MADISON COUNTY

EROSION AND SEDIMENTATION

CONTROL ORDINANCE

ADOPTED: June 27, 1975

Amendments: October 12, 1982
May 12, 1987
October 16, 1991
April 2, 2003(Effective: July 1, 2003)
October 4, 2006
July 1, 2014

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Madison County

Erosion and Sediment Control Ordinance

Madison County Ordinance No. 2014- ____

Section 1

Title

This ordinance shall be known as the "Erosion and Sediment Control Ordinance of Madison County, Virginia".

Section 2

Purpose

The purpose of this ordinance is to conserve the land, water, air and other natural resources of Madison County and promote the public health and welfare of the people of Madison County by establishing requirements for the control of erosion and sedimentation, and by establishing procedures whereby these requirements shall be administered and enforced.

Section 3

Authorization

This ordinance is authorized by the Code of Virginia, Title 62.1, Chapter 3.1, Article 2.4, (§ 62.1-44.15.51), known as the "Virginia Erosion and Sediment Control Law". This Article provides for a comprehensive statewide program, with standards and guidelines to control soil erosion and sedimentation, which is to be implemented on the local level.

Section 4

Definitions

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Agreement in lieu of a plan – A contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of an erosion and sediment control plan.

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Applicant - Any person submitting an erosion and sediment control plan or an agreement in lieu of a plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

Board - The State Water Control Board.

Certified inspector - An employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one (1) year after enrollment.

Certified plan reviewer or plan reviewer - An employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one (1) year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1.

Certified program administrator or administrator – The Erosion and Sediment Administrator of Madison County or his agent who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one (1) year after enrollment.

Clearing - Any activity which removes the vegetative ground cover, including, but not limited to, tree removal, root mat removal and/or topsoil removal.

Conservation plan, erosion and sedimentation control plan or plan - A document containing material for the conservation of soil and water resources of a unit or a group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management 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 - a term applied to land that has been physically disturbed and no longer supports vegetative cover.

Department - the Department of Environmental Quality.

Development - a tract or parcel of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

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District or soil water conservation district - A political subdivision of the Commonwealth of Virginia organized in accordance with the provisions of Chapter 1 (Sec. 21-1 et. seq.) of Title 21. For the purpose of this ordinance, this shall be the Culpeper Soil and Water Conservation District.

Erosion and sediment control program or local program - 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 an ordinance, policies and guidelines, technical materials, inspection and enforcement methods.

Excavating - Any digging, scooping or other methods of removing earthen materials.

Filling - Any depositing or stockpiling of earthen materials.

Grading - Any excavating or filling of earthen material or any combination thereof, including the land in its excavated or filled condition.

Land-disturbing activity - Any land change that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

A. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;

B. Individual service connections;

C. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk provided the land-disturbing activity is confined to the area of the road, street or sidewalk that is hard surfaced;

D. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

E. Surface or deep mining

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

G. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of this title or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

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

I. Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act, Article 2 (§ 10.1-604 et seq.) of Chapter 6 of this title, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;

J. Disturbed land areas of less than 10,000 square feet in size;

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

L. Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan-approving authority.

Owner - 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 the property.

Person - 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 – The Program Administrator shall be responsible for considering review comments from the Culpeper Soil and Water Conservation District and for approving plans located in the following zoning districts, as defined in the Madison County Zoning Ordinance: Conservation, C-1; Agricultural, A-1; Residential, Limited R-1; and Residential, General R-2. The Madison County Board of Supervisors shall be responsible for considering review comments from the Madison County Planning Commission, the Program Administrator, and the Culpeper Soil and Water Conservation District and for approving plans located in the following zoning districts, as defined in the Madison County Zoning Ordinance: Residential, Multiple Family R-3; Business, General B-1; Industrial, Limited M-1; Industrial, General M-2.

Responsible Land Disturber – An individual from the project of development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by and approved 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,

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architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1.

Single family residence – A noncommercial dwelling that is occupied exclusively by one family.

State erosion and sediment control program or State program - The program administered by the Board pursuant to Title 10, Chapter 5, Article 4, (Section 10.1 560-571) of the State Code, including regulations designed to minimize erosion and sedimentation.

State waters - All waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.

Transporting - Any movement of earthen materials from one place to another, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover, either by tracking or buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

Section 5

Erosion and sedimentation control plan required; applicability of ordinance.

Except as provided for in Section 4, no person may engage in any land-disturbing activity until such person has submitted to the administrator an erosion and sedimentation control plan for such land-disturbing activity and until that plan for such land-disturbing activity 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, and erosion and sediment control plan mat, at the option of the applicant, 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.

Section 6

Erosion and sedimentation control plan - Standards and techniques.

