

**AN ORDINANCE BY THE COUNCIL OF THE TOWN
OF ABINGDON, VIRGINIA
TO REPEAL, AMEND AND REENACT PART II, CHAPTER 30,
ENVIRONMENT, ARTICLE IV, EROSION AND SEDIMENT CONTROL,
§30-86 THROUGH §30-93 OF THE CODE OF ORDINANCES OF
THE TOWN OF ABINGDON, VIRGINIA**

WHEREAS, the Council of the Town of Abingdon desires to repeal, amend and reenact its Code of Ordinances with regard to Chapter 30, Environment, in an effort to bring existing ordinance into state compliance; and

WHEREAS, the existing ordinance reads as set forth below:

Sec. 30-86. Purpose.

The purpose of this article is to conserve the land, water, air and other natural resources of the town by establishing requirements for the control of erosion and sedimentation, and by establishing procedures whereby these requirements shall be administered and enforced.

(Ord. of 4-4-77, § 6-1; Ord. of 1-9-95(1), § 6-1; Ord. of 9-10-01)

Sec. 30-87. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agreement in lieu of a plan means a contract between the plan-approving 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 plan-approving authority 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 state soil and water conservation board.

Certified inspector means an employee or agent of a program authority who holds a certificate of competence from the board in the area of project inspection or 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 holds a certificate of competence from the board in the area of plan review, is enrolled in the board's training program for plan review and successfully completes such program within one year after

enrollment, or is licensed as a professional engineer, architect, certified landscape architect, or land surveyor pursuant to Code of Virginia, § 54.1-400 et seq.

Certified program administrator means an employee or agent of a program authority who holds a certificate of competence from the board in an area of program administration or is enrolled in the board's training program for program administration and successfully completes such program within one year after enrollment.

Certified responsible land disturber means an individual holding a certificate of competence, as provided by §10.1-561, who will be in charge of and responsible for carrying out the land-disturbing activity.

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

Denuded means a term applied to land that has been physically disturbed and no longer supports vegetative cover.

Department means the department of conservation and recreation.

Development means a tract or tracts 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.

District or soil and water conservation district means a political subdivision of this commonwealth organized in accordance with the provisions of Code of Virginia, § 10.1-506 et seq.

Dormant refers to denuded land that is not actively being brought to a desired grade or condition.

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 the 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 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 Code of Virginia, § 10.1-1100 et seq. or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, § 10.1-1163B;

- (8) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- (9) 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 (Code of Virginia, § 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;
- (10) Disturbed land areas of less than 10,000 square feet in size;
- (11) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- (12) 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 the plan-approving authority.

Land disturbing permit means a permit issued by the town 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 program means an outline of the various methods employed by the town 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.

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 in control of a property.

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 director of public works, or his designee, 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.

Post-development refers to conditions that may be reasonably expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

Pre-development refers to conditions at the time the erosion and sediment control plan is submitted to the plan-approving authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time the erosion and sediment control plan for the initial phase is submitted for approval shall establish pre-development conditions.

Program authority means the town which has adopted a soil erosion and sediment control program approved by the board.

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

Stabilized means an area that can be expected to withstand normal exposure to atmospheric conditions without incurring erosion damage.

State erosion and sediment control program or *state program* means the program administered by the state soil and water conservation board pursuant to Code of Virginia, § 10.1-560 et seq. 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.

Subdivision shall have the same meaning as defined in the town subdivision ordinance adopted pursuant to Code of Virginia, § 15.1-465 et seq., as amended.

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.

(Ord. of 4-4-77, § 6-2; Ord. of 1-9-95(1), § 6-2; Ord. of 9-10-01)

Cross reference— *Definitions generally, § 1-2.*

State law reference— *Definitions, Code of Virginia, § 10.1-560.*

Sec. 30-88. Local program generally.

(a)

The town shall have a soil erosion and sediment control program consistent with the state program and regulations for erosion and sediment control.

(b)

To carry out its program, the town shall adopt regulations consistent with the state program. The regulations may be revised from time to time as necessary. Before adopting or revising regulations, the town 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 town is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the town proposes or revises regulations that are more stringent than the state program.

©

The town hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the state soil and water conservation board pursuant to Code of Virginia, § 10.1-561, for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Such regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook, as amended from time to time.

