

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Ordinance

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 2010:

Present

Vote

Donald E. Wiggins, Chairman
George S. Hrichak, Vice Chairman
Walter C. Zaremba
Sheila S. Noll
Thomas G. Shepperd, Jr.

On motion of _____, which carried ____, the following ordinance was adopted:

AN ORDINANCE TO AMEND YORK COUNTY CODE SECTION 10-27 REGARDING PENALTIES FOR VIOLATION OF EROSION AND SEDIMENT CONTROL ORDINANCE, TO BRING IT INTO CONFORMANCE WITH CHANGES MADE BY THE 2010 GENERAL ASSEMBLY, AND INCREASING THE TOTAL MAXIMUM CIVIL PENALTY FOR A SERIES OF VIOLATIONS FROM \$3,000 TO \$10,000

BE IT ORDAINED by the York County Board of Supervisors, this ____ day of _____, 2010, that section 10-27, York County Code, be and it is hereby amended to read and provide as follows:

Sec. 10-27. Penalties, injunctions and other legal actions.

- (a) Any person who violates any provision of this chapter shall, upon a finding of the district court of the county, be assessed a civil penalty. The civil penalty for any one violation shall be not less than \$100.00, nor more than \$1,000~~except that the civil penalty for commencement of land-disturbing activities without an approved plan or an approved agreement in lieu of a plan shall be \$1000.00~~. 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~~\$10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan or an approved agreement in lieu of a plan for any site shall not result in civil penalties which exceed a total of \$10,000.

- (b) The county 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 the 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 ordinance, and the county administrator, that a violation of the ordinance has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the ordinance nor the county administrator has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.
- (c) 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.

- (d) 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 chapter, the county may provide for the payment of civil charges for violations in specific sums, not to exceed \$2,000. The county administrator shall establish a schedule enumerating the violations and the associated civil charges. Such civil charges shall be instead of any appropriate civil penalty.
- (e) The County Attorney shall, upon request, take legal action to enforce the provisions of this ordinance.
- (f) 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.
- (g) Nothing herein shall prevent the County Administrator from or be a prerequisite to the County Administrator taking any other action allowed by law or equity to remedy noncompliance with this Chapter.