

APPENDIX A

4VAC 50-30 et seq.,
Virginia's Erosion and Sediment Control
Law and Regulations

COMMONWEALTH of VIRGINIA

**Virginia Erosion and Sediment
Control Law, Regulations, and
Certification Regulations**

FY 2009

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Department of Conservation & Recreation

CONSERVING VIRGINIA'S NATURAL AND RECREATIONAL RESOURCES

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EROSION AND SEDIMENT CONTROL LAW, REGULATIONS AND CERTIFICATION REGULATIONS

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The following is a complete, edited text (unofficial copy) of the Virginia Erosion and Sediment Control Law (Title 10.1, Chapter 5, Article 4 of the Code of Virginia) as amended by the Virginia General Assembly. Please refer to the Code of Virginia for an official copy of the Law.

§ 10.1-560. Definitions.

As used in this article, unless the context requires a different meaning:

"Agreement in lieu of a plan" means 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 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.

"Certified inspector" means 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 year after enrollment.

"Certified plan reviewer" means 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 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" means an employee or agent of a program authority 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 year after enrollment.

"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.

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§ [10.1-506](#) et seq.) of this chapter.

"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 or to shorelines where the erosion results from wave action or other coastal processes.

"Land-disturbing activity" means 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:

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. Surface or deep mining activities authorized under a permit issued by the Department of Mines, Minerals and Energy;
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 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](#);
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, 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;

10. Disturbed land areas of less than 10,000 square feet in size; however, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

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

12. Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto; and

13. 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.

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

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

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

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

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.

"Plan-approving authority" means the Board, the program authority, or a department of a program authority, responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.

"Program authority" means a district, county, city, or town that has adopted a soil erosion and sediment control program that has been approved by the Board.

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

"State erosion and sediment control program" or "state program" means the program administered by the Board pursuant to this article, 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 jurisdiction.

"Town" means an incorporated town.

"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.

§ 10.1-561. State erosion and sediment control program.

- A. The Board shall develop a program and promulgate regulations for the effective control of soil erosion, sediment deposition and nonagricultural runoff that must be met in any control program to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) 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, §10.1-562, or 10.1-570. Any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels as defined in any regulations promulgated pursuant to § 10.1-562 or 10.1-570.

The regulations shall:

1. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including, but not limited to, data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;
 2. Include such survey of lands and waters as may be deemed appropriate by the Board or required by any applicable law to identify areas, including multi-jurisdictional and watershed areas, with critical erosion and sediment problems; and
 3. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of erosion and sediment resulting from land-disturbing activities.
- B. The Board shall provide technical assistance and advice to, and conduct and supervise educational programs for, districts and localities that have adopted local control programs.
- C. The program and regulations shall be available for public inspection at the Department.
- D. The Board shall promulgate regulations establishing minimum standards of effectiveness of erosion and sediment control programs, and criteria and procedures for reviewing and evaluating the effectiveness of erosion and sediment control programs. In developing minimum standards for program effectiveness, the Board shall consider information and standards on which the regulations promulgated pursuant to subsection A of this section are based.
- E. The Board shall periodically conduct a comprehensive review and evaluation to ensure that all erosion and sediment control programs operating under the jurisdiction of this article meet minimum standards of effectiveness in controlling soil erosion, sediment deposition and nonagricultural runoff. The Board shall develop a schedule for conducting periodic reviews and evaluations of the effectiveness of erosion and sediment control programs.

- F. The Board shall issue certificates of competence concerning the content, application and intent of specified subject areas of this chapter and accompanying regulations, including program administration, plan review, and project inspection, to personnel of program authorities and to any other persons who have completed training programs or in other ways demonstrated adequate knowledge. The Department shall administer education and training programs for specified subject areas of this chapter and accompanying regulations, and is authorized to charge persons attending such programs reasonable fees to cover the costs of administering the programs.
- G. As of December 31, 2004, any Department personnel conducting inspections pursuant to this chapter shall hold a certificate of competence as provided in subsection F.

§ 10.1-561.1. Certification of local program personnel.

- A. The minimum standards of local program effectiveness established by the Board pursuant to subsection D of § 10.1-561 shall provide that within one year following the adoption of amendments to the local program adding the provision of this section, (i) a conservation plan shall not be approved until it is reviewed by a certified plan reviewer; (ii) inspections of land-disturbing activities are conducted by a certified inspector; and (iii) a local program shall contain a certified program administrator, a certified plan reviewer, and a certified project inspector, who may be the same person.
- B. Any person who holds a certificate of competence from the Board in the areas of plan review, project inspection, or program administration which was attained prior to the adoption of the mandatory certification provisions of subsection A of this section shall be deemed to satisfy the requirements of that area of certification.

§ 10.1-562. Local erosion and sediment control programs.

- A. Each district in the Commonwealth shall adopt and administer an erosion and sediment control program for any area within the district for which a county, city, or town does not have an approved erosion and sediment control program.

To carry out its program the district 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 district 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 district is amending its program to conform to revisions in the state program. However, a public hearing shall be held if a district proposes or revises regulations that are more stringent than the state program. The program and regulations shall be available for public inspection at the principal office of the district.

- B. In areas where there is no district, a county, city, or town shall adopt and administer an erosion and sediment control program.

- C. Any county, city, or town within a district may adopt and administer an erosion and sediment control program.

Any town, lying within a county which has adopted its own erosion and sediment control program, may adopt its own program or become subject to the county program. If a town lies within the boundaries of more than one county, the town shall be considered for the purposes of this article to be wholly within the county in which the larger portion of the town lies. Any county, city, or town with an erosion and sediment control program may designate its department of public works or a similar local government department as the plan-approving authority or may designate the district as the plan-approving authority for all or some of the conservation plans.

- D. Any erosion and sediment control program adopted by a district, county, city, or town shall be approved by the Board if it is consistent with the state program and regulations for erosion and sediment control.