(d)

The town hereby designates the director of public works, or his designee as the plan-approving authority.

(e)

The program and regulations provided for in this article shall be made available for public inspection at the office of the director of public works.

(f)

Pursuant to Code of Virginia § 10.1-561.1, 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 town shall contain a certified program administrator, a certified plan reviewer, and a certified inspector.

(Ord. of 4-4-77, § 6-3; Ord. of 1-9-95(1), § 6-3; Ord. of 9-10-01)

State law reference— *Local erosion and sediment control programs, Code of Virginia, § 10.1-562.*

Sec. 30-89. Regulated land-disturbing activities; submission and approval of plans; contents of plans.

(a)

Except as provided herein, no person shall engage in any land-disturbing activity until he has submitted to the director of public works, or his designee, an erosion and sediment control plan for the land-disturbing activity, an the name of the certified responsible land disturber, and such plan has been reviewed and 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 plan-approving authority.

(b)

The Virginia Erosion and Sediment Control Regulations and the Virginia Erosion and Sediment Control Handbook, as amended periodically, are adopted as the standards, reference and guidelines for the local program. The standards contained within these publications are to be used by the applicant when making a submittal under the provisions of this article 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 plan-approving authority shall review conservation plans submitted to him and grant written approval within 45 days of the receipt of the plan if he determines that the plan meets the requirements of the board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article. In addition, as a prerequisite to approval of the plan, the person responsible for carrying out the plan shall provide the name of the certified responsible land disturber.

(d)

The plan shall be acted upon within 45 days from receipt thereof by either approving such plan in writing or by disapproving such 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 within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

(e)

An approved plan may be changed by the plan-approving authority 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 article, are agreed to by the plan approving authority and the person responsible for carrying out the plan.

(f)

In order to prevent further erosion, the town may require approval of a conservation plan for any land identified in the local program as an erosion impact area.

(g)

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.

(h)

Whenever electric and telephone utility companies or railroad companies undertake any of the following activities, they shall be considered exempt from the provisions of this article:

(1)

Construction, installation and maintenance of electric and telephone utility lines; and

(2)

Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

The exemption provided by this section shall not apply to any electric, natural gas, or telephone utility company, interstate and intrastate natural gas pipeline company, or railroad company which has not properly filed annual general erosion and sediment control specifications with the board or has otherwise failed to comply with the provisions of Code of Virginia, § 10.1-563D.

Projects not included in subsections (1) and (2) of this section shall comply with the requirements of the town erosion and sediment control program, pursuant to Code of Virginia, § 10.1-563D.

(i)

State agency projects are exempt from the provisions of this article, except as provided for in Code of Virginia, § 10.1-564.

(j)

Three copies of the erosion and sediment control plan, narrative, stormwater calculations, and supporting data shall be submitted to the plan approving authority.

(Ord. of 4-4-77, § 6-4; Ord. of 1-9-95(1), § 6-4; Ord. of 9-10-01)

State law reference— *Regulated land-disturbing activities, submission and approval of control plan, Code of Virginia, § 10.1-563.*

Sec. 30-90. 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 shall 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 article, and has paid the fees and posted the required bond. Issuance of a land-disturbing permit, or building permit when required, is conditioned upon an approved erosion and sediment control plan. The plan shall be presented at the time application for such a permit and in addition the applicant shall furnish evidence of provision of bond and payment of fees, as required, for such plan.

©

A plan review and inspection fee in the amounts authorized by the town council from time to time shall be paid to the town 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, the name of the certified responsible land disturber, and certification that the plan will be followed. All control measures shall be undertaken at the expense of the owner or his agent. Pending such actual provision thereof, the owner or his agent shall file with the plan approving authority prior to the issuance of the land-disturbing permit an agreement and bond with surety in the amount determined by the plan approving authority in a sum equal to the approximate total cost of providing erosion and sedimentation control improvements. The bond, as stated below, shall guarantee proper control measures will be properly and satisfactorily undertaken and maintained by the permittee.

(e)

All applicants for permits shall provide to the town a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the town manager, or his designee, to ensure that measures could be taken by the town 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. Should it be necessary for the town to take such conservation action, the town may collect from

the applicant any costs in excess of the amount of the surety held. Within 60 days of adequate stabilization, as determined by the director of public works, or his designee, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof shall be either refunded to the applicant or terminated. 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.

