VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 10.1-1182 and 62.1-44.15:54 of the Code of Virginia, relating to Department of Environmental Quality; special orders; Virginia Erosion and Sediment Control Program; civil penalties.

[H 1350]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1182 and 62.1-44.15:54 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-1182. Definitions.

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

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Environment" means the natural, scenic, and historic attributes of the Commonwealth.

"Environmental justice" means the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, faith, disability, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies.

"Special order" means an administrative order issued to any party that has a stated duration of not more than twelve months and that may include a civil penalty of not more than ~~$10,000~~ *$32,500*.

§ 62.1-44.15:54. Virginia Erosion and Sediment Control Program.

A. Any locality that has chosen not to establish a Virginia Erosion and Stormwater Management Program (VESMP) pursuant to subdivision B 3 of § 62.1-44.15:27 shall administer a VESCP in accordance with this article; however, a town may enter into an agreement with a county to administer the town's VESCP pursuant to subsection C of § 62.1-44.15:27.

B. A VESCP authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other public or private entities to assist with carrying out the provisions of this article, including the review and determination of adequacy of erosion and sediment control plans submitted for land-disturbing activities on a unit or units of land as well as for monitoring, reports, inspections, and enforcement of such land-disturbing activities.

C. Any VESCP adopted by a county, city, or town shall be approved by the Board if it establishes by ordinance requirements that are consistent with this article and associated regulations.

D. Each approved VESCP operated by a county, city, or town shall include provisions for the coordination of the VESCP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

E. The Board shall conduct compliance reviews of VESCPs in accordance with subdivision (19) of § 62.1-44.15. The Board or Department also may require any locality that is a VESCP authority to furnish when requested any information as may be required to accomplish the purposes of this article.

F. Any VESCP authority that administers an erosion and sediment control program may charge applicants a reasonable fee to defray the cost of program administration. A VESCP authority shall hold a public hearing prior to establishing a schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESCP authority's expense involved.

G. Any locality that is authorized to administer a VESCP may adopt an ordinance or regulation where applicable providing that violations of any regulation or order of the Board, *any ordinance*, any provision of its program, any condition of a land-disturbance approval, 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 ~~$1,000~~ *$ 32,500*.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 that exceed a total of ~~$10,000~~ *$32,500*, 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 that exceed a total of ~~$10,000~~ *$32,500. However, for a land-disturbing activity that (i) disturbs an area measuring at least 10,000 square feet but less than one acre in an area not designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and (ii) is not part of a larger common plan of development or sale that disturbs one or more acres of land, the civil penalty shall not exceed $5,000 for each violation, and a series of violations arising from the same set of facts shall not exceed $50,000.* The penalties set out in this subsection are also available to the Board in its enforcement actions.