

# **NELSON COUNTY EROSION AND SEDIMENT CONTROL ORDINANCE**

(Adopted 9/27/07, Effective 10/12/07)

## Chapter 9

### ARTICLE III

#### Sec. 9.1-51. Title, Purpose and Authority.

This ordinance shall be known as the "Erosion and Sediment Control Ordinance of Nelson County." The purpose of this chapter is to conserve the land, water, air and other natural resources of the County of Nelson establishing requirements for the control of erosion and sedimentation, and by establishing procedures whereby these requirements shall be administered and enforced.

This Chapter is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4 (10.1-560 et seq.), known as the Erosion and Sediment Control Law.

#### Sec. 9.1-52 Definitions. As used in the ordinance, unless the context requires a different meaning:

Agreement in lieu of a plan means a contract between the program authority and the owner which specifies conservation measures which must be implemented in the construction of a single family residence; this contract may be executed by the County and the owner in lieu of a formal site plan.

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.

Board means the Virginia Soil and Water Conservation Board.

Certified inspector means an employee or agent of a program authority who (1) 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.

Certified plan reviewer means an employee or agent of a program authority who (1) 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.

Certified Program administrator means an employee or agent of a program authority who (1) 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.

Clearing means any activity, which removes the vegetative ground cover including, but not limited to, root mat removal or topsoil removal.

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, 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 to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

County means the County of Nelson.

Department means the Department of Conservation and Recreation.

Development means a tract 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.

Director means the director of the Department of Conservation and Recreation.

District or Soil and Water Conservation District refers to the Thomas Jefferson Soil and Water Conservation District.

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 and all information deemed necessary by the plan approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Erosion Impact Area means an area of land not associated with 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.

Excavating means any digging, scooping or other methods of removing earth materials.

Filling means any depositing or stockpiling of earth materials.

Grading means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

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 Commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

1. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
2. Individual service connections;
3. 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;
4. 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;
5. Surface or deep mining;

6. Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas;

7. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, (Va. Code Sec. 10.1-604 et seq.), 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 Va. Code Sec. 10.1-1100 et seq. or is converted to bona fide agricultural or improved pasture use as described in subsection B of Section 10.1-1163, of the Code.

8. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;

9. Disturbed land areas of less than 10,000 square feet in size, except a land-disturbing activity of less than 10,000 square feet on individual lots in a recorded subdivision shall not be exempt from the provisions of this ordinance. [4-VAC50-30-70 (C)]

10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

11. Shore erosion control projects on tidal waters when the projects are approved by local Wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers;

12. 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 requirements of the plan-approving authority.

Land-disturbing permit means a permit issued by the County for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein.

Local erosion and sediment control program or local control program means an outline of the various methods employed by the County to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

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.

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.

Peak flow rate means the maximum instantaneous flow from a given storm condition at a particular location.

Permittee means the person to whom the permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

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, any interstate body, or any other legal entity.

Plan-approving authority means the Thomas Jefferson Soil and Water Conservation District responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.

Program authority means the County of Nelson which has adopted a soil erosion and sediment control program approved by the Board.

Responsible Land Disturber means an individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who (i) holds a Responsible Land Disturber certificate of competence, (ii) holds a current certificate competence from the Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review, (iii) holds a current Contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia 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 of the Code of Virginia.

Runoff volume means the volume of water that runs off the land development project from a prescribed storm event.

Single-family residence means a noncommercial dwelling that is occupied exclusively by one family.

State Erosion and Sediment Control Program or State Program means the program administered by the Virginia Soil and Water Conservation Board pursuant to the State Code including regulations designed to minimize erosion and sedimentation.

State waters means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdictions.

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.

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

Sec. 9.1-53. Local Erosion and Sediment Control Program.

