

CHAPTER 104. Erosion and Sedimentation Control.

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Section 104-1-1. Purpose and administration.

Pursuant to the powers granted by general law, including the provisions of the Code of Virginia, Title 62.1, Chapter 3.1, Article 2.4, Erosion and Sediment Control Law, this Chapter is adopted for the following purposes: To conserve and protect the land, water, air, vegetation and other natural resources of Fairfax County; to alleviate erosion, siltation and other harmful effects of land-disturbing activities on neighboring land and streams, by ensuring that the owner of the property on which land-disturbing activities are to be carried out provides adequate controls of erosion and sedimentation; and takes necessary measures to preserve and protect trees and other vegetation during all phases of any land-disturbing activity. The Director shall be responsible for the administration of this Chapter.

(5-82-104; 15-89-104; 04-14-104.)

Section 104-1-2. Applicability; regulated land-disturbing activities; submission and approval of a conservation plan.

Except as noted herein, no person may engage in any land-disturbing activity in Fairfax County until he has submitted to the County a conservation plan for the land-disturbing activity and the plan has been reviewed and approved by the Director. The conservation plan shall be included in the grading plan required under Paragraph 3 of Part 6 of Article 2 of the Zoning Ordinance unless the following applies. Where the land-disturbing activity results from the demolition of a single family dwelling, demolition of an accessory structure to a single family dwelling, construction of an addition to a single family dwelling as defined in Chapter 61 of the Code, or construction of an accessory structure to a single family dwelling, that results in a disturbed area of 5,000 square feet or less and does not require the installation of water quality controls or other drainage improvements, the conservation plan may be included in a plat certified by a land surveyor, engineer, landscape architect or architect authorized by the State to practice as such meeting the requirements of Part 6 of Article 18 of the Zoning Ordinance in lieu of a grading plan. The standards in Section 104-1-8 are to be used by the applicant when making a submittal under the

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provisions of this Chapter and in the preparation of a conservation plan. The Director, in considering the adequacy of a submitted plan, shall be guided by these standards. 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 Director, as provided in § 62.1-44.15:52 of the Code of Virginia, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this Chapter. In order to prevent further erosion, the County may require approval of a conservation plan for any land identified as an erosion impact area. The provisions of this Article shall not limit the powers or duties presently exercised by the State Water Control Board or the Department of Mines, Minerals and Energy.

- (a) 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 State Water Control Board for review and approval in accordance with § 62.1-44.15:55.D of the *Virginia Code*.
- (b) Any person engaging, in more than one jurisdiction, in the creation and operation of wetland mitigation or stream restoration banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetland mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation or stream restoration banks annually with the State Water Control Board for review and approval in accordance with § 62.1-44.15:55.E of the *Virginia Code*. Approval of general erosion and sediment control specifications by the State Water Control Board does not relieve the owner or operator from compliance with any other Fairfax County ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.
- (c) Except as provided for in § 62.1-44.15:56 of the *Virginia Code*, land-disturbing activities undertaken by an agency of the Commonwealth of Virginia shall be exempt from the requirements of this Chapter. Notwithstanding § 62.1-44.15:56 of *Virginia Code*, public institutions of higher education, including community colleges, colleges, and universities, shall be subject to project review and compliance for state erosion and sediment control requirements by the Director, unless such institution submits annual specifications to the Department of Conservation and Recreation, in accordance with § 62.1-44.15:56 A (i) of the *Virginia Code*.

(5-82-104; 15-89-104; 37-03-104; 07-07-104; 73-08-104; 24-11-104; 04-14-104.)

Section 104-1-3. Plan review and approval.

- (a) Upon submission of a conservation plan to the Director, the Director shall, within 45 days, approve any such plan if he determines that the plan meets the conservation standards as defined herein.
- (b) The Director must act on all plans submitted within forty-five (45) days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving the specific reasons for its disapproval. When a plan submitted for approval under this Section is found upon review by the Director to be inadequate, he/she shall specify such modifications, terms, and conditions as will permit approval of the plan and communicate these requirements to the applicant. If no action is taken by the Director within the time specified above, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. Where proposed land-disturbing activities involve lands under the jurisdiction of more than one (1) local erosion and sediment control program, at the option of the applicant, an erosion and sediment control plan may be submitted to the State Water Control Board for review and approval rather than to each jurisdiction concerned.