- E. If a comprehensive review conducted by the Board of a local control program indicates that the program authority has not administered, enforced or conducted its program in a manner that satisfies the minimum standards of effectiveness established pursuant to subsection D of § 10.1-561, the Board shall notify the program authority in writing, which notice shall identify corrective action required to attain the minimum standard of effectiveness and shall include an offer to provide technical assistance to implement the corrective action. If the program authority has not implemented the corrective action identified by the Board within thirty days following receipt of the notice, or such additional period as is necessary to complete the implementation of the corrective action, then the Board shall have the authority to (i) issue a special order to any locality that has failed to enter into a corrective action agreement or, where such corrective action agreement exists, has failed to initiate or has not made substantial and consistent progress towards implementing an approved corrective action agreement within the deadline established by the Board to pay a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed \$20,000 per violation for noncompliance with the state program, to be paid into the state treasury and deposited in the Virginia Stormwater Management Fund established by § 10.1-603.4:1 or (ii) revoke its approval of the program. Prior to issuing a special order or revoking its approval of any local control program, the Board shall conduct a formal hearing pursuant to § 2.2-4020 of the Administrative Process Act. Judicial review of any order of the Board revoking its approval of a local control program shall be made in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

- F. If the Board revokes its approval of a local control program of a county, city or town, and the locality is in a district, the district shall adopt and administer an erosion and sediment control program for the locality.

- G. If the Board (i) revokes its approval of a local control program of a district, or of a county, city, or town not in a district, or (ii) finds that a local program consistent with the state program and regulations has not been adopted by a district or a county, city, or town which is required to adopt and administer a local program, the Board shall, after such hearings or consultations as it deems appropriate with the various local interests involved, develop, adopt, and administer an appropriate program to be carried out within such district, county, city, or town, as applicable, by the Board.
- H. If the Board has revoked its approval of any local control program, the program authority may request that the Board approve a replacement program, and the Board shall approve the replacement program if it finds that (i) the program authority is capable of administering the program in accordance with the minimum standards of effectiveness and (ii) the replacement program otherwise meets the requirements of the state program and regulations. The Board shall conduct a formal hearing pursuant to § 2.2-4020 of the Administrative Process Act on any request for approval of a replacement program.
- I. Any program authority which administers an erosion and sediment control program may charge applicants a reasonable fee to defray the cost of program administration. A program authority shall hold a public hearing prior to enacting an ordinance establishing a schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill and administrators' expense involved.
- J. The governing body of any county, city or town which (i) is in a district which has adopted a local control program, (ii) has adopted its own local control program, (iii) is subject to a local control program adopted by the Board, or (iv) administers a local control program, may adopt an ordinance providing that violations of any regulation or order of the Board, any provision of its program, any condition of a permit, or any provision of this article shall be subject to a civil penalty. The civil penalty for any one violation shall be not less than \$100 nor more than \$1,000, except that the civil penalty for commencement of land-disturbing activities without an approved plan as provided in § 10.1-563 shall be \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$10,000 except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000. Adoption of such an ordinance providing that violations are subject to a civil penalty shall be in lieu of criminal sanctions and shall preclude the prosecution of such violations as a misdemeanor under subsection A of §10.1-569.

§ 10.1-563. Regulated land-disturbing activities; submission and approval of control plan.

- A. Except as provided in § [10.1-564](#), no person may engage in any land-disturbing activity until he has submitted to the district or locality an erosion and sediment control plan for the land-disturbing activity and the 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 may, 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.
- B. The plan-approving authority shall review conservation plans submitted to it and grant written approval within 45 days of the receipt of the plan if it 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 program authority, as provided by § [10.1-561](#), who will be in charge of and responsible for carrying out the land-disturbing activity. However, any plan-approving authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § [10.1-561](#). 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 article.

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 plan-approving authority within the time specified above, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

- C. An approved plan may be changed by the authority that approved the plan in the following cases:
1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; 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, 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.
- D. 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 approval. The specifications shall apply to:
1. Construction, installation or maintenance of electric transmission, natural gas and telephone utility lines and pipelines; and
 2. Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

The Board shall have 60 days in which to approve the specifications. If no action is taken by the Board within 60 days, the specifications shall be deemed approved. Individual approval of separate projects within subdivisions 1 and 2 of this subsection is not necessary when approved specifications are followed. Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the appropriate local erosion and sediment control program. The Board shall have the authority to enforce approved specifications.

- E. 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 wetlands 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.

The Board shall have 60 days in which to approve the specifications. If no action is taken by the Board within 60 days, the specifications shall be deemed approved. Individual approval of separate projects under this subsection is not necessary when approved specifications are implemented through a project-specific erosion and sediment control plan. Projects not included in this subsection shall comply with the requirements of the appropriate local erosion and sediment control program. The Board shall have the

authority to enforce approved specifications. Approval of general erosion and sediment control specifications by the Board does not relieve the owner or operator from compliance with any other local ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.

- F. In order to prevent further erosion a local program may require approval of a conservation plan for any land identified in the local program as an erosion impact area.
- G. For the purposes of subsections A and B of this section, 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.

§ 10.1-564. State agency projects.

- A. A state agency shall not undertake a project involving a land-disturbing activity unless (i) the state agency has submitted annual specifications for its conduct of land-disturbing activities which have been reviewed and approved by the Department as being consistent with the state program or (ii) the state agency has submitted a conservation plan for the project which has been reviewed and approved by the Department.
- B. The Department shall not approve a conservation plan submitted by a federal or state agency for a project involving a land-disturbing activity (i) in any locality which has not adopted a local program with more stringent regulations than those of the state program or (ii) in multiple jurisdictions with separate local programs, unless the conservation plan is consistent with the requirements of the state program.
- C. The Department shall not approve a conservation plan submitted by a federal or state agency for a project involving a land-disturbing activity in one locality with a local program with more stringent regulations than those of the state program unless the conservation plan is consistent with the requirements of the local program. If a locality has not submitted a copy of its local program regulations to the Department, the provisions of subsection B of this section shall apply.
- D. The Department shall have sixty days in which to comment on any specifications or conservation plan submitted to it for review, and its comments shall be binding on the state agency and any private business hired by the state agency.
- E. As on-site changes occur, the state agency shall submit changes in a conservation plan to the Department.
- F. The state agency responsible for the land-disturbing activity shall ensure compliance with the approved plan or specifications.

