this chapter shall be issued a notice of violation by certified mail or by delivery at the site of land disturbing activity. The notice shall require such violation to cease within a reasonable time which is specified in such notice. After such notice is sent or given, and such violation is not ceased within such reasonable time as is specified in the notice, then the administrator may proceed to remedy the violation as provided below.

(b) After having sent or delivered the notice referred to above, and if such violation has not ceased within such reasonable time as is specified in such notice, then the administrator shall cause a summons to be served upon such person.

(c) Such summons shall contain the following information:

1. The name and address of the person charged;
2. The nature of the infraction and the provision(s) being violated;
3. The location, date and time that the infraction occurred or was observed;
4. The amount of the civil penalty assessed for the infraction;
5. The manner, location and time in which the civil penalty may be paid to the County;
6. The right of the recipient of the summons to elect to stand trial for the infraction and the date for such trial;
7. The right of any person summoned for a violation to elect to pay the civil penalty to the treasurer for the county at least seventy-two (72) hours prior to the time and date fixed for trial and that payment of such civil penalty shall constitute a waiver of trial and an admission of liability; and
8. A statement that a signature to an admission of liability shall have the same force and effect as a judgment of court, but that an admission shall not be deemed a criminal conviction for any purpose.

(d) The administrator shall note the date of such service on the copy of the summons so delivered or posted.

(e) If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.

(2) The governing body may apply to the Circuit Court of Arlington County for injunctive relief to enjoin a violation or a threatened violation of this chapter.

(3) The county's legal representative shall, upon the request of the County Manager, take legal action to enforce the provisions of this chapter.

(4) Without limiting the remedies which may be obtained under this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this chapter shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars (\$2,000.00) for each violation. A civil action for such violation or failure may be brought by the county. Any civil penalties assessed by a court shall be paid into the treasury of the county.

(5) With the consent of any person who has violated or failed, neglected or refused to obey (i) any condition of a permit or (ii) any provisions of this chapter, the administrator may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection 4 of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (1) or (4).

(a) Civil charges in lieu of appropriate civil penalties issued in orders against violators of this chapter shall be assessed as follows:

(1) Failure to make proper application for a land disturbing permit, as required by section 57-8 of this chapter, within the time limit specified in a duly served notice of permit requirement-- Five hundred dollars (\$500.00).

(2) Failure to comply with the requirements of an approved erosion and sediment control plan within the time limit specified in a duly served notice to comply--One hundred dollars

(\$100.00), plus one hundred dollars (\$100.00) for each violation cited in the notice. Each day for which the violation is continued beyond the date of the issuance of such notice to comply shall constitute a separate offense.

(3) Failure to stop all work activities within the time limit specified in a duly served stop work order--One hundred dollars (\$100.00), plus one hundred dollars (\$100.00) for each violation cited in the notice. Each day for which the violation(s) is continued beyond the date of the issuance of such stop work order shall constitute a separate offense.

(6-27-76; Ord. No. 92-16, 5-1-92; Ord. No. 94-17, 6-4-94; Ord. No. 98-25, 10-17-99; Ord. No. 01-16, 7-28-01)

**§ 57-12. Severability.**

If any provision of this chapter is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining provisions.

(6-27-76)

**§ 57-13. Conflict of chapter.**

In any case where a provision of this chapter is found to be in conflict with any other provision of the Arlington County Code existing on the effective date of this chapter, the provision which establishes the more stringent standard for the promotion and protection of the health and safety of the people shall prevail. In any case where a provision of this chapter is found to be in conflict with any other provision of the Arlington County Code existing on the effective date of this chapter which establishes a less stringent standard for the promotion and protection of the health and safety of the people, the provisions of this chapter shall be deemed to prevail, and such other provisions are hereby declared to be repealed to the extent that they may be found in conflict with this chapter.

(6-27-76)