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- (c) *Plan Alterations*: An approved plan may be changed by the Director when he has approved the plan in the following cases:
 - (1) Where inspection has revealed the inadequacy of the plan to satisfy applicable regulations; or
 - (2) Where the owner 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 Director and the owner responsible for carrying out the plan.
- (d) No permit to engage in any land-disturbing activity shall be issued nor shall any conservation plan for such land-disturbing activity be approved until the applicable fees, at such times and amounts in Appendix Q of the Code, have been paid to the County.
- (e) 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 a conservation plan shall be the responsibility of the owner.
- (f) The Director may waive or modify any of the standards 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 Director 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 Director. The Director shall respond in writing either approving or disapproving such a request. If the Director 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 Director 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.

(5-82-104; 10-86-84; 17-86-104; 52-86-104; 7-89-104; 13-89-104; 15-89-104; 4-90-104; 17-91-104; 21-93-104; 28-93-104; 14-96-104; 12-00-104; 44-01-104; 31-03-104; 37-03-104; 17-05-104; 41-05-104; 07-11-104; 04-14-104.)

Section 104-1-4. Approved plan required for issuance of grading, building or other permits; security for performance.

Neither the Director, nor any agency authorized under any law to issue grading, building, or other permits for activities involving land-disturbing activities, may issue any such permits unless the applicant submits with his application an approved conservation plan, certification that the plan will be followed, and, where required, evidence of VSMP permit coverage. Prior to issuance of any permit, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the Director, as provided by *Virginia Code*, § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity. The Director, prior to issuance of any permit, may also require from any applicant a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the Director, to ensure that measures could be taken by the County 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. If the County takes such conservation action upon any failure by the permittee, the County may collect from the permittee the reasonable cost of such action which exceeds the amount of security held. Following the issuance of any permit, the Director, or his agents, shall have the right to enter and inspect the permittee's property at all times prior

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to release of the project. Within 60 days of the completion of adequate stabilization of the land-disturbing activity, as determined by the Director, such 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. 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.

(5-82-104; 15-89-104; 21-93-104; 37-03-104; 04-14-104.)

Section 104-1-5. Monitoring and inspections.

The Director shall provide for periodic inspections of any land-disturbing activity in accordance with Section 9VAC25-840-60.B of the Virginia Erosion and Sediment Control Regulations and require that an individual holding a certificate of competence, as provided by *Virginia Code*, § 62.1-44.15:52, will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this Chapter. The Director may require monitoring and reports from the person responsible for carrying out the plan to ensure compliance with (1) the approved plan, and (2) the field practices specified in the standards defined herein, to determine whether the measures required in the plan and standards are effective in preserving and protecting trees and other vegetation, and controlling erosion and sediment resulting from the land-disturbing activities. Notice of such right of inspection shall be included in the permit. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. If the Director determines that the permittee has failed to comply with the plan, the standards defined herein, or this Section, the Director shall immediately serve upon the permittee, his agent, or the person responsible for carrying out the plan either in person or by registered or certified mail to the address specified by the permittee in his permit application, or by delivery at the site of the permitted activities to the agent or employee of the permittee supervising such activities a notice to comply.

Such notice shall specifically set forth the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. If the permittee fails to comply within the time specified, he may be subject to revocation of the permit; furthermore, the permittee or the 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 this Article.

(5-82-104; 37-86-104; 15-89-104; 38-94-104; 44-01-104; 37-03-104; 04-14-104.)

Section 104-1-6. Reconsideration; judicial review.

- (1) Any person aggrieved by a decision of the Director has the right to petition the Director for reconsideration of the decision, provided such request is made in writing within ten (10) days of the date of the Director's written decision. This reconsideration procedure is not applicable where an emergency situation exists, as determined by the Director, which would require immediate and necessary action under this Chapter. A petitioner under this reconsideration procedure must demonstrate to the Director's satisfaction a clear and direct interest in the decision. If requested by the petitioner, the Director shall seek the recommendations of the Erosion and Sediment Control Review Board, as established in Article 3 of this Chapter, although such recommendations would be advisory in nature only. If a timely reconsideration is filed by a petitioner with a clear and direct interest, the final decision of the Director shall be the written decision on the reconsideration.
- (2) Final decisions of the Director under this Chapter shall be subject to review by the circuit court, provided an appeal is filed within thirty (30) days from the date of the final written decision which adversely affects the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities. (5-82-104; 12-00-104.)

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Section 104-1-7. Definitions.