Pursuant to Virginia Code § 62.1-44.15:54., the County of Madison, Virginia, hereby adopts the regulations and guidelines of the Virginia Department of Conservation and Recreation for the management of erosion and sedimentation, as modified herein and amended from time to time. These regulations and guidelines are included in, but not limited to the Virginia Stormwater Management Handbook and the Virginia Erosion and Sediment Control Handbook.

Section 7

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Approval of erosion and sediment control plans.

A. The plan-approving authority shall, within 45 days, approve any erosion and sediment control plan submitted from receipt to it, if it is determined that the plans meet the conservation standards of the local program and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and will comply with the provisions of this ordinance. In addition, as a prerequisite to engaging in the land disturbing activities shown on the approved site plan and in accordance with the Code of Virginia, § 62.1-44.15:55, as amended, the person responsible for carrying out the plan shall provide the name of a Responsible Land Disturber, who will be in charge of and responsible for carrying out the land disturbing activity, in accordance with the approved plan.

B. When a plan is determined to be inadequate, the plan-approving authority, within 45 days from receipt, shall give written notice of disapproval stating the specific reasons for this disapproval. The plan-approving authority shall specify such modifications, terms and conditions as will permit approval of the plan and shall communicate these requirements to the applicant. If no action is taken by the plan-approving authority within the time specified above, the plan shall be deemed approved.

C. An approved plan may be changed by the plan-approving authority, in the following cases:

1. Where inspection has revealed the inadequacy of the plan to accomplish the erosion and sediment control objectives of this ordinance, plan changes can be required without approval or agreement of the person responsible for carrying out the plan; or

2. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out; provided the proposed amendments to the plan are consistent with the requirements of the ordinance and are agreed to by the District, or the administrator or his agent, and the person responsible for carrying out the plan.

D. State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia, § 62.1-44.15:55.

E. 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.

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Section 8

Variances.

The plan-approving authority may waive or modify any of the regulations that are deemed inappropriate or too restrictive for site conditions, by granting a variance in accordance with Sec. 9VAC25-840-50of the Virginia Erosion and Sediment Control Regulations.

Section 9

Procedures for Plan review and administration.

A. Plan Review.

All final plans shall be approved by the county's plan-approving authority, after recommendation by the county's certified program reviewer, which is the Culpeper Soil and Water Conservation District for purposes of this ordinance

In reviewing plans, the plan-approving authority and the District may seek or receive recommendations or comments from the Virginia Division of Soil and Water Conservation, the Virginia Department of Transportation, the Health Department and such other agencies that are deemed to have some responsibility in this area.

The preparation and submission of an erosion and sediment control plan to be administered shall be the responsibility of the owner, lessee, or duly authorized agent of either the owner or lessee.

In determining the adequacy of the plan, the Culpeper Soil and Water Conservation District shall be guided by the recommendations contained in the Virginia Erosion and Sediment Control Handbook and/or the Virginia Erosion and Sediment Control Regulations.

B. Performance Guarantees.

The plan-approving authority, as a condition of approval of any erosion and sediment control plan, may require of the applicant a reasonable performance bond with surety, cash escrow, letter of credit, or combination thereof, or such other legal arrangement as is acceptable to the plan-approving authority to insure that measures could be taken by Madison County at the expense of the person conducting the land-disturbing activity should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of him in order to be in compliance with this ordinance.

1. If Madison County takes such measures upon such failure by the person conducting the land-disturbing activity and the costs of required corrective action exceed the security

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held, the Madison County Board of Supervisors may collect from such person the difference between the cost of the corrective action required and the amount of security held.

2. Within sixty (60) days of the achievement of adequate stabilization of the land-disturbing activity, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded by the plan-approving authority to the owner or his agent or terminated, as the case may be.

3. The amount of performance guarantee shall be set by the plan-approving authority in accordance with the Code of Virginia, § 62.1-44.15:57.

Section 10

Preconstruction conference.

No land-disturbing activity under an approved erosion and sediment control plan shall commence until the owner and/or his agent has met with the administrator and/or his agent on site for a preconstruction conference to review the requirements of said plan. The owner or his agent may request a preconstruction conference at anytime after the plan is approved, and the administrator and/or his agent shall schedule such conference within fifteen (15) days of such request. The requirement for a preconstruction conference may be waived by the Madison administrator at the time the plan is approved.

Section 11

Inspection and enforcement.

A. Inspection and enforcement of this ordinance shall rest with the administrator or his designated agent.

B. No permit that authorizes land-disturbing activities shall be issued until the applicant has obtained an approved erosion and sediment control plan.