§ 10.1-565. Approved plan required for issuance of grading, building, or other permits: security for performance.

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. Prior to issuance of any permit, the agency may also require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the agency, to ensure that measures could be taken by the agency at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of him by the approved plan as a result of his land-disturbing activity. The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the estimated cost of the conservation action. If the agency takes such conservation action upon such failure by the permittee, the agency may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within sixty days of the achievement of adequate stabilization of the land-disturbing activity, the bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated based upon the percentage of stabilization accomplished in the project or section thereof. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

§ 10.1-566. Monitoring, reports and inspections.

- A. The plan-approving authority or, if a permit is issued in connection with land-disturbing activities that involve the issuance of a grading, building, or other permit, the permit-issuing authority (i) shall provide for periodic inspections of the land-disturbing activity and require that 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 and (ii) may require monitoring and reports from the person responsible for carrying out the plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. However, any plan-approving authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single family residence. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. If the permit-issuing authority or plan-approving authority 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. Where the plan-approving authority serves notice, a copy of the notice shall also be sent to the issuer of the permit. 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 time specified, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this article and shall be subject to the penalties provided by § [10.1-569](#).

- B. Notwithstanding the above provisions of this section the following may be applied:
1. Where a county, city, or town administers the local control program and the permit-issuing authority and the plan-approving authority are not within the same local government department, the locality may designate one department to inspect, monitor, report and ensure compliance. In the event a district has been designated as the plan-approving authority for all or some of the conservation plans, the enforcement of the program shall be with the local government department; however, the district may inspect, monitor and make reports for the local government department.
 2. Where a district adopts the local control program and permit-issuing authorities have been established by a locality, the district by joint resolution with the appropriate locality may exercise the responsibilities of the permit-issuing authorities with respect to monitoring, reports, inspections and enforcement.
 3. Where a permit-issuing authority has been established, and such authority is not vested in an employee or officer of local government but in the commissioner of revenue or some other person, the locality shall exercise the responsibilities of the permit-issuing authority with respect to monitoring, reports, inspections and enforcement unless such responsibilities are transferred as provided for in this section.
- C. Upon receipt of a sworn complaint of a violation of this section, § [10.1-563](#) or § [10.1-564](#) from the representative of the program authority or the Board responsible for ensuring program compliance, the chief administrative officer, or his designee, of the program authority or the Board may, in conjunction with or subsequent to a notice to comply as specified in subsection A above, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan as provided in § [10.1-563](#), requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection A 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 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 jurisdiction wherein the violation was alleged to have occurred. 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 chief administrative officer 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 locality in which the site is located. The owner may appeal the issuance of an order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Any person violating or failing, neglecting or refusing to obey an order issued by the chief administrative officer or his designee may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred 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 chief administrative officer or his designee from taking any other action specified in § [10.1-569](#).

§ 10.1-566.1. Reporting.

Each locality's plan-approving authority shall report to the Department, in a method and on a time schedule established by the Department, a listing of each land-disturbing activity in the locality for which a plan has been approved under this article.

§ 10.1-567. Cooperation with federal and state agencies.

The districts and localities operating their own programs, and the Board are authorized to cooperate and enter into agreements with any federal or state agency in connection with plans for erosion and sediment control with respect to land-disturbing activities.

§ 10.1-568. Appeals.

- A. Final decisions of counties, cities or towns under this article shall be subject to review by the court of record of the county or city, provided that an appeal is filed within thirty days from the date of any written decision adversely affecting the rights, duties or privileges of the person engaging in or proposing to engage in land-disturbing activities.
- B. Final decisions of the districts shall be subject to an administrative review by the Board, provided that an appeal is filed within thirty days from the date of the written decision.
- C. Final decisions of the Board either upon its own action or upon the review of the action of a district shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 10.1-569. Penalties, injunctions and other legal actions.

- A. Violators of §10.1-563, §10.1-564 or §10.1-566 shall be guilty of a Class 1 misdemeanor.
- B. If a locality has adopted an ordinance establishing a uniform schedule of civil penalties as permitted by subsection J of §10.1-562, any person who violates any regulation or order of the Board, any condition of a permit, any provision of its program, or any provision of this article shall, upon a finding of an appropriate general district court, be assessed a civil penalty in accordance with the schedule. The erosion and sediment control administrator, his deputy or certified inspector for the locality wherein the land lies may issue a summons for collection of the civil penalty and the action may be prosecuted by the locality wherein the land lies. In any trial for a scheduled violation, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, 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.
- C. The appropriate permit-issuing authority, the program authority, the Board, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the circuit court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation under § 10.1-563, § 10.1-564 or § 10.1-566 without the necessity of showing that an adequate remedy at law does not exist; however an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.
- D. In addition to any criminal or civil penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the program authority, or the Board, as appropriate, in a civil action for damages.
- E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the locality wherein the land lies. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

- F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board, or any condition of a permit or any provision of this article, the Board, the Director or plan approving or permit-issuing authority may provide, in an order issued by the Board or plan-approving or permit-issuing authority against such persons, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection B or E.
- G. Upon request of a program authority, or the permit-issuing authority, the attorney for the Commonwealth shall take legal action to enforce the provisions of this article. Upon request of the Board, the Attorney General shall take appropriate legal action on behalf of the Board to enforce the provisions of this article.
- H. 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.