For the purpose of this Chapter, the following terms shall have the meanings respectively ascribed to them by this Section:

- (a) *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.
- (b) *Board* means the Virginia State Water Control Board.
- (c) *Certified inspector* means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one (1) year after enrollment.
- (d) *Certified plan reviewer* means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one (1) year after enrollment, or (iii) is licensed as a professional engineer, architect, landscape architect or land surveyor pursuant to Code of Virginia, Title 54.1, Chapter 4, Article 1, § 54.1-400 et seq., or is a professional soil scientist as defined in Code of Virginia, Title 54.1, Chapter 22, § 54.1-2200 et seq.
- (e) *Certified program administrator* means an employee or agent of a VESCP 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 (1) year after enrollment.
- (f) *Clearing* means removing or causing to be removed the vegetation growing in the soil which protects and stabilizes the soil. Such removing or causing to be removed shall include any intentional or negligent act to (1) cut down, (2) remove all or a substantial part of, or (3) damage a tree or other vegetation which will cause the tree or other vegetation to decline and/or die. Such acts shall include but not be limited to damage inflicted upon the root system of the vegetation by the application of toxic substances, by the operation of equipment and vehicles, by storage of materials, or by the damage of natural grade due to unapproved excavation or filling, or damage caused by the unapproved alteration of natural physical conditions.
- (g) *Conservation plan* or *erosion and sediment control plan* or *plan* means a document containing methods for the conservation of soil and water and other natural resources of a unit or group of units of land, pursuant to the requirements of this Chapter. 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 and demonstrate compliance with the standards of Section 104-1-8. The conservation plan shall contain the tree conservation requirements specified in Chapter 122 of the Code and in Chapter 12 of the Public Facilities Manual.
- (h) *Conservation standards* or *standards* shall be defined in Section 104-1-8, "Conservation standards," of this Article.
- (i) *Director* means the Director of the Department of Public Works and Environmental Services, or his/her agent.
- (j) *Disturbed land area* means that land on which the soil has been disturbed or on which soil disturbances may be caused by natural elements due to clearing of the vegetation or on which pavement or other impervious surfaces have been placed over existing pervious surfaces.
- (k) *Engage* means to take part in or to allow, direct or permit another person to take part in, a land-disturbing activity.

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- (l) *Erosion impact area* means an area of land not associated with current land-disturbing activities 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 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.
- (m) *Land-disturbing activity* means any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into State waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, paving of existing pervious areas or otherwise creating new impervious areas, except that the term shall not include:
- (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
 - (2) Individual service connections;
 - (3) Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk provided such land-disturbing activity is confined to the area of the road, street or sidewalk that is hard surfaced;
 - (4) Septic tank lines or drainfields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
 - (5) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Code of Virginia Title 45.1;
 - (6) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulation; including engineering operations as follows: the 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 *Virginia Code*, Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in Subsection (B) of § 10.1-1163;
 - (7) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
 - (8) Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act (*Virginia Code*, § 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;
 - (9) Disturbed land areas for commercial or noncommercial uses of 2,500 square feet or less in size;
 - (10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
 - (11) Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by the Fairfax County Wetlands Board, 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 Chapter;
 - (12) Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the Director.

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- (n) *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.
- (o) *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.
- (p) *Peak flow rate* means the maximum instantaneous flow from a given storm condition at a particular location.
- (q) *Permittee* means the person to whom the permit authorizing land-disturbing activities is issued or the person who certified that the approved erosion and sediment control plan will be followed.
- (r) *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 this State, any interstate body, or any other legal entity.
- (s) *Runoff volume* means the volume of water that runs off the land development project from a prescribed storm event.
- (t) *Soil and water conservation district* means a political subdivision of the Commonwealth organized in accordance with the provisions of *Virginia Code* Article 1.5 (§ 10.1-1187.21 et seq.) of Chapter 11.1 of Title 10.1.
- (u) *State waters* means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.
- (v) *Vegetation* includes but is not limited to trees, shrubs and plants of any kind.
- (w) *Virginia Erosion and Sediment Control Program* or *VESCP* means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations.
- (x) *Virginia Erosion and Sediment Control Program authority* or *VESCP authority* means the County of Fairfax, Virginia which has been approved by the Board to operate a VESCP.

(5-82-104; 43-88-104; 15-89-104; 9-90-104; 21-93-104; 38-94-104; 12-00-104; 37-03-104; 62-08-104; 24-11-104; 04-14-104.)

Section 104-1-8. Conservation standards.

- (a) *Conservation standards* or *standards* shall be the State Erosion and Sediment Control Regulations, the Standards & Specifications as contained in the current Virginia Erosion and Sediment Control Handbook and the *Public Facilities Manual* with modifications as follows:
 - (1) *Standard & Specification #3.04 Straw Bale Barriers*—Rebars are not to be used to stake these barriers. Straw bales are to be used only for sheet flow application; they are not to be used for any drainageway, or channel flow applications or site development perimeter control.
 - (2) *Standard & Specification #3.06 Brush Barrier*—This practice is not to be used without the specific authorization of the Director.