(a) Pursuant to section 10.1-562 of the Code of Virginia, except as modified below, the County hereby adopts the regulations, standards, and specifications promulgated by the Virginia Soil and Water Conservation Board and the Thomas Jefferson Soil and Water Conservation District, which are included in, but not limited to, the Virginia Erosion and Sediment Control Regulations, Title 4, Chapter 30, as

amended, the Virginia Erosion and Sediment Control Handbook and the Virginia Stormwater Management Handbook, for the effective control of storm water, soil erosion, and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Subsection 19 of 4 VAC 50-30-40 of the Virginia Erosion and Sediment Control Regulations is hereby modified as follows:

1. The provision found in subsection 19 b. (1) is deleted.

2. The following language is added to subsection 19 c. (4):

The plan approving authority may determine that some watersheds or Receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions brought on by land development projects. Therefore, in lieu of the reduction of the 2-year post-developed peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24-hour extended detention of the runoff generated by the 1-year, 24-hour duration storm.

(b) Before adopting or revising regulations, the County 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 County is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the County proposes or revises regulations that are more stringent than the state program.

(c) Pursuant to Section 10.1-561.1 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 the County shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.

(d) The County hereby designates the Thomas Jefferson Soil and Water Conservation District as the plan-approving authority.

(e) The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the Program Administrator for the County.

(f) 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.

(g) In accordance with §10.1-561 of the Code of Virginia, 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.

Sec. 9.1-54. Regulated Land-Disturbing Activities; Submission and Approval of Plans; Contents of Plans.

(a) Except as provided herein, no person may engage in any land-disturbing activity until he has submitted to the Program Administrator an erosion and sediment control plan for the land-disturbing activity and such plan has been 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, at the option of the applicant, may 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 Program Administrator.

(b) The standards contained within the Virginia Erosion and Sediment Control Regulations, as modified in Section 9.1-53, above, the Virginia Erosion and Sediment Control Handbook, and any additional requirements adopted by the Thomas Jefferson Soil and Water Conservation District and the County 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.

(c) All permanent stormwater facilities must be designed by a professional engineer and must meet the specifications of the latest edition of the Virginia Stormwater Management Handbook.

(d) The plan-approving authority shall, within 45 days, approve any such plan, if it is determined that the plan meets the requirements of the local control program. The program authority shall require the person responsible for carrying out the plan to certify that he or she will properly perform the erosion and sediment control measures included in the plan and will conform to the provisions of this ordinance.

(e) The plan shall be acted upon within 45 days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval.

When the plan is determined to be inadequate, the plan-approving authority shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken by the plan-approving authority within 45 days, the plan shall be deemed approved.

(f) An approved plan may be changed by the plan approving authority upon the request of the Program Administrator when:

1. An 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 Program Administrator, plan-approving authority and the person responsible for carrying out the plans.

(g) In order to prevent further erosion, the Program Administrator may require approval of conservation plan for any land identified in the local program as an erosion impact area.

(h) 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.

(i) Pursuant to Section 10.1-567 of the Code of Virginia, 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 written comments. the specifications shall apply to:

1. Construction, installation and 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 deleted structures and facilities of the railroad company.

Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the County erosion and sediment control program, pursuant to Code of Virginia, section 10.1-563 D.

(j) State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia, Section 10.1-564.

(k) 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.

Sec. 9.1-55. Permits; Fees; Bonding; Etc.

(a) Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.

(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) Fees: All Permit fees shall be paid to the County of Nelson before a Land Disturbing Permit or an Agreement in Lieu of Plan Permit for a single family residence is issued.

E & S Plans:

All Plan Review fees shall be paid to the County of Nelson prior to submittal of an Erosion and Sediment Control plan to the Thomas Jefferson Soil and Water Conservation District for review.

(1) A Plan Review fee shall be paid for the plan review of all erosion and sediment control plans that are to be reviewed by the Thomas Jefferson Soil and Water Conservation District. The plan review fee will be based upon the fee schedule (Appendix A) in effect at the time the plan is submitted for review.

(2) An administrative land disturbing permit fee for a twelve (12) month permit shall be paid to the County of Nelson at the time of the application for a Land Disturbing Permit. The permit fee will be based upon the fee schedule (Appendix A) in effect at the time of the permit application. Fees for projects exceeding 12 months shall be pro-rated in accordance with the fee schedule (Appendix A) in effect at the time of the permit application and commensurate with the project's completion date established by the Program Administrator.