§ 10.1-569.1. Stop work orders by Board; civil penalties.

- A. An aggrieved owner of property sustaining pecuniary damage resulting from a violation of an approved plan or required permit, or from the conduct of land-disturbing activities commenced without an approved plan or required permit, may give written notice of the alleged violation to the program authority and to the Director.
- B. Upon receipt of the notice from the aggrieved owner and notification to the program authority, the Director shall conduct an investigation of the aggrieved owner's complaint.
- C. If the program authority has not responded to the alleged violation in a manner which causes the violation to cease and abates the damage to the aggrieved owner's property within thirty days following receipt of the notice from the aggrieved owner, the aggrieved owner may request that the Director require the violator to stop the violation and abate the damage to this property.
- D. If (i) the Director's investigation of the complaint indicates that the program authority has not responded to the alleged violation as required by the local program, (ii) the program authority has not responded to the alleged violation within thirty days from the date of the notice given pursuant to subsection A of this section, and (iii) the Director is requested by the aggrieved owner to require the violator to cease the violation, then the Director shall give written notice to the program authority that the Director will request the Board to issue an order pursuant to subsection E of this section.

- E. If the program authority has not instituted action to stop the violation and abate the damage to the aggrieved owner's property within ten days following receipt of the notice from the Director, the Board is authorized to issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the plan or permit has ceased, or an approved plan and required permits are obtained, as appropriate, and specified corrective measures have been completed.
- F. Such orders are to be issued only after a hearing with reasonable notice to the affected person of the time, place and purpose thereof, and they shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Director. However, if the Board finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, it may issue, without advance notice or hearing, an emergency order directing such person to cease all land-disturbing activities on the site immediately and shall provide an opportunity or a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend or cancel such emergency order.
- G. If a person who has been issued an order or emergency order is not complying with the terms thereof, the Board may institute a proceeding in the appropriate circuit court for an injunction, mandamus, or other appropriate remedy compelling the person to comply with such order.
- H. Any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to subsection G of this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. Any civil penalties assessed by a court shall be paid into the state treasury.

§ 10.1-570. Authorization for more stringent regulations.

A district or locality is authorized to adopt more stringent soil erosion and sediment control regulations than those necessary to ensure compliance with the Board's regulations. However, this section shall not be construed to authorize any district or locality to impose any more stringent regulations for plan approval or permit issuance than those specified in § 10.1-563 and § 10.1-565.

§ 10.1-571. No limitation on authority of Water Control Board or Department of Mines, Minerals and Energy.

The provisions of this article shall not limit the powers or duties presently exercised by the State Water Control Board under Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1, or the powers or duties of the Department of Mines, Minerals and Energy as they relate to strip mine reclamation under Chapters 16 (§ 45.1-180 et seq.), 17 (§ 45.1-198 et seq) and 19 (§ 45.1-226 et seq) of Title 45.1 or oil or gas exploration under the Virginia Oil and Gas Act (§ 45.1-286 et seq.).

The following is a complete, edited text (unofficial copy) of the Virginia Erosion and Sediment Control Regulations (4VAC50-30). Please refer to the Virginia Administrative Code for an official copy of the Regulations.

4VAC50-30-10. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in §10.1-560 of the Erosion and Sediment Control Law.

"*Act*" means the Erosion and Sediment Control Law, Article 4 (§10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

"*Adequate channel*" means a watercourse that will convey the designated frequency storm event without overtopping its banks or causing erosive damage to the bed, banks and overbank sections of the same.

"*Agreement in lieu of a plan*" means a contract between the program authority and the owner which specifies conservation measures which must be implemented in the construction of a single-family residence; this contract may be executed by the program authority in lieu of an erosion and sediment control plan.

"*Applicant*" means 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*" means the Virginia Soil and Water Conservation Board.

"*Causeway*" means a temporary structural span constructed across a flowing watercourse or wetland to allow construction traffic to access the area without causing erosion damage.

"*Channel*" means a natural stream or manmade waterway.

"*Cofferdam*" means a watertight temporary structure in a river, lake, etc., for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, dams, etc., may be constructed.

"*Dam*" means a barrier to confine or raise water for storage or diversion, to create a hydraulic head, to prevent gully erosion, or to retain soil, rock or other debris.

"*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 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.

"*Dike*" means an earthen embankment constructed to confine or control water, especially one built along the banks of a river to prevent overflow of lowlands; levee.

"*Director*" means the Director of the Department of Conservation and Recreation.

"*District*" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§10.1-506 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

"*Diversion*" means a channel with a supporting earthen ridge on the lower side constructed across or at the bottom of a slope for the purpose of intercepting surface runoff.

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

"*Energy dissipator*" means a non-erodible structure which reduces the velocity of concentrated flow to reduce its erosive effects.

"*Erosion and sediment control plan, conservation 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 and all information deemed necessary by the plan-approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"*Flume*" means a constructed device lined with erosion-resistant materials intended to convey water on steep grades.

"*Live watercourse*" means a definite channel with bed and banks within which concentrated water flows continuously.

"*Locality*" means a county, city or town.

"*Natural stream*" means nontidal waterways that are part of the natural topography. They usually maintain a continuous or seasonal flow during the year and are characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams.

"*Nonerodible*" means a material, e.g., riprap, concrete, plastic, etc., that will not experience surface wear due to natural forces.

"*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 Board, the program authority a department of a program authority, or an agent of the program authority responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of land 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.

"*Program administrator*" means the person or persons responsible for administering and enforcing the erosion and sediment control program of a program authority.

"*Program authority*" means a district, county, city, or town which has adopted a soil erosion and sediment control program which has been approved by the Board.

"*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.

"*Sediment basin*" means a temporary impoundment built to retain sediment and debris with a controlled stormwater release structure.