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- (3) *Standard & Specification #3.07 Storm Drain Inlet Protection*—Any storm drain inlet protection measure which completely blocks the drain throat or entrance is not to be used. Straw bales and cinder block wrapped with filter fabric are not to be used for curb inlet protection.
- (4) *Standard & Specification #3.13 Temporary Sediment Trap*—For land areas designated as Resource Protection Areas (RPAs), the storage volume shall be 202 cubic yards per acre of disturbed area. Pipe outlet sediment traps shall be required for drainage areas of one to three acres. For land areas designated as RPAs, pipe outlet sediment traps may also be required for areas of less than one acre where topographical and drainage conditions are favorable for field implementation (see Plate 2-11 of the current *Public Facilities Manual* for details). Stone outlets for temporary sediment traps under one acre of drainage area outside of RPAs shall be constructed according to current Virginia Erosion and Sediment Control Handbook specifications.
- (5) *Standard & Specification #3.14 Temporary Sediment Basin*—For land areas designated as RPAs, the storage volume shall be 202 cubic yards per acre of disturbed area.
- (6) *Standard & Specification #3.34 Bermuda Grass and Zoysia Grass Establishment*—This practice is not to be employed in Fairfax County.
- (7) *Standard and Specification #3.38 Tree Preservation and Protection*—This section is not to be used in Fairfax County. In its place, Chapter 12, "Tree Conservation," of the *Public Facilities Manual* shall be used.
- (8) *Standard & Specification #3.02 Temporary Stone Construction Entrance*—The minimum length for the temporary gravel construction entrance shall be 75 feet and a woven filter fabric underliner is required. If the action of vehicles traveling over the gravel pad is not sufficient to remove the majority of the mud, then a wash rack shall be required with an appropriate water source to wash the mud off the tires before entering the public road.
- (9) *Standard & Specification #3.31 Temporary Seeding*—Temporary seeding and mulching shall be required once an area is denuded for a maximum of 14 days except for that portion of the site in which work will be continuous beyond 14 days. For winter stabilization, any area denuded for 14 days after November 1, shall be seeded and mulched with the appropriate seed mixture as specified in Chapter 3 of the current Virginia Erosion and Sediment Control Handbook.
- (10) *Standard & Specification #3.05 Silt Fence*—Manufacturer's certification shall be required to meet the physical properties given for synthetic filter fabric per the construction specifications as specified in the current Fairfax County Checklist for Erosion and Sediment Control Manual. This certification shall be presented to the Fairfax County inspector prior to installation in the field.

When the standards vary between the publications, the most stringent standard shall apply.

- (b) *Authorization for more stringent standards.* The Board of Supervisors is authorized to adopt more stringent soil erosion and sediment control regulations than those necessary to ensure compliance with the State's minimum regulations. However, this section shall not be construed to authorize the Board of Supervisors to impose any more stringent regulations for plan approval or permit issuance than those specified in Sections 104-1-3 and 104-1-4
- (c) 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 *Virginia Code* §§ 62.1-44.15:52, 62.1-44.15:54 or 62.1-44.15:65 or this section. Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one-year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, 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

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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 requirement for natural or man-made channels as defined in regulations promulgated pursuant to *Virginia Code* §§ 62.1-44.15:54 or 62.1-44.15:65 or this section. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of this subsection shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act (*Virginia Code* § 62.1-44.15:24 et seq.) and attendant regulations, unless such land-disturbing activities are in accordance with the grandfathering provisions of the Virginia Stormwater Management Program (VSMP) Permit Regulations.

(5-82-104; 27-88-104; 15-8-104; 9-90-104; 21-93-104; 38-94-104; 62-08-104; 24-11-104; 04-14-104.)

Section 104-1-9. Interpretation and conflict.² [¶](#)

- (a) In their interpretation and application, the requirements of this Ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.
- (b) *Conflict With Public and Private Provisions:*
 - (1) *Public provisions:* This Ordinance is not intended to interfere with, abrogate or annul any order of a court of competent jurisdiction, statute, regulation, or other provision of law. Where any provision of this Ordinance imposes restrictions different from those imposed by any other provision of County ordinances or regulations or other provisions of law, whichever provisions are more restrictive or impose higher standards shall control unless the intent is clearly otherwise.
 - (2) *Private provisions:* This Ordinance is not intended to abrogate any legally enforceable easement, covenant or any other private agreement, or restriction; provided, that where the provisions of this Ordinance are more restrictive or impose higher standards or regulations than such easement, covenant or other private agreement or restriction, the requirements of this Ordinance shall govern. Where the provisions of the easement, covenant or private agreement or restriction impose duties and obligations more restrictive, or higher standards than the requirements of this Ordinance, and such private provisions are not inconsistent with this Ordinance or determinations thereunder, then such private provisions shall be operative and supplemental to this Ordinance and determinations made thereunder. (5-82-104; 21-93-104.)