(Ord. of 4-4-77, § 6-5; Ord. of 1-9-95(1), § 6-5; Ord. of 9-10-01)

Sec. 30-91. Monitoring, reports, and inspections.

(a)

The person responsible for carrying out the plan will monitor and maintain the land-disturbing activity as required under the state program and will maintain records of these inspections and maintenance.

(b)

The director of public works, or his designee, shall periodically inspect the land-disturbing activity as required under the state program 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, certified responsible land disturber, or person responsible for carrying out the plan shall be given notice of the inspection. If the town manager, or his designee determines that there is a failure to comply with the plan, notice shall be served upon the permittee, certified land disturber, 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, certified land disturber, or person responsible for carrying out the plan shall be deemed to be in violation of this article and, upon conviction, shall be subject to the penalties provided by this article.

(c)

Upon determination of a violation of this article, the town manager, or his designee, may, in conjunction with or subsequent to a notice to comply as specified in this article, 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 as provided in Code of Virginia, § 10.1-563, the town manager, or his designee, may, in conjunction with or subsequent to a notice to comply as provided in this article, issue an order requiring that all or part of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds

of the commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection (b) of this section. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the enforcing authority or alleged violator for appropriate relief to the circuit court of the 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 town manager or his designee 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 registered or certified mail to the address specified in the permit application or the land records of the town. The owner may appeal the issuance of an order to the circuit court of the county. Any person violating or failing, neglecting or refusing to obey an order issued by the town manager or his designee may be compelled in a proceeding instituted in the circuit court of the 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 town manager or his designee from taking any other action specified in Code of Virginia, § 10.1-569, or this article.

(Ord. of 4-4-77, § 6-6; Ord. of 1-9-95(1), § 6-6; Ord. of 6-10-01)

State law reference— Monitoring, reports and inspections, Code of Virginia, § 10.1-566.

Sec. 30-92. Penalties, injunctions, and other legal actions.

(a)

Violators of this article shall be assessed a civil penalty. The civil penalty for any one violation shall be \$100.00, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000.00. 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 \$3,000.00, 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 \$10,000.00. This subsection shall be in lieu of criminal sanctions and shall preclude the prosecution of violations as misdemeanors.

(b)

The town manager, or his designee, may apply to the county circuit court to enjoin a violation or a threatened violation of this article, without the necessity of showing that an adequate remedy at law does not exist.

(c)

In addition to any criminal penalties provided under this article, any person who violates any provision of this article may be liable to the town in a civil action for damages.

(d)

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 \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the town. Any civil penalties assessed by a court shall be paid into the treasury of the town, 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.

(e)

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 article, the town may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection (d) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (d) of this section.

(f)

The town attorney shall, upon request of the town, take legal action to enforce the provisions of this article.

(g)

Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

(Ord. of 4-4-77, § 6-7; Ord. of 1-9-95(1), § 6-7; Ord. of 6-10-01)

State law reference— *Penalties, injunctions and other legal actions, Code of Virginia, §§ 10.1-562(J), 10.1-569.*

Sec. 30-93. Appeals and judicial review.

(a)

Any applicant under the provision of this article who is aggrieved by any action of the town or its agent in disapproving plans submitted pursuant to this article shall have right to apply for and receive a review of such action by the town planning commission, provided that any such appeal is filed within 30 days of any written decision by the plan-approving authority. In reviewing the agent's actions, the planning commission shall

consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the planning commission may affirm, reverse or modify the action. The planning commission's decision shall be final, subject only to review by the county circuit court.

(b)

Final decisions of the town under this article shall be subject to review by the county 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.

(Ord. of 4-4-77, § 6-8; Ord. of 1-9-95(1), § 6-8; Ord. of 9-10-01)

State law reference— Appeals, Code of Virginia, § 10.1-568.

WHEREAS, it is hereby the intent of the Council to repeal the existing ordinance, amend its language, define the scope of same via additional and/or amended language and reenact the Amended Ordinance which shall read as follows:

ARTICLE IV. - EROSION AND SEDIMENT CONTROL

Sec. 30-86. - Purpose, and Authority

This ordinance shall be known as the “Erosion and Sediment Control Ordinance of the Town of Abingdon. The purpose of this ordinance is to prevent degradation of properties, stream channels, waters and other natural resources of the Town of Abingdon by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced. This ordinance is authorized by the Code of Virginia, Title 62.1, Chapter 3.1, Article 2.4 (Sec. 62.1-44.15:54 et seq.), known as the Virginia Erosion and Sediment Control Law.