"*Sediment trap*" means a temporary impoundment built to retain sediment and debris which is formed by constructing an earthen embankment with a stone outlet.

"*Sheet flow*" (also called overland flow) means shallow, unconcentrated and irregular flow down a slope. The length of strip for overland flow usually does not exceed 200 feet under natural conditions.

"*Shore erosion control project*" means an erosion control project approved by local wetlands boards, the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality or the United States Army Corps of Engineers and located on tidal waters and within nonvegetated or vegetated wetlands as defined in Title 28.2 of the Code of Virginia.

"*Slope drain*" means tubing or conduit made of nonerosive material extending from the top to the bottom of a cut or fill slope with an energy dissipator at the outlet end.

"*Stabilized*" means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

"*Storm sewer inlet*" means a structure through which stormwater is introduced into an underground conveyance system.

"*Stormwater detention*" means the process of temporarily impounding runoff and discharging it through a hydraulic outlet structure to a downstream conveyance system.

"*Temporary vehicular stream crossing*" means a temporary nonerodible structural span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes or pipe arches constructed on or through nonerodible material.

"*Ten-year storm*" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as an exceedence probability with a 10% chance of being equaled or exceeded in any given year.

"*Two-year storm*" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two years. It may also be expressed as an exceedence probability with a 50% chance of being equaled or exceeded in any given year.

"*Twenty-five-year storm*" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in twenty-five years. It may also be expressed as exceedence probability with a 4% chance of being equaled or exceeded in any given year.

4VAC50-30-20. Purpose.

The purpose of these regulations is to form the basis for the administration, implementation and enforcement of the Act. The intent of these regulations is to establish the framework for compliance with the Act while at the same time providing flexibility for innovative solutions to erosion and sediment control concerns.

4VAC50-30-30. Scope and applicability.

- A. These regulations set forth minimum standards for the effective control of soil erosion, sediment deposition and nonagricultural runoff that must be met:
1. In erosion and sediment control programs adopted by districts and localities under §10.1-562 of the Act.
 2. In erosion and sediment control plans that may be submitted directly to the Board pursuant to §10.1-563 A of the Act;
 3. In annual general erosion and sediment control specifications that electric and telephone utility companies and railroad companies are required to file with the Board pursuant to §10.1-563 D of the Act;
 4. In conservation plans and annual specifications that state agencies are required to file with the Department pursuant to §10.1-564 of the Act; and
 5. By federal agencies that enter into agreements with the Board.
- B. The submission of annual specifications to the Board or the Department by any agency or company does not eliminate the need for a project specific erosion and sediment control plan.
- C. These regulations must be incorporated into the local erosion and sediment control program within one year of their effective date.

4VAC50-30-40. Minimum Standards.

An erosion and sediment control program adopted by a district or locality must be consistent with the following criteria, techniques and methods:

1. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 30 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.

2. During construction of the project, soil stockpiles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site.
3. A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion.
4. Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.
5. Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.
6. Sediment traps and sediment basins shall be designed and constructed based upon the total drainage area to be served by the trap or basin.
 - a. The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre of drainage area and the trap shall only control drainage areas less than three acres.
 - b. Surface runoff from disturbed areas that is comprised of flow from drainage areas greater than or equal to three acres shall be controlled by a sediment basin. The minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of drainage area. The outfall system shall, at a minimum, maintain the structural integrity of the basin during a 25-year storm of 24-hour duration. Runoff coefficients used in runoff calculations shall correspond to a bare earth condition or those conditions expected to exist while the sediment basin is utilized.
7. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.
8. Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.
9. Whenever water seeps from a slope face, adequate drainage or other protection shall be provided.

10. All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.
11. Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.
12. When work in a live watercourse is performed, precautions shall be taken to minimize encroachment, control sediment transport and stabilize the work area to the greatest extent possible during construction. Nonrodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by nonrodible cover materials.
13. When a live watercourse must be crossed by construction vehicles more than twice in any six-month period, a temporary vehicular stream crossing constructed of nonrodible material shall be provided.
14. All applicable federal, state and local regulations pertaining to working in or crossing live watercourses shall be met.
15. The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed.
16. Underground utility lines shall be installed in accordance with the following standards in addition to other applicable criteria:
 - a. No more than 500 linear feet of trench may be opened at one time.
 - b. Excavated material shall be placed on the uphill side of trenches.
 - c. Effluent from dewatering operations shall be filtered or passed through an approved sediment trapping device, or both, and discharged in a manner that does not adversely affect flowing streams or off-site property.
 - d. Material used for backfilling trenches shall be properly compacted in order to minimize erosion and promote stabilization.
 - e. Restabilization shall be accomplished in accordance with these regulations.
 - f. Applicable safety regulations shall be complied with.

17. Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land-disturbing activities.
18. All temporary erosion and sediment control measures shall be removed within 30 days after final site stabilization or after the temporary measures are no longer needed, unless otherwise authorized by the local program authority. Trapped sediment and the disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation.
19. Properties and waterways downstream from development sites shall be protected from sediment deposition, erosion and damage due to increases in volume, velocity and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in accordance with the following standards and criteria:
 - a. Concentrated stormwater runoff leaving a development site shall be discharged directly into an adequate natural or man-made receiving channel, pipe or storm sewer system. For those sites where runoff is discharged into a pipe or pipe system, downstream stability analyses at the outfall of the pipe or pipe system shall be performed.
 - b. Adequacy of all channels and pipes shall be verified in the following manner:
 - (1) The applicant shall demonstrate that the total drainage area to the point of analysis within the channel is one hundred times greater than the contributing drainage area of the project in question; or
 - (2)
 - (a) Natural channels shall be analyzed by the use of a two-year storm to verify that stormwater will not overtop channel banks nor cause erosion of channel bed or banks.
 - (b) All previously constructed man-made channels shall be analyzed by the use of a ten-year storm to verify that stormwater will not overtop its banks and by the use of a two-year storm to demonstrate that stormwater will not cause erosion of channel bed or banks; and
 - (c) Pipes and storm sewer systems shall be analyzed by the use of a ten-year storm to verify that stormwater will be contained within the pipe or system.