Section 104-1-10. Saving provision.³ [¶](#)

This Ordinance shall not be construed as abating any legal action pending under, or by virtue of, the prior existing Erosion and Sediment Control Ordinance or regulations, or as discontinuing, abating, modifying or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm, or corporation, or as waiving any right of the County under any section or provision existing at the time of adoption of this Ordinance or as vacating or annulling any rights obtained by any person, firm or corporation, by virtue of lawful action of the County, except as shall be expressly provided for in this Ordinance. (5-82-104; 21-93-104.)

Section 104-1-11. Reservations and repeal.⁴ [¶](#)

Upon the effective date of this Ordinance according to law, the "Erosion and Sediment Control Ordinance" of Fairfax County adopted November 4, 1970, as amended, is hereby repealed and replaced by a new Section 104-1-1. (5-82-104; 21-93-104.)

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Section 104-1-12. Penalties, injunctions and other legal actions.⁵ [a](#)

- (a) *Violations:* Violators of this Chapter shall be guilty of a Class 1 misdemeanor.
- (b) *Civil Action for Damages:* In addition to any criminal penalties provided under this Article, any person who violates any provision of this Article may be liable to the County in a civil action for damages.
- (c) *Stop-Work Order:* Upon receipt of a sworn complaint of a violation under this Chapter, the Director may, in conjunction with or subsequent to a notice to comply as specified above, issue an order requiring that all or part of the land-disturbing 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 Section 104-1-2, the Director may issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in Sections 104-1-2 and 104-1-5. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven (7) days from the date of service pending application by the Director or the permit holder for appropriate relief to the Circuit Court. If the alleged violator has not obtained an approved plan or any required permits within seven (7) days from the date of service of the order, the Director 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 County. The owner may appeal the issuance of an order to the Circuit Court. Any person violating or failing, neglecting or refusing to obey an order issued by the Director may be compelled in a proceeding instituted in the Circuit Court to obey same and comply therewith by injunction, mandamus or other appropriate remedy. The order shall be lifted immediately following completion and approval of the corrective action or obtaining the approved plan or any required permits. Nothing in this section shall prevent the Director from taking any other action specified in this Chapter.
- (d) *Injunctive Relief:* The County may apply to the Fairfax County Circuit Court for injunctive relief to enjoin a violation or a threatened violation under this Chapter, without the necessity of showing that there does not exist an adequate remedy at law.
- (e) *Enforcement:* The Commonwealth's Attorney shall, upon request of the County, take legal action to enforce the provisions of this Article.
- (f) *Compliance as Defense Against Damages:* Compliance with the provisions of this Article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met; and the complaining party must show negligence in order to recover any damages.
- (g) *Use of Escrow:* As provided for in Section 104-1-5 of this Article, the Director may authorize the County agents to use escrow funds posted by the applicant to provide conservation measures as may be necessary due to the applicant's failure to initiate appropriate conservation action as a result of his land-disturbing activity. In the event that escrow funds are used by the County pursuant to this Article, the applicant shall deposit, within ten (10) days of such disbursement, an amount sufficient to restore the amount to its original balance.
- (h) *Civil Penalty:* Without limiting the remedies which may be obtained in this Section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this Section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation.
- (i) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or any condition of a permit or any provision of this Article, the Director may provide, in an

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order issued by the Director against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection (h) of this Section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection (h). (5-82-104; 37-86-104; 15-89-104; 21-93-104; 38-94-104; 24-11-104.)

Section 104-1-13. Right of entry.

The Director or any duly authorized agent of the Director may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of Virginia Erosion and Sediment Control Law and this Chapter.

(04-14-104.)

FOOTNOTE(S):

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1. Editor's note—Ord. No. 5-82-104 effected major changes in Art. 1 through the process of redesignation and amendment. For the convenience of the user, the following table will illustrate the former designation and the new disposition: [Back](#)

Former Section	New Section	Former Section	New Section	Former Section	New Section
104-1-1(a)	104-1-1	104-1-1(h)	104-1-13	104-1-1(1)(7)	104-1-7(g)
104-1-1(b)	104-1-2	104-1-1(i)	104-1-7	104-1-1(i)(8)	104-1-7(h)
104-1-1(c)(1)	104-1-3(a)	104-1-1(i)(1)	104-1-7(a)	104-1-1(j)	104-1-9
104-1-1(c)(2)	104-1-3(b)	104-1-1(i)(2)	104-1-7(b)	104-1-1(k)	104-1-10
104-1-1(d)	104-1-3(c)	104-1-1(i)(3)	104-1-7(c)	104-1-1(l)	104-1-11
104-1-1(e)	104-1-4	104-1-1(i)(4)	104-1-7(d)	104-1-1(m)	104-1-12
104-1-1(f)	104-1-5	104-1-1(i)(5)	104-1-7(e)	104-1-2	104-2-4(d)
104-1-1(g)	104-1-6	104-1-1(i)(6)	104-1-7(f)		

ARTICLE 1. Purpose and Administration.