(3) A permit extension may be granted by the Program Administrator upon payment of an extension fee in accordance with the fee schedule (Appendix A) in effect at the time of the extension request.

Agreements in Lieu of E&S Plans:

(1) An administrative land disturbing permit, in lieu of plan fee for a twelve (12) month permit shall be paid to the County of Nelson at the time of the application for a Land Disturbing Permit. The permit fee will be based upon the fee schedule (Appendix A) in effect at the time of the permit application. Fees for projects exceeding 12 months shall be pro-rated in accordance with the fee schedule (Appendix A) in effect at the time of the permit application and commensurate with the project's completion date established by the Program Administrator.

(2) A permit extension may be granted by the Program Administrator upon payment of an extension fee in accordance with the fee schedule (Appendix A) in effect at the time of the extension request.

(d) No land-disturbing permit shall be issued until the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.

(e) Bond: All applicants for permits shall provide to the County a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the Program Administrator, to ensure that measures could be taken by the county 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 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 County to take such conservation action, the County 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 Program Administrator 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.

(f) The Program Administrator and the applicant shall establish a project completion date which shall appear on the land-disturbing permit as the permit's expiration date. Projects exceeding 12 months shall be pro-rated in accordance with the fee schedule (Appendix A) in effect at the time of the permit application and commensurate with the project's established completion date. Upon request of the applicant, and for good cause shown, the Program Administrator may issue a new permit extending the original expiration date upon payment of an extension fee in accordance with the fee schedule (Appendix A) in effect at the time of the extension request. In the event the applicant fails, before the permit expiration date, either to complete the permitted activity in accordance with applicable law, or to fulfill the approved erosion and sediment control plan, or both, then the applicant shall stop work and the Program Administrator shall initiate and complete appropriate conservation action at applicant's expense as provided in paragraph (e) above. Following completion of the Program Administrator's conservation action, the applicant may again apply for a new land disturbing permit. Failure to complete the project before the permit's expiration date shall constitute a violation of this ordinance.

(g) 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.

(h) The County shall provide for inspections of land disturbing permits issued prior to the effective adoption date, or effective amendments to the Nelson County Erosion and Sediment Control Ordinance that was in effect the date when the Agreement-In Lieu or land disturbing permit was issued by the Program Authority. The inspection and fee assessments shall be in accordance with the permit regulations effective at the time the permit was issued

#### Sec. 9.1-56. Monitoring, Reports, and Inspections.

(a) The County shall 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 County shall provide for periodic inspections of any land-disturbing activity in accordance with Section 4VAC50-30-60 B of the Virginia Erosion and Sediment Control Regulations and require that an individual holding a certificate of competence, as provided by Virginia Code, S 10.1-561, will be in charge of and responsible for carrying out the land-disturbing activity. 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 in this chapter. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.

If the Program Administrator 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.

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 deemed to be in violation of this ordinance and shall be subject to the penalties provided by this ordinance.

(c) Upon determination of a violation of this ordinance, the Program Administrator shall, 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 Program Administrator shall, in conjunction with or subsequent to a notice to comply as specified in this ordinance, 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 permittee has been issued a notice to comply as specified in this ordinance. Otherwise, such an order shall be issued only after the permittee 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 enforcing authority or permit holder for appropriate relief to the Circuit Court of Nelson County.

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 Program Administrator shall 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 County.

The owner may appeal the issuance of an order to the Circuit Court of Nelson County.

Any person violating or failing, neglecting or refusing to obey an order issued by the Program Administrator may be compelled in a proceeding instituted in the Circuit Court of Nelson County 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 Program Administrator from taking any other action authorized by this ordinance or Section 10-7 entitled Penalties, Injunctions, And Other Legal Actions.

#### Sec. 9.1-57. Penalties, Injunctions, and Other Legal Actions.

(a) Any person who violates any provision of this ordinance shall, upon a finding of the General District Court of Nelson County, be assessed 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 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.