- c. If existing natural receiving channels or previously constructed man-made channels or pipes are not adequate, the applicant shall:
 - (1) Improve the channels to a condition where a ten-year storm will not overtop the banks and a two-year storm will not cause erosion to the channel bed or banks; or
 - (2) Improve the pipe or pipe system to a condition where the ten-year storm is contained within the appurtenances; or
 - (3) Develop a site design that will not cause the pre-development peak runoff rate from a two-year storm to increase when runoff outfalls into a natural channel or will not cause the pre-development peak runoff rate from a ten-year storm to increase when runoff outfalls into a man-made channel; or
 - (4) Provide a combination of channel improvement, stormwater detention or other measures which is satisfactory to the plan-approving authority to prevent downstream erosion.
- d. The applicant shall provide evidence of permission to make the improvements.
- e. All hydrologic analyses shall be based on the existing watershed characteristics and the ultimate development of the subject project.
- f. If the applicant chooses an option that includes stormwater detention, he shall obtain approval from the locality of a plan for maintenance of the detention facilities. The plan shall set forth the maintenance requirements of the facility and the person responsible for performing the maintenance.
- g. Outfall from a detention facility shall be discharged to a receiving channel, and energy dissipators shall be placed at the outfall of all detention facilities as necessary to provide a stabilized transition from the facility to the receiving channel.
- h. All on-site channels must be verified to be adequate.
- i. Increased volumes of sheet flows that may cause erosion or sedimentation on adjacent property shall be diverted to a stable outlet, adequate channel, pipe or pipe system, or to a detention facility.

- j. In applying these stormwater management criteria, individual lots or parcels in a residential, commercial or industrial development shall not be considered to be separate development projects. Instead, the development, as a whole, shall be considered to be a single development project. Hydrologic parameters that reflect the ultimate development condition shall be used in all engineering calculations.
- k. All measures used to protect properties and waterways shall be employed in a manner which minimizes impacts on the physical, chemical and biological integrity of rivers, streams and other waters of the state.

4VAC50-30-50. Variiances.

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. 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 plan-approving 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 plan-approving authority. The plan-approving authority shall respond in writing either approving or disapproving such a request. If the plan-approving authority 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.
3. The plan-approving authority shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.

4VAC50-30-60. Maintenance and inspections.

- A. All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.

- B. Periodic inspections are required on all projects by the program authority. The program authority shall either:
 - 1. Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or
 - 2. Establish an alternative inspection program which ensures compliance with the approved erosion and sediment control plan. Any alternative inspection program shall be:
 - a. Approved by the Board prior to implementation;
 - b. Established in writing;
 - c. Based upon a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions and stage of construction; and
 - d. Documented by inspection records.

4VAC50-30-70. Developments.

- A. An erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction.
- B. If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an "Agreement in Lieu of a Plan" signed by the property owner.
- C. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the act and these regulations if the total land-disturbing activity in the development is equal to or greater than 10,000 square feet.

4VAC50-30-80. Criteria for determining status of land-disturbing activity.

- A. The program administrator shall determine the validity of a claim of exempt status by a property owner who disturbs 10,000 square feet or more. As soon as a nonexempt status is determined, the requirements of the Act shall be immediately enforced.

- B. Should a land-disturbing activity not begin during the 180-day period following plan approval or cease for more than 180 days, the plan-approval authority or the permit-issuing authority may evaluate the existing approved erosion and sediment control plan to determine whether the plan still satisfies local and state erosion and sediment control criteria and to verify that all design factors are still valid. If the authority finds the previously filed plan to be inadequate, a modified plan shall be submitted and approved prior to the resumption of land-disturbing activity.
- C. Shore erosion control projects are not subject to these regulations. However, land-disturbing activity immediately outside the limits of the shore erosion project is subject to the Act and these regulations.
- D. Whenever land-disturbing activity involves activity at a separate location (including but not limited to borrow and disposal areas), the program authority may either:
 - 1. Consider the off-site activity as being part of the proposed land-disturbing activity; or,
 - 2. If the off-site activity is already covered by an approved erosion and sediment control plan, the program authority may require the applicant to provide proof of the approval and to certify that the plan will be implemented in accordance with the Act and these regulations.

4VAC50-30-90. Review and evaluation of local programs: minimum program standards.

- A. This section sets forth the criteria that will be used by the Department to determine whether a local program operating under authority of the Act, satisfies minimum standards of effectiveness, as follows.

Each local program must contain an ordinance or other appropriate document(s) adopted by the governing body. Such document(s) must be consistent with the Act and 4VAC50-30 and 4VAC50-50, including the following criteria:

- 1. The document(s) shall include or reference the definition of land-disturbing activity including exemptions, as well as any other significant terms, as necessary to produce an effective local program.
- 2. The document(s) shall identify the plan-approving authority and other positions of authority within the program, and must include the regulations and design standards to be used in the program.