Formerly, Art. 1 consisted of §§ 104-1-1, 104-1-2 and was derived from the following: Ord. Nos. 11-4-70, 17-75-17; 1961 Code, § 17-2; and Ord. Nos. 29-75-17, 24-76-104, 10-77-104, 19-77-104, 31-78-104, 40-78-104, 4-79-104, 22-80-104, 12-81-104. [\(Back\)](#)

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2. Formerly, § 101-1-10; renumbered by Ord. No. 21-93-104. [\(Back\)](#)

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3. Formerly, section 104-1-11; renumbered by Ord. No. 21-93-104. [\(Back\)](#)

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4. Editor's note—Reference to Section 104-1-1 in this section refers to provisions before amendment by Ord. No. 5-82-104. See the editor's note 1. at the beginning of this chapter. Formerly section 104-1-12; renumbered by 21-93-104. [\(Back\)](#)

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5. Formerly, section 104-1-13; renumbered by 21-93-104. [\(Back\)](#)

ARTICLE 2. Debris Landfill.

[Section 104-2-1. Landfill operation.](#)

[Section 104-2-2. Purpose and intent.](#)

[Section 104-2-3. Definitions.](#)

[Section 104-2-4. Debris landfill permit.](#)

[Section 104-2-5. Debris landfill permit requirements.](#)

[Section 104-2-6. Revocation.](#)

[Section 104-2-7. Fee.](#)

Section 104-2-1. Landfill operation.

No person shall operate a debris landfill in Fairfax County until a debris landfill permit for such purpose has been issued by the Director. Any person who is operating a legal approved landfill on the effective date of this Ordinance shall have three (3) months within which to apply for a debris landfill permit. (28-75-14A.)

Section 104-2-2. Purpose and intent.

It is the purpose of this Ordinance to protect and to provide for the public health, safety, and general welfare of the citizens of Fairfax County; to protect against the unregulated dumping of garbage or debris, to prevent the hazards of fire, to protect the County's and State's waters from pollution and from erosion and sedimentation; to protect against undue noise, against undue truck traffic, against uncontrolled dust and debris; to ensure conformance with permits which have been issued for Land Use and Design; and to ensure that the ultimate master-planned use of the property may be accomplished upon completion of operations. (28-75-14A; 18-78-104.)

Section 104-2-3. Definitions.

- (a) For purposes of this Chapter, a debris landfill (hereinafter called a landfill) is defined as a landfill used to dispose of only the following materials expressly permitted by the Board. Tree stumps, brush, logs, limbs, and root material; construction and/or demolition rubble; excavation material; major household appliances; ash (thoroughly quenched); machinery; metals, and properly cut-up tires (i.e. radially split, shredded or chipped) such that, when buried, there is no potential for trapping air or water in voids. In addition, compost may be used as normal landfill cover only in accordance with the Virginia State Health Department regulations, and when the landfill operator has received written authorization from the Virginia State Health Department to dispose of same on such a landfill. Semi-liquid excavation material and paper wastes (unless part of construction/demolition rubble) may be included only where expressly approved by the Director.
- (b) *Director* shall mean the Director of the Department of Public Works and Environmental Services or his/her agent.
- (c) *Operator* shall mean the owner of the property where the landfill activities are to take place, or his authorized agent. (28-75-14A; 18-78-104; 3-81-104; 46-81-104; 37-03-104.)

ARTICLE 2. Debris Landfill.

Section 104-2-4. Debris landfill permit.