(Ord. of 4-4-77, § 6-1; Ord. of 1-9-95(1), § 6-1; Ord. of 9-10-01),

Sec. 30-87. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agreement in lieu of a plan means a contract between the VESCP authority and the owner that specifies erosion and sediment control measures and other conservation measures that must be implemented in the construction of a single-family residence 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 State Water Control Board

Certified inspector means an employee or agent of the VESCP authority who holds a

certificate of competence from the Board in the area of project inspection or 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 the VESCP authority who holds a certificate of competence from the Board in the area of plan review, is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1, or professional soil scientist as defined in § 54.1-2200.

Certified program administrator means an employee or agent of the VESCP authority who holds a certificate of competence from the Board in an area of program administration or 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 top soil removal.

County means the County of Washington, Virginia.

Department means the Department of Environmental Quality.

Development means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures, or the clearing of land for non-agricultural or non-silvicultural purposes.

Director means the director of the Virginia Department of Environmental Quality.

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 ensure 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 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, disturbing 10,000 square feet or more, 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 the land-disturbing activity is confined to the area of the road, street or sidewalk that 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) 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;
- (6) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; or as additionally set forth by the Board in regulation, 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 (§ 10.1-1100 et seq.) of the Code of Virginia, or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163; of the Code of Virginia;
- (7) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- (8) 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.) Chapter 6 of the Code of Virginia ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;
- (9) Disturbed land areas of less than 10,000 square feet in size;
- (10) Installation of fence and signposts or telephone and electric poles and other kinds of posts or poles;
- (11) 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 the town.

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

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, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

Plan-approving authority means the VESCP authority including the Town of Abingdon staff person or department responsible for administering the VESCP on behalf of the Town of Abingdon.

Program Administrator, hereinafter referred to as administrator, means the representative of the town who is responsible for administering the VESCP on behalf of the Town of Abingdon.

Responsible Land Disturber (RLD) 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 erosion and sediment control plan or agreement in lieu of a plan, who (i) holds a Responsible Land Disturber certificate of competence, (ii) holds a current certificate of 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, 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 detached, freestanding building containing a single dwelling unit, i.e., a building that has no attachment or connection by a common party wall to

another similar building.

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

"State permit" means an approval to conduct a land-disturbing activity issued by the State Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the State Board for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Virginia Stormwater Management Act and the Regulations.

Town means the incorporated Town of Abingdon, Virginia

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.

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 nonagricultural 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 ordinance, and evaluation consistent with the requirements of this ordinance and its associated regulations.

Virginia Erosion and Sediment Control Program authority, or VESCP authority, means an authority approved by the Board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the Department; a federal entity; a county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. As used in this ordinance the VESCP Authority shall refer to the Town of Abingdon, Virginia.

"Virginia Stormwater Management Program" or "VSMP" means a program approved by the State Board after September 13, 2011, that has been established by a locality to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items 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 ordinance, and evaluation consistent with the requirements of this article and associated regulations.

"Virginia Stormwater Management Program authority" or "VSMP authority" means an authority approved by the State Board after September 13, 2011, to operate a Virginia Stormwater Management Program.

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.

(Ord. of 4-4-77, § 6-2; Ord. of 1-9-95(1), § 6-2; Ord. of 9-10-01)

Cross reference— Definitions generally, § 1-2.

State law reference— Definitions, Code of Virginia, § ~~10.1-560~~ 62.1-44.15:51.

Sec. 30-88. - Local program generally.

(a) The town shall have a soil erosion and sediment control program consistent with the state program and regulations for erosion and sediment control.

(b) To carry out its program, the town shall adopt regulations consistent with the state program. The regulations may be revised from time to time as necessary. Before adopting or revising regulations, the town 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 town is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the town proposes or revises regulations that are more stringent than the state program.

(c) Pursuant to section 62.1-44.15:54 of the Code of Virginia, the town hereby adopts the regulations, references, guidelines, standards and specifications 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. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook, as amended from time to time.

(d) The Town hereby designates the Department of Public Works or its appointee as the program administrator.

(e) The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the Director of Public Works.

(f) 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 the town shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.