#### (b) Schedule of Civil Penalties

A civil penalty in the amount listed on the schedule below shall be assessed for each violation of the respective offenses:

1. Commencement of land disturbing activity without an approved E&S plan as provided in Section 10-4 shall be \$1,000.00 per day.

2. Vegetative Measures – Failure to comply with items 1, 2, and 3 of regulations in 4 VAC 50-30-40 shall be \$100.00 per violation per day.

3. Structural Measures ñ Failure to comply with items 2, 4, 9, 10, 11, 15 and 17 of the regulations in 4 VAC 50-30-40 shall be \$100.00 per violation per day.

4. Watercourse measures ñ failure to comply with items 12, 13, 14, and 15 of the regulations in 4VAC50-30-40 shall be \$100.00 per violation per day.

5. Underground Utility Measures ñ Failure to comply with either item 16(a), or (c) or both, of the regulations in 4 VAC 50-30-40 shall be \$100.00 per violation per day.

6. Failure to comply with Item 19 of Section 4 of the regulations in 4 VAC 50-30-40 shall be \$100.00 per violation per day.

7. Failure to obey a stop work order shall be \$100.00 per day.

8. Failure to stop work when permit is revoked shall be \$100.00 per day.

9. Failure to complete a project before the permit expiration date shall result in a \$100.00 penalty per day.

10. All other violations of this chapter not specifically enumerated in items (1) through (9) of this section shall be \$ 100.00 per violation per day.

(c) The Program Administrator or the owner of property which has sustained damage or which is in imminent danger of being damaged may apply to the Circuit Court of Nelson County to enjoin a violation or a threatened violation of this ordinance, 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 civil penalties provided under this ordinance, any person who violates any provision of this ordinance may be liable to the County 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 County.

Any civil penalties assessed by a court shall be paid into the treasury of the County 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, the County 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 E.

(g) The Commonwealth's Attorney shall, upon request of either the Program Administrator or the District, 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. (Ref. Va. Code Section 10.1-569)

#### Sec. 9.1-58. Appeals and Judicial Review.

(a) Final decisions of the Program Administrator under this article shall be subject to review by the Circuit Court of Nelson County provided that an appeal is filed within thirty 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.

(b) Final decisions of the District shall be subject to an administrative review by the Board, provided that an appeal is filed within thirty days from the date of the written decision.

(c) Except as provided in paragraph (a) above, final decisions of the board either upon its own action or upon the review of the action of the District shall be subject to judicial review in accordance with the provisions of the Administrative Process Act.  
(Ref. Va. Code Section 10.1-568)

Adopted: September 27, 2007

Appendix A ñ Fees  
(Adopted 9/27/07) Effective 10/12/07

E & S Plans:

Plan Review Fee: \$500.00 per plan

Land Disturbing Permit Fee: \$450.00 (12 months)

Fees for projects exceeding 12 months shall be pro-rated in accordance with the above fee commensurate with the project's completion date as established by the Program Administrator.

Permit extensions may be granted by the Program Administrator upon payment of a pro-rated (monthly) share of the above fee.

Agreements in Lieu of E & S Plans:

Up to Two (2.0) Acres of Land Disturbance:

Land Disturbing Permit Fees (12 months):

\*Inspection Frequency Fee

Once Beginning & End of Project \$ 35.00  
Once Every 8 Weeks \$100.00  
Once Every 4 Weeks \$225.00  
Once Every 2 Weeks \$450.00

Two (2.0) Acres or More of Land Disturbance:

Land Disturbing Permit Fee (12 months):

\*Inspection Frequency Fee

Once Every 2 Weeks \$450.00

Fees for projects exceeding 12 months shall be pro-rated in accordance with the above fees based on the project's required inspection frequency and commensurate with the project's completion date, as established by the Program Administrator.

Permit extensions may be granted by the Program Administrator upon payment of a pro-rated (monthly) share of the above fees based on the project's required inspection frequency.

\*Inspection frequency is determined by each project's rating in accordance with the County's approved Alternate Inspection Plan.