- (a) No debris landfill permit shall be issued by the Director until he is satisfied that the applicant therefor has met the Land Use requirements and the Design requirements of the Fairfax County ordinances, or that the applicant had a legally established landfill operation in existence on the effective date of this Ordinance.
- (b) A debris landfill permit shall be granted by the Director, within sixty (60) days, where the application conforms to the requirements of this Ordinance and the provisions of the Zoning Chapter of this Code, and be effective for a period of time not in excess of that required to attain the maximum engineered capacity of the said landfill as specified in the Design Plan. The permit, by its terms, shall be subject to annual review and renewal by the Director. An application for renewal shall be submitted to the Director no later than sixty (60) days prior to the annual expiration date.
- (c) The applicant may, within ten (10) days of the Director's denial or failure to act, appeal in writing to the Board of Supervisors for a final determination.
- (d) Any person who has received the appropriate Land Use approval for the operation of a debris landfill, as that term is defined by Section 104-2-3 of this Code, shall submit a Design Plan to the Director, in conformance with the standards defined in Article 1 of this chapter and the *Public Facilities Manual*. The Director, after receiving the recommendations of the Health Department shall approve or disapprove, with reasons therefor, the Design Plan within forty-five (45) days of the date of submission. (28-75-14A; 18-78-104; 5-82-104; 89-08-104.)

Section 104-2-5. Debris landfill permit requirements.

- (a) A detailed operating plan for the proposed debris landfill shall accompany the application for a license and shall include the following information:
 - (1) The proposed rate of utilization of the landfill capacity along with the projected life of the landfill.
 - (2) The projected traffic count for vehicles hauling to the landfill on all neighboring highways or as deemed necessary by the Director.
 - (3) The planned hours of operation; the number of personnel assigned to the landfill; and the types and number of pieces of equipment to be used during these hours.
 - (4) The procedures for the control of dust on-site.
 - (5) The provisions for minimizing and controlling the carrying of dirt, dust, and/or mud onto off-site roadways; and for minimizing and controlling odor.
 - (6) The procedures and plan for the control of fire.
 - (7) The provisions for screening and limiting access including vegetation, hills, embankments, fencing, trees, etc.
 - (8) The procedures for providing temporary erosion control including but not limited to division ditches, embankments, channels, vegetation growth, straw bales, grade stabilization, etc.
 - (9) The procedure for the placing of intermediate and final cover including the type of cover material to be used.
- (b) The operating plan shall demonstrate compliance with the following minimum requirements and guidelines:
 - (1) Adequate personnel and equipment to operate the landfill must be present during all working hours.
 - (2) A well-compacted cover, which shall be a minimum of four (4) to ten (10) inches in depth for surface and side slopes, shall be placed as intermediate cover over all material. No material shall remain uncovered for more than fourteen (14) days.

ARTICLE 2. Debris Landfill.

- (3) A well-compacted clean earth cover, which shall be a minimum of thirty (30) inches in depth for surface and side slopes, shall be placed as a final cover over the completed areas of the landfill.
- (4) A firebreak of a minimum of fifty (50) feet shall be maintained between the landfill and adjoining wooded areas in addition to availability of cover material maintained in close proximity to the working face of the fill.
- (5) Upon completion of a debris fill cell, the entire surface of intermediate cover shall be maintained free of cracks, erosion or uneven cover.
- (6) A vegetative or other appropriate cover for erosion control must be established and maintained on all intermediate and final landfill areas designated to remain inactive for a period of more than ninety (90) days.
- (7) All debris landfill cover shall be composed of earth or other approved material of such character that it can be compacted to provide a tight seal, will not crack excessively, and is free of putrescible substances.
- (8) No salvaging shall be permitted at the debris landfill, unless it is part of the operating plan.
- (9) The application shall indicate the degree of compaction of materials necessary to allow eventual construction upon the site commensurate with that envisioned by master plan use.
- (c) As a condition for the issuance of a debris landfill permit, the applicant shall agree to permit access to the site for inspection by the Director and other officials at any time as may be deemed necessary by the Director.
- (d) Such inspection shall be for the purpose of determining that the limitations and conditions of the debris landfill permit are being met, including but not limited to the following:
 - (1) Limitations on vehicle traffic, maintenance of the access road for vehicles;
 - (2) Provision for prevention from fire;
 - (3) Provisions for odor control;
 - (4) Protection of water quality;
 - (5) Establishment and preservation of grades as shown on the Design Plan. (28-75-14A; 18-78-104.)

Section 104-2-6. Revocation.

- (a) A debris landfill permit shall be subject to revocation at any time by the Director if he finds that the landfill is being operated in violation of the provision of this Chapter; in violation of the limitations and conditions of the permit; or that the landfill is not in accordance with the Design Plan as required herein.
- (b) Before revoking such permit, however, the Director shall give the holder thereof at least ten (10) working days written notice to correct any such violation. In the event that the violation has not been corrected within the ten-day period, the Director shall revoke the license.
- (c) Any operator whose permit is revoked may appeal in writing such revocation to the County Executive, for his decision within ten (10) days of his receipt of such appeal. (28-75-14A.)

Section 104-2-7. Fee.