(Ord. of 4-4-77, § 6-3; Ord. of 1-9-95(1), § 6-3; Ord. of 9-10-01)

State law reference— Local erosion and sediment control programs, Code of Virginia, §62.1-44.15:54.

Sec. 30-89. - 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 or she has submitted to the Department of Public Works, an erosion and sediment control plan for the land-disturbing activity, and such plan has been reviewed and approved by the plan-approving authority. Where land-disturbing activities involve lands under the jurisdiction of more than one VESCP authority, 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 administrator.

(b) The standards contained within the "Virginia Erosion and Sediment Control Regulations", the Virginia Erosion and Sediment Control Handbook as amended 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.

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 defined in any regulations promulgated pursuant to this section, § 62.1-44.15:54, or 62.1-44.15:65 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 as defined in any regulations promulgated pursuant to § 62.1-44.15:54 or 62.1-44.15:65 of the Code of Virginia. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of this subsection shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act, Title 62.1, Chapter 3.1, Article 2.3 (Sec. 62.1-44.15:24 et seq.) of the Code of Virginia and attendant regulations, unless such land-disturbing activities are in accordance with 9VAC25-870-48 of the Virginia Stormwater Management Program (VSMP) Permit Regulations.

(c) The VESCP authority shall review conservation plans submitted to it and grant written approval within 60 days of the receipt of the plan if the administrator determines that the plan meets the requirements of the Board's regulations and if the person responsible for carrying out

the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article. 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 administrator, as provided by § 62.1-44.15:54, 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 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 ordinance. However, the administrator 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 § 62.1-44.15:52 of the Virginia Erosion and Sediment Control Law. Failure to provide the name of an individual holding a certificate of competence shall be a violation of this ordinance.

(d) The plan shall be acted upon within 60 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 a 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 the modifications, terms and conditions that will permit approval of the plan. If no action is taken by the administrator within the time specified above, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. The town 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.

(e) The administrator may require changes to an approved plan in the following cases:

(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 administrator and the person responsible for carrying out the plans.

(f) Variances: The town may waive or modify any of the standards that are deemed to be 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 VESCP 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 administrator. The administrator shall respond in writing either approving or disapproving such a request. If the administrator 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.

(g) In order to prevent further erosion, the administrator may require approval of a 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) In accordance with the procedure set forth by § 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.

(j) State agency projects are exempt from the provisions of this article, except as provided for in Code of Virginia, § 62.1-44.15:56.

(j) A minimum of three (3) copies or an adequate number as specified by the administrator, of the final approved erosion and sediment control plan and all supporting data shall be submitted to the administrator for project distribution.

(Ord. of 4-4-77, § 6-4; Ord. of 1-9-95(1), § 6-4; Ord. of 9-10-01)

State law reference— Regulated land-disturbing activities, submission and approval of control plan, Code of Virginia, § ~~10.1-563~~ 62.1-44.15:55.

Section 30-90. 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 regulated under this ordinance 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 and, upon the development of an online reporting system by the Department but no later than July 1, 2014, evidence of Virginia stormwater management state permit coverage where it is required.

(b) A person shall not conduct any land-disturbing activity until he or she has submitted a permit application to the town that includes a state VSMP permit registration statement and, after July 1, 2014, a stormwater management plan, and has obtained town approval to begin land disturbance.

(c) A plan review and inspection fee in the amounts authorized by the town council from

time to time shall be paid to the town 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, and certification that the plan will be followed. All control measures shall be undertaken at the expense of the owner, or his agent. Pending such actual provision thereof, the owner or his agent shall file with the town prior to the issuance of the land-disturbing permit an agreement and bond with surety in the amount determined by the town in a sum equal to the approximate total cost of providing erosion and sedimentation control improvements. The bond, as stated below, shall guarantee proper control measures will be properly and satisfactorily undertaken and maintained by the permittee.

(e) All applicants, excluding state and federal entities, for permits shall provide to the town a performance bond, cash escrow, or an irrevocable letter of credit, any combination thereof, or such other legal arrangement acceptable to the town manager, or his designee, to ensure that measures could be taken by the town 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. Should it be necessary for the town to take such conservation action, the town may collect from the applicant any costs in excess of the amount of the surety held. Within 60 days of adequate stabilization, as determined by the administrator, or his designee, such bond, cash escrow or letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof shall be either refunded to the applicant or terminated. 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.