C. The administrator or his agent shall periodically inspect the land-disturbing activity in accordance with Sec. 9VAC25-840-60of the Virginia Erosion and Sediment Control Regulations to insure compliance with the approved plan and to determine whether the measures required in that plan are effective in controlling erosion and sediment resulting from the land-disturbing activity. The administrator may require monitoring and reports from the person responsible for carrying out the plan. The right of entry to conduct such inspections shall be expressly reserved in the permit. The person responsible for carrying out the plan, or his designated representative, shall be afforded the opportunity to accompany the inspectors, but does not have to be present for an inspection provided prior notification of inspection was given.

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D. If the administrator or his agent determines that the person responsible for carrying out the plan has failed to do so, the administrator or his agent shall serve the landowner with a notice to comply by personal delivery, registered or certified mail, or process by the Sheriff of Madison County. Such service of notice shall set forth specifically the measures needed in order for the site to come into compliance with such plan and shall specify the time within such measures shall be completed. If such person fails to comply within the time specified, the permit may be revoked or the permittee or the person responsible for carrying out the plan shall be deemed to be in violation of this ordinance and upon correction shall be subject to the penalties provided for herein.

E. Upon receipt of a complaint of a substantial violation of this ordinance, the administrator may, in conjunction with or subsequent to a notice to comply as specified above, issue an order requiring that all or part of the land-disturbing activity permitted on the site be stopped until the specified noncompliance corrective measurers have been taken. Where the alleged is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watershed of the Commonwealth, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified above. 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 effect for seven (7) days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the Circuit Court. 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 administrator or his agent 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 and 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 administrator. The owner may appeal the issuance of an order to the Circuit Court of Madison County. Any person violating or failing, neglecting or refusing to obey an order issued by the program authority or his agent may be compelled in a proceeding instituted in the Circuit Court of Madison County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion of corrective action, the order shall immediately be lifted. The remedies provided for in this section are cumulative and shall not be constructed to prevent the administrator from taking any other action allowed by law.

Section 12

Approval, Expiration and Extension.

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Approval of an erosion and sediment control plan under the provisions of this ordinance shall expire twelve (12) months after the date of such approval. A single one (1) year extension may be granted by the Madison County Board of Supervisors upon a written request by the applicant to the administrator. Such request shall be made no more than sixty (60) days nor less than thirty (30) days before the expiration date of the approved erosion and sediment control plan. The administrator shall acknowledge the request upon receipt, and the Madison County Board of Supervisors shall make a decision on the requested extension within thirty (30) days of the request receipt. If such extension is granted, the Madison County Board of Supervisors may require that performance guarantees as set forth herein be given or extended by the applicant as a condition of the extension approval.

Section 13

Fees.

Each applicant shall submit a fee with an application for an erosion and sediment control plan. The fee shall be set by the Madison County Board of Supervisors, and its purpose is to defray the costs of program administration, including costs associated with the issuance of grading or land-disturbing permits, plan review, and periodic inspection for compliance with erosion and sediment control plans.

Section 14

Administrative appeal; judicial review.

Any decision of the administrator under this ordinance shall be subject to review by the Madison County Board of Supervisors, provided an appeal is filed within thirty (30) days from the date of any written decision by the administrator.

Final decision of the Madison County Board of Supervisors under this ordinance shall be subject to review by the Court of record of the county, provided an appeal is filed with thirty (30) days from the date of the final decision.

Section 15

Violations and penalties.

A. Any person who violates any provision of this ordinance shall, upon a finding of the District Court of Madison County, be assessed a civil penalty. The civil penalty for any on 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 offence. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of $10,000, except that a series of violations

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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. The Madison County Board of Supervisors, 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 Madison County for injunctive relief to enjoin a violation or a threatened violation of this ordinance, without the necessity of showing that there does not exist an adequate remedy at law. 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 plan-approving 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 plan-approving 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

Section 16

Severability.

If any section of this ordinance is held by a court to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any other section.

Section 17

Effective Date.

The effective date of this ordinance shall be July 1, 2014. This ordinance amends the Soil and Sedimentation control ordinance of Madison County, Virginia, enacted by the Madison County Board of Supervisors on October 12, 1982

Adopted as amended on the 10th day of June, 2014.

Madison County Board of Supervisors

By: _____
Doris G. Lackey, Chair

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Adopted this 10th day of June, 2014, by the Madison County Board of Supervisors, on motion of Supervisor McGhee, seconded by Supervisor Jackson.

Doris G. Lackey, Chair
Madison County Board of Supervisors

	Aye	Nay	Abstain	Absent
Doris G. Lackey	x			
R. Clay Jackson	x			
Jonathon Weakley				x
Robert Campbell	x			
Kevin McGhee	x			

Attest:

Ernest C. Hoch, Clerk of the Board

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