The applicant for a debris landfill permit under these provisions shall pay to the County such fees as prescribed by Section 104-1-3(d). This fee shall include the cost of processing the debris landfill permit application and the inspections which are deemed necessary by the Director, and shall be assessed at the time of initial application and subsequently at the time of annual review. (28-75-14A; 10-86-104; 17-86-104.)

ARTICLE 3. Erosion and Sediment Control Review Board.

[Section 104-3-1. General.](#)

[Section 104-3-2. Recommendations.](#)

[Section 104-3-3. Rules and procedures.](#)

[Section 104-3-4. Meetings.](#)

[Section 104-3-5. Membership of the Review Board.](#)

[Section 104-3-6. Term of Review Board.](#)

Section 104-3-1. General.

- (a) *Purpose:* For the purpose of providing advice to the Director on all matters relating to erosion and sediment control upon the Director's request, and of making recommendations pursuant to the provisions of Section 104-1-6, "Reconsideration," under Article 1 of this Chapter, there is hereby established an Erosion and Sediment Control Review Board, herein referred to as the Review Board.
- (b) *Request for Reconsideration:* All requests for reconsideration shall be in writing and be made to the Director within ten (10) days of the Director's written decision. Such requests should indicate specifically whether the petitioner wishes the benefit of a review by the Review Board prior to the Director's final decision. (5-82-104.)

Section 104-3-2. Recommendations.

All recommendations of the Review Board shall be made in writing to the Director within ten (10) days after the Review Board has received all pertinent testimony and information on a specific case. (5-82-104.)

Section 104-3-3. Rules and procedures.

The Review Board may adopt, from time to time, such rules and procedures as it may deem necessary for its operation. (5-82-104.)

Section 104-3-4. Meetings.

The Review Board shall convene upon the request of the Chairman as necessary to hear reconsideration cases and provide advice and recommendations to the Director. (5-82-104.)

Section 104-3-5. Membership of the Review Board.

- (a) *Membership of the Erosion and Sediment Control Review Board.* The Review Board shall consist of five (5) members appointed by the Board of Supervisors. One (1) member shall be a representative from the Virginia Society of Professional Engineers, with at least five (5) years of local experience in erosion and sediment control measures associated with new construction activity. One (1) member shall be a representative from the Northern Virginia Building Industry Association or Associated Builders and Contractors, Incorporated, or Heavy Construction Contractors Association, with at least five (5) years of local experience in subdivision development and new home construction. One (1)

ARTICLE 3. Erosion and Sediment Control Review Board.

member shall be from Northern Virginia Soil and Water Conservation District. Two (2) members shall be residents of Fairfax County.

- (b) *Alternate Members:* The Board of Supervisors shall appoint alternate members with similar qualifications who may sit on the Review Board in the absence of any regular member. In the absence of a regular member, the respective alternate shall have the full power and authority of that regular member.
- (c) *Length of Appointment:* Members shall be appointed to serve for a term of two (2) years or until their successor has been appointed. Terms shall be staggered such that two (2) members shall be appointed every year, after the initial appointments. An appointment to fill a vacancy shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves.
- (d) *Chairman of Review Board:* The Review Board shall select one of its members to serve as Chairman.
- (e) *Review Board Staff Support:* The Director shall provide secretarial and staff support to the Review Board as is needed. A designated secretary shall be present at all proceedings of the Review Board and shall keep a written record of such proceedings. Such record shall be kept on file in the Office of the Director or his designee.
- (f) *Review Board Members Removal for Cause:* Any member may be removed by the Board of Supervisors for cause, including but not limited to nonfeasance, misfeasance, malfeasance or other just cause. Any such member shall be given notice of his removal and an opportunity to be heard.
- (g) *Review Board Members Removal:* In the event any member ceases to meet qualifications of the category under which he was appointed, his position shall be deemed vacant and a new member shall be appointed by the Board of Supervisors.
- (h) *Compensation of Review Board.* Compensation of appointed members of the Review Board shall be determined by the Board of Supervisors. (5-82-104; 13-88-104.)

Section 104-3-6. Term of Review Board.

Notwithstanding any provisions above to the contrary, the Review Board shall be terminated two (2) years from the date of adoption or readoption of this Article⁶, unless the Board of Supervisors expressly authorizes its continuation by an appropriate amendment to this Article. One (1) month prior to the termination date hereby established, the Director shall submit a written report to the Board of Supervisors evaluating the effectiveness of the Review Board. (5-82-104; 13-88-104; 16-90-104.) [i](#)

FOOTNOTE(S):

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6. This Article was adopted March 22, 1982; readopted April 25, 1988; and readopted May 21, 1990. [\(Back\)](#)