(Ord. of 4-4-77, § 6-5; Ord. of 1-9-95(1), § 6-5; Ord. of 9-10-01)

Sec. 30-91. - Monitoring, reports, and inspections.

(a) The person responsible for carrying out the plan will monitor and maintain the land-disturbing activity and 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 of public works, or its designee, shall periodically inspect the land-disturbing activity in accordance with Sec 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. The Department, the town, where authorized to enforce this article, or any duly authorized agent of the Department or such VESCP authority may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this ordinance. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, a VESCP authority may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has

failed to take acceptable action within the time specified.

If the administrator, or his designee 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, certified land disturber, or person responsible for carrying out the plan shall be deemed to be in violation of this article and, upon conviction, shall be subject to the penalties provided by this ordinance.

(c) Upon determination of a violation of this article, the town manager, or his designee, may, in conjunction with or subsequent to a notice to comply as specified in this article, 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 town manager, or his designee, may, in conjunction with or subsequent to a notice to comply as provided in this article, issue an order requiring that all or part 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 erosion and sediment control plan or any required permits, such an order may be issued without regard to whether or not the alleged violator has been issued a notice to comply as specified in subsection (b) of this section. 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 enforcing authority or alleged-violator for appropriate relief to the circuit court of the county.

If the alleged violator has not obtained an approved erosion and sediment control plan or any required permits within seven days from the date of service of the order, the town manager or his designee 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 erosion and sediment control 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 VESCP authority.

The owner may appeal the issuance of an order to the circuit court of the county or other appropriate court.

Any person violating or failing, neglecting or refusing to obey an order issued by the town manager or his designee may be compelled in a proceeding instituted in the circuit court of the 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 town manager or his designee from taking any other action authorized by this ordinance.

(Ord. of 4-4-77, § 6-6; Ord. of 1-9-95(1), § 6-6; Ord. of 6-10-01)

State law reference— Monitoring, reports and inspections, Code of Virginia, §62.1-44.15:58.

Sec. 30-92. - Penalties, injunctions, and other legal actions.

(a) Violators of this article shall be assessed a civil penalty. The civil penalty for any one violation shall be not less than \$100.00 nor more than \$1,000.00, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000.00. 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 \$10,000.00, 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 \$10,000.00. This subsection shall be in lieu of criminal sanctions and shall preclude the prosecution of violations as misdemeanors.

(b) The Town Manager, or his designee, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the county circuit court to enjoin a violation or a threatened violation of this article, 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 VESCP, and the VESCP authority, that a violation of the VESCP has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the VESCP, nor the VESCP authority has taken corrective action within fifteen 15 days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

(c) In addition to any criminal penalties provided under this article, any person who violates any provision of this article may be liable to the town in a civil action for damages.

(d) 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 \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the town. Any civil penalties assessed by a court shall be paid into the treasury of the town, except that where the violator is the locality itself, or its agent, or other VESCP authority, or where the penalties are assessed as the result of an enforcement action brought by the Department, the court shall direct the penalty to be paid into the state treasury.

(e) 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 town may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection (d) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (a) or (d) of this section.

(f) The town attorney shall, upon request of the town, take legal action to enforce the provisions of this ordinance.

(g) Compliance with the provisions of this article 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.

(Ord. of 4-4-77, § 6-7; Ord. of 1-9-95(1), § 6-7; Ord. of 6-10-01)

State law reference— Penalties, injunctions and other legal actions, Code of Virginia, §§ 62.1-44.15:54(J), 62.1-44.15:63.

Sec. 30-93. - Appeals and judicial review.

(a) Any applicant under the provision of this ordinance who is aggrieved by any action of the town or its agent shall have the right to apply for and receive a review of such action by the Town Council provided an appeal is filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before the Town Council shall be heard at the next regularly scheduled Town Council public hearing provided that the Town Council and other involved parties have at least 30 days prior notice. In reviewing the agent's actions, the Town Council shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the Town Council may affirm, reverse or modify the action. The Town Council's decision shall be final, subject only to review by the Circuit Court of Washington County, Virginia.

(b) Final decisions of the Town Council under this ordinance shall be subject to review by the Circuit Court of Washington County, Virginia 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.