3. The document(s) shall include procedures for submission and approval of plans, issuance of permits, monitoring and inspections of land-disturbing activities. The position, agency, department, or other party responsible for conducting inspections shall be identified. The local program authority shall maintain, either on-site or in local program files, a copy of the approved plan and a record of inspections for each active land-disturbing activity.
 4. The local program authority must take appropriate enforcement actions to achieve compliance with the program and maintain a record of enforcement actions for all active land-disturbing activities.
- B. The Department staff, under authority of the Board, shall periodically conduct a comprehensive review and evaluation of local programs. The review of a local program shall consist of the following: (1) personal interview between the Department staff and the local program administrator or designee(s); (2) review of the local ordinance and other applicable documents; (3) review of plans approved by the program; (4) inspection of regulated activities; (5) review of enforcement actions.
- C. Local programs shall be reviewed and evaluated for effectiveness in carrying out the Act using the criteria in this section. However, the Director is not limited to the consideration of only these items when assessing the overall effectiveness of a local program.
- D. If the Director determines that the deficiencies noted in the review will cause the local erosion and sediment control program to be inconsistent with the state program and regulations, the Director shall notify the local program authority concerning the deficiencies and provide a reasonable period of time for corrective action to be taken. If the program authority fails to take the corrective action within the specified time, the Director may formally request Board action pursuant to §10.1-562 of the Code of Virginia.
- E. Review and evaluation of local programs shall be conducted according to a schedule adopted by the Board.

4VAC50-30-100. State agency projects.

- A. All state agency land-disturbing activities that are not exempt and that have commenced without an approved erosion and sediment control plan shall immediately cease until an erosion and sediment control plan has been submitted to and approved by the Department. A formal "Notice of Plan Requirement" will be sent to the state agency under whose purview the project lies since that agency is responsible for compliance with the Act.

- B. Where inspections by Department personnel reveal deficiencies in carrying out an approved plan, the person responsible for carrying out the plan, as well as the state agency responsible, will be issued a notice to comply with specific actions and the deadlines that shall be met. Failure to meet the prescribed deadlines can result in the issuance of a stop work order for all land-disturbing activities on the project at the discretion of the Chief Administrative Officer of the Board, who is authorized to sign such an order. The stop work order will be lifted once the required erosion and sediment control measures are in place and inspected by department staff.
- C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided in an appropriate final order, the Director of the Department may petition for compliance as follows: For violations in the Natural Resources Secretariat, to the Secretary of Natural Resources; for violations in other secretariats, to the appropriate Secretary; for violations in other state agencies, to the head of such agency. Where the petition does not achieve timely compliance, the Director shall bring the matter to the Governor for resolution.
- D. Where compliance will require the appropriation of funds, the Director shall cooperate with the appropriate agency head in seeking such an appropriation; where the Director determines that an emergency exists, he shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

4VAC50-30-110. Board adopted local erosion and sediment control programs.

- A. To carry out its duties under §10.1-562 of the Code of Virginia, the Board shall develop, adopt, and administer an appropriate local erosion and sediment control program for the locality under consideration. In fulfilling these duties, the Board shall assume the full powers of the local erosion and sediment control program granted by law.
- B. The Board shall develop, adopt and administer a local erosion and sediment control program based on the minimum program standards established by these regulations and, as deemed appropriate by the Board, may include any or all of the provisions provided by law and regulations including administrative fees and performance securities.
- C. Upon adoption of a local erosion and sediment control program by the Board, payment of monies including fees, securities, and penalties shall be made to the state treasury.
- D. When administering a local erosion and sediment control program the Board may delegate to the Director such operational activities as necessary. Further, the Board may enter into agreements with other public or private entities to accomplish certain program responsibilities as it deems necessary to administer the local program.

The following is a complete, edited text (unofficial copy) of the Virginia Erosion and Sediment Control Certification Regulations (4VAC50-50). Please refer to the Virginia Administrative Code for an official copy of the Certification Regulations.

4VAC50-50-10. Definitions.

The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise.

"*Act*" means the Erosion and Sediment Control Law, Article 4 (§10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

"*Applicant*" means any person submitting a request to be considered for certification.

"*Board*" means the Virginia Soil and Water Conservation Board.

"*Certification*" means the process whereby the Board, on behalf of the Commonwealth, issues a certificate to persons who have completed training programs or in other ways demonstrated adequate knowledge in the specified subject areas.

"*Certified inspector*" means 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 year after enrollment.

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

"*Certified program administrator*" means an employee or agent of a program authority 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 administrator and successfully completes such program within one year after enrollment.

"*Certified combined administrator*" means an employee or agent of a program authority who: (i) holds a certificate of competence from the Board in the combined areas of program authority, plan review, and project inspection; or, (ii) is enrolled in the Board's training program for program administrator, plan reviewer, and project inspection and successfully completes such program within one year after enrollment.

"*Classification*" refers to the four specific subject areas that make up activities being performed

(program administrator, plan reviewer, inspector, and combined).

"Combined administrator" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer and project inspector of a program authority.

"Department" means the Department of Conservation and Recreation.

"Erosion and Sediment Control Plan," "conservation 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 all decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the plan-approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objective.

"Inspector" means anyone who, as a representative of a program authority, is responsible for periodically examining the erosion and sediment control activities and premises of a land-disturbing activity for consistency with the Erosion and Sediment Control Law and Regulations.

"Plan reviewer" means anyone who is responsible for determining the accuracy of erosion and sediment control plans and supporting documents for approval by a program authority.

"Program administrator" means the person or persons responsible for administering and enforcing the erosion and sediment control program of a program authority.

"Program authority" means a soil and water conservation district, county, city or town which has adopted an erosion and sediment control program which has been approved by the Board.

"State erosion and sediment control program" or "state program" means the program administered by the Board through the Director of the Department of Conservation and Recreation pursuant to the Erosion and Sediment Control Law and 4VAC50-30-10 et seq., Erosion and Sediment Control Regulations.

4VAC50-50-20. Purpose.

The purpose of these regulations is to guide the issuance of certificates of competence required by §10.1-561 of the Act.

4VAC50-50-30. Applicability.

These regulations are applicable to:

- A. Every program authority that administers an erosion and sediment control program. Staff of program authority must be certified in accordance with §10.1 - 561.1 of the Act.
- B. Anyone who is contracted by a program authority to perform any or all of the functions of that authority. This person will be subject to the same certification requirements as the authority.
- C. Anyone voluntarily seeking certificates of competence from the Board for classifications described in 4VAC50-50-40 of this chapter.