(Ord. of 4-4-77, § 6-8; Ord. of 1-9-95(1), § 6-8; Ord. of 9-10-01)

⁽²⁷⁾ **Cross reference**— Buildings and building regulations, ch. 14; streets, sidewalks and other public places, ch. 62; subdivisions, app. A. (Back)

⁽²⁷⁾ **State Law reference**— Erosion and sediment control, Code of Virginia, §62.1-44.15:51 et seq. (Back)

WHEREAS, a public hearing was held before Town Council at its February ____, 2014 meeting with no objections from the public; and

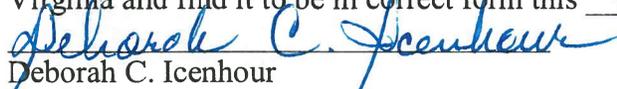
WHEREAS, a Second Reading of the proposed amendment was not necessary as the amendment was passed on the first reading; and

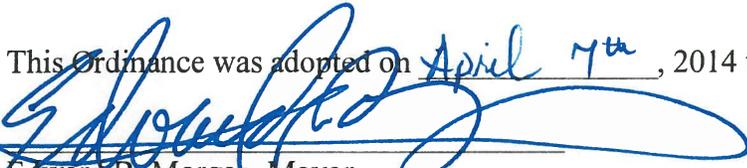
NOW, THEREFORE, BE IT ORDAINED that the Council of the Town of Abingdon, Virginia does hereby repeal, amend, and reenact Chapter 30, Erosion and Sediment Control, §30-86 through §30-93, Code of the Town of Abingdon, Virginia.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect on May 7th, 2014.

CERTIFICATE

Pursuant to Section 2-100 of the Code of the Town of Abingdon, I hereby certify that I have reviewed the foregoing proposed ordinance to repeal, amend, and reenact Chapter 30, Erosion and Sediment Control, §30-86 through §30-93 of the Code of the Town of Abingdon, Virginia and find it to be in correct form this 7th day of May, 2014.


 Deborah C. Icenhour
 Town Attorney for the Town of Abingdon, Virginia

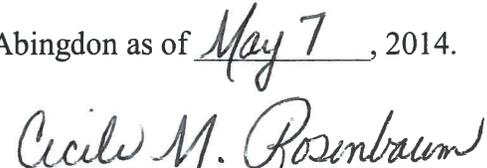
This Ordinance was adopted on April 7th, 2014 to take effect on May 7th, 2014.

 Edward B. Morgan, Mayor
 Town of Abingdon

The undersigned Clerk of the Town of Abingdon, Virginia (the "Town"), hereby certifies that the foregoing constitutes a true and correct copy of an ordinance duly adopted at a meeting of the Council held on the 7th day of April, 2014. I hereby certify that such meeting was a regularly scheduled meeting and that, during the consideration of the foregoing ordinance, a quorum was present. I further certify that the minutes of meeting was a regularly scheduled meeting and that, during the consideration of the foregoing ordinance, a quorum was present. I further certify that the minutes of such meeting reflect the attendance of the members and the voting on the foregoing ordinance was as follows:

MEMBERS	ATTENDANCE	VOTE
Edward B. Morgan, Mayor	yes	aye
Cathy C. Lowe, Vice Mayor	yes	aye
Robert M. Howard	yes	aye
Richard E. Humphreys	yes	aye
Jayne A. Duehring	yes	aye

WITNESS MY HAND and the seal of the Town of Abingdon as of May 7, 2014.

(SEAL)


 Clerk, Town of Abingdon



TOWN OF ABINGDON

OFFICE OF
DIRECTOR OF
PUBLIC WORKS

133 WEST MAIN STREET
P. O. BOX 789
ABINGDON, VIRGINIA 24212-0789

TELEPHONE:
(276) 628-3167
FAX:
(276) 628-9986

PLAN REVIEW AND INSPECTION FEES

The following table represents the plan review and inspection fees for land-disturbances that are greater than 10,000 square feet but less than 1 acre that are **NOT** part of a larger common plan of development or sale

A plan review and inspection fee in the amounts authorized by the Town Council from time to time shall be paid to the Town at the time of submission of the erosion and sediment control plan.

Agreement in Lieu of a Plan	\$65
Less than 1 acre but greater than 10,000 SF	\$190

NOTE: These fees are waived if a VSMP permit is required.

Adopted by Town Council: 4/7/2014