4VAC50-50-40. Certificates of competence.

- A. Certificates of competence shall be issued by the Board for the following classifications:
 - 1. Program administrator. The person or persons employed as the erosion and sediment control program administrator.
 - 2. Plan reviewer. The person or persons who review conservation plans to be approved by the program authority.
 - 3. Inspector. The person or persons responsible for inspecting erosion and sediment control practices to ensure compliance with the Virginia Erosion and Sediment Control Law and Regulations.
 - 4. Combined Administrator. The person or persons responsible for the combined duties of administration, plan review and inspection of regulated activities of a local program authority.
- B. Any person employed as a plan reviewer who 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 shall qualify as a certified plan reviewer and will not require a certificate of competence from the board.

- C. Any person who holds a level II certificate of competence from the Board in areas of plan review, project inspection or as a program administrator which was obtained prior to adoption of the mandatory certification as specified in §10.1 - 561.1 B of the Act shall be deemed to satisfy the requirements of that area of certification. Any certification obtained before the adoption of the mandatory program which satisfies the requirements will be valid until its previously scheduled expiration date.

4VAC50-50-50. Eligibility requirements.

- A. Certification may be obtained by satisfactorily completing and submitting an application to the Department for review and approval and:
 - 1. By obtaining a total of six months of experience (880 hours) as a plan reviewer, inspector or combined duties and obtaining a passing score on the certification examination administered by the Department; or,
 - 2. By enrolling in and completing a Board approved training program in the areas of program administrator, plan reviewer, inspector, or combined administrator within twelve months of the time of enrollment (starting with the first training course enrolled) and obtaining a passing score on the certification examination.
 - (a) The training program for inspectors will consist of attending and completing courses/seminars in "Basic Erosion and Sediment Control in Virginia" and "Erosion and Sediment Control for Inspectors."
 - (b) The training program for plan reviewers will consist of attending and completing courses/seminars in "Basic Erosion and Sediment Control in Virginia" and "Erosion and Sediment Control for Plan Reviewers."
 - (c) The training program for program administrators will consist of attending the seminar "Basic Erosion and Sediment Control in Virginia."
 - (d) The training program for combined administrators will consist of attending the courses/seminars in "Basic Erosion and Sediment Control in Virginia," "Erosion and Sediment Control for Inspectors" and "Erosion and Sediment Control for Plan Reviewers."
- B. Certification shall be valid for three years and will expire on the last day of the expiration month.

- C. Recertification may be obtained for classifications outlined in 4VAC50-50-40, "Certificates of Competence," prior to the expiration of a certification by:
1. Obtaining a passing score on the certification examination; or,
 2. Successfully completing a Board-approved training program.

4VAC50-50-60. Fees.

- A. Application and recertification fees shall be collected to cover the administrative cost for the certification program.
- B. A fee will also be charged to present education and training programs which support the certification program.
- C. Fees are non-refundable and shall not be prorated.

4VAC50-50-70. Examination.

- A. A Board approved examination shall be administered at least twice a year.
- B. An individual may take the certification examination for the desired certificate of competence after fulfilling the prerequisite experience requirement or completing a Board approved training program in accordance with 4VAC50-50-50 "Eligibility Requirements."
- C. An individual who is unable to take an examination at the time scheduled shall notify the Department within 48 hours prior to the date of the examination; such an individual shall be rescheduled for the next examination. Failure to notify the Department may require the individual to submit a new application and payment of fees, in accordance with these regulations.
- D. An applicant who is unsuccessful in passing an examination will be allowed to pay the appropriate fee and retake the appropriate exam within one year without resubmitting an application. After the one-year period has elapsed, an applicant will be required to submit a new application with the appropriate fee in accordance with these regulations in order to take the examination. Application for examination must be received at least 60 days prior to the scheduled examination by the Department to be eligible to sit for the examination.
- E. An acceptable passing score of 70% will be required on the appropriate certification exam.
- F. All applicants will be notified in writing within 60 days of the results of the examination.

4VAC50-50-80. Application.

- A. Any person seeking certification by a combination of experience and examination or by the combination of completion of the training program and examination shall submit a completed application with the appropriate fee(s) attached. The application shall contain the following:
1. The applicant's name, address, daytime phone number, social security number, name and address of business as well as the date the application was filled out.
 2. The classification of certification applying for as set forth in 4VAC50-50-50 Certificates of Competence of these regulations, and if applying for initial certification or recertification.
 3. If any special arrangements must be provided for because of a handicap.
 4. A verification of all work experience signed and dated by applicant's supervisor.
 5. A signed and notarized affidavit confirming that all statements in the application are believed to be true.

Incomplete applications will be returned to the applicant. All applications must be received in the appropriate Department office or by mail post marked at least 60 days prior to the scheduled examination date in order to be able to sit for the examination.

- B. All applications of candidates will be reviewed by the Department to determine eligibility for certification. All applicants will be notified of the results of the review within 30 days of receipt of the application. Any applicant may appeal the review, in writing, to the Board within 30 days of the Department's determination. No applicant will be approved for certification unless they meet all the requirements of these regulations.
- C. Applicants who have been found ineligible to sit for an examination may request further consideration by submitting a letter to the Board with the necessary evidence of additional qualifications. No additional fee will be required, provided that all requirements for certification are met within one year from the date of the original application.

4VAC50-50-90. Discipline of certified personnel.

The Board may suspend, revoke or refuse to grant or renew the certification of any person if the Board, in an informational fact finding under §9-6.14:11 of the Code of Virginia, finds that:

1. The certification was obtained or renewed through fraud or misrepresentation;
2. The certified person has violated or cooperated with others in violating any provision of these regulations;
3. The certified person has not demonstrated reasonable care, judgment, or application of his knowledge and ability in the performance of his duties; or
4. The certified person has made any material misrepresentation in the course of performing his duties.